IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-9799-2024 (O&M)
Date of decision : March 06, 2024

Sanjeev Narula ....Petitioner

versus

M/s Elkay International Limited ....Respondent

Coram: Hon'ble Mr. Justice Kuldeep Tiwari

Present : Mr. Arun Luthra, Advocate, for the petitioner

KULDEEP TIWARI, J.

1. The petitioner, being accused, facing trial in a criminal complaint, under Sections 138/142 of the Negotiable Instruments Act (in short, the NI Act), has invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C., to throw a challenge to an order dated 18.1.2024, passed by the learned trial court, whereby, the application preferred by the petitioner under Section 96 of the Insolvency and Bankruptcy Code, 2016 (in short, IBC), was dismissed.

2. In asking for the relief *(supra)*, it is submitted by the learned counsel for the petitioner that since an application under Section 94 of the IBC, has been filed before NCLT, Delhi on dated 10.11.2022, and the said application is still pending, and is yet to be admitted, in pursuance of provisions of Section 96 of the IBC, the

criminal proceedings of the instant complaint be directed to be stayed. He further submitted that the learned trial court concerned has erred in law by placing reliance upon a judgment passed by the Hon'ble Apex Court in ***P. Mohanraj & Ors. Vs M/s Shah Brothers Ispat Private Limited, Civil Appeal No. 10355 of 2018, decided on 1.3.2021, and in Narinder Garg & Ors. Vs Kotak Mahindra Bank Ltd. & Ors. (2022) SCC OnLine SC 517.*** He further submitted that earlier the Coordinate Bench of this Court in various cases, declined to grant the same relief with the observation, that no provision of IBC bars initiation of civil and criminal proceedings against the Director and officials of the companies. However, those orders were challenged before the Hon'ble Supreme Court, and interim stay was granted, and the same are pending for consideration, and therefore, in view of the above, the application is required to be allowed, and the criminal proceedings arising out of the instant criminal complaint, be ordered to be stayed, till an appropriate decision is taken by the NCLT, Delhi, upon the application as preferred under Section 94 of the IBC.

3. This Court has meticulously examined the impugned order as well as submissions made by the learned counsel for the petitioner, and do not find any merit in the contentions as raised, for the reasons assigned, hereinafter:

4. The legal issue, which was raised by the petitioner, is no more *res integra* as Hon'ble the Supreme Court in ***Ajay Kumar Radheyshyam Goenka vs Tourism Finance Corporation of India***

Ltd., 2023(10) SCC 545, has categorically held that there is no bar containing any provisions, in the IBC, and the NI Act, from approaching the criminal court for seeking criminal action under Section 138 of the NI Act. The signatories and directors cannot escape from their penal liability under Section 138 of the NI Act, by citing dissolution of the company. The relevant extract is read as under:-

> *"106. Thus, the upshot of all the decisions referred to above is where the proceedings under Section 138 of the NI Act had already commenced with the Magistrate taking cognizance upon the complaint and during the pendency, the company gets dissolved, the signatories/directors cannot escape from their penal liability under Section 138 of the NI Act by citing its dissolution. What is dissolved, is only the company, not the personal penal liability of the accused covered under Section 141 of the NI Act.*
>
> *107. I may draw my final conclusions as under:*
>
> *(a) After passing of the resolution plan under Section 31 of the IBC by the adjudicating authority & in the light of the provisions of Section 32A of the IBC, the criminal proceedings under Section 138 of the NI Act will stand terminated only in relation to the corporate debtor if the same is taken over by a new management. (b) Section 138 proceedings in relation to the signatories/directors who are liable/covered by the two provisos to Section 32A (1) will continue in accordance with law."*

5. Further in ***Narinder Garg's*** case *(supra)*, the Hon'ble Supreme Court, after relying upon ***P. Mohanraj's*** case *(supra),* has clarified that the moratorium provision contained in Section 14 of the IBC, would apply only to the corporate debtor, and that the natural

persons mentioned in Section 141 of the NI Act would continue to be statutorily liable under the provisions of the NI Act. The relevant extract is read as under:-

> *"3. In P. Mohanraj v. Shah Brothers Ispat Private Limited, (2021) 6 SCC 258, a Bench of three-Judges of this Court considered the matter whether a corporate entity in respect of which moratorium had become effective could be proceeded against in terms of Sections 138 and 141 of the Negotiable Instruments Act, 1881 ("the Act" for short). 4. A subsidiary issue was also about the liability of natural persons like a Director of the Company. In paragraph 77 of its judgment, this Court observed that the moratorium provisions contained in Section 14 of the Insolvency and Bankruptcy Code, 2016 would apply only to the corporate debtor and that the natural persons mentioned in Section 141 of the Act would continue to be statutorily liable under the provisions of the Act. 5. It is submitted by Mr. Gopal Sankaranarayanan, learned Senior Advocate that the resolution plan having been accepted in which the dues of the original complainant also figure, the effect of such acceptance would be to obliterate any pending trial under Sections 138 and 141 of the Act. 6. The decision rendered in P. Mohanraj is quite clear on the point and, as such, no interference in this petition is called for."*

6. Since the issue involved in the instant matter has already been settled by the Hon'ble Apex Court, therefore, this Court do not find any illegality or perversity in the impugned order, which has been passed while taking into consideration the above discussed verdicts, as passed by the Hon'ble Apex Court. Further the learned counsel for the petitioner is unable to point out any relevancy of the stay orders,

passed in different matters by the Hon'ble Apex Court, specifically when the legal issue, as raised in the instant petition, has already been settled by the Hon'ble Apex Court.

7. At this stage, it is also important to bring on record that the criminal complaint is pending since the year 2016, and this is 5th time, the petitioner has approached this Court, with the sole motive to delay the trial court proceedings. Earlier he approached this Court by filing CRM-M-46089-2018, under Section 482 Cr.P.C., seeking quashing of order dated 28.9.2018, whereby, the application of the petitioner for grant of permanent exemption from appearance was dismissed and his bail was cancelled, and surety bonds of the petitioner were forfeited, and further arrest warrants were issued against him. However, the same was dismissed as withdrawn vide order dated 10.12.2018. The petitioner also approached this Court by filing CRM-M-27578-2018, under Section 482 Cr.P.C., seeking quashing of complaint and that was also ordered to be dismissed, as having been rendered infructuous, vide order dated 11.3.2019. The third time, the petitioner approached this Court by filing CRM-M-12229-2019, again seeking quashing of complaint, and order dated 7.12.2018, whereby, the learned trial court concerned converted the complaint from summary trial to summons case. This Court, although, observed that the said petition was a gross abuse of the process of law, and the same was required to be dismissed with exemplary costs, however, showing leniency, the same was simply dismissed. The relevant

extract of the order dated 20.3.2019 is read as under:-

> *Instant petition is a gross abuse of the process of law, inasmuch*
> *as, learned counsel has not been able to show as to what prejudice has been caused to the petitioner from above action of the trial court. Same is liable to be dismissed with exemplary costs, but, however, the same is simply dismissed.*
>
> *Copy of this order be sent to concerned Chief Judicial Magistrate for information.”*

8. Lastly, the petitioner approached this Court by filing CRM-M-47329-2021, seeking quashing of order dated 16.4.2021, whereby application preferred by the present petitioner under Section 91 of the Cr.P.C., was dismissed. That petition was dismissed with liberty to the petitioner to move an appropriate application, on the same cause of action, before the learned trial court concerned, at the time of defence evidence. However, at the time of dismissal of the above petition, as the matter is pending since long, and with the consent of the petitioner, direction was issued upon the learned trial court to conclude the trial within six months. The relevant extract of the observation passed by this Court, vide order dated 5.12.2023 read as under:-

> *“Considering the innocuous and bonafide prayer made by the learned counsel for the respondent, coupled with the ‘No Objection’ expressed by the learned counsel for the petitioner, this Court directs the learned trial Court concerned to conclude the trial*

within six months from today."

9. Despite giving no objection for expeditious trial, the petitioner intentionally, to delay the trial, has filed the instant application under Section 96 of the IBC, for stay of the proceedings before the learned trial court. Interestingly, the instant petition has been filed by concealing all the earlier round of litigation, and very conveniently, mentioned in para no. 11 of the petition, that the petitioner has not filed any such or similar petition, either before this Court or before any other court including the learned Sessions Court, for the similar relief. At the time of motion hearing on dated 26.2.2024, when the learned counsel for the petitioner was confronted with the earlier four orders passed by this Court, he sought an adjournment to have appropriate instructions from the petitioner. Thereupon, the matter was adjourned for today, and the petitioner has now filed miscellaneous application with the request to bring on record all the earlier four orders passed by this Court. This shows that the petitioner was very well aware about the earlier orders, and not only that, he was also aware that the trial has to be concluded within six months, and despite that, after concealing all the earlier orders, he preferred to file the instant petition with an oblique motive to delay the trial, therefore, this Court can safely conclude that the petitioner has not approached this Court with clean hands, and rather abused the process of law. Therefore, this Court, while considering the above mentioned conduct of the present petitioner, has left with no other

option, except to dismiss the present petition, with exemplary costs, which are quantified as Rs One Lac. The costs shall be deposited with the District Legal Services Authority concerned. Further, the trial court is directed to adhere to the time frame as fixed by this Court vide order dated 5.12.2023.

10. The present petition stands **dismissed** with the aforesaid directions.

11. Copy of this order be forthwith sent to the learned trial court concerned for its compliance.

(Kuldeep Tiwari)
Judge

March 06, 2024
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Whether speaking/reasoned ? *Yes/No*
Whether Reportable ? *Yes/No*