2023:PHHC:144324

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on: 08.08.2023
Pronounced on : 07.11.2023

1. CRM-M-2962-2022 (O&M)

Sunil Mohan Wig and another ...... Petitioners

Versus

State of Haryana and others ...... Respondents

2. CRM-M-2970-2022 (O&M)

Sunil Mohan Wig and another ...... Petitioners

Versus

State of Haryana and others ...... Respondents

3. CRM-M-2991-2022 (O&M)

Sunil Mohan Wig and another ...... Petitioners

Versus

State of Haryana and others ...... Respondents

4. CRM-M-2992-2022 (O&M)

Sunil Mohan Wig and another ...... Petitioners

Versus

State of Haryana and others ...... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

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Present :-Mr. Sandeep Singh, Advocate
for the petitioners.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

Dr. Rao P.S. Girwar, Advocate
for respondent No.2.

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PANKAJ JAIN, J.

1. This batch of petitions filed under Section 482 of the Code of criminal procedure involve common question of law in the background of same facts and circumstances and are thus being decided by this common order.

2. For convenience, CRM-M-2962-2022 is being treated as a lead case.

3. The petitioners are stated to be erstwhile Directors of respondent No.3, a company incorporated under the provisions of Companies Act, 1956. It is stated to be under liquidation in proceedings under Insolvency and Bankruptcy Code, 2016. Respondent No.2 approached authority under the Payment of Wages Act, 1936 claiming unpaid wages for the period from March 2017 to September 2017 against petitioners as well as respondent No.3-the company. The application filed by respondent No.2 under Section 15(2) of the 1936 Act was allowed vide order dated 08.01.2020 directing the respondents to deposit an amount of Rs. 3,30,235/- within 30 days from the date of the order. The order placed on record as Annexure P-6 reads as under:-

> "The applicant claimed that she was employed as Office Executive in the respondents company and working on monthly basis of Rs. 29,885/-. The respondents didn't pay her earned wages for the period from March, 2017 to September, 2017 in spite of her repeated requests. It was prayed by the applicant that a direction be given to the respondents to pay claimed amount to her.
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> Usual notices were issued to the parties, the applicant along with her representative appeared but the respondents did not appear in the court

consequently the case was proceeded ex-parte against the respondent on 26/10/2018.

The applicant herself appeared in witness box as PW-1 and tendered her by way of affidavit as Ex.PW-1 and also adduced the document Ex.PW-1/A to PW-1/C in her evidence to support the contents made in the claim application.

Having gone through the evidence placed on the file by the applicant and the documents placed on record file by the respondent, it was found that the respondent made an application 05/12/2019 in which prayed that the respondent company went in NCLT Court and the Hon'ble Court passed an order 09/07/2018 in which declared the respondent bankrupt company, so in view of the said order Hon'ble Authority is not competent to hear and decide the said claim application. I have gone through the case file and found that the said claim application filed by the applicant u/s 15(2) of the Act in which the claimed amount is on account of earned wages and as the said Act is a Social Legislature and in the order of the NCLT Court there is no stay to hear and decide the such claim. Accordingly, to relied upon the evidence of applicant in the case I hereby to hold that the applicant is entitled to an amount of Rs.3,28,735/- on account of earned wages for the aforesaid period along with a compensation amounting to Rs. 1,500/-.

The respondent is therefore, directed to deposit an amount of Rs **3,30,235/-** in this court within 30 days from the date of this order, failing which said amount shall be recovered alongwith interest @ 12% p.a. from the date of this order upto the date of actual payment.

No order as to costs.

Parties be informed accordingly."

4. After the respondents failed to make the payment, recovery certificate under Section 15(5)(b) of the 1936 Act was issued and complaint was filed before CJM, Gurgaon to recover the amount. Acting upon the application moved by Authority under the Payment of Wages Act, 1936, impugned order dated 15.07.2021 (P-8) has been passed summoning the petitioners.

5. Counsel for the petitioners submits that the company was proceeded against the provisions of Insolvency and Bankruptcy Code, 2016 before NCLT. The petition was admitted and corporate insolvency resolution process was initiated on 09.07.2018. The company thereafter went into liquidation on 27.11.2019 and thus present proceedings which are in nature of recovery proceedings cannot be continued, more so when the workmen has a remedy to submit claims in the liquidation proceedings in terms of provisions of the Code. Reliance is being placed upon law laid down by Apex Court in '***Ajay Kumar Radheyshyam Goenka vs. Tourism Finance Corporation of India Ltd.'*, *2023 Cri. L.R. (SC) 589.***

6. Per contra, counsel for the workmen submits that the claim of the workmen relates to the period much prior to the date on which the company went into liquidation and the petitioners cannot be allowed to defeat the legitimate claim of the workmen hiding behind provisions of the Bankruptcy Code. Reliance has been further placed upon Section 22 of the Payment of Wages Act to submit that the only remedy with the workmen is under the Payment of Wages Act. The petitioner being

Directors cannot escape corporial punishment. Reliance is being placed upon ***'Narinder Garg and others vs. Kotak Mahindra Bank Ltd. And others'***, reported as ***2022(2) Apex Court Judgments (SC) 696.***

7. I have heard counsel for the parties and have gone through the records of the case.

8. The question involved is:-

> (i) Whether the proceedings initiated against the provisions under Section 15 of the Payment of Wages Act, 1936 can be allowed to continue against the company in liquidation under the provisions of IBC, 2016?

9. IBC has been enacted as a complete code to consolidate and amend the laws relating to Insolvency Resolution of Corporate Entities. Section 14 of the Code provides that on the date of commencement of insolvency, the adjudicating authority shall by order, declare a moratorium prohibiting the institution of suits, or continuation of pending suits or "proceedings" against the corporate debtor, including execution of any judgment, decree, or order in any court of law, tribunal, arbitration panel, or any other authority. Relevant provisions of the Code that needs to be perused for answering the question framed are as under:-

> "**14. Moratorium.**—(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—
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> (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other

authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

16. Appointment and tenure of interim resolution professional—(1) The Adjudicating Authority shall appoint an interim resolution professional within fourteen days from the insolvency commencement date.

(2) Where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor, as the case may be, the resolution professional, as proposed respectively in the application under section 7 or section 10, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

(3) Where the application for corporate insolvency resolution process is made by an operational creditor and—

(a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;

(b) a proposal for an interim resolution professional is made under sub-section (4) of section 9, the resolution professional as proposed, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

(4) The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

(5) The term of the interim resolution professional shall not exceed thirty days from date of his appointment.

19. Personnel to extend cooperation to interim resolution professional.—(1) The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor.

(2) Where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions.

(3) The Adjudicating Authority, on receiving an application under sub-section (2), shall by an order, direct such personnel or other person to comply with the instructions of the resolution professional and to

cooperate with him in collection of information and management of the corporate debtor.

53. Distribution of assets.—(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely :—

(a) the insolvency resolution process costs and the liquidation costs paid in full;

(b) the following debts which shall rank equally between and among the following :—

(i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and

(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;

(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

(d) financial debts owed to unsecured creditors;

(e) the following dues shall rank equally between and among the following:—

(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(f) any remaining debts and dues;

(g) preference shareholders, if any; and

(h) equity shareholders or partners, as the case may be.

(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction."

10. Under Section 15 of the Payment of Wages Act, 1936, any amount directed to be paid under the provisions of Section 15 by the authority is recoverable as fine imposed by the Magistrate. Thus there cannot be any second view, but to hold that the present proceedings against the petitioners are in form of recovery proceedings which cannot be held to be out of the purview of, 'proceedings against the corporate debtor'. Section 15 of 1936 Act reads as under:-

"15. Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.—[(1) The appropriate Government may, by notification in the Official Gazette, appoint—

(a) any Commissioner for Workmen's Compensation; or

(b) any officer of the Central Government exercising functions as,—

(i) Regional Labour Commissioner; or

(ii) Assistant Labour Commissioner with at least two years' experience; or

(c) any officer of the State Government not below the rank of Assistant Labour Commissioner with at least two years' experience; or

(d) a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 (14 of 1947), or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State; or

(e) any other officer with experience as a Judge of a Civil Court or a Judicial Magistrate, as the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area, including all matters incidental to such claims:

Provided that where the appropriate Government considers it necessary so to do, it may appoint more than one authority for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act.]

(2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorised in writing

to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for a direction under sub-section (3):

Provided that every such application shall be presented within [twelve months] from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be:

Provided further that any application may be admitted after the said period of [twelve months] when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

[(3) When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under section 3, or give them an opportunity of being heard, and, after such further inquiry, if any, as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding three thousand rupees but not less than one thousand five hundred rupees in the latter, and even if the amount deducted or delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding two thousand rupees:

Provided that a claim under this Act shall be disposed of as far as practicable within a period of three months from the date of registration of the claim by the authority:

Provided further that the period of three months may be extended if both parties to the dispute agree for any bona fide reason to be recorded by the authority that the said period of three months may be extended to such period as may be necessary to dispose of the application in a just manner: Provided also that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to—

(a) a bona fide error or bona fide dispute as to the amount payable to the employed person; or

(b) the occurrence of an emergency, or the existence of exceptional circumstances, the person responsible for the payment of the wages was unable, in spite of exercising reasonable diligence; or

(c) the failure of the employed person to apply for or accept payment.]

[(4) If the authority hearing an application under this section is satisfied—

(a) that the application was either malicious or vexatious, the authority may direct that a penalty [not exceeding three hundred seventy five rupees] be paid to the employer or other person responsible for the payment of wages by the person presenting the application; or

(b) that in any case in which compensation is directed to be paid under sub-section (3), the applicant ought not to have been compelled to seek redress under this section, the authority may direct that a penalty [65] [not exceeding three hundred seventy five rupees] be paid to 6[the appropriate Government] by the employer or other person responsible for the payment of wages.

(4A) Where there is any dispute as to the person or persons being the legal representative or representatives of the employer or of the employed person, the decision of the authority on such dispute shall be final.

(4B) Any inquiry under this section shall be deemed to be a judicial proceeding within the meaning of sections 193, 219 and 228 of the Indian Penal Code (45 of 1860).]

(5) Any amount directed to be paid under this section may be recovered—

(a) if the authority is a Magistrate, by the authority as if it were a fine imposed by him as Magistrate, and

(b) if the authority is not a Magistrate, by any Magistrate to whom the authority makes application in this behalf, as if it were a fine imposed by such Magistrate."

11. This Court is supported by the view taken by Supreme Court in '***Anand Rao Karoda Resolution Professional vs. Varsha Fabrics***

P. (Ltd.) and others, 2020 (14) SCC 198 holding as under:-

> "xx xx xx
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> 11. In view of the provisions of the IBC, the High Court ought not to have proceeded with the auction of the property of the Corporate Debtor, Respondent No. 4 herein, once the proceedings under the IBC had commenced, and an Order declaring moratorium was passed by the NCLT. The High Court passed the impugned Interim Orders dated 14.08.2019 and 05.09.2019 after the CIRP had commenced in this case.
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> 12. The moratorium having been declared by the NCLT on 04.06.2019, the High Court was not justified in passing the Orders dated 14.08.2019 and 05.09.2019 for carrying out auction of the assets of the Respondent No. 4 Company i.e. the Corporate Debtor before the NCLT. The subject matter of the auction proceedings before the High Court is a vast chunk of land admeasuring about 330 acres, including Railway lines and buildings.
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> 13. If the assets of the Respondent No. 4 Company are alienated during the pendency of the proceedings under the IBC, it will seriously jeopardise the interest of all the stakeholders. As a consequence, we set aside the impugned Interim Orders dated 14.08.2019 and 05.09.2019 passed by the Odisha High Court, as parallel proceedings with respect to the main issue cannot take place in the High Court. The sale or liquidation of the assets of Respondent No. 4 will now be governed by the provisions of the IBC."

12. In the present case, moratorium was declared by NCLT on 27.11.2019. Thus, the present proceedings summoning the petitioners for

recovery of payment of wages after moratorium ought not have been passed. As per provisions of Section 3 of the Payment of Wages Act, Directors of company are not personally liable for payment of wages in view of law laid down by Apex Court in the case of ***P.C. Agarwala vs. Payment of Wages Inspector, M.P. and others,*** reported as ***AIR (2006) SC 3576.*** However, in view of Regulation 9 of the Insolvency and Bankruptcy Code of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016, liberty is granted to the workmen to move an appropriate claim before Resolution Professional on the basis of recovery certificate issued. This Court is quite sanguine that the claim as raised by the petitioners shall be adjudicated by the professional in accordance with law, expeditiously.

13. Resultantly, impugned order 15.07.2021 (P-8) summoning the petitioners is hereby set aside with libertys to respondent No.2 as stated hereinabove.

14. Disposed off, accordingly.

15. A photocopy of this order be placed on the files of other connected cases.

(PANKAJ JAIN)
JUDGE

07.11.2023
Dinesh

Whether speaking/reasoned Yes

Whether Reportable : Yes