

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

**MA No. 524 of 2018**

In CP(IB) 1053 (MB) /2017

Under **Section 30(6)** of the IBC, 2016

Mr. Anil Goel

...Resolution Professional/ Applicant

**In the matter of**

Amar Remedies Limited

... Corporate Debtor/ Corporate Applicant

Order delivered on: 29.1.2019

Coram: Hon'ble Shri V.P. Singh, Member (Judicial)

Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For IDBI Bank Ltd.: Adv. Shavey Mukri a/w Nishitha Manbiar & Almira  
Lasrado i/b IndiaLaw

For SBI Global Factors Pvt. Ltd.: Adv. Ashish a/w Adv. Priyanak Upadhyaya  
i/b Ethos Legal Alliance

For Axis Bank Ltd.: Adv. Sugyata Choudhary i/b Prakash Choudhary

For Edelweiss Asset Reconstruction Company: Mr. Nikhil Rajani a/w Ms.  
Jyoti i/b V. Deshpande &  
Co. a/w Mr. Naman  
Awasthi, authorised  
signatory of EARC

For Saraswat Co-operative Bank: Adv. Bhupesh V. Samant a/w Adv.  
Ganesh Kale

For Corporate Applicant: Adv. S. Purohit i/b Yogendra

For ICICI Bank Ltd.: Ms. Suhsmitta Gandhi a/w Anamika i/b HSA Advocates

For Ramkumar Birendrakumar Pvt. Ltd.: Counsel Subir Kumar with Ms.  
Priyanka Sinha i/b A&P Partners

*Per V.P. Singh, Member (Judicial)*

**ORDER**

1. MA No. 524 of 2018 has been filed by Resolution Professional in connection with CP(IB) No.1053/2017 in case of Amar Remedies Ltd. under section 30(6) of the I&B Code, 2016 read with Regulation 39(4)

of IBBI (Insolvency Resolution process of Corporate Persons) Regulations 2016 for approval of Resolution Plan by Adjudicating Authority on the ground that the Resolution Plan has been approved by the Committee of Creditors in its 7<sup>th</sup> COC meeting with a vote share of 83.02%. While hearing the arguments, the Ld. Counsel appearing on behalf of IDBI Bank Ltd., brought to our notice that after Hon'ble High Court's order for liquidation of the company, this petition was filed under section 10 of the Code, after suppressing the material facts by the Corporate Applicant, without disclosing that the company has been wound up by order of the Hon'ble High Court. The Ld. Counsel appearing on behalf of IDBI bank has drawn our attention towards the order of the Hon'ble High Court, Bombay, dated 25.1.2017 passed in Company Petition No. 7/2015. In the said case Hon'ble High Court passed the following order:

"2. Ld. Counsel for the respondent states that the proceedings before AFFIR stand abated. **The Respondent Company is already wound up.**

3. Given these admitted facts, **the Official Liquidator is directed to proceed with the procedure of winding up of the respondent company expeditiously. The Petitioner is at liberty to file affidavit of claim before the Official Liquidator. Official Liquidator's Report is disposed of in the terms above. The company's above petition is also disposed of in the aforesaid terms."**

2. On perusal of the above order, it is apparent that liquidation order was passed against the corporate debtor/corporate applicant, and the Official Liquidator had been directed to proceed with the procedure of the winding up expeditiously.
3. We have perused the Petition No.1053/2017, which has been filed by the Amar Remedies Ltd., the Corporate Applicant, on 29.5.2017 for

initiation of the corporate insolvency resolution process. In the petition filed under section 10 of I & B Code, the Corporate Applicant has disclosed the following contents:

"the relevant fee is not being paid as the company is filing this application pursuant to the notification of the SICA Repeal Act, 2003. As per Section 4(b) of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, as amended by Section 252 read with Schedule VIII of the Insolvency and Bankruptcy Code, 2016 (IBC), a company in respect of which such appeal or reference or inquiry pending before AAIFR or BIFR stands abated, may make reference to the National Company Law Tribunal under IBC within 180 days from commencement of IBC, without payment of fees in accordance with the provisions of IBC.

*Copy of last AAIFR order dated 07.11.2016 in the matter of Amar Remedies Limited is enclosed as Annexure – 17.*

4. Since the company Petition is filed u/s 10 of the I&B Code, 2016 by the Corporate Applicant, without disclosing the material fact, known to be material, regarding the order of the Hon'ble High Court, whereby the corporate debtor, i.e. Company was wound up, and the Petitioner was directed to file Affidavit of claim before Official Liquidator, this Tribunal passed the following order.

"After winding up of the company, this Petition was filed by the Corporate Applicant u/s.10 of the Code, after suppressing the material facts, without disclosing that company has been wound up by order of the Hon'ble High Court. The Petition got admitted relying on the documents submitted by the Corporate Applicant.

It is unbelievable that CoC members, i.e. Financial Creditors and the Resolution Professional were not aware of the fact that the company has been wound up. But the CIRP process got initiated by the Corporate Applicant, and after the admission of the petition, the Resolution Plan got approved. This is a flagrant example of invoking CIRP fraudulently with malicious intention, which is punishable u/s.65 of the Code.

Let explanation be called from CoC Members and Resolution professional as to why action should not be taken against them u/s. 65 of the I&B Code."

5. In reply to the above notice, Suspended Directors of the Corporate Director, Pratima P Shah has filed affidavit wherein it is stated that

*“the applicant has filed a reference with the BIFR and the same was registered as Case No.55 of 2014. The reference was filed in the background of the Company Petition No.289 of 2013 which was admitted and order of winding up was passed by the Hon’ble High Court of Bombay on 27.8.2014. The above reference was preferred by the applicant, i.e. Corporate Debtor company for removal of its sickness and revival pursuant to the law laid down by Hon’ble Supreme Court in the matter of Rishabh Agro Industries Pvt Ltd vs. PNB Capital Services Ltd (2000) 5 SCC 515 and Madura Coats Ltd. vs. Modi Rubber Ltd &Anr. (2016) 7 SCC 603 and also in Real Value Appliances Ltd. vs. Canara Bank (1998) 5 SCC 554. It is further stated that as the winding up order was passed by the Hon’ble High Court and Official Liquidator was appointed to take over the control and management of the Corporate Debtor, the Board of Directors of the Corporate Debtor, pursuant to the law laid down by Hon’ble Supreme Court proceeded to file the reference with BIFR which was duly registered as Case No.55 of 2014. The said reference was rejected by Hon’ble BIFR vide order dated 22.9.2014 and same was challenged by the Corporate Debtor in an appeal before the AAIFR. The said appeal got abated on account of Sick Industries (Special Provision) Repeal Act, 2003, with effect from 1.12.2016. After that, as per Provision 6 of the SICA Repeal Act, applicant has filed Petition under Section 10 of IBC within the statutory limit of 180 days. Therefore, the aforesaid act of the Corporate Debtor was pursuant to the legal remedy and the right which was duly exercised as provided*

*to the Corporate Debtor by the statute (both under the Repeal Act and the IBC)*

*It is further contended by the Corporate Applicant that at the time when the application was made by the Corporate Debtor, the procedure of the NCLT was in infancy stage and the Form 6 requested for specific information which was duly provided. **Form 6 did not prescribed or require the applicant/corporate Debtor to furnish any additional information nor was any procedure/requirement pointed out by the office of NCLT which mandated the Corporate Debtor to submit any additional information.** The fact that the Corporate Debtor was before BIFR and SICA and the proceeding before the AAIFR were duly brought to the knowledge of this Tribunal in view of the requirements of Form 6.*

*The information required in Form 6 in turn referred in the proceeding of SICA. The proceeding before BIFR/AAIFR mentioned the factum of the winding up order passed against the Corporate Debtor and the reference made to BIFR/AAIFR after the order of winding up dated 27.8.2014 have been passed by the Hon'ble High Court. Thus there was no intention on the part of the Corporate Debtor to suppress any fact from this Tribunal. The Corporate Debtor proceeded on the advice and filed Form 6 as was required by law. It is further stated that Section 238 of the IBC has an overriding and non obstante clause which would mean that in the event of conflict between the provisions of Companies Act and the IBC, the later would over ride the provision of Companies Act, 1956 over 2013."*

6. It is clarified that transparency is hallmark in today's corporate world. There is no bar to provide any additional information in support of the petition in addition to the details sought in the prescribed form. Therefore, the plea of the Corporate Applicant is not tenable/ weaker and putting responsibility on office of NCLT is also not tenable.
7. The Axis Bank, a Member of CoC, submitted an Affidavit stating that Corporate Debtor has obtained the Admission Order dated 16.6.2017 by suppressing the facts of the revival of winding up proceedings concealing the same from this Tribunal. It is further stated in the affidavit that in the light of suppression of the material facts, the Application of the Corporate Debtor under section 10 of I&B Code be dismissed, as not maintainable. In the CoC meeting dated 17.11.2017 the issue regarding the passing of the winding up order was discussed, and after considering the sequence of the event, the RP decided that the CIRP is valid and continued with the same. It is also stated in the affidavit that Section 11(d) of IB Code, 2016 expressly bars a Corporate Debtor in respect of whom a Liquidation Order has been made from initiating the CIRP. It is further stated in the Affidavit of Axis Bank that the corporate debtor has initiated the insolvency resolution process under the Code with malafide and fraudulent intention and it deserves to be subjected to a penalty under sub-section (2) of Section 65 of the Code.
8. In reply to the notice, the RP filed its reply wherein it is stated that he has submitted a report on 9.12.2017 before the Hon'ble Tribunal setting out the events leading up to the CIRP and bringing to the notice of this Hon'ble Tribunal the facts of liquidation proceedings before the Hon'ble High Court against the Corporate Debtor. It is stated in his affidavit that

winding up petition was filed against Corporate Debtor which was allowed by the Hon'ble High Court by order dated 27.8.2014 and the Corporate Debtor was ordered to be wound up. The RP also contends that he has submitted a report dated 9.12.2017 before the Hon'ble Tribunal stating the fact of winding up order dated 25.1.2017. It is also mentioned in the minutes of 2<sup>nd</sup> CoC meeting dated 17.11.2017 stating that Mr Sagar Pravin Shah, erstwhile Mg. Director of the Corporate Debtor was also present at the meeting, who was asked to explain the matter of the liquidation order.

9. In reply to our Notice, the ICICI Bank has filed Affidavit stating that there was no intentional concealment of facts relating to the pendency of winding up proceedings of the Corporate Applicant. ICICI Bank was under a bonafide belief that Resolution Professional had informed the Hon'ble Tribunal about the pendency of the winding up proceeding against the Corporate Applicant.
10. The Financial Creditor the IDBI Bank, the member of CoC, filed Affidavit in response to our notice stating that present Financial Creditor had initiated winding up proceedings against the Corporate Debtor in the Hon'ble Bombay High Court vide C.P. No.26 of 2013, and Hon'ble High Court vide order dated 31.7.2013 was pleased to appoint provisional Liquidator under Rule 106 of the Companies Court Rules, 1959. The Hon'ble High Court vide order dated 1.8.2013 admitted the C.P. No.26/2013 and by order dated 27.8.2014 was pleased to wound up the Corporate Debtor. It is further stated in the Affidavit of IDBI Bank that reference filed by the Corporate Debtor before BIFR got abated. Hence an appeal was filed by the Corporate Debtor before AAIFR challenging the abatement order. In such circumstances, the Hon'ble High Court

was pleased to adjourn sine die the Official Liquidator's Report vide order dated 15.11.2016, as proceeding under Company's winding up petition cannot take place during the pendency of the Appeal before AAIFR. Copy of Hon'ble High court's order dated 15.11.2016 is annexed along with Affidavit as Annexure - F. The Corporate Debtor, during proceeding in CP No. 7/2015, informed the Hon'ble High Court that proceedings before AAIFR by the Corporate Debtor is also abated and the Corporate Debtor is already wound up. Given the said admitted fact, the Hon'ble High Court vide order dated 25.1.2017 was pleased to direct the Official Liquidator to proceed with the procedure of winding up expeditiously.

11. It is further contended by IDBI Bank that Corporate Debtor being fully aware of our proceedings, filed a Company Petition No.1053 of 2017 under section 10 of IB Code, without informing the order of liquidation passed by the Hon'ble High Court. It is further contended by the IDBI Bank that the Financial Creditor vide email dated 16.11.2017 intimated to the Resolution Professional about the winding order of the Hon'ble High Court dated 25.1.2017, whereby Official Liquidator was directed to proceed with the procedure of winding up of the Corporate Debtor. It is further stated that representative of IDBI Bank attended the 2<sup>nd</sup> CoC meeting dated 17.11.2017, and categorically informed the CoC that the Hon'ble High Court vide its order dated 25.1.2017 has already liquidated the Corporate Debtor and proceedings under I&B Code 2016 is bad in law.

12. The SBI Global Factors Ltd., the Financial Creditor, filed an Affidavit stating that IDBI bank has raised an issue before this Tribunal, but it



was addressed by the Resolution Professional, and accordingly Resolution Professional was permitted to proceed with the CIRP.

13. The Bank of Maharashtra, the Secured Creditor and the Saraswat Co-op Bank Ltd., the Secured Creditor, took the stand that in case of Murli Industries Ltd. in CA 10/2017 in CP No.6/2012 the Hon'ble Bombay High Court has held that the action of resolution process during the pendency of winding up proceedings is logical and possible. The Bank of Maharashtra, the Secured Creditor, has also filed an Affidavit.
14. The sequence of events as narrated by the Resolution Professional Mr Anil Goel, and further by the Members of CoC in respect of non submission of information relating to the order of winding up and liquidation passed by the Hon'ble High Court shows that they had no role in suppressing the material fact of winding up and liquidation order by the Hon'ble High Court.
15. We have heard the arguments of the Ld. Counsel representing the Resolution Professional; Counsel representing CoC and the Counsel representing the Corporate Applicant and perused the records. On perusal of the records, it is clear that IDBI Bank, a Member of Financial Creditor had initiated the winding up proceedings against the Corporate Debtor, bearing CP No.26 of 2013. IDBI Bank has stated that the Corporate Debtor was fully aware of the winding up proceedings and despite that Corporate Debtor filed proceedings under section 10 without disclosing that the winding up order has already been passed by the Hon'ble High Court against and the company has been wound up. The Official Liquidator had been directed by the Hon'ble High Court to proceed with the procedure of winding up expeditiously. It is further stated in the Affidavit of IDBI Bank that before the 2<sup>nd</sup> COC meeting

dated 17.11.2017 the IDBI Bank vide email 16.11.2017 intimated to the RP about the winding up order of the Hon'ble High Court dated 25.1.2017. It is further stated that the officers of the IDBI Bank attended the 2<sup>nd</sup> CoC meeting 17.11.2017 and categorically informed the entire CoC that the Hon'ble High Court vide order dated 27.8.2014 had already liquidated the Corporate Debtor and proceedings under I&B Code is bad in law. It is further stated in the Affidavit that the said discussion was recorded in the minutes of the CoC as agenda item No.10. A copy of the minutes has been annexed as Annexure - "J" with the Affidavit. On perusal of the minutes of CoC, it appears that the Financial Creditor IDBI Bank has informed the CoC about the order dated 25.1.2017 passed by the Hon'ble High Court liquidating the Corporate Debtor.

16. It is further stated that the RP vide email dated 21.11.2017 shared the copy of the minutes of the 2<sup>nd</sup> CoC meeting with all the members of CoC. It is also stated that IDBI Bank informed the RP that the Corporate Debtor is also barred by Section 11(d), Chp. II of IB Code, 2016 from initiating the CIRP. Copy of the mail communication which was sent to the members of CoC is annexed with the reply of the IDBI Bank as Annexure - K.

17. It is also stated in the Affidavit of IDBI Bank that vide letter dated 21.11.2017 also intimated the office of the Official Liquidator about the conduct of the Corporate Debtor and the RP and also requested the Official Liquidator to take urgent needful action. Copy of the letter sent to Official Liquidator is Exhibit - L.

18. It is further stated by the IDBI Bank that on 8.12.2017 the Officer of the IDBI Bank appeared before the Tribunal and informed that despite

liquidation order passed by the Hon'ble High Court against the Corporate Debtor, the Corporate Debtor suppressed the facts and filed Petition u/s. 10 of IB Code for initiation of CIRP.

19. It is further stated that the RP appeared before the Tribunal on 11.12.2017 and filed a report dated 8.12.2017, Exhibit – M.

20. On perusal of the said documents, it appears that this Tribunal was informed by IDBI Bank, Gen. Manager that despite the liquidation order passed by the Hon'ble High Court Dt. 25.1.2017 the Corporate Debtor, knowingly obtained Admission order under I&B Code, 2016. It is also clear from the Order sheet dated 8.12.2017 that the RP was stopped by this Tribunal to carry out the functions of this Company as an IRP until he makes his report before this Bench. The RP was not present on the day of order, but the Counsel representing the Corporate Debtor was present in the Court, and his presence is noted in the order sheet.

21. The Financial Creditor has further stated that he has always been diligent in intimating the concern about the winding up order with the Members of CoC and RP and to this Tribunal. On perusal of the reply of IDBI Bank, it is clear that IDBI Bank as a member of CoC, has at every stage of the CIRP proceedings was informing to the members of CoC and RP. The RP has also circulated amongst the members of CoC the letter of the Financial Creditor, IDBI Bank, intimating the information received by him of Liquidation order passed by the Hon'ble High Court. It is also clear from the perusal of the record that the RP has also submitted a progress report, containing the minutes of the 2<sup>nd</sup> CoC informing about the liquidation order passed by the Hon'ble High Court. Thus it is clear that the RP and the members of CoC are not responsible for the action of the Corporate Debtor, whereby the Corporate Debtor

filed the Petition under section 10 of the IB Code, without disclosing that the Liquidation order has been passed by the Hon'ble High Court.

22. It is pertinent to mention that the Corporate Debtor has filed the petition under section 10 of the IB Code, 2016 vide CP No.1053 of 2017 on 29.5.2017 without disclosing that a liquidation order has already been passed by the Hon'ble High Court. Section 11 of the I & B Code provides that:

**11. Persons not entitled to make application.**— The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter, namely—

- (a) a corporate debtor undergoing a corporate insolvency resolution process; or
- (b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or
- (c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or
- (d) **a corporate debtor in respect of whom a liquidation order has been made.**

*Explanation.*— For the purposes of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor.

Thus it is clear that Section 11(d) of the IB Code, 2016 expressly prohibits the Corporate Debtor, in respect of whom the liquidation order has been passed, to apply for initiation of CIRP.

23. Given the provision of Sec 11(d) of the IB Code the corporate debtor was not entitled to make an application for initiation of Corporate Insolvency Process U/S 10 of the I & B Code. But the corporate debtor has filed the petition U/S 10 of the code, after suppressing material facts that the company was wound up by the order dated 25.1.2017 of the Hon'ble High Court.

24. It is further pertinent to mention the Rule 10 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 provides that:

**10. Filing of application and application fee**

...

**(2) An applicant under these rules shall immediately after becoming aware, notify the Adjudicating Authority of any winding-up petition presented against the corporate debtor.**

...

Thus it is clear that the law requires disclosure of winding-up petition immediately once the applicant becomes aware of it.

25. It is further important to point out that the provisions of Section 77 of I & B Code 2016 provide that:

**77. Punishment for providing false information in application made by corporate debtor.— Where—**

(a) **a corporate debtor provides information in the application under Section 10 which is false in material particulars, knowing it to be false and omits any material fact, knowing it to be material; or**

(b) any person who knowingly and wilfully authorised or permitted the furnishing of such information under sub-clause (a),

**such corporate debtor or person, as the case may be, shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years or with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both.**

*Explanation.—* For the purposes of this section and Sections 75 and 76, an application shall be deemed to be false in material particulars in case the facts mentioned or omitted in the application, if true, or not omitted from the application as the case may be, would have been sufficient to determine the existence of a default under this Code.

Thus it is clear that where the corporate debtor initiates corporate insolvency process after suppressing material facts, then he will be liable for punishment u/s 77 of the I & B Code 2016.

26. The Ld counsel representing the Resolution Professional and counsel appearing on behalf of Corporate Debtor, i.e. corporate applicant emphasized that based on various judicial pronouncement and existing

rules the corporate debtor was within its right to apply with BIFR. Accordingly, the application filed by the corporate debtor was accepted and winding up proceedings were suspended.

27. It is pertinent to mention that here we are not concerned with the views of Resolution Professional or any of the Financial Creditor regarding the right of the corporate debtor in applying Section 10 of the I & B Code. Here point in issue is not the right of the corporate applicant for initiation of CIRP. But we are only examining whether the application U/S 10 of the IB Code 2016 is filed after the suppression of material facts known to be material. Following issue arise for our determination:

1. **"Whether the corporate debtor /corporate applicant has filed the application U/S 10 of the Insolvency and Bankruptcy Code 2016 after the suppression of material facts known to be material?"**

28. Here the corporate applicant has in his application under Sec 10 *inter alia* disclosed that;

"the relevant fee is not being paid as the company is filing this application pursuant to the notification of the SICA Repeal Act, 2003. As per Section 4(b) of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, as amended by Section 252 read with Schedule VIII of the Insolvency and Bankruptcy Code, 2016 (IBC), a company in respect of which such appeal or reference or inquiry pending before AAIFR or BIFR stands abated, may make reference to the National Company Law Tribunal under IBC within 180 days from commencement of IBC, without payment of fees in accordance with the provisions of IBC.

Copy of last AAIFR order dated 07.11.2016 in the matter of Amar Remedies Limited is enclosed as Annexure – 17."

29. It is pertinent to mention that corporate debtor has not mentioned anything about the order of the **Hon'ble High Court, Bombay, dated**

**25.1.2017 passed in company application no. 7/2015. In the said case Hon'ble High Court passed the following order:**

**"1. Official Liquidator's report not on Board. Taken on Board.**

**2. Ld. Counsel for the respondent states that the proceedings before AAIFR stand abated. The Respondent Company is already wound up.**

**3. In view of the admitted facts, the Official Liquidator is directed to proceed with the procedure of winding up of the respondent company expeditiously. The Petitioner is at liberty to file affidavit of claim before the Official Liquidator. Official Liquidator's Report is disposed of in the terms above. The company's above petition is also disposed of in the aforesaid terms. No order as to costs."**

The question that arises is whether disclosure of order mentioned above of the Hon'ble High Court was material or not for applying U/S 10 of I & B Code for initiation of CIRP. It is important to refer to the order of the Hon'ble High Court dated 1<sup>st</sup> August 2013 passed in Company Application No 26 /2013 which is as follows:

"1. The Petitioner seeks winding up of the respondent M/s. Amar Remedies Ltd. The dues claimed by the Petitioner are to the tune of ₹12,80,04,500/-. According to the Petitioner, the respondent company is liable to pay the Petitioner under the Facility Agreement dated 25<sup>th</sup> January 2010 which the Respondent-company has failed to pay. Cheques issued by the respondent have been dishonoured.

**2. The respondent-company has filed reply stating that the statutory notice has not been sent.** The learned Counsel for the Petitioner submitted that notice is sent to both the registered address of the company as well as the address mentioned in the correspondence. **Perusal of the reply shows that no substantial reason has been given as to why the debt is being disputed. The company petition No.517 of 2012 and other connected matters have been admitted against the respondent – company and advertisement has been directed to be issued.**

**3. In the circumstances, the company petition is admitted."**

Thus it is clear that the corporate debtor was in the knowledge of the winding up proceedings, and it was contested by the corporate debtor.

It is further necessary to mention the order of the Hon'ble High Court dated 15<sup>th</sup> Nov 2016 which is as follows:

**"1.Reference was filed by the Company during `liquidation before the BIFR. That reference was disposed of by BIFR as abated. The company in liquidation has come in appeal before the AAIFR from the order of abatement. The appeal is pending before the AAIFR. In the premises, no further proceedings can take place in company winding up Petition.**

2.Accordingly, the OLR is adjourned sine die. The Official Liquidator to have the Report mentioned and placed before this Court after the disposal of the pending appeal before the AAIFR."

30. Thus it is clear that the corporate applicant was fully aware of the fact that company, i.e. Amar Remedies Ltd stands wound up by order of the Hon'ble High Court dated 25<sup>th</sup> Jan 2017, and Official Liquidator was directed to proceed with the procedure of winding up of the respondent company expeditiously. The said fact was beyond an iota of doubt material fact for the presentation of the petition under Sec 10 of the Code. The Ld counsel appearing on behalf of the Corporate debtor emphasized on the law laid down by Hon'ble Supreme Court in the matter of *Rishabh Agro Industries Pvt Ltd vs PNB Capital Services Ltd (2000) 5 SCC 515 and Madura Coats Ltd. vs Modi Rubber Ltd &Anr. (2016) 7 SCC 603 and also in Real Value Appliances Ltd. vs Canara Bank (1998) 5 SCC 554*. It is further stated that as the winding up order was passed by the Hon'ble High Court and Official Liquidator was appointed to take over the control and management of the Corporate Debtor, the Board of Directors of the Corporate Debtor, pursuant to the law laid down by Hon'ble Supreme Court proceeded to file the reference with BIFR which was duly registered as Case No.55 of 2014. The said reference was rejected by Hon'ble BIFR vide order dated 22.9.2014, and same was challenged by the Corporate Debtor in an appeal before the



AAIFR. The said appeal got abated on account of Sick Industries (Special Provision) Repeal Act, 2003, with effect from 1.12.2016. After that, as per Provision 6 of the SICA Repeal Act, the applicant has filed a Petition under Section 10 of IBC within the statutory limit of 180 days. Therefore, the act above of the Corporate Debtor was under the legal remedy and the right which was duly exercised as provided to the Corporate Debtor by the statute (both under the Repeal Act and the IBC).

31. It is further contended by the Corporate Applicant that at the time when the application was made by the Corporate Debtor, the procedure of the NCLT was in the infancy stage and the Form 6 requested for specific information which was duly provided. **Form 6 did not prescribe or require the corporate Applicant/corporate Debtor to furnish any additional information nor was any procedure/requirement pointed out by the office of NCLT which mandated the Corporate Debtor to submit any additional information.**
32. The corporate applicant has relied on the following provision of the **Sick Industrial Companies (Special Provisions) Repeal Act, 2003.**

#### **Section 4. Consequential provisions**

**4. Consequential provisions.**—On the dissolution of the Appellate Authority and the Board,—

(b) On such date as may be notified by the Central Government in this behalf, any appeal preferred to the Appellate Authority or any reference made or inquiry pending to or before the Board or any proceeding of whatever nature pending before the Appellate Authority or the Board under the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) shall stand abated:

Provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make reference to the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 within one hundred and eighty days from the commencement of the Insolvency and Bankruptcy Code, 2016 in

accordance with the provisions of the Insolvency and Bankruptcy Code, 2016:

Provided further that no fees shall be payable for making such reference under Insolvency and Bankruptcy Code, 2016 by a company whose appeal or reference or inquiry.

33. In this case, as stated earlier we are not examining the right of the corporate applicant for filing petition U/S 10 of the I & B Code. We are only examining whether the petitioner, i.e. corporate applicant has filed the petition suppressing the material facts, which were known to it as material.

34. The Hon'ble Supreme Court in **Civil Appeal No. 818/2018 in case of FORECH India Ltd Vs Edelweiss Assets Reconstruction Company dated 22<sup>nd</sup> January 2019** has held that

***"section 11 of the code specifies which persons are not eligible to initiate proceedings under it. In particular, section 11 (d) reads as follows:***

***11. Persons not entitled to make application.— The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter, namely—***

***...***

***(d) a corporate debtor in respect of whom a liquidation order has been made.***

***This section is of limited application and only bars a corporate debtor from initiating a petition under section 10 of the Code in respect of whom a liquidation order has been made. From a reading of this section, it does not follow that until a liquidation order has been made against the corporate debtor, an insolvency petition may be filed under section 7 or Section 9 as the case may be, as has been held by the Appellant Tribunal. Hence any reference to section 11 in the context of the problem in view of the law laid down by them was in the above mentioned case before us is wholly irrelevant."***

35. **Given the law laid down by Hon'ble Supreme Court in the above-mentioned case, it is clear that after liquidation order passed in**

**a winding-up petition against the corporate debtor then it is barred from filing a petition under section 10 of the Code. Here the corporate debtor has not only suppressed the material fact that the winding up petition has not only been filed and admitted, but liquidation order has also been passed against the corporate applicant/corporate debtor liquidator has been directed to expedite liquidation proceedings expeditiously. The corporate applicant suppressed this material fact, knowing it to be material, and filed the petition under section 10 and in contravention of Rule 10 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The alleged act of the corporate applicant is punishable under section 77 (a) of the Insolvency and Bankruptcy Code 2016. The Registrar of Companies, Mumbai is directed to lodge prosecution against the corporate applicant under section 77(a) of the insolvency and bankruptcy code in 2016.**

- 36. Since the petition has been filed under section 10 of the Insolvency and Bankruptcy Code 2016 after the suppression of the material facts, which were known to be material, therefore the petition is rejected with cost ₹ 10 lakhs which shall be paid by the Corporate Applicant. The cost will be deposited in the account of the Prime Ministers National Relief Fund. It is to be clarified that by the order dated 25.1.2017 of Hon'ble Bombay High Court, the Corporate Applicant stands wound up and the Official Liquidator has already been directed to expedite process of liquidation expeditiously.**

37. The Registry is directed to immediately communicate this order to the Resolution Professional, the CoC, the Official Liquidator, the Corporate Applicant and the Registrar of Companies, Mumbai.

SD/-

**Ravikumar Duraisamy**  
**Member (Technical)**

SD/-

**V.P. Singh**  
**Member (Judicial)**

DT. 29<sup>th</sup> January, 2019