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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 444/2014, I.A. 20147/2014, 2230/2015, 5610/2015,**
12848/2016
PUNJ LLOYD LIMITED Plaintiff

Through: Mr. Dhruv Dewan and Ms. Yashna
Mehta, Advocates (M: 9818921502).

versus

SABIC UK PETROCHEMICALS LIMITED Defendant
Through: Ms. Mamta Tiwari and Ms. Charu
Ambwani, Advocates (M:
7838683884).

AND

✓ **EX.P. 88/2015, EX.APPL.(OS) 82/2017, 182/2018**

SABIC UK PETROCHEMICALS LTD Decree Holder

Through: Ms. Mamta Tiwari and Ms. Charu
Ambwani, Advocates (M:
7838683884).

versus

PUNJ LLOYD LTD Judgement Debtor
Through: Mr. Dhruv Dewan and Ms. Yashna
Mehta, Advocates (M: 9818921502).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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26.03.2019

1. CS (OS) 444/2014 has been filed by Punj Lloyd Limited seeking a declaration that judgment and decree dated 10th October, 2013 passed by the English Technology and Construction Court in Case No. HT-11-311 is incapable of being enforced in India and a permanent injunction restraining SABIC UK Petrochemicals Limited from relying upon the said

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CS(OS) 444/2014

judgement/decreed.

2. Execution Petition No. 88/2015 has been filed by SABIC UK Petrochemicals Limited to seek enforcement and execution of the said judgement. Both these matters were part heard from time to time.

3. Today, learned counsels for the parties have placed before the Court an order dated 8th March, 2019 passed by the National Company Law Tribunal New Delhi. By the said judgement, in an application filed by ICICI Bank Limited, a financial creditor of Punj Lloyd Limited, the NCLT has declared a moratorium and appointed an interim resolution professional.

Paragraphs 25 and 26 of the said order are set out below:-

“25. We also declare moratorium in terms of Section 14 of the Code. A necessary consequence of the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) and (d) and thus the following prohibitions are imposed which must be followed by all and sundry:

“(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;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.”

26. It is made clear that the provisions of moratorium shall not apply to (a) such transactions which might be

notified by the Central Government in consultation with any financial regulator; (b) a surety in a contract of guarantor to a Corporate Debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other services or supplies as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016."

4. The interim resolution professional has now taken charge of the affairs of the company. As per the moratorium, the continuation of any pending suit where a debt is sought to be recovered is barred under Section 14 of the Insolvency and Bankruptcy Code, 2016. Learned counsel appearing for SABIC UK Petrochemicals Limited submits that she wishes to withdraw the execution petition, leaving her remedies open before the NCLT. The petition is dismissed as withdrawn with liberty to the petitioner SABIC UK Petrochemicals Limited to approach the NCLT and file its claims before the NCLT in accordance with law. If for any reason including the pendency of CS (OS) 444/2014, the claims of SABIC UK Petrochemicals Limited are not entertained by the NCLT, liberty is granted to revive the present petition.

5. Execution petition is dismissed as withdrawn with liberty as aforesaid.

6. Learned counsel earlier appearing for Punj Lloyd Limited has assisted the Court and placed a judgement in ***Power Grid Corporation of India Limited v Jyoti Structures Limited OMP (COMM) 397/2016 Decided on 11th December, 2017.*** It is his submission that any proceedings which are

meant for the benefit of the company can continue, as Section 14(1)(a) only envisages non-continuation of proceedings “*against the corporate debtor*”. Since the suit seeking declaration and injunction, has been filed by the company for the benefit of the company, the suit is not liable to be dismissed under Section 14 of the Insolvency and Bankruptcy Code.

7. The Court has perused the judgement in ***Power Grid Corporation of India Limited*** wherein a Ld. Single Judge of this Court has observed as under:-

“10. In the light of above purpose or object behind the moratorium, Section 14 of the Code would not apply to the proceedings which are in the benefit of the corporate debtor, like the one before this court in as much these proceedings are not a ‘debt recovery action’ and its conclusion would not endanger, diminish, dissipate or impact the assets of the corporate debtor in any manner whatsoever and hence shall be in sync with the purpose of moratorium which includes keeping the corporate debtor’s assets together during the insolvency resolution process and facilitating orderly completion of the process envisaged during the insolvency resolution process and ensuring the company may continue as a going concern.

...
 14. Hence for following reasons I conclude the present proceeding would not be hit by the embargo of Section 14(1)(a) viz., (a) ‘proceedings’ do not mean ‘all proceedings’; (b) moratorium under section 14(1)(a) of the code is intended to prohibit debt recovery actions against the assets of corporate debtor; (c) continuation of proceedings under section 34 of the Arbitration Act which do not result in endangering, diminishing, dissipating or adversely impacting the assets of corporate debtor are not prohibited under section

14(1)(a) of the code; (d) term 'including' is clarificatory of the scope and ambit of the term 'proceedings'; (e) the term 'proceeding' would be restricted to the nature of action that follows it i.e. debt recovery action against assets of the corporate debtor; (f) the use of narrower term "against the corporate debtor" in section 14(1)(a) as opposed to the wider phrase "by or against the corporate debtor" used in section 33(5) of the code further makes it evident that section 14(1)(a) is intended to have restrictive meaning and applicability; (g) the Arbitration Act draws a distinction between proceedings under section 34(i.e. objections to the award) and under section 36(i.e. the enforceability and execution of the award). The proceedings under section 34 are a step prior to the execution of an award. Only after determination of objections under section 34, the party may move a step forward to execute such award and in case the objections are settled against the corporate debtor, its enforceability against the corporate debtor then certainly shall be covered by moratorium of section 14(1)(a)."

8. In view of the ratio of the above said judgement, the suit filed by Punj Lloyd Limited would not be liable to be dismissed at this stage subject to hearing the IRP.

9. Accordingly, issue notice to Mr. Gaurav Gupta, the Interim Resolution Professional, for appearance, whose contact details are as under:-

10. 203, Savitri Complex- 1, Near Dholewal Chowk, Ludhiana, Punjab-141003.

11. Email:-gauravinduca@gmail.com,

12. Mobile: 9814918377.

13. Learned counsel who was appearing earlier for Punj Lloyd Limited is

33

permitted to inform the IRP about today's order. The Company shall duly be represented by the IRP or anyone authorised for or on his behalf. Notice is made returnable on 28th May, 2019.

Prathiba
PRATHIBA M. SINGH, J.

✓ **MARCH 26, 2019**
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