

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
C.P. NO. 01/I & BP/NCLT/MAH/2016

Coram: B.S.V. Prakash Kumar, Member (Judicial) &
V. Nallasenapathy, Member (Technical)

In the matter of **Section 7 of the Insolvency and Bankruptcy Code, 2016** read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016).

Between:
ICICI Bank Ltd. Applicant
V/s.
M/s. Innoventive Industries Limited Respondent

Applicants' Counsel: Mr. Zal Andhyarujina, Mr. L. Viswanathan, Mr. Mr. Anush Mathkar, Mr. Dhananjay, Mr. Animesh Bisht, Advocates for the Applicant.

Respondents' Counsel: Mr. Ravi Kadam, Sr. Counsel, Mr. Chetan Kapadia, Mr. Rahul Sarda, Mr. Sanjay Asher, Ms. Manik Joshi, Ms. Aditi Shukla, Advocates for the Respondent Company.

ORDER

(Heard on 16.01.2017)

(Pronounced on 17.01.2017)

The Applicant company namely ICICI Bank Ltd. mentioned this Company Petition on 22.12.2016 stating that the Corporate Debtor namely Innoventive Industries Ltd. availed ₹40,74,57,388 as Term Loan facility, ₹21,80,00,000 as Working Capital facility, and \$7 million as External Commercial Borrowing facility, but when the Respondent company later defaulted in making payments, this applicant says the default occurred on 30.11.2016 for ₹12,22,10,737 towards RTL facility, ₹7,50,05,661 towards Working Capital facility and ₹11,47,58,969 towards External Commercial Borrowing facility. Since the aforesaid facilities have not been recalled, the total outstanding amount payable by this corporate debtor is ₹1,019,177,034 as on November 30, 2016 and the Corporate Debtor is liable to pay the

outstanding amount together with interest cost, expenses and other moneys which shall accrue on the contractual rate. For the Corporate Debtor has defaulted in making repayment as mentioned above, this Applicant company initiated this Company Petition under Insolvency and Bankruptcy Code, 2016 for realization of this money by initially seeking for an order of Moratorium as mentioned in the provisions of aforesaid Code.

2. In which, the corporate debtor filed an Application in this Creditor Petition stating that as on the date of filing this Creditor Petition, the debts said to have been existing against the Corporate Debtor have been suspended under Maharashtra Relief Undertaking (Special Provisions) Act on 18.7.2016 declaring that the Industrial Undertaking called M/s. Innoventive Industries Ltd. (under the said it is referred as "the said relief undertaking"), to which financial assistance of industrial promotion subsidy of ₹115,36,40,000 provided by the Government of Maharashtra under the Package Scheme of 2007 Incentive, shall for a period one year commencing on 22.7.2016 and ending of 21.7.2017 be conducted to serve as a measure of preventing unemployment and directs that in relation to such undertaking in respect of one year period mentioned above, rights, privileges, obligations, or liability accrued or incurred before 22.7.2016 and any remedy for the enforcement thereof shall remain suspended and all proceedings relating thereto pending before any Court, Tribunal, Officers or Authority shall be stayed.

3. The case of the Corporate Debtor in this interim application is, since Industry, Energy and Labour Department of Maharashtra passed the above reliefs suspending the liabilities of the Corporate Debtor and remedies against the debtor for one year from 22.7.2016, this financial Creditor could not have invoked this relief on the ground default occurred in relation to the debt owed to the creditor ignoring the order passed by the said Department declaring all liabilities and the reliefs thereof been suspended until 21st July 2017.

4. To fortify his argument, the counsel of the Corporate Debtor submits that the Maharashtra Relief Undertaking (Special Provisions) Act is

armoured with non-obstante clause in section 4 with overriding effect, which is as follows: -

4. (1) Notwithstanding any law, usage, custom, contract, instrument, decree, order, award, submission, settlement, standing order or other provision whatsoever, the State Government may, by notification in the official Gazette, direct that—

(a) in relation to any relief undertaking and in respect of the period for which the relief undertaking continues as such under sub-section (2) of section 3—

(i) all or any of the laws in the Schedule to this Act or any provisions thereof shall not apply (and such relief undertaking shall be exempt there from), or shall, if so directed by the State Government, be applied with such modifications (which do not however affect the policy of the said laws) as may be specified in the notification;

(ii) all or any of the agreements, settlements, awards or standing orders made under any of the laws in the Schedule to this Act, which may be applicable to the undertaking immediately before it was acquired or taken over by the State Government 3[or before any loan, guarantee or other financial assistance was provided to it by, or with the approval of, the State Government,] for being run as a relief undertaking, shall be suspended in operation or shall, if so directed by the State Government, be applied with such modifications as may be specified in the notification ;

(iii) rights, privileges, obligations and liabilities shall be determined and be enforceable in accordance with clauses (i) and (ii) and the notification;

(iv) any right, privilege, obligation or liability accrued or incurred before the undertaking was declared a relief undertaking and any remedy for the enforcement thereof shall be suspended and all proceedings relative thereto pending before any court, tribunal, officer or authority shall be stayed;

.....”

5. The counsel of the Corporate Debtor further submits that Non-Obstante clause in Section 238 of Insolvency and Bankruptcy Code 2016 as

against Non-Obstante Clause in MRU, both operate in different fields, one for realisation of the credit facility availed by the Debtor and another for preventing unemployment in the Industry, since the later object is more laudable cause protected by the state, the same shall not be disturbed by invoking section 238 of Insolvency and Bankruptcy Code 2016.

6. Therefore, to propound this argument, the counsel relied upon *Vishal N Kalsa v. Bank of India and Others (2016) 3 SCC 762 (Para 113)*, to say “..... *the non obstante clause contained in section 34 (1) of the DRT Act and Section 35 of the Securitisation Act give overriding effect to the provisions of those Acts only if there is anything inconsistent contained in any other law. In other words, if there is no provision in other enactments which are inconsistent with the Code, the provisions contained in those Acts cannot override other legislations.*”

7. To which the Applicant Counsel submits that non obstante clause in section 238 of IBC 2016 will have overriding effect over the operation of MRU Act 1958, because the law envisaged in MRU Act is inconsistent with section 238 of IBC 2016.

8. He also relied upon *JM Financial Asset Reconstruction Company v/s. State of Maharashtra 2016 SCC online Bombay, 9099* and *Madras Petrochem Ltd. and Ors. v/s. BIFR and Others 2016 (4) SCC 1* and further saying that the notification issued u/s.4 of MRU Act is limited to the enactments as specified in the Schedule to MRU Act. He further submits that plain reading of section 4 of MRU makes it clear that only the right, privilege, obligation or liability accrued or incurred before the undertaking was declared a relief undertaking, in so far as the said right relates to availing of any remedy for enforcement is suspended and not existence/continuation of debt or default itself, therefore suspension of indebtedness or default has not been contemplated or provided under the MRU Act.

9. He further submits, as per Section-7, only the fact of the event of default has to be ascertained, and no other determination has been envisaged under the Code for admission of the application u/s 7 of the Code

and the Tribunal is only required the documents specified under the Code, if in the event of the same are not sufficient or there is any defect in the application, the Tribunal has discretion to direct the Applicant to rectify the same. In view of the same, the Applicant Counsel submits that the Notification given by the Industry, Energy and Labour Department of Maharashtra, on 22.7.2016, will not have any bearing on passing an order u/s.7 of the Code henceforth he prays this Bench to admit the Company Petition with the direction mentioned u/s.13, 14, 15 & 16 of this Code.

10. On hearing the submissions of the Applicant counsel and Corporate Debtor Counsel, it is evident that non obstante class is present in both MRU Act and IB Code, now the point to be decided is whether an order could be passed u/s.7 of the Code or not.

11. It is evident on record that IB Code has come into existence subsequent to MRU Act therefore, notwithstanding clause in section 238 of IBC prevails upon any other law for the time being in force, hence it could not be said that Notification given under MRU Act will become a bar to passing this order u/s. 7 of the IBC 2016.

12. Moreover, the objective under MRU Act, is to prevent unemployment of the existing employees of an industry which is recognized as relief undertaking, but by passing an order u/s.7, it will not cause any obstruction to their employment until next 180 days, even if the company goes into liquidation, then also the rights of the employees are protected to the extent mentioned under IBC, therefore, the Corporate Debtor Counsel cannot have an argument saying that passing an order u/s.7 of the Code will be against the interest of the employees.

13. Here the subject matter is liability over the company, the liability of the company has been dealt with by the MRU Act and also by IBC but with different objectives, in MRU Act, it is to protect the interest of employees and in IBC, it is for protecting the creditors who have supplied fuel to the company to make it run. Since the liability suspended under MRU Act being inconsistent with the default occurred to the debt payable to the creditor, this order will not be against the ratio decided by Hon'ble Apex

Court in *Vishal N Kalsa v. Bank of India and Others* (2016) 3 SCC 762 (Para 113) therefore, this Bench having not noticed any merit in the argument of the Corporate Debtor Counsel, the Application filed by the Corporate Debtor is hereby dismissed.

14. The corporate debtor filed another application saying notice has not been served to the debtor, but this plea pales into insignificance because this Bench already heard the Corporate Debtor and his application has already been dismissed, therefore this application also does not lie, hence the same is also hereby dismissed.

15. As to the Petition filed by the Financial Creditor, this Bench, on perusal of this documents filed by the Creditor, it is evident that the Corporate Debtor defaulted in making payments as mentioned above, and he has placed the record of the default with Information Utility and he also placed the name of the Insolvency Resolution Professional to act as interim resolution Professional, having this Bench noticed that default has occurred and there is no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of section 7 is taken as complete, accordingly this Bench hereby admits this Application declaring Moratorium with the directions as mentioned below:

1. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

2. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
 3. That the provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 4. That the order of moratorium shall have effect from 17.1.2017 till the 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.
 5. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
 6. That this Bench hereby appoints Mr. Dhinal Shah, 9, Urmikunj Society, Nr. St. Xavier College Corner, Navrangpura, Ahmedabad – 389009, Gujrat, email: dhinal.shah@in.ey.com, Registration No. IBBI/IPA-01/2016-17/015 as interim resolution professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.
16. Accordingly, this Application is disposed of.

Sd/-

B. S.V. PRAKASHKUMAR
Member (Judicial)

Sd/-

V. NALLASENAPATHY
Member (Technical)