KERALA STATE CONSUMER DISPUTES REDRESSAL COMMISSION
VAZHUTHACAUD, THIRUVANANTHAPURAM
I.A.No.962/21
IN
C.C. No.165/2016
ORDER DATED:18/04/2023

PRESENT:

HON'BLE JUSTICE . SRI. K. SURENDRA MOHAN: PRESIDENT
SRI. RANJIT.R : MEMBER
SMT. BEENA KUMARI. A : MEMBER
SRI.K.R. RADHAKRISHNAN : MEMBER

PETITIONERS/OPPOSITE PARTIES:

1. Samson and Sons Builders & Developers (P) Ltd., T.C.3/679, Kaliveena Building, Muttada P.O., Thiruvananthapuram represented by its Managing Director, John Jacob, Thiruvananthapuram – 695 025.

2. John Jacob, S/o Jacob Samson, Managing Director, Samson and sons Builders and developers Pvt. Ltd, T.C.3/679, Kaliveena Building, Muttada, Thiruvananthapuram – 695 025.

3. Samuel Jacob, S/o Jacob Samson Director, Samson and sons Builders and developers Pvt. Ltd, T.C. 3/679, Kaliveena Building, Muttada P.O, Thiruvananthapuram – 695 025.

4. Dhannya Mary John, Director, Samson and sons Builders and developers Pvt. Ltd, T.C. 3/679, Kaliveena Building, Muttada P.O, Thiruvananthapuram- 695 025.

4. Dhannya Mary John , Director, Samson and sons Builders and developers

Pvt. Ltd, T.C.3/679, Kaliveena Building, Muttada P.O., Thiruvananthapuram – 695 025.

(By Adv. Dougles Linsby N . R)

RESPONDENT/ COMPLAINANT :

Winston Noel Dhas Gnanam,
Gold Nagar, 314 E1, K P road,
Nagercoil, Tamil Nadu- 629003.

(By Adv. S. Reghukumar)

ORDER

SRI. K.R. RADHAKRISHNAN: MEMBER

This is a petition filed by the opposite parties to the complaint praying for the issue of an order to keep the entire proceedings in this complaint in abeyance till completion of the Corporate Insolvency Resolution process or until the National Company Law Tribunal approves the Resolution Plan and for impleading the Insolvency Professional appointed by the NCLT as an opposite party in these proceedings. It was agreed that this petition need be considered only along with the main complaint. Therefore it has been kept pending.

2. The crux of the relief sought for in this petition is that, in view of the proceedings pending before the National Company Law Tribunal and the interim order passed in the said proceedings, all further proceedings in this complaint are required to be kept in abeyance. This petition is opposed by the counsel for the complainant pointing out that, the proceedings before this

Commission are not in anyway affected by the pendency of the proceedings before the National Company Law Tribunal. The counsel for the opposite parties on the other hand points out that in view of the sweeping nature of the provisions of the Insolvency and Bankruptcy Code, all proceedings including those before this Commission are liable to be kept in abeyance until completion of the proceedings before the National Company Law Tribunal.

3. Heard. The impact of the provisions of the Insolvency and Bankruptcy Code, 2016 (I&B Code for short) on the provisions of the Consumer Protection Act, 1986 and the RERA has been considered by the Apex Court in ***Pioneer Urban Land and Infrastructure Limited Vs Union of India and others(2019)8 SCC 416.*** After considering the entire question in detail, Rohinton Nariman J. has concluded the issue in paragraph 100 as follows:-

> *100. "RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the code will prevail over RERA. Remedies that are given to allottees of flat/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code".*

Following the above judgement the National Commission has in ***Emaar MGF Land Ltd. Vs. Dalwinder Singh Atwal*** held on 24.01.2020 as follows:-

11. "The learned counsel for the appellant relies upon an order dated 01.11.2019 passed by a single Hon'ble Member of this Commission in AE/27/2019, Emaar MGF Land Ltd. Vs.

Dalwinder Singh Atwal, whereby it was held that the State Commission could not have proceeded against the appellant company, during the subsistence of the moratorium declared u/s 14 of the IBC. The said decision being contrary to the above referred decisions rendered by the larger Benches of this Commission and Madras High Court, is per incuriam, does not constitute a binding precedent and therefore, cannot be followed".

In ***M/s Imperia Structures Ltd. Vs. Anil Patni and another*** a three Judge Bench of the Supreme Court has by judgement dated 02.11.2020 in Civil Appeal No.3581-3590 of 2020 held as follows:-

21. "It has consistently been held by this Court that the remedies available under the provisions of the Consumer Protection Act are additional remedies over and above the other remedies including those made available under any special statutes; and that the availability of an alternate remedy is no bar in entertaining a complaint under the CP Act".

In view of the above authoritative pronouncements, we are not satisfied that the petitioners herein are entitled to an order keeping the proceedings in this

case in abeyance. This petition is therefore dismissed.

JUSTICE . SRI. K. SURENDRA MOHAN : PRESIDENT

RANJIT. R : MEMBER

BEENA KUMARI. A : MEMBER

K.R. RADHAKRISHNAN : MEMBER

Sh/-

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