

NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

CORAM:

(IB)194 (ND) 2017

**PRESENT: SH. S. K. MOHAPATRA
HON'BLE MEMBER(T)**

**SMT. INA MALHOTRA
HON'BLE MEMBER (J)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW
DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON
09.11.2017**

NAME OF THE COMPANY: State Bank of India Vs. M/s Garg Inox Ltd.

SECTION OF THE COMPANIES ACT: 7 of IBC, 2016

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
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Present:		Mr. Ankit Parashar, Mr. Ajay Kumar Jain and Madhurima Ray, For the Applicant (RP).		
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Mr. Samir Rastogi, Advocate for SBI.

ORDER

An application being CA No. 293/17 has been filed by the Resolution Professional seeking urgent directions from this Bench in view of the orders dated 13.10.2017, 16.10.2017 and 3.11.2017 passed by the Industrial Court, Maharashtra at Pune, inspite of the Mortarium imposed by this Bench. The factum of the Moratorium has been duly brought to the Ld. Presiding Officer of the Industrial Court.

2. The Petition for initiating the Corporate Insolvency Resolution Process had been admitted at the instance of the State Bank of India, a financial creditor. They are also aggrieved by the said order. As per the decision taken by the Committee of Creditors (SBI having a representation of more than 98%), it was decided that the operation of the Corporate Debtor be shifted from Pune and consolidated with its business operation at Bahadurgarh. The said decision, which was duly approved by the Committee of Creditors was taken in a bid to consolidate the resources of the Corporate

(Lekh Raj Singh)

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Debtor to streamline its financial affairs. As per the mandate under the Code, the Resolution Professional is required to take all such steps as are necessary for preserving the property of the Corporate Debtor and to keep its business as an ongoing concern. The decision to shift the unit from Pune would result in a projected saving of Rs.55 lakhs per month. The decision is crucial for the Corporate Debtor who is deep down in financial crisis and efforts are being made by the Resolution Professional to turn around the business of the Corporate Debtor so as to improve its efficiency and work out its revival plan.

3. Pursuant to the order dated 25.07.2017, admitting the application CA (IB)-194/2017, the moratorium came into immediate effect. It is submitted that at the instance of some workers who were aggrieved by the decision to shift the plant from Pune, a complaint was filed before the Ld. Industrial Court which allowed the following prayer of the workers vide its interim order dated 13.10.2017:-

“5(b) till disposal of the main complaint the Respondent Company addressed as above may be restrained by passing ex-parte order of status quo from closing or shifting the company.

5(c) till disposal of the main complaint the Respondent Company addressed as above may be restrained by passing ex-parte order of status quo from selling or creating third party interest in the Company.

5(d) till disposal of the main complaint and Respondent Company addressed as above may be restrained by passing ex-parte order of status quo from shifting machinery, raw material and finished goods or dispose of the same.”

On bringing the factum of the Moratorium to the notice of the Ld. Court, the said order was vacated but remains in force for a period of 15 days.

4. The grievance in the present application is that though they have been permitted to remove the goods, they have been restrained from shifting the plant and machinery for the next 15 days.

(Lekh Raj Singh)

5. The Moratorium imposed by this Bench, mandates a stay on all proceedings before other courts. Though the Ld. Court has taken note of the provisions of Section 63 and 64 of the IBC and has fixed the matter for maintainability having been filed during the period of Moratorium, the interim order is directed to continue for a period of 15 days to enable the complainants impugn the same.
6. The submission of the Financial Creditor as well as the applicant, Shri Sanjay Gupta, the Resolution Professional that a further delay of 15 days is extremely crucial, considering that the Revival/ Resolution Plan has to be worked out within 180 days, merits consideration. Accordingly, the impugned order which has been passed in the face of the moratorium needs to be set aside. We are in respectful disagreement with the direction of the Ld. Industrial Court. In our considered opinion, no interim order could be passed much less extended. The Resolution Professional is directed to take expeditious steps for taking steps as approved by the COC.
7. Given the facts and circumstances of the case, we direct the RP to take necessary steps for shifting of the Plant and Machinery to Bahadurgarh, Haryana and make an endeavour to keep the Corporate Debtor as a going concern.
8. Notwithstanding the above, it is also pointed out that out of 250 employees at Pune, 80 have opted to shift to the Corporate Debtor's Plant at Bahadurgarh, while others have either resigned or are in the process of resigning. The same has been stated on affidavit by the RP. In any event, the financial liability on account of labour disputes can be met if the business of the Corporate Debtor starts showing profits or shall be taken into consideration by the liquidator should the Corporate Debtor go into liquidation in the event of the Resolution Plan not being able to turn around its business.

Sd-

(S. K. Mohapatra)
Member (T)

Sd-

(Ina Malhotra)
Member (J)