

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal(AT) (Insolvency) No. 317 of 2020

IN THE MATTER OF:

Mahalaxmi Spinning & Weaving Mills Pvt. Ltd.
103/1, Sumer Kendra Premises CHS Ltd., P.B. Marg
Behind Mahindra Towers, Worli
Mumbai 0 400 018

**...Appellant
(Original
Respondent
No. 4)**

Vs

1. Maruti Cotex Ltd. & Ors.

Through Resolution Professional Ms. Sujata
Chattopadhyay
Plot T-17, Kagal-Hathkanangale Lane,
Five Start MIDC, Post Talandge,
Hatkanangale,
District Kolhapur- 416 603

**..(Original
Corporate
Debtor)-
Applicant**

2. State of Maharashtra

Through Superintendent of Police
Kasaba Bawada Main Rd, Ramanlala,
Kokhapur,
Maharashtra- 416 003

**..(Original
Respondent
No. 1)**

3. Police Inspector

Gokul Shirgaon Police Station
MIDC, Kolhapur,
Maharashtra- 416 234

**...(Original
Respondent
No. 2)**

**4. JM financial Asset Reconstruction
Company Pvt. Ltd**

Regd. Office: 7, Cnergy,
25 Appasaheb Marathe Marg, Prabhadevi
Mumbai 400 025

**...(Original
Respondent
No. 3)**

Also at

3rd Floor, B Wingh, Suashish IT Park
Plot No. 68E, Off. Dattapada Road,
Opp. Tata Street, Borivali (East),
Mumbai 400 066.

.. Respondents

Present:

**For Appellant: Mr. Sumesh Dhawan and Mr. Jaskin Dhama,
Advocates**

**For Respondents: Mr. Abhijeet Sinha and Mr. Naveen Kumar,
Advocates for Respondent No. 1.**

**Mr. Rahul Chitwis and Mr. Aaditya Pandey,
Advocates for Respondent Nos. 2 & 3**

**Mr. Abhishek Anand and Ms. Honey Satpal,
Advocates for Respondent No. 4**

ORDER

24.02.2020 Heard Advocate Mr. Sumesh Dhawan for the Appellant, Advocate Mr. Abhijeet Sinha for Respondent No. 1-Resolution Professional, Advocate Mr. Rahul Chitwis, who appears for State of Maharashtra- Respondent Nos. 2 & 3 and Advocate Mr. Abhishek Anand for Respondent No. 4.

2. This Appeal arises out of order passed in M.A. No. 50 of 2020 in C.P.(IB) 241/(MB)/2018 (Annexure-1) passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Mumbai. It is a short order which reads as under:

“ORDER

138. MA 50/2020 in C.P.(IB) 241/(MB)/2018

This is an application seeking to restrain R1 and R2 from taking any action against the RP and also seeking to restrain R4 from communicating, publishing with the prospective Resolution applicant without prior permission of this Tribunal and also from creating any hindrance in the process of CIRP.

The Counsel for the R4 is present in the court alongwith other Counsels. This is a case where a particular property was auctioned prior to CIRP proceedings under SARFAESI by R3 who is the secured creditor and the cost of the

property was valued at Rs. 100 crores and R4 evinced interest in purchasing the same and has paid an amount of Rs. 5 crores as EMD. Subsequently when the bid was finalized, he was asked to pay the balance amount. The R4 then backed out from paying the further payments, for which reason R3 forfeited the EMD amount.

Under the said circumstances, the R4 approached Debt Recovery Tribunal, and made an application in which he clearly stated that forfeiture is barred in law and asked for the refund of the amount. The said application is pending before DRT. The stand of the R4 is that he is not proceeding further to purchase the property but only seeking refund from R3. While that being the background of the case, after the petition has been admitted, the IRP has been appointed, and taken over the charge of the entire assets of the company, the resolution plan is being worked out, this R4 has lodged a police complaint against R3 and it is understood from the communication and also from the arguments that the police are also going beyond their brief and threatening RP from proceeding further with CIRP.

Under Section 233 of IBC, 2016, the RP who is the officer of the court is absolutely immune from any actions taken in good faith and there is no locus standi on the part of the R4 to directly or indirectly influence the police, so as to threaten

the RP in any manner. Apart from that in the open court, the Counsel has admitted that he has sought for refund of the amount. By any stretch of imagination, can it be presumed that R4 has a claim of any nature against the property and the manner in which he conducted himself by exerting influence on the police to proceed against the secured creditor and also against RP should be taken very seriously and we hereby direct the very same Police authorities, Station House Officer with whom the R4 has lodged a complaint to take strenuous action against R4 for maliciously proceeding against the RP and to disturb the CIRP process which amounts to Contempt of Court.

However, R4 seeks to file reply for which he is entitled to. But in the meanwhile, R4 is restrained, injuncted in any manner from proceeding against RP or obstructing the proceedings of CIRP and to have any sought of communication with the prospective Resolution Applicant. If this court comes to know that R4 is indulged in such an unwarranted communication or any action on his part, this court will view very seriously. R4 has no recourse against the RP or the assets of the Corporate Debtor. Hence his order.

List the matter on 3.2.2020.

(Emphasis supplied – for reasons to follow)

3. Brief facts stated by the learned Counsel for the Appellant may be referred. It is stated that Respondent No. 4 – JM Financial Asset Reconstruction Company Pvt. Ltd., the assignee of loan of consortium of five banks, had initiated the proceeding under The Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (In short '**SARFAESI**' Act) against the Corporate Debtor and had initiated action to e-auction property of the Corporate Debtor. In the process the bid of the Appellant was accepted and he had paid Rs. 5 lakhs earlier at the time of Application and later on paid Earnest Money Deposit (in short '**EMD**') of Rs. 5 Crores. It is stated that thereafter between the Appellant and Respondent No. 4 differences arose with regard to the description of the property and in the process, Respondent No. 4 forfeited the amount deposited by the Appellant. It is stated that this led the dispute before the Debt Recovery Tribunal (in short '**DRT**') which is still pending. It is stated that thereafter Corporate Insolvency Resolution Process (in short '**CIRP**') was initiated.

4. It is stated by the learned Counsel for the Appellant that before CIRP started, the Appellant had already filed Complaint against Respondent No. 4 on 04.06.2018 (Annexure-2). Learned Counsel says that the said Complaint is under investigation.

5. Learned Counsel for the Respondent No. 4 states that there is a Writ Petition pending for quashing the said Complaint.

6. Counsel for Appellant states that Appellant had not asserted any pressure on Police to take action against Resolution Professional. Counsel for Respondent Nos. 2 & 3 states that Police cannot and will not interfere in CIRP.

7. There is no dispute between the respective Counsel relating to the fact that e-auction proceeding initiated has not culminated into transfer of title of the property of the Corporate Debtor. The learned Counsel for the Appellant states that the Appellant now does not have grievances against the last paragraph of the impugned order but is aggrieved by the last-but-one-paragraph of the impugned order against Appellant (Respondent No. 4 before Adjudicating Authority) where it is recorded:

“..... we hereby direct the very same Police authorities, Station House Officer with whom the R4 has lodged a complaint to take strenuous action against R4 for maliciously proceeding against the RP and to disturb the CIRP process which amounts to Contempt of Court.”

..

8. Learned Counsel for the Appellant states that earlier the Appellant had sent communication as seen at Exhibit-G (at pages 179 & 180) of M.A. No. 50 of 2020. However, it is stated, the Appellant had no intention to interfere in the CIRP and will not question title of the Corporate Debtor to the concerned property. Learned Counsel states that the Appellant only wants to continue the proceeding which the Appellant had filed with the Police and which is pending before DRT. Learned Counsel states that he has taken special instructions from the Appellant and states that “The Appellant will not interfere, in any manner, with the CIRP proceeding and will not claim the property of the Corporate Debtor to be encumbered.” We record the statement of the learned Counsel for the

Appellant and in view of the same, we delete the portion from Impugned Order,
i.e.: -

*“..... we hereby direct the very same Police authorities,
Station House Officer with whom the R4 has lodged a
complaint to take strenuous action against R4 for
maliciously proceeding against the RP and to disturb the
CIRP process which amounts to Contempt of Court.”*

9. With this modification the M.A. No. 50/2020 should not survive for further Orders before Adjudicating Authority. However, Adjudicating Authority may pass suitable orders, in the light of above undertaking and these orders.

The Appeal is disposed of accordingly. No costs.

[Justice A.I.S. Cheema]
Member (Judicial)

[Justice Anant Bijay Singh]
Member (Judicial)

(Kanthi Narahari)
Member(Technical)

Akc/Mn