



INSOLVENCY & BANKRUPTCY

IBC Moratorium Does Not Shield Penalties Under Consumer Protection Act, Supreme Court Asserts

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The Supreme Court of India has delivered a landmark judgment in the matter of Saranga Anilkumar Aggarwal vs Bhavesh Dhirajlal Sheth & Ors.[1] clarifying that the interim moratorium under the Insolvency and Bankruptcy Code (IBC) does not shield individuals or companies from regulatory penalties imposed under consumer protection laws. This ruling has significant implications for both insolvency proceedings and consumer rights.

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Background of the Case

The case involved Saranga Anilkumar Aggarwal, the proprietor of East and West Builders, who faced insolvency proceedings before the National Company Law Tribunal (NCLT) under the IBC. Aggarwal had been penalized by the National Consumer Disputes Redressal Commission (NCDRC) for failing to deliver possession of residential units to homebuyers within the stipulated timeframe. The NCDRC imposed multiple penalties (27 in total) for non-compliance of his agreed terms with the homebuyers. Aggarwal argued for stay over the execution of these penalty orders under the interim moratorium provisions of Section 96 of the IBC as he had filed for insolvency resolution.

Legal Provisions Involved

Section 96 of the IBC – This section imposes an interim moratorium, temporarily suspending all legal actions against an individual (personal guarantor to a corporate debtor), including the execution of any judgments. The purpose of this moratorium is to provide a breathing space to the debtor during the insolvency resolution process.

Section 72 of the Consumer Protection Act, 2019: This section provides for penalties and even imprisonment for non-compliance with consumer protection laws. The penalties imposed under this section are regulatory in nature, aimed at ensuring compliance with consumer protection laws.

Supreme Court's Rationale and Judgment

The Supreme Court held that the interim moratorium under Section 96 of the IBC does not extend to regulatory penalties imposed for non-compliance with consumer protection laws. The court's reasoning was based on the following key points:

- **Distinction Between Penalties and Debt:** The court emphasized that penalties imposed by the NCDRC are regulatory in nature and do not constitute 'debt' under the IBC. The moratorium under Section 96 applies only to debts and not to penalties for statutory violations.
- **Exclusion of Certain Liabilities:** The court referred to Section 79(15) of the IBC, which explicitly excludes certain categories of liabilities, including fines and penalties imposed by courts and tribunals, from the insolvency resolution process. Since the penalties imposed by the NCDRC fall within this category, they are not protected by the moratorium under Section 96.
- **Public Interest and Consumer Protection:** The court reaffirmed that consumer laws serve an essential public function, ensuring accountability and protecting consumer rights. Allowing developers to evade penalties through insolvency proceedings would set a dangerous precedent and render consumer protection laws ineffective.
- **Preventing Misuse of Insolvency Framework:** The court observed that homebuyers, who often invest their life savings in real estate projects, should not be deprived of their legal remedies due to the insolvency status of a developer. Allowing a moratorium on penalties would encourage defaulting developers to misuse the insolvency framework as a shield against regulatory sanctions.

Implications of the Judgment

- For Personal Guarantors and Developers: This ruling makes it clear that personal guarantors to a corporate debtor cannot invoke insolvency proceedings to escape penalties for non-compliance with consumer protection laws. It reinforces that insolvency laws cannot be used as a tool to frustrate statutory obligations and evade liabilities imposed by regulatory bodies.
- For Homebuyers and Consumer Protection Laws: The judgment strengthens homebuyer rights by ensuring that penalties imposed for developer misconduct remain enforceable despite insolvency proceedings. It upholds the principle that consumer protection laws serve a broader public interest, distinct from insolvency resolution mechanisms under the IBC.
- For Insolvency Proceedings and Moratoriums under IBC: The Supreme Court has reaffirmed that the scope of the interim moratorium under Section 96 is limited to legal proceedings concerning debts and does not extend to penalties arising from regulatory non-compliance. This distinction will guide future cases where entities seek to misuse insolvency proceedings to evade statutory obligations.

Conclusion

This landmark judgment by the Supreme Court strikes a crucial balance between insolvency law and consumer protection, reinforcing the principle that regulatory obligations cannot be evaded under the guise of insolvency proceedings. The verdict clarifies that while insolvency law provides financial relief to distressed entities, it does not absolve them of statutory penalties imposed for non-compliance with consumer protection laws. This decision prevents the misuse of the IBC framework by delinquent individuals and ensures that homebuyers retain their rights to enforce regulatory penalties. By upholding the sanctity of consumer protection laws, the Supreme Court has reaffirmed that insolvency proceedings are not a tool to circumvent public interest legislation.

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