



202(7)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1) CWP-16610-2022 (O&M)
Date of Decision:07.08.2024

M/S INTERNATIONAL COIL LTD THROUGH SHALU KHANNA
..... Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT-I, GURUGRAM AND ANR
..... Respondents

2) CWP-16428-2022 (O&M)

M/S INTERNATIONAL COIL LTD THROUGH SHALU KHANNA
....Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT-I, GURUGRAM AND ANRRespondents

3) CWP-16511-2022 (O&M)

M/S INTERNATIONAL COIL LTD THROUGH SHALU KHANNA
.....Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT-I, GURUGRAM AND ANRRespondents

4) CWP-16529-2022 (O&M)

M/S INTERNATIONAL COIL LTD THROUGH SHALU KHANNA
.....Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT-I, GURUGRAM AND ANRRespondents

5) CWP-16587-2022 (O&M)



M/S INTERNATIONAL COIL LTD THROUGH SHALU KHANNA

.....Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT-I, GURUGRAM AND ANRRespondents

6) CWP-16676-2022 (O&M)

M/S INTERNATIONAL COIL LTD THROUGH SHALU KHANNA

....Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT-I, GURUGRAM AND ANRRespondents

7) CWP-16710-2022 (O&M)

M/S INTERNATIONAL COIL LTD THROUGH SHALU KHANNA

.....Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT-I, GURUGRAM AND ANRRespondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Sumit Puri, Advocate
for the petitioner(s).

Mr. Raman Sharma, Addl. AG, Haryana.

Mr. Vashu Dev, Advocate with
Mr. G.S. Randhawa, Advocate
for respondent No.2
(CWP-16610-2022 & CWP-16710-2022).

JAGMOHAN BANSAL, J. (Oral)

1. By this common order CWP-16610-2022, CWP-16428-
2022, CWP-16511-2022, CWP-16529-2022, CWP-16587-2022, CWP-
16676-2022 and CWP-16710-2022 are disposed of since issues involved



in the captioned petitions and prayer sought are common. With the consent of parties and for the sake of brevity, facts are borrowed from CWP-16610-2022.

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of award dated 03.12.2021 (Annexure P-2) whereby Industrial Tribunal-cum-Labour Court, Gurugram has answered the reference in favour of workman.

3. The petitioner is a Resolution Professional appointed by National Company Law Tribunal (for short 'NCLT') vide order dated 17.09.2020 (Annexure P-1) in Application No. IB/1700/ND/2018.

4. The respondent No.2-workman was working with M/s International Coil Limited (for short 'ICL'). The Management terminated workman who preferred an application under Section 2-A of Industrial Disputes Act, 1947 (for short '1947 Act') before Labour Court. The application before the Labour Court was filed on 04.04.2019 and it came to be adjudicated vide award dated 03.12.2021. The Labour Court has ordered the Management to reinstate workman with 50% back wages. In the interregnum, operational creditors of ICL preferred petition before NCLT seeking resolution of their issues. The petitioner as afore-stated came to be appointed as Resolution Professional.

5. The NCLT vide order dated 16.12.2019 admitted application of creditors in terms of Section 9 (5) of Insolvency and Bankruptcy Code, 2016 (for short 'IBC') and declared that moratorium as envisaged under Section 14 of IBC shall follow.

6. Mr. Sumit Puri, counsel for the petitioner submits that there



was constructive notice of moratorium period declared by NCLT in terms of Section 14 of IBC, thus, Labour Court was supposed to defer the proceedings instead of adjudicating the same. He further submits that in the meeting of creditors, it has been resolved that company should be liquidated accordingly, petitioner-Resolution Professional seeking dissolution/liquidation of the company has filed an application before NCLT. The respondent after appointment of liquidator by NCLT would get remedy to lodge its claim before the liquidator.

7. Learned counsel for respondents appearing in CWP-16610-2022 & CWP-16710-2022 do not dispute afore-stated factual and legal position.

8. Despite service, there is no representation on behalf of the respondent No.2 in CWP-16428-2022, CWP-16511-2022, CWP-16529-2022, CWP-16587-2022 and CWP-16676-2022.

9. I have heard the arguments and perused the record.

10. From the perusal of record, it is evident that workman preferred his claim before Labour Court prior to declaration of moratorium period by NCLT. The application before Labour Court was filed on 04.04.2019 whereas moratorium period was declared on 16.12.2019. As per Section 14 of IBC, the Labour Court was prohibited from proceeding with claim application of the workman. Section 14 of IBC for the ready reference is reproduced as below:

“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—

(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 (54 of 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.

Explanation.—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2-A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such



corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to—

(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

11. Section 14 of IBC is *pari materia* with Section 22 of Sick Industrial Companies (Special Provisions) Act, 1985. Section 14 of IBC specifically prohibits institution as well as continuation of suits and any other proceedings against the company.

12. In the case in hand, the Labour Court has already passed the award, though it is an *ex parte*. The Management has been asked to reinstate the workman which is impossible because undertaking/establishment has already closed. The company is before the NCLT and Resolution Professional has already moved an application seeking liquidation of the company.



13. Recently, a two Judge Bench of Supreme Court in '***Fertilizer Corporation of India Limited and others Vs. Coromandal Sacks Private Limited***' 2024 SCC OnLine 662 has opined that suit for recovery despite suspension of proceedings under Section 22 of 1985 Act can be proceeded, however, money decree cannot be executed. In the present case, the establishment/undertaking is before the NCLT and Resolution Professional has already moved an application seeking liquidator. The workman as per Regulation 19 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 may prefer their claim before Official Liquidator. They cannot claim reinstatement, at this stage, however, they can claim back wages as ordered by Labour Court. The relevant extracts of ***Fertilizer Corporation of India Limited and others*** (supra) are reproduced as below:

“98. Applying the aforesaid tests to the facts of the present case, we have already observed that requirement (i) is fulfilled. The proceeding in question being a suit for recovery of money, requirement (ii) is also satisfied. However, we are of the considered opinion that the third requirement is not fulfilled. We say so because the suit for recovery was not of a nature which could have proved to be a threat to the properties of the defendant sick company or would have adversely impacted the scheme of revival. The suit was a simple suit for recovery of money towards the dues arising under the alleged illegal deductions under the contract. This cannot be said to be a proceeding in the nature of execution, distress or the like and hence the suit was not hit by Section 22(1) of the 1985 Act.

99. By no stretch of imagination could it be said that the legislature intended to include even the proceedings for the adjudication of the liabilities not admitted by a sick company



within the protective ambit of Section 22(1) of the 1985 Act. Such an adjudicatory process only determines the liability of the defendant towards the plaintiff, and does not threaten the assets of the sick company or interfere with the formulation of the scheme unless execution proceedings are initiated pursuant to the completion of such adjudicatory process. In the case of Jay Engineering (supra), it was rightly observed by this Court in the context of arbitration proceedings under the 1993 Act for the adjudication of claims, that while the execution of an award would definitely be suspended under Section 22(1) of the 1985 Act, the adjudicatory process for arriving at such an award cannot be said to be suspended by the said provision. This position also seems to be justified in light of the fact that the proceedings before the BIFR under the 1985 Act were generally long-drawn and time consuming and it would subserve the interest of justice if a party was prevented even from proving the debt/liability of the sick company for the entirety of that lengthy period.

[Emphasis Supplied]

14. In the wake of afore-cited judgment and factual position, it would not be just and fair to set aside the award. The respondent cannot get award executed through Labour Court and he has option to follow the path shown by IBC. Therefore, all the petitions are disposed of with liberty to workman to approach NCLT/Official Liquidator at an appropriate stage.
15. Pending misc. application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

07.08.2024
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No