

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.A. No. 189(PB)/2018
IN
C.P. NO. (IB)-160(ND)/2017

IN THE MATTER OF:

M/s Levcon Valves (P) Ltd. Petitioner
v.
Energo Engineering Projects Ltd. Respondent

**SECTION: Under Section 60(5) of The Insolvency and
Bankruptcy Code, 2016**

Order delivered on 28.09.2018

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR
Hon'ble President

SH. S. K. MOHAPATRA
HON'BLE MEMBER (TECHNICAL)

PRESENTS:

For the Petitioner: Mr. Aseem Chaturvedi & Ms. Wamica Trehan,
Advocates

For the Respondent: Mr. Anush Raajan & Ms. Mitali Daryani, Advs.

M.M. KUMAR, PRESIDENT

ORDER

This order shall dispose of C.A. No. 189(PB)/2018. In fact, a similar application came up for hearing & decided on 24.08.2018 being C.A. No. 453(PB)/2017 in present C.P. No. (IB) No. 160(ND)/2017. The question of law which is common in the present application is whether the moratorium could be extended to the

bank guarantees furnished by non applicant-respondent nos. 2 & 3 namely State Bank of India and Bank of Maharashtra by restraining them to encash those bank guarantees. In that regard reference was made to the provisions of Section 14 (3) of the Code, 2016 & the operative part of the order which reads as under:-

“8. Having heard the learned counsel for the parties and perusing the pleadings with their able assistance we are of the view that the application would not warrant acceptance. The question of law raised in the instant application would not survive for consideration as the Legislation itself has taken care of the situation like the one in hand. The provisions of Section 14 (3) of the Code, 2016 has been amended and the same reads as under:-

Moratorium.

14. (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)

(b)

(c)

(d)

(2)

(3) The provisions of sub-section (1) shall not apply to –

(a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

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

9. A close examination of the aforesaid provision would make it patent that moratorium would not apply to a surety in a contract of guarantee to a Corporate Debtor. It is therefore evident that Section 14(1) of the Code, 2016 would not come in the way of the non applicant-respondent no. 1 to encash the bank guarantee. Moreover, it is an independent agreement. We are also tempted to place reliance on a judgment of Hon'ble the Supreme Court rendered in the case of **State Bank of India v. V. Ramakrishnan & Ors.**, (Civil Appeal No. 3595 of 2018 with Civil Appeal No. 4553 of 2018) decided on 14.08.2018. Hon'ble the Supreme Court has taken note of the aforesaid amendment and has concluded that the amendment would apply to the pending proceeding as it is clarificatory in nature. In para 23 of the judgment it has been observed by Hon'ble the Supreme Court that Section 14 of the Code, 2016 cannot possibly apply



to a personal guarantor and the reasons have been given as under:-

“.....First and foremost, this is a separate moratorium, applicable separately in the case of personal guarantors against whom insolvency resolution processes may be initiated under Part III. Secondly, the protection of the moratorium under these Sections is far greater than that of Section 14 in that pending legal proceedings in respect of the debt and not the debtor are stayed. The difference in language between Sections 14 and 101 is for a reason. Section 14 refers only to debts due by corporate debtors, who are limited liability companies, and it is clear that in the vast majority of cases, personal guarantees are given by Directors who are in management of the companies. The object of the Code is not to allow such guarantors to escape from an independent and coextensive liability to pay off the entire outstanding debt, which is why Section 14 is not applied to them. However, insofar as firms and individuals are concerned, guarantees are given in respect of individual debts by persons who have unlimited liability to pay them. And such guarantors may be complete strangers to the debtor – often it could be a personal friend. It is for this reason that the

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moratorium mentioned in Section 101 would cover such persons, as such moratorium is in relation to the debt and not the debtor.

10. When the aforesaid principles are applied to the facts of the present case it becomes evident that the performance guarantee furnished by IDBI Bank, Red Cross Road, New Delhi, Punjab National Bank, Nehru Place, New Delhi and State Bank of Mysore (now State Bank of India), Nehru Place, New Delhi would not enjoy the benefit of moratorium as envisaged under Section 14 of the Code, 2016 and therefore, those guarantees have been rightly invoked. There is thus no doubt left that the interim order dated 08.03.2018 would also stand vacated.”

As a sequel to the above discussion, this application fails and the same is dismissed.

Sd/-
28.09.

(M.M. KUMAR)
PRESIDENT

Sd/-

(S. K. MOHAPATRA)
MEMBER (TECHNICAL)

28.09.2018
Vineet