

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3422 OF 2022**

Kirankumar Moolchand Jain

....Petitioner

V/s.

Union of India Through Its
Secretary & Ors.

...Respondents

Mr. V. K. Rambhadran, Senior Advocate a/w Mr. Sanjay Dubey i/b Mr. Akhlak A Khan for Petitioner.

Mr. Rajshekhar Govilkar a/w Mr. Shahaji Shinde for Respondent No.1 – UOI.
Mr. Rohit Gupta a/w Mr. Nikhil Rajani i/b V. Deshpande & Co. for Respondent No.3.

**CORAM : K.R. SHRIRAM &
A.S. DOCTOR, JJ
DATED : 6th OCTOBER 2022**

P.C. :

1 Prayer clause (a) is to direct the Debt Recovery Tribunal-II (DRT) Mumbai to forthwith and expeditiously adjudicate and dispose O.A. No.35 of 2019 and Counter Claim No.01 of 2021.

2 In view of the provisions of Section 96 of Insolvency and Bankruptcy Code, 2016 (IBC), by which an interim moratorium commences on the date an application under Section 95 of IBC is filed, at this stage, we find it a bit difficult to grant the prayer as prayed for.

3 At the same time, Mr. Rambhadran pointed out to the court that in the Section 95 application filed by respondent no.3 before NCLT Mumbai, there has been serious suppression of material facts. According to Mr. Rambhadran, petitioner had received the notice dated 31st July 2020 from

respondent no.3 under Rule 7(1) of Insolvency and Bankruptcy Rules 2019, to which petitioner had replied vide email dated 14th September 2020 addressed to one Sanjay Sawant, Cosmos Recovery Mumbai (sanjay.sawant@cosmosbank.in) and Sanjay Sawant is the General Manager of respondent no.3. According to Mr. Rambhadran, this email denying liability has been suppressed in the application filed by respondent no.3 under Section 95 and, therefore, respondent no.3 has managed to get an automatic stay in the counter claim that petitioner had filed against respondent no.3 before DRT. Mr. Rambhadran also stated that in the petition at paragraph 7.26 there has been a specific allegation that respondent no.3 has suppressed this email in the Company Petition filed under Section 95 of IBC. We do not find any affidavit in reply denying the allegation. Mr. Gupta pointed out that the affidavit in reply is filed only on the limited aspect of challenge to the jurisdiction of this court.

4 Copy of the Company Petition No.510 of 2021 filed by respondent no.3 under Section 95 of IBC is annexed to the petition. It does appear that this email dated 14th September 2020 is not annexed atleast to the copy of the company petition annexed to this petition. What is annexed as a reply to the said notice dated 31st July 2020 and referred to in the synopsis to the company petition is a letter dated 16th October 2020 that petitioners had sent. We have considered the contents of letter dated 16th October 2020 and it has nothing do with respondent no.3's allegations of liability against petitioner. In this communication dated 16th October 2020, petitioner has

alleged against the bank that the promoters and Directors of DC Designs Pvt Ltd. (in liquidation) before the NCLT Mumbai have in connivance with respondent no.3, misappropriated the assets of the company.

5 Here is a peculiar situation, by which petitioner is unable to pursue its counter claim because of the automatic moratorium that kicks in the moment an application is filed under Section 95(1) of IBC. The application under Section 95 of IBC is similar to the proceedings filed under Section 14 of the SARAFESI Act where the order passed is *exparte* in nature. As held by this court in ***Satish Kumar Surendra Shetty Vs. The District Collector, Thane & Ors.***¹ in such proceedings, it would necessarily put a higher onus on applicant to ensure strict compliance with both content and truth thereof and if there is even the slightest hint of a person being untruthful either in content or form, the same would render the application susceptible to challenge. Therefore, when a moratorium automatically kicks in upon filing of a petition under Section 95 of IBC whereby third parties are put to inconvenience / difficulty, in such situation, there is a higher onus put on such applicant .

6 Therefore, keeping open the rights and contentions of the parties including Mr. Gupta's submissions that there was no deliberate suppression of any fact, petitioner may file an application before the NCLT for rejecting the petition filed by respondent no.3 on the ground of alleged suppression of material facts. As and when such application is filed, we would expect

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NCLT to dispose the same as expeditiously as possible and in any case, within 8 weeks of the application being filed, particularly in view of the prejudice being caused to petitioner herein. Mr. Rambhadran on instructions states that he would not press for the challenge to the constitutional validity as made in prayer clause (a)(i) at this point of time and reserves petitioners' right to raise the same at an appropriate stage.

7 We would only clarify that we have not made any observations on the merits of the matter and on the allegations made by Mr. Rambhadran and denials raised by Mr. Gupta.

8 Petition disposed.

(A. S. DOCTOR, J.)

(K.R. SHRIRAM, J.)