

In the National Company Law Tribunal  
Mumbai Bench.

MA 78/2018 in CP 1268/I&BC/NCLT/MB/MAH/2017

Under Section 25(2)(b) read with section 60(2) and read with section 9 of  
Insolvency & Bankruptcy Code 2016

In the matter of

JAI AMBE ENTERPRISE : Petitioner  
V/s

S.N. Plumbing Private Limited : Respondent  
Order delivered on: 06.02.2018

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)  
Hon'ble Shri Bhaskara Pantula Mohan (Judicial)

Present: Mr. Sanjay Kumar Ruia, Resolution Professional.  
Per M.K. Shrawat, Member (Judicial).

**ORDER**

1. In this case an Order under section 9 of The Code was passed on 06.08.2017 (CP No.1268/I&BC/MB/2017) wherein M/s. Jai Ambe Enterprise is the Operational Creditor (Petitioner) and M/s. S.N. Plumbing Pvt. Ltd. is Corporate Debtor (Respondent). Vide Para 15, Mr. Sanjay Kumar Ruia is appointed as IRP. This Miscellaneous Application is moved by the said RP.

2. On the date of hearing RP present in person and informed that during the commencement of the Insolvency Proceedings he has examined the Books of Accounts of the Corporate Debtor M/s. S.N. Plumbing and noticed that there are several Debtors from whom outstanding dues are recoverable. As a



consequence, he has filed Insolvency Proceedings against all those parties from whom the Debt is recoverable in favour of S.N. Plumbing. He has informed that a Petition has been submitted before Hon'ble NCLT Hyderabad against IL & FS Engineering and Construction Company (Respondent Debtor of S.N. Plumbing) for initiation of CIRP pertaining to an Operational Debt of ₹83,65,263/-. In this M.A. it is Prayed that directions be issued by NCLT Mumbai Bench to proceed against the Corporate Debtor IL & FS Engineering of the Creditor S.N. Plumbing.

3. To decide this Application, we have perused the provisions of Section 25 of The Code wherein prescribed the "Duties of Resolution Professional". The Section says that it shall be the duty of the Professional to preserve and protect the Assets of the Corporate Debtor. For that purpose, the Professional shall undertake certain actions viz. to represent and act on behalf of the Corporate Debtor with Third Parties, exercise rights for the benefit of the Corporate Debtor in any Judicial Proceedings. (Refer Section 25(2)(b)).

4. In view of the above discussed provision of The Code, *prima facie*, the action of the Professional against one of the Debtor of the S.N. Plumbing appears to be a correct legal action. It is one of the duty of the Resolution Professional to recover the outstanding Debts of a Corporate Debtor against whom already CIRP is in progress. At the cost of repetition, as referred *supra*, the Insolvency Proceedings have already been commenced against the Corporate Debtor viz. S.N. Plumbing by this NCLT Bench. Indeed, it is the duty of the IRP/RP to take

all possible steps not only to invite Resolution Applicant but to take steps for recovery of the Debts outstanding. The action against IL & FS Engineering is one of such action as a Corporate Debtor by invoking the provisions of section



9 of The Code. As per the statement made before us by the RP, no other case is pending against IL & FS in the capacity of a Corporate Debtor.

5. In this connection one more section is worth consideration; i.e. Sec. 60(2) of The Code. In our humble opinion, the language of Section 60(2) and other allied provisions of The Code has no ambiguity that no two parallel Insolvency Proceedings must run against a Corporate Debtor. Hence a clarification is needed in this case that S.N. Plumbing has not submitted the impugned Petition before the respected NCLT Bench, Hyderabad in the capacity of a Corporate Debtor but undisputedly, the said Petition is filed in the capacity of an Operational Creditor by submitting Form No.5 as prescribed under The Code. It is to be emphasised at the cost of repetition that the impugned Petition before NCLT, Hyderabad is not a Petition against S.N. Plumbing as a Corporate Debtor but the Petition is filed by the S.M. Plumbing in the capacity of Operational Creditor. We have been informed that the impugned Petition is filed by the Resolution Professional on behalf of S.N. Plumbing. This action of the Resolution Professional is a right recourse for managing the affairs of the financially stressed Company.

6. The proceedings initiated against the Debtors of S.N. Plumbing is therefore a justifiable action of the Insolvency Resolution Professional hence duly approved by us. *Inter alia*, the Miscellaneous Application is allowed.

Sd/-

**BHASKARA PANTULA MOHAN**  
Member (Judicial)

Date : 06.02.2018

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Sd/-

**M.K. SHRAWAT**  
Member (Judicial)

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On 15.02.2018

Assistant Registrar

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