

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.29084 and 29085 of 2017

W.M.P. Nos.31321 to 31323 of 2017

1.M/s.Anandram Developers Private Limited
Represented by its Director Shri Mukund Vijayan
No.45 & 47, Arcot Road
Saligramam
Chennai - 600 093

2.Mukundan Vijayan

... Petitioners in both W.Ps.

versus

1.The National Company Law Tribunal
Represented by its Registrar
Corporate Bhawan
Rajaji Salai, Chennai - 600 001.

2.M/s.Asset Reconstruction Company
(India) Limited, (ARCIL)
The Ruby, 10th Floor, 29 Senapati Bapat Marg,
Dadar (West), Mumbai - 400 028
Regional Office:
No.1G, 1st Floor, Century Plaza
No.560-562, Anna Salai
Teynampet, Chennai - 600 018
Represented by its Chief Manager
Mr.S.Saravanan

... Respondents in both W.Ps.

Prayer in W.P. No.29084/2017: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, forbearing the 2nd respondent from proceeding with the Application No.603/2017 under Section 7 of Insolvency and Bankruptcy Code, 2016 before the 1st Respondent, pending disposal of OA filed by the 2nd respondent in O.A.29/2016 on the file of DRT-I, Chennai, and Review Application No.3 of 2017 in OA No.430/2014 on the file of DRT-II, Chennai and consideration of the One Time Settlement Proposal given by the 1st petitioner company.

Prayer in W.P. No.29085/2017: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, forbearing the 1st respondent from proceeding further with the Application filed by the 2nd respondent in Application No.603/2017 under Section 7 of Insolvency and Bankruptcy Code, 2016 to initiate corporate insolvency resolution process against the company pending disposal of OA filed by the 2nd respondent in O.A.29/2016 on the file of DRT-I, Chennai, and Review Application No.3 of 2017 in OA No.430/2014 on the file of DRT-II, Chennai and consideration of the One Time Settlement Proposal given by the 1st petitioner company.

For Petitioners

: Mr.Niranjan Rajagopalan

COMMON ORDER

(Common order of this was delivered by **S.MANIKUMAR, J.**)

W.P.No.29084 of 2017 has been filed for a Writ of Mandamus, forbearing M/s.Asset Reconstruction Company (India) Limited, (ARCIL), Mumbai, 2nd

respondent herein, from proceeding with the Application No.603/2017 under Section 7 of Insolvency and Bankruptcy Code, 2016 before the the Registrar, National Company Law Tribunal, Chennai, 1st respondent herein, pending disposal of OA filed by the 2nd respondent in O.A.29/2016 on the file of DRT-I, Chennai, and Review Application No.3 of 2017 in OA No.430/2014 on the file of DRT-II, Chennai and consideration of the One Time Settlement Proposal given by the 1st petitioner company.

2. W.P. No.29085 has been filed for a Writ of Mandamus, forbearing the Registrar, National Company Law Tribunal, Chennai, 1st respondent herein, from proceeding further with the Application filed by the M/s.Asset Reconstruction Company (India) Limited, (ARCIL), Mumbai, 2nd respondent herein, in Application No.603/2017 under Section 7 of Insolvency and Bankruptcy Code, 2016 to initiate corporate insolvency resolution process against the company pending disposal of OA filed by the 2nd respondent in O.A.29/2016 on the file of DRT-I, Chennai, and Review Application No.3 of 2017 in OA No.430/2014 on the file of DRT-II, Chennai and consideration of the One Time Settlement Proposal given by the 1st petitioner company.

3. As facts involved in both the writ petitions and the reliefs claimed are similar, they are heard together and taken up for common disposal.

4. The second petitioner is the Director of the 1st petitioner Company and he has filed the writ petitions for the relief stated supra. The company is in the business constructing commercial Mall projects including shopping complex, food court and multiplex theatres. The first petitioner Company has borrowed a Term Loan to an extent of Rs.30 crores each from M/s.Indian Overseas Bank (IOB) and M/s.Oriental Bank of Commerce (OBC) for the purpose of developing a "Multiplex Mall" at Nos.45 & 47, Arcot Road, Saligramam, Chennai in the year 2005. The cost of the said project was approximately Rs.515 crores. In addition to the Term Loan sanctioned by M/s.Indian Overseas Bank (IOB) and M/s.Oriental Bank of Commerce (OBC), the Promoters of the petitioner Company have also contributed a sum of Rs.260 crores from their resources. The first petitioner Company has approached M/s.Indian Overseas Bank (IOB) for a further fund of Rs.100 crores for completion of the said project. Though M/s.Indian Overseas Bank (IOB) initially assured them that the further fund would be sanctioned, the said bank did not extend payment to the petitioner for more than a year and finally the bank dropped the proceedings of

sanctioning the said loan, without assigning any reasons. Due to the inordinate delay, on the part of M/s.Indian Overseas Bank (IOB), the project has been stalled for some time for want of further fund, which led to complications in repayment.

5. By then, the first petitioner company had repaid a sum of Rs.48.26 Crores, as against a sum of Rs.60 Crores borrowed from the banks, which establishes the bona fides of the first petitioner company in discharging their liabilities. When the first petitioner company approached the above said banking institutions for One Time Settlement (OTS) in March 2014 by offering Rs.19 Crores to M/s.Indian Overseas Bank (IOB) and Rs.21.00 Crores to M/s.Oriental Bank of Commerce (OBC), respectively, the banking institutions refused to consider the same, but immediately proceeded to assign the debt to a third party, namely, M/s.Asset Reconstruction Company (India) Limited, (ARCIL), Mumbai, 2nd respondent herein. Prior to the assignment, M/s.Indian Overseas Bank (IOB) has filed Original Application before DRT-1 in O.A.No.430/2014, under Section 19(1) of Recovery of Debts Due to Bank and Financial Institution Act, 1993 on 04.06.2012, for recovery of a sum of Rs.22,77,65,247/- together with interest @ 17.50 % with monthly rests from

04.06.2012. The guarantor for the financial facilities availed by the petitioner, has also filed S.A.No.113/2012 before the DRT-1, Chennai and has obtained a status quo order by which M/s.Indian Overseas Bank (IOB) was restrained from alienating the properties given by the debtor/guarantor as security.

6. The petitioners have contended that as per the guidelines of the Reserve Bank of India, OTS has to be placed before the Board and the Board has to take a decision, on the said OTS Proposal before the same is rejected. The said procedure was not followed, but M/s.Indian Overseas Bank (IOB) has increased only Rs.35 Lakhs from the petitioner company's offer and assigned the debt in favour of the said 2nd respondent, which was challenged by the petitioner Company by filing a Writ Petition No.8351 of 2016, before this Court and a Hon'ble Division Bench of this Court directed the petitioner to take all possible defence before the DRT-I and also seek for OTS and further held that it is for the Tribunal to consider the same and pass orders with one month from the said date and directed status quo to be maintained till one month. A similar Order was passed in W.P.No.7953/2014, dated 21.03.2014.

7. The first petitioner company has filed S.I.A.No.72/2016 in S.A.No.113/2012, seeking for a relief to set aside the assignment of the petitioner's debt by the M/s.Indian Overseas Bank (IOB) to the 2nd respondent, by assignment deed dated 10-02-2015 and consequently, to direct M/s.Indian Overseas Bank (IOB), ARCIL to accept the offer of the petitioner for payment of Rs.19,35,40,503/- together with interest @ 9% per annum from 10.02.2015. The Tribunal passed an order, dated 28-07-2016 in S.A.No.113/2012 observing that it was open to the petitioner company to approach the 2nd respondent with appropriate representation of settlement of outstanding dues under OTS and consider the representation for OTS given by the petitioner.

8. When the petitioners sent a proposal to the 2nd respondent for consideration, without following the procedure laid down by RBI, the 2nd respondent simply replied, stating that it is not acceptable to them. In the meanwhile, the DRT-II, has passed an order in O.A.No.430/2014 (filed by M/s.Indian Overseas Bank (IOB), directing the petitioner to pay the a sum of Rs.22 Crores with simple interest @ 12% per annum. Therefore, the petitioner has filed the Review Petition before the DRT-II pointing out the patent error in the said order and disclosing that the actual principal amount payable by the

petitioner was only Rs.19.35 crores and prayed for correction of the same and further for reduction of interest awarded from 12% to 9% per annum. The said Review Petition is pending before the DRT-II for determination of the quantum of liability of the petitioner.

9. The second respondent has also filed O.A.No.29 of 2016, against the claim of Oriental Bank of Commerce (OBC), before DRT-I and the computation of debt prayed for therein, is pending disposal. When the matter stood thus, the 2nd respondent has filed an application to initiate Corporate Insolvency Resolution under Section 7 of the Bankruptcy Code 2016 r/w. Bankruptcy (Application to Adjudicating Authority Rules, 2016) in Application No.603/2017, on 05.09.2017 before the National Company Law Tribunal, Chennai Bench, the first respondent herein.

10. The petitioner company has arranged the required funds through a well reputed lender, who is willing to pay the OTS amount directly to the 2nd respondent on behalf of the petitioner company, but the 2nd respondent has refused to give any offer in spite of negotiations having taken place on several occasions, which resulted in the delay of the entire settlement process.

11. The principal outstanding of M/s.Indian Overseas Bank (IOB) and Oriental Bank of Commerce (OBC), which has been assigned to the said creditor, while executing the Assignment Deed was Rs.19.35 Crores and Rs.22.35 Crores respectively, and the petitioner company is willing to settle the above said principal along with simple interest as prescribed by the Guidelines of Reserve Bank of India. Since the petitioner Company is willing to pay the outstanding amounts to the 2nd respondent on the determination of the quantum of the same by the DRT, the application filed by the 2nd respondent before the National Company Law Tribunal is totally unnecessary and has no merit.

12. When the proceedings before the Debt Recovery Tribunal is pending adjudication for determination of quantum of liability of the petitioner parallel proceedings before the NCLT will defeat the purpose of the said proceedings. More so, when the applicant before NCLT, has relied on the said proceedings, as an evidence for default. When proceedings with respect to computation of debt is pending adjudication before the DRT, approaching NCLT would amount to forum shopping. Though NCLT is not technically prevented under law from proceeding by virtue of Section 238 of the Insolvency and

Bankruptcy Code, 2016, as the issue involves, questions of fundamental rights to business and property, proceedings initiated are violative of Articles 14, 19 and 300-A of the Constitution of India.

13. According to the petitioners, the scheme of the 2016 code is such that, it divests the Directors and shareholders of any authority over the Company which they run, and vests it with the Creditors. The business of the company and its assets are indirectly held by and belong to the shareholders and they have a right to property and do business. When there is a dispute on the quantification of the amount to be repaid and when the petitioner is willing to repay the debt to the 2nd respondent, approaching NCLT, is to strip him off the right to do business, which is violative of fundamental rights.

14. The 2nd respondent is promoted by various Public and Private Sector Banks and therefore has substantial shareholding, vested with the State. Hence, the 2nd Respondent has a duty to act fair. In the above circumstances the petitioner has filed these writ petitions on the following grounds:

"(i) Action of the 2nd respondent in initiating parallel proceedings before the DRT and CLT, especially when adjudication in the former is pending is arbitrary and unfair.

When a person chooses a forum and is prosecuting a remedy, he is estopped from initiating any other proceeding conflicting the same. The action of the 2nd Respondent will also amount to forum shopping.

(ii) The action of the 2nd respondent in resorting to initiating proceedings against the petitioner before the National Company Law Tribunal to initiate Corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016, when the petitioner is ready and willing to pay the outstanding amounts to the 2nd respondent after determination of the same by the DRT is arbitrary and the very application filed by the 2nd respondent is not bonafide and an abuse of process.

(iii) The 1st petitioner has preferred a Review petition pointing out errors in adjudication amount and in the circumstances, if the NCLT proceeds to issue a moratorium, then the proceedings will come to a standstill and any negotiation will take place upon erroneous premise.

(iv) Orders have been passed by the Division Bench of this Court in W.P.No.7953/2014, dated 21.03.2014 and W.P.No.8351/2016, dated 28.06.2017, directing the petitioner to approach the Debt Recovery Tribunal to work out the remedies and pursuant to the orders of this Court the DRT has been adjudicating the claims of the petitioner company. In such circumstances proceedings before DRT should work themselves

out and any action to the contrary will conflict with the Orders of this Court.

(v) The Directors and shareholders of the company are affected parties. They are entitled to their rights of business and ownership which are constitutionally protected rights under Art 19(1)(g) and 300 A. Admission of the petition under section 7 and consequential appointment of an. insolvency professional will deny the valuable rights of the petitioners and other share holder and other directors of the 1st petitioner their right to manage and have a say in the repayment of debt and running of the company. It is submitted that when a person is willing to repay and making efforts to pay, he is entitled to a fair opportunity and cannot be striped of his rights of management of his property .

(vi) The appointment of Insolvency Professional and Moratorium, will effectively take all the Directors and shareholders out of the picture and they would not be able to participate in negotiation and take steps to repay. The willingness of the party and bonafide efforts are valid consideration in putting off the proceedings under the Insolvency and Bankruptcy Code.

15. Heard Mr.Niranjan Rajagopalan, learned counsel for the petitioner and perused the materials available on record.

16. Before advertizing to the submissions, let us have a cursory look, at the statement of objects and reasons, for enacting the Insolvency and Bankruptcy Code, 2016, as follows:

"There is no single law in India that deals with insolvency and bankruptcy. Provisions relating to insolvency and bankruptcy for companies can be found in the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debt Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act, 2013. These statutes provide for creation of multiple fora such as the Board for Industrial and Financial Reconstruction (BIFR), Debt Recovery Tribunal (DRT) and National Company Law Tribunal (NCLT) and their respective Appellate Tribunals. Liquidation of companies is handled by the High Courts. Individual bankruptcy and insolvency is dealt with under the Presidential Towns Insolvency Act 1909 and the Provincial Insolvency Act, 1920 and is dealt with by the courts. The existing framework for insolvency and bankruptcy is inadequate, ineffective and results in undue delays in resolution, and therefore the proposed legislation.

2. The objective of the Insolvency and Bankruptcy Code, 2015 is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for

maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of government dues and to establish an Insolvency and Bankruptcy Fund, and matters connected therewith or incidental thereto. An effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship. It would also improve ease of doing business, and facilitate more investments leading to higher economic growth and development.

3. The Code seeks to provide for designating the NCLT and DRT as the Adjudicating Authorities for corporate persons and firms and individuals, respectively, for resolution of insolvency, liquidation and bankruptcy. The Code separates commercial aspects of insolvency and bankruptcy proceedings from judicial aspects. The Code also seeks to provide for establishment of the Insolvency and Bankruptcy Board of India ("Board") for regulation of insolvency professionals, insolvency professional agencies and information utilities. Till the Board is established, the Central Government shall exercise all powers of the Board or designate any financial sector regulator to exercise the powers and functions of the Board. Insolvency professionals will assist in completion of insolvency resolution, liquidation and bankruptcy proceedings envisaged in the Code. Information Utilities would collect, collate, authenticate and disseminate financial information to facilitate

such proceedings. The Code also proposes to establish a fund to be called the Insolvency and Bankruptcy Fund of India for the purposes specified in the Code.

4. The Code seeks to provide for amendments in the Indian Partnership Act, 1932, the Central Excise Act, 1944, Customs Act, 1962, Income-Tax Act, 1961, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Finance Act, 1994, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, the Payment and Settlement Systems Act, 2007, the Limited Liability Partnership Act, 2008, and the Companies Act, 2013."

17. Insolvency and Bankruptcy Code, 2016 (31 of 2016), is an Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.

18. As per Section 1(3), the Code shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. Proviso to the said Section states that different dates may be appointed for different provisions of this Code and any reference in any such provision to the commencement of this Code shall be construed as a reference to the commencement of that provision.

19. Sub-Section (7) of Section 5 of the Code, defines "corporate person", as a company as defined in clause (20) of section 2 of the Companies Act, 2013, a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider. "Insolvency Professional Agency", defined in Sub-Section (20) of Section 5 of the Code, means, any person registered with the Board under section 201 as an insolvency professional agency.

20. In the case on hand, initiation of corporate insolvency resolution

process, has been made by the Asset Reconstruction Company (India) Limited, (ARCIL), a financial creditor. Chapter II of the Insolvency and Bankruptcy Code, 2016, deals with Corporate Insolvency Resolution Process. Section 6 of the Code, deals with persons, who may initiate corporate insolvency resolution process and the said Section is extracted hereunder:

"Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter."

21. Section 7 of the Code deals with initiation of corporate insolvency resolution process by a financial creditor and the same reads as follows:

"7. (1) A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with

such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

(5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a

notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate—

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be."

22. Other sections in Chapter II of the Code, 2016, deal as hereunder:

Section	Dealing with
8	Insolvency resolution by operational creditor
9	Application for initiation of corporate insolvency resolution process by operational creditor.
10	Initiation of corporate insolvency resolution process by corporate applicant.
11	Persons not entitled to make application.
12	Time-limit for completion of insolvency resolution process.
13	Declaration of moratorium and public announcement.
14	Moratorium.
15	Public announcement of corporate insolvency resolution process.
16	Appointment and tenure of interim resolution professional.

Section	Dealing with
17	Management of affairs of corporate debtor by interim resolution professional
18	Duties of interim resolution professional.
19	Personnel to extend cooperation to interim resolution professional.
20	Management of operations of corporate debtor as going concern.
21	Committee of creditors.
22	Appointment of resolution professional.
23	Resolution professional to conduct corporate insolvency resolution process.
24	Meeting of committee of creditors.
25	Duties of resolution professional.
26	Application for avoidance of transactions not to affect proceedings.
27	Replacement of resolution professional by committee of creditors
28	Approval of committee of creditors for certain actions.
29	Preparation of information memorandum.
30	Submission of resolution plan.
31	Approval of resolution plan.
32	Appeal.

23. Considering the averments to the supporting affidavit, suffice to extract what Section 14 of the Code, states on Moratorium,

"(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following,

namely:—

(a) 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;

(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;

(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.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) 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) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process: Time-limit for completion of insolvency resolution process. Declaration of moratorium and public announcement.

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

24. Thus, Chapter II of the Code, 2016, sets out the measures to be taken in the process of corporate insolvency resolution. As per Sub-Section (5) of Section 7, where the Adjudicating Authority is satisfied that,

"(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application."

25. Though Mr.Niranjan Rajagopalan, learned counsel for the petitioner submitted that applications filed under Section 7 of the Code, are admitted mechanically by the National Company Law Tribunal and the moment, such application is admitted, the corporate insolvency resolution process comes into

operation and in such circumstances, the Company, sought to be declared as insolvent or the directors, as the case may be, has no say, except to go by the procedure set out and therefore, intervention of the said process is required, we are not inclined to accept the said contention, for the reason that if the adjudicating authority is satisfied that default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application. Proviso to Section 7(5)(b) also states that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

26. As per sub-Section (7) of Section 7 of the Code, 2016, (7) The Adjudicating Authority shall communicate the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor and also the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be. According to the petitioner, proceedings initiated under the SARFAESI Act, 2002, have to be continued. Submission of the learned counsel for the petitioner, cannot be countenanced, in the light of the statement of objects

and reasons of the Code, 2016, extracted supra.

27. Section 60 of Chapter VI of the Insolvency and Bankruptcy Code, states about the adjudicating authority for corporate persons and the same reads as follows:

"60. (1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located.

(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or bankruptcy of a personal guarantor of such corporate debtor shall be filed before such National Company Law Tribunal.

(3) An insolvency resolution process or bankruptcy proceeding of a personal guarantor of the corporate debtor pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

(4) The National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated

under Part III of this Code for the purpose of sub-section (2).

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

(6) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded."

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28. As per sub-Section (4) of Section 60 of the Code, the National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of this Code for the purpose of sub-

section (2) of Section 60 of the Code.

29. Section 61 of the Code deals with the appeals and appellate authority and it reads thus,

"61. (1) Notwithstanding anything to the contrary contained under the Companies Act 2013, any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal: Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.

(3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:—

(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;

(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;

(iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;

(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or

(v) the resolution plan does not comply with any other criteria specified by the Board.

(4) An appeal against a liquidation order passed under section 33 may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order."

30. As per Section 62(1) of the Code, any person aggrieved by an order of the National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under this Code within forty-five days from the date of receipt of such order. As per Section 63, no civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code.

31. Section 64 of the Code deals with expeditious disposal of the applications and the same is extracted hereunder:

"64. (1) Where an application is not disposed of or an order is not passed within the period specified in this Code, the National Company Law Tribunal or the National Company Law Appellate

Tribunal, as the case may be, shall record the reasons for not doing so within the period so specified; and the President of the National Company Law Tribunal or the Chairperson of the National Company Law Appellate Tribunal, as the case may be, may, after taking into account the reasons so recorded, extend the period specified in the Act but not exceeding ten days.

(2) No injunction shall be granted by any court, tribunal or authority in respect of any action taken, or to be taken, in pursuance of any power conferred on the National Company Law Tribunal or the National Company Law Appellate Tribunal under this Code."

32. Part IV of the Code deals with regulation of insolvency professional, agencies and information utilities. Chapter II of the said Part deals with the powers and functions of the Board. Section 196 of the Code is extracted hereunder:

"196. (1) The Board shall, subject to the general direction of the Central Government, perform all or any of the following functions namely:—

(a) register insolvency professional agencies, insolvency professionals and information utilities and renew, withdraw, suspend or cancel such registrations;

(b) specify the minimum eligibility requirements for registration of insolvency professional agencies, insolvency

professionals and information utilities;

(c) levy fee or other charges for the registration of insolvency professional agencies, insolvency professionals and information utilities;

(d) specify by regulations standards for the functioning of insolvency professional agencies, insolvency professionals and information utilities;

(e) lay down by regulations the minimum curriculum for the examination of the insolvency professionals for their enrolment as members of the insolvency professional agencies;

(f) carry out inspections and investigations on insolvency professional agencies, insolvency professionals and information utilities and pass such orders as may be required for compliance of the provisions of this Code and the regulations issued hereunder;

(g) monitor the performance of insolvency professional agencies, insolvency professionals and information utilities and pass any directions as may be required for compliance of the provisions of this Code and the regulations issued hereunder;

(h) call for any information and records from the insolvency professional agencies, insolvency professionals and information utilities;

(i) publish such information, data, research studies and other information as may be specified by regulations;

(j) specify by regulations the manner of collecting and storing data by the information utilities and for providing access to

such data;

(k) collect and maintain records relating to insolvency and bankruptcy cases and disseminate information relating to such cases;

(l) constitute such committees as may be required including in particular the committees laid down in section 197;

(m) promote transparency and best practices in its governance;

(n) maintain websites and such other universally accessible repositories of electronic information as may be necessary;

(o) enter into memorandum of understanding with any other statutory authorities;

(p) issue necessary guidelines to the insolvency professional agencies, insolvency professionals and information utilities;

(q) specify mechanism for redressal of grievances against insolvency professionals, insolvency professional agencies and information utilities and pass orders relating to complaints filed against the aforesaid for compliance of the provisions of this Code and the regulations issued hereunder;

(r) conduct periodic study, research and audit the functioning and performance of to the insolvency professional agencies, insolvency professionals and information utilities at such intervals as may be specified by the Board;

(s) specify mechanisms for issuing regulations, including the conduct of public consultation processes before notification of any

regulations;

(t) make regulations and guidelines on matters relating to insolvency and bankruptcy as may be required under this Code, including mechanism for time bound disposal of the assets of the corporate debtor or debtor; and

(u) perform such other functions as may be prescribed.

(2) The Board may make model bye-laws to be adopted by insolvency professional agencies which may provide for—

(a) the minimum standards of professional competence of the members of insolvency professional agencies;

(b) the standards for professional and ethical conduct of the members of insolvency professional agencies;

(c) requirements for enrolment of persons as members of insolvency professional agencies which shall be non-discriminatory;

Explanation.—For the purposes of this clause, the term "non-discriminatory" means lack of discrimination on the grounds of religion, caste, gender or place of birth and such other grounds as may be specified;

(d) the manner of granting membership;

(e) setting up of a governing board for internal governance and management of insolvency professional agency in accordance with the regulations specified by the Board;

(f) the information required to be submitted by members including the form and the time for submitting such information;

(g) the specific classes of persons to whom services shall be

provided at concessional rates or for no remuneration by members;

(h) the grounds on which penalties may be levied upon the members of insolvency professional agencies and the manner thereof;

(i) a fair and transparent mechanism for redressal of grievances against the members of insolvency professional agencies;

(j) the grounds under which the insolvency professionals may be expelled from the membership of insolvency professional agencies;

(k) the quantum of fee and the manner of collecting fee for inducting persons as its members;

(l) the procedure for enrolment of persons as members of insolvency professional agency;

(m) the manner of conducting examination for enrolment of insolvency professionals;

(n) the manner of monitoring and reviewing the working of insolvency professional who are members;

(o) the duties and other activities to be performed by members;

(p) the manner of conducting disciplinary proceedings against its members and imposing penalties;

(q) the manner of utilising the amount received as penalty imposed against any insolvency professional.

(3) Notwithstanding anything contained in any other law for

the time being in force, while exercising the powers under this Code, the Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

(i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of any person at any place;

(iv) issuing of commissions for the examination of witnesses or documents."

33. As per Section 231 of the Code, 2016, no civil court shall have jurisdiction in respect of any matter in which the Adjudicating Authority is empowered by, or under, this Code to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such Adjudicating Authority under this Code.

34. As per Section 238, 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.

35. In exercise of the powers conferred by clauses (c), (d), (e) and (f) of sub-section (1) of section 239 read with sections 7, 8, 9 and 10 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government have framed the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Rule 4 deals with the application by financial creditor and it reads as follows:

(1) A financial creditor, either by itself or jointly, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 7 of the Code in Form 1, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(2) Where the applicant under sub-rule (1) is an assignee or transferee of a financial contract, the application shall be accompanied with a copy of the assignment or transfer agreement and other relevant documentation to demonstrate the assignment or transfer. (3) The applicant shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the corporate debtor."

36. Rule 8 speaks about withdrawal of application and the same reads as follows:

"The Adjudicating Authority may permit withdrawal of the application made under rules 4, 6 or 7, as the case may be, on a request made by the applicant before its admission."

37. In exercise of the powers conferred under sections 58, 196 and 208 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India has framed the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017. Chapter II speaks about Eligibility for resolution professional, Access to books, Extortionate credit transaction and relevant regulations are extracted hereunder:

"3. Eligibility for resolution professional. (1) An insolvency professional shall be eligible to be appointed as a resolution professional for a fast track process of a corporate debtor if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor.

Explanation- A person shall be considered independent of the corporate debtor, if he -

(a) is eligible to be appointed as an independent director on the board of the corporate debtor under section 149 of the Companies Act, 2013 (18 of 2013), where the corporate debtor is a company;

(b) is not a related party of the corporate debtor; or

(c) has not been an employee or proprietor or a partner:

1) of a firm of auditors or company secretaries in practice or cost auditors of the corporate debtor; or

2) of a legal or a consulting firm, which has or had any transaction with the corporate debtor amounting to ten per cent or more of the gross turnover of such firm, at any time in the preceding three years.

(2) An insolvency professional shall not be eligible to be appointed as a resolution professional if he, or the insolvency professional entity of which he is a partner or director, is under a restraint order of the Board.

(3) An insolvency professional shall make disclosures at the time of his appointment and thereafter in accordance with the Code of Conduct.

(4) An insolvency professional shall not continue as a resolution professional if the insolvency professional entity of which he is a director or a partner, or any other partner or director of such insolvency professional entity represents any other

stakeholders in the same fast track process.

4. Access to books. Without prejudice to section 17(2)(d), the interim resolution professional may access the books of account, records and other relevant documents and information, to the extent relevant for discharging his duties under the Code, of the corporate debtor held with-

- (a) depositories of securities;
- (b) professional advisors of the corporate debtor;
- (c) information utilities;
- (d) other registries that record the ownership of assets;
- (e) members, promoters, partners, board of directors and joint venture partners of the corporate debtor; and
- (f) contractual counterparties of the corporate debtor.

5. Extortionate credit transaction. A transaction shall be considered an extortionate credit transaction under section 50(2) where the terms:

- (a) require the corporate debtor to make exorbitant payments in respect of the credit provided; or
- (b) are unconscionable under the principles of law relating to contracts."

38. Chapter III speaks about public announcement and Regulation 6

reads thus,

"6. Public announcement. (1) An insolvency professional shall make a public announcement immediately on his appointment as

an interim resolution professional. Explanation: 'Immediately' means not later than three days from the date of his appointment.

(2) The public announcement referred to in sub-regulation (1) shall -

(a) be in Form A;

(b) (i) be published in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the interim resolution professional, the corporate debtor conducts material business operations;

(ii) be hosted on the website, if any, of the corporate debtor; and

(iii) be hosted on the website, if any, designated by the Board for the purpose,

(c) provide the last date for submission of proofs of claim, which shall be ten days from the date of appointment of the interim resolution professional.

(3) The applicant shall bear the expenses of the public announcement which may be reimbursed by the committee to the extent it ratifies them.

Explanation-The expenses on the public announcement shall not form part of fast track process costs."

39. Chapter IV of the Regulations, 2017, deals with proof of claims.

Relevant Regulations in the said Chapter read as follows:

"8. Claims by financial creditors:- (1) A financial creditor shall submit proof of claim to the interim resolution professional in electronic form in Form C:

Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.

(2) The existence of debt due to the financial creditor may be proved on the basis of -

(a) the records available with an information utility, if any;
or

(b) other relevant documents, including -

(i) a financial contract supported by financial statements as evidence of the debt;

(ii) a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;

(iii) financial statements showing that the debt has not been repaid; or

(iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.

10. Substantiation of claims:- The interim resolution professional or the resolution professional, as the case may be, may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim.

12. Submission of proof of claims:- (1) Subject to sub-regulation (2), a creditor shall submit proof of his claim on or before the last date mentioned in the public announcement.

(2) A creditor, who failed to submit proof of claim within the time stipulated in the public announcement, may submit proof of such claim to the interim resolution professional or the resolution professional, as the case may be, till the approval of a resolution plan by the committee.

(3) Where the creditor in sub-regulation (2) is a financial creditor, it shall be included in the committee from the date of admission of such claim:

Provided that such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion.

13. Verification of claims:- (1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the fast track commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

(2) The list of creditors shall be -

(a) available for inspection by the persons who submitted proofs of claim;

(b) available for inspection by members, partners, directors

and guarantors of the corporate debtor;

- (c) displayed on the website, if any, of the corporate debtor;
- (d) filed with the Adjudicating Authority; and
- (e) presented at the first meeting of the committee.

14. Determination of amount of claim:- (1) Where the amount claimed by a creditor is not precise or cannot be determined due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.

(2) The interim resolution professional or the resolution professional, as the case may be, shall revise the amount of claims admitted, including the estimates of claims made under sub-regulation (1), as soon as may be practicable, when he receives additional information warranting such revision."

40. Regulation 16 of Chapter V, deals with Committee with only operational creditors and the same is extracted hereunder:

"(1) Where the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor, the committee shall be set up in accordance with this Regulation.

(2) The committee formed under this Regulation shall consist of following members: -

(a) eighteen largest operational creditors by value:

Provided that if the number of operational creditors is less than eighteen, the committee shall include all such operational creditors;

(b) one representative elected by all workmen other than those workmen included under sub-clause (a);

and (c) one representative elected by all employees other than those employees included under sub-clause (a).

(3) Every member of the committee formed under this Regulation shall have voting rights in proportion of the debt due to such creditor or debt represented by such representative, as the case may be, to the total debt.

Explanation - For the purposes of this sub-regulation, 'total debt' means the sum of-

(a) the amount of debt due to the creditors listed in sub-regulation 2(a);

(b) the amount of the aggregate debt due to workmen under sub-regulation 2(b); and

(c) the amount of the aggregate debt due to employees under sub-regulation 2(c).

(4) A committee formed under this Regulation and its members shall have the same rights, powers, duties and obligations as a committee comprising financial creditors and its members, as the case may be."

41. Reading of the provisions of the Insolvency and Bankruptcy Code, 2016, Rules and Regulations framed, makes it clear that the said Code is a comprehensive Code, dealing with the matters, relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.

42. In **M/s. Innoventive Industries Ltd., v. ICICI Bank** reported in **2017 SCC Online 1025**, the Hon'ble Supreme Court, dealt with the repugnancy in Insolvency and Bankruptcy Code, 2016 and Maharashtra Act, regarding "moratorium". Referring to Article 254 of the Constitution of India and a catena of case laws, the Hon'ble Supreme Court, held thus,

"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning nonpayment of a debt once it becomes due and payable, which includes non-payment of

even part thereof or an instalment amount. For the meaning of “debt”, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5 (21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor - it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under subsection (7), the adjudicating authority shall then communicate the order passed to the financial

creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in subsection (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing - i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.

31. The rest of the insolvency resolution process is also very important. The entire process is to be completed within a period of 180 days from the date of admission of the application under Section 12 and can only be extended beyond 180 days for a further period of not exceeding 90 days if the committee of creditors by a voting of 75% of voting shares so decides. It can be seen that time is of essence in seeing whether the corporate body can be put back on its feet, so as to stave off liquidation.

32. As soon as the application is admitted, a moratorium in terms of Section 14 of the Code is to be declared by the adjudicating authority and a public announcement is made stating, inter alia, the last date for submission of claims and the details of the interim resolution professional who shall be vested with the management of the corporate debtor and be responsible for receiving claims. Under Section 17, the erstwhile management of the corporate debtor is vested in an interim resolution professional who is a trained person registered under Chapter IV of the Code. This interim resolution professional is now to manage the operations of the corporate debtor as a going concern under the directions of a committee of creditors appointed under Section 21 of the Act. Decisions by this committee are to be taken by a vote of not less than 75% of the voting share of the financial creditors. Under Section 28, a resolution professional, who is none other than an interim resolution professional who is appointed to carry out the resolution process, is then given wide powers to raise finances,

create security interests, etc. subject to prior approval of the committee of creditors.

33. Under Section 30, any person who is interested in putting the corporate body back on its feet may submit a resolution plan to the resolution professional, which is prepared on the basis of an information memorandum. This plan must provide for payment of insolvency resolution process costs, management of the affairs of the corporate debtor after approval of the plan, and implementation and supervision of the plan. It is only when such plan is approved by a vote of not less than 75% of the voting share of the financial creditors and the adjudicating authority is satisfied that the plan, as approved, meets the statutory requirements mentioned in Section 30, that it ultimately approves such plan, which is then binding on the corporate debtor as well as its employees, members, creditors, guarantors and other stakeholders. Importantly, and this is a major departure from previous legislation on the subject, the moment the adjudicating authority approves the resolution plan, the moratorium order passed by the authority under Section 14 shall cease to have effect. The scheme of the Code, therefore, is to make an attempt, by divesting the erstwhile management of its powers and vesting it in a professional agency, to continue the business of the corporate body as a going concern until a resolution plan is drawn up, in which event the management is handed over under the plan so that the corporate body is able to pay back its debts and get back on its

feet. All this is to be done within a period of 6 months with a maximum extension of another 90 days or else the chopper comes down and the liquidation process begins."

43. During the course of arguments, Mr.Niranjan Rajagopalan, learned counsel for the petitioners submitted that a writ petition has been filed, challenging the Insolvency and Bankruptcy Code, 2016 and that there is no stay. On the above submission, this Court deems it fit to consider few decisions of the Hon'ble Supreme Court, on the presumption of the constitutionality of an enactment,

(i) A Full Bench of the Hon'ble Supreme Court in **Shri Ram Krishna Dalmia v. Shri Justice S.R.Tendolkar** reported in AIR 1958 SC 538 = 1959 SCR 279, has carved out the principles as follows:

"(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the legislature is free to recognise degrees of harm

and may confine its restrictions to those cases where the need is deemed to be the clearest ;

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

(ii) In **Mohd. Hanif Quareshi v. The State of Bihar** reported in **1958 AIR 731**, the Hon'ble Supreme Court observed as follows :-

"The pronouncements of this Court further establish, amongst other things, that there is always a presumption in favour of the constitutionality of an enactment and that the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. The courts, it is accepted, must presume that the legislature understands and

correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation."

(iii) In **Mahant Moti Das v. S.P.Sahi**, the Special Officer In Charge of Hindu Religious Trust & Ors. reported in AIR 1959 SC 942, the Hon'ble Supreme Court, held as follows:

"The decisions of this Court further establish that there is a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional guarantee; that it must be presumed that the legislature understands and correctly appreciates the needs of its own people and that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds; and further that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to

be the clearest....."

(iv) In **State of Uttar Pradesh v. Kartar Singh** reported in AIR 1964 SC 1135, the Constitution Bench of the Hon'ble Supreme Court held that where a party seeks to impeach the validity of a rule on the ground of such rule offending Article 14, the burden is on him to plead and prove infirmity. This Court said :

"....., if the rule has to be struck down as imposing unreasonable or discriminatory standards, it could not be done merely on any apriori reasoning but only as a result of materials placed before the Court by way of scientific analysis. It is obvious that this can be done only when the party invoking the protection of Article 14 makes averments with details to sustain such a plea and leads evidence to establish his allegations. That where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the rules offend Art.

14 the burden is on him to plead and prove the infirmity is too well established to need elaboration. If, therefore, the respondent desired to challenge the validity of the rule on the ground either of its unreasonableness or its discriminatory nature, he had to lay a foundation for it by setting out the facts necessary to sustain such a plea and adduce cogent and convincing evidence

to make out his case, for there is a presumption that every factor which is relevant or material has been taken into account in formulating the classification of the zones and the prescription of the minimum standards to each zone, and where we have a rule framed with the assistance of a committee containing experts such as the one constituted under Section 3 of the Act, that presumption is strong, if not overwhelming... .."

(v) In **A.C. Aggarwal, Sub-Divisional Magistrate, Delhi v. Mst. Ram Kali** reported in **AIR 1968 SC 1**, the Constitution Bench of the Hon'ble Supreme Court reiterated the legal position thus :

".....The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, and its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds."

(vi) In **Pathumma and others v. State of Kerala** reported in **AIR 1978 SC 771 = 1978 SCR (2) 537**, a Constitutional Bench of the Hon'ble Supreme Court held as follows:

"It is obvious that the legislature is in the best position to understand and appreciate the needs of the people as enjoined by

the Constitution to bring about social reforms for the upliftment of the backward and the weak or sections of the society and for the improvement of the lot of poor people. The Court will therefore, interfere in this process only when the statute is clearly violative of the right conferred on the citizen under Part III of the Constitution or when the Act is beyond the legislative competence of the legislature or such other grounds. It is for this reason that the Courts have recognised that there is always a presumption in favour of the constitutionality of a statute and the onus to prove its invalidity lies on the party which assails the same."

(vii) In **M.L.Kamra v. Chairman-Cum-Managing Director, New India Assurance Co. Ltd.**, reported in **1992 AIR 1072 : 1992 SCR (1) 220**, the Hon'ble Supreme Court held as follows:

"It is settled law that there is a presumption of constitutionality of the rule. The court ought not to interpret the statutory provisions, unless compelled by their language, in such a manner as would involve its unconstitutionality, Since the legislature of the rule making authority is presumed to enact a law which does not contravene or violate the constitutional provisions. Therefore, there is a presumption in favour of constitutionality of a legislation or statutory rule unless ex facie it violates the fundamental rights guaranteed under Part III of the constitution."

(viii) In **Peoples Union for Civil Liberties v. Union of India** reported in **2004 (2) SCC 476**, the Hon'ble Supreme Court held that a statute carries with it a presumption of constitutionality and such a presumption extends also to a law which has been enacted for imposing reasonable restrictions in the fundamental right. It is further held that a further presumption may also be drawn that the statutory authority would not exercise the power arbitrarily.

(ix) In **Karnataka Bank Limited v. State of Andhra Pradesh** reported in **(2008) 2 SCC 254**, the Hon'ble Supreme Court held as follows:

"19. The rules that guide the constitutional courts in discharging their solemn duty to declare laws passed by a legislature unconstitutional are well known. There is always a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt; "to doubt the constitutionality of a law is to resolve it in favour of its validity". Where the validity of a statute is questioned and there are two interpretations, one of which would make the law valid and the other void, the former must be preferred and the validity of law upheld. In pronouncing on the constitutional validity of a statute, the court is not concerned with the wisdom or unwisdom, the justice or injustice of the law. If that

which is passed into law is within the scope of the power conferred on a legislature and violates no restrictions on that power, the law must be upheld whatever a court may think of it. (See *State of Bombay v. F.N.Balsara* [AIR 1951 SC 318])”

(x) In **Government Of Andhra Pradesh & Ors vs Smt.P.Laxmi Devi** reported in **2008 (4) SCC 720**, the Hon'ble Supreme Court has considered few decisions, on the presumption in favour of the constitutionality, as follows:

"58. The U.S. Supreme Court enunciated the principle that there is a presumption in favour of the constitutionality of Statute, and the burden is always upon the person who attacks it to show that there has been a clear transgression of a constitutional provision. This view was adopted by the Constitution Bench of this Court in **Charanjit Lal Chowdhury v. Union of India and others** [AIR 1951 SC 41 (para 10)], which observed:

"Prima facie, the argument appears to be a plausible one, but it requires a careful examination, and while examining it, two principles have to be borne in mind :

(1) that a law may be constitutional even though it relates to a single individual, in those cases where on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(2) that it is the accepted doctrine of the American Courts, which I consider to be well-founded on principle, that the

presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. A clear enunciation of this latter doctrine is to be found in **Middleton vs. Texas Power and L. Company, (248 U.S. 152 and 157)**, in which the relevant passage runs as follows :

It must be presumed that a legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by expression and that its discriminations are based upon adequate grounds." and this view has been consistently followed thereafter.

59. Thus in **M/s. B.R. Enterprises vs. State of U.P. and others AIR 1999 SC 1867** this Court observed :

"Another principle which has to be borne in mind in examining the constitutionality of a statute is that it must be assumed that the legislature understands and appreciates the need of the people and the laws it enacts are directed to problems which are made manifest by experience and that the elected representatives assembled in a legislature enact laws which they consider to be reasonable for the purpose for which they are enacted. Presumption is, therefore, in favour of the constitutionality of an enactment, vide **Charanjit Lal Chaowdhury v. Union of India, 1950 SCR 869: AIR 1951 SC 41**); **State of Bombay v. F.N.Bulsara, 1951 SCR 682: (AIR 1951 SC 318)**, **Mahant Moti Das v. S.P.Sahi (AIR 1959 SC 942)**".

The following passage in Seervai, Constitutional Law of India (3rd Edn.) page 119 found approval in **Delhi Transport Corporation v. D.T.C.Mazdoor Congress, 1991 (Supp) 1 SCC 600 : (AIR 1991 SC 101)**. The Court held:

"Seervai in his book Constitutional Law of India (3rd Edn) has stated at page 119 that:

"the courts are guided by the following rules in discharging their solemn duty to declare laws passed by a legislature unconstitutional:

1) There is a presumption in favour of constitutionality and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt; 'to doubt the constitutionality of a law is to resolve it in favour of its validity'.

2) A statute cannot be declared unconstitutional merely because in the opinion of the court it violates one or more of the principles of liberty, of the spirit of the Constitution, unless such principles and that spirit are found in the terms of the Constitution" (emphasis supplied)

60. Similarly in **Union of India v. Elphinstone Spinning and Weaving Co. Ltd., and another, AIR 2001 SC 724** (vide para 9) a Constitution Bench of this Court observed :

"There is always a presumption that the legislature does not exceed its jurisdiction and the burden of establishing that the legislature has transgressed constitutional mandates such as, those relating to fundamental rights is always on the person who

challenges its vires. Unless it becomes clear beyond reasonable doubt that the legislation in question transgresses the limits laid down by the organic law of the Constitution it must be allowed to stand as the true expression of the national will **Shell Company of Australia vs. Federal Commissioner of Taxation, 1931 AC 275 (Privy Council)**. The aforesaid principle, however, is subject to one exception that if a citizen is able to establish that the legislation has invaded his fundamental rights then the State must justify that the law is saved. It is also a cardinal rule of construction that if one construction being given the statute will become ultra vires the powers of the legislature whereas on another construction which may be open, the statute remains effective and operative, then the Court will prefer the latter, on the ground that the legislature is presumed not to have intended an excess of jurisdiction". (emphasis supplied)

61. In **State of Bihar and others v. Bihar Distillery Ltd., AIR 1997 SC 1511** (vide para 18) a Constitution Bench of this Court observed :

"The approach of the Court, while examining the challenge to the constitutionality of an enactment, is to start with the presumption of constitutionality. The Court should try to sustain its validity to the extent possible. It should strike down the enactment only when it is not possible to sustain it. The Court should not approach the enactment with a view to pick holes or to search for defects of drafting, much less inexactitude of language employed.

Indeed, any such defects of drafting should be ironed out as part of the attempt to sustain the validity/constitutionality of the enactment. After all, an Act made by the Legislature represents the will of the people and that cannot be lightly interfered with. The unconstitutionality must be plainly and clearly established before an enactment is declared as void."

62. The same view has been taken by the Constitution Bench of this Court in **Hamdard Dawakhana and another v. Union of India**, AIR 1960 SC 554 (vide para 9) which observed :

"Another principle which has to be borne in mind in examining the constitutionality of a statute is that it must be assumed that the legislature understands and appreciates the need of the people, that the laws it enacts are directed to problems which are made manifest by experience, and that the elected representatives assembled in a legislature enact laws which they consider to be reasonable for the purpose for which they are enacted. Presumption is, therefore, in favour of the constitutionality of an enactment. **Charanjit Lal v. Union of India**, 1950 SCR 869: (AIR 1951 SC 41); **State of Bombay v. F.N.Baulsara**, 1951 SCR 682 at p.708; (AIR 1951 SC 318 at p. 326); AIR 1959 SC 942."

(xi) In **Namit Sharma vs Union Of India** reported in 2013 (1) SCC 745, the Hon'ble Supreme Court, held as follows:

"46. To examine constitutionality of a statute in its correct perspective, we have to bear in mind certain fundamental principles as afore-recorded. There is presumption of constitutionality in favour of legislation. The Legislature has the power to carve out a classification which is based upon intelligible differentia and has rational nexus to the object of the Act. The burden to prove that the enacted law offends any of the Articles under Part III of the Constitution is on the one who questions the constitutionality and shows that despite such presumption in favour of the legislation, it is unfair, unjust and unreasonable."

44. **M/s.Innoventive Industries Ltd.,**'s case (cited supra), has also considered several authoritative pronouncements, under Article 142 of the Constitution of India, dealing with repugnancy between the Central and State laws. At Paragraph 50, the Hon'ble Supreme Court, culled out the preposition of law, as hereunder:

"i) Repugnancy under Article 254 arises only if both the Parliamentary (or existing law) and the State law are referable to List III in the 7th Schedule to the Constitution of India.

ii) In order to determine whether the Parliamentary (or existing law) is referable to the Concurrent List and whether the State law is also referable to the Concurrent List, the doctrine of pith and substance must be applied in order to find out as to where

in pith and substance the competing statutes as a whole fall. It is only if both fall, as a whole, within the Concurrent List, that repugnancy can be applied to determine as to whether one particular statute or part thereof has to give way to the other.

iii) The question is what is the subject matter of the statutes in question and not as to which entry in List III the competing statutes are traceable, as the entries in List III are only fields of legislation; also, the language of Article 254 speaks of repugnancy not merely of a statute as a whole but also “any provision” thereof.

iv) Since there is a presumption in favour of the validity of statutes generally, the onus of showing that a statute is repugnant to another has to be on the party attacking its validity. It must not be forgotten that that every effort should be made to reconcile the competing statutes and construe them both so as to avoid repugnancy - care should be taken to see whether the two do not really operate in different fields qua different subject matters.

v) Repugnancy must exist in fact and not depend upon a mere possibility.

vi) Repugnancy may be direct in the sense that there is inconsistency in the actual terms of the competing statutes and there is, therefore, a direct conflict between two or more provisions of the competing statutes. In this sense, the inconsistency must be clear and direct and be of such a nature as to bring the two Acts or parts thereof into direct collision with

each other, reaching a situation where it is impossible to obey the one without disobeying the other. This happens when two enactments produce different legal results when applied to the same facts.

vii) Though there may be no direct conflict, a State law may be inoperative because the Parliamentary law is intended to be a complete, exhaustive or exclusive code. In such a case, the State law is inconsistent and repugnant, even though obedience to both laws is possible, because so long as the State law is referable to the same subject matter as the Parliamentary law to any extent, it must give way. One test of seeing whether the subject matter of the Parliamentary law is encroached upon is to find out whether the Parliamentary statute has adopted a plan or scheme which will be hindered and/or obstructed by giving effect to the State law. It can then be said that the State law trenches upon the Parliamentary statute. Negatively put, where Parliamentary legislation does not purport to be exhaustive or unqualified, but itself permits or recognises other laws restricting or qualifying the general provisions made in it, there can be said to be no repugnancy.

viii) A conflict may arise when Parliamentary law and State law seek to exercise their powers over the same subject matter. This need not be in the form of a direct conflict, where one says “do” and the other says “don’t”. Laws under this head are repugnant even if the rule of conduct prescribed by both laws is

identical. The test that has been applied in such cases is based on the principle on which the rule of implied repeal rests, namely, that if the subject matter of the State legislation or part thereof is identical with that of the Parliamentary legislation, so that they cannot both stand together, then the State legislation will be said to be repugnant to the Parliamentary legislation. However, if the State legislation or part thereof deals not with the matters which formed the subject matter of Parliamentary legislation but with other and distinct matters though of a cognate and allied nature, there is no repugnancy.

ix) Repugnant legislation by the State is void only to the extent of the repugnancy. In other words, only that portion of the State's statute which is found to be repugnant is to be declared void.

x) The only exception to the above is when it is found that a State legislation is repugnant to Parliamentary legislation or an existing law if the case falls within Article 254(2), and Presidential assent is received for State legislation, in which case State legislation prevails over Parliamentary legislation or an existing law within that State. Here again, the State law must give way to any subsequent Parliamentary law which adds to, amends, varies or repeals the law made by the legislature of the State, by virtue of the operation of Article 254(2) proviso."

45. With reference to the corporate persons, at Paragraphs 52 to 55, in

M/s.Innoventive Industries Ltd.,'s case (cited supra), the Hon'ble Supreme Court held as follows:

"52. On the other hand, the Insolvency and Bankruptcy Code, 2016 is an Act to consolidate and amend the laws relating to reorganization and insolvency resolution, *inter alia*, of corporate persons. Insofar as corporate persons are concerned, amendments are made to the following enactments by Sections 249 to 252 and 255:

"249. Amendments of Act 51 of 1993. The Recovery of Debts due to Banks and Financial Institutions Act, 1993 shall be amended in the manner specified in the Fifth Schedule.

250. Amendments of Act 32 of 1994. The Finance Act, 1994 shall be amended in the manner specified in the Sixth Schedule.

251. Amendments of Act 54 of 2002. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 shall be amended in the manner specified in the Seventh Schedule.

252. Amendments of Act 1 of 2004. The Sick Industrial Companies (Special Provisions) Repeal Act, 2003 shall be amended in the manner specified in the Eighth Schedule.

(253) and (254) xxx xxx xxx

255. Amendments of Act 18 of 2013. The Companies Act, 2013 shall be amended in the manner specified in the Eleventh

Schedule.”

53. It is settled law that a consolidating and amending act like the present Central enactment forms a code complete in itself and is exhaustive of the matters dealt with therein. In **Ravula Subba Rao and another v. The Commissioner of Income Tax, Madras**, (1956) S.C.R. 577, this Court held:

“The Act is, as stated in the preamble, one to consolidate and amend the law relating to income tax. The rule of construction to be applied to such a statute is thus stated by Lord Herschell in *Bank of England v. Vagliano* [(1891) AC 107, 141]:

“I think the proper course is in the first instance to examine the language of the statute, and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably “intended to leave it unaltered...”

We must therefore construe the provisions of the Indian Income-tax Act as forming a code complete in itself and exhaustive of the matters dealt with therein, and ascertain what their true scope is.” (at page 585)

Similarly in **Union of India v. Mohindra Supply Company**, [1962] 3 S.C.R. 497, this Court held:

“The Arbitration Act of 1940 is a consolidating and amending statute and is for all purposes a code relating to arbitration. In dealing with the interpretation of the Indian Succession Act, 1865,

the Privy Council in *Narendra Nath Sircar v. Kamlabasini Desai* [(1896) LR 23, IA 18] observed that a code must be construed according to the natural meaning of the language used and not on the presumption that it was intended to leave the existing law unaltered. The Judicial Committee approved of the observations of Lord Herschell in *Bank of England v. Vagliano Brothers* [(1891) AC 107, 144-145] to the following effect:

“I think the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning uninfluenced by any considerations derived from the previous state of the law, and not to start with enquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view. If a statute, intended to embody in a code a particular branch of the law, is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a statute surely was that on any point specifically dealt with by it the law should be ascertained by interpreting the language used instead of, as before, by roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions....”

The court in interpreting a statute must therefore proceed without seeking to add words which are not to be found in the

statute, nor is it permissible in interpreting a statute which codifies a branch of the law to start with the assumption that it was not intended to alter the pre-existing law; nor to add words which are not to be found in the statute, or “for which authority is not found in the statute”. (at pages 506-508)

In **Joseph Peter v. State of Goa, Daman and Diu**, (1977) 3 SCC 280, this Court dealt with a Goa regulation vis-à-vis the Code of Criminal Procedure. In that context, this Court observed:

“A Code is complete and that marks the distinction between a Code and an ordinary enactment. The Criminal Procedure Code, by that canon, is selfcontained and complete.” (at page 282)

There can be no doubt, therefore, that the Code is a Parliamentary law that is an exhaustive code on the subject matter of insolvency in relation to corporate entities, and is made under Entry 9, List III in the 7th Schedule which reads as under:

“9. Bankruptcy and insolvency”

54. On reading its provisions, the moment initiation of the corporate insolvency resolution process takes place, a moratorium is announced by the adjudicating authority *vide* Sections 13 and 14 of the Code, by which institution of suits and pending proceedings etc. cannot be proceeded with. This continues until the approval of a resolution plan under Section 31 of the said Code. In the interim, an interim resolution professional is appointed under Section 16 to manage the affairs of corporate debtors under Section 17.

55. It is clear, therefore, that the earlier State law is repugnant to the later Parliamentary enactment as under the said State law, the State Government may take over the management of the relief undertaking, after which a temporary moratorium in much the same manner as that contained in Sections 13 and 14 of the Code takes place under Section 4 of the Maharashtra Act. There is no doubt that by giving effect to the State law, the aforesaid plan or scheme which may be adopted under the Parliamentary statute will directly be hindered and/or obstructed to that extent in that the management of the relief undertaking, which, if taken over by the State Government, would directly impede or come in the way of the taking over of the management of the corporate body by the interim resolution professional. Also, the moratorium imposed under Section 4 of the Maharashtra Act would directly clash with the moratorium to be issued under Sections 13 and 14 of the Code. It will be noticed that whereas the moratorium imposed under the Maharashtra Act is discretionary and may relate to one or more of the matters contained in Section 4(1), the moratorium imposed under the Code relates to all matters listed in Section 14 and follows as a matter of course. In the present case it is clear, therefore, that unless the Maharashtra Act is out of the way, the Parliamentary enactment will be hindered and obstructed in such a manner that it will not be possible to go ahead with the insolvency resolution process outlined in the Code. Further, the non-obstante clause contained

in Section 4 of the Maharashtra Act cannot possibly be held to apply to the Central enactment, inasmuch as a matter of constitutional law, the later Central enactment being repugnant to the earlier State enactment by virtue of Article 254 (1), would operate to render the Maharashtra Act void vis-à-vis action taken under the later Central enactment. Also, Section 238 of the Code reads as under:

“Sec. 238. Provisions of this Code to override other laws.-

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.”

It is clear that the later non-obstante clause of the Parliamentary enactment will also prevail over the limited nonobstante clause contained in Section 4 of the Maharashtra Act.

For these reasons, we are of the view that the Maharashtra Act cannot stand in the way of the corporate insolvency resolution process under the Code.”

46. During the course of hearing of the instant writ petition, submission has been made by the learned counsel for the petitioners that a counter affidavit has been filed, to the application under Section 7 of the Code, before the NCLT, opposing the admissibility of the application filed by the 2nd respondent. When admission of the application filed, under Section 7

of the Code, is opposed before the Tribunal, we do not want to record any finding, as to whether, notice is required under Section 7(5)(a), except to observe that the Hon'ble Supreme Court, in **M/s.Innoventive Industries Ltd.**, 's case (cited supra), has held that Insolvency and Bankruptcy Code, 2016, is a comprehensive code.

47. Moment, an application is admitted, under Section 7 of the Insolvency and Bankruptcy Code, 2016, a detailed procedure is set out in the Insolvency and Bankruptcy Code, 2016 and Rules and Regulations have framed. In the light of the decision of the Hon'ble Supreme Court, in **M/s.Innoventive Industries Ltd.**, 's case (cited supra), which has thread analysed the code, the contention that the rights of the Company and its Directors, as well as the share holders, would be stripped of the moment, an application, under Section 7 of the Code, is admitted and that therefore, the whole proceedings by NCLT, require to be stalled, cannot be accepted.

48. Further contention of the petitioners that the action of the 2nd respondent in approaching the NCLT, would amount to forum shopping, also cannot be countenanced, for the reason, Insolvency and Bankruptcy Code,

2016, has been enacted, consolidating various enactments, such as, Sick Industrial Companies (Special Provisions) Act, 1985; the Recovery of Debts Due to the Banks and Financial Institutions Act, 1993; the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; Companies Act, 2003; Insolvency and Bankruptcy law and other laws.

49. As per Section 238 of the Insolvency and Bankruptcy Code, 2016, provisions of the Code shall have the effect, notwithstanding anything inconsistent therewith, contained in any other law, for the time being in force or any instrument, has effect, by virtue of such power. As per Sub-Section (4) of Section 60 of the Code, the National Company Law Tribunal is vested with all the powers of the Debts Recovery Tribunal, as contemplated under Part II of the Code, for the purpose of sub-Section (2) of Section 60 of the Code and therefore, it is for the NCLT to consider, all the materials, and pass appropriate orders.

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50. Code enables a financial creditor to make an application, under Section 7 of the Code, if the adjudicating authority is satisfied that default has not occurred or the application is complete and there is no disciplinary

proceedings pending against the proposed resolution professional, it may, by order, admit such application. Contention of the learned counsel that applications are mechanically admitted, cannot be accepted. Contention that approach of the 2nd respondent to NCLT, amounts to forum shopping is not tenable, as the Code enables filing of an application, notwithstanding the pendency of any proceedings, under the SARFAESI Act, 2002. When the code has not been stayed, the process envisaged in the code, has to be continued, and cannot be restrained.

51. In view of the above discussion and decisions, we are not inclined to entertain the writ petitions and the same are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

(S.M.K., J.) (R.S.K., J.)
17.11.2017

Index: Yes

Internet: Yes

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To

1. The Registrar,
National Company Law Tribunal,
Corporate Bhawan,

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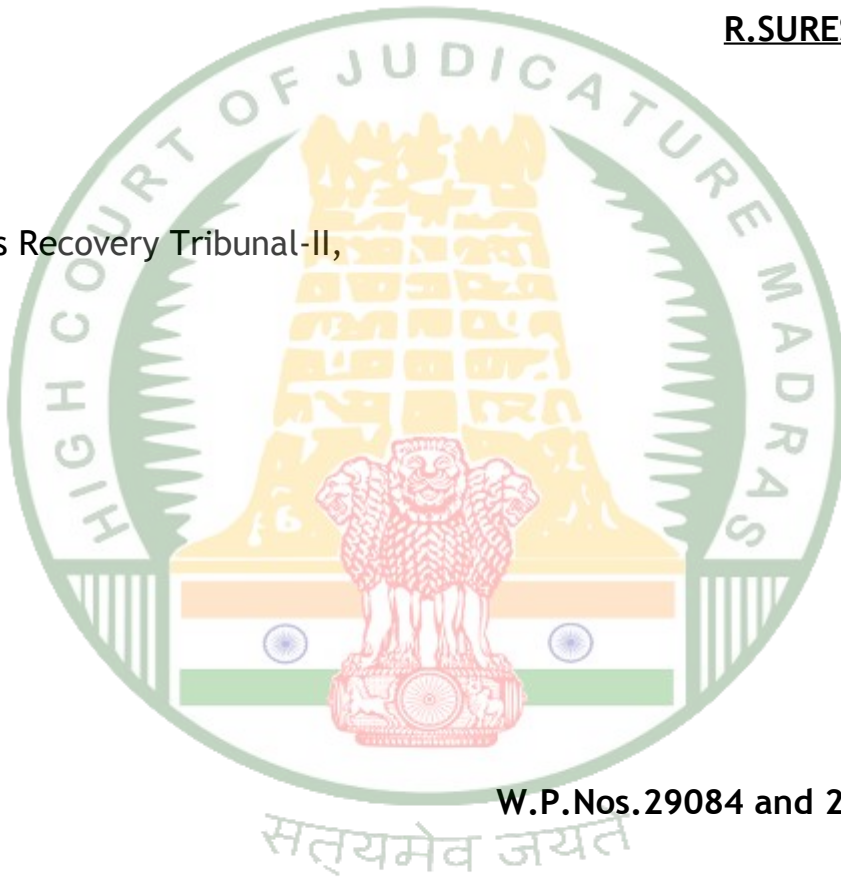
Rajaji Salai, Chennai - 600 001.

2. The Debts Recovery Tribunal-I,
Chennai.

S.MANIKUMAR, J.
AND
R.SURESH KUMAR, J.

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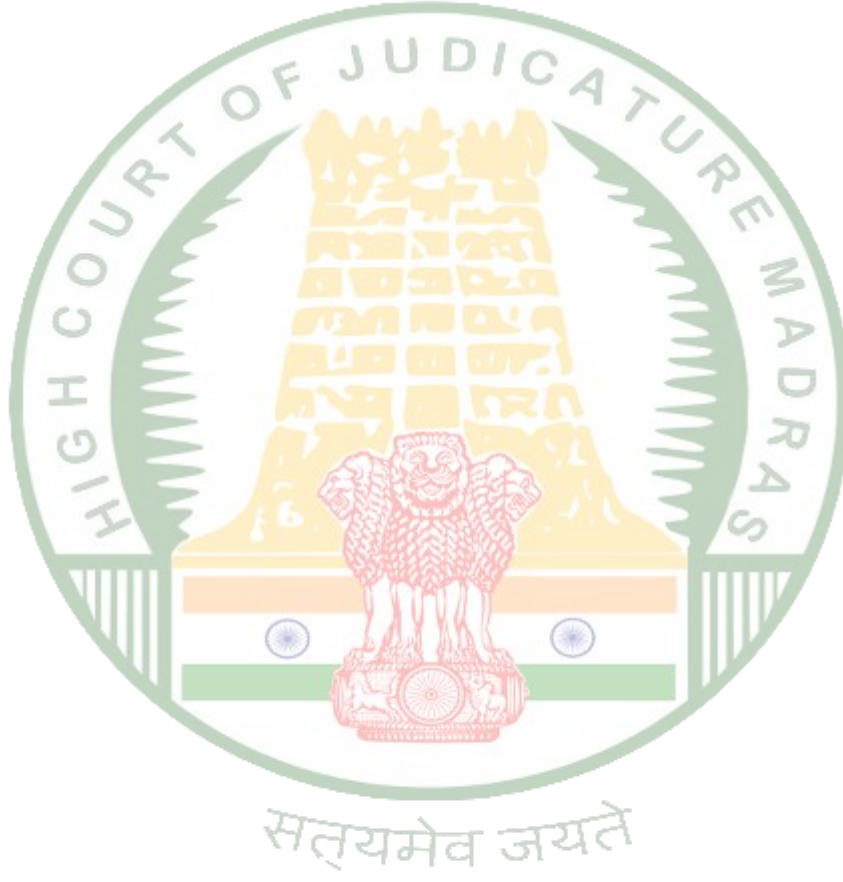
3. The Debts Recovery Tribunal-II,
Chennai.



W.P.Nos.29084 and 29085 of 2017

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