

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO. 2172 OF 2019
IN
EXECUTION APPLICATION NO. 787 OF 2019**

Shirdi Industries Ltd.	... Applicant
<u>In the matter between</u>	
Mars Art Studio	... Petitioner
Vs.	
Shirdi Industries Limited	... Respondent

**AND
EXECUTION APPLICATION NO. 787 OF 2019**

Mr. Ranjan Dwivedi for Respondent/Judgment Debtor in EXA and for Applicant in IA.
Mr. Lalit V. Jain for Claimant/Judgment Creditor.

**CORAM : ABHAY AHUJA, J.
DATE : 18 MARCH, 2024.**

ORAL JUDGMENT :

1. This Interim Application seeks setting aside the warrant of attachment in respect of the current account no. 1112016583 (the “said current account”) with Kotak Mahindra Bank, Shivaji Park Branch, situate at Saraswat Bhawan, Prabhadevi, Mumbai-400 028, standing in the name of the Applicant to the extent of Rs. 8,73,159.70

2. Mr. Dwivedi, learned Counsel for the Applicant would submit that earlier the Respondent had filed Petition on 4th March, 2016, before the Micro and Small Enterprises Facilitation Council (the “MSEFC”), MMR Region, Mumbai, for recovery of sum of Rs. 2,87,500/-. The Applicant was thereafter, subjected to the Corporate Insolvency Resolution process and by order dated 12th December, 2017, passed by the National Company Law Tribunal (the “NCLT”), Mumbai Bench, the resolution plan submitted by the Insolvency Resolution Professional entitling the Respondent to 15% of the claim amount was approved. Thereafter, perhaps unknown to the MSEFC, the Applicant was directed by award dated 3rd March, 2018, passed by the MSEFC, to pay the Respondent a sum of Rs. 2,87,500/- along with interest till realisation of the amount by the Respondent.

3. Thereafter, the Respondent called upon to Applicant to pay the outstanding amount. After receipt of the said communication, the Applicant sent a letter dated 21st May, 2018, to the Respondent and thereafter, the Respondent called upon the Applicant to furnish copy of the order dated 12th December, 2017, along with the resolution plan.

4. However, since the Applicant failed to pay the amount of the award, the Respondent took out an Execution Application No. 787 of 2019 before this Court for recovery of Rs. 8,73,159.70.

5. Thereafter, on 18th December, 2019, the Applicant took out this Interim Application for setting aside the warrant of attachment, submitting that the arrangement towards the claim of the Respondent had already been made as per order dated 12th December, 2017 of the NCLT, Mumbai Bench and that the Applicant had by letter dated 2nd May, 2018, already informed the Directorate of Industries / Office of the Joint Director of Industries, Mumbai Region about its readiness and willingness to pay the dues of the Respondent as per the approved resolution plan and the same was also sent to the Respondent. The relevant paragraph of the said communication is quoted as under:-

“4. According to the resolution plan approved by Hon’ble NCLT the dues of operational creditors as on 18/05/2017 shall be paid @ 15% and this amount shall be payable in 8 installments commencing from June 2022 till March 2014 without any interest. In the present case the amount payable is Rs. 43,125/- and to be paid as above.”

6. Mr. Dwivedi, learned Counsel for the Applicant would submit that thereafter, on 21st January, 2020, this Court (Coram: G. S. Kulkarni, J.)

had passed the following order:-

“ After hearing Mr. Sawant, learned Counsel for the applicant and Mr. Soman, learned Counsel for the judgment debtor, I am of the opinion that it would be appropriate that the applicant moves an application either before the Resolution Professional or before the National Company Law Tribunal as may be permissible under the provisions of Insolvency and Bankruptcy Code, 2016 (for short, “IBC”). This would be desirable course of action in as much as the award which is put into execution and subject matter of the proceedings is subsequent to the approval of the scheme under the IBC which was approved in the year 2017 and more particularly when the judgment debtor contested the arbitral proceedings and after its due participation, the arbitral tribunal has pronounced the award post the execution proceedings. It is also required to be noted that the applicant was also never part of the committee of the creditors and/or was not aware of the proceedings under the IBC. The judgment debtor has unilaterally disclosed a meager amount of the claim as made by the applicant to be included in the resolution proceedings.

2. Prima-facie in these circumstances, it is difficult to accept the submission as made on behalf of the respondent that the decretal interest of the applicant is required to be considered as redundant and inconsequential or of no legal consequences in view of such unilateral action taken on the part of the judgment debtor under the IBC. Prima-facie I am not in agreement with Mr.Soman, learned Counsel for the judgment debtor when he contends that the applicant is now required to accept the meager amount of Rs.45,000/- which is assigned in favour of the applicant to be received by the applicant in the year 2022 when the decree itself is for an amount of about Rs .8 Lakhs (principal amount and interest).

3. Consequently keeping open all these issues noted above, let the applicant approach the appropriate authorities under the IBC with its plea. All contentions of the parties in that regard are expressly kept open.

4. In the circumstances, proceedings are required to be adjourned.

5. Stand over to 3 March 2020.

6. Mr.Sawant, learned Counsel for the applicant states that an application under the IBC would be moved within two weeks from today.”

7. That pursuant to the liberty granted vide the aforesaid order of this Court, the Respondent approached the NCLT, Mumbai by application M. A. 718 of 2020 seeking declaration that the order dated 12th December, 2017, passed by the Tribunal approving the resolution plan was not binding upon the Respondent. On 16th January, 2024, the NCLT, Mumbai has dismissed the Miscellaneous Application filed by the Respondent holding that in terms of settled law the claim of the Respondent is to be dealt with in accordance with the approved resolution plan.

8. Mr. Dwivedi, learned Counsel for the Applicant would submit that soon thereafter, till 15th February, 2024, the Applicant has made payment of Rs. 62,539/- towards the full and final payment in accordance with the resolution plan to the Respondent. Learned Counsel draws the attention of this Court to the Exhibit-D at pages 24 to 28 of the Additional Submissions dated 20th February, 2024, in Interim Application, filed in this Court.

Learned Counsel would submit that, therefore, this Court set aside the warrant of attachment as the dues of the Respondent as per the approved resolution plan have been paid.

9. Mr. Jain, learned Counsel appearing for the Respondent would submit that in view of the order dated 16th January, 2024 of the NCLT, Mumbai in M.A. 718 of 2020 and in view of the payment of Rs. 62,539/- having been made by the Applicant to the Respondent in accordance with the resolution plan, nothing would survive in the Execution Application and this Court may pass the appropriate orders.

10. I have heard the learned Counsel and also perused the papers and proceedings in the matter.

11. It cannot be disputed that by order dated 12th December, 2017, passed by the NCLT, the resolution plan as submitted by the Resolution Professional was approved pursuant to which the Applicant was liable to pay 15% of the total amount of Rs. 4,16,925/- i.e. Rs. 62,538.75 to the Respondent.

12. Under Section 31 of the Insolvency And Bankruptcy Code, 2016 (the “IBC”), it is provided that if the NCLT is satisfied that the resolution plan as approved by the committee of creditors under section 30 of the IBC meets the mandate of the IBC, the NCLT approves the resolution plan and once the plan is approved, it shall be binding on all the parties including the corporate debtors, its employees, members, creditors, guarantors and all other stakeholders including government authorities.

Section 31 of the IBC is usefully quoted as under:-

“31. Approval of resolution plan

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom the debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1),—

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating

to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later.

Provided that where the resolution plan contains a provision for combination as referred to in section 5 of the Competition Act, 2002 (12 of 2003), the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of Creditors.”

13. Therefore, once the resolution plan has been approved / sanctioned by the NCLT, it is binding on all the stake holders.

14. Under Section 32 of the IBC, any appeal from an order approving the resolution plan by the NCLT, can be made in the manner and on the grounds laid down under Section 61 (3) of the IBC and such an appeal can be filed within 30 days before the National Company Law Appellate Tribunal (“NCLAT”). The NCLAT can allow further extension of time for sufficient cause but not beyond a period of 15 days. As on date and as also recorded by the NCLT order dated 16th January, 2024, no appeal has been filed by the Respondent and the period for filing the same has also long expired.

15. Moreover, the order dated 16th January, 2014, seeking recall of the sanctioned resolution plan dated 12th December, 2017 by the NCLT has also been dismissed and the Tribunal apart from holding that it has no power to recall the order dated 12th December, 2017, has observed that in terms of settled law, the claim of the Respondent is to be dealt with in accordance with the approved resolution plan.

16. The Hon'ble Supreme Court in the case of *Ghanshyam Mishra and sons private limited through the Authorised Signatory Vs. Edelweiss Asset Reconstruction Company Limited*.¹ has observed that it is trite law that the resolution applicant cannot be fastened with the liabilities in relation to the period upto the date of the resolution plan in case the resolution plan is approved under Section 31 of the IBC. Paragraphs 93, 95 to 98 and 102.1 of the said decision are usefully quoted as under:-

“93. As discussed hereinabove, one of the principal objects of the I&B Code is providing for revival of the corporate debtor and to make it a going concern. The I&B Code is a complete Code in itself. Upon admission of petition under Section 7 there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details

1 (2021) 9 SCC 657

provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the corporate debtor is revived and is made an on-going concern. After CoC approves the plan, the adjudicating authority is required to arrive at a subjective satisfaction that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only thereafter, the adjudicating authority can grant its approval to the plan. It is at this stage that the plan becomes binding on the corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The legislative intent behind this is to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans would go haywire and the plan would be unworkable.

95. There is another reason which persuades us to take the said view. Clause (10) of Section 3 of the I&B Code defines “creditor” thus:

3. (10) “creditor” means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder;”

96. Clauses (20) and (21) of Section 5 of the I&B Code define “operational creditor” and “operational debt” respectively as such:

“5. (20) “operational creditor” means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;

(21) “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;”

97. “Creditor” therefore has been defined to mean “any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder”. “Operational creditor” has been defined to mean a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred. “Operational debt” has been defined to mean a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.

98. It is a cardinal principle of law that a statute has to be read as a whole. Harmonious construction of clause (10) of Section 3 of the I&B Code read with clauses (20) and (21) of Section 5 thereof would reveal that even a claim in respect of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority would come within the ambit of “operational debt”. The Central Government, any State Government or any local authority to whom an operational debt is owed would come within the ambit of “operational creditor” as defined under clause (20) of Section 5 of the I&B Code. Consequently, a person to whom a debt is owed would be covered by the definition of “creditor” as defined under clause (10) of Section 3 of the I&B Code. As such, even without the 2019 Amendment, the Central Government, any State Government or any local authority to whom a debt is owed, including the statutory dues, would be covered by the term “creditor” and in any case, by the term “other stakeholders” as provided in sub-section (1) of Section 31 of the I&B Code.

102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the

adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.”

(emphasis supplied)

17. There is no dispute that the resolution plan approved vide order dated 12th December, 2017 has attained finality and accordingly the claim of the creditors or statutory authorities has to be dealt with in accordance with the approved resolution plan. The principle of clean slate as propounded by the said decision requires that the corporate debtor viz. the Applicant herein cannot be fastened with any liability for a period upto the date of the approval viz. 12th December, 2017, even if such liability crystallizes after this date. That all liabilities payable to any creditor shall stand satisfied and discharged upon approval of the resolution plan, provided those sums are set aside against which all such liabilities are paid.

18. It is not in dispute that the Applicant has discharged its liability in accordance with the approved resolution plan and paid an amount of Rs. 62,539/-, which it was permitted to paid in eight equally installments commencing from June, 2022 till March, 2024.

19. In the circumstances, I am of the view, that the warrant of attachment on the said current account be set aside.

20. Accordingly, the Application is made absolute in terms of the prayer Clause (a), which reads thus:-

“ a. that the Hon’ble Court be pleased to set aside the warrant of attachment of the schedule property i.e. Current Bank Account bearing No. 1112016583, IFSC : KKBK0000963 with Kotak Mahindra Bank situated at Saraswat Bhawan, Prabhadevi, Shivaji Park branch, Mumbai-400028 standing in the name of the Respondent above named to the extent of Rs. 8,73,159=70 Ps.;”

21. The Application accordingly stands disposed.

22. In view of the above, the Execution Application also to accordingly stand disposed.

(ABHAY AHUJA, J.)

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