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Supreme Court clarifies the scope and ambit of Interim Moratorium in personal insolvency proceedings

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Introduction

In Saranga Anilkumar Aggarwal v Bhavesh Dhirajlal Sheth and Ors 2025 SCC OnLine SC 493, the Hon'ble Supreme Court of India (Supreme Court) ushered in some much-needed clarity on the scope and ambit of an interim moratorium which comes into force under Section 96 of the Insolvency and Bankruptcy Code, 2016 (IBC) (Interim Moratorium) in personal insolvency proceedings. A three-judge Bench of the Supreme Court had earlier upheld the constitutional validity of the personal insolvency provisions in the IBC in Dilip Jiwarajka v Union of India [IBC - Constitutionality of Personal Guarantors Judgement].

Section 96 of the IBC stipulates that simultaneous with the filing of an application by a creditor (under Section 95 of the IBC) or by the debtor itself (under Section 94 of the IBC), an interim moratorium comes into force which has the effect of staying "any legal action or proceeding" pending in respect of "any debt". However, despite the seemingly broad wording of Section 96 of the IBC, the Hon'ble Supreme Court construed Section 96 of the IBC restrictively and held that the protection conferred in terms of Section 96 of the IBC is not a blanket protection against any and all proceedings involving a debtor and instead, extends solely to proceedings in relation to recovery or enforcement of any "debt" or other "financial obligation". Accordingly, any proceedings involving the recovery or enforcement of penalties imposed by a court or tribunal or a regulatory or statutory authority are not covered within the scope of the Interim Moratorium.

In this Ergo, the Authors analyse the key observations of the Supreme Court and examine the contours of the scope and applicability of an Interim Moratorium in personal insolvency proceedings in light of the observations of the Supreme Court.

Factual background

Mrs. Saranga Anilkumar Aggarwal, the Appellant before the Supreme Court, was the proprietor of East & West Builders (Developer) which was engaged in the business of real estate development. The Developer did not complete a housing project as per the proposed timelines. and various flat purchasers (Homebuyers) filed complaints before the National Consumer Disputes Redressal Commission (NCDRC) under the Consumer Protection Act, 1986 (CP Act) seeking reliefs against the Developer including for completion the project, handing over possession of the flats to the Homebuyers and compensation for delay.

The NCDRC, vide its final judgment dated 10 August 2018 (2018 Order) allowed the complaints filed by the Homebuyers and *inter-alia* directed the Developer to complete construction of the real estate units and hand over possession of the real estate units to the Homebuyers. Additionally, the NCDRC imposed various penalties on the Appellant for having failed to deliver possession of the real estate units within timelines (Penalties).

However, the Developer failed to abide by the directions of the NCDRC in the 2018 Order, including making payment of the Penalties imposed by the NCDRC. Consequently, two Homebuyers initiated execution proceedings before the NCDRC alleging that the Appellant failed to comply with NCDRC's directions in the

2018 Order and accordingly is liable to face penal consequences under the CP Act for non-compliance of NCDRC's orders (Execution Proceedings).

In the interim, State Bank of India (SBI) filed an application under Section 95 of the IBC against the Appellant on the ground that the Appellant failed to discharge her payment obligations under a personal guarantee issued to secure the credit facilities availed by one A.A. Estates Private Limited (Corporate Debtor) from SBI. Consequently, an interim moratorium came into force in terms of Section 96 of the IBC.

Thereafter, the Appellant filed an interlocutory application in the Execution Proceedings (Stay Application) requesting NCDRC to stay the ongoing Execution Proceedings on the ground that the Interim Moratorium has the effect of staying the Execution Proceeding pending before the NCDRC. However, the NCDRC, vide its order dated 7 February 2024 (Impugned Order) rejected the Stay Application on the ground that consumer claims and penalties imposed under the CP Act are not covered within the scope of the Interim Moratorium.

Aggrieved by the Impugned Order, the Appellant preferred an appeal before the Hon'ble Supreme Court.

Submissions of the Appellant

The Appellant contended that Section 96 of the IBC has the effect of staying "any legal action or proceeding" pending in respect of "any debt". In other words, Section 96 of the IBC creates an absolute bar on any proceedings against the debtor relating to any debt during the Interim Moratorium. The Appellant further contended that in the instant case, Penalties were imposed by NCDRC arise out of financial obligations or debts of the Appellant. In view of the above, the Execution Proceedings seeking enforcement of these financial obligations or debts are squarely covered within the scope and ambit of the Interim Moratorium.

The Appellant also submitted that, the insolvency proceedings under the scheme of the IBC prevail over all other proceedings and if the protection which is statutorily guaranteed in terms of Section 96 of the IBC is not extended to the Appellant, then not only would the insolvency proceedings pending against the Appellant be frustrated, but also, the Appellant would be subjected to conflicting proceedings in multiple courts and tribunals.

Submissions of the Homebuyers

The Homebuyers contend that the Penalties imposed by the NCDRC are not merely monetary claims but punitive measures imposed as deterrence against unfair trade practices. The Homebuyers submitted that including the Execution Proceeding within the ambit of the Interim Moratorium would set a dangerous precedent where a developer can indefinitely delay justice by invoking insolvency proceedings and claim protection under the Interim Moratorium.

Secondly, the Homebuyers submitted that the Interim Moratorium is limited only to recovery actions and civil proceedings against the debtor. Accordingly, it does not extend to criminal proceedings under Section 27 of the CP Act. Unlike civil recovery proceedings which aim at recovery/enforcement of debt, proceedings under Section 27 of the CP Act serve a penal function to ensure compliance with orders passed by a consumer court. Accordingly, these punitive proceedings are outside the scope and ambit of the Interim Moratorium.

Thirdly, the Homebuyers argued that in terms of Section 94 of the IBC, the protection of interim moratorium does not apply to debts that are not "excluded debts" under Section 79(15) of the IBC. In terms of Section 79(15) of the IBC, liabilities arising from fines imposed by courts or tribunals, damages for negligence or breach of obligation, and other prescribed debts qualify as "excluded debt". The Penalties awarded by NCDRC and their execution fall under the ambit of "excluded debts".

Observations of the Hon'ble Supreme Court

The Hon'ble Supreme Court dismissed the contentions of the Appellant and upheld the Impugned Order. The Supreme Court formulated the primary question of law as "whether the execution of penalty orders passed by the NCDRC can be stayed under the Interim Moratorium". The key observations rendered by the Hon'ble Supreme Court are set out below.

Distinction between "debt" and regulatory liabilities:

The Supreme Court held that in terms of Section 96(1)(b)(i) of the IBC, an Interim Moratorium has the effect of staying any legal action or proceeding pending "***in respect of any debt***". In this regard the Supreme Court distinguished between proceedings in relation to a "**debt**" and proceedings in relation to regulatory or statutory liabilities. The Supreme Court held that the Penalties imposed by the NCDRC arise due to non-compliance with consumer protection laws under the CP Act. These penalties do not arise from any "**debt**" owed to any creditor. Rather they arise on account of the failure to comply with the remedial mechanisms established under consumer protection laws. In view thereof, such liabilities are not included within the scope of the Interim Moratorium. The Supreme Court further cautioned that including regulatory liabilities within the scope of Interim Moratorium would enable a business to contravene consumer protection laws by merely initiating insolvency proceedings.

Distinction between civil and criminal proceedings vis-à-vis Interim Moratorium:

The Supreme Court held that there is a fundamental distinction between civil and criminal proceedings vis-à-vis the various provisions of moratorium as applicable under IBC. While civil proceedings are generally stayed in terms of the moratorium imposed under the scheme of IBC, criminal proceedings, ***including proceedings for enforcement of penalties***, are not automatically included in the ambit of the provisions of moratorium unless explicitly stated by law. Section 27 of the CP Act empowers a consumer court to impose penalties to ensure adherence to an order passed by a consumer court. These penalties do not arise from any civil proceedings in relation to the enforcement of any "debt" owed to a creditor but from the failure to comply with the orders passed by a consumer court. Accordingly, the Execution Proceedings, which are essentially proceedings involving enforcement of Penalties are not covered within the scope of the Interim Moratorium.

The Supreme Court also observed that the judicial precedents rendered in the context of applicability of Interim Moratorium to proceedings under Section 138 of the Negotiable Instruments Act, 1882 are not applicable in relation to punitive proceedings before regulatory authorities.

Distinction between moratorium under Section 96 of the IBC and Section 14 of the IBC:

The Supreme Court drew a distinction between Interim Moratorium applicable vis-à-vis individuals under Section 96 of the IBC and moratorium against corporate persons under Section 14 of the IBC. The protection under Section 96 of the IBC applies only to *"debt"* as defined under the IBC and not to regulatory penalties. However, moratorium under Section 14 of the IBC is substantially broader in its latitude and has the effect of staying all proceedings against the concerned corporate debtor, including execution and enforcement actions.

The Supreme Court held that, unlike in the case of corporate resolution insolvency process, where the object is the comprehensive resolution of the company's liabilities, an Interim Moratorium under Section 96 of the IBC is aimed primarily at restructuring personal debts and providing relief to a debtor. Accordingly, the scope of an Interim Moratorium is required to be construed from the perspective of this objective and should extend only towards protecting a debtor against those proceedings which prejudicially affect the restructuring of "debts" of an individual. Unlike Section 14 of the IBC, Section 96 of the IBC should not be construed as granting a blanket protection against proceedings involving a debtor or his/her assets.

Exclusion of excluded debts from the scope of Interim Moratorium:

The scheme of the IBC expressly excludes liabilities classified as "excluded debts" under Section 79(15) of the IBC from the purview of the moratorium under Section 94(3) of the IBC. Under Section 79(15) of the IBC, the term "excluded debt" includes liabilities arising from fines imposed by courts or tribunals, damages for negligence or breach of obligation, and other prescribed debts (Excluded Debts). These liabilities which are either statutory, penal, or personal in nature do not form part of the insolvency estate that can be discharged under the resolution process.

In the present case, the Penalties imposed by the NCDRC for non-compliance with its orders are not in the nature of ordinary contractual debts. The penalties imposed by a court or tribunal to ensure compliance with their orders are distinct from "debts" which may be subject to restructuring under the IBC. Accordingly, penalties imposed by NCDRC fall within the term "excluded debt" under Section 79(15) of the IBC. The Supreme Court further held that the Excluded Debts "do not get the benefit of interim moratorium under Section 96 of the IBC and their enforcement remains unaffected by the initiation of insolvency proceedings".

The Supreme Court further held that the rationale behind excluding "Excluded Debts" from the provisions of moratorium is rooted in considerations of public policy. If damages arising from legal violations, consumer protection claims, or penalties imposed by courts and tribunals were to be shielded under provisions of moratorium, it would enable errant individuals to evade their legal obligations by filing applications for commencement of personal insolvency resolution under IBC.

Comments

This judgment clarifies that the scope and extent of the moratorium under Section 96 of the IBC is limited solely to actions in relation to recovery or enforcement of debts of a borrower. Consequently, damages or penalties or other penal costs imposed by a court or tribunal or a regulatory or statutory authority are not covered within the scope of the Interim Moratorium.

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