

(2020) 06 DEL CK 0129

In the Delhi High Court

Case No : Civil Writ Petition No. 13685 Of 2020, Civil Miscellaneous Application No. 13194, 13195, 13196 Of 2020

Pankaj Aggarwal

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 23-06-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 9, 14

Citation : (2020) 06 DEL CK 0129

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Prabhat Kumar, Maninder Acharya, Shiva Lakshmi, Taqvi. GP.

Judgement

Prathiba M. Singh, J

1. This hearing has been held by video-conferencing.
2. The present petition has been filed challenging the impugned order passed by the NCLT dated 29th May, 2020 by which the NCLT has entertained a petition against the Company M/s. VMA Enterprises Pvt Ltd. of which the Petitioner is one of the Promoter-Directors, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC). The NCLT has vide the said order appointed an IRP and declared moratorium under Section 14 of the IBC.
3. The first contention of Mr. Prabhat Kumar, Id. counsel appearing for the Petitioner is that the Company falls within the category of Micro, Small and Medium Enterprise (MSME), with more than 20 employees and at least 50 vendors would be affected if the insolvency proceeding continue against the Petitioner. The Petitioner would completely out of business overnight. The NCLT has failed to appreciate that w.e.f. 24th March, 2020, the jurisdiction of the NCLT has been increased to Rs 1 crore. However, in the operative portion of the NCLT's order, the NCLT proceeds on the basis that the defaulted amount is more than Rs.1 lakh, and has exercised jurisdiction.

4. It is submitted by Mr. Prabhat Kumar, Id. counsel on a query from the Court, that advance copy of the petition was served upon the Respondent No.1 i.e. the Complainant before the NCLT, as also the IRP. Both are based in Gujarat. However, there is no appearance for them today. According to the Petitioner, the dues of the Respondent No.2 would at best be approximately Rs.10 lakhs.

5. After perusing the records and the pleadings in the petition, it is clear that the purpose of increasing the jurisdiction of the NCLT to Rs. 1 crore was to ensure that MSMEs are not inflicted with sudden insolvency proceedings, as they may have faced a set-back to their businesses during the lockdown period. The NCLT's order records that the default amount is to the tune of Rs.1 lakh, and hence the petition under Section 9 is being entertained. The relevant extract from the NCLT's order reads:

"18. In the light of the submissions made on behalf of the parties when we shall consider the case in hand then we find that the respondent has failed to raise the dispute or failed to produce the documents to show that the unpaid operational debt has already been paid by the Corporate Debtor to the Operational Creditor. We further find that application filed on behalf of the Operational Creditor is complete and applicant also proposed the name of the IRP and consent of the IRP is also enclosed at page 78-81 and there is no disciplinary proceeding is pending against him and the defaulted amount is more than Rs.1,00,000/- is being the minimum threshold limit fixed under IBC, 2016. Under such circumstances this Adjudicating Authority is inclined to admit this petition and initiate CIRP against the respondent. Accordingly, this petition is ADMITTED. A moratorium in terms of Section 14 of the IBC, 2016 shall come into effect forthwith staying:-

(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 debt or any of its assets or 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.

Further:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated to 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 the 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."

The notification dated 24th March 2020 has changed the 'minimum amount of default' from one lakh rupees to one crore rupees in respect of 'Insolvency Resolution and Liquidation for corporate persons' in Part II of the Code. The proceedings in the present case have been commenced under Section 9 of the IBC which is in Part II of the Code. The purpose of the notification was to ensure that Small and Medium Enterprises viz., SMEs and MSMEs are not subjected to Insolvency proceedings during the lockdown or immediately thereafter. The present writ petition accordingly deserves consideration. Prima facie, this is an error by the NCLT, as the notification dated 24th March 2020 was clearly applicable. Subject to the Petitioner depositing an amount of Rs.10 lakhs with the Id. Registrar General of this Court, the order of the NCLT dated 29th May, 2020 shall remain stayed till the next date of hearing. The deposit shall be made within two weeks. The Company - VMA Enterprises Pvt Ltd. is permitted to carry on its day to day operations. However, the IRP is given liberty to approach this Court in case he deems fit for any further directions.

6. Ld. ASG, who is appearing for the Union of India is requested to bring to the notice of the NCLT the notification dated 24th March, 2020 which is placed at page 60 of the present petition.

7. List on 13th August, 2020.