

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 5TH DAY OF DECEMBER, 2024
BEFORE
THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ
WRIT PETITION NO. 15290 OF 2022 (GM-RES)

BETWEEN:

1. M/S KODAGU DISTRICT CO-OPERATIVE
CENTRAL BANK LIMITED,
GENERAL THIMMAIAH CIRCLE, MADIKERI,
KODAGU (COORG), KARNATAKA
REPRESENTED BY ITS
CHIEF EXECUTIVE OFFICER.

...PETITIONER

(BY SRI. K S BHEEMAIAH., ADVOCATE)

AND:

1. RESERVE BANK OF INDIA
DEPARTMENT OF REGULATION (NBFC)
12TH FLOOR, CENTRAL OFFICE BUILDING,
SHAHID BHAGAT SINGH ROAD,
MUMBAI-400001,
REPRESENTED BY ITS CHIEF GENERAL
MANAGER (IN CHARGE)
2. SECURITIES AND EXCHANGE BOARD
OF INDIA, SEBI BHAVAN BKC;
ADDRESS PLOT NO.C4-A,
'G' BLOCK BANDRA-KURLA COMPLEX
BANDRA (EAST), MUMBAI 400051.
MAHARASHTRA.
REP. BY ITS AUTHORISED REPRESENTATIVE.
3. SERIOUS FRAUD INVESTIGATION
OFFICE (MCA)
2ND FLOOR, PT.DEENDAYAL
ANTYODAYA BHAWAN,
CGO COMPLEX LODHI ROAD,
NEW DELHI 110003.
REP. BY ITS AUTHORISED

Digitally signed
by SHWETHA
RAGHAVENDRA
Location: HIGH
COURT OF
KARNATAKA

REPRESENTATIVE.
(R3 IS DELETED V/O DATED: 27/07/2023.)

4. KARVY STOCK BROKING LTD.,
KARVY HOUSE 2ND FLOOR,
NO.10, NANDI NAGAR ROAD,
BANJARA HILLS, HYDERABAD,
TELANGANA 500034.
COMPANY REGISTERED UNDER
COMPANIES ACT,
REPT. BY ITS CHAIRMAN.

...RESPONDENTS

(BY SMT. RASHMI SUBRAMANYA A/W
SMT. ADITHI SHETTY, ADVS. FOR R1 & R2,
R4 IS SERVED,
V/O DATED: 27/7/23, LEAVE TO RELIEVE R3 FROM
THE ARRAY OF PARTIES.)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF
THE CONSTITUTION OF INDIA PRAYING TO-DIRECT THE R-1
TO 3 TO INITIATE INSOLVENCY RESOLUTION AGAINST M/S.
KARVY STOCK BROKING LTD., AS EMPOWERED UNDER RULE
5(a)(i) OF INSOLVENCY AND BANKRUPTCY (INSOLVENCY AND
LIQUIDATION PROCEEDINGS OF FINANCIAL SERVICE
PROVIDERS AND APPLICATION TO ADJUDICATING AUTHORITY)
RULES, 2019 READ WITH S.7 OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016 VIDE ANNEX-K.

THIS PETITION, COMING ON FOR PRELIMINARY
HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE SURAJ GOVINDARAJ

ORAL ORDER

1. The petitioner is before this Court seeking for the
following reliefs:

- a. Issue a writ of mandamus or any other writ or order or direction as the case may be, directing the respondent Nos.1 to 3 to initiate insolvency resolution against M/s. Karvy Stock Broking Ltd., as empowered under Rule 5(a) (i) of Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 read with Section 7 of the Insolvency and Bankruptcy Code, 2016 as per the Annexure-K.
- b. Grant such other incidental relief, which this Hon'ble Court may deem fit to grant in the circumstances of the case.

2. The petitioner claims to be a Co-operative Bank registered under the provisions of Karnataka Co-operative Societies Act, 1959 and during the course of its business had invested a sum of Rs.15,00,00,000/- (Rupees Fifteen Crores only) in M/s. Karvy Stock Broking Ltd. (Karvy), i.e., respondent No.4 herein who is stated to be a financial service provider. The amount not having been paid by the said Karvy to the petitioner, the petitioner is a creditor of the said Karvy. However, the petitioner being unable to initiate proceedings against the said Karvy under the Insolvency and

Bankruptcy Code, 2016 (IBC), the petitioner is before this Court contending that in terms of Rule 5(a) (i) of Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019, (hereinafter referred to as 'Rules 2019' for the sake of brevity) it is only an appropriate regulator who can initiate proceedings in terms of Rule 6 thereof and as such, the above relief of mandamus is sought for, directing respondent No.1-Reserve Bank of India (RBI) who is the regulator of financial service providers to initiate appropriate action before the National Company Law Tribunal (NCLT).

3. Respondent No.1 in the present matter is the Reserve Bank of India (RBI) and respondent No.2 is the Stock Exchange Board of India (SEBI). Objections have been filed by both the respondents.
4. Learned counsel for Respondent No.2 contending that respondent No.2 is not the financial regulator

and it is the RBI which is the financial regulator insofar as financial service providers are concerned.

5. The SEBI has filed statement of objections contending that insofar as commercial papers are concerned which is the subject matter of the transaction between the petitioner and KARVY, SEBI is not a regulator, it is the RBI which is the regulator.

6. Respondent No.1-RBI, has filed statement of objections contending that in terms of Rule 2 of Rules, 2019, the Rules would apply only to such financial service providers or categories of financial service providers as may be notified by the Central Government under Section 227 of the IBC.

7. In terms of Section 227 of IBC, it is contended that the Central Government is required to notify the financial service providers. The said provision is non-obstante provision which indicate that notwithstanding anything to the contrary contained in this Code (IBC) or any other law for the time being

in force, the Central Government may, if it considers necessary, in consultation with the appropriate financial sector regulators, notify financial service providers or categories of financial service providers for the purpose of their insolvency and liquidation proceedings. On that basis, it is contended that respondent No.4 as the category of in which the respondent No.4 comes under has not been notified by the Central Government under Section 227 of the IBC. Therefore, the Rules of 2019 would not be applicable to respondent No.4 in terms of Rule 2 of Rules, 2019 and as such, it is submitted that neither the SEBI nor the RBI though being the regulators would be required to initiate liquidation proceedings under IBC.

8. The embargo which has been imposed on the petitioner in terms of Rule 5(a) (i) of Rules, 2019 would not apply insofar as respondent No.4 is concerned.

9. Heard Sri. K S Bheemaiah, learned counsel for the petitioner and Smt. Rashmi Subramanya and Smt. Adithi Shetty, learned counsels for respondents No.1 and 2. Perused the papers.

10. It is not in dispute that respondent No.4 is a financial service provider. However, it is also not in dispute that respondent No.4 has not been notified under Section 227 of IBC. If that be the case, it is rightly contended by the learned counsel for respondent No.1 that Rules, 2019 would not apply to respondent No.4. Therefore, the embargo created under Rule 5(a) (i) of Rules, 2019 would also not apply requiring the regulator to initiate insolvency proceedings under the IBC.

11. In that view of the matter, the petitioner would be free to initiate such proceedings before the NCLT as may be available to him, since according to both SEBI and RBI, respondent No.4 is not a notified financial service provider under Section 227 of IBC.

12. Since the petitioner was required to approach this Court seeking for mandamus being under the impression that the embargo under Rule 5(a) (i) of Rules, 2019 was applicable and it was only the financial regulator who could initiate proceedings and a notice was also issued to the RBI on 22.03.2022 and at that time, it was not made clear by respondents No.1 and 2 in their reply thereto thereby enabling the petitioner to approach the NCLT under IBC, I am of the considered opinion that the time spent by the petitioner before this Court would entitle the petitioner to the benefit of Section 14 of the Limitation Act. Providing such benefit to the petitioner, liberty is reserved to the petitioner to approach the NCLT to initiate proceedings under the IBC against the Karvy. Accordingly, the writ petition stands ***disposed of***, with the above observations.

**SD/-
(SURAJ GOVINDARAJ)
JUDGE**