

THE HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY

Civil Revision Petition No.1124 of 2021

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India by the revision petitioner/defendant No.1 assailing the impugned order dated 12.04.2019 in IA No.48 of 2021 in OS No.239 of 2000 on the file of the learned X Additional District and Sessions Judge (Fast Track Court), Rana Reddy District at L.B. Nagar.

2. This application in I.A.No.48 of 2019 was filed by the defendant No.1 under Section 151 of the Civil Procedure Code (for short 'CPC') to stay all further proceedings in the original suit till the completion of moratorium period under Section 14 of the Insolvency and Bankruptcy Code, 2016 (for short 'Code of 2016').

3. Notice served on the respondents. Heard Sri M.K. Viswanath, learned counsel appearing on behalf of the revision petitioner/defendant No.1 and Sri K. Vasanth Rao, learned counsel appearing on behalf of the respondent/plaintiff. The submissions made on either side have received

due consideration of this Court. Perused the material available on record.

4. This application in IA No.48 of 2019 was filed under Section 151 of CPC stating that the plaintiff has filed the original suit for recovery of freight charges amounting to Rs.13,35,587/-, the defendant has filed the written statement. However, after filing the suit, the defendant has initiated proceedings before the National Company Law Tribunal (NCLT) at Hyderabad Bench and the moratorium u/s.14 of Code of 2016 has commenced from the date of order i.e., dated 14.08.2019, accordingly, requested to stay all further proceedings till the conclusion of the Corporate Insolvency Resolution Process.

5. The learned Judge of the trial Court having considered the rival contentions dismissed the said application with an observation that the moratorium proceedings have no bearing over the proceedings pending before the civil Court, as the plaintiff is a neither corporate debtor nor a corporate creditor. Feeling aggrieved by the

said finding recorded by the trial Court, the civil revision petition is filed.

6. The learned counsel for the revision petitioner/defendant contends that the trial Court ought to have allowed the application, staying all further proceedings in the original suit in view of Section 14 of Code of 2016, the trial Court has failed to consider that as per Section 238 of Code of 2016, the provisions of Code shall have overriding effect. Thus, the conclusion of the trial Court that the moratorium proceedings before the NCLT have no bearing on the pending original suit, is not correct, prayed to stay all further proceedings till the conclusion of the proceedings before the NCLT and relied on the principles laid by this Court in ***Golden Jubilee Hotels Limited and Ors v. EIH Ltd., and Ors***¹.

7. I have carefully perused the principles laid in the above decision. On identical facts, a Division Bench of this Court in the above decision has stayed all further

¹ MANU/HY/0151/2018

proceedings in COS No.67 of 2017 pending on the file of the learned Judge, Commercial Court-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad, till the conclusion of the Corporate Insolvency Resolution Process.

8. In the present case, the revision petitioner/defendant No.1 is a corporate debtor, and initiated the moratorium proceedings before the NCLT at Hyderabad Bench. Though the plaintiff is not a party to such moratorium proceedings in CP(IB) No.384/7/HDB/2018, in view of the fact that the NCLT has appointed Sri Nitin Panchal as Interim Resolution Professional (IRP) under the provisions of Code of 2016, pursuant to the orders dated 14.08.2019 and as the moratorium proceedings will be in force for a period of 330 days from the date of order or till they are extended, I find justification in the request of the revision petitioner. It is also an admitted fact that the moratorium orders stated above are extended on 10.06.2021 and are in force.

9. In ***Innoventive Industries Limited v. ICICI Bank Ltd***², the Supreme Court dealt with various nuances of the Code of 2016. As regards the effect of a moratorium order, it is observed that the moment the initiation of corporate insolvency resolution process takes place, a moratorium is announced by the Adjudicating Authority, vide Section 13 and 14 of the Code of 2016 by which institution of suits and continuation of pending suits etc., cannot be proceeded with and this situation would continue until the approval of a resolution plan under Section 31 of Code of 2016.

10. The learned counsel for the revision petitioner has also submitted the present stage of the proceedings and the matter is listed before the NCLT, Hyderabad Bench on 16.08.2022, the learned counsel for the Resolution Professional was directed to file his counter by the next date of hearing. At this stage, the learned counsel for the respondent/plaintiff submitted that he may be given an opportunity to participate in the moratorium proceedings

² (2018) 1 SCC 407

stated above, so that his interest will protect it. Be it stated that the plaintiff is not a party to the moratorium proceedings pending before the NCLT, Hyderabad, in view of Section 14 of the Code of 2016 upon the moratorium orders being passed, the pending suit proceedings necessarily had to come to a complete halt and also considering the principles laid by the Apex Court in **Innoventive Industries Limited** (2nd supra) and by a Division Bench of this Court in **Golden Jubilee Hotels Limited** (1st supra), the plaintiff is at liberty to participate in the proceedings pending before the NCLT.

11. In the result, the Civil Revision Petition is allowed and the orders impugned dated 12.04.2019 in IA No.48 of 2021 in OS No.239 of 2000 passed by the trial Court are hereby set aside and the proceedings in OS No.239 of 2000 on the file of the learned X Additional District and Sessions Judge (FTC), Ranga Reddy District at L.B. Nagar shall remain stayed until the conclusion of the Corporate Insolvency Resolution Process in CP(IB) No.384/7/HDB/ 2018, as indicated above. However, in the

facts and circumstances of the case, there shall be no order as to costs.

As a sequel, interlocutory applications, if any pending in this revision petition, shall stand closed.

A. VENKATESWHARA REDDY, J

Date: 08-08-2022

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***THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY**

+ CRP No.1124 of 2021

% 08-08-2022

Galada Power and Telecommunication Limited

.. Petitioner

v.

\$India Transport Organization,
Rep.by its Proprietor

.. Respondent

! Counsel for the petitioner/defendant No.1: Sri M.K. Viswanath
Counsel for the Respondent/plaintiff: Sri K. Vasanth Rao

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? Cases referred:

¹ MANU/HY/0151/2018

² (2018) 1 SCC 407