

SL. No.2

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

**CORAM: JUSTICE TELAPROLU RAJANI- HON'BLE MEMBER (J)
CORAM: SHRI. CHARANSINGH - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 17.08.2023, At 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/751/2022 in CP (IB) No.224/9/HDB/2021
NAME OF THE COMPANY	Cura Technologies Ltd
NAME OF THE PETITIONER(S)	Alphasoft Technologies, Inc
NAME OF THE RESPONDENT(S)	Cura Technologies Ltd
UNDER SECTION	9 of IBC

ORDER

IA (IBC)/751/2022

This application is allowed, vide separate orders.

**Sd/-
MEMBER (T)**

**Sd/-
MEMBER (J)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

IA No.751/2022 in
CP(IB) No. 224/9/HDB/2021
U/s. 60(5) of IB Code, 2016

IN THE MATTER OF M/S. CURA TECHNOLOGIES LIMITED

Between:

Mr. Maligi Madhusudhana Reddy,
Resolution Professional of
M/s. Cura Technologies Limited,
MMR Lion Corp, 4th Floor,
HSR Eden, Beside Cream Stone,
Road No.2, Banjara Hills,
Hyderabad – 500 034.

.... Petitioner/
Resolution Professional

Vs.

1. Bombay Stock Exchange Limited,
25th Floor, PJ Towers, Dalal Street,
Mumbai – 400 001.

.... Respondent No.1

2. National Stock Exchange Limited,
Exchange Plaza, Plot No.C/1, G Block,
Bandra-Kurla Complex, Badra (E),
Mumbai – 400 051.

.... Respondent No.2

3. Securities and Exchange Board of India,
SEBI Bhavan BKC, Plot No.C4-A, G Block,
Bandra-Kurla Complex, Badra (E),
Mumbai – 400 051.

.... Respondent No.3

Date of order: 17.08.2023

CORAM:

Hon'ble Justice Smt. Telaprolu Rajani, Member (Judicial)

Hon'ble Sri Charan Singh, Member (Technical)

Counsels present:

For the Petitioner : Mr. Y. Suryanarayana, Advocate

For the Respondent : Mr. A Sanjay Kishore, Advocate

Heard on : 10.08.2023

**[PER: BENCH]
ORDER**

1. This application is filed by the Applicant/Resolution Professional of M/s. Cura Technologies Limited, Corporate Debtor (CD) under Section 60(5) of IBC, 2016 r/w Rule 11, 13 and 32 of NCLT Rules, 2016, seeking for a direction to the National Stock Exchange (NSE), to withdraw their orders passed on 22.03.2022 and to restore listing rights as they stood prior to the admission of the applicant into Corporate Insolvency Resolution Process (CIRP) by the Adjudicating Authority on 16.03.2022, till the moratorium is lifted; and to direct the Bombay Stock Exchange (BSE) to withdraw their orders dated 20.07.2022 and to restore listing rights as they stood prior to the admission of the applicant into CIRP by the same order of this Adjudicating Authority.

2. The facts of the case briefly, are as follows:
 - a. The CD was listed for public trading in its securities with BSE Limited, referred hereinafter as “Stock Exchange” and the Stock Exchange allotted Scrip Code No.532332 to the CD to quote in all its correspondence, while complying with the requirements under SEBI laws and Listing Agreement entered into by the CD with the Stock Exchange. The NSE has delisted the CD vide its Circular Reference No.0328/2022 dated 22.03.2022. Based on the above delisting by NSE, BSE has also delisted the CD w.e.f. 22.07.2022.
 - b. The CD has been admitted into the CIRP by order dated 16.03.2022 of this Adjudicating Authority and moratorium came into operation. An Interim Resolution Professional (IRP) was appointed who was confirmed as Resolution Professional (RP) in the 1st CoC meeting held on 10.05.2022.
 - c. The copy of the order was circulated to all the Stakeholders, including the Stock Exchange, BSE Ltd. and NSE Ltd. and also informing them about the moratorium.
 - d. While the moratorium was in operation, the Stock Exchange, BSE Ltd has, in blatant violation of the orders, delisted the CD w.e.f. 22.07.2022 vide its order dated 20.07.2022. Hence, this application.

3. Respondent No.1 filed Counter, denying the contents of the application and further contending that Respondent No.1 is a recognized Stock Exchange and is bound by the provisions of the SCRA, Securities Contracts (Regulations) Act, 1956, Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI (LODR) Regulations, 2015), the Rules, Bye-laws and Regulations, 1957 of the 1st Respondent (as amended from time-to-time) and the regulatory framework laid down by SEBI.
- a. The application cannot be entertained as an effective alternative remedy is available. Section 23L of SCRA confers exclusive jurisdiction to the Hon'ble Securities Appellate Tribunal to entertain any appeal against the decision of a recognised stock exchange, who is the 1st Respondent herein. A conjoint reading of Section 22E and Section 23L of the SCRA reveals that any Court or other authority would not have jurisdiction to entertain any proceeding against a recognised stock exchange which are exclusively triable by the Securities Appellate Tribunal. Section 22E and 23L are as follows:

“Section 22E – Civil Court not to have jurisdiction:

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Securities Appellate Tribunal is empowered by or under this Act to

determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

“Section 23L - Appeal to Securities Appellate Tribunal:

Any person aggrieved, by the order or decision of the recognized stock exchange or the adjudicating officer or any order made by the Securities and Exchange Board of India under section 4B, may prefer an appeal before the Securities Appellate Tribunal and the provisions of sections 22B, 22C, 22D and 22E of this Act, shall apply, as far as may be, to such appeals.”

- b. The Law is settled and also due to lack of territorial jurisdiction, this Tribunal cannot entertain this application. Also in view of Rule 1.3, Chapter V of the Rules of 1st Respondent, which confers exclusive jurisdiction to the Courts of Mumbai, this application cannot be entertained. The relevant Rule is extracted hereunder:

“Chapter V - Miscellaneous:

Rule 1.3 – Save and except as specifically provided otherwise, the Rules, Bye-laws and Regulations shall be subject to the exclusive jurisdiction of the Courts of Mumbai irrespective of the location of the place of business of the members and clients in India or the place where the concerned transaction may have taken place.”

- c. The Registered office of 1st Respondent is in Mumbai. Hence, the Courts in Mumbai have exclusive territorial jurisdiction. Section 21A of the SCRA read with Rule 21 of the SCR Rules and Chapter V of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021 / Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 (Regulations) provides for the mechanism of compulsory delisting

of securities of companies listed at recognized stock exchanges by the recognized stock exchanges.

- d. Rule 21(2)(b) of SCR Rules lays down that if securities of a company are delisted from a recognized stock exchange under Rule 21(1) of SCR Rules, then the said securities shall be delisted from all the recognized stock exchanges.
- e. 1st Respondent took note of the 2nd Respondent's action of compulsorily delisting the securities of M/s. Cura Technologies Limited (CD) vide circular dated 22.03.2022 and in consequence thereof, 1st Respondent delisted the securities of the CD. Said action was consequential to the action taken by the 2nd Respondent. The companies undergoing CIRP cannot flout all other Laws.
- f. Section 14(1) of IBC prohibits any proceeding against a CD in respect of dues payable by the CD. It cannot be construed as prohibition in respect of actions taken by any authority for violation of any other enactments. IBC permits initiation of action adopted by the stock exchanges against listed entities, including delisting. It is evident from the Explanation to Section 14(1) of IBC.

g. Insolvency and Bankruptcy Board of India (IBBI) vide its circular dated 03.01.2018 clarified that a corporate person undergoing insolvency process under IBC needs to comply with the provisions of applicable laws. Hence, unless specifically exempted by the Competent Authority, the CD cannot seek exemption. On the above grounds, Respondent seeks to dismiss the application.

4. A rejoinder is filed by the Applicant contending that the NCLT is not a Civil Court and therefore the contention of the Respondent that the NCLT does not have jurisdiction is not tenable. *The Hon'ble High Court of Karnataka in the matter of Sri B S Raja and Ors. Vs. Sri B S Hemanth and Ors vide Commercial Appeal No.256 of 2021 has held that:*

“Even if the application, where for a moment considered to be maintainable and the plaint was to be rejected, the said Court could not have directed presentation of the same before NCLT because NCLT is not a Court which is contemplated under Order VII Rule 10 or Order VII Rule 10A of CPC.”

a. The contention of Respondent No.1 about the applicability of Section 23L of the Securities Contracts (Regulation) Act, 1956 is not correct.

b. As per Section 238 of the Code, the provision of the Code shall prevail over the provisions of the other acts, which is as under:

“Section 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.”

- c. The explanation provided in Section 14 of the Code prevails over the provisions made in any other law. The same is extracted as under:

“Explanation provided in Section 14 –

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 license, permit, registration, quota, concession, clearances 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, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.”

- d. Section 32A of IBC, 2016 provides that the offences committed by the CD prior to the admission of the CD into CIRP cannot be continued and the same is as follows:

Section 32A – Liability for prior offences, etc.-

(1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if

the resolution plan results in the change in the management or control of the corporate debtor.”

- e. Fine can be imposed only for an offence committed and the word ‘offence’ has been defined in the General Clauses Act (No.10 of 1897) as meaning “*any act or omission made punishable by any law for the time being in force*’. The fines imposed by Respondent No.1 pertain to the period prior to the initiation of CIRP.
- f. As regards the jurisdiction, the Registered Office of the CD whose shares were listed on stock exchange and who is undergoing the process of CIRP is situated within the territorial jurisdiction of this Adjudicating Authority, hence, this application is maintainable. The rest of the averments are almost repetition of the contents of the application, hence not mentioned. On the above grounds, the Petitioner once again seeks to allow the Application.
5. Heard both the Counsel and perused the written submissions filed by either side which shall be discussed at the relevant places of the order.
6. The important and the only issue that comes for consideration is, whether the moratorium under Section 14 of IBC, 2016 operates against the Acts of the Stock Exchange Board or not.

7. Before taking up the contentions raised on either side, one judgement which is relied upon by the Counsel for the Petitioner rendered by the *Hon'ble NCLAT in the case of M/s. Anju Agarwal RP for Shree Bhawani Paper Mills Ltd. Vs. Bombay Stock Exchange & Ors.* can be looked into. The contention of the Counsel for the Appellant therein was, Section 14(1)(a) of IBC is also applicable to the provisions of SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015, during the Moratorium period, no compliance of Regulations, 2015 is required. It was also alleged therein that the BSE threatened suspension of trading shares of the CD. The contention was that the BSE has no jurisdiction to suspend trading shares to impose penalty, in view of the clear prohibition under Section 14 of the Code.

8. The Hon'ble NCLAT referred to Section 238 of IBC, 2016 which is as an overriding provision and held that Section 28A of SEBI Act, 1992 is inconsistent with Section 14 of IBC, 2016 and hence, Section 14 of IBC, 2016 would prevail over Section 28A of SEBI Act, 1992 and 'Securities Exchange Board of India' cannot recover any amount, including the penalty, from the CD. It further held that the 'Bombay Stock Exchange', for the very same reason

cannot take any coercive steps against the CD nor can threaten the CD for suspension of trading of shares.

9. However, it also observed that the RP cannot sell the shares of the CD during the period of Moratorium except in accordance with the provisions of the IBC and with the approval of the Committee of Creditors.
10. It further held that the shares can be transferred only in the manner prescribed under the IBC and following the requirements framed under the SEBI Act, 1992 and the Companies Act, 2013.
11. The Hon'ble NCLAT relied on the judgement rendered by it in the case of *Maharashtra Seamless Ltd. Vs. Shri Padmanabhan Venkatesh & Ors. in Company Appeal (AT) (Insolvency) No.220 of 2019 wherein it was held that:*

“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.”

12. In the light of the above judgement, the judgements relied upon by the Counsel for the Petitioner cannot be applied to the facts of this

case, since they are all rendered by the Benches of NCLT Mumbai & Delhi.

13. Further, it can be noted that the NCLT Mumbai Bench in MA No.373/2017 in CP No.1055/I&BC/2017 though has extracted Section 238 which is as above, observed that it has not been said in Section 238 that “Notwithstanding anything contained in any other law for the time being in force”, where as Section 238 very much contains those words.
14. It is not in dispute that the impugned orders are passed subsequent to the order of this Adjudicating Authority ordering CIRP against the CD. The judgement of the Hon’ble NCLAT has held that no coercive steps can be taken during the period of moratorium. The delisting of the company, without any doubt, amounts to coercive steps against the CD. In the order, there was a prohibition for the promoters and directors of the companies from accessing the securities market or seek listing for any equity shares for a period of 10 years from the date of such delisting.
15. There was an order that these companies should be moved to the Dissemination Board of Stock Exchange for a period of 5 years as directed by SEBI. The NSE did not choose to appear inspite of notice. BSE made its appearance through its Counsel. The

Counsel appearing for BSE submits that the order passed by BSE is only a consequential order to the order passed by NSE. But, however, in view of the clear position of Law laid down by the Hon'ble NCLAT in the above mentioned judgement, we deem it fit to set aside the Order No.NSE/CML/51708 dated 22.03.2022 of National Stock Exchange (NSE).

16. As regards jurisdiction there is no counter argument to the contents of the rejoinder that the registered office of the applicant is located in an area within the jurisdiction of this Tribunal.
17. As regards the maintainability of this application, in view of alternate remedy, it can be seen that the application is filed impugning the orders passed during moratorium, which operates by virtue of section 14 IBC, which can be decided only by this Tribunal.
18. In the result **IA No.751 of 2022 in CP (IB) No 224 of 2021** is accordingly allowed and disposed of.

Sd/-

**(CHARAN SINGH)
MEMBER (TECHNICAL)**

Sd/-

**(JUSTICE TELAPROLU RAJANI)
MEMBER (JUDICIAL)**

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