

Srei Equipment Finance Limited, ... vs Rajesh Bajirao Khandewar And Others on 17 October, 2025

2025:BHC-NAG:11220

Judgment

wp141.24

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION No. 41/2025.

SREI Equipment Finance Limited,
a Non-banking Financial Corporation,
having its Registered Office at
Vishwakarma, 86-A, Topsis Road,
Kolkata and branch office at F-7,
First Floor, Shradda House, Kingsway,
Sitabuldi, Nagpur, through its
Power of Attorney Shri Shounak
s/o Tapan Chatterjee.

... PETITIONER.

VERSUS

1.Rajesh Bajirao Khandewar,
Aged about 42 years, Occupation
Labourer, through Power of Attorney
Varsha Rajesh Khandewar, having
residence at Ramesh Nagar, Dabki
Road, Akola.

2.Pramod Sharma,
having address at Dashta Nagar Complex,
Sindhi Camp, Near S.P. Office,
Vision Square, Akola.

3.Pravin Sakhare,
having office at E-7, Shraddha House,
Kingsway, Nagpur.

... RESPONDENTS.

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Mr. A.S. Naik, Senior Advocate with Shri A.S. Manohar,
Advocate for the Petitioner.
Mr. A.B. Mirza, Advocate for Respondents.

CORAM : M.M. NERLIKAR, J.

DATE : OCTOBER 17, 2025.

ORAL JUDGMENT :

Heard. Rule. Rule is made returnable forthwith and by consent of the learned Counsel appearing for the parties, the matter is taken up for final disposal.

2. The petitioner by way of this petition challenges the order passed by the District Consumer Dispute Redressal Commission, Akola in Consumer Complaint No.312/2021 dated 20.07.2022, whereby the learned District Consumer Commission allowed the complaint filed by the respondent no.1 and directed the petitioner to return the JCB Machine to respondent no.1. Another prayer is to Rgd.

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3. Facts of the case are such that - the petitioner is a Company registered under the Companies Act. Respondent Nos.2 and 3 are its employees. On 04.10.2021 the Reserve Bank of India issued a notification superseding the Board of Directors of the petitioner Company. Pursuant to that, the Reserve Bank of India has preferred an application before the National Company Law Tribunal, Kolkata bench bearing CT (IB) No.2904/2021 for initiation of insolvency resolution process. By order dated 08.10.2021, the application was admitted and moratorium under Section 14 of the Insolvency and Bankruptcy Code (hereinafter referred to as "the I.B. Code" for short"), came to be imposed. It is submitted that the resolution plan of the petitioner Company has been sanctioned by the National Company Law Tribunal, Kolkata Bench vide order dated 11.08.2023.

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4. It is the contention of the petitioner that during pendency of the moratorium proceedings, on 26.10.2021, the respondent no.1 preferred a complaint before the District Consumer Dispute

Redressal Commission, Akola under the provisions of Consumer Protection Act, 2019. This complaint was filed against respondent nos.2 and 3 herein, and petitioner was not made a party to the same. The contention of respondent no.1 in the complaint was that the petitioner Company has illegally repossessed his JCB machine on the ground of non-payment of installments, which machine had been purchased after availing finance from the company. By order dated 20.07.2022, the said complaint filed by respondent no.1 came to be allowed and respondent nos. 2 and 3 were directed to return the JCB machine upon payment of dues. The contention of petitioner Company is that, the order has been passed after imposition of moratorium and during the pendency of Corporate Insolvency Resolution Process and therefore, the order passed by the Consumer Commission is completely unenforceable and in contravention of law.

5. It is contented by the petitioner that a recovery petition Rgd.

Judgment wp141.24 was filed by respondent no.1 before District Consumer Commission on 08.02.2023, in which non-bailable warrants were issued, pursuant to which respondent nos.2 and 3 appeared before the said Commission. Thereafter, on 19.06.2024, an application came to be filed by the respondent no.1 for issuance of warrant against the owner and Chief Executive Officer of the petitioner Company, wherein the learned District Consumer Commission has issued bailable warrants. The petitioner submits that the Company has moved application on 31.07.2024 questioning maintainability of the proceedings before the District Consumer Commission, and also filed an application on 03.09.2024 praying recalling of the arrest warrants issued on 19.06.2024. This application was allowed, thereby the warrants issued were recalled till the disposal of the application at Exh.34 filed on 31.07.2024 by the petitioner. The petitioner has also questioned the aforesaid orders in this petition.

6. Mr. Naik, the learned Senior Counsel appearing on behalf of the petitioner submits that the moratorium was imposed on 08.10.2021, and subsequent to that complaint came to be filed on Rgd.

Judgment wp141.24 05.01.2024, thus, the very initiation of the proceedings itself is against the provisions of the IB Code. He further submits that the Company was not a party to the proceedings initiated before the Consumer Redressal Commission, Akola and therefore, the order passed therein is not binding on the Company. As per the orders of the NCLT Kolkata, a new management has taken over the affairs of the Company, it is therefore submitted that the recovery proceedings initiated on the basis of the impugned order dated 20.07.2022 would not be maintainable on the ground that in the original proceeding, the Company was not party, and order is passed after imposition of moratorium. The further course adopted by the District Consumer Commission in recovery Petition No.6/2023 of issuing bailable warrant against the Owner and CEO of the Company is bad in law, and the impugned order itself is non-est in the eyes of law. He therefore prays to quash the recovery proceedings the order dated 20.07.2022, so also order dated 19.06.2024 whereby bailable warrants were issued.

7. On the other hand, Shri Mirza, the learned Counsel Rgd.

Judgment wp141.24 appearing for the respondents by filing reply submits that the petition is devoid of merits, as non joinder of parties does not render the proceeding void. The party to the proceedings before the District Consumer Commission, respondents herein, are the employees of the petitioner Company who have taken away the JCB machine without the consent of the respondent no.1, and in such circumstances, the respondent herein cannot be deprived of his right to execute the impugned order. It was submitted that consumer complaint remains maintainable during the pendency of Corporate Insolvency Resolution Process (CIRP) proceedings, provided that such complaint do not seek execution of monetary reliefs, but is confined to the grievances of deficiency in service or possession. The respondent has deposited installments to the tune of Rs.13,50,000/- and the JCB machine was wrongfully confiscated. The proceedings before the District Consumer Commission is in the nature of protection of consumer and is not strictly a recovery proceedings akin to civil suits or execution actions. . He therefore, submits that there is no merit in the petition and the same is liable to be dismissed. Rgd.

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8. Upon hearing the learned Counsel for the parties, few admitted facts which emerge from the record are that - the Reserve Bank of India initiated proceedings under IB Code, 2016 and Rules framed thereunder against the petitioner Company; By order dated 08.10.2021, moratorium in terms of Section 14 of the IB Code was applied and the application was admitted; Thereafter by order dated 11.08.2023, resolution plan under Section 31[1] of the IB Code was approved by the NCLT Kolkatta Bench. While approving the resolution plan by the adjudicating Authority under Section 31[1] of the IB Code in paragraph no.118 it was observed that - "On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owned to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such Rgd.

Judgment wp141.24 dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued."

9. In view of aforesaid background, it is necessary to consider whether the judgment and order passed by the District Consumer Redressal Commission, Akola dated 20.07.2022 would be binding on the Company or the new management, in view of the fact that the moratorium under Section 14 of the IB Code was applied so also under Section 31[1], the Adjudicating Authority has approved the resolution plan so also when Company is not made party before Consumer Commission.

10. In order to answer the question, it would be necessary to consider Sections 14 and 31 of the IB Code, which reads as under :

"14. Moratorium :(1) Subject to provisions of sub- sections (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;

(b) transferring, encumbering, alienating or disposing of Rgd.

Judgment wp141.24 by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

1[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;] (2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during Rgd.

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moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified;

[(3) The provisions of sub-section (1) shall not apply to-- 3[(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial

sector regulator or any other authority;]

(b) a surety in a contract of guarantee to a corporate debtor.].

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of Rgd.

Judgment wp141.24 corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

"Section 31: Approval of resolution plan. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.

[Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.] (2) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1),--

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and Rgd.

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(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

[(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under

sub-section (1) or within such period as provided for in such law, whichever is later. Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.]"

11. Section 14 states that institution of suits or continuation of pending suits or proceedings against corporate debtor including execution of any judgment, decree or order of any Court of law, tribunal, arbitration panel or other authority, shall be prohibited upon declaration of the moratorium by the Adjudicating Authority.

Further Section 31 states that the approval of the Rgd.

Judgment wp141.24 resolution plan by the Adjudicating Authority would be binding on the corporate debtor, its employees, members, creditors [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed], guarantors and other stake holders involved in the resolution plan. Therefore, it is crystal clear from above provisions, that once the moratorium is declared or applied or resolution plan is approved, the proceedings which are in the nature of recovery cannot be maintained in any Court of law, Tribunal or Arbitration panel or any other authority.

12. Looking at the factual background of the present case it is undisputed that the Company has not been added as party to the complaint/application made before the District Consumer Commission, Akola and therefore, naturally the said order cannot have a binding effect on the Company. Moreover, even otherwise, in view of declaration of moratorium, as well as approval of the resolution plan by the NCLT, the impugned order dated 20.07.2022 Rgd.

Judgment wp141.24 is bad in law, so far as the petitioner Company is concerned.

13. As can be gathered from the record that new management came into existence under the orders of the NCLT Kolkata, and therefore, further proceedings initiated as recovery proceeding No.6/2023 would also not be maintainable against the Company and its employees/members of the new management. Therefore, the warrants issued against the owner and CEO of the Company, though are stayed by the Consumer Commission till the decision on Exh.34, are also bad in law.

14. If this is to be permitted, the initiation of proceedings under IB Code would be rendered redundant and the object of the IB Code would be frustrated. No doubt the respondent herein is the victim, as he has paid near about Rs.13 lakhs to the Company, and he has lost possession of the JCB machine, however, considering the stringent provisions of IB Code, law does not permit the respondent no.1 herein to lodge or institute any proceedings against the petitioner Company. Therefore, the order dated 20.07.2022 is non-est in law. Rgd.

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15. The submission of learned Counsel for the respondent no.1, so far as the complaint instituted is in respect of the deficiencies in service and not in the nature of recovery proceedings, cannot be accepted as it was directed by the Commission to return the JCB machine upon payment of dues. Therefore, it is as good as a monetary decree, which would squarely falls within the definition of 'property' defined under Section 3[27] of the IB Code, and therefore, there is a bar to institute suit or proceedings, including execution, as per Section 14 of the Code.

16. Therefore, upon considering the above facts and circumstances, coupled with the discussion above, the petition deserves to be allowed, hence, I proceed to pass the following order.

ORDER (1) Criminal Writ Petition is allowed in terms of prayer clauses (a), (c) and (d). The prayer clauses are as under-

"(A) Quash and set aside the order dated

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20.07.2022 passed by the learned District Consumer Redressal Commission, Akola in Consumer Complaint No.312/21;

(C) Quash the proceedings bearing R.P.No.6/2023 pending before the learned District Consumer Redressal Commission, Akola;

(D) Quash and set aside the order dated 19.06.2024 issuingailable warrants against the owner and Chief Executive Officer of the petitioner no.1 Company, and further be pleased to quash theailable warrants issued against the Owner and Chief Executive Officer of the Petitioner."

(2) Rule is made absolute in the aforesaid terms.

JUDGE Rgd.

Signed by: R.G. Dhuriya (RGD) Designation: PS To Honourable Judge Date: 17/10/2025 17:02:49