



Supreme Court holds that Section 14 of the Insolvency and Bankruptcy Code is wide enough to include proceedings under Section 34 of the Act¹

Brief Facts

M/s. Shah Brothers Ispat Pvt. Ltd (“**Respondent**”) and M/s Diamond Engineering Pvt. Ltd. (“**Company**”) executed a contract pursuant to which the Respondent had to supply steel to the Company. An amount of INR 24,20,91,054/- was due and payable from the Company to the Respondent. The Company issued 51 cheques in favour of the Respondent. However, the cheques were dishonoured on the grounds of insufficient funds.

The Respondent issued demand notice(s) calling upon the Company and the Appellants to pay the due amount and upon the Company’s failure to do so, instituted two criminal proceedings under Sections 138 and 141 of the Negotiable Instruments Act, 1881 (“**NI Act**”) against the Company and the Appellants before the Additional Chief Metropolitan Magistrate, Mumbai.

The Respondent further issued a notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) against the Company, pursuant to which the Adjudicating Authority admitted the application under Section 9 of the IBC and ordered a moratorium under Section 14 of the IBC. The Adjudicating Authority stayed the criminal proceedings against the Company and the Appellants.

In appeal, the National Company Law Appellate Tribunal (“**NCLAT**”) set aside the order of the Adjudicating Authority on the ground that proceedings under Section 138 of the NI Act, being criminal in nature, cannot be stopped/stayed under Section 14 of IBC. The Supreme Court (“**Court**”) in appeal (against the NCLAT order), stayed the criminal proceedings before the Additional Chief Metropolitan Magistrate, Mumbai. Subsequently, the resolution plan was approved by the COC² and thus, the moratorium ceased to have effect. There are two pending proceedings before the Adjudicating Authority, i.e., (i) application filed by the financial creditors of the Company regarding withdrawal of the resolution plan; and (ii) application filed by the resolution applicant for extension of time for implementation of the resolution plan.

Issue

Whether the expression “*proceedings*” in Section 14 of the IBC includes proceedings under Section 34 of the Act? (although this was not an issue framed by the Court, the Court discussed this as elaborated below)

Judgment

The Court held that the expression “*or*” occurs twice in the first part of Section 14(1)(a). First, between the expressions “*institution of suits*” and “*continuation of pending suits*”; and second, between the expressions “*continuation of pending suits*” and “*proceedings against the corporate debtor*”. In light of the above, the Court concluded that given the object and context of Section 14, the expression “*proceedings*” cannot be curtailed by any rule of construction and must be given a fair meaning to include institution, continuation, judgment and execution of suits and proceedings.

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The Court held that the decision of the High Court of Delhi in **Power Grid Corporation of India Ltd. v. Jyoti Structures Ltd.**,³ wherein it was held that an application under Section 34 of the Act (“**Section 34 proceeding**”) to set aside an arbitral award would not be covered by Section 14 of the IBC, does not state the correct position of law. The Court observed that a Section 34 proceeding is certainly a proceeding against the corporate debtor, which may result in an arbitral award against the corporate debtor, where the corporate debtor would be required to pay money. A Section 34 proceeding against the corporate debtor in a court of law would be similar to an appellate proceeding in a decree from a suit. In light of the above, the Court concluded that a Section 34 proceeding would be covered under the realm of Section 14 of the IBC.

Analysis

The Court has re-affirmed the object of Section 14 of the IBC, i.e., preservation of assets of the corporate debtor during the corporate insolvency resolution process. The Court has also given a clear finding that a Section 34 proceeding would be covered under Section 14 of the IBC. This would essentially mean that all pending applications challenging an arbitral award under Section 34 of the Act would mandatorily have to be stayed until the conclusion of the corporate insolvency resolution process.

The judgment is in line with the overall scheme and object of the IBC, i.e., to ensure the revival and continuation of the corporate debtor and avoid liquidation. However, it is likely to have the consequence of reducing the efficacy of Section 34 proceedings. Since the court would be compelled to stay a Section 34 proceeding, the judgment may also run afoul of Section 34(6) of the Act, which mandates courts to dispose of Section 34 proceedings expeditiously and within a period of one year from the date of serving notice to the other party in accordance with Section 34(5) of the Act.

Endnotes

- 1 Authored by Binsy Susan, Partner, Akshay Sharma, Senior Associate and Amogh Srivastava, Associate; *P. Mohanraj & Ors. v. M/s Shah Brothers Ispat Pvt. Ltd.*, Civil Appeal No. 10355/2018, 2021 SCC OnLine SC 152, judgment dated 1 March 2021.
Coram: R.F. Nariman, Navin Sinha, K.M. Joseph, JJ.
- 2 Committee of Creditors.
- 3 2017 SCC Online Del 12189.

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