

Criminal Proceedings Do Not Fall Under The Purview Of The Moratorium Under The Insolvency And Bankruptcy Code, 2016 – Bombay High Court

Recently the Bombay High Court, in *Tayal Cotton (P.) Ltd. Vs. State of Maharashtra* discussed whether moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (Code) includes criminal proceeding within its ambit. After considering the legislative intent behind introducing the provision for a moratorium in the Code, the Bombay High Court held that Section 14 of the Code, clearly excludes criminal proceedings. The section only prohibits a suit or legal proceedings of like nature including the execution of judgment; decree or order in any court of law, arbitral tribunal or other authority.

Facts: Tayal Cotton (P.) Ltd. (TCL) had filed a criminal proceeding under Section 138 of the Negotiable Instruments Act, 1881 (NI Act), against the Respondent Company and its directors (Respondents) before the Magistrate Court. In the complaint, the Magistrate Court passed an order issuing process against the Respondents. Aggrieved by this order, the Respondents preferred a criminal revision application before the Sessions Court.

Meanwhile, the Respondents initiated insolvency proceedings, under Section 10 of the Code, before the National Company Law Tribunal, (NCLT) Bench at Bengaluru. Admitting the application of the Respondents, the NCLT passed an order under Section 14 of the Code prohibiting the institution of suits or continuation of suits or proceedings against the Respondents including the execution of any decree, judgment or order in any court of law, tribunal, arbitration panel.

Basis the order of moratorium passed by the NCLT, the Respondents filed an application in the criminal revision application seeking a stay of the criminal revision proceedings. TCL opposed this application and contended that criminal proceedings do not fall within the ambit of moratorium passed under Section 14 of the Code. For this contention, TCL placed reliance on the judgment of Bombay High Court, in *Indorama Synthetics (I.) Ltd. Vs. State of Maharashtra*, where the Bombay High Court while interpreting sub-section (1) of section 446 of the Companies Act, 1956 held that the words "suit or other proceedings" exclude criminal complaints filed under section 138 of the NI Act. TCL contended that

the court ought to draw a similar analogy while interpreting Section 14 of the Code.

However, the Ld. Additional Sessions Judge allowed the application filed by the Respondents for a stay of proceedings and directed to keep the criminal revision proceeding in abeyance/stayed until further orders.

Aggrieved by this order of the Ld. Additional Sessions Judge, TCL approached the Hon'ble Bombay High Court by way of a writ petition.

Issue: The question that came for determination before the Bombay High Court was: whether the moratorium prohibiting the institution of a proceeding as provided for in Section 14 of the Code applies even to a criminal proceeding.

Judgment: Before answering the issue involved in the matter the Bombay High Court examined the wordings of Section 14(1)(a) of the Code, which reads as under:

"Section 14 Moratorium – (1) Subject to provisions of sub-section (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:

- 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;"*

To interpret Section 14(1)(a) of the code the Bombay High Court relied upon the principle of *ejusdem generis*, i.e. general words take their colour from the words preceding it. Since the words '*proceedings*', '*order*' and '*in court of law*' are preceded by the word '*suits*', they will have to be interpreted as a proceeding arising in the nature of a suit and orders passed in such proceedings and suits.

Taking in account that the legislature has not conspicuously used the words 'criminal' as an adjective to the word 'proceeding' and as an adjective to the noun 'court of law', it must be assumed that the legislature has consciously omitted to use such an adjective. The legislature must have intended to prohibit only the suits and execution of the judgments and decrees or a proceeding of the like nature. Thus, applying this principle of interpretation, the Bombay High Court held that Section 14 of the Code only prohibits a suit or proceeding of a similar nature and does not include any criminal proceedings.

Further, the Bombay High Court held that the above interpretation of Section 14 of the Code is supported

by the reasoning given in the case of *Indorama (Supra)*, while interpreting a similar provision contained in Section 446(1) of the Companies Act, 1956 therefore the above interpretation of Section 14 (1) (a) is inescapable.

Conclusion: In view of the observations of the Bombay High Court, and as per the interpretation placed upon Section 14 of the Code, it can be safely concluded that criminal complaints filed under section 138 of the NI Act, are excluded from the ambit of Section 14 of the Code. Further, the moratorium in Section 14 of the code only covers suit or proceedings of a similar nature including execution of judgment, decree or order in any court of law, tribunal, arbitration panel or other authority.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.