

*Through Videoconference*

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT No. - I

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MA No. 2642 of 2019  
in  
C.P. (IB) No. 1687/MB/2018

(An Application under Section 14 r/w Sections 17, 18, 20 & 238 of the Insolvency and Bankruptcy Code, 2016 and r/w Rule 11 of National Company Law Tribunal Rules, 2016)

Ashok Kumar Dewan  
Resolution Professional  
for Maxx Mobile Communication Limited  
Building No. B1/D2, 2<sup>nd</sup> Floor,  
Mohan Co-Operative Industrial Estate,  
New Delhi – 110 044

... *Applicant*

*V/s*

The Development Commissioner  
Office of the Development Commissioner,  
SEEPZ – Special Economic Zone,  
Andheri, Mumbai – 400 096

... *Respondent*

*In the matter of:*

Edelweiss Asset Reconstruction Co. Ltd.

... Financial Creditor

*V/s*

Maxx Mobile Communication Ltd.

... Corporate Debtor

Date of Order: 19.05.2021

CORAM:

Janab Mohammed Ajmal, Hon'ble Member (Judicial)

Shri V. Nallasenapathy, Hon'ble Member (Technical)

*Appearance:*

For the Applicant: Mr Abhishek Anand with Mr Viren Sharma,  
Advocates.  
For the Respondent: Mr M. S. Bhardwaj, Advocate.

*Per: Janab Mohammed Ajmal, Member (Judicial)*

**ORDER**

This is an Application by the Resolution Professional of the Corporate Debtor seeking certain directions against the Respondent *inter alia* not to proceed with any penalty proceedings against the Corporate Debtor.

2. Briefly stated the facts leading to the Application are thus:

- i. This Tribunal by order dated 31.01.2019 in the quoted Company Petition u/s 7 of the Insolvency and Bankruptcy Code, 2016 (the Code) initiated Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor. Thereunder this Authority appointed the Interim Resolution Professional (IRP) and *inter alia* declared moratorium u/s 14 of the Code.
- ii. In course of the CIRP the Applicant took steps under the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. He made Public Announcement in Form – A and published them in local newspapers in Marathi, Hindi & English on 03.02.2019. The last day for submission of proof of claim was 14.02.2019.
- iii. The Committee of Creditors (CoC) in their 1<sup>st</sup> meeting on 01.03.2019 resolved to appoint the Applicant as the Resolution Professional (RP) by majority of 98.84% votes.
- iv. The Corporate Debtor was in possession of a premises- Unit No. 160, SDF-V, SEEPZ SEZ Andheri (E), Mumbai - 96 under LOA No. SEEPZ SEZ/IA-I/APL/HW-30/08-09/5171 dated 25.05.2009. The allotment was effective till 05.08.2014. The Corporate Debtor as on 01.04.2015

was in arrears of the government dues in respect of the premises to the tune of ₹. 38,35,552.94/-. The Estate Manager of the SEZ Authority on 08.09.2015 issued a notice u/s 4(1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (the Act) read with Section 4(2)(b)(ii) of the said Act, to show cause on or before 23.09.2015 as to why an order of eviction shall not be passed for the reasons recorded therein, including payment of outstanding dues.

- v. Subsequently, the Respondent on 18.12.2015 issued another notice u/s 7(3) of the Act, calling upon the Corporate Debtor to pay an amount of ₹. 35,53,553/- towards arrears of rent on or before 18.01.2016. The Respondent followed up the notice dated 08.09.2015 with another notice dated 18.12.2015 granting a second opportunity to the Corporate Debtor as to why the order of eviction would not be passed.
- vi. No action was taken by the SEZ Authority till 05.09.2017. The Specified Officer of the Respondent on 05.09.2017 assessed that the Corporate Debtor was in arrears of ₹. 2,98,37,311/- towards duty as per the Bond-cum-Legal Undertaking in terms of the SEZ Rules on the balance capital goods imported by it. Apparently, the Corporate Debtor did not comply with the notices. The Respondent on 11.02.2019 issued a notice u/s 11(2) of the Foreign Trade (Development and Regulations) Act, 1992 (the Foreign Trade Act) to the Corporate Debtor indicating various violations by the Corporate Debtor to show cause within 15 days as to why penal action shall not be taken for non-compliance of various notices and non-payment of dues and duty.
- vii. The Applicant replied to the notice on 12.06.2019 *inter alia* indicating that the Corporate Debtor had gone into CIRP on 31.01.2019 and no proceedings against the Corporate Debtor could be taken up till completion of CIRP in terms of the moratorium declared u/s 14 of the Code.

viii. The Respondent in the meantime had attached various machineries and office equipment as listed in Annexure A-10 at page 65 of the Application (Pdf pg. 68). It is submitted by the Applicant that in view of the moratorium, the Respondent could not take any coercive action against the Corporate Debtor including realization of the dues or take any action for eviction of the Corporate Debtor from the SEZ premises. It accordingly filed the present Application with the following prayers:

- a) *Allow the present Application,*
- b) *Direct the Respondent to not to proceed or institute any proceedings including any penalty proceedings against the Corporate Debtor in view of the moratorium granted by this Hon'ble Adjudicating Authority vide order dated 31.01.2019;*
- c) *Pass consequential order under Section 74(2) of the I & B Code, 2016 against the Respondent for wilfully and knowingly contravening the provisions of the Code; and*
- d) *Pass such other or further order / order (s) as may be deemed fit and proper in the facts and circumstances of the instant case (wrongly mentioned as prayer (e) in the Application).*

3. The Respondent in its reply submitted that the action initiated by him was much prior to the commencement of the CIRP process and upon receipt of the letter dated 26.02.2019 the Respondent on 11.06.2019 submitted its claim towards the Customs duty and Estate dues. Since the notice dated 11.02.2019 was issued prior to the Respondent becoming aware of the commencement of the CIRP, the action would not amount to the contravention of the moratorium. The proceedings contemplated under the notice dated 11.02.2019 had remained unadjudicated and no proceedings has been taken up. Since there is no contravention of the provisions of the Code the Application deserves to be dismissed.

4. In support of his contentions the Respondent has relied on the following decisions:
- i. *Varrsana Ispat Ltd. v. Deputy Director, Directorate of Enforcement (Company Appeal (AT) (Insolvency) 493 of 2018)* decided on 02.05.2019.
  - ii. *Shah Brothers Ispat Pvt. Ltd. v. P. Mohanraj & Ors. (Company Appeal (AT) (Insolvency) 306 of 2018)* decided on 31.07.2018.
  - iii. *Mr Ajay Kumar Bishnoi Vs. M/s. Tap Engineering (CRL.OP Nos. 34996 etc. of 2019)* decided on 09.01.2020.
5. We have heard the learned counsels appearing for both the sides at length. It is settled that the Code is a 'complete code' in itself as recognized by the Hon'ble Apex Court in *Innoventive Industries Ltd. v. ICICI Bank and Anr.:* (2018) 1 SCC 407. Section 238 of the Code mandates that the provisions of the Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having the effect by virtue of any such law. The message set out by this salutary provision is loud and clear that the provisions of the Code would come into operation notwithstanding anything inconsistent therewith contained in any other law and such law shall cease to have any effect till such time the provisions of the Code remains applicable.
6. In addition, Section 14 of the Code specifically prohibits certain actions effective from the Insolvency Commencement Date (ICD). Section 14 may profitably be quoted as under:
- “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 judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*

*(b) transferring, encumbering, alienating or disposing off 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 (54 of 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.*

*[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;]*

*(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

*[(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]*

*[(3) The provisions of sub-section (1) shall not apply to —*

*[(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;]*

*(b) a surety in a contract of guarantee to a corporate debtor.]*

*(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:*

*Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”*

7. A plain reading of the section would *inter alia* indicate that neither any suit or proceedings can be instituted or continued before any other Authority. Sub-section (1)(d) provides that no property by an owner or lessor can be recovered which is under occupation of the Corporate Debtor. Explanation to the Section makes it abundantly clear that all the rights and privileges granted in respect of such possession shall continue and cannot be curtailed by any authority including the Central and the State Governments. All the dues claimed under the show cause notices and the consolidated notice dated 11.02.2019 admittedly relate to a period preceding the declaration of CIRP. The claims raised by the Applicant essentially are operational debts as provided u/s 5(21) of the Code and those have to be worked out within the parameters of the provisions contained in Code and the relevant Regulations. As the above would indicate no action in respect thereof, coercive or otherwise, can be taken in terms of section 14(1)(a) of the Code. The same thing would also apply to the recovery of the property in possession of the Corporate Debtor in terms of section 14(1)(d) of the Code. Therefore, neither the proceedings for recovery of the dues nor the proceedings for recovery of

possession of the allotted premises can be allowed to continue or any proposed action in that regard can be sustained during the currency of the CIRP.

8. The referred decision in Varrsana Ispat Ltd. (*supra*) relates to a penal action of 'proceeds of crime' under the Prevention of Money Laundering Act, 2002. This would accordingly be neither relevant nor applicable to the case at hand. Similarly, the decisions in Shah Brothers (*supra*) and Mr Ajay Kumar Bishnoi (*supra*) relate to prosecution u/s 138 of the Negotiable Instruments Act, 1881 and accordingly would not be relevant for our purpose.
9. In any case the Respondent has already presented a claim before the IRP in respect of the outstanding duty and dues. The Respondent accordingly shall stay his hands from seeking any action in terms of the notices indicated above. No order u/s 74(2) of the Code can be passed, the same being of a penal nature. Hence ordered.

#### ORDER

The Application be and the same is allowed on contest. The Respondent shall not proceed with the notices dated 08.09.2015, 18.12.2015 & 11.02.2019 and shall not take any action arising therefrom/pursuant thereto. The order shall remain in force till the completion of the CIRP. Prayer (c) is refused. There would however be no order as to costs.

Sd/-  
V. Nallasenapathy  
Member (Technical)

Sd/-  
Janab Mohammed Ajmal  
Member (Judicial)