

NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI

C.P No. 1262/(MAH)/2017

CORAM:

Present: SHRI M.K. SHRAWAT  
MEMBER (J)

SHRI BHASKARA PANTULA MOHAN  
MEMBER (J)

ATTENDENCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF  
THE NATIONAL COMPANY LAW TRIBUNAL ON 08.09.2017

NAME OF THE PARTIES: Kotak Mahindra Bank Ltd.  
V/s.  
Parekh Aluminex Ltd.

SECTION OF THE COMPANIES ACT: I & BP Code 2016.

S. No. NAME DESIGNATION SIGNATURE

1 Counsel Zal Andhyarujina 8/9/17

Mr. Punit Damodar }  
Ms. Nikita Vardhan } i/b Kanga  
& Co

For the Respondents

2. Counsel Mr. Rohit Gupta

Mr. Bhayaw Joshi

For the Financial  
Creditors

i/b. HSA  
Advocates

Bangru  
8/9/17.

(contd...)

**ORDER**

**CP No. 1262/I&BC/NCLT/MB/2017**

- i. This Petition was filed by the "Financial Creditor" in respect of a Debt amount of ₹1,39,76,30,566/- against Financial/Corporate Debtor M/s. Parekh Aluminex Limited. An argument has been raised by the "Corporate Debtor" that in a situation when against the same Debtor the "winding up" Petition has been admitted by the Hon'ble Bombay High Court in CP No. 136 of 2014 and Others vide an Order dated 11.04.2017, hence this Petition of the Financial Creditor could not be allowed to be admitted because of the reason that this "Financial Creditor" along with the other Financial Creditors can be an Intervener or can be a Member of the Committee of Creditors. It has also been pleaded that against the same Financial Debtor a Petition in the Insolvency & Bankruptcy Code bearing No. TCP 829 filed by the ICICI Bank has also been filed before the NCLT, Mumbai. Similarly, a Petition filed by UCO Bank against the same Financial Debtor before NCLT, Mumbai pending disposal. However, in the course of the hearing the Respondent has also suggested, alternatively that no prejudice shall be caused to the Respondent Debtor if the Petition of the Financial Creditor is admitted.
- ii. This bench hereby seeks a clarification that under the circumstances (1) whether this Petition is fit for admission or not, specially when the "Insolvency" as well as "winding up" proceedings are already subjudice against this Financial Debtor; (2) Whether in a situation when question of law has been framed and are pending before the Larger Bench, this Bench should wait for the outcome of the final decision of the Larger Bench or can proceed independently? For reference reproduced below:-

"1. Whether the process under the Insolvency and Bankruptcy Code, 2016 can be triggered in the face of the pendency of the winding up petitions before the respective High Court or it is to be considered as an independent process?"

2. In case the process is considered to be not independent, whether the Petition filed under the Code is required to be transferred to the concerned High Court which is having seisin over the winding up proceedings or await the outcome of the winding up proceedings by adjourning it sine die?"

3. Whether the Code gives any room for discretion to be exercised for adjourning it sine die in view of the statutory mandate given under Section 7, 9 and 10 of the Code for expeditious disposal of cases by either admitting or rejecting it within the fixed time frame?"

4. In case if the Petition is adjourned sine die and if the winding up Petition is dismissed or set aside in appeal subsequently, whether there is scope in such an eventuality for power of revival within the frame work of the Code conferred on this Tribunal?"

- iii. Listed for hearing on **09.10.2017**.
- iv. Intimate the parties accordingly.

Sd/-

**BHASKARA PANTULA MOHAN**

Member (Judicial)

Date : 08.09.2017

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Sd/-

**M.K. SHRAWAT**

Member (Judicial)