

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**Company Appeal (AT) (Insolvency) No. 734 of 2018**

(Arising out of Order dated 10th September, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench, Allahabad, in Company Petition No. (IB)/110/ALD/2017 and CA No. 100/2018)

IN THE MATTER OF:**Ms. Anju Agarwal****Resolution Professional****For Shree Bhawani Paper Mills Ltd.****...Appellant****Vs****Bombay Stock Exchange & Ors.****....Respondents****Present:****For Appellant:****Mr. Anant A. Pavgi and Mr. A. Anand,
Advocates.****For Respondents:****Ms. Surekha Raman and Mr. N. Prashant Kumar
Nair, Advocates for R-1.****Mr. Mahfooz Nazki, Mr. Sanyam Saxena, Mr.
Sahil Khanna and Mr. Dutta Baruah, Advocates
for R-2.****J U D G M E N T****SUDHANSU JYOTI MUKHOPADHAYA, J.**

The Appellant- 'Resolution Professional' of 'Shree Bhawani Paper Mills Limited'- ('Corporate Debtor') has challenged the order dated 10th September, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench, Allahabad, whereby the Adjudicating

Authority held that Regulatory Authorities are not covered under the 'Moratorium' as provided under Section 14 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short), relevant portion of which reads as follows:

"It is to be clarified that Section 10 application was admitted on the application of the Corporate Applicant, i.e. Corporate Debtor, now he seeks exemption from statutory compliances as required by the Stock Exchange and Central Depository Services (India) Ltd. and National Securities Depository Services (India) Ltd. It is pertinent to mention that in Section 14 it is specifically mention that in which area moratorium order shall be effective. Regulatory Authority are not covered under the moratorium order as provided U/S 14 of I&B Code. Given the moratorium issued under Section 14 of the I&B Code, 2016, Regulatory Authorities are not debarred from enforcing the Regulations as prescribed under Rules. Bombay Stock Exchange, under SEBI (LODR) Regulation, 2015 or Central Depository Services (India) Ltd. and National Securities Depository Stocks India Limited are not barred from compelling the Corporate Debtor company to comply with the Regulations as prescribed under

Rules. The CA is not maintainable Hence rejected at the very threshold.”

2. Learned counsel appearing on behalf of the Appellant submitted that Section 14 (1) (a) of the 'I&B Code' is also applicable to the provisions of 'Securities Exchange Board of India (Listing Obligations and Disclosure Requirements), Regulations, 2015', during the 'Moratorium' period, no compliance of Regulations, 2015 is required.

3. It is also alleged that the Respondent- 'Bombay Stock Exchange' threatened suspension of trading shares of the 'Corporate Debtor', which is against the provision of Section 14 of the 'I&B Code'. According to him, the Respondent- 'Bombay Stock Exchange' has no jurisdiction to suspend trading shares nor can impose penalty in view of clear prohibition under Section 14 of the 'I&B Code'.

4. Reliance has been placed on Section 238 of the 'I&B Code' to suggest that the 'I&B Code' will have an overriding effect upon provisions of the 'Securities Exchange Board of India (Listing Obligations and Disclosure Requirements), Regulations, 2015'.

5. Reliance has also been placed on the decision of the Hon'ble Supreme Court in ***"Innoventive Industries Limited vs. ICICI Bank and Another—(2018) 1 SCC 407"*** wherein the Hon'ble Supreme Court held that any proceeding under any law against the 'Corporate Debtor' cannot be proceeded once Moratorium is in effect.

6. Learned counsel appearing on behalf of the Respondents- 'Securities Exchange Board of India' and 'Bombay Stock Exchange' referring to Section 14 and Section 17 (2) (e) of the 'I&B Code' submitted that Section 14 is not applicable nor the 'Securities Exchange Board of India' or the 'Bombay Stock Exchange' can be prohibited from taking actions in terms with the 'SEBI Act, 1992' and Regulations framed therein.

7. Reliance has been placed on Section 28A (3) of the 'SEBI Act, 1992' to suggest that the said provision will prevail over the 'I&B Code'.

8. Referring to the decision of the Hon'ble High Court of Delhi in Criminal Appeal No. 143 of 2018 and Criminal M.A. No. 2262 of 2018 disposed of on 2nd April, 2019, it is submitted that the offender of ill-gotten assets so as to be perceived to be sharing the loot cannot take benefit of the provisions of Section 14.

9. We have heard learned counsel for the parties and perused the record.

10. Section 14(1) (a) of the 'I&B Code' relates to 'Moratorium' and reads as follows:

“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;”

11. Section 17 while deals with ‘management of affairs of ‘Corporate Debtor’ by ‘Interim Resolution Professional’. Sub-section (2) of Section 17 empowers the ‘Interim Resolution Professional’ to act in terms of the provisions therein including clause (e) of Section 17(2) which reads as follows:

17. Management of affairs of corporate debtor by interim resolution professional.—(1) From the date of appointment of the interim resolution professional,—

(a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;

xxx xxx xxx

(2) The interim resolution professional vested with the management of the corporate debtor shall—

xxx xxx xxx

(e) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.”

12. From the aforesaid provisions, it is clear that the 'Interim Resolution Professional' is responsible for complying with the requirements under any law for the time being in force on behalf of the 'Corporate Debtor', which includes the 'SEBI Act, 1992' and 'Securities Exchange Board of India (Listing Obligations and Disclosure Requirements), Regulations, 2015' framed therein.

13. The question arises for consideration is whether on failure to perform the duties, if any, penal order is passed for penalty imposed on the 'Corporate Debtor' or any recovery can be made in terms of Section 28A of the 'SEBI Act, 1992'.

14. According to learned counsel for 'Securities Exchange Board of India' and the 'Bombay Stock Exchange', Section 28A of the 'SEBI Act, 1992' will have overriding effect on the provisions of Section 14 of the 'I&B Code'. However, such submission cannot be accepted for the reasons as mentioned and discussed below.

15. Section 28A of 'SEBI Act, 1992' relates to 'recovery of amounts' and reads as follows:

“28A. Recovery of amounts.— (1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to

pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:—

(a) attachment and sale of the person's movable property;

(b) attachment of the person's bank accounts;

(c) attachment and sale of the person's immovable property;

(d) arrest of the person and his detention in prison;

(e) appointing a receiver for the management of the person's movable and immovable properties, and for this purpose, the provisions of sections 220 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules made thereunder were the provisions of this Act and referred to the amount due under this Act

instead of to income-tax under the Income-tax Act, 1961.

Explanation 1.— For the purposes of this subsection, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

Explanation 2.— Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate.

Explanation 3.— Any reference to appeal in Chapter XVIII and the Second Schedule to the Income-tax Act, 1961, shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 15T of this Act.

(2) The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).

(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 11B, shall have precedence over any other claim against such person.

(4) For the purposes of sub-sections (1), (2) and (3), the expression Recovery Officer “means any officer of the Board who may be authorised, by general or special

order in writing, to exercise the powers of a Recovery Officer.”

16. As per Section 14 (1) (a) of the 'I&B Code', 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** is prohibited.

17. Thus, we find that Section 28A of the SEBI Act, 1992 including sub-Section (3) therein is in contravention of Section 14 of the 'I&B Code'.

18. Section 238 of the 'I&B Code' is overriding provision and reads as follows:

“238. Provisions of this Code to override other laws.—*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.”*

19. Section 28A of the 'SEBI Act, 1992' being inconsistent with Section 14 of the 'I&B Code', we hold that Section 14 of the 'I&B Code' will prevail over Section 28A of the 'SEBI Act, 1992' and 'Securities Exchange Board of India' cannot recover any amount including the penalty from the 'Corporate Debtor'. The 'Bombay Stock Exchange' for the same very reason cannot

take any coercive steps against the 'Corporate Debtor' nor can threaten the 'Corporate Debtor' for suspension of trading of shares.

20. The 'Bombay Stock Exchange' deals with the shares. The shares of the 'Corporate Debtor', if listed with the 'Bombay Stock Exchange', can be dealt with by the 'Bombay Stock Exchange'. However, in view of Section 18 of the 'I&B Code', the 'Interim Resolution Professional' while taking control and custody of any asset including the tangible and intangible assets, cannot sell the shares of the 'Corporate Debtor' during the period of 'Moratorium' except in accordance with the provisions of the 'I&B Code' and with the approval of the 'Committee of Creditors'. Therefore, dealing with the shares of the 'Corporate Debtor' by the 'Bombay Stock Exchange' during the period of 'Moratorium' normally does not arise. The shares can be transferred only in the manner prescribed under the 'I&B Code' and following requirements framed under the 'SEBI Act, 1992' and the 'Companies Act, 2013'.

21. At this stage, we may mention that in the case of "***Pr. Director General of Income Tax (Admn. & TPS) vs. M/s. Synergies Dooray Automotive Ltd. & Ors. etc.— Company Appeal (AT) (Insolvency) No. 205 of 2017 etc.***", this Appellate Tribunal held that the statutory dues i.e. the dues to Central Government or the State Government arising under any law for the time being in force and payable come within the meaning of 'Operational Debt'. If penalty is imposed or amount is payable to the 'Securities Exchange Board of India' in such case, it may claim as an

‘Operational Creditor’ but cannot recover the same during the ‘Resolution Process’.

The impugned order dated 10th September, 2018 stands modified and clarified to the extent above. The appeal stands disposed of with aforesaid observations and directions. However, in the facts and circumstances of the case, there shall be no order as to costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice A.I.S. Cheema)
Member(Judicial)

(Kanthi Narahari)
Member(Technical)

NEW DELHI
23rd April, 2019

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