IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9202 of 2018

Metalyst Forgings Ltd. **...Petitioner**

VERSUS

Ramchandra Abasaheb Adhav **...Respondent**

WITH
WRIT PETITION NO. 9203 of 2018

Metalyst Forgings Ltd. **...Petitioner**

VERSUS

Shivaji Ananda Choudhary **...Respondent**

WITH
WRIT PETITION NO. 9205 of 2018

Metalyst Forgings Ltd. **...Petitioner**

VERSUS

Mahendra Laxman Shrikhande **...Respondent**

WITH
WRIT PETITION NO. 9406 of 2018

Metalyst Forgings Ltd. **...Petitioner**

VERSUS

Rajendra Bhimrao Ugale **...Respondent**

WITH

WRIT PETITION NO. 9407 of 2018

Metalyst Forgings Ltd. **...Petitioner**

VERSUS

Sham Tulsiram Dhangare **...Respondent**

WITH
WRIT PETITION NO. 9408 of 2018

Metalyst Forgings Ltd. **...Petitioner**

VERSUS

Sachin Ashok Sonwane **...Respondent**

WITH
WRIT PETITION NO. 9409 of 2018

Metalyst Forgings Ltd. **...Petitioner**

VERSUS

Samadhan Machhindra Ghorpade **...Respondent**

WITH
WRIT PETITION NO. 9410 of 2018

Metalyst Forgings Ltd. **...Petitioner**

VERSUS

Ganesh Dnyandeo Dongare **...Respondent**

WITH
WRIT PETITION NO. 9411 of 2018

Metalyst Forgings Ltd. **...Petitioner**

VERSUS

Vishnu Ramesh Jaybhaye **...Respondent**

WITH
WRIT PETITION NO. 9412 of 2018

Metalyst Forgings Ltd. **...Petitioner**

VERSUS

Vijay Kundlik Thombre **...Respondent**

Mr.Y.R.Marlapalle, Advocate for the petitioner.
Mr.B.R.Kaware, Advocate for the respondents.

(CORAM : Ravindra V.Ghuge, J.)
DATE : 05/10/2018

PER COURT :

1. I have heard the learned Advocates for the respective sides for quite some time. By order dated 13/08/2018, this Court had recorded the submissions of the petitioner as follows :-

"1. Issue notice to respondents, returnable on 10th September, 2018.

2. Learned counsel Mr Marlapalle for petitioner urges for interim relief and refers to that despite placing on record order passed by the National Company Law Tribunal, Mumbai, dated 15th December 2017, learned Labour Court purported to interpret it differently, while the provisions may not support such interpretation. He submits that since time limit is given in order *that has been passed by this court in earlier proceedings in writ petition No. 8598 of 2016 with civil application No. 12615 of 2016 dated 28th September, 2016; the court has declined request under application Exhibit – C-23. He submits that having regard to order of the National Company Law Tribunal pursuant to provisions under section 14 of the Insolvency and Bankruptcy Code, 2016 further prosecution of proceedings before Labour Court may not be possible. He refers to provision of Section 14, reading, thus:*

> *" **14. 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, tribunbal, 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 respecft of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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:

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. "

3. Learned counsel submits that interpretation sought to be placed by the Labour Court may have to be rethought of. He points out Section 17 of the Insolvency and Bankruptcy Code, 2016 and states that from the date of appointment of interim resolution professional, the petitioner has been cut off from management and administration of the firm and it may not be possible for petitioner even if Labour Court proceeds with the matter, to comply with the orders passed.

4. *In view of aforesaid, there shall be ad-interim relief in terms of prayer clause (f) .*

5. *In addition to service through Court process, petitioner shall serve respondents by any legally acceptable private mode of service and file affidavit alongwith tangible proof to that effect within a period of one week before returnable date. In case of failure to serve respondents privately and file affidavit as directed before returnable date, ad-interim relief as has been granted would automatically cease to operate."*

2. Learned Advocate for the petitioner submits that in so far as the pending proceedings before the Labour Court are concerned, they would be covered by Sub Clause A below Section 14(1) of the Insolvency and Bankruptcy Code, 2016. Consequentially, the institution of suits or continuation of pending suits or proceedings against the Corporate debtor would stand prohibited.

3. I find from the definitions under this Code in Section 3(8) that a "Corporate debtor" is defined to mean a Corporate Person who owes a debt to any person. The National Company Law Tribunal (For short, NCLT) while dealing with the matter in between the State Bank of India Vs. Metalyst Forgings Ltd., (this petitioner), in Company

Petition No.1555/1 & BP/2017 has passed an order on 15/12/2017 by which a moratorium has been declared. While setting out the directions for the moratorium, the Tribunal has reproduced Section 14(1) under Clause (a) below paragraph 11 and according to the petitioner, the pending cases of these workers are covered under clause (a), which reads thus :-

> "*That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority ; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets of any legal right or beneficial interest therein ; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*"

4. I find that a cursory glance to clause (a), reproduced above may not clear the picture as to whether the matters pertaining to the workmen under Labour Laws could be covered under the said direction. However, the definition of "corporate debtor" u/s 3(8), the

definition of "creditor" u/s 3(10), the definition of "debt" u/s 3(11) and the definition of "security interest" u/s 3(31) r/w the definition of "operational debt" u/s 5(21) would make it clear that the "operational debt" would include a claim in respect of providing services including employment.

5. For the sake of clarity, the above stated definitions are reproduced hereunder :-

> *Section 3(8)* ***"corporate debtor"*** *means a corporate person who owes a debt to any person ;*
>
> *Section 3(10) "**creditor"**means any person to whom a debt is owed and includes a financial creditor, <u>an operational creditor</u>, a secured creditor, an unsecured creditor and a decree-holder;*
>
> *Section 3(11) "**debt"** means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and <u>operational debt</u>;*
>
> *Section 3(31)* ***"security interest"*** *means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person ;*
>
> *Provided that security interest shall not include a performance guarantee;*
>
> *Section 5(21) "**operational debt"** <u>means a claim in respect of</u>*

> *the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority ;*
> *(Emphasis supplied)*

6. It, therefore, appears that a proceeding against the petitioner in relation to the dispute raised by the respondents/ workmen originating from their orders of termination, is likely to involve payment of back wages or quantification of compensation, if they succeed in proving that their termination would amount to either retrenchment or illegal termination or the same being held to be unsustainable by the Labour Court. The pending proceedings, therefore, would amount to a proceeding against the "corporate debtor", who is defined to be a Corporate Person who owes a debt to any person which could even be a workman as the word "Debt" has been defined to mean a liability or obligation in respect of a claim including an operational debt. "Operational debt" u/s 5(21) would involve a claim in respect of providing of services including employment which would mean that the claim of the respondent/workmen arising out of their employment and non employment would amount to an operational debt against the petitioner.

7. In view of the above, it would appear that the order of imposing a moratorium by the NCLT would affect the pending proceedings before the Labour Court.

8. It is informed that the petitioner/factory at Aurangabad is continuing with its manufacturing activities. The petitioner has not declared a closure and has not suspended its operations inclusive of the manufacturing activities. It is further informed that the issue before the NCLT is likely to be resolved within a period of about 4 to 6 weeks, though a definite outer limit cannot be expressed by the petitioner since the entire process involves financial negotiations between the petitioner and the prospective management.

9. It is, therefore, stated that as soon as there is a change of Management and a resolution is reached before the NCLT, the petitioner, who is the first party employer in the reference proceedings before the Labour Court, would make a statement before the Labour Court and support such statement by placing documents on record to indicate a change of Management. Thereafter, these respondents, who are second party workmen, could request the Labour Court for addition or deletion of parties in view of the Law laid down in <u>M/s Hochtief Gammon Vs. Industrial Tribunal,</u>

Bhubaneshwar, [AIR 1964 SC 1746] and Digambar Madye and others Vs. Union of India and others, [2015(II) CLR 540]

10. In view of the above, these petitions are partly allowed and the impugned orders dated 03/07/2018 in the reference proceedings are quashed and set aside.

11. Needless to state, the Labour Court would not adjourn the proceedings *sine-die* and would post the proceedings in the first week of each month commencing from December 2018 and the petitioner would be obliged to tender a *purshis* in each of these proceedings to update the status of the NCLT proceedings. Once the moratorium is lifted by the NCLT and if there is a change in management, the second party workmen would be permitted to move applications for addition/deletion of the first party employer as noted above and the petitioner or the new management would not oppose such an amendment. If the change in Management occurs, which is necessarily to be in tune with Section 25-FF of the Industrial Disputes Act, 1947, and in which process, the workers have no say, it would oblige the petitioner to place on record before the Labour Court in each of these proceedings, the details of the transfer of ownership or Management with further details as to whether the

present workers are being continued in employment or are being discharged. So also, the new Management would then have to take a call as regards the pending reference cases and it would be open to the new management to explore the possibility of a settlement or contest the proceedings on their merits.

12. The amounts deposited in each of the reference cases before the Labour Court shall be invested in Fixed Deposit Receipts by the Labour Court in a Nationalized Bank, initially for a period of 6 months and in the event the matters are to proceed with a contest between the parties, the Labour Court would decide further F.D. investment of the amounts for a period as it may deem appropriate till the decision in the reference cases and shall therefore pass necessary orders in this regard.

13. It be noted that I have considered these petitions in the light of the submissions of the learned Advocates and since the facts of the cases did not require, I have not adverted to Sections 8 and 9 of the Insolvency and Bankruptcy Code, 2016 and Rules 7 and 9 to 16 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(Ravindra V.Ghuge, J.)