

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION 1437 OF 2017

Tayal Cotton Pvt. Ltd.
Through its Authorised Signatory,
Sunil S/o Pausalai Tayal,
Age : 50 years, Occu : Business
R/o "Manu Prabhu", Flat No.1,
Plot No.100, Guru Sahani Nagar,
N-4, CIDCO, Aurangabad

.. PETITIONER

Versus

- 1] The State of Maharashtra
- 2] Aegan Industries Private Limited
280, Bommanallur Village, Palani
Highway, Dharapuram Talukka
Dist.Tirupur, State TamilNadu.
- 3] Mr.Arun Kumar
Managing Director of
Aegan Industries Private Limited
R/o 715, 10th A Main, 4th Block,
Jayanagar, Bangalore.
- 4] Mrs.Arunkumar Bhadra Devi
Director of Aegan Industries Private
Limited R/o as above.
- 5] Mr.Rajkumar,
Director of Aegan Industries
Private Limited, R/o 715,
10th A Main, 4th Block,
Jayanagar, Bangalore.

6] Mrs.Chitra Rajkumar,
Director of Aegan Industries
Private Limited
R/o as above.

7] Mr.Ramesh Kumar
Director of Aegan Industries
Private Limited
R/o Door No.3/558, Garer Mill,
Palladam Main Road,
Veerapandi (PO)
Tirupur.

..RESPONDENTS

Mr.S.S.Patil, Advocate for petitioner.
Mr.V.M.Kagne,APP for Respondent State.
Mr.A.S.Barlota,Advocate for respondents 2 to 7.

CORAM : MANGESH S. PATIL, J.

RESERVED ON : 10/07/2018.
PRONOUNCED ON :06/08/2018.

JUDGMENT :

1] Rule. Rule is made returnable forthwith. With the consent of both sides, the matter is heard finally at the stage of admission.

2] A very short question that arises for determination in this proceeding is as to whether moratorium prohibiting institution of a proceeding as provided for in Section 14 of the Insolvency and Bankruptcy Code, 2006 (hereinafter referred to as Code) applies even to a criminal proceeding.

3] The facts as are necessary to be delineated are to the effect that the petitioner company instituted a complaint under Section 138 of the Negotiable Instruments Act (hereinafter referred as N.I.Act for short) bearing SCC No.3197/2016 against the respondent no.2 company and the respondents 3 to 7 who are its Managing Director and Directors, in respect of a cheque for an amount of Rs.15,58,612/- issued by respondents 2 to 7 towards discharge of a civil liability. The learned Magistrate issued process under Section 204 of the Code of Criminal Procedure. Being aggrieved, the respondents 2 to 7 challenged the order of issuance of process by preferring Criminal Revision No.147/2016.

4] In the meanwhile, the respondents 2 to 7 initiated insolvency proceeding in Case No.CP/(IB No.20/BB/2017). The National Company Law Tribunal, Bengaluru passed following order :

“That this Bench hereby prohibits 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, transferring, encumbering, alienating or disposing of by the corporate debtor any of this assets or any legal right or beneficial interest therein, any action to foreclose, recovery or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial assets and enforcement of security interest Act 2002, the recovery of any property by an owner or lessor

where such property is occupied by or in the possession of the corporate debtor.”

In view of such an order, the respondents 2 to 7 submitted application (Exh.20) in the Criminal Revision and requested to keep the revision in abeyance/stayed till further order was passed in the insolvency proceeding.

5] The petitioner opposed that application by its Say (Exh.23) *inter alia* on the ground that in view of the Division Bench judgment of this Court in Indorama Synthetics India Limited Nagpur V/s State of Maharashtra and others; 2016 (4) Mh.L.J.249 while considering a similar provision contained in Sub Section 1 of Section 446 of the Companies Act it has interpreted the words 'Suit or other proceeding' contained in that Section as not to include a criminal complaint filed under Section 138 of the N.I.Act. The learned Additional Sessions Judge after hearing the arguments allowed the application Exh.20 filed by the respondents 2 to 7 and directed the revision to be kept in abeyance till further order was passed in the insolvency proceeding. Being aggrieved by the order, the petitioner has filed this Writ Petition under Articles 226 and 227 of the Constitution of India.

6] The learned advocate for the petitioner vehemently submitted that the provision contained in Section 14 of the Code does not specifically prohibit a criminal proceeding being

prosecuted against the company which has applied for insolvency under Section 10 of that Code. The National Company Law Tribunal, pursuant to this provision has prohibited institution or continuation of any proceeding, however even that order does not specifically prohibit continuation of a criminal proceeding. The decision in Indorama (supra) though interprets the provision of Sub Section 1 of Section 446 of the Companies Act, the reasons and the analogy as applied therein for arriving at a conclusion that that provision does not debar continuation of a criminal proceeding clearly settles the law and can be followed even in the matter in hand.

7] The learned advocate would point out that though the decision was cited before the learned Additional Sessions Judge and though the learned Judge has reproduced the observations therein, nothing has been said by her as to why the decision in that case does not govern the situation in the matter in hand.

8] The learned advocate further submitted that the order passed by the National Company Law Tribunal in a proceeding under Section 10 of the Code, also does not in clear terms directs any criminal proceeding to be kept in abeyance/stayed. Still the learned Additional Sessions Judge has readily held that the order prohibits continuation of the complaint under Section 138 of the N.I.Act in the matter in hand and consequently even the criminal revision.

9] *Per contra*, the learned advocate for the respondents 2 to 7 submitted that the decision in the case of Indorama (supra) is not applicable to the facts of the matter in hand. In that case, the provision of Sub Section 1 of Section 446 of the Companies Act was in question, whereas in the matter in hand, it is the provision of Section 14 of the Code which comes into play. The very purpose of prohibiting a proceeding to go on would be defeated if a complaint under Section 138 of the N.I.Act is allowed to be prosecuted further. The National Company Law Tribunal has also passed an order invoking the provision of Section 14 of the Code and in the circumstances, no fault can be found in the impugned order passed by the learned Additional Sessions Judge in directing the hearing of the Criminal Revision to be kept in abeyance.

10] True it is that in the case of Indorama (supra), the provision of Sub Section 1 of Section 446 of the Companies Act was in picture and was interpreted by laying down that it does not debar filing/continuation of a proceeding under Section 138 of the N.I.Act but it cannot be straightway applied to the matter in hand since in this case the provision contained in Section 14 of the Code is in question. However, in my considered view, the aim and object behind providing the bar under Sub Section 1 of Section 446 of the Companies Act and that of Section 14 of the Code are similar and therefore, though not strictly as a precedent, the decision in the case of Indorama is not applicable to the matter in hand, the reasonings and the logic in

interpreting the provision contained in Sub Section 1 of Section 446 of the Companies Act laid down therein can easily be pressed into service even in the matter in hand. The learned Additional Sessions Judge has apparently overlooked this aspect of the matter and without quoting any reason has refused to follow the reasonings and the logic contained in the case of Indorama.

11] Be that as it may, since it is a matter of interpretation of Section 14 of the Code, let us examine its wordings, which read as under :

“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 of 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.

(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.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(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. “

12] As can be seen from Clause (a) of Sub Section 1 of Section 14 of the Code, once the adjudicating authority declares moratorium for prohibiting institution of suits or continuation of pending suits or proceeding against the corporate debtor including execution of any judgment, decree or order in any Court of law, Arbitration Tribunal or other authority, the whole emphasis of the arguments of the learned advocate for the respondents 2 to 7 is on the words 'proceedings', 'order' and 'in any Court of law'. It has been submitted that these words do not precisely restrict its operation to only civil proceedings. The words are omnibus and even include a criminal proceeding including the one under Section 138 of the N.I.Act and a criminal revision arising therefrom.

13] As is the principle of interpretation of Statutes, these words would take colour from words preceding thereto. These words will have to be interpreted *ejusdem generis* with the words 'suits' used earlier thereto. So interpreted, the word 'proceedings' used therein and even the words 'order' and 'in Court of law' will have to be interpreted as a proceeding arising in the nature of a suit and orders passed in such proceedings and suits. Apart from the fact that the Legislature has not conspicuously used the words 'criminal' as an adjective to the word 'proceedings' and as an adjective to the noun 'Court of law', it must be assumed that the Legislature in its wisdom has consciously omitted to use such adjectives since it must have intended to prohibit only the suits and execution of the judgments and decrees or a proceeding of the like nature. Therefore, applying this principle of interpretation, one cannot put any other interpretation on this provision contained in Section 14 of the Code except that it only prohibits a suit or a proceeding of a like nature and does not include any criminal proceeding.

14] In view of such interpretation, which is deducible by following the line of reasonings for interpreting a similar provision contained in Sub Section 1 of Section 446 of the Companies Act in the case of Indorama (supra), the conclusion is inescapable. The criminal revision should not have been directed to be kept in abeyance by resorting to Section 14 of the Code. For that matter even the National Company Law Tribunal in its order in a proceeding under Section 10 could not have and

has not specifically directed any prohibition against the continuation of a criminal proceeding. The learned Additional Sessions Judge has committed a gross illegality in directing the criminal revision to be kept in abeyance by the impugned order. The order is not sustainable in law and is liable to be quashed and set aside.

15] The Writ Petition is allowed. The impugned order passed by the learned Additional Session Judge is quashed and set aside, meaning thereby that the learned Additional Sessions Judge shall proceed with the hearing of the criminal revision and shall decide it in accordance with law.

16] The Rule is made absolute in above terms.

(MANGESH S. PATIL,J.)

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