

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CA.No. 169 of 2017

In

CP.No. (IB) No.111/7/HDB/2017
U/s. 60 (5) R/w. Section 14 of the IBC, 2016.

In the Matter of:

Lanco Infratech Limited
Through its interim Resolution Professional
Mr.Savan Godiawala,
Plot No.4, Software Unites Layouts,
Hitch City, Madhapur,
Hyderabad, Telangana-500081.

...Applicant

Versus

Isolloyd Engineering Technologies Limited
A Company incorporated under the Companies Act,
1956,
Having its registered office at
Punjstar Premises
Kalkaji Industrial Area,
Kalkaji, New Delhi - 110019.

...Respondent

Order pronounced on 16th November, 2017

CORAM

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

Counsels/Parties Present:

For IRP:

Mr. Manik Dogra Senior
Advocate with Ms. Misha,
Mr.Vijayanth
Palimal, Mr.L.Aravind Reddy,
Counsels for IRP

For the Corporate Debtor:

Smt.Divya Datla, Advocate

Per: Rajeswara Rao Vittanala, Member (Judicial)



ORDER

1. The present Company Application No.169/2017 in CP.No.(IB).No.111/7/HDB/2017 is filed by Lanco Infratech Limited (Applicant) through Mr. Savan Godiawala, IRP U/s. 60 (5) R/w Section 14 of Insolvency and Bankruptcy Code, 2016, by inter-alia seeking following reliefs:
 - a. Pass a specific direction and order staying the arbitration proceedings in Arbitration Case No.66 of 2017, including pronouncement of an award in the arbitration proceedings in Arbitration Case NO.66 of 2017 pending before the Ld.Sole Arbitration Shri M.D. Sharma, District and Session Judge (Retd.), Shimla at Shimla between Isollyd Engineering Technology Limited and the Corporate Debtor till conclusion of the Corporate Insolvency resolution process; and/or
 - b. Declare that any award passed in Arbitration Case No.66 of 2017 pending before the Ld.Sole Arbitration Shri M.D.Sharma, District and Session Judge (Retd) Shimla at Shimla between Isolloyd Engineering Technology Limited and the Corporate Debtor during the corporate insolvency resolution process, shall not be binding on the Applicant.
2. Brief facts, leading to filing of present application, are as follows:
 - (a) Corporate Insolvency Resolution Process (CIRP) was initiated against the Lanco Infratech Limited (Corporate Debtor), vide this Tribunal order dated 7th August 2017 in an application filed by IDBI Bank Ltd, under Section 7 of the Insolvency and Bankruptcy Code 2016 (IBC) read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and Mr. Savan



Godiawala is appointed as the Interim Resolution Professional (IRP) with direction to take all necessary action(s) under the provisions of the IBC and also passed an order of moratorium.

- (b) The Respondent had initiated arbitration proceedings vide Arbitration Case No. 66 of 2017 before the Learned Sole Arbitrator Shri M.D.Sharma ,District and Sessions Judge(Retd) against the Corporate Debtor before the commencement of the CIRP, in pursuant to the order of the Micro, Small, and Medium Enterprise Development Council dated 6th March 2017. The claim of the Respondent is for an amount of Rs.14,08,117/- (Rupees Fourteen Lakhs Eight Thousands One Hundred and Seventeen Only) arising out of purchase orders dated 10 September 2009, 10th March 2010, 24th June 2010, 04 August 2010 and 27th August 2010. The Respondent has also additionally claimed interest @ 28.80%, damages and costs.
- (c) Since the CIRP pending before this Tribunal, the Petitioner has moved an application before the Arbitral Tribunal for stay of proceedings .However, the same was dismissed by Ld. Arbitrator vide his order dated 14th August 2017. Subsequently, the Corporate Debtor with an intention to clarify the detailed provisions of IBC U/s 14 regarding moratorium and Sec.74 of the IBC regarding consequences violation of the moratorium and Sec.238 of the IBC giving it an overriding effects over any other law, moved another detailed application before the Ld. Arbitration seeking recall of the order dated 14th August 2017 while highlighting the relevant provisions namely Section



14, 238 and 74 of the IBC. The Arbitrator, after taking note of the provisions of Section 14 (1), 238 and 74 of the Code concluded that the matter has already been dealt with in the order dated 14 August 2017 and accordingly dismissed the said application vide orders dated 26th August 2017. Subsequently the Arbitrator has passed final Award dated 16.09.2017 by allowing the claim as prayed for.

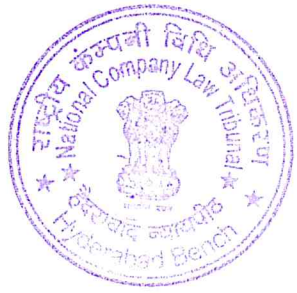
3. Mr. Manik Dogra Learned Senior Advocate for the applicant/Respondent/IRP submits that continuation of arbitration proceedings against the Corporate Debtor and consequently passing of an award, despite moratorium is contrary to the express provisions and mandate of the IBC. Further, having experienced a change in management and all proceedings having been stayed against the applicant, the pronouncement of the award would cause great prejudice to the applicant. It is also contended that other Arbitral Tribunals constituted of Retd. Hon'ble Justices of the Supreme Court, before whom arbitration proceedings are pending against the Corporate Debtor have duly recognised the provisions of the IBC and have stayed the arbitration proceedings. In this regard Copy of an order dated 16.08.2017 in the matter of Hindustan Construction Company Ltd. Versus Lanco Infratech Ltd. Sec.14 of IBC prohibits continuation of any legal proceedings against the Corporate Debtor including arbitration proceedings. Further, Sec. 238 of the IBC gives an overriding effect to the IBC. Section 238 of the IBC provides as follows:

"The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in



force or any instrument having effect by virtue of any such law”.

4. The Learned Senior Counsel submits that reasoning of the Ld. Arbitrator that the moratorium does not apply to arbitration proceedings as the same has been initiated under the provisions of the Micro, Small, and Medium Enterprise Development Act, 2006 (MSME Act) is entirely misconceived. The provisions of the IBC and the moratorium declared in terms of the provisions of the IBC overrides the effect of any other law including the MSMS Act.
5. It is not correct to say that provision of moratorium under IBC and both the IBC and the MSME Act operate in their own fields. Even assuming for the sake of arguments that there is a conflict between the two laws, even then the moratorium under section 14 of the IBC shall override anything to the contrary under the MSME Act. The legal position in this respect has been recently been elaborated upon by the Supreme Court in the case titled *Innoventive Industries Limited Vs. ICICI Bank & Anr.* (being Civil Appeal Nos. 8337-8338 of 2017) while upholding the provisions of the IBC and its overriding effect over the Maharashtra State Relief Undertakings (Special Provisions Act) 1958. Thus, even if it is assumed that the provisions of the MSME Act are in conflict with the provisions of the IBC, as suggested by the order dated 14 August 2017 of the Ld. Arbitrator (although reasoning to this effect has been cited in the said order), even then the provisions of the IBC would prevail as the IBC is a later enactment containing a non-obstante, overriding clause.
6. Further, it is stated that the provisions of moratorium provided for under IBC have been provided for by the legislature in its wisdom to afford an opportunity to a



distressed company to focus all its energies towards resolution of its insolvency. The motivation behind introducing the provisions of the moratorium under IBC have been discussed in the report of the Bankruptcy Law Reforms Committee which was set up for drafting the IBC. The report in paragraph 5.3.1 sub para 1 observes as follow:

“The motivation behind the moratorium is that it is value maximising for the entity to continue operation even as viability is being assessed during the IRP. There should be no additional stress on the business after the public announcement of the IRP. The order for the moratorium during the IRP imposes a stay not just on debt recovery actions, but also any claims or expected claims from, old lawsuits or on new lawsuits, for any manner of recovery from the entity.”

Thus, it is essential for a meaningful and quick resolution process that the provision for the moratorium is strictly enforced.

7. It is further contended that that the Respondent has acted in stark violation of the provisions of the IBC in as much as despite being a creditor of the Corporate Debtor and being aware of the CIRP having been initiated, the Respondent and its officers have continued to object to the provisions of Section 14 being given effect. Such act of the Respondent is punishable under section 74 (2) of the Code with imprisonment for a term which shall not be less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extent to one crore rupees, or with both. The relevant section of the IBC is reproduced herein below:
- “74 (1)...



(2) Where any creditor violates the provisions of section 14, any person who knowingly and wilfully authorised or permitted such contravention by a creditor shall be punishable with imprisonment for a term which shall not be less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees. But may extend to one crore rupees, or with both..."



8. It is evident that Respondent has knowingly and wilfully authorised and permitted contravention of the moratorium provision by the Respondent by objecting to stay of the arbitration proceedings and continuing to press with the same despite express provisions of Section 14 of the IBC and the order of this Tribunal declaring moratorium. Accordingly, the Respondent is also liable to be prosecuted in accordance with the provisions of Section 74 of the IBC, with respect to which we reserve our rights and liberty.
9. It is contended that the Respondent is also participating in the CIRP process and has filed his claim with the IRP vide his claim form submitted on 22nd August 2017. Thus there is no cause for him to seek the alternate course of arbitration during the CIRP and pursuing tow remedies in parallel, constitutes nothing but forum shopping. That such action is prejudicial to the Corporate Debtor which is already under CIRP and runs contrary to the object and scheme of the Code.
10. Heard Mr. Manik Dogra, learned Senior Counsel with Mr. Vijayanth, Mr Manik Dogra, Ms. Misha Mr L. Aravind Reddy, Learned Counsels for the Applicant/IRP.
11. It is not in dispute that the CIRP in the instant case was initiated on 7th August, 17, and also imposed moratorium with immediate effect. Moratorium as

prescribed under section 14 of IBC is not total for everything and there are exceptions under provisions (2) & (3) with regard to essential goods, transactions which are notified by the Central Government. M/s Isolloyd Engineering Technology Limited is a small scale Industrial enterprise registered with Department of Industries.



12. When the case was taken up for hearing, the Learned Resolution Professional prayed the Tribunal to permit him to withdraw the present Company Application with a liberty to take appropriate remedy in accordance with law with regard to the issue raised in the present Company Application.
13. In view of the fact and circumstances of the case, the Company Application bearing CA No. 169 of 2017 in CP (IB) No. 111/7/HDB/2017 is disposed of as withdrawn. No order as to costs.

Sd/-

RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

Sd/-

RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

G. Anand Rao
for Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

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केस संख्या
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निर्णय का तारीख 111/7/HDB/2017
DATE OF JUDGEMENT.....16/11/2017
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