

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION NO.460 OF 2018
IN
COMPANY PETITION NO.781 OF 2015
WITH
COMPANY APPLICATION NO.461 OF 2018
IN
COMPANY PETITION NO.461 OF 2016
WITH
COMPANY APPLICATION NO.462 OF 2018
IN
COMPANY PETITION NO.704 OF 2015**

Oriental Bank of Commerce	Applicant
Vs.	
Mittal Corporation Limited	Respondent

Mr. D.D. Madon, senior advocate a/w. Mr. Anup Khaitan I/b. Anup Khaitan and Company for applicant in all applications/original respondent no.2.
Mr. Shyam Kapadia a/w. Mr. Darshan R. Mehta and Mr. Niket Jani I/b. M/s. Dhruve Liladhar and Co. for petitioner in all petitions.
Ms. Upasana Vasu I/b. Wadia Ghandy and Co. for respondent no.1 in all petitions.

**CORAM : K.R.SHRIRAM, J.
DATE : 12th SEPTEMBER 2018**

P.C.:

**COMPANY APPLICATION NO.460 OF 2018
WITH
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COMPANY APPLICATION NO.462 OF 2018**

1 These applications are for transferring the company petition no.781 of 2015, company petition no.461 of 2016 and company petition no.704 of 2015 to National Company Law Tribunal (NCLT) in view of the amendment made to Section 434 of the Companies Act 2013 which came into effect on 6th June 2018.

2 Section 39 of the Insolvency and Bankruptcy Code

(Amendment) Ordinance 2018 reads as under :

39. In section 434 of the Companies Act, 2013, [as substituted by paragraph 34 of the Eleventh Schedule to the Insolvency and Bankruptcy Code, 2016], in sub-section (1), in clause (c), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that any party or parties to any proceedings relating to the winding up of companies pending before the any Court immediately before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance), 2018, may file an application for transfer of such proceedings and the Court may by order transfer such proceedings to the Tribunal and the proceedings so transferred shall be dealt with by the Tribunal as an application for initiation of corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016."

3 Applicant has, therefore, taken out this application to transfer the above petitions to NCLT. According to applicant, applicant is a consortium leader of 11 banks which have lent Rs.1100 Crores to respondent no.1 company under consortium and applicant has filed a petition under Section 7 of the provisions of the IBC before NCLT being case no.CP(IB) 434(MB)/2018. Mr. Madon, on instructions, states that the petition is still pending and has been stood over to 26th October 2018 for admission. Mr. Madon states that petitioner herein is an unsecured creditor. Mr. Madon states that if the petition is admitted, moratorium period will start and the Resolution Professional will be appointed, who shall in consultation with the Committee of Creditors, file a report and opine as to whether respondent company can be resurrected or has to be liquidated. Mr. Madon states that under the provisions of IBC, there is a possibility of

the company being resurrected, whereas under the provisions of the Companies Act, 1956, the only route is to liquidate the company and later make out a case under Section 466 by submitting a revival plan for the company to be brought out of liquidation. Mr. Madon, therefore, states that it will be in the interest of all parties if these petitions are also transferred to NCLT. Mr. Madon states that no prejudice will be caused to petitioners because even for any reason applicant's petition is rejected by NCLT, still petitioners can persuade their petitions under Section 9 of the IBC to be taken up, except that petitioners will have to file an additional form as per the format prescribed under the NCLT rules.

5 Mr. Kapadia states that since these petitions have been listed on many occasions, this Court should not transfer the petitions but should hear these petitions. I have to note that because of petition that was pending before NCLT, these petitions came to be adjourned from time to time but having heard Mr. Madon's submissions, as noted in paragraph 4 above, with which I am in agreement, in my view, it would be better to transfer these petitions also to NCLT so that all petitions can be taken up together. That will also obviate a possible (at least theoretically).

6 Applications are allowed and accordingly disposed in terms of prayer clause – (a).

7 Within four weeks from today, registry to transfer the records and proceedings of these petitions to NCLT. Registry of NCLT to tag these petitions also with IBC case no.CP(IB) 434(MB)/2018 to be heard on the next date.

8 Mr. Kapadia states that by 20th October 2018 all office objections of NCLT will be removed so that these petitions can also be taken up for admission alongwith IBC no.CP(IB) 434(MB)/2018 on 26th October 2018.

Gauri
Amit
Gaekwad

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signed by
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(K.R. SHRIRAM, J.)