



2024:DHC:6494-DB



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

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Date of decision: 09.08.2024

+ **FAO(OS) (COMM) 134/2024 & CM APPL. 37707/2024**

M/S ZILLION INFRAPROJECTS PVT LTDAppellant
Through: Mr Sumit Kumar, Ms Shweta
Srivastava and Mr N.K. Jha, Advocates.

versus

M/S KELLER GROUND ENGINEERING
INDIA PVT LTD & ANRRespondents
Through: Dr Madhumita Kothari and Ms
Jyotika Malhotra, Advocates for R-1.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL)

1. This appeal is directed against the judgment and order dated 20.05.2024, passed by the learned Single Judge in I.A. 9857/2019.
2. Grievance of appellant/ defendant no.1 is that the aforementioned application, whereby modification of the order dated 22.10.2019 was sought was not adjudicated and instead, simply notice was issued with a direction to the learned Joint Registrar to record evidence in the matter.
3. According to us, if the order had ended with issuance of notice to respondent no. 1/plaintiff, one would have found no reason to interfere.
4. As observed by us while issuing notice in the appeal and hereinabove,

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the learned Single Judge went on to direct the learned Joint Registrar to continue with recordal of evidence in the suit action.

5. Concededly, the appellant/ defendant no.1, in the suit action preferred by the respondent no. 1/ plaintiff, has filed a counter-claim. The purpose of moving I.A. 9857/2019 was to seek modification of the order dated 22.10.2019, to the extent that it suspends the adjudication of the suit of the respondent no. 1/plaintiff and permits continuation of recordal of evidence in the counter-claim preferred by the appellant/defendant no. 1, notwithstanding the fact that the appellant/ defendant no.1 is undergoing a Corporate Insolvency Resolution Process (CIRP) under the aegis of the National Company Law Tribunal (NCLT) Delhi Bench.

6. Therefore, according to the appellant/ defendant no.1, the direction issued *via* the impugned judgment and order, contained in paragraph 6 of the said order, that the learned Joint Registrar would continue the recordal of evidence is contrary to the provisions of Section 14 of the Insolvency and Bankruptcy Code, 2016 [in short, IBC].

7. We found merit in the above submission when the appeal came up for hearing on 08.07.2024.

7.1 Consequently, we had stayed the direction contained in paragraph 6 of the impugned judgment and order dated 20.05.2024.

8. It is important to note that the order dated 22.10.2019 was passed by the then learned Single Judge dealing with the matter, based on the judgment of the coordinate bench in *SSMP Industries Ltd. vs. Perkan Food Processors Pvt. Ltd.*, 2019 SCC Del 9339 [in short, “*SSMP*”].

8.1. A perusal of *SSMP* shows that it is based on a judgment of another coordinate bench, rendered in the context of the Arbitration and Conciliation



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Act, 1996. This judgement is titled, *Power Grid Corporation vs. Jyothi Structures Ltd.*, 2017 SCC Del 12189.

9. In opposition, counsel for the appellant/ defendant no.1 has submitted that the decision in *SSMP* is contrary to several decisions rendered by the Supreme Court and other High Courts.

10. In this context, reliance was placed on the following judgments:

(i) *P. Mohanraj & Ors. v. Shah Brothers Ispat Pvt. Ltd.*, (2021) 6 SCC 258;

(ii) *New Delhi Municipal Council v. Minosha India Limited*, (2022) 8 SCC 384;

(iii) *Zillion Infraprojects Private Limited v. Tenova Technologies Private Ltd.*, 2024:KHC:7368;

(iv) *Imperial Consultants and Securities Limited v. Assistant Commissioner of Income Tax, Circle-5(1), Mumbai*, 2024:BHC-OS:2101-DB.

11. On the other hand, the learned counsel for the respondent submits that *SSMP* enunciates good law and, therefore, the direction issued by the learned Single Judge *via* the impugned judgment and order for recordal of evidence ought not to be disturbed.

12. It is contented by the learned counsel for the respondent that continuation of the suit action, which includes the counter-claim, will help in crystallizing the amount, if any, payable by either side.

13. We have heard the learned counsel for the parties.

14. We are unable to agree that the counter-claim of the corporate debtor comes within the sway of the moratorium that gets triggered under Section 14 of the IBC once the NCLT is in seisin of the proceedings under the IBC.

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15. In this case, a petition under Section 7 of the IBC has admittedly been instituted *qua* the appellant/ defendant no.1.

16. The concerned Bench of NCLT, in paragraph 19 of the order dated 05.02.2019, has, while indicating that the creditor's petition stands admitted, gone on to declare that moratorium under Section 14 of the IBC would kick in.

17. For convenience, the relevant part of Section 14(1) of the IBC is set forth hereafter:

“Section 14. Moratorium

(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;”

18. Mere perusal of the provisions of Section 14(1) of the IBC would show that once moratorium is declared by the adjudicating authority i.e., NCLT, it prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor, which includes execution of any judgment, decree or order in any Court of law, tribunal, arbitration panel and other authorities. The corporate debtor in this case being the appellant/defendant no. 1, as alluded to above, the appellant/defendant no. 1 has preferred a counter claim.

19. Clearly, the plain language of Section 14(1)(a) of the IBC does not prohibit continuation of a counter-claim. The counter-claim, as defined under Order VIII Rule 6(a) of the Code of Civil Procedure, 1908, typically



as against a set off, can relate to a cause of action accruing to a defendant vis-a-vis the plaintiff, either before or after filing of the suit action. Counter-claim needs to be filed, as per the said provision, before the defendant has delivered his defence or before the time limit for delivering his defence has expired. Counter-claim cannot exceed the pecuniary limits of the jurisdiction of the Court concerned, where the suit action is instituted.

20. In our view, the argument advanced on behalf of the respondent no.1/plaintiff that continuation of the suit action, which includes the counter claim, would help in crystallizing the debt is untenable. In other words, because counter claim can proceed to trial, evidence ought to be permitted to be recorded in the suit claim, is a submission which is misconceived in law. Such submission flies in the face of the plain language of Section 14 of the IBC and what constitutes a counter claim. Therefore, in our opinion, *SSMP* does not lay down the correction position in law. [See *P. Mohanraj & Ors. v. Shah Brothers Ispat Pvt. Ltd.*, (2021) 6 SCC 258 and *Zillion Infraprojects Private Limited v. Tenova Technologies Private Ltd.*, 2024:KHC:7368].

21. Therefore, the direction issued *via* the impugned judgment and order to record evidence in the suit action, which, obviously, would also include the counter-claim, in our view, is flawed.

22. Thus, to that extent, the impugned judgment and order is varied.

23. The recordal of evidence by the learned Joint Registrar (Judicial) will continue vis-a-vis the counter-claim preferred by the appellant/ defendant no.1. However, moratorium will operate vis-a-vis the claim made by the respondent no.1/ plaintiff.

24. The appeal is disposed of in the aforesaid terms.

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25. At this stage, the learned counsel for the respondent no.1/ plaintiff says that the respondent no.1/ plaintiff should have liberty to move the concerned NCLT Bench for bringing to its notice the claims it seeks to prefer against the appellant/ defendant no.1.

26. In case such an application is moved, the concerned Bench of NCLT will decide the same, *albeit* as per law.

**RAJIV SHAKDHER
(JUDGE)**

**AMIT BANSAL
(JUDGE)**

AUGUST 09, 2024
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