

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insol.) No. 116 of 2017

IN THE MATTER OF:

Alpha & Omega Diagnostics (India) Ltd.

...Appellant

Vs.

**Asset Reconstruction Company of
India Ltd. & Ors.**

...Respondents

Present: For Appellant:- Mr. Amit Vyas, Advocate

**For Respondents:- Sh. Arun Kathpalia, Senior Advocate
with Mr. Rohit Gupta, Mr. P.S. Sudheer and Subhoshree,
Advocates.**

ORDER

31.07.2017- The Appellant-Corporate Applicant filed an application under Section 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I & B Code") for initiation of corporate insolvency resolution process in so far it relates to Corporate Debtor with the Adjudicating Authority.

2. Ld. Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Mumbai, after notice to the 'Financial Creditor' and others passed impugned order dated 10th July, 2017 in T.C.P. No. 1117/I&BP/NCLT/MB/MAH/2017, admitting the application subject to qualification, as quoted below:

*"4.8. Nevertheless, the decision on "Admission" as
pronounced hereinabove is subject to a qualification.*

The I&BP Code, 2016 has prescribed certain

limitations which are inbuilt and must not be overlooked. The 'Moratorium' indeed is an effective tool, sometimes being used by the corporate Debtor to thwart or frustrate the Recovery Proceedings, as happened in this Case. The Learned Chief Metropolitan Magistrate vide Order (supra) dated 11.04.2017 has appointed a Court Commissioner to take over the possession of the flats. **The admitted position is that the Flats in question are not under the Ownership of the corporate Debtor.** A question in this regard was raised during the hearing however not disputed by the either side. Even in the balance sheet of the Corporate Debtor these flats are not reflected. It is further evidenced that the documents annexed have clearly demonstrated that the **personal properties of the Promoters have been given as a "Security" to the banks.** Now the question is that whether a property(ies) which is/are not 'owned' by a Corporate Debtor shall come within the ambits of the Moratorium? To examine this aspect, it is useful to reproduce verbatim the provisions of **Section 14 of the Code** as under: -

5. Section 14. Moratorium

(1) Subject to provisions of sub-sections (2)(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 judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of 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.

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6. On careful reading I have noticed that the term **"its"** is significant. The plain language of the Section is that on the commencement of the Insolvency process the 'Moratorium' shall be declared for **prohibiting any action to recover or enforce any security interest created by the Corporate Debtor in respect of "its" property**. Relevant section which needs in-depth examination is Section 14(1)(c) of the Code.
7. There are recognised canons of interpretation. Language of the Statute should be read as it existed. This is a trite law that no word can be added or substituted or deleted from the enacted Code duly legislated. Every word is to be read and interpreted as it exists in the statute with the natural meaning attached to the word. **Rather in this Section the language is so simple that there is no scope even to supply 'casus omissus'**. I hasten to add that the doctrine of 'Noscitur a Sociis' is somewhat applicable that the associated words take their meaning from one another so that common sense meaning coupled together in their cognate sense be interpreted. As a

result, "its" denotes the property owned by the Corporate Debtor. **The property not owned by the Corporate Debtor do not fall within the ambits of the Moratorium.** Even Section 10 is confined to the Book of the Accounts of the Corporate Debtor, due to the reason that Section 10(3) has specified that the Corporate Applicant shall furnish "its" Books of Accounts. This Bench has no legislative authority to expand the meaning of the term "its" even under the umbrella of '**Ejusdem generis**'.

8. The outcome of this discussion is that the Moratorium shall prohibit the action against the properties reflected in the Balance Sheet of the Corporate Debtor. The Moratorium has no application on the properties beyond the ownership of the Corporate Debtor. For the sake of completeness, it is worth to refer that the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (the SARFAESI Act) may be having different criteria for enforcement of recovery of outstanding debt, which is not the subject matter of this Bench. **Before I past with it is necessary to clarify my humble view that the SARFAESI Act may come within the ambits of**

Moratorium if an action is to foreclose or to recover or to create any interest in respect of the property belonged to or owned by a Corporate Debtor, otherwise not.

9. To conclude the Application under Section 10 of the Code is hereby "Admitted" subject to the exception as carved out supra. The consequential directions shall be that the provisions of Section 14 of The Code i.e. "Moratorium" shall come into operation. Next, the proposed name of Interim Resolution professional i.e. Mr. Rajendra Karanmal Bhuta, C/o RK Bhutta & Co. Chartered Accountants, Insolvency Professionals, 1207, Yogi paradise, Yodi Nagar, Borivali (West), Mumbai-400 092, email - rkbhuta,co.@gmail.com, IP Registration No. INNI/IBA-IP/00078/2016-2017/1074 is hereby approved. The IRP shall take appropriate action such as Public Announcement etc. so that the Insolvency Resolution Process shall be initiated expeditiously. He is directed to submit a Progress Report within one month's time from the commencement of Insolvency Resolution Process."
3. The impugned order dated 10th July, 2017 is under challenge in this appeal.

4. Ld. Counsel appearing on behalf of the Appellant submitted that the appellant has grievance only relating to qualifying part of the impugned order as quoted above. According to the appellant, the Moratorium should take into its recourse on the subject matters and assets relating to its matters pending before the Debt Recovery Tribunal (DRT) and under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI).

5. However, we are not inclined to accept such submissions as Appellant-Corporate Applicant has sought for **“its”** own insolvency resolution process that will include only the assets of the Corporate Debtor and not any assets, movable or immovable of a third party, like any director or other. In so far as ‘guarantor’ is concerned, we are not expressing any opinion, as they come within the meaning of ‘Corporate Debtor individually’, as distinct from principal debtor who has taken a loan.

6. In the aforesaid background, if Ld. Adjudicating Authority, on careful reading of the provisions has come to the definite conclusion that on commencement of the insolvency process the “Moratorium” shall be declared for prohibiting any action to recover or enforce any security interest created by the ‘Corporate Debtor’ in respect of **“its”** property, no ground is made out to interfere with the said order.

7. We find no merit in this appeal. It is accordingly dismissed. However, in the facts and circumstances, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member(Technical)

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