

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
[COMMERCIAL DIVISION]

INTERIM APPLICATION NO.323 OF 2022

IN

COMMERCIAL SUMMARY SUIT NO.84 OF 2021

Reliance Capital Ltd. .. Applicant–Org. Def. 2

In the matter between

IDBI Trusteeship Services Ltd. .. Plaintiff

Vs.

1. Reliance Broadcast Network Ltd.

2. Reliance Capital Ltd. .. Defendants

Mr. Gaurav Joshi, Sr. Advocate, with Mr. Tushad Kakalia, Ms. Raghavi Sharma and Mr. D.J. Kakalia, i/by Mulla & Mulla & Craigie Blunt & Caroe, for the Applicant–Original Defendant No.2.

Dr. Birendra Saraf, Sr. Advocate, with Mr. Rohan Savant, Mr. Sachin Chandarana, Mr. Mayur Bhojwani and Mr. Reehan Ajmerwalla, i/by Manilal Kher Ambalal & Co., for the Plaintiff.

Mr. Pranav Desai, with Mr. Hrutvik Patil and Ms. Minal Pawar, i/by India Law Alliance, for Defendant No.1.

CORAM : A. K. MENON, J.

DATE : 7TH MARCH, 2022.

P.C. :

1. The applicant prays for vacating the ad-interim order passed by this court on 4th November 2020, by which the court granted ad-interim relief in terms of prayer clause (e), which reads as follows :-

“(e). That pending the hearing and final disposal of this Suit, this Hon’ble Court be pleased to restrain the defendants, by itself, its agents, and/or any other persons claiming through it, by a temporary order and injunction, from, in any manner

transferring, alienating, selling, disposing of and/or dealing with and/or parting with possession and/or encumbering and/or creating any third party right or interest in the all assets, immovable and movable, securities, investments owned by the defendants and/or the assets and securities of which the beneficial ownership or control is enjoyed by the defendants including assets disclosed on oath by the defendants.”

2. The order is operating against defendant no.2 and it is the applicant's case that on 29th November 2021, the Reserve Bank of India by a Press Release of even date issued under Section 45-IE of the Reserve Bank of India Act, 1934 superseded the Board of Directors of the 2nd defendant and appointed the applicant – Mr. Nageswara Rao Y., a former Executive Director of the Bank of Maharashtra, as Administrator of the 2nd defendant. It is submitted that the Reserve Bank of India (**RBI**) has since constituted a three-member Advisory Committee to assist the Administrator. It is contended by Mr. Joshi appearing in support of the IA that on or about 2nd December 2021, the RBI filed an application before the National Company Law Tribunal, Mumbai (**NCLT**) for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the 2nd defendant. The CIRP proceedings were admitted on 6th December 2021. The order of the NCLT records that the respondent no.2 was in default of a debt due and payable and the default was more than the minimum amount contemplated under Section 4(1) of the Insolvency and Bankruptcy Code, 2016 and hence there was no reason to deny admission of the petition.

3. Mr. Joshi submitted that the Appropriate Regulator was the RBI in the instant case and it had initiated the CIRP against defendant no.2 – Reliance

Capital Ltd. – a Financial Service Provider (**FSP**), who is amenable to the provisions of the Code. Accordingly, a moratorium came into effect as contemplated under Section 14 of the Code. The moratorium took effect from the date of the order, i.e. 6th December 2021, and would continue till completion of the CIRP or till the Adjudicating Authority approves a Resolution Plan under Section 31(1) of the Code; alternatively, till an order of liquidation of the defendant no.2-FSP was passed under Section 33 of the Code. The Administrator was appointed of the respondent no.2 to carry out functions as per the Code and was thus required to exercise his powers pursuant to Sections 15, 17, 18, 19 and 20 of the Code. During the CIRP, the management of defendant no.2 would vest in the Administrator. According to Mr. Joshi, by virtue of the order passed by the NCLT, read with Section 14(1) of the Code, a moratorium having been declared, the plaintiff cannot seek to enforce any rights under the suit contract.

4. Mr. Joshi submitted that in view of commencement of the CIRP, the suit against the 2nd defendant cannot proceed and by operation of law, viz. Section 14 of the Code, interim relief cannot continue and hence the 2nd defendant has approached this court for vacating that order in view of the change in the circumstances. It is also contended that if the order is not vacated, it would adversely impact the CIRP. Mr. Joshi has therefore submitted that the Administrator proposes to make attempts at revival and those efforts cannot be frustrated on account of the injunction and hence he sought an order vacating the ad-interim stay dated 4th November 2020.

5. In support of his application, Mr. Joshi has relied on numerous judgments. In particular, he makes reference to an order passed by the Delhi High Court in *Housing Development Finance Corporation Ltd. Vs. Reliance Capital Ltd. & Anr.*¹, in which the court vide an order dated 13th January 2022 stayed the suit and interim orders passed therein. The suit was adjourned sine die, granting liberty to the parties to bring on record orders that may be passed by the NCLT on conclusion of proceedings. This order was made on an application under Order XXXIX Rule 4 of the Civil Procedure Code, 1908 seeking stay of proceedings and / or vacation of the ad-interim stay that has been granted by that court on 15th March 2021. Relying upon the observations of the court, Mr. Joshi invited me to follow suit and vacate the injunction.

6. Relying on the inherent powers of this court under Section 151, Mr. Joshi has submitted that given the provisions of the Code, it is obvious that this court cannot proceed with the hearing of the suit or the applications therein but a court can recall that order if the proceedings culminate into an order which suffers from inherent lack of jurisdiction and if lack of jurisdiction is patent. In support of this submission, he relies upon the decision of the Supreme Court in *Budhia Swain and Ors. Vs. Gopinath Deb and Ors.*², wherein the court held that the power to recall a judgment can be exercised by invoking the inherent powers of the court.

7. Mr. Joshi then submitted that the purpose of a moratorium, as seen from

1 C.S. (COMM) 47 of 2021

2 (1999) 4 SCC 396

the legislative intent of the Insolvency and Bankruptcy Code, 2016 (*the Code*), is to ensure that the assets of the Corporate Debtor are preserved during the Resolution Process and the scope of the moratorium is so wide such that the Corporate Debtor has sufficient opportunity to manage its affairs in order to enable the new management to take over and regain its financial health. He submits that the purpose of the moratorium is to ensure that there should be no additional stress on the assets of the Corporate Debtor and the Code, being comprehensive on the aspect of insolvency of companies, provides a unified umbrella covering all laws relevant for the purposes of insolvency. Mr. Joshi submits that the entire effort is to ensure that the Corporate Debtor is given a fair opportunity to resolve its pending issues, duly insulated from multiple claims that may arise. He submitted that as held by the Supreme Court in *Ghanashyam Mishra and Sons Private Limited, through the Authorized Signatory Vs. Edelweiss Asset Reconstruction Company Limited, through the Director and Ors.*³, the legislative intent is to freeze all the claims so that a resolution applicant can get a fair chance in recovering from financial sickness. He also relies upon the decisions in *Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka and Ors.*⁴, and *Committee of Creditors of Essar Steel India Ltd., through Authorized Signatory Vs. Satish Kumar Gupta and Ors.*⁵.

8. Inviting my attention to the decision in *Edukanti Kistamma (Dead), through LRs. and Ors. Vs. S. Venkatareddy (Dead), through LRs. and Ors.*⁶ and

3 (2021) 9 SCC 657

4 (2020) 13 SCC 308

5 (2020) 8 SCC 531

6 (2010) 1 SCC 756

*Indian Handicrafts Emporium and Ors. Vs. Union of India and Ors.*⁷, Mr. Joshi urged me to appreciate the fact that provisions of the statute must be construed in a manner such that it is rendered effective and should not frustrate the attempt that a party seeks to make in exercise of its rights under the statute. Mr. Joshi submitted that the statute must be read in its entirety and in that behalf, the learned counsel canvassed the purposive rules in interpretation of the Code. Mr. Joshi has also relied upon the decision of the Supreme Court in *Alchemist Asset Reconstruction Company Ltd. Vs. Hotel Gaudavan Private Ltd. and Ors.*⁸, which observes that the moratorium expressly interdicts institution and continuation of pending proceedings against corporate debtors and that the present suit also cannot proceed. According to Mr. Joshi, if the present suit cannot proceed, no purpose is served by having the injunction operative since it obstructs the attempts of the Administrator now appointed to conduct the affairs of the corporate debtor as a going concern.

9. According to Mr. Joshi, the “going concern” status of the corporate debtor is now severely affected by the injunction, which has been in operation since November 2020. Mr. Joshi therefore invites me to hold that since the suit cannot proceed, the injunction ought not to continue and the same be either vacated or stayed. Mr. Joshi also relies upon multiple decisions in support of his contention that no parallel proceedings can be pursued after the moratorium is ordered. Mr. Joshi further submitted that other financial institutions such as Franklin Templeton India Ltd. and L & T Finance also have claims against

7 (2003) 7 SCC 589

8 (2018) 16 SCC 94

respondent no.2, but have submitted themselves to the insolvency process. In the present case, he submitted that the plaintiff has also filed its claim before the NCLT and the plaintiff's claims would be considered only in accordance with the law. Mr. Joshi has taken me through the framework of the Insolvency and Bankruptcy Code including Sections 14, 17 and 18. The Adjudicating Authority prohibits not only institution of suits but also continuation of pending suits and proceedings and execution of any decrees, judgments or orders in any court of law and that includes the High Court. The moratorium prohibits transferring, encumbering, alienating or disposing assets of the corporate debtor as also actions to foreclose recovery or enforce any security interest created by the corporate debtor and recovery of possession of owner or lessor of the property occupied by having possession of the corporate debtor. Mr. Joshi submitted that the provisions of section 14 are so wide that even supplies of essential goods and services cannot be terminated or suspended. The order of moratorium continues to operate till date of completion of CIRP, provided that, at any time during the process, if a Resolution Plan is approved by the Adjudicating Authority, the moratorium will cease to have effect.

10. Mr. Joshi further submitted that management and affairs of the corporate debtor vests in the Interim Resolution Provision (*IRP*), given the IRP powers of the board of directors, which will stand suspended. Managers and officers of the corporate debtor would report to IRP and provide all records, as required by the IRP. The financial institutions shall also act on the instructions of the IRP. In managing the corporate debtor's affairs, the IRP is to act and execute in the

name of the debtor all documents and deeds. The duties of the IRP are provided in Section 18. That includes constitution of a Committee of Creditors (*COC*) monitoring the assets of the debtors, managing in operations until the Resolution Professional is appointed by the creditors. In the present case, Mr. Joshi submits that the applicant-Mr. Nageswara Rao Y. has been appointed by RBI in its capacity as the Appropriate Regulator, which is the authority nominated for appointment of a Resolution Professional, and the Administrator is now in a position to carry forward his obligations on behalf of the corporate debtor. The COC has been constituted pursuant to section 18(c) and it was process of taking control and custody of the assets, as contemplated in Section 18. These obligations include management of operations of the corporate debtor as a going concern, as contemplated in section 20, and for that purpose, he is entitled to enter into contracts on behalf of the corporate debtor, amend or modify contracts, raise finance after prior consent of the creditors, whose debt is secured unless the value of property is less than twice the amount of debt. In these circumstances, Mr. Joshi submits that the order of injunction comes in the way of IRP carrying out his statutory duties of managing operations of the corporate debtor since section 20(e) empowers the IRP to take all actions as are necessary to keep the corporate debtor as going concern.

11. Mr. Joshi further submitted that upon a Resolution Plan being passed by the COC and sanctioned by the NCLT, all further proceedings would cease and success of the Resolution Plan would result in a clean slate for the debtor and no claim would survive. If the Resolution Plan does not take place, the company

will be ordered to be wound-up. Adverting to the scheme of the Act, Mr. Joshi submitted that the provisions of the Code would override all other laws notwithstanding anything inconsistent with the Code in other laws. Under Sections 22 and 23, the Resolution Professional would, upon his appointment, require to conduct the CIRP to manage the operations of the corporate debtor during the entire period taken for the CIRP. The proviso to section 23 requires the Resolution Professional to conduct the entire process and manage the operations of the corporate debtor including for the period after expiry of the CIRP period until the order approving a Resolution Plan or appointing a Liquidator is passed. Considering the entire gamut of operations that the Resolution Professional is required to carry out, Mr. Joshi submitted that the ad-interim order must be vacated.

12. Mr. Joshi further submitted that the plaintiff is an unsecured creditor, who has exercised a put option against defendants; whereas, the applicant is seeking an order of recall of the injunction granted in respect of defendant no.2. He submits that the apprehension expressed while seeking relief, that the assets of the defendant no.2 may be frittered away, no longer exists in view of the moratorium ordered pursuant to the NCLT proceedings and the allegation that the Administrator is misusing security cannot be accepted. Inviting my attention to Section 33(5) of the Code, Mr. Joshi submitted that even if liquidation is initiated and an order is passed, no suit or other legal proceedings can be instituted against the corporate debtor except with the leave of the Adjudicating Authority, namely, the NCLT. He therefore submits that there is no

occasion to now continue the order of injunction. He seeks to persuade me to exercise the court's powers under Section 151 of the CPC. He emphasized the fact that it is the Reserve Bank of India which has now appointed the applicant– Mr. Nageswara Rao Y. and if the injunction continues, it will not be possible for the applicant to carry out his duties in the manner that the Code envisages. Mr. Joshi submits that the court must appreciate the completeness of the Code, reiterating that Sections 14, 17, 18, 21 and 25 all indicate that the Code has taken into consideration all aspects of claims of creditors against the corporate debtor. In particular, he submits that the duties of the Administrator under Section 25 cannot be performed if the injunction continues. Alluding to the legislative intent, Mr. Joshi submits that it is in the fitness of things that the injunction is vacated of the order stayed, as was the case in the Delhi High Court. Mr. Joshi therefore submitted that the application be allowed, as prayed.

13. The application is opposed by Dr. Saraf, who submits that in view of the moratorium, no further order is required to be passed. Referring to the order passed by the Delhi High Court in the case of *Daiichi Sankyo Company Ltd. Vs. Malvinder Mohan Singh and Ors.*⁹, Dr. Saraf submits that no action is required to be taken in the present case. The plaintiff has obtained an order of injunction as early as 4th November 2020. The corporate debtor has not challenged that order. In view of the moratorium now operating, that order should continue to operate since this court is not required to pass any further order since that would amount to continuation of pending proceedings.

9 O.M.P.(EFA)(COMM) 6/2016, along with connected matters – Order dt.15-01-2020

14. Dr. Saraf submitted that the IA discloses no reason why the applicant cannot manage the affairs of the company as a going concern. He invites my attention to paragraphs 9 and 10 of the IA and submits that nothing whatsoever has been set out as to how the company is not able to carry on its business as a going concern. According to Dr. Saraf, the contention of the applicant has no basis on fact or on law. He further submits that merely because the plaintiff is a member of the COC is of no avail. The resolution process can end at any time and if the order is vacated and the resolution process comes to an end, the plaintiff will be left with no remedy whatsoever. He relies upon the uncertainty of any conclusion being arrived at during the resolution process. He seeks to guard against any abrupt closure of the resolution process and submits that if an order is vacated and the resolution process ends, the plaintiff, who has secured an order, will be left with no protection whatsoever. He therefore submits that this court should not entertain the present application. Once a moratorium is in force, the court ought not to proceed especially since it is the applicant's case that the order is not executable and not enforceable.

15. Dr. Saraf has invited my attention to the affidavit-in-reply filed by one Kaustubh Sudame, the Authorized Signatory of the plaintiff, and submits that the application is filed without the authority of the COC under the Code and there is not an iota of a reason or any factor that could cause prejudice to the ongoing affairs of defendant no.2. The affidavit goes on to state that the application does not disclose any change in circumstances or any need for vacating the ad-interim order. In the absence of any such pleadings,

demonstrating specific change in circumstances or inability to carry on the affairs of the 2nd respondent there is no occasion to entertain the present application and modify the order, moreso, since the moratorium is already operating. It is contended that there are proceedings pending before the Debt Recovery Tribunal, Mumbai against defendant no.2 and various interim orders continue to operate. According to Dr. Saraf, the initiation of insolvency proceedings before the NCLT and the declaration of moratorium cannot be a ground for vacating the protective orders passed by this court. Thus, apart from maintainability of the IA for want of specific permission of the NCLT or the COC, Dr. Saraf submits that the IA has no merit and deserves to be rejected. In particular, Dr. Saraf has invited my attention to the provisions of Section 12A of the Code, which empowers the NCLT to permit withdrawal of an application admitted under Section 7 or 9 or 10 with the approval of 90% of voting share of the COC. This, he fears, will result in interim protection granted in the suit to be negated without any opportunity to the plaintiff to seek restoration of an order or any preventive relief. It is not as if the interim order, if vacated, would be restored upon withdrawal of proceedings being permitted by the NCLT. In these circumstances, Dr. Saraf submits that no action requires to be taken. The court need not pass any orders staying or vacating the injunction and it is for the applicant to carry out its duties under the Code. He therefore submits that the application be rejected.

16. Dr. Saraf in support of his contentions has relied upon the decision of the Supreme Court in *Binod Mills Co. Ltd., Ujjain, (M.P.) Vs. Suresh Chandra*

*Mahaveer Prasad Mantri, Bombay*¹⁰, in which he has invited my attention to the treatment of execution proceedings pursuant to a decree passed by the Bombay High Court, which was proposed to be executed in Madhya Pradesh. The decree was passed in a Summary Suit on the Original Side. There was no contest to the suit. The decree was transferred to the District Judge, Ujjain and an execution application was filed. The application was opposed by the respondent contending that the District Court had no jurisdiction. The respondent took shelter under the State Relief Undertaking under the M.P. Sahayata Upkram (Vishesh Upbandh) Adhiniyam, 1978 (**M.P. Act**), which protected notified relief undertakings against legal proceedings. Section 5 of the M.P. Act dealt with suspension of suits and other legal proceedings against relief undertakings and the Supreme Court, after having considered all aspects, observed that the object of the M.P. Act was to relieve undertakings from litigative pressures for a period of time. The court found that not only were suits and other legal proceedings similar to suits suspended, but execution proceedings were also required to be suspended. Thus, the definite object of the M.P. Act was to prevent litigation against the relief undertakings.

17. The instant case also is similar, inasmuch as, no further steps can be taken in execution or enforcement of orders passed by this court by virtue of the moratorium and Dr. Saraf submits that there is no warrant to vacate the order since the law does not provide for such an eventuality merely because a moratorium has come into effect. He has cited a decision of the Delhi High

10 (1987) 3 SCC 99

Court in *Daiichi Sankyo Company Ltd. Vs. Malvinder Mohan Singh and Ors.*¹¹, in which group of matters dealing with execution applications against the company which was enjoying a protection of the moratorium. An order dated 15th January 2020 records the various submissions of the parties, recognizes that a COC has been appointed and observes that due to the moratorium, no further orders needs to be passed except to state that the execution proceedings cannot be continued against the applicants during the period of moratorium. This is the correct approach inasmuch as this court is also not required to take any further steps, cannot take any further steps and need not pass any orders vacating injunction or modifying it. He therefore submits that the application is misconceived and is liable to be rejected.

CONCLUSIONS

18. I have heard the learned counsel at some length. At the outset, I may observe that the applicant has relied upon 17 judgments, none of which supports the application made today. None of these judgments are indicative of the course of action to be taken in applications such as the one at hand. Apart from the fact that this court has inherent powers, the exercise of inherent powers would have to be justified by the circumstances of the case and I am of the view that there are no grounds made out for recall of the order of injunction passed on 4th November 2020.

19. In *Budhia Swain (supra)*, the Supreme Court observed that a court may recall its earlier order if proceedings culminating in that order suffer from

¹¹ O.M.P. (EFA) (COMM.) 6/2016, along with connected matters – Order dt. 15-01-2020.

inherent lack of jurisdiction and lack of jurisdiction was patent. That is not the case at hand, nor is it a situation where there was any fraud or collusion in obtaining the order of injunction or a mistake committed by the court, thereby prejudicing defendant no.2. The injunction was also not in ignorance of any fact and it is not even the case of the applicant that the order was passed ignoring an order of moratorium or any other order. In fact, in paragraph 8, the Supreme Court also observed that power to recall will not be exercised when the ground for vacating a judgment was available in some other proceedings such as by way of appeal or revision, which was not availed of. It also observes that the right of seeking vacation of a judgment may be lost by waiver, estoppel or acquiescence.

20. *Budhia Swain (supra)* also records is that the power to recall will not be exercised when the ground for reopening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy is by way of appeal or revision which was not availed of.

21. In the present case, the ad-interim order passed by this court is dated 4th November 2020. No appeal was filed against that order which has been remained in operation all of this time. The question therefore to be considered is whether any further orders can be or are required to be passed at all in view of the moratorium now in place. As far as the decision of the Delhi High Court is concerned, I find that there was no opposition whatsoever to the order being

stayed; whereas in the present case, the application for vacating the stay or staying the order itself is opposed vehemently by the plaintiff.

22. In the present case, the injunction order has been passed on 4th November 2020. No attempt was made to vacate or modify that order. It is only after the moratorium is being declared that the Administrator of defendant no.2 seeks to vacate that order. The corporate debtor felt no need to do so since the order is a protective order and preventing them from encumbering and frittering away assets including to defeat claims of creditors. In the present set of circumstances, I find no reason to interfere, invoke and exercise inherent powers. The decisions in the various other judgments that have been relied upon by the applicant merely record the effect of the IBC, the moratorium and the need to preserve its assets during the resolution process that is achieved by the injunction as well. The purpose of the moratorium is not in dispute and thus reliance upon *P. Mohanraj and Ors. Vs. Shah Brothers Ispat Pvt. Ltd.*¹² and *Power Grid Corporation of India Ltd. Vs. Jyoti Structures Ltd.*¹³ is of no assistance to the applicant. The fact that the IBC is a complete Code is also not disputed. It deals with insolvency and since it is a unified and a complete Code, the legislature would certainly have envisaged situations such as the one at hand and would have provided for vacating of injunctions and orders appointing Receivers and other orders securing claimants' / plaintiffs' interest, but that is not the case.

¹² (2021) 6 SCC 258

¹³ 2017 SCC OnLine Del 12189

23. There can be no doubt that claims must be submitted to and decided by the Resolution Professional and that the intention of the Code is to freeze enforcement of claims and institution of fresh claims. The injunction does not in any manner frustrate this object. Reading the Code as a whole, there is nothing in the Code that has been pointed out to me which would require this court to reverse orders that have already been passed. It simply prevents further orders from being passed, which would have the effect of continuation of proceedings and enforcement of orders already in operation. No doubt, as observed in *Alchemist Asset Reconstruction Company Ltd. (supra)*, the moratorium interdicts continuation of proceedings against corporate debtors, including money suits under original jurisdiction. That would cover the present suit as well. The purpose was to ensure that no proceedings take place which could frustrate the attempts at restructuring corporate debtors and the attempts of the Resolution Professional. If such proceedings were allowed to continue, the appointment of the Resolution Professional would only make such attempts more aggressive and therefore frustrate the intention of the Code. No further action should be taken by courts in continuance of proceedings that would interfere with the CIRP. This is the view taken in some of the judgments that Mr. Joshi has cited before me including *Hirakud Industrial Works Ltd. Vs. Varsha Fabrics (P) Ltd.*¹⁴ and *Liberty House Group Pte. Ltd. Vs. State Bank of India and Ors.*¹⁵.

24. One other aspect that is to be considered is whether the court needs to

14 (2020) 14 SCC 198

15 2019 SCC OnLine Del. 7256

modify an order of injunction in view of change in circumstances. Change in circumstances, in effect and in the present context, would mean change in circumstances affecting rights and obligations as between the parties inter se. The only change in circumstances that Mr. Joshi has been able to canvass is coming into effect of the moratorium. There is no order passed by the NCLT or by the Resolution Professional, nor any steps taken by the COC that cannot be carried out by virtue of the injunction. In fact, the effect of the injunction is protective of the assets of the corporate debtor and does not run counter to the interest of the corporate debtor. It prevents the corporate debtor from alienating assets. It is not for a moment suggested that alienating assets is the business of the respondent no.2 and certainly it is not the case of the applicant that alienation of assets is part of its business as a going concern. The injunction is protective and is required to be discharged only if change in circumstances so warrant and in this aspect Mr. Joshi has relied upon the decision of *Dover Park Builders Pvt. Ltd. and Ors. Vs. Smt. Madhuri Jalan and Ors.*¹⁶, *Padmavati Paradise, Proprietary Concern of Parashar Arvind and Anr. Vs. Kirtiben Dhaneshkumar Shah*¹⁷ and *K.P.M. Aboobucker Vs. K. Kunhamoo and Ors.*¹⁸. Alienation was justified in cases where irreparable loss or injury may be caused to the defendant or if the plaintiff finds that it is not necessary to continue the same.

25. In the case at hand, save and except for the moratorium, there is no

16 2002 SCC OnLine Cal 413

17 2012 SCC OnLine Guj 471

18 1957 SCC OnLine Mad 349

change in the circumstance whatsoever. The applicant has failed to demonstrate in what manner the operations of the company are to be prejudiced by continuation of the order of injunction and by this court in not vacating that order. The order has been in operation for several months. If the applicant's contentions are to be accepted, all orders passed by every court and tribunal would have to be set aside. Clearly, that is not the intention of the Code. If that was the intention, the enactment would have provided so. The legislature in its wisdom has not thought it fit to so provide and we cannot read into the legislation what it does not contemplate in specific terms.

26. In *Krishna, son of Bulaji Borate Vs. State of Maharashtra and Ors.*¹⁹, the Supreme Court was considering removal of a nominated trustee under the Nagpur Improvement Trust Act, 1936 and on the aspect of interpretation of statutes, the court observed that while determining legislative intent, in the absence of clear words indicating that in legislative intent, it is open for the court, when interpreting any provision, to read it with other provisions of the same statute. Applying this principle in the instant case, I find that nothing in the Code requires a court to reverse its orders and set aside the order of injunction in the instant case. Likewise in *Arnit Das Vs. State of Bihar*²⁰, while dealing with the legislative intent of the Juvenile Justice Act, 1986, the court observed that if the language used by the Parliament is ambiguous, the court is permitted to look into the preamble for construing the provisions of an Act and the preamble is the key to unlock the legislative intent. In the instant case, there

19 (2001) 2 SCC 441

20 (2000) 5 SCC 488

is no provision which requires or implies that courts are required to vacate orders or reverse the orders passed. Useful reference may be made to the UNCITRAL Legislative Guide on Insolvency Law, 2005, which inter alia considers the effect of a moratorium. A relevant extract is reproduced below.

“B. Protection and preservation of the insolvency estate

1. Introduction

25. Essential objectives of an effective insolvency law are protecting the value of the insolvency estate against diminution by the actions of the various parties to insolvency proceedings and facilitating administration of those proceedings in a fair and orderly manner. The parties from whom the estate needs the greatest protection are the debtor and its creditors.

2. Protection of the estate by application of a stay

26. With regard to creditors, one of the fundamental principles of insolvency law is that insolvency proceedings are collective proceedings, which require the interests of all creditors to be protected against individual action by one of them. Many insolvency laws include a mechanism to protect the value of the insolvency estate that not only prevents creditors from commencing actions to enforce their rights through legal remedies during some or all of the period of the liquidation or reorganization proceedings, but also suspends actions already under way against the debtor. Such a mechanism is variously termed a “moratorium”, “suspension” or “stay”, depending on the effect of the mechanism. For the purposes of the Legislative Guide, the term “stay” is used in a broad

sense to refer to both suspension of existing actions and a moratorium on the commencement of new actions.

(i) Liquidation

27. As a general principle, the emphasis in liquidation is on realizing the assets, in whole or in part, so that creditors' claims can be satisfied from the proceeds of the estate as quickly as possible. Maximizing value is an overriding objective. The imposition of a stay can ensure a fair and orderly administration of the liquidation proceedings, providing the insolvency representative with adequate time to avoid making forced sales that fail to maximize the value of the assets being liquidated and also an opportunity to see if the business can be sold as a going concern, where the collective value of assets may be greater than if the assets were to be sold piecemeal. A stay also allows the insolvency representative to take stock of the debtor's situation, including actions already pending, and provides time for all actions to be fully considered, increasing the possibility of achieving a result that is not prejudicial to the interests of the debtor and creditors. The balance that is difficult to achieve in liquidation proceedings is between the competing interests of secured creditors, who will often hold a security interest in some of the most important assets of the business and wish to enforce that security interest, and unsecured creditors, who may benefit from retention of that asset to facilitate sale of the business as a going concern."

27. These guidelines also do not contemplate reversal of any orders passed by

the court. As we have seen from the extract reproduced above, the attempt is to stay all remedies and proceedings and restrain a corporate debtor from taking actions with respect to the assets and enforcing the rights including governments from exercising priority rights. These principles have been incorporated in the Code. Nothing has been shown to me that requires a court and judicial authority, before whom an action is pending, to undo its previous orders. The application to that extent has no merit.

28. In *State of Himachal Pradesh and Anr. Vs. Kailashchand Mahajan and Ors.*²¹, while considering amendments to the Electricity Supply Act, 1948, the Supreme Court quoted with approval *Francis Bennion* on statutory interpretation while dealing with the distinction between legislative intention and purpose or object of the legislation and in paragraph 82, the Supreme Court observed that there is a great distinction between legislative intent and the purpose or object of an enactment. The object of legislation is to provide a remedy for the malady the legislative intention relates to the meaning from the exposition of the remedy, as enacted. For determining the purpose of legislation, it is permissible to look into the circumstances which were prevalent at the time the law was enacted and which necessitated passing of that enactment. In Francis Bennions' words, it is expressed as follows :-

"The distinction between the purpose or object of an enactment and the legislative intention governing it is that the former relates to the mischief to which the enactment is directed and its remedy while the later relates to the legal meaning of the enactment."

21 1992 Suppl. 2 SCC 351

29. Considering all of the above, I am of the view that there is no occasion to read into the Insolvency and Bankruptcy Code, 2016, the requirement that a court, which passed an order of injunction or appointment of a Court Receiver for that matter, is required to vacate such an order is in order to sub-serve the moratorium. Only further proceeding remain suspended. I may observe that not only was the Code amended after its enactment, but there are numerous rules and regulations that have since been notified including those pursuant to powers of the Central Government under Sections 239 and 240. None of these rules and regulations support the views of the applicant in the present case and would justify vacating of that order in the face of opposition to that effect. The moratorium having come into force, there is no occasion to pass any further order in the suit or pending proceedings and this IA is, in my view, thoroughly misconceived. For all the aforesaid reasons, I pass the following order :-

- (i) Interim Application is dismissed.
- (ii) No order as to costs.

(A.K. MENON, J.)