



S.No.4

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
12.03.2026 AT 10:30 A.M.**

**IA (IBC)/1520/2025 and IA (IBC)/1521/2025
in Company Petition IB/320/7/HDB/2022
U/s 7 of IBC**

IN THE MATTER OF:

Catalyst Trusteeship Limited

...Petitioner

AND

Manjeera Constructions Ltd

...Respondent

C O R A M:-

**SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
SHRI. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)**

ORDER

IA (IBC)/1520/2025

Orders pronounced, recorded vide separate sheets. In the result, this application is allowed.

IA (IBC)/1521/2025

In view of the orders passed in IA (IBC)/1520/2025, this application has become infructuous.

**Sd/-
MEMBER (T)**

**Sd/-
MEMBER (J)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, COURT - II**

IA (IBC) No. 1520 OF 2025

in

CP(IB) NO. 320/7/HDB/2022

[U/s. 60(5), 14 and 74 of the Insolvency & Bankruptcy Code, 2016]

**In the matter of M/s.Catalyst Trusteeship Limited vs. M/s.Manjeera
Constructions Ltd.**

In the matter of:

M/s.Manjeera Constructions Ltd.
Represented Authorised Representative
711, Manjeera Trinity Corporate
Near Manjeera Mall, JNTU-Hitech City Road
Kukatpally Housing Board Colony
Hyderabad - 500 072

.... Applicant

Vs.

1. Vasavi Realtor LLP
LLPIN: AAL-8270
8-2-269-S-59, Sagar Society
Road No.2, Banjara Hills
Hyderabad - 500 003
Email: vkyerram@gmail.com

... Respondent No.1

2. Mr. Yerram Vijay Kumar
S/o. Sri Yerram Shankaraiah
6, Villa No.32, Luxura Greens
New Bowenpally, Opp. Kendriya Vidyalaya
Secunderabad – 500 011
Email: vkyerram@gmail.com

... Respondent No.2



3. Mr. Kanday Ramesh
S/o. Sri K. Shankaraiah
R/o. Villa No.06, Luxura Greens
New Bowenpally, Opp. Kendriya Vidyalaya
Secunderabad – 500 011
Email: vkyerram@gmail.com

... Respondent No.3

4. Mr. Kanday Srinivasulu
S/o. Sri K. Shankaraiah
R/o.404, Vasavi's Bhuvana Apartments
Sri Nagar Colony, Hyderabad – 500 073
Email: vkyerram@gmail.com

... Respondent No.4

5. M/s. Vasavi Realty Private Limited
CIN: U45200TG2005PTC045262
R/o. Villa No.32, Luxura Greens
Opp. Kendriya Vidyalaya
Secunderabad – 500 011

Also at:

R/o. Vasavi Corporate, H.No.8-2-703/7/1 and
8-2-703/7/1/A, 4th Floor, Road No.12
Banjara Hills, Hyderabad – 500 034
Email: vkyerram@gmail.com
sreemukhbuilders@gmail.com

... Respondent No.5

6. Indus Ind Bank Limited
CIN: L65191PN1994PLC076333
R/o. CAD Hyderabad, Ground Floor
Durga Towers, P.No.1-8-435/436, Rasoolpura
Begumpet, Hyderabad
Email: jain.vinay@indusind.com

... Respondent No.6



7. IDBI Trusteeship Services Ltd.
CIN: U65991MH2001GOI131154
R/o. Asian Building, Ground Floor, 17
R. Kamani Marg, Ballard Estate
Mumbai – 400 001
Email: itsl@idbitrustee.com
response@idbitrustee.com

... Respondent No.7

8. Vasavi Constructions LLP
LLPIN: AAV-4802
Vasavi Corporate, H.No.8-2-703/7/1 and
8-2-703/7/1/A, 4th Floor, Road No.12
Banjara Hills, Hyderabad – 500 034
Email: vkyerram@gmail.com

... Respondent No.8

Order Pronounced on: 12.03.2026

Coram:

Shri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Shri Sanjay Puri, Hon'ble Member (Technical)

Parties / Counsels Present:

For the Applicant : Mr. Avinash Desai, Senior Counsel alongwith
Mr. Aishvary Vikram, Advocate

For the R1 to R5 & R8 : Mr. Krishna Grandhi, Senior Counsel alongwith
Mr. G.P. Yash Vardhan and Mr. Avinash Alladi,
Advocates



[PER: BENCH]

ORDER

1. The present Application has been filed under Sections 60(5), 14 and 74 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”), read with Rule 11 of the National Company Law Tribunal Rules, 2016, alleging that the Applicant was illegally removed as a partner from Respondent No.1, a Limited Liability Partnership, during the subsistence of the moratorium declared under Section 14 of the Code, and that such removal is void and non est in law. The Applicant accordingly seeks restoration of its status as a Partner in Respondent No.1, along with consequential reliefs.

2. Application

2.1 Respondent No.1 is a Limited Liability Partnership, incorporated on 24.01.2018 under the provisions of the Limited Liability Partnership Act, 2008 (**LLP Act**). Respondent Nos.2 to 5 are stated to be the partners of Respondent No.1. Respondent No.6 is the Lender, Respondent No.7 is the Security Trustee, and Respondent No.8 is the Borrower under the Memorandum of Deposit of Title Deeds dated 07.02.2024 and Deed of Hypothecation dated 05.02.2024.

2.2 A Partnership Agreement (**LLP Agreement**) was entered into amongst the partners and was subsequently modified on 27.08.2021 and on various other dates. Under the said arrangement, Respondent Nos.2 to 5 and the Applicant were partners of Respondent No.1, with the Applicant holding a 20% partnership interest.



- 2.3 During the subsistence of the Corporate Insolvency Resolution Process (CIRP) of the Applicant and the operation of moratorium under Section 14 of the Code, Respondent Nos.2 to 5 are stated to have removed the Applicant as a partner of Respondent No.1 by resolution dated 11.03.2024.
- 2.4 The alleged removal is stated to have come to light only upon receipt of a letter dated 22.07.2025 through which certain financial records of Respondent No.1 were furnished. Upon further inquiry, it was discovered that the Applicant had been expelled from Respondent No.1 without any prior notice or opportunity.
- 2.5 Following approval of the Resolution Plan, the new management of the Corporate Debtor attempted to take charge of its assets and exercise partnership rights in Respondent No.1. However, access to partnership records was denied and the status of the Corporate Debtor's capital contribution could not be ascertained.
- 2.6 It is also alleged that Respondent Nos.1 to 5 executed a Memorandum of Deposit of Title Deeds dated 07.02.2024 and a Deed of Hypothecation dated 05.02.2024 in favour of Respondent No.7, IDBI Trusteeship Services Ltd., acting as Security Trustee for Respondent No.6, IndusInd Bank Limited, in relation to credit facilities extended to Respondent No.8, M/s Vasavi Constructions LLP, thereby creating security interest over the properties of Respondent No.1.



- 2.7 These transactions were undertaken during the CIRP period of the Applicant, i.e. between 18.07.2023 and the alleged expulsion on 11.03.2024, without notice to or approval of the Interim Resolution Professional/Resolution Professional, and are therefore claimed to be in violation of the moratorium under Section 14 of the Code.
- 2.8 The Applicant asserts that the 20% partnership interest constitutes a legal and beneficial interest in Respondent No.1 and that its removal during the moratorium is void. Restoration of the Applicant's status as partner is therefore sought along with consequential reliefs.

3. Counter of Respondent Nos. 1 to 5 and 8

- 3.1 Respondent Nos.1 to 5 do not dispute that the Applicant was a partner holding a 20% share in Respondent No.1 prior to the commencement of the moratorium. The remaining averments in the Application have, however, been denied.
- 3.2 In accordance with Article 24.3(e) of the Principal LLP Agreement dated 24.01.2018, the Designated Partners passed a unanimous resolution dated 11.03.2024 expelling the Applicant from Respondent No.1 due to insolvency proceedings initiated against it. The Respondents state that the CIRP adversely affected the affairs, reputation, and financial standing of Respondent No.1 and created difficulties in securing disbursements under existing loan facilities. The cessation of partnership was effected strictly under Article 24.3 of the LLP Agreement and is a contractual consequence, not a prohibited Act under Section 14(1)(b) of the Code.



3.3 Pursuant to the resolution dated 11.03.2024, the continuing partners executed a Deed of Modification dated 16.03.2024 formally recording the cessation of the Applicant as a partner and revising the profit-sharing ratio amongst the remaining partners. The amended LLP Agreement reflects redistribution of the Applicant's erstwhile 20% share among the continuing partners and correspondingly updates the rights, responsibilities, and management provisions of Respondent No.1.

3.4 The Respondents further rely on Section 24(2)(c) of the LLP Act, 2008, which provides that a person who has applied to be adjudicated as insolvent or has been declared insolvent shall cease to be a partner of the LLP. Accordingly, the Applicant ceased to be a partner by operation of law and no violation of Section 14 arises. Section 238 of the Code, according to the Respondents, is not attracted as there is no inconsistency between the two statutes.

3.5 It is further submitted that the present dispute pertains exclusively to contractual rights and obligations arising under the LLP Agreement. Respondent No.1 is neither a creditor nor a debtor in relation to the CIRP of the Applicant. Hence, Respondent No.1 does not fall within the category of persons upon whom an approved Resolution Plan is binding under Section 31(1) of the Code.

3.6 Upon approval of the Resolution Plan, all prior rights, claims, and disputes stand governed by the terms of the Plan. The relationship between the Corporate Debtor and Respondent No.1 is therefore regulated by the LLP Agreement and related contractual arrangements.



3.7 The LLP Agreement contains an arbitration clause requiring disputes to be resolved under the Arbitration and Conciliation Act, 1996. The Respondents therefore contend that the present Application is premature and not maintainable before this Tribunal.

3.8 Lastly, it is submitted that Section 14 of the Code restrains transfer or disposal of assets of the Corporate Debtor but does not prohibit independent actions taken by third parties in exercise of contractual or statutory rights. The moratorium cannot override the decision-making autonomy of an independent entity such as Respondent No.1.

4. Rejoinder

4.1 In rejoinder, the Applicant reiterates the averments made in the Application.

4.2 The Applicant maintains that the reliance placed by Respondent Nos.1 to 5 on the Limited Liability Partnership Act and the LLP Agreement is misplaced. Section 238 of the Code gives overriding effect to its provisions over any inconsistent law. Further, Section 63 bars the jurisdiction of Civil Courts in matters within the competence of this Tribunal, while Section 71 of the LLP Act clarifies that the Act is not in derogation of any other law in force.

4.3 The removal of the Applicant's 20% stake during the CIRP is alleged to be a direct violation of the moratorium under Section 14 of the Code and therefore falls within the jurisdiction of this Tribunal under Section 60(5). The partnership interest constitutes an asset of the Corporate Debtor, and its deprivation during the moratorium is impermissible.



- 4.4 The moratorium under Section 14 is intended not only to prevent proceedings but also to preserve the assets, rights, and interests of the Corporate Debtor, including its beneficial interest in Respondent No.1.
- 4.5 Even assuming that the LLP Agreement permits cessation of partnership upon insolvency, Article 25 requires distribution of the outgoing partner's share on mutually agreed terms and after issuance of written notice by the remaining partners. No such notice was issued and no settlement was reached. The unilateral redistribution of the Corporate Debtor's 20% share is therefore contrary to the LLP Agreement itself.
- 4.6 Since the 20% stake forms part of the Corporate Debtor's assets and its deprivation occurred during the moratorium period, the Applicant contends that this Tribunal must set aside the expulsion and safeguard the Corporate Debtor's rights.
- 4.7 The 20% shareholding of the Corporate Debtor in Respondent No.1 was also reflected as an asset in the Information Memorandum prepared during the CIRP. Once recorded, the stake forms part of the asset base of the Corporate Debtor and cannot be divested unilaterally.
- 4.8 The Applicant alleges mala fides on the part of the Respondents. Vasavi Realty Pvt. Ltd., which held 53% shareholding in Respondent No.1, had submitted a Resolution Plan in the CIRP of the Corporate Debtor in February 2024. The expulsion of the Applicant appeared for the first time in the Balance Sheet of Respondent No.1 filed on 05.10.2024, after rejection of the



said Resolution Plan. Thereafter the Applicant's 20% stake was transferred to Vasavi Realty Pvt. Ltd., increasing its shareholding from 53% to 66.75% in Respondent No.1.

4.9 The Applicant lastly contends that the dispute cannot be referred to arbitration. The issue involves an alleged violation of Section 14 of the Code, falling within the exclusive jurisdiction of this Tribunal under Section 60(5). By virtue of Section 238 of the Code, the arbitration clause in the LLP Agreement cannot override the statutory jurisdiction of this Tribunal.

5. Respondent Nos. 6 and 7 were set ex parte on 03.12.2025.

6. We have heard Learned Counsel for both the parties and have also gone through the entire records including written submissions filed by them.

7. Findings

7.1 It is not in dispute that Respondent No.1, Vasavi Realtors LLP, was incorporated under the provisions of the Limited Liability Partnership Act, 2008. The Principal LLP Agreement dated 24.01.2018 (**Annexure P-1**) was executed amongst the then existing and incoming partners of Respondent No.1. Pursuant to a Modification Agreement dated 16.05.2018, the Applicant was inducted as an incoming partner of Respondent No.1. Thereafter, by way of a Supplementary/Modified LLP Agreement dated 27.08.2021 (**Annexure P-2**), the Applicant's profit-sharing ratio/partnership interest in Respondent No.1 was revised to 20%.



- 7.2 Subsequently, the Applicant was admitted into CIRP by this Adjudicating Authority vide order dated 18.07.2023 passed in CP (IB) No. 320/7/HDB/2022. Consequent thereto, moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 came into effect from the said date.
- 7.3 It is further borne out from the record that during the CIRP, an Information Memorandum dated 09.01.2024 (**Annexure AA-1**) was issued, wherein the 20% partnership interest of the Applicant in Respondent No.1, Vasavi Realtors LLP, was specifically reflected as an investment asset of the Corporate Debtor. The value of the said investment was indicated as ₹779.85 lakhs.
- 7.4 It also emerges from the Minutes of the 12th Meeting of the Committee of Creditors (**CoC**) dated 10.06.2024 (**Annexure AA-2**) that Vasavi Realty Pvt. Ltd. (Respondent No.5) had submitted a Resolution Plan which was taken up for evaluation by the CoC. Respondent No.5 admittedly holds 53% majority partnership interest in Respondent No.1 – Vasavi Realtors LLP.
- 7.5 The record further discloses that Respondent No.1, by Resolution dated 11.03.2024 (**Annexure-2 to the Counter**), purported to expel the Applicant under Clause 24.3(d) of the LLP Agreement dated 24.01.2018, on the ground of initiation of insolvency proceedings against the Applicant, with effect from 11.03.2024. Thereafter, another Resolution dated 16.03.2024 (**Annexure-3 to the Counter**) was passed declaring that the Applicant had ceased to be a partner of Respondent No.1 and that its 20% partnership interest stood distributed among the remaining partners.



7.6 Thus, it is evident that on the date of commencement of moratorium under Section 14 of the Code, the Applicant was holding 20% partnership interest in Respondent No.1. During the subsistence of the moratorium, Clause 24.3(d) of the LLP Agreement was invoked by passing unanimous resolution under clause(e), resulting in cessation of the Applicant's partnership and redistribution of its 20% interest to the other partners.

7.7 The basis for such divestment of the Applicant's interest is Clause 24 (3) (d) of the LLP Agreement dated 24.01.2018. This clause is similar to Section 24 (2)(c) of LLP Act. Clause 24(3) of the LLP Agreement reads as under:

24.3 OTHER CASES:

A person shall cease to be a Partner of the LLP in following circumstances also:-

- a) on his death or;
- b) dissolution of the limited liability partnership; or
- c) if he is declared to be of unsound mind by a competent court; or
- d) if he has applied to be adjudged as an insolvent or has been declared as an insolvent.
- e) in the event of passing of a unanimous resolution of the Designated Partners.

7.8 Having regard to the admitted factual position emerging from the record, learned counsel appearing for the parties have advanced their respective submissions.



7.9 Submissions on behalf of the Applicant

- (i) Learned counsel for the Applicant submits that prior to the enactment of the Insolvency and Bankruptcy Code, 2016, insolvency of individuals was governed, inter alia, by the Provincial Insolvency Act, 1920, and in the case of companies, the Companies Act provided for winding-up of the company and liquidation of its assets. Both these regimes were predominantly liquidation-oriented and did not contemplate revival of the debtor as a going concern.

- (ii) In contrast, the primary object of the IBC is revival and continuation of the Corporate Debtor by protecting it from its own management and from liquidation, and by ensuring resolution through a time-bound process. Reliance is placed upon paragraph 28 of the judgment of the Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17, wherein the object of the Code has been elaborately explained. Similar observations were made in *Arun Kumar Jagatramka v. Jindal Steel and Power Ltd.*, (2021) 7 SCC 474. In *A.Navinchandra Steels Private Limited v. SREI Equipment Finance Ltd.*, (2021) 4 SCC 435, the Hon'ble Supreme Court observed that the Companies Act contemplates only winding-up, while the IBC emphasizes revival of the Corporate Debtor through infusion of new management. Thus, it is submitted that the legislative intent of the IBC is not to destroy the Corporate Debtor as an economic entity but to preserve it as a going concern through a resolution process.



- (iii) It is further submitted that the Respondents have violated Section 14(1)(b) of the IBC, which prohibits transfer, alienation, encumbrance or disposal of any assets of the Corporate Debtor, including any legal or beneficial interest therein, during the moratorium. Redistribution of the Applicant's 20% partnership interest amounts to extinguishment and alienation of a valuable asset of the Corporate Debtor. Consequently, the Resolution dated 11.03.2024 and all consequential actions are liable to be declared null and void.
- (iv) Reliance is placed upon the judgment of the Hon'ble Supreme Court in *Alchemist Asset Reconstruction Company Ltd. v. Hotel Gaudavan Pvt. Ltd. (2018) 16 SCC 94*, wherein actions taken in violation of moratorium were held to be non est. It is further submitted that in cases where lender banks have debited amounts from accounts of the Corporate Debtor during moratorium, applications for reversal have been entertained under Section 14(1)(b) and directions for restitution have been issued. Reference is made to *Axis Bank Ltd. v. Asset Reconstruction Company (India) Ltd., 2025 SCC Online NCLAT 1224*; *Rohit Ramesh Mishra, RP of Siti Networks Ltd. (2024) ibclaw.in 1245 NCLT*; and *Rupinder Singh Gill v. Three C Universal Developers Private Limited CA (AT) (Ins) No. 702 of 2020*, wherein restitutionary directions were issued in cases of moratorium violations.
- (v) It is also contended that the expulsion of the Applicant was not an automatic statutory consequence but a deliberate act undertaken through Resolutions dated 11.03.2024 and 16.03.2024. Moreover, the



procedure contemplated under the LLP Agreement and the LLP Act, 2008 was not followed, as no prior notice or opportunity was given.

- (vi) The objection raised by the Respondents that the dispute is covered under the arbitration clause is misconceived. The present controversy is not a mere contractual dispute but pertains to violation of the statutory mandate under Section 14 of the IBC, which squarely falls within the jurisdiction of this Tribunal under Section 60(5) of the Code.
- (vii) It is lastly submitted that in the event of any inconsistency between the IBC and the LLP Act, the provisions of the IBC would prevail by virtue of Section 238 of the Code. Reliance is placed on *ABG Shipyard Ltd. Liquidator v. Central Board of Indirect Taxes & Customs, (2023) 1 SCC 472*; and *Anand Rao Koranda v. Varsha Fabrics (P) Ltd. and others (2020) 14 SCC 198*, wherein the Hon'ble Supreme Court held that the IBC overrides inconsistent provisions contained in other statutes.

7.10 Submission of Respondent Nos. 1 to 5 and 8

- (i) Learned counsel for the Respondents submits that the embargo under Section 14 of the IBC applies only to acts undertaken by the Corporate Debtor in relation to its assets and does not extend to independent actions taken by third parties. According to the Respondents, the provision cannot be interpreted so broadly as to override contractual rights or the internal decision-making of a separate legal entity such as Respondent No.1.



- (ii) It is further submitted that the cessation of the Applicant as a partner was effected strictly in accordance with Clause 24.3 of the LLP Agreement, which the Applicant had voluntarily executed. In exercise of the contractual power contained therein, Resolutions dated 11.03.2024 and 16.03.2024 were passed resulting in cessation of the Applicant as a partner.
- (iii) The Respondents further submit that the dispute essentially arises out of contractual rights and obligations under the LLP Agreement. Respondent Nos.1 to 5 and 8 are neither creditors nor debtors in the CIRP of the Applicant. Consequently, the dispute does not arise out of or in relation to the insolvency resolution process of the Corporate Debtor. The LLP Agreement also contains an arbitration clause providing for resolution of disputes under the Arbitration and Conciliation Act, 1996, and therefore the present Application is stated to be not maintainable.
- (iv) It is also contended that the non-obstante clause under Section 238 of the IBC is attracted only in the event of clear inconsistency between the provisions of the Code and another statute. According to the Respondents, no such inconsistency exists between the LLP Act and the IBC.
- (v) Learned counsel also submitted that the expression “has applied to be adjudged as an insolvent or is declared as an insolvent” occurring in Section 24(2)(c) of the Limited Liability Partnership Act, 2008 refers to



the legal state of insolvency which, under the IBC regime, is recognised upon admission of an application initiating insolvency proceedings. In this context, reference is made to Section 5(12) of the Code which defines the “insolvency commencement date” as the date of admission of such application by the Adjudicating Authority. It is contended that the Code does not contemplate a separate adjudicatory declaration declaring a corporate person insolvent in the traditional sense; rather, insolvency is determined through the mechanism of admission of the application itself. Accordingly, admission into Corporate Insolvency Resolution Process constitutes statutory recognition of insolvency under the Code and the cessation contemplated under Section 24(2)(c) of the LLP Act operates automatically by force of law once such state of insolvency arises.

(vi) Lastly, learned counsel submitted that the contention of the Applicant that paragraph 11.4 of the Resolution Plan has been violated is wholly misconceived and unsupported by the record. The said clause does not contain any specific stipulation regarding the partnership interest of the Applicant in Respondent No.1 – Vasavi Realtors LLP, nor does it prohibit cessation of partnership in accordance with law or contract. It is further submitted that Respondent Nos. 1 to 5 and 8 are third parties to the Resolution Plan and the approval order passed by this Tribunal. In terms of Section 31(1) of the Code, a Resolution Plan is binding only upon the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution process. Since the said Respondents do not fall within any such category, they cannot be bound by the internal restructuring provisions of the



Resolution Plan. In the absence of any specific provision in the Resolution Plan dealing with the LLP transaction, the Applicant cannot rely upon paragraph 11.4 of the Resolution Plan to create obligations or restrictions against Respondent Nos. 1 to 5 and 8.

7.11 In light of the pleadings and the rival submissions advanced on behalf of the parties, the principal issue that arises for consideration is whether the cessation of the Applicant as a partner of Respondent No.1 and the consequent redistribution of its 20% partnership interest during the subsistence of the moratorium can be sustained in law, having regard to the prohibition contained in Section 14(1)(b) of the Code, 2016. An ancillary question which also arises is whether the expression “has applied to be adjudged as an insolvent or has been declared as an insolvent” occurring in Section 24(2)(c) of the Limited Liability Partnership Act, 2008 or Clause 24.3(d) of the LLP Agreement can be interpreted to include the admission of a corporate debtor into Corporate Insolvency Resolution Process under the Code.

7.12 Coming to the ancillary question, the concept of a person being “adjudged as an insolvent” is traceable to the insolvency regime under the Provincial Insolvency Act, 1920, where a debtor could be formally adjudicated as insolvent by a competent court. The IBC, however, adopts a fundamentally different framework wherein the admission of an application under Sections 7, 9 or 10 merely triggers the CIRP with the objective of resolution and revival of the Corporate Debtor as a going concern. [See *Arun Kumar Jagatramka v. Jindal Steel and Power Ltd (2021)7 SCC 474* and *A. Navinchandra Steels Pvt Ltd v SREI Equipment Finance Ltd. (2021)4*



SCC 435]. The admission of a petition under the Code does not amount to a declaration of insolvency in the traditional sense resulting in civil consequences akin to those contemplated under the earlier insolvency laws.

7.13 This position stands in contrast with proceedings relating to individuals under Part III of the Insolvency and Bankruptcy Code, 2016, where applications may be filed under Sections 94 or 95 for initiating the insolvency resolution process against an individual debtor or personal guarantor. The statutory framework governing individuals ultimately contemplates the making of a bankruptcy order in appropriate cases, pursuant to which the debtor/guarantor may be adjudged bankrupt.

7.14 The scheme of the Insolvency and Bankruptcy Code thus distinguishes between insolvency resolution and bankruptcy. In the case of corporate persons, admission of a petition merely initiates the Corporate Insolvency Resolution Process with the objective of revival of the corporate debtor. In contrast, the framework governing individuals under Part III of the Code ultimately contemplates the making of a bankruptcy order, which bears closer resemblance to the earlier concept of adjudication of insolvency under the pre-existing insolvency laws.

7.15 Hence, the concept of a person “has applied to be adjudged as an insolvent or is declared as an insolvent”, as referred to in Section 24(2)(c) of the Limited Liability Partnership Act, or Clause 24.3 (d) of the LLP Agreement 2008, cannot be readily equated with the mere admission of a petition initiating CIRP against a corporate debtor under the Code.



7.16 Therefore, even assuming that Clause 24.3(d) of the LLP Agreement or Section 24(2)(c) of the Limited Liability Partnership Act contemplates cessation of partnership upon insolvency, the enforcement of such provision during the subsistence of the moratorium would necessarily result in divestment of an asset of the Corporate Debtor, which is impermissible under Section 14(1)(b) of the Insolvency and Bankruptcy Code, 2016.

7.17 It is an admitted position that on the insolvency commencement date the Applicant continued to hold 20% partnership interest in Respondent No.1 – Vasavi Realtors LLP. The said partnership interest was also reflected in the Information Memorandum issued during the CIRP as an investment asset of the Corporate Debtor. The said interest therefore formed part of the assets and beneficial interests of the Corporate Debtor during the subsistence of the moratorium.

7.18 Section 14(1)(b) of the Insolvency and Bankruptcy Code, 2016 prohibits the transfer, encumbrance, alienation or disposal of any assets of the Corporate Debtor, including any legal or beneficial interest therein, during the moratorium period. The legislative object underlying this provision is to preserve the asset base of the Corporate Debtor and maintain the status quo so that the insolvency resolution process can proceed without diminution in value. In *Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407*, the Hon'ble Supreme Court observed that the moratorium under Section 14 is intended to ensure that the assets of the Corporate Debtor remain protected during the CIRP. Similarly, in *Alchemist Asset Reconstruction Company Ltd. v. Hotel Gaudavan Pvt. Ltd., (2018) 16 SCC 94*, it was held that any action taken in violation of the moratorium is void and non est in law.



7.19 In the present case, the Resolutions dated 11.03.2024 and 16.03.2024 resulted in cessation of the Applicant as a partner and redistribution of its 20% partnership interest among the continuing partners. The inevitable consequence of these resolutions was that the Corporate Debtor stood divested of its beneficial interest in Respondent No.1 during the subsistence of the moratorium. Such divestment directly affects the asset position of the Corporate Debtor and runs contrary to the statutory embargo contained in Section 14(1)(b) of the Code.

7.20 The contention of the Respondents that the cessation was merely a contractual consequence flowing from the LLP Agreement cannot be accepted in circumstances where enforcement of such contractual stipulation results in extinguishment of an asset of the Corporate Debtor during the moratorium period. Contractual stipulations must necessarily yield to the statutory mandate of the Code. In ***Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, (2021)7 SCC 209***, the Hon'ble Supreme Court has held that termination of contractual rights which has the effect of undermining the insolvency resolution process or the going concern status of the Corporate Debtor can be examined and interdicted by the Adjudicating Authority under the Code. The same principle squarely applies in the present case where enforcement of the contractual clause has resulted in divestment of a valuable asset of the Corporate Debtor during the CIRP.

7.21 The principle that contractual rights cannot be exercised in a manner which defeats the objectives of the insolvency resolution process has also been recognised in ***Tata Consultancy Services Ltd. v. Vishal Ghisulal Jain, (2021) ibclaw.in 167 SC***, wherein the Hon'ble Supreme Court observed that



while contractual rights ordinarily remain enforceable, the Adjudicating Authority is empowered to examine whether the exercise of such rights would have the effect of undermining the Corporate Insolvency Resolution Process or diminishing the value of the Corporate Debtor as a going concern. Where the enforcement of a contractual clause has the effect of depriving the Corporate Debtor of a valuable asset during the moratorium, the Adjudicating Authority would be justified in intervening to preserve the asset base of the Corporate Debtor.

7.22 Equally, the objection raised regarding the existence of an arbitration clause in the LLP Agreement cannot be sustained. The present dispute concerns the effect and enforcement of the statutory moratorium under Section 14 of the Code, which squarely falls within the jurisdiction of this Adjudicating Authority under Section 60(5). The Hon'ble Supreme Court in ***Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta (2021) 7 SCC 209*** has recognized that questions having a direct bearing on the insolvency resolution process fall within the exclusive domain of the Adjudicating Authority under the Code. Here, we also refer to the decision in ***Indus Biotech Pvt. Ltd. v. Kotak India Venture (Offshore) Fund & Ors., (2021) ibclaw.in 52 SC***, wherein it was held that if the irresistible conclusion by the Adjudicating Authority is that there is default and the debt is payable, the bogey of arbitration to delay the process would not arise despite the position that the agreement between the parties indisputably contains an arbitration clause.



7.23 Further, by virtue of Section 238 of the Insolvency and Bankruptcy Code, the provisions of the Code shall have overriding effect notwithstanding anything inconsistent contained in any other law or instrument having effect by virtue of such law. To the extent the provisions of the LLP Agreement or the LLP Act are sought to be enforced in a manner inconsistent with the moratorium under the Code, the provisions of the IBC would prevail. The overriding nature of the Code has also been affirmed by the Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. v. Union of India (2019) 4 SCC 17*; *ABG Shipyard Liquidator v. Central Board of Indirect Taxes (2023)1 SCC 472*; *Anand Rao Korada v. Varsha Fabrics (2020)14 SCC 198*; *Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. (2021) 9 SCC 657* and *Principal Commissioner of Income Tax v. Monnet Ispat & Energy Ltd.(2018) ibclaw.in 30 SC*.

7.24 In view of the foregoing discussion, we are of the considered opinion that the Resolutions dated 11.03.2024 and 16.03.2024, whereby the Applicant was expelled as a partner of Respondent No.1 and its 20% partnership interest was redistributed among the continuing partners, were passed during the subsistence of the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 and had the effect of divesting the Corporate Debtor of a valuable asset forming part of the insolvency estate. Such action is clearly contrary to the statutory embargo contained in Section 14(1)(b) of the Code and therefore the said Resolutions and all consequential actions taken pursuant thereto cannot be sustained in law and are liable to be declared void and non est.



8. Final Order

8.1 The Resolutions dated 11.03.2024 and 16.03.2024, along with all consequential actions taken pursuant thereto, including redistribution of the Applicant's 20% partnership interest, are hereby set aside and declared void and non est in law.

8.2 Respondent Nos.1 to 5 are directed to restore the Applicant as a partner of Respondent No.1 – Vasavi Realtors LLP – with its original 20% partnership interest, as existed on the insolvency commencement date, and to make all necessary corrections in the records of the LLP within a period of four weeks from the date of this Order.

8.3 The Application is allowed in the above terms. No order as to costs.

Sd/-

**(SANJAY PURI)
MEMBER (TECHNICAL)**

Sd/-

**(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)**

Syamala