

24th January,
2020
(AK)
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W.P. 21071(W) of 2019

India Infoline Finance Limited & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Rahul Karmakar
Ms. Rituparna Sanyal

...For the Petitioners

Mr. Dilawar Khan
Ms. Ankita Baid

...For the Respondent no.7

Mr. Ashim Kumar Ganguly
Mr. Shukla Das Chandra

...For the State

The grievance of the writ petitioner is that the police has refused to act on the First Information Report registered by them at the behest of the petitioners against the private respondents, taking shelter of a Corporate Insolvency Resolution Process (CIRP) pending in connection with the company in question.

Learned counsel for the petitioners, by placing reliance on an unreported judgment dated April 16, 2019 passed in C.R.R 3456 of 2018 (along with connected applications), argues that a co-ordinate bench of this court specifically held that “it appears that the said

declaration of moratorium does not prohibit continuation of criminal proceedings against the company or its directors”.

It was further recorded therein that, from the order of moratorium dated March 30, 2017 as well as from Section 14 of the Insolvency and Bankruptcy Code, it can be said that the declaration of moratorium has no manner of application to criminal proceedings.

Even taking into consideration the principle of law as laid down in the cited judgment, although a moratorium under Section 14 may directly not affect a criminal proceeding, the same covers all aspects and components of the loans and transactions made in respect of the company, which is the subject matter of the CIRP and consequential proceedings.

In the instant case, it is evident from the affidavit-in-opposition filed by the police that a notice under Section 41A of the Criminal Procedure Code was served on the respondent and already, subsequent to registration of a First Information Report, a police case was started, bearing Shakespeare Sarani Police Station Case No.97 dated June 4, 2019, under Sections 120(b)/420/406/24 of the Indian Penal Code.

It is further stated in the opposition that when the accused persons were examined, they admitted that they procured a loan of Rs. 25 lakh from the petitioner company during the normal course

of business and that the alleged accused persons were the guarantors of the said loan.

However, the said accused persons also apprised the investigating agency that only after verifying all financial credentials of the company and being satisfied of all the papers and documents submitted by them, the loan amount was disbursed to the petitioner's company.

It was further stated by the accused persons that the loan amount was not in their personal account but credited in the account of their company M/s Prime Retail India Limited.

A perusal of the affidavit-in-opposition filed by the police authorities, taken in its full perspective, shows that the police took sufficient steps in connection with the complaint lodged by the present petitioners.

However, since the intervening commencement of the CIRP and the moratorium following therefrom, to which effect an order has also been passed by the National Company Law Tribunal, Kolkata Bench, whatever action the police may take, will ultimately lead to an investigation as to the transactions of the company, which are the subject matter of the CIRP.

Therefore, although agreeing with the principle that a moratorium under Section 14 might not, in certain circumstances, directly stop a criminal proceeding from going on, however, in the

present case, as is evident from the affidavit-in-opposition of the police, the police has done its level best up to the time when the moratorium started operating, and the order in connection with the CIRP was passed.

Since any action of the police will have to be based on investigation on the subject matter of the transaction, which is directly within the purview of the CIRP, it is to be deemed that the police cannot take further steps in the matter unless and until the CIRP culminates, in a resolution or otherwise.

In such view of the matter, the allegation, that the police are not taking sufficient steps on the complaint of the petitioners, cannot be accepted by this court.

Accordingly, W.P. 21071(W) of 2019 is dismissed on contest, without any order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities

(Sabyasachi Bhattacharyya, J.)