



\$~4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 234/2017 with I.A. Nos. 3960/2017, 3961/2017, 5317/2017**

SPADE FINANCIAL SERVICES LIMITED Plaintiff

Through: Mr. Rahul Rajan and
Mr. Lokesh Bhola
(Ph. 9999410660, e-mail:
lokesh@legalicons.in).

versus

AKME PROJECTS LIMITED & OTHERS Defendants

Through: Mr. Mohit Uppal, Advocate for
D-1 (Ph. 9427849009, e-mail:
mohit.uppal@aanandlaw.com).

Mr. Akhilesh Wahal, Advocate
(proxy) for Mr. Arjun Syal,
Advocate for D-2
(Ph. 9717754070, e-mail:
syalandcompany@gmail.com).

Ms. Divya Sharma, Advocate
for D-3 (Ph. 9216304161,
e-mail:divyasharma817@gmail.com).

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT
12.09.2022

%

1. Mr. Akhilesh Wahal, Advocate submits that he has instructions to withdraw their *vakalatnama*. At request, Mr. Arjun Syal and Mr. Akhilesh Wahal, Advocates are discharged from appearance on behalf of defendant No. 2.



2. Mr. Mohit Uppal, Advocate appears for Resolution Professional and submits that Mr. Jailesh Kumar Grover has been appointed as the Resolution Professional ('RP') of defendant No. 1 i.e. Akme Projects Limited. He submits that the moratorium qua the defendant No. 1 company is still in operation. He further submits that the plaintiff has already submitted its claims before the RP.

3. Learned counsel appearing for the RP has handed over copy of judgment passed by Hon'ble Supreme Court dated 01.02.2021 in Civil Appeal No.2842/2020 and Civil Appeal No. 3063/2020 to contend that the present suit is not maintainable in view of the aforesaid judgment.

4. Aforesaid judgment passed by Hon'ble Supreme Court discloses the facts that are material in the present case also.

5. National Company Law Tribunal (NCLT) had held that the plaintiff herein i.e. Spade Financial Services Limited ('Spade') along with AAA Landmark Private Limited ('AAA') have to be excluded from the Committee of Creditors ('CoC') formed in relation to the Corporate Insolvency Resolution Process ('CIRP') initiated against AKME Projects Ltd. i.e. defendant No. 1 herein, the Corporate Debtor before Hon'ble Supreme Court. NCLT by its order dated 19.07.2019 excluded both AAA and Spade from the COC upon applications filed by Phoenix Arc Private Limited ('Phoenix') and YES Bank under Section 60(5)(C) of the Insolvency and Bankruptcy Code, 2016 (IBC).

6. Subsequently, against the aforesaid order dated 19.07.2019 passed by NCLT, appeals were filed before the National Company



Law Appellate Tribunal ('NCLAT'). By judgment dated 27.01.2020, NCLAT dismissed the appeals under Section 61 of the ('IBC'), which was preferred by AAA and Spade i.e. the plaintiff herein.

7. Against the judgment dated 27.01.2020 passed by NCLAT, appeals bearing Civil Appeal No. 2842/2020 and Civil Appeal No.3063/2020 were filed before Hon'ble Supreme Court. The said appeals came to be disposed of by Judgment dated 01.02.2021 by Hon'ble Supreme Court.

8. In the aforesaid judgment, Hon'ble Supreme Court has given a categorical finding that Spade i.e. plaintiff herein, cannot be labelled as financial creditor of Corporate Debtor i.e. defendant No. 1 herein under Section 5(7) of IBC. Further, Hon'ble Supreme Court also held that Spade i.e. plaintiff herein alongwith AAA was related parties of the Corporate Debtor i.e. defendant No. 1 under Section 5(24) of IBC. Thus, the decision of NCLAT, inasmuch as it excluded Spade i.e. the plaintiff herein and AAA from the CoC in accordance with the first proviso of Section 21(2) IBC, was affirmed by Hon'ble Supreme Court. Further, Hon'ble Supreme Court set aside decision of the NCLAT inasmuch as it referred to Spade i.e. the plaintiff herein along with AAA as financial creditor of the Corporate Debtor i.e. defendant No. 1 herein.

9. The relevant paragraphs of the judgment dated 01.02.2021 passed by Hon'ble Supreme Court in Civil Appeal No. 2842/2020 and Civil Appeal No.3063/2020 are reproduced as under:



“A The appeals

1. This judgment would govern two sets of appeals arising from the judgment of the National Company Law Appellate Tribunal (“**NCLAT**” or “**Appellate Tribunal**”). By a judgment dated 27-1-2020 [Spade Financial Services Ltd. v. Hari Krishan Sharma, 2020 SCC OnLine NCLAT 983] , NCLAT dismissed the appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) preferred by AAA Landmark Pvt. Ltd. (“**AAA**”) and Spade Financial Services Pvt. Ltd. (“**Spade**”) to assail the order dated 19-7-2019 [Hari Krishan Sharma v. AKME Projects Ltd. CP (IB) No. 55/ND/2018, decided on 19-7-2019 (NCLT)] of the National Company Law Tribunal, New Delhi Bench-III (“**NCLT**” or “**Adjudicating Authority**”). The NCLT had held that AAA and Spade have to be excluded from the Committee of Creditors (“**CoC**”) formed in relation to the Corporate Insolvency Resolution Process (“**CIRP**”) initiated against AKME Projects Ltd. (“**Corporate Debtor**”). NCLT passed its order dated 19-7-2019 [Hari Krishan Sharma v. AKME Projects Ltd. CP (IB) No. 55/ND/2018, decided on 19-7-2019 (NCLT)] on applications [CA No. 337 of 2018 and CA No. 338 of 2019 (**Phoenix**); CA No. 268 of 2018 and CA No. 269 of 2018 (Yes Bank).] filed by Phoenix Arc Pvt. Ltd. (“**Phoenix**”) and YES Bank under Section 60(5)(c) IBC.

2. Phoenix, in Civil Appeal No. 2842 of 2020, submits that though the NCLAT correctly dismissed the appeal filed by Spade and AAA, holding that they are related parties of the corporate debtor and are hence to be excluded from the CoC, there is an erroneous finding that they are financial creditors. In para 11 of its judgment, the NCLAT has observed that:

“11. ... admittedly appellants are the financial creditors of the corporate debtor AKME Projects Ltd. ...”



It has been submitted that there was never any admission on the part of Phoenix that AAA and Spade are financial creditors. The appeal by Phoenix seeks to challenge the above finding on the ground that:

- (i) It is contrary to the record; and
- (ii) The specific stand of Phoenix is that both AAA and Spade are not even creditors of the corporate debtor, much less financial creditors.

Phoenix is thus in appeal under Section 62 IBC, confined to the finding that AAA and Spade are financial creditors.

XXXXXX

G. Whether Spade and AAA are financial creditors of the corporate debtor.

G.1. Submission of the counsel

25. The learned Senior Counsel who appeared in these proceedings on behalf of the contesting parties are:

- (i) Mr K.V. Viswanathan for AAA and Spade;
- (ii) Mr Neeraj Kishan Kaul for Phoenix; and
- (iii) Mr Sanjiv Sen for the Resolution Professional (“RP”).

26. The submission of Mr K.V. Viswanathan is that NCLT held against AAA and Spade on the ground that they were not financial creditors. In view of this finding, the NCLT held that it was not necessary to enter upon the second issue which it had formulated. On the other hand, NCLAT in appeal proceeded on the basis that admittedly AAA and Spade are financial creditors but then went on to hold that they are related parties and are therefore liable to be excluded from the CoC. His submission is threefold:

- 26. (i) The issue as to whether Spade and AAA are financial creditors was concluded by the earlier order of



the NCLT dated 31-5-2018 which operates as res judicata. NCLT having allowed the applications of AAA and Spade for submitting their claims to the IRP as financial creditors, this finding could not have been altered in the subsequent order dated 19-7-2019 [*Hari Krishan Sharma v. AKME Projects Ltd.* CP (IB) No. 55/ND/2018, decided on 19-7-2019 (NCLT)] . The NCLT in its order dated 31-5-2018 gave a categorical finding that the amount received by the corporate debtor in the form of deposits by Spade and AAA are financial debts and the IRP's rejection of their claim was unsustainable;

XXXXXXXXXX

G.3. Analysis

G.3.1. Relevant provisions

41. Section 5(7) IBC defines a financial creditor:

“(7) “**financial creditor**” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;”

42. Section 5(8) IBC provides a definition of “financial debt” in the following terms:

“(8) “**financial debt**” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire-purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;



(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

Explanation.—For the purposes of this sub-clause—

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of Section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;”

XXXXXX

G.3.3. Collusive transactions

46. The above discussion shows that money advanced as debt should be in the receipt of the borrower. The borrower is obligated to return the money or its equivalent along with the consideration for a time value of money, which is the compensation or price payable for the period of time for which the money is lent. A transaction which is sham or collusive would only create an illusion that money has been disbursed to a borrower with the object of receiving consideration in the form of time value of money, when in



fact the parties have entered into the transaction with a different or an ulterior motive. In other words, the real agreement between the parties is something other than advancing a financial debt. A useful elaboration of “sham transactions” can be found in the opinion of Diplock, L.J. in **Snook v. London & West Riding Investments Ltd.** [*Snook v. London & West Riding Investments Ltd.*, (1967) 2 QB 786].

“As regards the contention of the plaintiff that the transactions between himself, Auto Finance and the defendants were a “sham,” it is, I think, necessary to consider what, if any, legal concept is involved in the use of this popular and pejorative word. I apprehend that, if it has any meaning in law, it means **acts done or documents executed by the parties to the “sham” which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create.**”

(emphasis supplied)

Diplock, L.J. also stated:

“But one thing, I think, is clear in legal principle, morality and the authorities (see *Yorkshire Railway Wagon Co. v. Maclure and Stoneleigh Finance Ltd. v. Phillips*), that for acts or documents to be a “sham”, with whatever legal consequences follow from this, **all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating. No unexpressed intentions of a “shammer” affect the rights of a party whom he deceived...**”

(emphasis supplied)

XXXXXXX



G.3.4. Spade and AAA

49. Mr Kaul argued that the transactions entered into between the corporate debtor and Spade and AAA are collusive in nature and do not constitute a financial debt. Mr Viswanathan has urged that the eligibility of Spade and AAA as financial creditors has conclusively been determined by the NCLT in its order dated 31 May 2018. We have already concluded that the above order would not operate as res judicata and it was within the jurisdiction of the NCLT to consider this issue afresh. NCLT in its order dated 19 July 2019 has undertaken a detailed analysis of the transactions to arrive at a finding that the transactions were collusive. We are inclined to agree with the findings of the NCLT in its order dated 19 July 2019. NCLAT has also made an observation that: **we are of the considered opinion that Mr Anil Nanda, Mr Arun Anand had created a web of companies in which both along with the near and dear ones including Ms Renu Anand (wife of Mr Arun Anand) and Mr Sonal Anand (brother-in-law of Mr Arun Anand) acted in a concert with each other**” [Para 18.] (emphasis supplied). It is to be noted that M/s Ernst & Young were appointed as forensic/transactional auditors by the RP on 19-11-2019. Their report contains significant findings:

“Considering the above transactions, *we were unable to understand the business rationale of:*

Purchase and sale transaction with Spade Financial resulting in a loss of approx. INR 2.12 crores to CD.

Rent paid to Arun Anand and Aditya Anand.

ICD balance of Spade Financial being transferred to AAA Landmark against which sale agreement was executed.

Basis of valuation of the land transaction and sale of property to AAA Landmark.

**EY Comments:****Reference to Section 66 of the Insolvency and Bankruptcy Code, 2016**

‘66. Fraudulent trading or wrongful trading.—(1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the adjudicating authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.’

Considering the above facts and when read in reference with Section 66 of the Insolvency and Bankruptcy Code, 2016, indicates an intent to defraud the creditors and may be categorized as potentially fraudulent. However, the RP shall make an independent assessment whether it intends to file an application for the same with the adjudicating authority as mentioned in the Insolvency and Bankruptcy Code.”

(emphasis supplied)

50. As noted by NCLT, the Memorandum of Understanding dated 12-8-2011, on the basis of which Spade had filed its claim in Form C before the IRP, was signed two years after the commencement of the purported transaction. The execution of the memorandum of understanding was sought to be explained on the basis that a formal document was created for specifying the rate of interest on the ICDs given by Spade to the corporate debtor. However, despite the creation of a formal document, the rate of interest being charged on the ICDs



was 12% as mentioned in the claim before the IRP, which is half of the interest rate of 24% stipulated in the memorandum of understanding. During the arguments, Mr Kaul and Mr Sen have also brought to the notice of this Court that the memorandum of understanding is unregistered and unstamped. The IRP in his letter dated 25-5-2018 has noted that as per the ledger provided by Spade, no interest was claimed on the alleged debt and no adjustment was made regarding the payment of principal or interest by the corporate debtor to Spade. It has been submitted in the written submissions filed on behalf of Spade and AAA that the auditors of the corporate debtor had been putting a note in its balance sheets stating that the interest of 12% was not being paid to Spade due to a dispute. This submission in fact further fortifies the finding of the IRP that no interest has been paid on the alleged loan. The IRP has also noted in his letter that the memorandum of understanding does not stipulate the period of repayment. Hence, the consideration for time value of money is absent, which is an essential ingredient of a financial debt. The NCLT has also noted that a major portion of the ICDs was credited in the account of Mr Arun Anand holding that the entire amount was not “disbursed” to the corporate debtor. Nclat has also made a similar finding in para 11(i) of its judgment. This finding has been disputed by Mr Viswanathan who argued that no amount of the ICDs has been credited to the account of Mr Arun Anand and such an allegation has not been made by any of the parties including the RP. However, it is to be noted under Clause 2 of the memorandum of understanding, the amount of Rs 26.55 crores has been disbursed not only to the corporate debtor but also to “other companies on behalf of AKME”. In any event, the entirety of the ICDs were not disbursed to Spade. Additionally, no Board Resolution was passed by Spade approving the grant of ICDs and the charge created on the loan was not registered with the Registrar of Companies. In view of the above, we are inclined to agree with Mr



Kaul that the memorandum of understanding was an eyewash and collusive.

51. NCLT in its order dated 19-7-2019 [Hari Krishan Sharma v. AKME Projects Ltd. CP (IB) No. 55/ND/2018, decided on 19-7-2019 (NCLT)] has noted that AAA and the corporate debtor had entered into multiple agreements regarding the same property without giving any explanation or rationale regarding variation in the consideration. This showed that the transactions were collusive in nature entered with the purpose of diverting properties of the corporate debtor to AAA. Mr Viswanathan sought to explain the multiple agreements, and argued that AAA entered into a development agreement dated 1-1-2012 with the corporate debtor to obtain 38.3% of development rights. Since the development agreement could not be implemented because the licence for the project could not be split into two parts, an agreement to sell and a side letter were executed on 25-10-2012. The agreement to sell was entered to purchase FSI/flats equivalent to 38.3% of the total FSI in relation to specific units identified and allotted in the agreement. Apparently, the sale consideration was re-negotiated and enhanced from Rs 32.80 crores under the development agreement to Rs 86.01 crores under the agreement to sell. Mr Viswanathan has submitted that there was no partnership clause in the agreement to sell. However, Clause 3 of the side letter dated 25-10-2012 shows that the intent of the parties was to continue to co-develop the land. Clause 3 of the side Letter provides:

“3. It is agreed that ALPL shall share the cost of the Project in the same ratio as the share of respective development in the Property [i.e. Villas- 50% and other developments (group housing, etc.) — 36.33%]. The cost of the Project shall include:

(a) Land cost



- (b) Licence and approval costs
- (c) Construction cost
- (d) Direct project management costs (people at the site)
- (e) Marketing & sales promotion cost
- (f) Liaison cost
- (g) Maintenance cost for unsold inventory
- (h) Government levies and charges including EDS & IDC and any enhancement thereof.”

It appears that the parties converted the development agreement into an agreement to sell executed along with a side letter to circumvent the legal prohibition on splitting a development licence in two parts. The transaction between AAA and the corporate debtor was collusive in nature.

52. Since the commercial arrangements between Spade and AAA, and the corporate debtor were collusive in nature, they would not constitute a “financial debt”. Hence, Spade and AAA are not financial creditors of the Corporate Debtor.

53. The Appellate Tribunal has affirmed the decision of the NCLT to exclude Spade and AAA from the CoC on the ground that they are related parties. As we have seen earlier, there was a specific finding in the decision of the NCLT on the close business relationship between AAA and Spade on one hand and the corporate debtor on the other, in terms of the provisions contained in Section 5(24). The decision of the NCLT spoke of a deep entanglement in the business affairs. The NCLT came to the specific finding that Spade and AAA “were related parties” of the corporate debtor but, that the relationship had ended by the time the initiation of the CIRP took place. It is this aspect which now merits consideration. We shall first analyse whether Spade and AAA are related parties of the Corporate Debtor.

XXXXXXXX



H.3 Analysis

60. Crucial to the understanding of whether Spade and AAA were related parties of the corporate debtor during the relevant period is the relationship between Mr Arun Anand and Mr Anil Nanda. It is Mr Viswanathan's argument that these individuals shared no prior relationship, which has been opposed by Mr Kaul and Mr Sen. We noted that Mr Arun Anand has held multiple positions in companies which form part of Anil Nanda Group of Companies. Further, Mr Anil Nanda has himself invested in companies owned by Mr Arun Anand, and had commercial transactions with them. Through Spade and AAA's own admission, Mr Arun Anand was appointed as the Group CEO of the Anil Nanda Group of Companies (for however short a period) on circular approval by Mr Anil Nanda himself. Finally, Mr Arun Anand's brother in-law, Mr Sonal Anand, has also been consistently associated with companies in the Anil Nanda Group of Companies, including the corporate debtor and JIPL. This deep entanglement between these individuals was noted by the NCLT and the NCLAT.

61. Admittedly, Mr Arun Anand was in control of Spade and AAA during the relevant period. Further, he held positions in the corporate debtor or the Anil Nanda Group of Companies, which included the corporate debtor. Mr Anil Nanda and Mr Sonal Anand also held positions in the corporate debtor and JIPL during this period.

62. Based on the above, it is not difficult for us to accept the conclusion of the NCLAT that Mr Arun Anand would be a related party of the corporate debtor in accordance with Section 5(24)(h) and Sections 5(24)(m)(i). Mr Viswanathan has tried to refute this argument by relying on the definition of "control" in **Arcelor Mittal (India) (P) Ltd. vs. Satish Kumar Gupta** (supra). However, it is



important to note that the discussion there was in the context of ineligible resolution applicants under subsection (c) of Section 29-A IBC, which specifically prescribes this test. Presently, we have to determine whether the corporate debtor's board, Directors, etc. are accustomed to act on Mr Arun Anand's advice/direction/instruction and if he participates in the policy-making process of the corporate debtor. While a strict determination of *intent* or *mens rea* may not always be possible by the NCLT and NCLAT in summary proceedings, it is possible to draw the inference from the facts at hand. These facts are that there was a deep entanglement between the entities of Mr Arun Anand and Mr Anil Nanda, and Mr Arun Anand did hold positions during this period which could have been used by him to guide the affairs of the corporate debtor. This finding is further supported by our conclusion that the transactions between the corporate debtor and the entities led by Mr Arun Anand were collusive in nature.

63. Similarly, we have no hesitation in accepting the NCLAT's conclusion that Spade entered into two transactions on the basis of the advice/instructions/directions of the board/Directors of the corporate debtor under Section 5(24)(f). Mr Viswanathan's submission that these were purely commercial transactions between the parties cannot be accepted, given the extensive history demonstrating the interrelationship between the individuals associated with these corporations. While the transactions may have indeed been commercial, it cannot be doubted that Spade undertook them due to the pervasive influence of Mr Anil Nanda. In our analysis above, we have similarly come to the conclusion that other past transactions between these entities have been collusive.

64. Finally, we have already held that the transactions between AAA and the corporate debtor were collusive in



nature. This supports the findings of the NCLAT that the agreement to sell and side letter dated 25-10-2012 were a mere eyewash, through which they sought to develop the AKME RAAGA project together while circumventing government guidelines. Hence, AAA would be a partner of the corporate debtor within the meaning of Section 5(24)(a).

65. Therefore, we come to the conclusion that Mr Arun Anand, Spade and AAA were related parties of the corporate debtor during the relevant period when the transactions on the basis of which Spade and AAA claim their status as financial creditors took place.

XXXXXX

J Conclusion

97. In conclusion, we hold that:

(i) The decision of the NCLAT, inasmuch as it referred to Spade and AAA as financial creditors, is set aside. Due to the collusive nature of their transactions alleged to be a financial debt under Section 5(8), Spade and AAA cannot be labelled as financial creditors under Section 5(7);

(ii). The decision of the NCLAT, inasmuch as it referred to Spade and AAA as related parties of the corporate debtor under Section 5(24), is affirmed.

(iii) The decision of the NCLAT, inasmuch as it excluded Spade and AAA from the CoC in accordance with the first proviso of Section 21(2), is affirmed but for the reasons mentioned above.

(iv) The appeals are accordingly disposed of. Pending application(s), if any, stand disposed of.”



10. Perusal of the aforesaid judgment shows that Hon'ble Supreme Court has given very clear finding that the commercial arrangements between Spade i.e. the plaintiff herein, AAA and the Corporate Debtor i.e. the defendant No. 1 herein, were collusive in nature and that they would not constitute a 'financial debt'. Thus, Hon'ble Supreme Court has held that the plaintiff herein is not the financial creditor of the Corporate Debtor i.e. the defendant No. 1 herein.

11. In view of the aforesaid clear findings by the Hon'ble Supreme Court, the present suit for recovery cannot continue against the defendants. Defendant No. 1 is the Corporate Debtor as referred to by Hon'ble Supreme Court in its judgment dated 01.02.2021 Civil Appeal Nos. 2842/2020 and 3063/2020, defendant No. 2 herein is the erstwhile Director of defendant No. 1. Once Hon'ble Supreme Court having categorically held that commercial arrangements between the plaintiff and the defendant No. 1 were collusive in nature and that they would not constitute a 'financial debt', there is no question of any suit being maintainable against either the defendant No.1 or defendant No.2, who is the erstwhile director of defendant No. 1. Similarly, as far as defendant No. 3 is concerned, defendant No. 3 is the auction purchaser of the defendant No. 1 company, carried out by YES Bank under the SARFAESI Act. It is seen that the proceedings before Hon'ble Supreme Court emanated from the applications filed on behalf of YES Bank before the NCLT. Thus, all the issues pertaining to defendant No. 3 have also been considered by Hon'ble Supreme Court.



12. It has been informed by learned counsel appearing for the Resolution Professional that the moratorium in terms of Section 14 of the IBC still continues to operate against the defendant No. 1 company. Thus, there is clear bar to continuation of the present suit in terms of the provisions of the IBC.

13. In view of the categorical findings by Hon'ble Supreme Court and also in view of provisions of IBC, it is held that the present suit cannot continue. The same is accordingly dismissed.

14. In case any cause of action still survives in favour of the plaintiff, the plaintiff would be at liberty to pursue its legal remedies available.

MINI PUSHKARNA, J

SEPTEMBER 12, 2022

PB

न्यायमेव जयते