

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL JURISDICTION

COMPANY PETITION NO.471 OF 2015

Axis Bank	..	Petitioner
Versus		
MMS Infrastructure Ltd.	..	Respondent

Dr. Birendra Saraf with Mayur Bhojwani and Shadab Jain I/b. Manilal Kher
Ambalal & Co. for petitioner
Mr. B.S.Mahajani for ex-Directors

CORAM : K.R.SHRIRAM, J.

DATE : 3rd July 2018.

P.C.

By an order dated 22nd December 2017, the respondent company
MMS Infrastructure Ltd. was ordered to be wound up.

2] The petitioner has placed on record today an affidavit of one
Rajesh Kumar Dalia, affirmed on 2nd July 2018 stating that the NCLT had, in a
petition filed by an operational creditor M/s. Nabh Interior Works, admitted the
petition under Section 9 of the Insolvency and Bankruptcy Code 2016 and by
its order dated 21st November 2017, declared moratorium in respect of the
company in terms of sections 13 and 14 of the IBC. It is stated that on 31st May
2018, an interim resolution professional (IRP) was also appointed and a public
announcement was made inviting claims. Dr. Saraf states that in response to
the public announcement, the petitioner has lodged its claim with the IRP.

3] Dr. Saraf states that in view of the moratorium pursuant to the order that was pronounced on 21st November 2017 but delivered on 4th December 2017, the order dated 22nd December 2017 winding up the company could not have been passed. Therefore, Dr. Saraf states that the order dated 22nd December 2017 be recalled. The petitioner be permitted to withdraw the petition and pursue its claim with the IRP.

4] I agree with Dr. Saraf that when there was a moratorium in existence, the order dated 22nd December 2017 could not have been passed. Of course, the order would not have been passed had the petitioner brought it to the notice of this Court but the petitioner also was not aware of the order as stated in the affidavit of Rajesh Kumar Dalia affirmed on 2nd July 2018.

5] In the circumstances, the explanation given by the petitioner is accepted and the order dated 22nd December 2017 is recalled. At the same time, since the petition was originally admitted and advertised and an order of winding up has been passed, the petitioner to advertise, in Free Press Journal and Navshakti, about recall of this order dated 22nd December 2017 and the subsequent withdrawal of petition by the petitioner. O.L. is discharged. Notice to be given within two weeks from today. The wording of the notice to be proved by the Liquidator.

(K.R.SHRIRAM, J.)