

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

| Reserved on | Delivered on |
|-------------|--------------|
| 12~11~2019  | 28~11~2019   |

CORAM:  
THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

**A.Nos.8557 of 2017 and 6563 of 2019**  
**in C.S.No.962 of 2017**

**A.No.8557 of 2017**

M/s. Sheenlac Noroo Coatings India Private Ltd.,  
Rep.by its authorised signatory Mr.Ramachandran  
No.139-142, SIDCO Industrial Estate,  
Thirumazhisai, Chennai 602107. ... Applicant / Plaintiff

Vs.

M/s.TATA Steel BSL Limited,  
(Formerly known as Bhushan Steel Limited)  
Rep. by Mr.Sushil Kumar Agarwal  
Registered Office at Ground Floor Mira Corporate Suites  
Plot No.1&2, Ishwar Nagar, Mathura Road,  
New Delhi 110065. ... Respondent / Defendant

**A.No.6563 of 2019**

M/s.TATA Steel BSL Limited,  
(Formerly known as Bhushan Steel Limited)  
Rep. by Mr.Sushil Kumar Agarwal  
Registered Office at Ground Floor Mira Corporate Suites  
Plot No.1&2, Ishwar Nagar, Mathura Road,  
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.Vs.

M/s. Sheenlac Noroo Coatings India Private Ltd.,  
Rep.by its authorised signatory Mr.Ramachandran  
No.139-142, SIDCO Industrial Estate,  
Thirumazhisai, Chennai 602107. .. Respondent / Plaintiff

**A.No.8557 of 2017** has been filed to direct the respondent/defendant to furnish security to the extent of the suit claim of Rs.2,69,19,926/- with further interest at the rate of 24% per annum from the date of plaint till the date of realisation failing which to pass an order of attachment of the Respondent/Defendants movable and immovable properties situate at Bhusham Centre.

**A.No.6563 of 2019** has been filed to reject/dismiss the suit in C.S.No.962 of 2017 along with accompanying applications as being barred by law with exemplary cost.

For Applicant : Mr.P.V. Balasubramanian  
for M/s. BFS Legal

For Respondent : Mr. N.V.V.Krishna

Amicus Curiae : Mr.R. Shankaranarayanan

**ORDER**

**A.No.6563 of 2019**

This application has been filed by the Applicant/Defendant to reject the plaint on the ground that the suit has been filed when the Adjudicating Authority granted moratorium period on the Applicant's company. It is further stated that the suit has been filed on 28.11.2017. It is also stated that the Company Petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal, Principal Bench, New Delhi (Adjudicating Authority) and a Moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC) was declared by the

Adjudicating Authority Prohibiting/Barring institution of the suits against the Defendant/Respondent. On 28.07.2017 in terms of order dated 26.07.2017, public announcement was made in respect of initiation of Corporate Insolvency Resolution Process (CIRP) of the Applicant. Further announcement called for claims from all the creditors of the applicant including the plaintiff. The Plaintiff has not filed any claim whereas they filed the present suit on 28.11.2017. The suit was numbered on 18.12.2017. Notice was ordered on 20.12.2017. The respondent/Plaintiff filed the suit for recovery of money for supply of goods/services. The alleged amount is an operational Debit and the Respondent/Plaintiff is an Operational Creditor as defined under Section 5(20) and 5(21) of the IBC. It is further stated that the Plaintiff being the Operational Creditor in terms of the public announcement the Respondent/Plaintiff instead of filing its claim before the Resolution professional under the IBC, instead chose to file the present suit which had specifically been barred under the application of the law i.e., Insolvency and Bankruptcy Code. The present suit has been filed after the announcement of CIRP, during the declaration/subsistence of the moratorium period and after making of the public announcement. Hence, the suit is barred by the law and the same is liable to be dismissed.

2. It is the contention of the respondent/Plaintiff that the suit is filed to pay the defendant a sum of Rs.2,96,19,926/- being the amount due with further interest and cost and for other orders. In the above suit, the applicant was represented by counsel as early as 20.06.2018 and on the same day the commercial jurisdiction of the suit was determined. Thereafter, the applicant took out an application No.5090 of 2019 for amending the cause title with regard to the Defendant as Tata Steel BSL (Formerly known as Bhushan Steel Limited). It is the contention of the Respondent/Plaintiff that as per Section 14(4) of The Insolvency and Bankruptcy Code, 2016(IBC) the moratorium prohibiting the institution of suit against the Defendant comes to an end with the completion of the corporate insolvency resolution process and in the instant case it has been completed on 15.05.2018. After approval of the resolution plan, the moratorium order passed under Section 14 shall cease to have effect. Therefore, with the approval of the insolvency resolution process on 15.05.2018, the moratorium automatically comes to an end and there is no restriction in adjudicating the suit further.

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3. It is the further contention that that the purpose of imposing moratorium pending resolution process only to ensure that multiple

proceedings are not taken simultaneously to help obviate the possibility of potentially conflicting outcomes of related proceedings and to ensure that the resolution process is a collective one and also to facilitate orderly completion of the process. The moratorium is only to ensure a stand-still period during which creditors cannot resort to individual enforcement action which could frustrate the insolvency resolution process. Hence, it is the contention that once the period of moratorium comes to an end, adjudication of other legal proceedings can be proceeded. Only adjudication during the moratorium period can be questioned. It is his further contention that on the date of this application the moratorium not in existence. All the effect and consequences of moratorium came to an end by 15.05.2018. The moratorium as contemplated by the Code cannot be construed as a total bar against the adjudicating any valid dispute but only as a standstill period in order to facilitate smooth completion of the resolution process. Intent of legislature is only to restrain the parallel proceedings when the insolvency resolution proceedings is under progress and not to a bar any adjudication after completion of the resolution process. Hence, the application does not satisfy the requirement under Order VII Rule 11 of C.P.C. and the same is liable to be dismissed. The Respondent even prior to filing of the above suit had sent a notice dated 13.2.2017 for which the applicant sent a reply dated

13.06.2017 with false pavements. Hence, prayed for dismissal of the application.

4. Learned counsel Mr.P.V. Balasubramanian appearing for the Applicant submitted that State Bank of India, Financial creditor filed Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) before the Adjudicating Authority of the National Company Law Tribunal, Principal Bench, New Delhi (Adjudicating Authority). The said application was admitted on 26.07.2017 triggering Corporate Insolvency Resolution Process from the said dated. A moratorium under Section 14 of the IBC was declared by the Adjudicating Authority prohibiting/barring institution of suits or continuation of pending suits or proceedings against the against the Defendant/Respondent. Third party resolution applicant viz., Tata Steel Ltd., (TSL) submitted his resolution plan prepared on the basis of Information Memorandum, to the Resolution Professional appointed in terms and provisions of IBC. The Resolution Plan submitted by TSL, was approved by the Committee of Creditors (CoC) consisting the financial creditors of the Applicant/Defendant Company. The Resolution Plan as approved by the CoC, was presented by the Resolution Professionals to the Adjudicating Authority for its approval. The said Resolution Plan in terms of the IBC was approved

by the Adjudicating Authority on 15.05.2018 making it binding on all the Creditors of the Applicant/Defendant Company in terms of Section 31(1) of the IBC. Pursuant to the approval of the Resolution Plan, the name of the Applicant/Defendant Company was changed from Bhushan Steel Limited to Tata Steel Limited. In respect of which, cause title also amended before this Court. Hence it is the contention that the suit has been instituted contrary to law as such the plaint is liable to be rejected on account of clear bar under law.

5. Language employed in Section 14 (1)(a) of the Code is peremptory or there is no option but to enforce a moratorium. This is because the scheme of the Code mandates that there will be a `stand still` period where the assets of the CD stands preserved. This is most critical as a proposed Resolution Applicant will be required to know the CD's total liabilities very clearly before deciding to rehabilitate the Company. In this case from 26.07.2017 Moratorium under Section 14 declared was in force. It was remained in force for a period of about 10 months, until the Resolution Plan was approved by the Adjudicating Authority (NCLT) on 15.05.2018. While such Moratorium prohibiting institution of Suits was in operation, the Plaintiff instituted the suit against the Defendant-Corporate Debtor by presenting the

Plaint on 28.11.2017. The suit was numbered on 18.12.2017. The suit having been instituted in violation of the Moratorium mandated under S.14 of the IBC, the said suit is still born, filed on the fact that there is a bar under Law and as such non-est in the eyes of law.

6. In support of his submission he relied upon the following Judgments:

1. *Alchemist Asset Reconstruction Company Ltd., vs. M/s.Hotel Gaudavan Pvt. Ltd., & Others* [**Civil Appeal No.16929 of 2017 arising out of S.L.P.(C) No.18195 of 2017 dated 23.10.2017**].
2. *M.D., Bhoruka Textiles Limited vs. Kashmiri Rice Industries* [(2009) 7 SCC 521]
3. *RM.M.Ramanathan Chettiar vs. Ramaswami Pillai and Others* [(1957)2 MLJ 267]
4. *Alikutty Sahib vs. Cherian and Others* [AIR 1961 Ker 138]

7. Hence his contention is that cessation of moratorium cannot revive monetary claim, which was instituted by a pre-existing creditor during

moratorium. Hence it is his contention that cessation of moratorium is linked to approval of Resolution Plan under section 31(1) or an order of Liquidation of the CD under Section 33. A resolution Plan will be approved by an Adjudicating Authority only if it is in compliance of the requirements of such a Plan, as set out in Section 30 of the IBC. In the given case, Resolution Plan submitted by the Resolution Applicant was approved by the Adjudicating Authority and as such the relevant provision is under Section 31(1) of the Code. Hence it is his contention that with the approved Resolution Plan providing for a manner of resolution of all monetary claims, the requirement for continuation of a Moratorium lapses and therefore the legislature has provided for cessation of the same. The cessation of the Moratorium cannot mean revival of a previous claim of a Creditor, as the same has already become extinguished on account of the provisions of the Resolution Plan which provides for all claims, as per Law. It is for this reason that Section 31(3) provides that only upon the approval of a Resolution Plan by the Adjudicating Authority, the Moratorium under Section 14 ceases. Hence his contention that all the creditors are bound by the Resolution Plan and therefore their claims get extinguished. The question of revival therefore does not arise, even the Moratorium ceases.

8. Further it is his contention that when on the date of filing of the suit there was a categorical bar under the law against the institution, no subsequent event will correct the error of the Respondent/Plaintiff. Hence, it is his contention that once an application for Corporate Insolvency Resolution Process is admitted the proceeding become one in rem and are no longer in personem. The plaintiff's admitted case is that he is pre-existing creditor. As per the scheme envisaged under IBC the Plaintiff ought to have lodged the claim after the Public Notice calling for claims had been made. Any issue in respect thereof would have been dealt with by the NCLT as the Adjudicating Authority under Section 60 (5) among other provisions. Therefore the jurisdiction of Civil Courts is completely barred as the Code has an overriding effect. Since the suit was instituted during the period of Moratorium, the Adjudicating Authority alone have the power to entertain the plea. Plaintiff is liable to be rejected on that ground. Hence, submitted that the suit is liable to be rejected.

9. It is the contention Mr.N.V.V.Krishna learned counsel appearing for the Respondent/Plaintiff that the applicant/Defendant was represented by the counsel as early as 20.06.2018 and on the same day the commercial courts jurisdiction of the suit was determined and adjourned for filing written

statement. Thereafter, amendment application also filed by the Applicant. It is the further contention that for an application for rejection, only plaint averment alone to be considered. Plaint can be rejected only with the averments made in the plaint do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law. It is his further contention that Moratorium came to an end with the completion of the Corporate Insolvency Resolution Process. It has been completed on 15.05.2018. With the approval of the Insolvency resolution process on 15.05.2018 the moratorium automatically comes to an end and there is no restriction in adjudicating the suit further. It is further submitted that the legislation intended to impose a moratorium pending resolution process only to ensure that multiple proceedings are not taken simultaneously to help obviate the possibility of potentially conflicting outcomes of related proceedings and to ensure that the resolution process is a collective one and also to facilitate orderly completion of the process. The moratorium is only to ensure a stand-still period during which creditors cannot resort to individual enforcement action which could frustrate the insolvency resolution process. Therefore, it is submitted that once the period of moratorium comes to an end, adjudication of other legal proceedings can be proceeded. It is further submitted that the applicant is entitled to question any

adjudication only during the period of moratorium during which it has got effect and with the completion of the insolvency resolution process, the effect of moratorium comes to an end by virtue of which the applicant cannot seek any advantage of the moratorium which is now non existing. This application is bound and liable to be dismissed in limine. On the date of application there is no moratorium in existence.

10. Institution of the present suit has no manner interfered nor frustrated the insolvency resolution process. But admittedly the resolution process has come to an end by 15.05.2018. The moratorium as contemplated by the Code cannot be construed as a total bar against adjudicating any valid dispute but only as a stand still period in order to facilitate completion of resolution process. The intent of the legislature is only to restrain parallel proceedings when the insolvency process is under progress and definitely not to bar any adjudication after the completion of the resolution process. The Insolvency and Bankruptcy Code does not impose any blanket ban in pursuing any adjudication after the completion of the insolvency process. There is only a stand-still for a limited period and not a permanent bar. The Respondent/Plaintiff has sent a notice dated 13.02.2017 even prior to filing of this suit. Further the supply of goods were

done only pursuant to the purchase orders of the applicant/Defendant. Payment for certain supplies were made. Therefore the interim resolution professional ought to have noted from books and records of the company about the factum of the respondent and included the name of the respondent in the list of operational creditors. The respondent/Plaintiff was not aware of the resolution proceedings which took place in Delhi, whereas the respondent/plaintiff is in chennai and the applicant did not bring it to the notice of the respondent about the commencement of the resolution process even though notices were received by the applicant about the claim of the respondent. For the first time the applicant brought to the notice of the respondent about the resolution process only after filing the amendment petition during July 2019. This application has filed after the lapse of more than a year and a half after entering appearance on behalf of the applicant. Hence prayed for dismissal of the application.

11. In support of his contention he relied upon the following judgments:

1. *RM.M. Ramanathan Chettiar vs. Ramaswami Pillai and Ors. [ MANU/TN/0519/1957]*

2. *K.L.Kuttayan Chettiar and Ors. vs. K.V.R.Surendranathachary and Ors.*

**[MANU/TN/0374/1982]**

3. *Alikutty Sahib v. Cherian and Ors.*

**[MANU/KE/0048/1961]**

4. *State Bank of India vs. Bhushan Steel Limited*

**[C.P.(IB) 201 (PB)/2017]**

12. Mr.R. Sankaranarayanan, Learned Amicus Curiae who assisted the Court submitted that the interim resolution professional is required to receive and collate all claims submitted by creditors to him in pursuance of the public advertisement made u/s 13 and 15 of the Code. After collation of all claims, the interim resolution professional shall form the committee of creditors which shall consists of all Financial Creditors. In the event of three being no financial creditors the operational creditors shall constitute the committee of creditors. This shall be followed by appointment of a Interim Resolution Professional (IRP) and IRP may be confirmed as the Resolution Professional or a Resolution Professional (RP) may be appointed. Thereafter, the RP prepares the Information Memorandum (IM) as per the Regulations freamed under the Code and call for Expression of Interest (EoL) by the aspirants who are willing to take over the management of the Corporate Debtor as a going concern. Once resolution plan submitted by such aspirants atleast 66% of the share of the Committee of Creditors (CoC) shall be placed

before the Adjudicating Authority for their approval. Adjudicating authority once approved the plan which becomes operative. It is his contention that as per Section 18 of the Code, IRP to collect the information regarding the finances and list of assets and liabilities as on the initiation dates. Section 18(1)(b) requires him to receive and collate all the claims submitted by the creditors to IRP pursuant to the announcement made as per Section 13 & 15. Hence it is his contention that expression 'collate' is defined in New Lexicon Webster's Dictionary to mean to 'examine a text closely against another in order to discover variations and correct or amend; to put in correct order; to verify the number and order of the sheets of a book; to bring together'. As per the Oxford English Dictionary it means 'collect and combine text, information or data; compare and analyse two or more sources of valuation; verify the number and order of sheets of a book. The word 'collate' occurring in Section 18(1)(b) could therefore be understood only in the same manner. The legislature has employed the term 'receive and collate'. This term means that the IRP would receive from a creditor and then collate the same by comparing the information with some other material relating to the same information. Section 18(1)(a) r/w 1(a)(iii) discloses that the task of the IRP begins with collect information regarding the assets, finances and operation of the corporate debtor. The same

section specifies the object of such collection of data. Therefore the primary task is to ascertain the financial position and this can be done by getting all the particulars of the Corporate Debtor from the Corporate Debtors including the lists of assets and liabilities. Once this information is collected Section 18(1)(b) comes into operation and the claims made by the creditors is compared with the lists of assets and liabilities obtained from the Corporate Debtor. Even as per the regulation 13(1) the provision provides for receiving and collating the claims it can mean only comparing the claim made by the any one creditor with the records of the Corporate Debtor. The IRP has to find out the financial position of the Corporate Debtor. It is inconceivable to presume that the financial position of a Corporate Debtor can be determined by omitting a liability disclosed in the balance sheet including the annual report where normally contingent liabilities are also taken into account. The RP cannot ignore the admitted liabilities according to the balance sheets and this position cannot change or account of any creditor not filing a claim with the IRP or RP. The RP should determine the financial position which is the essential pre-requisite for any resolution plan.

13. It is his further contention that any aspirant Resolution Applicant would have to conduct a due diligence of an entity which he intends to take

over. Any such due diligence would disclose this liability. The scheme of the act thus presupposes a simple due diligence being done by the IRP and RP before information memorandum is prepared. The RP cannot ignore any amount due by the Corporate Debtor to a statutory authority and also to those who render essential services like electricity board. Regulation 36 deals with the information Memorandum and the contents thereof. The Information Memorandum should contain the assets and liabilities with such description as on the Insolvency Commencement date, latest annual financial statement and details of all material litigation and on-going investigations or proceedings initiated by the Government and statutory authorities. There is a regulatory clause in regulation 36 which requires the RP to collect other information which he deems relevant. Therefore, it is his contention that RP or IRP has only to verify the claim of any person and RP cannot turn a Nelson's eye to any creditor whose name is found in the balance sheet of the Corporate Debtor and cannot ignore any litigation pending. Hence, it is his contention that Section 53 of the Code dealing with the Distribution of Assets is applicable even in the case of resolution process. Regulation 20 of Insolvency and Bankruptcy Board (Liquidation Process) Regulations, 2016 adds strength to the position that the stakeholders is also a separate category and all the people must be involved in the process of

resolution application before it can be made binding on them. Section 25 deals with the duties of the RP. A Resolution Professional is required to maintain an updated list of claims as per Section 25(2)(e). Hence, it is his contention that ascertainment of claim of creditors does not cease with filing of claim pursuant to the announcement under section 13 & 15 of the Code, which is a seamless operation which continues throughout the process till the dissolution of the company. Hence it is contended that restructuring process does not reserve the right of the corporate debtor and right to proceed against them for recovery of money would stand good in the hands of the liquidator or the Resolution Applicant under the supervision of monitoring committee. It is his further contention that UNCITRAL Legislative Guide provides for the entitlement of both identified as well as identifiable creditors to receive notice of all claims of the corporate debtor. Hence it is his contention that it would be illogical to extinguish the right of the creditor on account of his failure to submit a claim before the RP in the absence of any mandatory duty imposed by law coupled with another provision which extinguishes the debt. An extinguishment of a debt amounts to confiscation of a property rights guaranteed under the Art.300-A of the Constitution of India and without due process of law. Hence it is his contention that mere failure of creditor to submit the claim before the Resolution Professional

Right of the Creditor would not extinguish.

14. In support of his contention he relied upon the judgment in *State Bank of India vs. ARGL Ltd.*, **[CA-1215(PB)/2019 NCLT New Delhi dated 12.03.2019]**

15. The contention of the learned counsel for the applicant/defendant is that by order dated 26.07.2017, the Adjudicating Authority under Section 14 of the Insolvency and Bankruptcy Code, 2016 had declared moratorium prohibiting/barring institution of suit. Whereas, the present suit has been filed during the moratorium period. Hence, his contention is that the suit is barred by law provided under IBC under Order VII Rule 11(d). The above clause mainly applies when the statement in the plaint to be barred by law: General rule that only when the plaint averments indicate without any doubt or dispute the suit is barred by any law in force. At the same time, institution of the suit itself is violation of specific law which prohibits institution of such suit without referring those laws in the plaint. The Court is not powerless to go into the question whether the suit filed by the plaintiff is barred by any other law and liable to be rejected.

16. On perusal of entire suit the plaint has proceeded as simply money recovery suit for certain supplies which are made to the defendant company. It is relevant to note that though no circumstance pleads in the plaint to find out whether the suit is maintainable or not or liable to be rejected, it is to be noted that suit has been originally filed against M/s.Bhusham Steel Ltd., as the defendant. During the pendency of the suit in the place of defendant M/s. Tata Steel BSL Ltd., was substituted as defendant. The M/s. Tata Steel BSL Ltd., is none other than the resolution applicant approved by NCLT. Therefore, from the above facts, this Court can easily come to the conclusion that the resolution plan was in force and newly substituted defendant is none other than resolution applicant approved by NCLT. It is also relevant to note that the suit has been presented before this Court on 28.11.2017. It is admitted by both sides with regard to the proceedings before the NCLT the Company petition was filed before NCLT against the defendant under Section 7 of the Insolvency and Bankruptcy Code, 2016 before the Adjudicating authority of the National Company Law Tribunal on 03.07.2017. It is also not disputed by the plaintiff herein that the Company Petition was admitted on 26.07.2017 and moratorium under Section 14 of the Insolvency and Bankruptcy Code was admittedly declared by the Adjudicating Authority.

17. The suit has been filed on 28.11.2017 and numbered on 18.12.2017. It is also relevant to note that the Insolvency and Bankruptcy code, 2016 was introduced in the parliament, contained notes on clauses, the relevant portions are extracted hereunder:

“Clause 14 describes the effect of the moratorium. The purposes of the moratorium include keeping the corporate debtor's assets together during the insolvency resolution process and facilitating orderly completion of the processes envisaged during the insolvency resolution process and ensuring that the company may continue as a going concern while the creditors take a view on resolution of default. This also ensures that multiple proceedings are not taking place simultaneously and helps obviate the possibility of potentially conflicting outcomes of related proceedings. This also ensures that the resolution process is a collective one.

The order under this Clause 14 inter alia, prohibits the institution or continuation of suits or any legal proceedings against the corporate debtor, the disposal of any assets of the corporate debtor and debt enforcement actions under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The moratorium on initiation and continuation of legal proceedings, including debt enforcement action ensures a stand-still period during which creditors cannot resort to individual enforcement action which may frustrate the object of the corporate insolvency resolution process. The

prohibition on disposal of the corporate debtor's assets would ensure that the corporate debtor or its management is not able to transfer its assets, thereby stripping the corporate debtor of value during the corporate insolvency resolution process. The moratorium also extends to recovery of any property occupied by or in possession of the corporate debtor. It also prevents the termination of a contract that provides for supply of such essential goods and services as may be specified. Access to certain goods and services during the insolvency resolution process may be important for ensuring orderly completion of the proceedings. However, the costs for such goods or services will have to be paid in priority to other costs as part of a resolution plan or during distribution of assets, in case the corporate debtor goes into liquidation.

Clause 31 provides that the adjudicating authority is required to review the resolution plan sanctioned by the committee of creditors for ensuring that the resolution plan (a) meets the criteria set out in Clause 30(), (b) provides for the repayment to operational creditors of at least the amount which they would have been entitled to if the corporate debtor were to be liquidated and (c) satisfies such other conditions as may be prescribed by the Insolvency and Bankruptcy Board of India. Criterion (b) set out above is intended to provide protection to operational creditors (as they are not represented on the committee of creditors). Although a resolution plan may be provide for any proposal for its insolvency resolution (including sale of the business as a going concern, takeover of the corporate debtor by another entity, reorganising or retiring debt etc. - all in compliance with law). The

Adjudicatory Authority is also required to ensure that there were no material irregularities in the exercise by the resolution professional of his powers during the course of the corporate insolvency resolution professional of his powers during the course of the corporate insolvency resolution period. Where the resolution plan meets the criteria set out in Clause 31(1), the adjudicating authority shall sanction the plan. The plan shall be binding on the corporate debtors, its creditors, employees, shareholders, guarantors and other stakeholders. Further, the moratorium imposed under section 14 ceases to have effect upon approval of the plan. However, it is important to note that the plan is binding on all the relevant stakeholders. Therefore, if a plan requires stakeholders to do or not do certain actions for the successful implementation of a plan, it shall be binding on all the affected parties who shall be bound to undertake the actions set out in the plan. The resolution professional is also required to forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Insolvency and Bankruptcy Board of India to be kept as part of its record-keeping function.”

18. Section 14 of the Insolvency and Bankruptcy Code is reads as follows:

*“14.(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-*

*(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*

*The language employed in S.14(1) (a) of the Code is peremptory and there is no option but to enforce a moratorium. This is because the scheme of the code mandates that there will be a 'stand still' period where the assets of the CD stand preserved. This is most critical as a proposed Resolution Applicant will be required to know the CD's total liabilities very clearly before deciding to rehabilitate the Company."*

19. Therefore, when the institution of the suit itself prohibited by an order of moratorium passed in the given case and such suit has been filed during the existence of moratorium. Merely because these facts has not been stated in the plaint it cannot be said that the Court cannot go into maintainability of the suit or rejecting the suit. Merely because these averments in the plaint do not reveal any bar under law the Court is without any power to go into the question, the literal interpretation of the provision under Order VII Rule 11(d) C.P.C to be given. The Court has to apply the

relevant law to determine that the plaint is liable to be rejected on the ground of bar under law. The proceedings before Insolvency and Bankruptcy Code is not disputed before this Court. Such being the position the Court can take Judicial notice of such proceedings.

20. It is the contention of the respondent/plaintiff that the moratorium has come to an end after resolution plan under Section 31 was approved by the Adjudicating Authority. It is relevant to refer the Section 14(4) of the Insolvency and Bankruptcy Code that the order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process: Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 32 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

21. It is thus clear from a reading of the proviso to Section 14(4) that the cessation of moratorium is linked to approval of a Resolution Plan under Section 31 (1) of an Order for Liquidation of the CD under Section 33. A

resolution plan will be approved by an Adjudicating Authority only if it is in compliance of the requirements of such a plan, as set out in Section 30 of the Insolvency and Bankruptcy Code. In the present instance, the Resolution Plan submitted by the Resolution Applicant was approved by the Adjudicating Authority and as such the relevant provision is Section 31 (1) of the Code.

S.31 (1) of the Insolvency and Bankruptcy Code reads as follows:

*“31.(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, 3 [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] creditors, guarantors and other stakeholders involved in the resolution plan.”*

22. Prior to such resolution, section 15 of Insolvency and Bankruptcy Code mandates public announcement of the corporate insolvency resolution process and Section 18 of IBC deals with the duty of interim resolution professional that he shall perform (a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the

financial position of the corporate debtor, including information relating to business operations for the previous two years; financial and operational payments for the previous two years; list of assets and liabilities as on the initiation dates; and such other matters as may be specified. (b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under Sections 13 and 15. Whereas, the resolution plan is submitted that approved by the Adjudicating Authority under Section 31. Such resolution plan will be binding on the creditor, guarantors and other stakeholders involved in the resolution plan. Therefore, when the approved resolution plan providing for a manner of resolution of all monetary claims, the requirement for continuation of a moratorium lapses and therefore the legislature has provided for cessation of the same. The cessation of the moratorium cannot mean revival of a previous claim of a creditors, as the same has already become extinguished on account of the provisions of the resolution plan which provides for all claims, as per law. It is for this reason that Section 31(3) provides only upon approval of a resolution plan by Adjudicating Authority, the moratorium under Section 14 ceases. Be that it may, on the date of filing the present suit there is clear bar under law against this institution mere cessation of moratorium will not cure such defect. The very filing of the suit itself in the given case was prohibited under

Section 14 of the Insolvency and Bankruptcy Code, 2016 at the relevant time.

23. The Hon'ble Apex Court in Civil Appeal No.16929 of 2017 **[Alchemist Asset Reconstruction Company Ltd., Vs. M/s.Hotel Gaudavan Pvt. Ltd., and Others]** has held as follows:

*“5. The mandate of the new Insolvency Code is that the moment an insolvency petition is admitted, the moratorium that comes into effect under Section 14(1) (a) expressly interdicts institution or continuation or pending suits or proceedings against Corporate Debtors.*

*6. This being the case, we are surprised that an arbitration proceeding has been purported to be started after the imposition of the said moratorium and appeals under Section 37 of the Arbitration Act are being entertained. Therefore, we set aside the order of the District Judge dated 06.07.2017 and further state that the effect of Section 14(1)(a) is that the arbitration that has been instituted after the aforesaid moratorium is non est in law.”*

24. The Hon'ble Apex Court in the above judgment has held that arbitration proceedings started after moratorium is non est in law.

25. The judgment passed by this Court in ***K.L.Kuttayan Chettiar and others Vs. K.V.R.Surendranathachary and others*** reported in ***(1982)2 MLJ 1443*** pertaining to the relevant agricultural Act (XV of 1976) which was enacted by the State Government. Section 3 of the Act prohibited filing of the suit against the agriculturist for a period of two years and six months from the commencement of Act. This Court held that the institution of suit contravening Section 3 during the moratorium period is liable to be rejected.

26. Similarly the judgment passed by this Court in ***RM.M.Ramanathan Chettiar Vs. Ramaswami Pillai and others*** reported in ***(1957)2 MLJ 267***, has held that the suit instituted in controvention of the special Act is liable to be dismissed. From the above judgment since the moratorium is in existence, the suit is filed in contravention of specific law and such suit is liable to be rejected. In this case the resolution plan has been approved by the Adjudicating Authority. The Insolvency and Bankruptcy Code provides for equitable terms of each class of creditors. The approval of the resolution plan by the Adjudicating Authority validates that the plan has provided for dealing with operational creditors, as provided under Section 30 (2) of the Insolvency and Bankruptcy code. Such being

the position, no pre existence creditors by filing suit can try to steal a march over other similarly placed creditors particularly the suit is filed during the moratorium.

27. It is also to be noted that the Hon'ble Apex Court in **Swiss Ribbons Vs. Union of India** reported in AIR2019SC 739, held that once CIRP proceedings are initiated, it is no longer a proceeding between the applicant creditor and the corporate debtor but is envisaged to be a proceeding involving all creditors of the debtor.

28. Therefore, if such suits are permitted to file to make claim outside CIRP, the giving a go by to the resolution plan will certainly lead to unequal treatment of creditors and encourage non filing of claims before the IRP/RP leading to a complete breakdown of the code and procedure. Though it is the duty of the interim professional to collate or (a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to business operations for the previous two years; financial and operational payments for the previous two years; list of assets and liabilities as on the initiation dates; and such other matters as may be

specified. (b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under Sections 13 and 15.

29. According to Amicus resolution applicant also to make due enquiry. Hence, his contention that the debt cannot be extinguishing merely because the claim has not been preferred, such submission cannot be countenanced for the simple reason. Once the CIRP is admitted the proceedings become one in rem as held by the Honourable Supreme Court. Therefore, it is for the creditor to file claim before RP. In this regard, recently pronounced three judges bench of the Hon'ble Apex court in Civil Appeal Nos.8766-67, 5634-5635, 5716-5719, 5996, 6266, 6269, 6409, 8768, 7266, 7260, 8769 of 2019 Diary Nos.24417, 31409, 36838 of 2019, Writ Petition (Civil) Nos.1055, 1064, 1049, 1050, 1057, 1061, 1060, 1056, 1063, 1066, 1087, 1110, 1113, 1121, 1246, 1296. para 67 held as follows:

“67. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decoded on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into

uncertainly amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us herein above. For these reasons, the NCLAT judgment must also be set aside on this Court.”

30. The above judgment makes it very clear that once the resolution plan approved the applicant cannot face undecided claims mere accepting leads to uncertainty amounts payable by a prospective resolution applicant. Having regard to above decision and also as discussed earlier, this Court is of the view that suit filed by Plaintiff during existence of Moratorium is barred by law. No doubt only plaintiff averments are required to be seen to find out whether suit appears to be barred by any law. However when the law itself prohibits the institution of the suit which has not been disclosed in the plaint and suppressed. The Court can still reject the plaint on the basis of the bar contained in the law. The suit itself instituted during moratorium period as held by the Hon'ble Apex Court in **Alchemist Asset Reconstruction Company Ltd. case** (supra) that such institution is non est. The suit has to be necessarily to be rejected not only under Order VII

Rule 11, but also by invoking inherent power of the Court. Particularly, when the claim has not been filed the resolution plan is approved the continuation of suit is meaningless. This Court is of the view that even such suit is continued no purpose would be served once the approval of resolution plan done by the Adjudicating Authority no claim can be made as held by the Hon'ble Apex Court in three Judges Bench. In view of the same, this court hold that the suit is not maintainable. Accordingly, the plaint is rejected.

**A.No.8557 of 2017**

31. In view of the order passed in A.No.6563 of 2019 rejecting the plaint, this Application is closed.

32. In the result, A.No.6563 of 2019 is ordered and A.No.8557 of 2017 is closed.

**28.11.2019**

Index : Yes / No  
Internet: Yes  
Speaking/Non-speaking order  
ggs/rst

A.Nos.8557 of 2017 and 6563 of 2019 in C.S.No.962 of 2017

**N. SATHISH KUMAR, J.**

ggs/rst



Pre delivery order in:  
**A.Nos.8557 of 2017 and 6563 of 2019**  
**in C.S.No.962 of 2017**

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**28.11.2019**