**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**
**IN ITS COMMERCIAL DIVISION**

**CHAMBER SUMMONS NO.78 OF 2019**
**IN**
**COMMERCIAL EXECUTION APPLICATION NO.343 OF 2018**
**WITH**
**CHAMBER SUMMONS NO. 135 OF 2018**

Shailesh Verma … Applicant
In the matter of
Ananjan Mitter … Claimant
(Decree Holder)

*V/s.*
Lavasa Corporation Limited … Respondent
(Judgment Debtor)

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Mr. Ravi Kadam,Sr. Counsel with Mr. Ashish Kamat, Counsel, Mr. Ameja Gokhale and Ms.Radhika Indapurkar i/b Shardul Amarchand Mangaldas for Applicant.

Mr. Prakash Shinde I/b MDP Partners for respondent no.3.

Mr. Anostakc Daver I/b Kaushik Krishnaswamy for original applicant in execution/respondent.

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**CORAM: R. I. CHAGLA, J.**
**DATE: 14TH JUNE, 2019**

**PC:-**

1. Heard the learned Counsel for the Applicant and learned counsel for decree holder as well as the learned counsel for the Union Bank of India. By this application the applicants are seeking modification of order dated 7th May 2018 by allowing the applicant to access the sum of Rs. 2,98,14,484.12 retained by

Union Bank of India pursuant to the said order dated 7th May 2018. By the said order, Union Bank of India was directed to ensure that a sum of Rs. 2,98,14,484.12 be retained from and out of the accounts of the applicant company and transfer such amount to a separate 'no lien' account till further orders of the court.

2. The senior counsel for the applicant has submitted that the order dated 7th May 2018 was passed prior in point of time to the order passed by the National Company Law Tribunal, Bench at Mumbai (for Short **“NCLT”**) under the Insolvency and Bankruptcy Code, 2016 (for Short **“the said Code”**). By the said order of the NCLT dated 30th August 2018 the petition filed by M/s Raj Infrastructure Development (India) Private Limited, was admitted against the applicants herein and initiation of the corporate insolvency resolution process (for short “**CIRP”**) was directed to be held with effect from the date of the order and the interim resolution professional came to be appointed. Thereafter, the resolution professional has been appointed and the CIRP period under the said Code is directed to be completed within 180 days. This period commenced from 14th March 2019 and is to be completed on 16th June 2019 i.e. expiry of 180 days. It is stated by the learned Senior counsel that the NCLT in an order dated 12th June 2019 has granted certain extension of time and therefore the

CIRP period is extended till a date in July which he believes that 21st July 2019 as the order has not yet been served on the applicant.

3. The Senior Counsel has referred to the scheme of the said Code and taken this court to the various provisions including Section 238 of the said Code which states that “The provision of the Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law”

4. He has also referred to Sections 13 and 14 of the said Code and has in the context of Section 13 referred to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 and in particular Regulation 6 thereof in connection with public announcement. This provides for an insolvency professional to make a public announcement immediately on his appointment as interim resolution professional. The moratorium provided in Section 14 is a declaration by the adjudicating authority of a moratorium for prohibiting the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law. This moratorium applies from the insolvency commencement date which is defined under Section

5 (12) of the said Code as the date of application for initiating CIRP by the adjudicating authority of Sections 8,9 and 10 of the said Code as the case may be. It is an admitted fact that the insolvency commencement date has arisen in the present case when application was made under Section 9 of the said Code and thus there was a moratorium of proceeding including execution.

5. The learned senior counsel has further referred Section 20 of the said Code which provides that management of operations of corporate debtor as going concern, which will be the hands of the interim resolution professional and in this case the resolution professional which has been appointed under Section 22 of the said Act. The learned senior counsel has also referred to the provisions of Section 17(1)(d) of the said Code which the state out as under:-

"17 (1)(d):- The financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional".

6. Further, Section 18 of the said Code provides for the duties for the interim resolution which includes under sub-section (b) of section 18 the duty to receive and collect all the claims submitted

by the creditors to him. Further, under Section 18 (f) the interim resolution professional is under a duty to take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor which includes tangible assets as well as intangible assets.

7. Section31 of the said Code provides for approval of the resolution plan and if the adjudicating authority is satisfied with the resolution plan as approved by the committee of creditors under Section 30(4) by a vote of not less than 66% of voting share of the financial creditors and after examination of the resolution plan under Section 30 (2), approval shall be given to the resolution plan which shall be binding on corporate debtor.

8. After referring to these various provisions, the learned Senior counsel has submitted that the said Code is a complete Code in itself and will exclude the civil court from adjudicating upon the corporate debtor. He has thus stated that there is a moratorium of the execution proceeding in the present case and that necessary order be passed modifying the order dated 7th May 2018 so as to permit the resolution professional to access the sum of Rs. 2,98,14,484.12 retained by the Union Bank of India in the light of the on going CIRP in respect of the corporate debtor viz. the respondent no. 1 company.

9. The learned counsel for the decree holder has submitted that the only reason given by the applicant in the affidavit in support of the chamber summons is that the respondent is in a precarious financial situation and there is an urgent and pressing need of funds to keep the respondent company as a going concern. There is a table annexed at Exh.E to the affidavit in support to the chamber summons and according to the learned counsel for the decree holder majority of the loans which the applicant has sought to access is for 'insolvency resolution process expenses'. He states that there are no particulars given as of these expenses and that the applicant should give account for the same. He has also stated that the applicant has made a vague statement that the respondent has no other source of fund to meet these expenses and that the applicant is making all possible efforts to utilise the funds available to the respondent for the benefit of its stakeholders, including employees, home buyers and financial creditors. He has stated that leave should be granted to the decree holder for filing application for disclosure of these particulars.

10. The learned counsel for Union Bank of India supports the case of the applicants and infact submits that under Section 17(1)(d) the bank is mandated to act on the instructions of the interim

resolution professional in relation to accounts including the no lien account in the present case.

11. I have considered the submissions of the parties. It is clear from the said Code that there will be a moratorium of the proceedings including execution proceedings in the Civil Court and that NCLT will have exclusive jurisdiction during the duration of the CIRP and the resolution professionsl will in turn have control over the management of affairs of the corporate debtor. Further under Section 17(1)(d), the financial institutions such as Union Bank of India in the present case is mandated to act on the instructions of the interim resolution professional / resolution professional (under Section 23 of the said Code) in relation to the accounts of the corporate debtor lying with them and which would include in the present case the 'no lien' account. Further, has been provided under Section 25 of the said Code that the duties of the resolution professional would include the duty to take immediate custody and control of all assets of the corporate debtor including the business records of the corporate debtor.

12. Having perused the various provisions of the said Code, I am inclined to accept the submissions of the learned senior counsel for the applicant that the said Code is a completed Code in itself. It is therefore necessary for the resolution professional to have access

to the monies of the corporate debtor which are lying with the Union Bank of India and kept in a 'no lien' account.

13. I do not find merit in the submissions of the learned counsel for the decree holder. This court cannot go into the expenses incurred by the resolution professional which have been set out in the table annexed to Exhibit E to the affidavit in support of the chamber summons. If the decree holder is at all aggrieved, his remedy lies before the NCLT who has exclusive jurisdiction as mentioned above. The execution proceedings in any event cannot be proceeded with on account of the application of the moratorium under Section 14 of the said Code.

14. Considering the application of the applicant for access to the sum of Rs. 2,98,14,484.12 retained by the Union Bank of India, I am of the view such application is perfectly justifiable and that the order dated 7th May 2018 had been passed at a point of time prior the order of the NCLT dated 30th August 2018. After passing of the said order by the NCLT, the order dated 7th May 2018 passed by the learned judge of this court would necessarily have to be modified as the applicant being the resolution professional is required to take exclusive control over the assets of the judgement debtor and the Union Bank of India is mandated under said Code

to act on the instructions of the resolution professional with regard to accounts of the corporate debtor.

15. Accordingly, the order dated 7th May 2018 is modified to the extent of paragraph 6(i) of the said order and the applicant shall have access to the sum of Rs. 2,98,14,484.12 which had been retained by the Union Bank of India and the Union Bank of India is directed to release the funds lying to the credit of the account of respondent no. 1 company within a period of one week to be utilised by the resolution professional for keeping the company as a going concern in accordance with the provision of the said Code.

16. Chamber summons is accordingly made absolute in terms of prayer clause (a) and (b).

**( R I. CHAGLA, J. )**