

OD-4

IA NO. GA/2/2021
In EC/431/2016
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Via Video Conference)

INDIA BREWERY & DISTILLERY LIMITED
Versus
SHAW WALLACE & COMPANY LIMITED & ANR.

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 4th October, 2021.

Appearance:-
Ms.Sonal Shah, Adv.
..for the decree-holder

Mr.Dhruba Ghosh, Sr. Adv.
Mr.Shounak Mitra, Adv.
Mr.P. Datta, Adv.
Ms.P.Banerjee, Adv.
..for the judgment-debtors.

The Court : Affidavits filed on behalf of the parties are taken on record.

This is an application for dismissal of the execution petition and for a direction that the Registrar, Original Side be directed to return to the petitioner/decreed-holder a sum of Rs.1.20 crores lying with interest accrued thereon in terms of an order dated 6 December 2016 passed in the execution petition.

The facts culminating in the filing of this petition are that the instant execution petition being EC No.431 of 2016 was filed in respect of an *ex parte* judgment and decree dated 14 November 2014 passed in CS No. 291 of 1992 (India Brewery & Distillery Limited versus Shaw Wallace & Company Limited). Subsequent to the filing of the instant execution petition, it is alleged that the

judgment-debtors came to learn about the decree dated 14 November 2014 for the first time and took steps for setting aside and /or recalling of the same. In an application filed by the judgment-debtor no.2, the ex parte judgment and decree dated 14 November 2014 was set aside upon contest by an order passed by a Co-ordinate Bench dated 29 August 2019 and subsequently corrected on 20 September 2019.

Being aggrieved by the orders passed in the application under Order IX Rule 13, the decree-holder had preferred an appeal being APO No.203 of 2019. The said appeal was dismissed by an order dated 6 January 2020. Being aggrieved by the said order passed by the Hon'ble Division Bench, the decree-holder had preferred a Special Leave Petition but there has been no stay granted by the Hon'ble Supreme Court.

In this background, the judgment-debtor no.2 has now filed the instant application asking for dismissal of the execution petition being EC No. 431 of 2016 and for a direction that the money deposited with the Registrar, Original Side, High Court, Calcutta be returned back to the decree-holder/petitioner.

The decree-holder opposes the prayer made by the judgment-debtor on the ground that in view of Section 14 of the Insolvency and Bankruptcy Code, 2016 there is a moratorium and that this application is not maintainable. It is submitted on behalf of the judgment-debtor that in so far as the embargo under Section 14 of the Code is concerned, the same is inapplicable in the facts of this case because the parent execution petition is a proceeding which has been filed by a corporate debtor and not against a corporate debtor.

In sofaras the pendency of the proceeding before the Hon'ble Supreme Court is concerned, I find that there is no stay operating as on date. Hence, I am of the view that mere pendency of the Special Leave Petition (SLP) cannot operate as an automatic stay of the judgment dated 6 January 2020. In any event I find that that there can be no prejudice caused to the decree-holder at this stage of the proceeding.

I am also of the view that it is an indisputable fact that the decree sought to be executed dated 14 November 2014 is not final nor enforceable nor binding on the parties. This decree has been set aside by a Single Judge of this Court and the Hon'ble Division Bench has also dismissed the appeal against the order dated 29 August 2019. It is true that there is a proceeding pending before the Hon'ble Supreme Court but there is no stay as on date and I reiterate that mere pendency of a Special Leave Petition cannot and does not operate as an automatic stay. As such, I am of the view that there is no question of executing the decree dated 14 November 2014.

In view of this fact, the present execution petition is not maintainable and is dismissed. Liberty is granted to the decree-holder to file a fresh proceedings in accordance with law if the circumstances so arise. In sofaras the deposit of money with the Registrar, Original Side is concerned, there will be an order in terms of prayer (b) of the Master's Summons I also note that in the light of the affidavit filed on behalf of the judgment-debtor at paragraph- 7 of the affidavit, it has been alleged that the decree-holder is a listed entity and in view of the change of hands in their management, the judgment-debtor is now a solvent

company and there is no question of their being any financial instability at the present. Furthermore, an undertaking is given by the Advocate-on-Record of the judgment-debtor that if necessary, the sum of Rs.1.20 crores would be secured or paid back if the circumstances so warrant in accordance with law.

The Registrar and all the parties are to act forthwith.

GA No.2 of 2021 and EC No. 431 of 2016 stand disposed of.

(RAVI KRISHAN KAPUR, J.)

D.Ghosh