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CRP.No.2303 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.2303 of 2019 and
CMP.No.15011 of 2019

Shempark Public School,
Rep. by its Correspondent A.K.P.Mani,
Morasapatti Post,
Idappadi Taluk,
Salem District

... petitioner

Vs.

1.M/s.Edusmart Services(P) Ltd.,
Rep.by its Manager K.Bhagavathi Raja,
Having registered office at
L74, Mahipalpur Extension,
New Delhi – 37
2.M/s.Educomp Solutions Ltd.,
Rep. by its Manager K.Bhagavathi Raja,
Having its Office at 1211
Padma Tower,
1-5, Rajendra Place,
New Delhi-8

... Respondents

PRAYER:

Civil Revision Petition filed under Section 115 of CPC to set aside the fair and decretal order dated 12.03.2019 passed in REA.No.1 of 2019 in REP.No.95 of 2017 in Arbitration Case No.ARB/JN/418/2014 on the file of the Additional District Judge-III, Salem by allowing the application with costs.



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For Petitioner : Mr.M.Premkumar
for Mr.S.Senthil

For Respondents: Mr.K.B.Vivekanandhan

ORDER

This civil revision petition has been filed to set aside the fair and decretal order dated 12.03.2019 passed in REA.No.1 of 2019 in REP.No.95 of 2017 in Arbitration Case No.ARB/JN/418/2014 on the file of the Additional District Judge-III, Salem, thereby dismissed the petition filed under Section 33(5) of the Insolvency and Bankruptcy Code 2016.

2. Heard, the learned counsel for the petitioner and the learned counsel for the respondents.

3. The petitioner is the judgment debtor in the execution petition filed by the respondents in REP.No.12 of 2019. The respondents filed execution petition for attachment of movable property as against the petitioner herein. The Execution Court also passed an order to attach the property by order dated 29.11.2018 and the process of attachment is pending. While being so, the petitioner filed petition to dismiss the execution petition on the ground that the National Company Law Tribunal Principal Bench, New Delhi has ordered the commencement of a



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corporate insolvency resolution process for the respondents herein on 30.05.2017

and appointed Dr.Sanjiv Agarwal as its interim resolution professional. Since the respondents are unable to pay off debts to the creditors, they had produced all the books of accounts and creditors before the Tribunal. The insolvency commencement date and estimated date of closure of insolvency resolution process and the name of address of the interim resolution professional have also been read in 'Form-A'. The operational creditors, financial creditors, workman of employee and authorised representative of workmen and employees have also been directed to go through the interim resolution professional. Therefore, as per Section 33(5) of the Insolvency and Bankruptcy Code 2016, when a liquidation order has been passed, no suit or other legal proceedings, shall be instituted by or against the corporate debtor provided that a suit or other legal proceedings may be instituted by the liquidators on behalf of the corporate debtor with the prior approval of the adjudications authorities. Therefore, the respondents cannot maintain execution petition as against the petitioner. However, the court below dismissed the application stating that already the execution petition was filed and it is pending.

4. The learned counsel for the petitioner also relied upon the judgment in the case of ***P.Mohanraj and others Vs. Shah Brothers Ispat Private Limited***



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reported in **(2021) 6 SCC 258**, wherein the Hon'ble Supreme Court of India held that once moratorium ordered under Section 14 of Insolvency and Bankruptcy Code 2016, it would apply even in respect of proceedings initiated under Sections 138 and 141 of NI Act. Further held that Section 32 A(1) includes the liability of the corporate debtor for all offences committed prior to the commencement of the corporate insolvency resolution process including offence based upon complaints under Section 2(d) of Cr.P.C. Thus, Section 138 of NI Act proceedings would be included, and would, after the moratorium period comes to an end with a resolution planned by a new management being approved by the adjudicating authority, cease to be an offence qua the corporate debtor. Admittedly, the respondents filed application under Section 10 before the National Company Law Tribunal Principal Bench, New Delhi in CP.No.(IB)-101(PB)/2017). By order dated 30.05.2017, one Dr.Sanjiv Agarwal was appointed as interim resolution professional. He shall be bound by all the statutory provisions of the Insolvency and Bankruptcy Code 2016 and the Code of Conduct devised by the Insolvency and Bankruptcy Code. He will perform his function and duties strictly in accordance with the provisions of the Insolvency and Bankruptcy Code and the rules framed thereunder. Therefore, the respondents cannot maintain execution petition as against the petitioner herein.



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5. The interim resolution professional can institute proceedings as against the petitioner, that too after approval of adjudicating authority. Once moratorium order which was passed by the National Company Law Tribunal is in force and as such it is in operation, Corporate Insolvency Resolution process against the decree holder, the decree holder can neither initiate nor continue with the execution proceedings.

6. In view of the above, the fair and decretal order dated 12.03.2019 passed in REA.No.1 of 2019 in REP.No.95 of 2017 in Arbitration Case No.ARB/JN/418/2014 on the file of the Additional District Judge-III, Salem are set aside and this civil revision petition is allowed. Accordingly, the execution petition in REP.No.95 of 2017 in Arbitration Case No.ARB/JN/418/2014 on the file of the Additional District Judge-III, Salem is hereby dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

10.01.2023

Speaking/non-speaking
Index : Yes/No
Internet : Yes
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G.K.ILANTHIRAIYAN, J.

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To

- 1.The Additional District Judge-III,
Salem
- 2.A.K.P.Mani,
Correspondent,
Shempark Public School,
Morasapatti Post,
Idappadi Taluk,
Salem District
- 3.K.Bhagavathi Raja,
Manager,
M/s.Edusmart Services(P) Ltd.,
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