2025:BHC-NAG:5296

IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH, NAGPUR

CIVIL REVISION APPLICATION NO.42/2024

M/s Mohota Industries Ltd.
Ram Mandir Ward, Hinganghat,
Tahsil Hinganghat, Dist. Wardha.
A company registered under the
Companies Act, 1956, through its
Authorised Representative
Shri. Pradeep Harne

....**APPLICANT**

....VERSUS....

Smt. Vibha w/o Mayank Agrawal
Aged about 34 years, r/o "Tripti Kunj"
Plot No.46, Road No.2, Film nagar,
Jubilee Hills, Hyderabad- 500096

....**RESPONDENT**

Shri Jatin Kumar, Advocate for applicant
Shri P.P. Kothari, Advocate for respondent

CORAM : SMT. M. S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 23/04/2025
DATE OF PRONOUNCING THE JUDGMENT: 09/06/2025

1. Heard learned Counsel for both the parties.

2. Present Revision is filed being aggrieved by the order dated

23.11.2023, passed by learned Joint Civil Judge Junior Division, Hinganghat on Exh. 24 and thereby rejected the application for rejection of plaint under Order 7 Rule 11 of Code of Civil Procedure.

3. The Brief of the case is as under:

Respondent had leased property situated at all that is piece and parcel of land admeasuring 42000 Sq. Mtrs. bearing Survey No.14/2 (kh) at Mouza Burkoni, Mouza No.119, Patwari Halka No.31, situated at Burkoni, Tehsil Higanghat, District Wardha, Maharashtra to the applicant Company by entering into a lease deed. Respondent allegedly issued a notice dated 01.06.2021 terminating the lease deed dated 28.03.2007 and asked the applicant to vacate the suit property. The respondent (Original Plaintiff) has instituted a suit against the applicant through Regular Civil Suit No.23 of 2022 ("the Suit") before the learned Civil Judge Junior Division Higanghat, Dist. Wardha, seeking declaration, recovery of possession, eviction, and injunction along with arrears of rent with regards to the property.

4. The respondent filed an application seeking rejection

of plain under Order VII Rule 11 read with Section 151 of the Code of the Civil Procedures, 1908. Through this application, the Civil Judge was informed that, the National Company Law Tribunal, through its order dated 30.08.2021, had initiated Corporate Insolvency Resolution Process (“CIRP") under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“the Code") against the applicant Company and had placed the Company under a moratorium under Section 14 of the Code, prohibiting initiation of any sort of proceedings against the Company or recovery of any property that is in possession of the Company during the subsistence of the CIRP. During this period, the CIRP of the applicant Company was resolved and the National Company Law Tribunal gave its approval to a resolution plan submits for revival of the Company and the moratorium came to be lifted. The Civil Judge erroneously rejected the application dated 20.09.2022, on the ground that the period of 180 days of CIRP under Section 12 of the Code had come to an end before filing of the suit by the respondent making the suit and it is further concluded that now that the moratorium is lifted, the suit is no more barred by law and can be continued to be adjudicated, however, the very institution of the suit during subsistence of moratorium period renders is non est as per Section 14(1) (a) of the Code. The aforesaid order is the subject matter of challenge in the present Civil Revision Application.

5. The learned Counsel for applicant contended that through the application under Order VII Rule 11, the applicant had raised the issue that suit filed by the defendant is not maintainable and is barred under Section 14 (1) (a) of the Insolvency and Bankruptcy Code, 2016, which provides for a blanket moratorium on *inter alia* institution of any proceeding against a corporate debtor. It was contented that, the National Company Law Tribunal had initiated Corporate Insolvency Resolution Process under Section 9 of the Code against the applicant Company through its order 30.08.2021, by which the applicant Company came under CIRP and, therefore, had a protection of the moratorium envisaged under Section 14 of the Code. That, through the said order, the learned Tribunal had also directed that a moratorium under Section 14 of the Code would be placed upon the applicant Company, barring initiation of any proceedings against the applicant Company.

6. It is further contended that the Civil Judge in paragraph 20 of the order dated 23.11.2023 erred in holding that, as the CIRP period as contemplated under 12 of the Code is only 270 days, the CIRP period had already lapsed before filing of the suit i.e., on 21.01.2022. It is specifically contended that as the CIRP against the applicant Company was initiated on 30.08.2021, only 145 days had lapsed on the date of filing of the suit i.e., 21.01.2022. Hence, the CIRP period of the applicant Company had lapsed. Therefore, the provisions of Section 14, providing for a blanket moratorium on the institution of proceedings against the applicant, were squarely applicable to the applicant when the suit came to be instituted which needs to be taken into consideration and, therefore, impugned order needs interference by this Court and also needs to be set aside.

7. Learned Counsel for applicant relied on following citations:

1) ***Sheenlac Noroo Coatings India Private Ltd. And ors Vs. TATA Steel BSL Limited and Ors. (2020) 157 CLA 39 (Mad)***

2) Electrosteel Steel Limited (Now M/s ESL Steel Limited) Vs. ISPAT Carrier Private Limited in Civil Appeal

No.2896 of 2024 (arising out of SLP (C) No.15823 of 2023

3) Jaipur Trade Expocentre Private Limited Vs. Metro Jet Airways Training Private Limited, IV (2022) BC 12, (2022) 173 SCL 331

4) Alchemist Asset Reconstruction Company Ltd Vs. Hotel Gaudavan Pvt. Ltd. And Ors., AIR 2017 SC 5124.

5) Anand Rao Korada Vs. Varsha Fabrics (P) Ltd. And Ors., AIR 2020 SC 222.

6) RPS Infrastructure Ltd. Vs. Mukul Kumar and Ors., 2023 (251) AIC 219

8. Learned Counsel for the respondent supported the order passed by the lower Court and contended that the lower Court has rightly taken into consideration that no prejudice will be caused to the parties if the application is rejected and rightly rejected the application which needs no interference and also needs to be confirmed.

9. Learned Counsel for respondent relied on following citations:

1) ***Embassy Property Developments Private Limited Vs. State of Karnataka and others, (2020) 13 SCC 308.***

2) C. Ramachandra, s/o Mr Chakrapani, C

Radhakrishnan, s/o Mr Chakrapani; Canara Bank, authorized officer Vs. A Chakrapani, s/o Mr S Adhimoola Mudaliar, C Shankar, s/o Mr A Chakrapani; C Hemalatha, d/o Mr A Chakrapani; M/s Canara Bank; authorized Officer; C Ramachandran, s/o Mr Chakrapani; C Radhakrishnan, s/ o Mr Chakrapani, 2021 LawSuit (Mad) 3064.

3) Kanak Projects Ltd Vs. Stewarts and Lloyds of India Ltd., 2019 LawSuit (Cal) 1429

10. Heard learned Counsel for both the parties at length. Perused impugned order and other documents placed on record, considered the citations relied on by both the parties. M/s Mohota Industries Ltd./applicant is registered under Companies Act. It appears that NCLT vide order dated 30.08.2021 had initiated CIRP under Section 9 of the Code against the applicant Company and placed the Company under a moratorium as per Section 14 of the Code, prohibiting initiation of any sort of proceedings against the Company or recovery of any property that is in possession of the Company during the subsistence of the CIRP. This order came to be passed on 30.08.2021. In the said order, it is specifically observed that Corporate Debtor in spite of granting various opportunities remained absent and proceeded ex-partee.

11. The learned NCLT passed order as under:

> *"9. With the mere reading of the above-mentioned facts, it has become crystal clear to the Bench that the Corporate Debtor has clearly defaulted in paying its dues to the Petitioner. The Bench has no hesitation in concluding that the Corporate Debtor has committed a default and therefore, it is a fit case for admission.*
>
> *10. This Bench, on perusal of the documents filed by the Petitioner, is of the view that the Corporate Debtor defaulted in paying the total outstanding dues to the Petitioner. Therefore, the Petition under Section 8 & 9 of the code is taken as complete, accordingly this Bench hereby admits this Petition, prohibiting all of the following of item-(1), namely:*
>
> *(I) (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 (SARFAESI Act);*
>
> *(d) <u>the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.</u>*
>
> *…..*

> *IV) That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub- section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be."*

12. As such, on perusal of this order, it appears that while admitting this application, prohibited all the items mentioned in paragraph No.10 wherein Clause 1(d), read thus, "*the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor*". From this order, it also appears that the moratorium shall have effect from the date of pronouncement of the order till the completion of the corporate insolvency resolution process or until NCLT approved the resolution plan under Section 31(1) of the Act.

13. It is contention of the applicant that during the subsistence of moratorium, landlord filed a suit for declaration, recovery of possession and injunction. The suit came to be filed on 21.01.2022 against the order of NCLT dated 30.08.2021. It is vehemently argued by learned Counsel for respondent that the moratorium and bar to filing of suit will only apply when the

assets of the Debtor Company is involved. However, on perusal of the order, it is specifically barred the suit for recovery of any property by an owner or lesser where such property is occupied by or in possession of the Corporate Debtor. The resolution plan was approved by NCLT on 19.05.2023, as such moratorium was in effect till 19.05.2023.

14. On perusal of the Clause 238 of the IBC which is reproduced as under:

> *"238. The provisions of this 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."*

It is contended by the learned Counsel for applicant that trial Court erroneously held that there is jurisdiction to the Court as a declaration sought for and arrears of rent claimed.

15. Learned Counsel for applicant relied on ***Jaipur Trade Expocentre Private Limited (supra)***, wherein NCLT in answer to reference held that "*the Claim of Licensor for payment of license fee for use of Demised Premises for business purposes is an 'operational debt' within the meaning of Section 5(21) of the Code.*"

16. Therefore, when the initiation of Corporate Insolvency Resolution Process is made publicly known the plaintiff ought to have been raised his claim in the prescribed form. If operational creditor is aggrieved by the decision of the IRP or RP remedy is provided to approach the NCLT, by moving appropriate application. In view of Section 63 of the IBC, which reads as under:

> *"63. No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code."*

17. Learned Counsel for applicant placed reliance on ***Sheenlac Noroo Coatings India Private Ltd. And ors (supra)***, wherein it is held as under:

> *"1. 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 on20.12.2017. 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 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."*

18. The reliance is placed by learned Counsel for applicant on the judgment of the Hon'ble Apex Court in ***Electrosteel Steel Limited (supra)***, wherein it is held as under:

"29. In Essar Steel India Ltd. (supra), a three-Judge Bench of this Court examined amongst others the role of resolution applicants, resolution professionals and the committee of creditors constituted under the IBC as well as the jurisdiction of NCLT and NCLAT qua resolution plans approved by the committee of creditors. After an elaborate and exhaustive analysis of various provisions of the IBC, the Bench concluded that a successful resolution applicant cannot suddenly be faced with 'undecided' claims after the resolution plan submitted by him has been accepted. This would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant. 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 corporate debtor. Paragraph 107

of the said decision reads as under:

107. For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLine NCLAT 388] in holding that claims that may exist apart from those decided 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 uncertainty amounts payable by a prospective resolution applicant who would 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 hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.

30. An important question arose for consideration in Ghanshyam Mishra (supra). Again a three-Judge Bench of this Court examined a question as to whether any creditor including the central government, state government or any local authority is bound by the resolution plan once it is approved by the adjudicating authority under sub-section (1) of Section 31 of IBC? Corollary to the above question was the issue as to whether after approval of the resolution plan by the adjudicating authority, a creditor including the central *government, state government or any local authority is entitled to initiate any proceeding for recovery of any of the dues from the corporate debtor which are not a part of the resolution plan approved by the adjudicating authority. In that case, the Bench concluded by holding that once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the central government, any state government or any local authority, guarantors and other stakeholders. On the date of approval of the resolution plan by the adjudicating authority, all such claims which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceeding in respect to a claim which is not part of the resolution plan. The Bench declared that all dues including statutory dues owed to the central government, any state government or any local authority if not part of the resolution plan shall stand extinguished and no proceeding in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued. Paragraph 102 of the aforesaid decision reads thus:*

102. In the result, we answer the questions framed by us as under: 102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the central government, any state government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a

> *part of the resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.*
>
> *102.3. Consequently all the dues including the statutory dues owed to the central government, any state government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.*"

19. Learned Counsel for applicant placed reliance on the judgment in ***Alchemist Asset Reconstruction Company Ltd. (supra)***, wherein the Hon'ble Apex Court held that "*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 of pending suits or proceedings against Corporate*." The Hon'ble Apex Court set aside the order of District Judge, which entertained appeal under the Arbitration and Conciliation Act.

20. Learned Counsel for applicant placed reliance on ***Anand Rao Korade (supra)***, wherein it is held as under:

> "*A Financial Creditor filed a Petition under Section 7 of*

the IBC, 2016 before the National Company Law Tribunal, for initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor-Respondent No. 4, since it had committed a default in paying the financial debt. The NCLT admitted the insolvency petition, and declared a moratorium in accordance with the provisions of Sections 13 and 15 of the IBC. The moratorium was declared for the purpose referred to in Section 14 of the IBC. The appellat herein was appointed as the Insolvency Resolution Professional. During the pendency of the moratorium, the High Court passed orders for carrying auction of assets of Respondent No. 4-Company.

Held, while allowing the appeal:

(i) Section 238 gives an overriding effect to the IBC over all other laws. The provisions of the IBC vest exclusive jurisdiction on the NCLT and the NCLAT to deal with all issues pertaining to the insolvency process of a corporate debtor, and the mode and manner of disposal of its assets. [7]

(ii) Section 231 of the IBC bars the jurisdiction of civil courts in respect of any matter in which the Adjudicating Authority i.e. the NCLT or the NCLAT is empowered by the Code to pass any Order. [8]

(iii) In view of the provisions of the IBC, the High Court ought not to have proceeded with the auction of the property of the Corporate Debtor- Respondent No. 4, once the proceedings under the IBC had commenced, and an Order declaring moratorium was passed by the NCLT. The High Court passed the impugned Interim Orders after the CIRP had commenced in this case. The moratorium having been declared by the NCLT, the High

> *Court was not justified in passing the Orders for carrying out auction of the assets of the Respondent No. 4-Company i.e. the Corporate Debtor before the NCLT. The subject matter of the auction proceedings before the High Court was a vast chunk of land, including Railway lines and buildings. If the assets of the Respondent No. 4-Company are alienated during the pendency of the proceedings under the IBC, it would seriously jeopardise the interest of all the stakeholders. As a consequence, set aside the impugned Interim Orders passed by the High Court, as parallel proceedings with respect to the main issue could not take place in the High Court. The sale or liquidation of the assets of Respondent No. 4 would now be governed by the provisions of the IBC. [9]"*

21. Learned Counsel for applicant placed reliance in ***RPS Infrastructure Ltd. (supra***), in support of his contention that the plaintiff has not raised the claim when initiation of CIRP is published.

22. Learned Counsel for respondent submitted that the property in relation to which it is filed, the Company is not the owner and, therefore, cannot be assessed of the Company. The judgment of ***Anand Rao Korada (supra)*** is not applicable as giving a decree of declaration is not within the jurisdiction of NCLT. Plaint cannot be rejected in part, even if, it is presumed that rent is

the operational debt. However, the order passed by the NCLT is well clear as referred above.

23. Learned Counsel for respondent Shri Kothari relied in ***Embassy Property Development Private Limited (supra)***, wherein it is held as under:

> *"Wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right- Further, S. 60(5)(c) is very broad in its sweep, in that it speaks about any question of law or fact, arising out of or in relation to insolvency resolution, but a decision taken by Government or a statutory authority in relation to a matter which is in the realm of public law cannot be brought within the fold of the phrase "arising out of or in relation to the insolvency resolution" appearing in S. 60(5)(c)."*

However in the present matter, there is no question of adjudication of public law.

24. Learned Counsel for respondent also placed reliance on judgment of Madras High Court in ***C. Ramachandran s/o Mr Chakrapani; C Radhakrishnan, s/o Mr Chakrapani; Canara Bank; Authorized offcer (supra)***, however, the facts involved in the said

matter are totally distinguishable. It was substantive suit for partition of the suit property by the plaintiff. He was admittedly having share as co-owner. Therefore, the Madras High Court held as under:

> *"21. As far as the maintainability of the present suit is concerned, the learned counsel for the plaintiffs submitted that this is not a suit intended to scuttle the legitimate process of recovery by the lender against the borrower, but it is a substantive suit for partition of the suit property by the plaintiffs who have admittedly share as co-parceners. All the judgments relied on by the learned counsel for the applicants/Bank do not touch upon this aspect. According to the learned counsel, the plaintiffs (respondents 1 and 2 herein) have no remedy under any other law including the SARFAESI Act, 2002, for partition of the property. The Tribunal constituted under the RDDBFI Act, 1993 read with SARFAESI Act, 2002, has no power for granting preliminary decree of partition and appointment of the Advocate Commissioner to divide the properties by metes and bounds."*

25. Learned Counsel for respondent also placed reliance on judgment of Calcutta High Court in ***Kanak Projects Ltd (supra)***, however in view of the judgment of full bench of NCLT, this issue will not survive and it is held as rent is operational debt that has to be raised at proper time.

26. In view of this settled position of law and provision of IB Code, the day on which suit is filed was barred by the order of NCLT, which has overriding effect over other enactment and provisions. In the said order itself, the moratorium period shall be in effect till approval of plan submitted by the **resolution professional.**

27. The moratorium came to an end on 19.05.2023, which was came into effect on 30.08.2021. Admittedly, the suit was filed on 21.02.2022, suppressing this fact. As held by the Hon'ble Apex Court, therefore, suit is not only liable for rejection under Order 7 Rule 11 but also under Section 151 of C.P.C. It is not necessary at all to look only into the pleadings in the plaint while considering the application under Order 7, Rule 11, specifically when the IB Code is special legislation which empowers NCLT to pass orders prohibiting parties to initiate proceedings while moratorium period is in effect. As such, impugned erroneous order is liable to be set aside as passed without considering the law position. Accordingly, I proceed to pass the following order.

ORDER

i) The Civil Revision Application is allowed.

ii) The order dated 23.11.2023 passed by the Joint Civil Judge Junior Division, Hinganghat at exhibit 24 in R.C.S. No.23/2022, is hereby quashed and set aside.

iii) Exhibit 24 is hereby allowed. Consequently, the plaint is rejected under Order 7 Rule 11 r/w Section 151 of Civil Procedure Code.

28. The Civil Revision Application is disposed of in above terms. No order as to costs.

(SMT. M.S. JAWALKAR, J.)

R.S.Sahare