

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No(s).5170/2022

MARS REMEDIES PVT LTD

Appellant(s)

VERSUS

BDH INDUSTRIES LIMITED

Respondent(s)

(IA No. 50068/2023 - APPROPRIATE ORDERS/DIRECTIONS  
IA No. 50067/2023 - INTERVENTION APPLICATION  
IA No. 98857/2022 - STAY APPLICATION)

Date : 02-05-2023 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN  
HON'BLE MR. JUSTICE PANKAJ MITHALFor Appellant(s) M/S. Lawfic, AOR  
Mr. Koshy John, Adv.  
Mr. M.s.vishnu Sankar, Adv.  
Mr. Pavan Godiawala, Adv.  
Mr. Sriram Parakkat, Adv.  
Ms. Athira G. Nair, Adv.  
Mr. Adithya Santosh, Adv.For Respondent(s) Mr. Vivek Jain, AOR  
Ms. Suchitra Kumbhat, Adv.  
Mr. Abhinav Jain, Adv.  
Ms. Honey Kumbhat, Adv.  
Mr. Rajat Jain, Adv.  
  
Mr. Navin G. Pahwa, Sr. Adv.  
Mr. Mohit D. Ram, AOR  
Mr. Ravi Pahwa, Adv.  
Ms. Monisha Handa, Adv.  
Mr. Rajul Shrivastav, Adv.  
Mr. Anubhav Sharma, Adv.UPON hearing the counsel the Court made the following  
O R D E RIA No. 50067/2023 - This is an application for  
intervention filed by an unfortunate financial creditor. The  
financial creditor is seeking to intervene in the main appeal filed

by the corporate debtor against the order of admission passed in another Corporate Insolvency Resolution Process (CIRP) initiated by another financial creditor.

We have heard the learned Senior counsel for the applicant seeking to intervene, the learned counsel appearing for the appellant in the main appeal who is the corporate debtor and the learned counsel appearing for the financial creditor who initiated the CIRP and who is arrayed as the respondent in the Civil Appeal.

The respondent in the main Civil Appeal, filed a petition in CP(IB) NO.804/2019 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short "IBC") against the appellant in the main appeal. The NCLT (National Company Law Tribunal) dismissed the application. But NCLAT (National Company Law Appellate Tribunal) allowed the application, forcing the corporate debtor to come up with the above main appeal being C.A. No.5170/2022.

In the above appeal, C.A. No.5170/2022, this Court passed an order on 26.09.2022 directing the issue of notice and also staying further proceedings in C.P.(IB) No.804/2019. The appeal is yet to be heard finally.

In the meantime, another financial creditor of the appellant in the main Civil Appeal has come up with the application for intervention, with a very peculiar grievance. The grievance of the intervenor is that the corporate debtor defaulted in payment of certain amount, forcing him to independently file an application under Section 7 IBC, in CP(IB) No.300/2020. The said application was dismissed by the NCLT, but the said order reversed by the

NCLAT. As against the said order, the very same Corporate Debtor came up with a Civil Appeal No.4823/2022. But the said appeal was dismissed as withdrawn on 01.08.2022.

In other words, the order passed by NCLAT on the application of the proposed intervenor under Section 7 IBC attained finality.

But in the meantime, the other proceedings initiated by the respondent in the above Civil Appeal reached this Court and an interim stay was granted. On account of the stay so granted, the NCLT has now passed an order dated 12.01.2023 in the intervenor's own application under Section 7 IBC. It is better to reproduce the order passed by the NCLT. It reads as follows:

*"Hence, we are of the considered view that the present application cannot be considered at this stage. However, the present applicant can avail the remedy of restoring the main application subject to the outcome of the appeal before Hon'ble Supreme Court in CP(IB) 804/2019."*

As a result of the above order, the proposed intervenor is stuck. The CIRP initiated at the behest of the respondent in the above Civil Appeal is put on hold by this Court and the CIRP initiated by the proposed intervenor is put on hold by the NCLT. Therefore the intervenor is caught in the middle and hence he seeks appropriate directions.

The main contention of the corporate debtor who is the appellant in the above main appeal is that there cannot be two CIRPs simultaneously going on against the same debtor. The said

contention is legally well-founded. But today, both CIRPs are on hold. This is despite the fact that the order passed in favour of the proposed intervenor in his own application under Section 7 IBC, by the NCLAT has attained finality and there is no impediment for the CIPR initiated by the proposed intervenor to proceed further.

It is understandable that if the CIRP initiated by the respondent in the above civil appeal is on track. If it is not on track, at least the other CIPR should be allowed to proceed. The Corporate Debtor cannot be allowed to have benefit of the best of both the worlds.

Therefore the intervention application is disposed of clarifying that the intervenor may again move an application before the NCLT for restoration and the NCLT shall pass fresh orders keeping in mind the above observations.

The appeal may be listed for hearing in July, 2023.

(RADHA SHARMA)  
COURT MASTER (SH)

(RENU BALA GAMBHIR)  
COURT MASTER (NSH)