IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

MA 527/2017 in C.P. 1139/I&BP/2017

Under Section 14(1)(a) r/w 60(5) of I&BC, 2016

In the matter of:

State Bank of India .... Financial Creditor
v/s.
Monnet Ispat & Energy Ltd.
... Corporate Debtor

AND
In the matter of:

Resolution Professional ... Applicant
For Monnet Ispat & Energy Ltd.

v/s.
Moorgate Industries India Pvt. Ltd.
... Respondent

Order delivered on: 22.11.2017

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Mr. V. Nallasenapathy, Member (Technical)

For the Petitioner: **Anne Mathew,**
Deepa Mani
Akshata Naik
Krishna Patel
Rukshin Ghiara
Advocates for Applicant

For the Respondents: Mr. Ashish Rana,
Adv. for Respondent/
Moorgate Industries in Application

Per B.S.V. Prakash Kumar, Member (Judicial)

ORDER

Oral order dictated in the open court on 16.11.2017

The Insolvency Resolution Professional filed an Application before this Bench seeking clarification to the Moratorium Order passed on 18.7.2017 and also for stay of the arbitration proceedings pending in between Moorgate Industries India Pvt. Ltd and the Corporate Debtor in respect to the claim payable to the Respondent (Moorgate).

2. The Applicant has been appointed as Insolvency Resolution Professional in the Moratorium Order passed u/s 7 of Insolvency & Bankruptcy Code, 2016 on 18.7.2017, with that authority, this application has been filed for the above reliefs. The Applicant submits that despite this Bench has declared Moratorium prohibiting institution of suits or continuation of pending suits, proceedings against the Corporate Debtor, including execution of judgement, decree or order in any Court of Law, Tribunal, Arbitration Panel, or other authority, the Arbitral Tribunal appointed in the claimant proceeding against the Corporate Debtor proceeded to an extent of clarifying that the said Arbitral Tribunal is not bound by the Moratorium declared u/s 14 of the Code against the Corporate Debtor in the order passed on 11.10.20017.

3. Since the claimant in that arbitral claim petition is Moorgate Industries India Pvt. Ltd. i.e., the Respondent in this Application, the Counsel appearing on behalf of the Respondent has submitted that the Arbitral Tribunal already decided on 11.10.2017 holding that it is not

bound by Moratorium Order passed by this Bench, the jurisdiction for assailing the order passed by the Arbitral Tribunal lies before Honorable High Court of Bombay u/s 37 of The Arbitration and Conciliation Act not before this Bench.

4. To justify his argument, the Counsel has raised a point saying, the word "proceedings" mentioned u/s.14(1)(a) of I&B Code, 2016 is related to the suit proceedings and not to the proceeding pending before Arbitral Tribunal, therefore the arbitration proceedings pending before the Arbitral Tribunal is not governed by the Moratorium declared u/s 14 of I&B Code.

5. On perusal of the provisions of I&B Code, Sec.14, 238 of the I&B Code in the light of the primary objective of I&B Code, it goes without saying that all credit transactions that the Corporate Debtor entered into with creditors are covered by I&B Code, regardless of jurisdiction the creditors have before other forums under other laws. This Code has overriding effect through section 238 of the Code over all other laws dealing with claims against corporate debtor/corporate person, which are inconsistent therewith contained in any other law in force or any instrument having effect by virtue of any such law. It has been further reiterated by Honorable Apex Court in ***Innoventive Industries v/s. ICICI Bank 2017 SCC Online 1025***, that when repugnancy between central law

and state law under concurrent list, central law prevails over as enunciated under Article 254 of the Constitution, of course, that is not the case here, but here the point is later law will prevail over earlier law.

6. In ***Alchemist Asset Reconstruction Company Ltd. v. M/s Hotel Gaudvan Pvt. Ltd (order dated 23.10.2017 in Company Appeal 16929/2017),*** Honorable Supreme Court set aside the proceedings initiated u/s 37 of Arbitration and Conciliation Act 1996 holding it as non-est in law for such proceedings were initiated after Moratorium had been declared, for saying so, the reasoning given by Honorable Supreme Court of India is as follows:

"5) The mandate of the new Insolvency Code is that the moment insolvency petition is admitted, the Moratorium that comes into effect u/s 14(1) (a) expressly interdicts institution or continuation of pending suits or proceedings against Corporate debtors"

7. As to the argument advanced by the Respondent counsel in respect to non-obstante clause in section 5 of The Arbitration and Conciliation Act 1996, if this non-obstante clause is set against the non-obstante clause u/s 238 of the Code 2016, since the present proceeding before Arbitral Tribunal being a money claim against the corporate debtor, it is obvious that all credit claims against corporate debtor will fall under Moratorium. As to conflict between these two non-obstante clauses, later law prevails

over earlier law, therefore the non-obstante clause in section 5 of Arbitration and Reconciliation Act, 1996 cannot be held as law that can prevail over non-obstante clause u/s 238 of I&B Code 2016. In view of the above logic, the claim on credit transaction between the Respondent and the corporate debtor, has invariably to be considered as claim proceeding against corporate debtor. Upon such consideration, the Arbitration Proceeding in respect to such claim being inconsistent with the operation of the Code, it will fall within the ambit of the Code.

8. The logic behind bringing notwithstanding clause in section 238 is to ensure that whatever credit transactions the Corporate Debtor entered into will come before one Forum enabling it to adjudicate all claims against the corporate debtor expeditiously by balancing out the interest of all the stakeholders in respect to Corporate Debtor. This Bench is therefore of the opinion that Arbitral Tribunal shall not proceed with its proceedings where a claim has been made against the Corporate Debtor on the assumption of notwithstanding clause present in section 5 of the Act 1996.

9. As to the argument saying that Arbitration proceeding is not covered under section 14 (1) (a) of the Code, if the conjoint reading is given to the section 14 (1) (a) of the Code, the word "proceedings against the corporate debtor" is inclusive of the proceedings pending before

Arbitration Panel and also fall within the ambit of residuary phrase of "other authority". It is therefore made clear that the arbitration proceeding pending before the Arbitrary Tribunal is governed by Moratorium Order already passed on 18.7.2017.

10. The Respondent Counsel raised another argument saying that since the Arbitral Tribunal has already decided that the proceeding before Arbitral Tribunal is not bound by the Moratorium dated 18.7.2017, this has to be assailed before respective appellate authority, not before this Bench, about which, we make it clear that we have not given any adjudication over the order 11.10.2017 passed by the Arbitral tribunal, we have only made it clear that Arbitral proceeding is governed by the Moratorium already passed, which can be held by this Bench within its limits to effectuate the order 18.7.2017 passed by this Authority.

11. Since no award has been passed till date, it is hereby held that arbitration proceeding between Moorgate Industries of India Pvt. Ltd v. Monet Ispat & Energy Ltd (the Corporate Debtor) pending before the Arbitral Authority will remain suspended until the Moratorium period is completed.

Accordingly, this Application is disposed of.

Sd/-
V. NALLASENAPATHY
Member (Technical)

Sd/-
B.S.V. PRAKASH KUMAR
Member (Judicial)