

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.497 OF 2018
WITH
WRIT PETITION NO. 882 OF 2017
WITH
MISC. CIVIL APPLICATION NO.271 OF 2018
IN
WRIT PETITION NO.882 OF 2017
WITH
STAMP NUMBER (MAIN) NO.1756 OF 2018.

Western India Shipyard Ltd.
Through its President & Anr. Petitioners.
V/s.

Western India Shipyard Ltd.
and others. Respondents.

Mr. Parikshit Sawant, Advocate for the Petitioners.

Mr. Y.V. Nadkarni, with Ms. H. Fernandes, Advocate for Respondent No.2.

Ms. Prachita Kalangutkar, Additional Govt. Advocate for Respondent No.3.

Mr. Nigel Costa Frias, with Ms. Maria Correia, Advocate for the Petitioners in WP No.882/2017 and for the Respondents in MCA No.271/2018,

Ms. Neha Kholkar, Additional Govt. Advocate for Respondent No.3 in WP No.882/2017.

Mr. Y. V. Nadkarni, with Ms. H. Fernandes, Advocate for

Respondent No.4 in WP No.882/2017.

Mr. Narayan Govekar, Advocate for Respondent No.5 in WP No.882/201, for the Applicant in MCA No.271/2018 and for Respondent No. 7 in STM No.1756/2018.

Mr. Parag Rao, Advocate for the Petitioner in STM No.1756/2018.

Mr. Deep Shiroadkar, Additional Govt. Advocate for Respondents No.1 to 5 in STM No.1756/2018.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 12 June 2018.

P.C.:

This group of matters pertain to Western India Shipyard Ltd., a company, incorporated under the Companies Act, 1956.

2. Writ Petition No.882/2017 is filed by the Western India Shipyard Workers' Union. Writ Petition No.497/2018 is also filed by the Western India Shipyard Officers/Staff/Engineers Association. In Writ Petition No.882/2017, the Workers' Union has sought for a direction against the Board of Trustees of the Mormugao Post Trust not to proceed with the auction and sale of the wrecked floating dry docks and other assets of the Respondent No.1, i.e. the Western India Shipyard Ltd. In Writ Petition No. 497/2018, filed by the Western

India Shipyard Officers/Staff/Engineers Association, an identical relief is sought in respect of the auction of the assets of the Company. Writ Petition Stamp Number (Main) No.1756/2018 is filed by the Mormugao Port Trust, *inter alia*, seeking a prayer that the Port Trust be permitted to remove the floating dry dock without obstruction from the workers' and the employees' union and the State should extend all co-operation for this purpose.

3. In Writ Petition No.882/2017, an order was passed on 4 October 2017 that the auction of the floating dry dock and other assets of the Shipyard can continue, however, the proceeds will not be distributed without the leave of this Court.

4. An Interim Resolution Professional has been appointed by the National Company Law Tribunal in CP. No.1487/I&BP/NCLT/MAH/2017 concerning the Shipyard. The Interim Resolution Professional has also filed an application being Misc. Civil Application No.271/2018.

5. The learned Counsel for the parties have pointed out two factual positions. First, that the auction of the floating dry dock and the assets of the Shipyard has taken place and the amount has been

received by the Mormugao Port Trust. The learned Counsel appearing for the Mormugao Port Trust states that an amount of ₹ 45500000/- has been deposited in a Term Deposit in the State Bank of India, Mormugao under Account No.37588497203.

6. The second position is that the National Company Law Tribunal, Mumbai Bench on 12 December 2017 has admitted the Company Petition filed under Section 7 of Insolvency and Bankruptcy Code, 2016 filed by the ICICI Bank Ltd., and has prohibited certain activities, namely :-

“I (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor inducing execution if 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(SARFAESI Act);

(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.

(II) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(IV) That the order of moratorium shall have effect from 12.12.2017 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, as the case may be.

(V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

(VI) That this Bench hereby appoints Mr. Om Prakash Kanoongo, C-1109, Upvan Tower, Upper Govind Nagar, Malad East, Mumbai – 400 097, Email opkanoongogmail.com, having Registration No.IBBI/IPA-001/IP-00410/2017-18/10726 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.”.

The learned Counsel for the Interim Resolution Professional states that the claim lodged by the Workmen has been admitted. The learned Counsel for the parties, in view of the aforesaid position,

agree that to avoid any conflicting orders being passed, it would be appropriate that further distribution of dues payable to various claimants as against the Shipyard be adjudicated by the National Company Law Tribunal. We are also of the opinion that since the National Company Law Tribunal has admitted the Company Petition against the Shipyard under the Code and that has set in motion the procedure by appointing an Interim Resolution Professional, to avoid any conflicting orders, the parties be relegated in respect of their dues, to the Tribunal.

7. As regards the contention of the Interim Resolution Professional that the Port Trust be directed to hand over money to it, it is open to the Interim Resolution Professional to obtain necessary orders from the Tribunal.

8. The Workers and the Employees had initially approached this Court with the apprehension that if the assets are sold and the money is taken away by other claimants, the Workers and the Employees would be rendered remediless. However, the money, after the auction, has been deposited in a Term Deposit by the Mormugao Port Trust and it will continue to hold the amount deposited and its disbursement will take place as per the directions of

the Tribunal. The apprehension raised by the Workers' and the Employees' Union thus no longer survives and, therefore, it is not necessary to keep their Petitions pending. The learned Counsel for the parties state that in case any relief is necessary in respect of their dues or assets of the Shipyard, they will make necessary application to the Tribunal. It is open for them to apply to the Tribunal.

9. As regards Petition at Stamp Number (Main) No.1756/2018 is concerned, it appears that the Petition was filed in view of certain emergent situation. Mr. Rao, the learned Counsel for the Petitioner points out that the issue has been redressed in view of the order passed by the Vacation Judge on 25 May 2018 and the Workers have also given assurance that they will not cause any impediment. Even, otherwise, since the Tribunal will be monitoring the disposal of the assets of the Shipyard, the parties can obtain necessary orders from the Tribunal, if required.

10. In view of this position, the Writ Petitions, along with the Civil Application, are disposed of.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.