

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, BENCH VI**

**I.A – 317/2024  
in  
C.P (IB) No.10/ND/2024**

**IN THE MATTER OF:**

RAMESH KUMAR CHUGH

...APPLICANT

*versus*

ASSETS CARE & CONSTRUCTION ENTERPRISE LIMITED

...RESPONDENT

**AND IN THE MATTER OF**

MR RAMESH KUMAR CHUGH

R/0: 595-598, SECTOR 11-12, HUDA COLONY, PANIPAT, HARYANA-  
132103

EMAIL: rameshkumarchugh8@gmail.com

...APPLICANT

*versus*

ASSETS CARE & CONSTRUCTION ENTERPRISE LIMITED

REGISTERED OFFICE AT:

14<sup>TH</sup> FLOOR, EROS CORPORATE TOWER, NEHRU PLACE, NEW DELHI-  
110019

EMAIL: [acre.arc@acreindia.in](mailto:acre.arc@acreindia.in)

...RESPONDENT NO. 1

M/S WHITE LINE ENTERPRISES

THROUGH ITS PROPRIETOR, MR. ANKUR JAIN

960, KATRA SHAHNSHAHI, CHANDNI CHOWK, DELHI – 110006

Email: [ankurjain0522@gmail.com](mailto:ankurjain0522@gmail.com)

... RESPONDENT NO. 2

**CORAM:**

**Shri Mahendra Khandelwal** : **Member (Judicial)**  
**Shri Rahul Bhatnagar** : **Member (Technical)**

**Appearances (through Video Conferencing/physical hearing)**

**For the Petitioner/Applicant:** Adv. R.P. Agarwal along with Adv. Reema Mishra

**ORDER**

**PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)**

**Date of Pronouncement: 03.07.2024**

1. This Interlocutory Application has been filed by Mr. Ramesh Kumar Chugh, as the Partner of M/s. Sheena Exports and Director in M/s. Sheena Textiles Limited against whom a petition u/s Section 95 of the Insolvency and Bankruptcy Code, 2016 is pending adjudication before this Hon'ble Tribunal making the following prayers: -

- (i) Pass Directions upon Respondent No. 1 to immediately withdraw the Notice(s) dated 15.12.2023 under Rule 8(6) of Security Interest (Enforcement Rules), 2002/ Sale Notice(s) dated 15.12.2023 being bad in law and contrary to the Interim moratorium operating u/s 96 of the Insolvency and Bankruptcy Code, 2016; and/ or
- (ii) Pass Directions upon Respondent No. 1 to restrain from taking any further action pursuant to Notice(s) dated 15.12.2023 under Rule 8(6) of Security Interest (Enforcement Rules), 2002/ Sale Notice(s) dated 15.12.2023 in respect of the properties put to auction; and/or
- (iii) Pass Directions upon Respondent No. 1 to act in compliance of the spirit of the interim moratorium operating with respect to the debts of the Applicant; and/or

(iv) Pass such other order(s) in favor of the Applicant as the Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the case.

2. The applicant has made the following submissions in the present Interlocutory Application:

(i) That a Petition under Section 95 was preferred by one entity called 'M/s. Whiteline Enterprises' against the Applicant herein namely Mr. Ramesh Kumar Chugh. This Tribunal vide order dated 12.02.2024 had appointed Ms. Parul Goyal as Interim Resolution Professional in the company Petition bearing CP No. (IB)-10/ND/2024.

(ii) The applicant had given a notice dated 06.02.2024 to the remaining 3 partners regarding dissolution of the partnership firm.

(iii) Section 48 of the Partnership Act, 1932 provides the mode of settlement post dissolution of the partnership firm.

(iv) It is further contended that Section 48 of The Indian Partnership Act, 1932 gives priority to the debts of the firm, however, in the instant case interim moratorium under Section 96 is in operation qua the applicant.

(v) The IBC being a special legislation prevails over the Partnership Act by virtue of Section 238 of IBC. Thus, it is submitted that permitting sale of the assets which are subject matter in the present petition would result in violation of not only Section 96, but also Section 178 of IBC.

- (vi) That when an application is filed under section 94/95 IBC, an interim moratorium commences on the date of the application to all the debts and during the interim-moratorium period—
- (i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and
  - (ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.
- (vii) Meanwhile, the Applicant received notice dated 15.12.2023, issued by the Respondent No. 1 under the SARFAESI Act, 2002 r/w Rule 8(6) of the Security Interest (Enforcement) Rules, 2002, wherein Respondent No. 1 herein had raised a demand upon the guarantors of M/s. Sheena Textiles Limited and M/s. Sheena Exports, including the Applicant herein for repayment of certain specified dues arising from the credit facilities granted by Respondent No. 1 herein to M/s. Sheena Textiles Limited and M/s. Sheena Exports.
- (viii) By way of the said notice, the Respondent No. 1 herein further intimated that, in case the guarantors/Applicant failed to repay the said amount within 15 days of the notice, the Bank shall conduct e-auction sale of the secured/immovable properties of the Applicant which is scheduled to be held on 22.01.2024.
- (ix) The initiation of moratorium was intimated to Respondent No. 1 soon after advance service of the main company petition. Despite intimation, the Respondent No. 1 refused due intimation/ service of any such petition and is proceeding to deal with the assets of the Applicant in violation of the interim moratorium under Section 96 of the code. The said fact is also evident from order dated 12.01.2024 passed by the Ld. Debts Recovery Tribunal-11, Delhi in OA No. 220/ 2014 and OA No.

221/ 2014.

- (x) The Applicant is the owner of undivided share in the properties put to auction on 22.01.2024 by the way of sale notice dated 15.12.2023.
  - (xi) In view of the operation of the interim moratorium in relation to all the debts of the Applicant, the e-auction sale notice dated 15.12.2023, also in the nature of demand/recovery notice is bad in law, qua the Applicant.
3. The Respondent No.1 (ASSETS CARE & CONSTRUCTION ENTERPRISE LIMITED) have filed their reply via affidavit dated 29.01.2024 submitting as follows: -
- (i) The jurisdiction of this Hon'ble Tribunal is barred in view of **Section 34** of the **SARFAESI Act, 2002**. Hence, the present Application is liable to be dismissed on this short ground itself.
  - (ii) That M/s SHEENA EXPORTS, a partnership firm, had availed loan facilities from HSBC & Citi Bank. Mr. Ramesh Kumar Chugh i.e. the Applicant herein is a partner of the said partnership firm. It is further submitted that M/s SHEENA TEXTILES LIMITED (STL) had availed loan facilities from PNB & IDBI. The Applicant was a guarantor to the facilities granted to STL. That the aforesaid financial institutions (HSBC, Citi Bank, PNB & IDBI) have assigned the loans granted to the above borrowers i.e. SHEENA EXPORTS &

STL together with underlying securities in favour of Respondent vide Assignment Agreements dated 10.10.2011, 13.06.2011 & 24.05.2011.

(iii) The three properties put for auction in the account of Sheena Exports is admittedly owned in the name of Sheena Exports which is a partnership firm and consists of the following four partners as per the knowledge of the Respondent herein: -

- a) Sh. Ram Prakash Chugh
- b) Sh. Ramesh Kumar Chugh
- c) Sh. Satish Kumar Chugh
- d) Sh. Manoj Chugh

(iv) The Respondent had issued two sale notices dated 15.12.2023. One sale notice is in respect of '**Sheena Exports**'. In this sale notice the following three properties had been put on auction:

- a. *"All that part and parcel of the immovable property at Khewat No. 578, Min Khatouni No. 687, Min 11-12 Part, Khasra No.56/13/1, Village Patti Afgan, Panipat, Haryana admeasuring 7 kanal 8 maria.*
- b. *All that part and parcel of the immovable property at Khewat No.568, Min Khatauni No.677, Min Khasra No.56/18/2 Village Patti Afgan, Panipat, Haryana admeasuring 7 kanal 8 marla.*
- c. *All that part and parcel of immovable property at Plot of Khasra No.56/9, min. South 12-11/3/2 Village Patti Afgan, Industrial Zone, Sector 28, Panipat, (Haryana)."*

(v) Another sale notice dated 15.12.2023 was in respect of the Borrower namely "**Sheena Textile Limited**". In this sale notice, the following property had been put on auction:

*"Khewat No. 682, Kahtauni No. 819, Rectangle No. 55, Killa No. 1g/2 (5-16), 22/1 (6-0), Khewat No. 309, Khatauni No. 375, Rectangle No. 55, Kil/a No. 22/2 (2-0l admeasuring 13 Kanal, 16 Marla at Patti Afganana, Panipat, Haryana."*

(vi) The property put for auction in the account of Sheena Textile Limited, referred supra, also stands in the name of Sheena Exports by the virtue of Judgment dated **22.04.2006** of the Court of **Ms. Anshu Shukla, Additional Civil Judge (Senior Division), Panipat** in the matter titled as **M/s Sheena Exports vs Manoj Kumar Chugh & Ors."**

(vii) The Applicant has knowingly and deliberately suppressed the above material fact so as to mislead this Hon'ble Tribunal. That the matter is already sub-judice before the Hon'ble DRT-2, New in SA No.17/2024 & SA No.18/2024.

(viii) The assets and the properties of a Partnership Firm are distinguishable from the personal/individual assets of the Partnership Firm. As per well settled law, a partner is not the owner of any of the Assets and Properties of a Partnership Firm and that a partner is entitled only to his share in the profits of the Firm, if any. The Hon'ble Supreme Court (Full Bench) in a recent decision

dated 21.09.2021 in the matter of **Rajendra Bajoria Vs. Hemant Kumar Jalan** has *inter-aha* held as under:

*" It is trite law that the partners of a firm are entitled only to the profits of the firm and upon dissolution of the firm they are entitled to the surplus of the sale proceeds of the assets and properties of the firm, if any, after meeting the liabilities of the firm, in the share agreed upon in the partnership deed. The partners do not have any right, title or interest in respect of the assets and properties of a firm so long as the firm is carrying on business. Hence, the plaintiffs as legal heirs of some of the original partners cannot maintain any claim in respect of the assets and properties of the said firm. Their prayer for declaration of co-ownership of the assets and properties of the said firm is not maintainable in law. "*

- (ix) As the Properties in question are not owned by Applicant and the same stand in the name of Sheena Exports, as aforesaid, Respondent (ACRE) as a secured creditor is entitled to proceed in accordance with the provisions of the SARPAESI ACT, 2002 for realization of its dues by sale of the property in question which is mortgaged in favour of Respondent.
- (x) Respondent is not taking any action either against the Applicant or any of his personal properties.
- (xi) With regard to the dissolution notice, the said notice is on the face of it is malafide, by way of an afterthought and with a view to defeat the rights / defence of the Respondent herein, as the same has been

issued during the pendency of the present proceedings. Secondly, even if it is presumed that the firm SHEENA EXPORTS has been dissolved then also the legal position remains the same i.e. that a partner after dissolution of a firm will be entitled to the surplus of the sale proceeds of the assets and properties of the firm, if any, after meeting the liabilities of the firm, in the share agreed upon in the partnership deed, as stated in catena of judgments.

(xii) In one of the said SAs, the plea of Insolvency Proceedings having commenced against Respondent No. 4 in Para No.-V, II of the Application (Page No. 81 of the Reply filed by the Respondent) has already been taken. The said SAs are still pending adjudication before the DRT and during the pendency of the same, the present application has been filed. The Applicant is therefore attempting to do forum shopping which is an abuse of the process of law.

4. The applicant via Rejoinder dated 05.02.2024 has made the following submissions: -

(i) That the said properties are in the name of M/s Sheena Exports, the applicant being a partner to it has a share of 25% as per the partnership deed. Reference may also be made to the order/decreed dated 22.04.2006 passed by the Ld. Additional Civil Judge in Civil Suit No. 167/2006.

(ii) The allegations made by the Respondent with regard to concealment of proceedings pending before Hon'ble DRT holds no merit in as much as the said proceedings were initiated by other partners of the firm and not the Applicant himself. It is submitted that the allegations of concealing the said facts lacks merit in as much as the same has no bearing on the just adjudication of the present case before this Tribunal.

(iii) It is however pertinent to note that no bids were received by the Respondent on sale notices dated 15.12.2023. Even thereafter, during the pendency of the present application, the Respondent has proceeded to issue fresh sale notices dated 01.02.2024 which are allegedly in violation of the interim moratorium in operation.

### **ANALYSIS AND FINDINGS**

5. We have heard the contentions of both the parties and after perusal of documents placed on record by them to substantiate their respective claims, we now proceed to adjudicate the present Interlocutory application filed by the Personal Guarantor.
  
6. The Interim Moratorium u/s 96 of IBC commences upon filing of application under Section 94 or 95 as the case may be. However, the scope of such interim moratorium applies only to stay of any legal action or proceeding pending or that could potentially be initiated by

creditors of the debtor only in respect of debt. Section 96(1) of the IBC reads as under:

“96- Interim Moratorium

- (1) When an application is filed under section 94 or section 95—
- (a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and
  - (b) during the interim-moratorium period—
    - (i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and
    - (ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.”

7. The Hon’ble Supreme Court in the matter of Dilip B Jiwrajka versus Union of India & Ors Writ Petition (Civil) No 1281 of 2021, in their Judgment dated 09.11.2023 has considered the impact of a moratorium under Section 14 of Part II vis-a-vis interim moratorium under Section 96 of Chapter III of Part III and has stated as under:

“The impact of the interim-moratorium under Section 96 is that a legal action or proceeding pending in respect of any debt is deemed to have been stayed and the creditors or the debtors shall not initiate any legal action or proceedings in respect of any debt. The crucial words which are used both in clause (b)(i) and clause (b)(ii) of sub-section (1) of Section 96 are “in respect of any debt”. These words indicate that the

interim-moratorium which is intended to operate by the legislature is primarily in respect of a debt as opposed to a debtor. Clause (b) of sub-section (1) indicates that the purpose of the interim-moratorium is to restrain the initiation or the continuation of legal action or proceedings against the debt.”

8. Thus, interim moratorium under Section 96 operates in respect of debt only. The Interim Moratorium u/s 96 of IBC commences upon filing of application under Section 94 or 95 as the case may be. However, the scope of such interim moratorium applies only to stay of any legal action or proceeding pending or that could potentially be initiated by creditors of the debtor only in respect of **debt**.
9. The applicant has stated that he is a guarantor. It is further an admitted fact that the applicant is partner in the undivided share of the partnership firm. The interim moratorium u/s 96 of the IBC applies on the debt of the guarantor, however the proceedings before Debt Recovery Tribunal are related to the property of the partnership firm which do not belong to the applicant i.e. Mr. Ramesh Chugh.
10. Even if the dissolution of the partnership firm is accepted, the contention of the creditor that liabilities of the partnership firm are to be met first before distributing the balance amongst the partners holds ground. It is clear that the creditor (respondent herein) has proceeded against the property of the partnership firm and not against

the personal property of the applicant (in the latter case, the interim moratorium u/s 96 would have applied).

11. Moreover, it has been brought to our notice that that two (2) Securitization Applications (SAs) under Section 17 of the SARFAESI Act have already been filed before the DRT-II, New Delhi challenging the very same Sale Notices dated 15.12.2023 which form the subject matter of the present application. In one of the said SAs, the plea of Insolvency Proceedings having commenced against Respondent No. 4 has already been taken. The said SAs are still pending adjudication before the DRT and during the pendency of the same, the present application has been filed.
12. When an allegation regarding violation of moratorium is raised and pending before the DRT (which is a quasi-judicial authority) in terms of SARFAESI Act, 2002, it may not be appropriate for this Adjudicating Authority to interfere in the proceedings which are pending in the DRT.
13. Moreover, the proceedings before the DRT are against a Partnership firm and not against the Applicant, although the applicant is/was a partner in that firm. There is a dispute between the parties in respect of whether the properties in question now belongs to the Partnership firm or the applicant. Further, there are divergent views of the parties regarding alleged dissolution of the Partnership firm. It is a settled law that in summary proceedings under the IBC, these issues cannot be

decided.

14. It is observed that the main petition C.P (IB) No. 10/ND/2024 has not yet been admitted by this adjudicating authority u/s 100 of the IBC.

15. In view of above discussion, we do not find any merit in the application.

16. I.A 317/2024 in C.P (IB) No. 10/ND/2024 accordingly stands **dismissed**.

Without costs.

-SD/-  
**RAHUL BHATNAGAR**  
**MEMBER (TECHNICAL)**

-SD/-  
**MAHENDRA KHANDELWAL**  
**MEMBER (JUDICIAL)**