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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2821 of 2018

1. Raipur Power And Steel Limited, a company formed and constituted under the Companies Act, 1956 and an existing company within the meaning of the Companies Act, 2013 having its works at Plot No. 75-76, Industrial Growth Centre Borai, District Durg 491001 (CG)

2. Balraj Garg, S/o Sh. Ram Garg, Aged About 45 Years Working for gain at Raipur Power and Steel Limited, and R/o A-33, Wallfort City, Bhatagaon, Raipur 492001 (CG)

---- Petitioners

Versus

1. Union Of India Through Secretary, Ministry Of Finance, North Block, Cabinet Secretariat, Raisina Hill, New Delhi 110011.
2. The Reserve Bank Of India, a body corporate formed and constituted under the Reserve Bank Of India Act, 1934 having its office at 6, Sansad Marg, New Delhi, New Delhi 110001
3. The Union Bank of India, a body corporate formed and constituted under the Banking Companies (Acquisition And Transfer Of Undertakings) Act, 1970, having Its registered office at Union Bank Bhavan, 239, Vidhan Bhavan Marg, Nariman Point, Mumbai- 400021 and inter alia, carrying on business through its Branch Office Pandri Branch Raipur, Bhatiya Bhavan, Vidhan Sabha Marg, Pandri, Raipur, (Cg) 492001

---- Respondents

CONT No. 372 of 2019

1. Raipur Power And Steel Limited, a company formed and constituted under the Companies Act, 1956 and an existing company within the meaning of the Companies Act, 2013 having its works at Plot No. 75-76, Industrial Growth Centre Borai, District Durg 491001 (CG)

2. Balraj Garg, S/o Sh. Ram Garg, Aged About 45 Years Working for gain at Raipur Power and Steel Limited, and R/o A-33, Wallfort City, Bhatagaon, Raipur 492001 (CG)

---- Petitioners

Versus

1. Shashank Shukla Branch Manager, Union Bank Of India, Pandri Branch, Raipur, Bhatiya Bhavan, Vidhan Sabha Road, Pandri, Raipur Chhattisgarh. (492001).

2. Rajesh Kumar Assistant General Manager (Law), Union Bank Of India, Pandri Branch Raipur, Bhatiya Bhavan, Vibhan Sabha Road, Pandri, Raipur (492001).

---- Respondents

WPC No.2821/2018

For Petitioners	:	Shri S.B. Upadhyay, Sr. Advocate with Shri Akant Mittal, Shri B.D. Guru & Shri Rajesh Dubey, Advocates
For Respondent No.1	:	None.
For Respondent No.2	:	Shri T. Nande, Advocate under the authority of Shri Saurabh Sharma, Advocate.
For Respondent No.3	:	Shri Ankit Pandey, Advocate.

Contempt Case No.372/2019

For Petitioners	:	Shri S.B. Upadhyay, Sr. Advocate with Shri Akant Mittal, Shri B.D. Guru & Shri Rajesh Dubey, Advocates
For Respondents	:	Shri Ankit Pandey, Advocate.

Hon'ble Shri P. R. Ramchandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per P.R. Ramchandra Menon, CJ

25/07/2019

1. The petitioner is a company engaged in the business of manufacturing and supply of power, iron & steel and other related products, who had availed finance, by way of loan, from different sources including from the third respondent Bank. The grievance of the petitioner is mainly with regard to the course pursued by the third respondent Bank by invoking the power and procedure under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short 'the IBC') by approaching the National Company Law Tribunal, New Delhi (NCLT) for getting the petitioner company declared as 'insolvent' and for realization of debts to the extent as due to the said bank.

2. The sequence of events reveals that the petitioner admittedly could not satisfy the amounts borrowed from the different bankers and in such circumstances, appropriate steps were being pursued by the

bankers for realization of the amounts due by resorting to necessary proceedings. The Bankers who had advanced the loans to the petitioner Company had formed a 'consortium' and the viability of restructuring the petitioner was being discussed and certain decisions were taken in this regard. It is stated that the proceedings had almost come to a positive end and appropriate measures were suggested to the satisfaction of the lenders, which was assured and undertaken by the petitioner, to be given effect to. Then came Annexure P-3 Circular dated 12.2.2018 issued by the Reserve Bank of India as a bolt from blue, as per which, the ongoing proceedings (which was about to be concluded providing for restructuring), were to be given a 'go-bye' and the lender Banks were set at liberty to proceed with further steps as per the Circular.

3. The third respondent Bank grabbed the opportunity and leaving all other lenders, who were the major fund suppliers, rushed to the NCLT, New Delhi, by filing Annexure P-1 petition under Section 7 of the IBC, 2016 to get the petitioner declared as insolvent. The NCLT passed two interim orders on 25.09.2018 & 26.09.2018 favoring the third respondent Bank, who had filed the insolvency petition. Since the contents of said Circular (Annexure P-3) were detrimental to the rights and interests of the parties like the petitioner herein, it was subjected to challenge from different corners. The petitioner approached this Court by filing the writ petition in the said circumstances, seeking to set aside the Circular dated 12.2.2018 (Annexure P-3) and to quash the orders passed by the NCLT, New Delhi on 25.9.2018 & 26.9.2018 in the application preferred by the third respondent bank by way of

insolvency proceedings, besides some incidental reliefs. The prayers are as given below:-

> "(i) Issue an appropriate writ order or declaration the provisions of Section 35AA and Section 35AB of the Banking Regulation Act, 1949, as ultra vires to the Constitution of India.
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> (ii) Issue Writ of Certiorari or any other Writ, Order or Direction of like nature quashing the order issued under Section 35AA of the Banking Regulation Act, 1949, being without the authority of law.
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> (iii) Issue a Writ of Certiorari or any other writ, order or Direction of like nature quashing the circular dated 12/02/2018.
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> (iv) A writ of or in the nature of Mandamus directing the respondent no.2 i.e. Reserve Bank of India to provide for a sunset clause in case of Companies which were at an advanced stage or in the alternative direct Respondent No.2 to announce its policy for resolution of stressed assets in terms of Clause 12 of the Circular dated 122.02.2018;
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> v. Declaration that the proceedings being C.P. No. (IB)-1256(PB)/2018 being initiated by the respondent no.3 before the learned National Company Law Tribunal, Delhi is illegal and in contravention of law.
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> vi. A writ of or in the nature of certiorari for quashing the order dated 25.09.2018 and order dated 26.09.2018 and for quashing complete proceedings pending before the National Company Law Tribunal, Delhi Bench, New Delhi and which has been registered as C.P. No.(IB)-1256(PB)/2018 as the same is illegal, without jurisdiction, arbitrary, not maintainable, premature and is based on a wrong appreciation of facts.

> vii. Injunction restraining the respondent No.3 their men, agents, servants, assigns from proceeding with their application filed against the petitioner under Section 7 of the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal, Delhi Bench, being C.P. No.(IB)-1256(PB)/2018 in any manner whatsoever.
>
> viii. Issue a writ of Mandamus or any other writ, order of Direction of like nature to direct the respondents to constitute a task force with representatives from all stake holders to consider the investment proposal of the petitioner submitted by prospective investors and to consider all the problems faced by the petitioner in the running of the present iron and steel plant of the petitioner no.1 so that the stress of the petitioner no.1 is alleviated.
>
> ix. Such further and/or other order or orders be passed, direction or directions be given as Your Lordship may deem fit and proper."

It is stated that an interim order of 'Status Quo' was granted by this Court and the same continues.

4. Meanwhile, notwithstanding the interim order passed by this Court in the writ petition, the matter pending before the NCLT was caused to be pursued further at the instance of the officers of the third respondent Bank, which was cited as an instance of contumacious act, leading Contempt of Court Case No.372 of 2019. Observing that a *prima facie* case was made out, notice was ordered to the respondents on 16.05.2019 and it was made clear by this Court that interim order of 'Status Quo' meant that the Tribunal would not proceed further in the matter and would stand restrained from

proceeding further.

5. We heard learned Senior Counsel for the petitioner as well as learned counsel representing the third respondent-lender Bank, besides the learned counsel for the Reserve Bank of India.

6. Learned Senior Counsel for the petitioner submits that Circular dated 12.2.2018 (Annexure P-3) issued by the Reserve Bank of India was under challenge before the Apex Court as well, as noted already. After considering all the relevant aspects, final verdict was rendered by the Apex Court on 2.4.2019, whereby the said Circular was set aside; making it clear that all the consequential proceedings initiated pursuant to the said Circular also would stand inoperative. It is worthwhile to extract the operative portion of the order passed by the Apex Court on 2.4.2019, which reads as under:-

> "45.......... There is nothing to show that the provisions of Section 45L (3) have been satisfied in issuing the impugned circular. The impugned circular nowhere says that the RBI has had due regard to the conditions in which and the objects for which such institutions have been established, their statutory responsibilities, and the effect the business of such financial institutions is likely to have on trends in the money and capital markets. Further, it is clear that the impugned circular applies to banking and non-banking institutions alike, as banking and non-banking institutions are often in a joint lenders' forum which jointly lend sums of money to debtors. Such non-banking financial institutions are, therefore, inseparable from banking institutions insofar as the application of the impugned circular is concerned. It is very difficult to segregate the non-banking financial institutions from banks so as to make the circular applicable to them even if it is *ultra vires* insofar as banks are concerned. For these reasons also, the impugned circular will have to be declared as *ultra vires* as a whole, and be declared to be of no effect in law. Consequently, all actions taken under the said circular, including actions by which the Insolvency Code has been triggered must fall along with the said circular. As a result, all cases in which debtors have been

> proceeded against by financial creditors under Section 7 of the Insolvency Code, only because of the operation of the impugned circular will be proceedings which, being faulted at the very inception, are declared to be non-est."

7. Learned Senior Counsel for the petitioner points out that the petitioner has produced all the relevant materials showing the course of action which was being pursued, particularly the consensus and understanding arrived at among the parties concerned including the leading Banks, in the various meetings of the consortium of Banks. By virtue of the turn of events, leading to the setting aside of the Circular dated 12.2.2018 (Annexure P-3) issued by the Reserve Bank of India, as per the verdict passed by the Apex Court on 2.4.2019, the prayers raised by the petitioner at Prayer Clause No. (i) to (iv), do not survive. Remaining questions are also only with regard to the sustainability of the proceedings before the NCLT and the orders passed on 25.9.2018 & 26.9.2018, apart from the prayer of the petitioner at Prayer No.(viii) for afresh consideration of the matter in the manner as stated therein for restructuring of the petitioner Company; more so in view of the understanding reached in the consortium meetings held before the Annexure P-3 Circular.

8. Annexure P-5 is the debt profile of the petitioner Company, as on 30.6.2018. The figures given therein display the debt of the petitioner towards the six financing institutions mentioned therein and the liability to third respondent Bank is only to the extent of 24.27%. It is stated that the third respondent Bank has taken a U-turn after the consensus arrived at in the consortium meetings for revival of the petitioner Company and chose to approach the NCLT by filing insolvency proceedings, merely based on Annexure P-3 Circular.

9. In support of the contention that the third respondent Bank had also agreed to the revival of the petitioner Company in the consortium meetings, reference is made to Annexure 'A' to 'D' proceedings filed along with IA No.6/2019. It is seen from the said proceedings that all the Banks including the third respondent Bank had participated in the proceedings. Reference to the resolution plan forming part of Annexure-A dated 17.1.2018 & Annexure-B dated 2.2.2018, clearly reveals that the resolution was passed also with the consensus of the third respondent Bank, to explore the chance of revival of the petitioner Company. But the things took a different turn, after issuance of the Circular dated 12.2.2018 by the Reserve Bank of India. This is revealed from the proceedings of the consortium meeting held on 26.2.2018 (after the circular), that the third respondent Bank unilaterally chose to withdraw from the resolution (which was intended to be given effect to, by reviving the petitioner Company) and filed the insolvency proceedings before the NCLT on 7.9.2018. It is also pointed that the petitioner's worth, by way of various security deposits, is admittedly to an extent of about Rs.541 Crores; whereas the liability towards the third respondent Bank is only to the extent of about Rs.90 Crores; which by itself would demonstrate the irrational haste shown by the third respondent Bank and hence the somersault made by them cannot be justified under any circumstance.

10. Learned Senior Counsel for the petitioner also submits that the third respondent Bank virtually succeeded in misguiding the NCLT for causing the orders to be passed on 25.9.2018 & 26.9.2018; whereby it was attempted to be demonstrated that the Supreme Court's

judgment would not be applicable to the petitioner, insofar as it was only in respect of the “power sector”, whereas the petitioner Company was engaged in the “Steel” segment. According to the petitioner, the verdict of the Supreme Court is applicable to all segments, as discernible from Para-9 of the order passed on 02.04.2019, where specific reference is made to the industries in various segments such as Telecom, Steel, Infrastructure, Sports, Sugar, Fertilizer, Shipyard etc. It is further pointed out that, pursuant to the understanding and resolution passed in the consortium meetings, the petitioner was required to submit a revised proposal; which infact was submitted on 10.8.2018 & 13.9.2018, copies of which have been placed on record. Learned Senior Counsel makes a reference to the incorporation of a specific clause therein, to show the bona fides, that absolutely no part of the liability was necessary to be compromised by the lender Bank in any manner, adding and assuring that the liability would be cleared by the petitioner in toto and it was in the said context, that the revival assurance was sought to be given effect to. However, the said revised proposals were paid only scant regards by the third respondent Bank, although all the other lender Banks including the Lead Bank i.e. IDBI Bank (who is having 33.32% share of the total outstanding loans) had agreed to have the revival measures implemented. This being the position, the proceedings filed and pending before the NCLT are liable to be interdicted, more so, when the Apex Court has made it clear that all consequential proceedings pursued merely based on the Circular dated 12.2.2018 (which was set aside by the Apex Court) would stand 'non-est'. As it stands so, it is quite necessary to the put the clock back to 'zero' so as to proceed with further steps pursuant to the consensus reached in the resolution as per the consortium meetings, as referred to herein before.

11. In this context, it is relevant to note that the Reserve Bank of India has come up with a 'new Circular' bearing No.BP.BC.45/21.04.048/ 2018-19 dated 7.6.2019, a copy of which has been produced as Annexure-A along with IA No.8/2019. The applicability specified under Clause (3) of the said Circular makes the third respondent Bank also to be bound by it and the petitioner is coming within the purview of the said Circular. Relevant clause sought to be relied on, with regard to implementation of the 'resolution plan' is Clause-9, which is reproduced below for convenience and reference:-

> “9. All lenders must put in place Board-approved policies for resolution of stressed assets, including the timelines for resolution. Since default with any lender is a lagging indicator of financial stress faced by the borrower, it is expected that the lenders initiate the process of implementing a resolution plan (RP) even before a default. In any case, once a borrower is reported to be in default by any of the lenders mentioned at 3 (a), 3(b) and 3 (c), lenders shall undertake a *prima facie* review of the borrower account within thirty days from such default (“Review Period”). During this Review Period of thirty days, lenders may decide on the resolution strategy, including the nature of the RP, the approach for implementation of the RP, etc. The lenders may also choose to initiate legal proceedings for insolvency or recovery.”

Learned Senior Counsel for the petitioner submits that Prayer No.(viii) in the writ petition has to be considered in the light of Clause-9 of the Circular Dated 7.6.2019 (Annexure-A to IA No.8/19) and appropriate directions might be issued to the 2nd & 3rd respondents in this regard.

12. Learned counsel representing the third respondent bank submits that the idea and understanding of the petitioner with regard to the scope

of the proceedings preferred before the NCLT and being pursued by the respondent Bank, is thoroughly wrong and misconceived. It is stated that the proceeding filed under Section 7 of the IBC is an independent proceeding, which in nowhere is connected with the consortium meetings or the outcome in this regard. So also, it is having no connection with Annexure P-3 Circular or the consequential proceedings issued by the respondent No.3 Bank. As it stands so, the setting aside of Annexure P-3 Circular by the Supreme Court does not have the relevance or bearing with regard to the pendency or continuance of the proceedings before the NCLT.

13. In support of the above contention, the learned counsel for the third respondent Bank submits that Annexure P-8 was issued by the Bank to the petitioner on 30.6.2018, referring to the position whereby the Bank might be compelled to resort to the insolvency proceedings before the NCLT. It is stated that several opportunities were given to the petitioner Company to clear the liability to the requisite extent and to come-up with an appropriate and 'attractive plan' so as to hold back the Bank from proceeding with further steps in terms of the provisions in the 'IBC'. It is also pointed out that the Bank had found no other alternative, but to declare the status of the petitioner as 'Non-performing Asset" (NPA) on 31.3.2018 (after Annexure P-3 Circular) and still, chance was given again as per the letter issued on 30.6.2018. Though the petitioner Company submitted a reply on 26.7.2018, on scrutiny, it was noted that there was nothing positive in it and in the said circumstance, the third respondent Bank issued a further letter on 3.8.2018 to the petitioner and waited till 6.8.2018. It

was only on observing that the petitioner Company had not come up with any 'attractive proposal', that the Bank was compelled to approach the NCLT by filing insolvency petition on 7.9.2018, under Section 7 of the IBC.

14. Learned counsel representing the third respondent Bank points out that the Bank is having every right to pursue independent proceedings before the NCLT as there is a 'default' on the part of the petitioner Company as defined under Section 3 (12) of the IBC and by virtue of the enabling provision under Sections 7 & 8 of the very same Code. Apart from the said general power, right has been conferred under the '<u>footnote 8</u>' given in the Circular (Annexure P-3) issued by the Reserve Bank of India on 12.2.2018, particularly in connection with the course of action under the Heading 'D'- **Timelines for Large Accounts to be Referred under IBC**. Clauses 8 & 9 under the said heading are relevant and hence they are reproduced along with the '<u>footnote 8</u>' sought to be relied from the part of the third respondent Bank, as given below:-

> “**D** - **<u>Timelines for Large Accounts to be Referred under IBC</u>**.
>
> 8. In respect of accounts with aggregate exposure of the lenders at Rs.20 billion and above, on or after March 1, 2018 ('reference date'), including accounts where resolution may have been initiated under any of the existing schemes as well as accounts classified as restructured standard assets which are currently in respective specified periods (as per the previous guidelines), RP shall be implemented as per the following timeles:-
>
> i) If in default as on the reference date, then 180 days from the reference date.
>
> ii) If in default after the reference date, then 180 days from the date of first such default.
>
> 9. If a RP in respect of such large accounts is not

> implemented as per the timelines specified in paragraph 8, lenders shall file insolvency application, singly or jointly, under the Insolvency and Bankruptcy Code, 2016 (IBC) within 15 days from the expiry of the said timeline.[8]"

Footnote '8'

> *"The prescribed timelines are the upper limits. Lenders are free to file insolvency petitions under the IBC against borrowers even before the expiry of the timelines, or even without attempting a RP outside IBC."*

15. According to learned counsel representing the third respondent Bank, the 'footnote 8' clearly mentions that the lenders are free to file insolvency petitions under the IBC against borrower, even before the expiry of timeline, or even without attempting a Resolution Plan (RP) outside the IBC. In the said circumstances, there is nothing wrong on the part of the third respondent Bank in having approached the NCLT by filing necessary petition under Section 7 of the IBC, submits the learned counsel.

16. Learned Senior Counsel for the petitioner points out that the version put-forth by learned counsel for the third respondent Bank is not at all correct. The 'footnote 8' referred to in 'Clause 9' quoted above is connected only with the accounts with aggregate exposure of the lenders at Rs.20 billion and above, as on 1.3.2018. In the case in hand, the total debt of the petitioner Company towards the third respondent Bank is only about Rs.90 Crores and as such, the 'footnote' is having no application at all. On the contrary, it is obligatory for the third respondent Bank to have given effect to the resolution passed in the meetings convened by the Consortium Banks for revival of the petitioner Company, in which the third respondent Bank had also participated and consented. It is in the said

circumstance, that Prayer No.'**viii'** in the writ petition is sought to be given effect to, with reference to the course to be pursued as mentioned by the Reserve Bank of India in their 'new Circular' dated 07.06.2019 and in particular, Paragraph No.9, submits the learned Senior Counsel. We find force in this submission.

17. After hearing both the sides, this Court is of the view that, by virtue of the declaration of law by the Apex Court setting aside Annexure P-3 Circular issued by the Reserve Bank of India on 12.2.2018 and also that all further proceedings taken merely on the basis of said Circular would be non-est, the proceedings which are sought to be pursued based on the said Circular have to be interdicted. This Court finds that the third respondent Bank proceeded to file the insolvency proceedings merely pursuant to the Annexure P-3 Circular, ignoring the understanding reached as per the resolution passed in the consortium meetings held earlier and hence, the said proceedings are not liable to be continued. The version of the third respondent Bank that the Bank is having independent right to move the insolvency proceeding based on the 'footnote' extracted above, is not correct and it is not applicable to the case in hand, but will be attracted only in respect of accounts where the aggregate exposure is <u>more than Rs.20 billion</u>.

18. In the above facts and circumstances, we do not require any second thought to hold that the continuance of the proceedings before the NCLT is not justified under any circumstance and the matter has to be considered with reference to the resolution already passed in the consortium meetings and the further direction given by the Reserve

Bank of India as to the manner in which things are to be worked out, particularly with reference to Clause-9 of the new Circular dated 7.6.2019 (Annexure 'A' in IA No.8 of 2019).

19. Accordingly, the orders dated 25.9.2018 & 26.09.2018 (Annexure P-1) passed by the NCLT stand set aside. It is declared that the insolvency proceedings filed by the third respondent Bank before the NCLT are not maintainable and it stands interdicted. The 2nd & 3rd respondents are directed to give effect to the resolution already passed in the meetings of the consortium Banks and the 'revised proposal' submitted by the petitioner Company on 10.8.2018 & 13.9.2018 shall be considered in the light of Clause-9 of the revised Circular dated 7.6.2019 issued by the Reserve Bank of India. This exercise shall be completed as expeditiously as possible, at any rate within a period of three months.

20. Writ petition also stands disposed off accordingly.

21. The learned Senior Counsel for the petitioner Company submits that, in view of the turn of events, the petitioner does not want to press the contempt petition. Accordingly, it is dismissed as not pressed.

Sd/-	**Sd/-**
(P.R. Ramchandra Menon)	(Parth Prateem Sahu)
Chief Justice	Judge

roshan/-