

NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI

C.P No. 10/(MAH)/2017

CORAM:

Present: SHRI B.S.V. PRAKASH KUMAR  
MEMBER (J)

SHRI V. NALLASENAPATHY  
MEMBER (J)

ATTENDENCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF  
THE NATIONAL COMPANY LAW TRIBUNAL ON 04.04.2017

NAME OF THE PARTIES: Ashok Alco-Chem Limited.  
V/s.  
M/s. Unimark Remedies Limited.

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

S. No.	NAME	DESIGNATION	SIGNATURE
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1	Mr. Somasekhar Sundaresan Mr. Abishek V. Mr. Sharel Kothari Mr. Sohenne Himathulla - i/b - J. Sagar Associates		→ Respondents
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2	Sankalp Anantwar i/b Indialaw for operational Auditor	Advocate	<u>Anantwar</u>
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**ORDER**

CP NO.10/I&BP/NCLT/MB/MAH/2017

The Corporate debtor filed an application for recalling order dated 24<sup>th</sup> February 2017. When this bench has put to the counsel of either side as to how recall of this order is permissible under Insolvency & Bankruptcy Code, the corporate debtor counsel has pointed out that dispute between the parties has been resolved, therefore seeking a review of the order of admission passed on 24.02.2017 and disposal of this application in terms of the settlement mentioned above.

The corporate debtor counsel has further argued that since this Bench has passed an order before completion of 10 days after receipt of notice under section 8 of the Insolvency and Bankruptcy Code, the order above is invalid in the eye of law.

On hearing the submissions of the corporate debtor counsel, it is evident that this application has been moved as there is a settlement between the parties after an order of admission has been passed by this Bench declaring Moratorium with consequential directions. It has been already made clear in other case that the order passed declaring Moratorium with consequential directions cannot be set aside or recalled or reviewed either on the facts existed before filing the application or on the facts happened subsequent to filing application.

The application should have been withdrawn before order of Moratorium was passed by this Bench. Here, the present application has been filed only after passing order of Moratorium on 24<sup>th</sup> February, 2017. The corporate debtor counsel has argued saying that the corporate debtor filed his application before this order has been communicated to the corporate debtor. He says that order has been made available to the corporate debtor only on 28<sup>th</sup> March 2017, i.e., after this application has been filed.

As to this point, this Bench makes it clear that when an order is passed in a case where the matter is reserved for orders, then may be, the argument taken out by the corporate debtor could be some extent taken into consideration. Since the order dated 24.02.2017 was passed in open court as soon as the arguments of the petitioner counsel had been heard, we do not find any merit in the argument that since the order dated 24.2.2017 was not made available to the corporate debtor before it filed an application, the order above should be nullified. When orders are passed in open court on the date of hearing after notice has been issued to the corporate debtor, such order cannot be called ex-parte order, that apart, it is not that this Bench should not pass orders unless corporate debtor appears. It is also not the case of the corporate debtor that it had not received notice to hearing date 24.2.2017.

As to the second argument placed by the corporate debtor is, it is evident on record that it is a matter transferred from the Hon'ble High Court. This matter has been transferred to this Bench on

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the notification dated 7<sup>th</sup> December 2016. On perusal of this notification dated 7-12-2016, it is understood that all applications that have been transferred under this notification have to be treated as applications u/s. 7, 9 or 10 of the Code. Therefore, issuing another notice u/s 8 of the Code in the transferred case is not necessary, because the precondition of issuing notice u/s 8 will not apply because this case was transferred to this Bench from Honorable High Court only after application was filed under the old Act. Only direction given in the notification is that the party shall file form as specified under Rules, that this operational creditor did before this Bench passed orders on 24.2.2017.

Therefore, we have not noticed any merit in the argument of the counsel of corporate debtor. However, for there is neither a section of law envisaged to recall its own orders, nor a Rule set out to recall orders, and moreover the moratorium being rem in nature, this application is hereby dismissed in limine as not maintainable.

Sd/-  
V. NALLASENAPATHY  
Member (Technical)

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