INDIALAW



INSOLVENCY & BANKRUPTCY

Moratorium under I&B Code to include proceedings of cheque dishonor & Section 34 of Arbitration Act

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The Supreme Court of India in P Mohanraj and others vs. M/s Shah Brothers Ispat Ltd[1] has held that the moratorium under Section 14 of the Insolvency and Bankruptcy Code (the "Code") also covers proceedings for dishonor of cheque under Sections 138 and 141 of the Negotiable Instruments Act, 1881 (the "NI Act") against the corporate debtor.

Therefore, when an order of moratorium is passed under the Code, parallel proceedings under Section 138 of the NI Act against the corporate debtor cannot be allowed to continue.

However, the judgment added that since no Section 138 proceeding can be continued or initiated against the corporate debtor because of a statutory bar, such proceedings can be initiated or continued against natural persons such as the directors of the company, as mentioned in Section 141 of the NI Act.

"This being the case, it is clear that the moratorium provision contained in Section 14 of the IBC would apply only to the corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act," the court observed.

The judgment settles the law on whether the institution or continuation of a proceeding under Section 138/141 of the NI Act would be covered by the moratorium provision under the Code.

Among other things, Section 14 allows a moratorium till the completion of insolvency proceedings on "the institution of suits or continuation of pending suits or proceedings against the corporate debtor". Until now, the Bombay high court[2] and the Calcutta high court[3] had ruled that since the expression "proceedings" takes its colour from the previous expression "suits", such proceedings must necessarily be civil in nature.

However, the Supreme Court now disagreed with this position, ruling that "a quasi-criminal proceeding that is contained in Chapter XVII of the Negotiable Instruments Act would, given the object and context of Section 14 of the IBC, amount to a "proceeding" within the meaning of Section 14(1)(a), the moratorium therefore attaching to such proceeding".

Additionally, the court also concluded that an application filed under Section 34 of the Arbitration and Conciliation Act, 1994 to set aside an arbitral award is covered by the moratorium under Section 14 of the Code. In doing so, it declared that a Delhi high court judgment passed in 2017[4] did not state the law correctly, observing, "A Section 34 proceeding is a proceeding against the corporate debtor in a court of law pertaining to a challenge to an arbitral award and would be covered just as an appellate proceeding in a decree from a suit would be covered. This judgment does not, therefore, state the law correctly."

[1] Civil Appeal No. 10355 of 2018

[2] Tayal Cotton Pvt. Ltd. vs. State of Maharashtra, 2018 SCC OnLine Bom 2069

[3] M/s MBL Infrastructure Ltd. vs. Manik Chand Somani, CRR 3456/2018

[4] Power Grid Corporation of India Ltd. vs. Jyoti Structures Ltd., 2017 SCC OnLine Del 12189