INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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IBC Case Law Capsule

No. 214

(March 10, 2025)

Saranga Anilkumar Aggarwal Vs. Bhavesh Dhirajlal Sheth & Ors.

CIVIL APPEAL NO(S). 4048 OF 2024

Date of Supreme Court Judgement: March 04, 2025

Facts of the Case

The present appeal has been filed by the Appellant, Saranga Anilkumar Aggarwal (hereinafter referred as 'Appellant') against Bhavesh Dhirajlal Sheth & Ors. (hereinafter referred as 'Respondent'), challenging the final judgment and order of the National Consumer Disputes Redressal Commission (NCDRC). The dispute arises from multiple penalties imposed (27 in total) on the Appellant due to the failure to deliver possession of residential units to homebuyers within the stipulated timeline. The Appellant seeks a stay on the execution of penalty proceedings on the grounds that an application under Section 95 of the IBC code 2016 has been filed, triggering an interim moratorium under Section 96 of the IBC.

The matter originates from an execution application filed by Respondents before the NCDRC, demanding compliance with its earlier orders penalizing the Appellant for deficiency in service and breach of contractual obligations. The NCDRC had issued a ruling dated 10.08.18 in Consumer Complaint No. 1362 of 2017 and other related cases, directing the Appellant to complete construction, obtain an occupancy certificate, and hand over possession. However, the Appellant failed to comply, leading to execution applications seeking enforcement of penalties. The appellant contends that the penalties should be stayed due to ongoing insolvency proceedings against the company.

The Appellant further argues that insolvency proceedings were initiated against A.A. Estates Pvt. Ltd., for which the Appellant is a personal guarantor. Following this, the State Bank of India (SBI) filed an application under Section 95 of the IBC against the Appellant, triggering an interim moratorium under Section 96. The Appellant submits that the moratorium prevents all legal proceedings, including the NCDRC's execution proceedings. The NCDRC, however, rejected the Appellant's plea on 07.02.24, asserting that penalties imposed under consumer law do not fall within the scope of the IBC moratorium.

The main issue raised before this court is: (i) Whether the execution of penalty orders passed by the NCDRC can be stayed under the interim moratorium provisions of Section 96 of the IBC or not?

Supreme Court's observations:

The Supreme Court held that civil proceedings are generally stayed under IBC provisions, but criminal proceedings, including penalty enforcement, do not automatically fall within its ambit unless explicitly stated by law. The penalties imposed by the NCDRC are regulatory and arise due to non-compliance with consumer protection laws. They are distinct from "debt recovery proceedings" under the IBC.

The Supreme Court observed that a moratorium under Section 96 of the IBC applies to individuals and personal guarantors, staying legal actions relating to debt. However, this provision does not cover regulatory penalties. The statutory scheme of the IBC suggests that penalties arising from regulatory infractions are outside the definition of "debt." The Apex court while placing its reliance on ***P. Mohanraj and Ors. vs Shah brothers Ispat Pvt. Ltd. 2021*** held that there is a distinction between punitive actions and criminal proceedings. While criminal proceedings aim to determine guilt, regulatory penalties, such as those imposed by the NCDRC, ensure compliance and deter violations. Section 27 of the CP Act empowers consumer fora to impose penalties for non-compliance. These penalties do not arise from "debt" but rather from failure to comply with consumer law. Unlike criminal prosecutions requiring mens rea, NCDRC penalties are regulatory, aiming to protect public interest rather than punish criminal behavior.

A distinction must be drawn between the corporate debtor moratorium under Section 14 and the personal guarantor moratorium under Section 96 of the IBC. The court also said that enforcing consumer rights through regulatory penalties, not just a financial dispute. Since the CP Act aims to ensure consumer welfare, staying such penalties would violate public policy. The appellant cannot use insolvency proceedings to evade statutory liabilities. The IBC is meant to resolve financial distress, not nullify regulatory obligations. The legislative intent behind Section 96 must be respected, and a blanket stay on regulatory penalties would defeat consumer protection objectives.

Order/Judgement: The Apex court held that there is no merit in the appellant's arguments. The penalties imposed by the NCDRC are regulatory in nature and do not constitute "debt" under the IBC and directed to comply with penalties within period of eight weeks. The moratorium under Section 96 of the IBC does not extend to regulatory penalties imposed for non-compliance with consumer protection laws.

Case Review: The appeal was dismissed with no order as to costs.