DPNC GLOBAL

REGULATORY UPDATES

SUPREME COURT CLARIFIES: IBC MORATORIUM DOESN'T SHIELD AGAINST CONSUMER PENALTIES

As per Section 96 of the Insolvency Bankruptcy Code, 2016 ("IBC") an interim moratorium period shall commence on the date of filing of application by the creditor or debtor themselves or through any authorised representative. Further during the interim moratorium period any pending legal action or proceeding in respect of any "**debt"** shall be deemed to have been stayed.

However, regulatory penalties for non-compliance with consumer laws are not classified as "debt" under the IBC and do not fall under its protection as per section 75(15) of the IBC.

BACKGROUND

In Saranga Anilkumar Aggarwal ("Appellant") filed an appeal against the final judgment order passed by the National Consumer Disputes Redressal Commission (NCDRC) for failing to deliver possession of residential units to homebuyers.

The Appellant failed to comply with the directions of the NCDRC, pursuant to which, **Bhavesh Dhirajlal Sheth & Others ("Respondents")** filed an execution application with the NCDRC.

Subsequently, the appellant filed a stay application with the NCDRC stating that the pending insolvency proceeding against them.

However, the NCDRC rejected the application by stating that the consumer claims and the penalty imposed did not fall within the moratorium under the IBC.

APPEAL WITH THE SUPREME COURT

The Appellant filed an appeal with the Supreme Court, arguing that the NCDRC imposition and execution of penalties should be stayed due to the pending insolvency proceedings under Section 95 of the IBC.

Also, they relied on **P. Mohanraj and Others v. Shah Brothers Ispat Pvt. Ltd.**, where the Supreme Court held that proceedings under Section 138 of the Negotiable Instruments Act, 1881, fall within the scope of 'any legal action or proceeding pending' and are therefore stayed by the moratorium under Section 14 of the IBC.

On the other hand, the respondents argued that:

- Section 96 of the IBC moratorium does not apply to criminal proceedings under Section 27 of the Consumer Protection Act (CP Act), as these are regulatory and punitive, including punishment and imprisonment for non-compliance.
- The IBC moratorium is meant to protect assets of the corporate debtor and personal guarantor but does not cover all types of debts.
- Section 94 of the IBC clarifies that the moratorium does not extend to "excluded debts" as defined under Section 79(15) of the IBC.
- Excluded debts include fines, damages for negligence, breach of obligation, maintenance liabilities, student loans, and other specified debts.
- Since NCDRC penalties fall under "excluded debts," they are not covered by the moratorium under Section 96 of the IBC.

Supreme Court's Key Observations & Findings:

1. **Interim Moratorium Under Section 96 Is Limited in Scope**

    - Unlike the corporate moratorium under Section 14 of the IBC, which stays all legal actions against a corporate debtor, the moratorium under Section 96 applies only to “debt” and not to regulatory penalties.

    - Penalties imposed for non-compliance with consumer protection laws do not fall within the definition of "debt" under the IBC and thus are not covered by the moratorium.

2. **Regulatory Penalties Are Not Debt Under the IBC**

    - The NCDRC’s penalty orders were not merely monetary claims but punitive measures to deter unfair trade practices.

    - Consumer protection laws serve a public interest function, ensuring that homebuyers are not left without recourse due to project delays.

    - Since regulatory penalties do not arise from a debt transaction, they cannot be stayed under insolvency moratorium provisions.

3. **IBC Moratorium does not extend to Criminal or Penal actions**

    - The moratorium applies only to debt-related proceedings, whereas the penalties imposed under consumer laws serve a regulatory purpose.

    - Section 27 of the CP Act provides for punitive action, including imprisonment, for non-compliance with consumer forum orders, which is distinct from debt enforcement.

- The Court cited **State Bank of India v. V. Ramakrishnan (2018) and Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corp of India (2023),** where it was held that criminal liability does not abate merely due to insolvency.

4. Public Policy Considerations: Avoiding a Dangerous Precedent

- If penalties imposed by regulatory bodies were stayed under insolvency proceedings, it would create a loophole allowing defaulters to escape liability.

- The Court highlighted that homebuyers are already vulnerable due to delays, and allowing a moratorium on penalties would leave them without recourse.

- Staying penalties would weaken consumer protection laws and encourage businesses to misuse insolvency proceedings to evade compliance.

5. Excluded Debts Under Section 79(15) of the IBC

- The Court noted that certain liabilities, such as fines, damages for negligence, and regulatory penalties, are classified as “excluded debts” under Section 79(15) of the IBC.

- Since these excluded debts are not protected by insolvency moratoriums, the penalties imposed by NCDRC remain enforceable.

CONCLUSION

In conclusion, the appeal was dismissed stating that **regulatory penalties are not covered by the moratorium under Section 96 of the IBC**, and the appellant was directed to comply with the penalties imposed by the NCDRC within eight weeks from the date of this judgment.

For more details, refer to the Supreme Court Judgement ***CIVIL APPEAL NO(S). 4048 OF 2024*** dated 04th March 2025.

https://ibbi.gov.in//uploads/order/24b99d6ef78383056cf92c6c7be275d2.pdf

DISCLAIMER*: - The summary information herein is based on Supreme Court, Civil Appellate Jurisdiction Judgement dated 04.03.2025. While the information is believed to be accurate, we make no representations or warranties, express or implied, as to the accuracy or completeness of it. Readers should conduct and rely upon their own examination and analysis and are advised to seek their own professional advice. This note is not an offer, advice or solicitation. We accept no responsibility for any errors it may contain, whether caused by negligence or otherwise or for any loss, howsoever caused or sustained, by the person who relies upon it.*

DPNC GLOBAL

CONTACT US

NOIDA OFFICE

DPNC GLOBAL LLP
Windsor Grand, 15th Floor,
Plot No. 1C, Sector-126,
Noida-201303, Uttar Pradesh

GURGAON OFFICE

DPNC GLOBAL LLP
120, Vipul Business Park,
Sector-48, Sohna Road,
Gurugram, Haryana-122018

+91.120.6456990

dpnc@dpncglobal.com

https://dpncglobal.com/

FOLLOW US ON