

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
KOLKATA BENCH- II  
KOLKATA**

*IA(IBC)/1708/KB/2022*

*IN*

*C.P (IB) No.250/KB/2021*

*An application under sections 60(5) and other relevant provisions of the Insolvency and Bankruptcy Code, 2016 read with Rule of the National Company Law Tribunal Rules, 2016 .*

***In the matter of:***

**Manjushree Khaitan & Ors.**

*... Applicants*

Versus

**M/s Hind Agencies**

*...Respondent*

Date of hearing : 18/01/2023

Order Pronounced on : 07/02/2023

**Coram:**

***Mrs. Bidisha Banerjee, Member (Judicial)***

***Mr. Balrarj Joshi, Member (Technical)***

**Counsels appeared through Physically/ Video Conference**

Mr. Rohit Kumar Keshri, Adv. ] In IA 1060/2022

Mr. Nitish Kumar Singh, Adv. ]

---

Ms. Manju Bhuteria, Adv. ] For Applicant in IA 638/2022  
Mr. Debargha Basu, Adv. ]  
Mr. Shounak Mukherjee, Adv. ]

Mr. Shaunak Mitra, Adv. ] For RP in IA 638/2022  
Mr. Sayantak Das, Adv. ]  
Mr. Amardup Singh, Adv. ]

Mr. Mainak Bose, Adv. ] For the suspended Board of Director  
Mr. Tridib Bose, Adv. ]  
Mr. Debjyoti Saha, Adv. ]

**ORDER**

**Per: Bidisha Banerjee, Member (Judicial)**

1. Ld. Counsel for the parties were heard.
2. This is an application preferred by Operational Creditor SRF Limited under section sections 60(5) and other relevant provisions of the Insolvency and Bankruptcy Code, 2016 read with Rule of the National Company Law Tribunal Rules, 2016 seeking the following reliefs:-

*“ a. An order be passed directing the respondent to withdraw the complaint being Case No. CN/1647 of 2022 instituted in the Court of the Learned 19<sup>th</sup> Metropolitan Magistrate at Calcutta.*

*b. An order be passed injuncting and /or restraining the respondent from pursuing its complaint being Case No. CN/1647 of 2022 instituted before the Learned 19<sup>th</sup> Metropolitan Magistrate at Calcutta;*

*c. Ad-interim orders in terms of prayers made above;*

*d. Such further or other orders be made and /or direction or directions be given as this Hon’ble Tribunal may seem fit and proper”.*

3. It has been averred by the applicant that the applicant is in receipt of summon

---

dated 5<sup>th</sup> November, 2022 from the 19<sup>th</sup> Metropolitan Magistrate at Calcutta issued in Case No. CN/1647 of 2022 directing the applicants to appear in regard to a complaint instituted by the Respondents- Corporate Debtor being Birla Tyres Ltd. of Rs. 1,25,800/- on account of delivery and sale of HSS Hack Blades to the Corporate Debtor in terms of the purchase order dated 21<sup>st</sup> December, 2020.

4. It is submitted that the Corporate Debtor is undergoing corporate insolvency resolution process vide an order 5<sup>th</sup> May, 2022 as initiated by this Tribunal.
5. It is further submitted upon initiation of the CIRP, the Creditors of the Corporate Debtor have lodged their claim with the RP and having already exercised and/or availed its remedy as available under the Insolvency and Bankruptcy Code, 2016, lodging complaint before the learned 19<sup>th</sup> Metropolitan Magistrate at Calcutta for the same amount of money is an abuse of the process of law. It attracts operational ban under section 236(2) read with section 63 of the IBC, 2016  
The Section 236(2) enjoins:

*“No Court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Board or the Central Government or any person authorised by the Central Government in this behalf”.*

While Section 63 envisages:

*“No Court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code. Civil Court not to have jurisdiction”.*

6. Ld. Counsel for the applicant was heard at length.
7. It is evident that Mr. Anant Gupta, as Director of M/s Birla Tyres Ltd. has lodged

---

a complaint under section 420,406,120B of IPC.

8. The objective of purpose of the two enactments are distinctly different and operate in respective spheres. IPC is an enactment to prevent crime by laying down punishment for committing such crime. Section 60(5) of the IBC states as follows:

*“Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of-*

- a) Any application or proceeding by or against the corporate debtor or corporate person;*
  - b) Any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India;and*
  - c) Any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code”.*
9. At the hearing, Ld. Counsel for the applicant failed to bring to our notice any legal provision or authority that would allow this Tribunal to restrain the respondent/corporate debtor from pursuing its complaint before the Learned 19<sup>th</sup> Metropolitan Magistrate at Calcutta or direct the respondent to withdraw the said Complaint Case No. CN/1647 of 2022.
10. We are aware of the limits of exercise of jurisdiction of this Tribunal. It cannot venture into forbidden fields including restricting or curtailing the right of a party to pursue its remedies under other statues not expressly forbidden under any legal provisions that bind us. Moreover, the applicant has its recourse against the

---

complaint, elsewhere.

Hon'ble Apex Court in ***Kanwar Singh Saini v High Court of Delhi [2012 4 SCC page 307]*** has held that “when a statute gives a right and provides a forum for adjudication of claims, remedy has to be sought under the provisions of the Act .

11. The only possibility of exploring would be to find out whether provisions under section 9 (5)(ii) of IBC would get attracted in the event there is a pre-existing dispute, which will be considered at the appropriate stage of proceeding.
12. Hon'ble High Court of judicature at Madras, in **Ajay Kumar Bishnoi vs. M/s Tap Engineering CRP OP(MD)Nos. 34996 of 2019** while dealing with an application seeking for quashing of complaints noted that,

*“ 4. The Petitioner’s contention is that in view of the acceptance of the resolution plan by the Tribunal and the change in management, the impugned prosecution against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 is liable to be quashed.*

xxx

xxx

xxx

Hon'ble Court noted, the following argument advanced in the matter:

*“He also contended that the Insolvency and Bankruptcy Code, 2016 is a self contained enactment which has an overriding effect over other laws. Therefore, continuation of the impugned prosecution would only amount to an abuse of legal process. He, therefore, called upon this Court to quash the impugned proceedings”.*

Hon'ble Court observed:

*“ 5. I am unable to agree with any of the contentions advanced by the Learned Counsel appearing for the petitioner. Section 14 of the Insolvency and Bankruptcy Code, 2016 contemplates declaration of moratorium. The*

---

institution of suit 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 is prohibited. In CRL OP(MD).Nos 34996 and etc. question arose before various judicial fora as to whether the expression “proceeding” will include criminal prosecution.

6. The High Court of Calcutta in C.R.R. NO. 3455 of 2018 vide judgment dated 16.04.2019, declined to quash the complaint under section 138 of the Negotiable Instrument Act, 1881 merely on account of the declaration of moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016. The learned Judge held that declaration of moratorium under Section 14 of the Code, does not create any bar for continuation of criminal proceedings initiated under Section 138/141 of the Negotiable Instruments Act, 1881.

The learned Judge placed reliance on *Indorama Synthetics (I) Ltd. Nagpur Vs. State of Maharashtra and others* reported in 2016 (4) Mh. L.J.249. The question that arose in *Indorama* was whether the expression of “suit or other proceedings” mentioned in Section 446(1) of the Companies Act, 1956 would include criminal proceedings under Section 138 of the Negotiable Instruments Act, 1881. In *Indorama Synthetics*, it was answered in the negative.

xxx

xxx

xxx

The National Company Law Tribunal vide order dated 31/07/2018 in (AT) (Insolvency)No.306 of 2018 (Shah Brothers Ispat Pvt.Ltd. vs. P.Mohanraj & Ors.), also held that Section 14 of the Insolvency and Bankruptcy Code, 2016 relating to moratorium will not cover criminal proceedings under Section 138 of the Negotiable Instruments Act, 1881.

---

*While respectfully concurring with the ratio laid down in the aforesaid decisions, I may also reinforce the reasoning. Section 233 of Insolvency and Bankruptcy Code, 2016 which protects action taken in good faith under the Code or the Rules or Regulations made thereunder employs the expression “no suit, prosecution or other legal proceeding”. But, in Section 14 the expression “suits or proceedings” alone is found.*

*“Prosecution “is conspicuously absent in Section 14. When the legislative consciously included the expression “prosecution’ elsewhere in the Code and omits it in Section 14 of the Code, I can only come to the conclusion that the omission is deliberate and intentional. The legislative did not intend to bar criminal prosecution even though moratorium has been declared.”*

*26. I am, of the course, conscious that there petitions have been filed under section 482 of the Cr.P.C. The inherent powers of this Court are meant to be exercised only to prevent the abuse of process of law or to secure the ends of justice. The facts appearing on record and contentions put forth by the learned counsel for the petitioner do not persuade me to come to the conclusion that continuation of the impugned would constitute an abuse of legal process, I, therefore, decline to invoke the inherent powers of this Court under Section 482 of the Cr.P.C. in favour of the petitioner.*

*In the result, all these criminal petitions stands dismissed”.*

*(emphasis added)*

It is evident therefore, that even a moratorium (Under section 14 of the Code) does not impose a bar to criminal prosecution.

13. For the reasons noted above, this application being devoid of merit is **dismissed**.

14. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

**(Balraj Joshi)**  
**Member (Technical)**

**(Bidisha Banerjee)**  
**Member (Judicial)**

Order signed on the 7<sup>th</sup> day of February, 2023

*PJ.*