

**In the National Company Law Tribunal  
Mumbai Bench, Mumbai.**

**TCP 779/I&BC/NCLT/MB/MAH/2017**

Under Section 9 of the Insolvency & Bankruptcy Code 2016

In the matter of

Mr. Nimish S. Mehta,  
Proprietor of M/s. M. Tex-Chem,  
A-15, Subhash Udhoy Bhavan,  
Ashalpha, Ghatkopar (West),  
Mumbai – 400 087

**Vs.**

Maharaja Dyeing Private Limited,  
TS-12, MIDC Phase-I,  
Dombivli (East) 421204,  
District Thane,  
Maharashtra State.

Coram :

Hon'ble M.K. Shrawat, Member (Judicial)

Hon'ble Bhaskara Pantula Mohan, Member (Judicial).

For the Petitioners : Mr. Vijay M. Waghela, Advocate

For the Respondents : 1. Ms. Kavita Brid Chavan  
2. Mr. Archan Shah, Advocate

Per M.K. Shrawat, Member (Judicial).

**Heard on 04.09.2017**  
**ORDER dated 06.09.2017**

1. This Petition is transferred from Hon'ble High Court where it was numbered as "Company Petition No.654/2016". The said Petition was filed under the old provisions of the Companies Act, 1956 under section 433(e) and section 434 of the Companies Act, 1956 for claiming an outstanding debt of ₹1,36,68,000.
2. Thereafter the said Petition was transferred to NCLT, Mumbai. Thereupon, complying the provisions of the I&B Code, the Petitioner has filed a fresh Application on requisite Form No.5 before NCLT on 21-04-2017 and therein also the "Operational Debt" was stated to be ₹1,36,68,000. It is stated that the Petitioner as a Sole Proprietor of M/s. M. Tex-Chem has supplied chemicals, pigments, etc. to the Respondent Debtor M/s. Maharaja Dyeing Private Limited having its office in Dombivli (East), District Thane, Maharashtra, alleged to be an "Operational Debtor".
3. A preliminary legal question has been raised from the side of the Respondent Debtor that the matter being subjudice before the Hon'ble High Court, hence no parallel proceedings under I&B Code 2016 must be carried out simultaneously. The





Respondent has stated that as per the powers conferred under sub-sections (1) and (2) of Section 434 of the Companies Act, 2013 read with sub-section (1) of Section 239 of the Insolvency and Bankruptcy Code, 2016, the Central Government made the Companies (Transfer of Pending Proceedings) Rules 2016, which came into force from 15-12-2016 in accordance with Notification dated 07-12-2016. As per Rule 5 of the said Rules, all petitions relating to winding up under Clause (e) of Section 433 of the Act on the ground of inability to pay its debts pending before a High Court, and where the Petition has not been served on the Respondent as required under Rule 26 of the Companies (Court) Rules, 1959 should be transferred to the appropriate Bench of the National Company Law Tribunal (NCLT) and in NCLT, such applications are to be treated as Applications under Section 7 / 8 / or 9 of the Code as the case may be and dealt with in accordance with Part-II of the Code.

- 3.1 He has further stated that the old Petition was filed on 30-07-2016 before the Hon'ble High Court, Bombay and came up for acceptance before the Company Registrar on 29-11-2016. The Petitioner was directed to serve a copy of the Petition upon the Respondent. According to the claim of the Respondent, the Petition was served on 14-12-2016. The Respondent has further stated that according to the Inward Register of the Respondent Company, the Petition was received on that date. So the argument is that since the Petition had already been served upon the Respondent Company before the transfer rules were notified which came into effect on 15-12-2016 therefore the captioned Petition was wrongly transferred to NCLT.
- 3.2 The next argument is that the Petition under section 9 was defective because the requisite Form No.5 was incomplete, devoid of the necessary details and particulars. One of the defect according to the Learned Counsel was that the Petitioner had not furnished the copy of the Invoices demanding the payment. It has also been pleaded that the Demand Notice as per Section 8 has not been issued. It has also been pleaded that vide a letter of 19-11-2015 the Respondent Company had raised the issue of inferior quality of goods. The Petitioner had not filed any Affidavit stating on oath that there was no "dispute". The Petition also has not placed on record the statement of Bank Account to show that the Debt in question had not been repaid. It is pleaded that there was also suppression of material facts, hence the Petition deserves to be rejected.
4. Learned Representative of the Petitioner has vehemently objected the legal questions raised and informed that the Petition was submitted on 21-04-2017 before NCLT and thereafter number of opportunities were granted to the Respondent Debtor but no such objection was raised in the past. According to the Court Proceedings sheet the Petition was listed for admission on 27-04-2017 and with certain directions adjourned to 02-05-2017. On 02-05-2017, the Petitioner has explained the facts of the case and also pleaded that the Debt amount had duly been "tallied" by the Debtor and there was no "dispute". On hearing both the sides, the respected NCLT Bench had given



last chance to the Respondent Debtor to defend the case, otherwise liable to face the Insolvency Proceedings. The matter was again listed for 14-07-2017, but adjourned due to non-availability of the Advocate of the Petitioner, on 10-08-2017. On that date, the name of the IRP was placed on record; however, on the request of the Respondent, the Petition was adjourned to 24-08-2017. On 24-08-2017, the matter was partly heard on the question of "Maintainability" and adjourned to 04-09-2017, i.e. today. It is pleaded that sufficient opportunity was given to the Respondent but there was no evidence to support the impugned question of jurisdiction of NCLT. Finally, it has also been pleaded, by referring an Affidavit in reply of the Petitioner dated 01-09-2017, that the Respondent is relying upon a private document to demonstrate that the Petition was served upon him on 14-12-2016; however, it was a fabricated document. The NCLT cannot pass order to give instruction to send back the file to the Hon'ble High Court and such power is only with the Hon'ble High Court. If at all the jurisdiction is with the High Court and the Hon'ble High Court is satisfied with the private document of the Respondent Debtor, then empowered to recall the Petition.

5. Learned Representative has explained the merits of the case and pleaded that number of documents and copies of accounts of the Debtor company in the books of the Petitioner have clearly demonstrated the 'supply' of the goods and 'default' in payment. Learned Counsel has drawn attention on the Statement of Account of the Respondent Debtor in the books of the Petitioner to demonstrate that the account of the Debtor Company was duly "tallied" by its Accountant. At that point of time, no "dispute" was ever expressed. A legal notice was issued on 29-10-2015 and also a reply had come from the Respondent dated 19-11-2015, however, no serious "dispute" was ever raised. He has concluded that the Operational Debt was duly "admitted" by the Debtor Company and payment had not been made. Hence, the Petition deserves admission.
6. Heard Learned Representatives of both the sides at some length and on due consideration of the facts of this case, prima facie it appears that once Hon'ble High Court has transferred a Petition to NCLT Bench then the NCLT Bench must not intervene in the said decision of the Hon'ble High Court. There is no dispute on facts that this Petition in question, was transferred by the Hon'ble High Court, hence the NCLT has neither jurisdiction nor empowered to reverse that direction of the Hon'ble High Court. The settled convention is that the subordinate Court/Tribunal has to follow and honour the judgment/direction of the superior Court. Universal fact is that the stream of water flows from higher level to lower level. Because of this reason, this Bench is of the opinion that once a Petition has been transferred from the High Court, then unless and until it is recalled by an order of the High Court, the Petition cannot be transmitted back to High Court. We, as a subordinate Court, cannot and

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must not revert back a Petition with an observation that the same to be decided by the Hon'ble High Court.

7. As far as the service of the original Petition on the Respondent is concerned, the date of service as alleged by the Debtor Company is very conspicuous. According to the Debtor Company, it was served on 14<sup>th</sup> December 2016, i.e. a day prior to the date of notification dated 15<sup>th</sup> December, 2016. The transfer rules were notified and came into force with effect from 15<sup>th</sup> December 2016. One more point has been raised that the alleged register was a self-serving document being a private document maintained by the Debtor Company itself. The authenticity of such private document remained doubtful throughout. Rest of the objections of the Respondent are dealt with hereunder.
8. Merits of the Petition under consideration filed by the "Operational Creditor" has duly been considered, according to which, the Debtor Company Viz. M/s. Maharaja Dyeing Private Limited, Dombivli, Thane, is admittedly an "Operational Debtor" having liability of Debt amount of ₹1,36,68,000 as indicated in Part-IV of Form No.5. The Petitioner has placed on record an Affidavit dated 02-05-2017 of delivery of Form No.5 on the Respondent on 27-04-2017. A tracking record of the consignment is placed as an evidence. The Respondent had the opportunity of 10 days to raise the objection; however, failed to avail the prescribed time.
9. Facts of the case have revealed that the Petitioner is running a proprietary concern viz. M/s. M. Tex-Chem, Ghatkopar, Mumbai and on 12-04-2006, the Company had placed order for supply of "Silicon 5000". The agreed payment term was 30 days, else 24% interest was payable. Since 2006, the Petitioner was regularly supplying the goods. The books of Accounts are duly maintained and demonstrated that the receivable amount as on 12-05-2014 was ₹1,10,74,450. The Petitioner had sent the Ledger Account to the Debtor Company for verification which was marked as "tallied" by one of the Company's Officer, as also duly stamped. The Petitioner issued a legal notice; however, no payment was made. Having no option left, the Petitioner filed the Petition before the Hon'ble High Court under the old provisions of the Companies Act. As a result the "Debt" as also the "Default" has duly been established by the Petitioner.
10. Considering the totality of the facts and circumstances this Petition now under consideration deserves to be "Admitted".
- 10.1 The Petitioner has proposed the name of the Interim Resolution Professional Mr. Hemant Mehta, Registration No.IBBI/IPA-001/IP-P00027/2016-17/10060. The appointed IRP shall perform the duties as defined under section 18 of the Code. He shall also submit the resolution plan for approval as prescribed under section 31 of the Code.
- 10.2 Since the Petition is "Admitted", hence the Moratorium shall commence as prescribed under section 14 of the I&B Code as under :-
  - (I) (a) the institution of suits or continuation of pending suits or proceedings

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against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

- (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(SARFAESI Act);
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(II) That supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(III) That the provisions of sub-section (1) Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(IV) That the order of Moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

(V) That the public announcement of the corporate insolvency resolution process shall be acted upon immediately as specified under section 13 of the Code.

10.3 That this Bench hereby appoints, Mr. Hemant Mehta, Registration No.

IBBI/IPA-001/IP-P00027/2016-17/10060 as Interim Resolution Professional to carry out the functions as mentioned under Insolvency & Bankruptcy Code.

10.4 Accordingly, **this TCP 779/I & BP/NCLT/MAH/2017 stood admitted.**

10.5 The Corporate Insolvency Resolution Process is commenced from the date of this order.

Sd/-

**BHASKARA PANTULA MOHAN**  
**Member (Judicial)**

Date : 06.09.2017.

Sd/-

**M.K. SHRAWAT**  
**Member (Judicial)**