

NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT VI

Item No. 01.

C.P. (IB)/1312(MB)2022

CORAM

SHRI SANJIV DUTT
HON'BLE MEMBER (TECHNICAL)

SHRI K. R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **19.03.2024**

NAME OF THE PARTIES : **ICICI Bank Limited**

Vs

Supreme Infrastructure India Limited

For FC : Adv. Anamika Singh i/b Indusland

For CD : Sr. Adv. J.P. Sen a/w. Adv. Rohan Agrawal, Malhar Zatakia,

Mr. Sujit Lahoti, Adv. Shrushti Relekar i/b Sujit Lahoti

IBC under Sec. 7

ORDER

1. The matter stands listed today for pronouncing final orders as we heard the parties and reserved for orders on 31.01.2024.
2. However, Ld. Sr. Counsel for the Corporate Debtor (CD) has tendered copy of order of the Hon'ble NCLAT dated 13.03.2024 in Company Appeal No 84/2024. The appeal is preferred against the order of recall of stay in IA 133/2023 in CA 653/2022 by Bench-II of NCLT Mumbai, recalling its earlier order dated 23.12.2023, which had stayed all Section 7 applications filed/to be filed under the IBC in a scheme

application proposed under Sections 230-232 of the Companies Act, 2013. In the appeal, the Hon'ble NCLAT issued notice and directed the appellant (CD herein) and the respondent [Financial Creditor (FC) herein] to complete pleadings in four weeks in respect of the recall matter.

3. The last paragraph of the order of the Hon'ble NCLAT reads as under:
“Learned NCLT in the circumstances is requested to adjourn the proceedings under Section 7 of the IBC till after the next date of hearing.”

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“List on 10th May, 2024.”

4. The Ld. Sr. Counsel for the CD submits that *“proceeding under Section 7 of IBC”* mentioned in the above order of the Hon'ble NCLAT is only regarding this CP. No. (IB)/1312(MB)2022. However, there is no clarity as to the above in the said order as neither the name of parties herein nor this CP number finds a place. When the Ld. Sr. Counsel of the appellant (CD herein) was asked if full facts regarding pending litigations connected with the CD have been brought to the notice of the Hon'ble NCLAT and that no material fact was suppressed, he tendered a copy of the memorandum of appeal, wherein it was stated under “B. BRIEF FACTS” in para (iii), that *“Pertinently, the Respondent filed Company Petition No. 1312 of 2022 under Section 7 of the IBC against the Appellant before the Ld. NCLT Mumbai Bench seeking commencement of CIRP against the Appellant. This was reserved for orders on 31.01.2024.”*

5. Further, the Ld. Sr. Counsel brought to our notice para (xxxvi) of the appeal memorandum, wherein it has been stated “*That on 31.01.2024, the Ld. NCLT Mumbai reserved Company petition 1312 of 2002 for orders.*” According to the Ld. Sr. Counsel for the CD herein (appellant in Company Appeal No. 84/2024 in NCLAT), no other Section 7 application is pending against the appellant (CD herein) by the same respondent (FC herein). Incidentally, CP (IB) No. 348/2022 filed by the same FC (respondent in Company Appeal No. 84/2024 in NCLAT) against Supreme Housing and Hospitality Private Ltd., a group company of the CD herein, was admitted into CIRP by this Bench on 14.02.2024. Another application for compromise and arrangement filed by the CD herein (appellant in Company Appeal No. 84/2024 in NCLAT) was rejected by Bench-III of NCLT, Mumbai on 24.01.2024, *inter alia*, observing that the applicant company was seeking stay of proceedings under Section 7 of the IBC against all its creditors during the pendency of approval of the scheme proposed under Sections 230-232 of the Companies Act, 2013.

6. We observe that Bench-II of NCLT, Mumbai, on 05.03.2024, in IA 133/2023 in CA 653/2022, recalled its earlier order dated 23.12.2023, which had stayed all Section 7 applications filed/to be filed under the IBC in a scheme application proposed under Sections 230-232 of the Companies Act, 2013. Further, the CD herein (appellant in Company Appeal No. 84/2024 in NCLAT) approached the Hon’ble Bombay High Court in WP No. 3569/2024 against our daily order dated 31.01.2024

reserving this matter for final judgment on the ground of violation of the doctrine of judicial discipline and judicial comity saying that coordinate Benches of NCLT were passing divergent orders. The Hon'ble High Court on 01.02.2024 disposed of the WP; however, granted stay against pronouncement of final orders by us until recall application in IA 133/2023 in CA 653/2022 was decided by Bench-II of NCLT Mumbai. Since that Bench has now recalled their earlier stay order on 05.03.2024, and that there is no impediment to proceed with pronouncement, the CD herein (appellant in Company Appeal No. 84/2024 in NCLAT) is now before the Hon'ble NCLAT against the recall of stay order in in IA 133/2023 in CA 653/2022 by that Bench. According to the Ld. Sr. Counsel for the CD herein, the Hon'ble NCLAT directed this Bench to adjourn the proceedings in this CP. No.1312/2022, under Section 7 of the IBC in the appeal preferred against the recall order of stay in IA 133/2023 in CA 653/2022 pending before Bench II. Since we do not find any specific stay by the Hon'ble NCLAT against pronouncement of final order by us in this CP 1312/2022, the CD (appellant in Company Appeal No. 84/2024 in NCLAT) is directed to provide clarity as to the above. Pleadings in this matter are already completed and both the Counsel for FC and CD have been heard in detail; only pronouncement of final order is pending.

7. In the meantime, based on the submissions of the Ld. Sr. Counsel for the CD (appellant in Company Appeal No. 84/2024 in NCLAT), pronouncement of final order in this matter is deferred until

10.05.2024, the date of listing of Appeal No. 84/2024 before the Hon'ble
NCLAT.

8. In view of the above, list this matter on **13.05.2024 for
pronouncement.**

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)

//SKS//

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)