

- iv) *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor;*

- v) *Section 14(2) of the IBC Code, 2016 already exempted supply of essential goods and services to the Corporate Debtor and in addition the Learned Counsels for the Respondent submitted that goods/services viz., Water, Electricity, Printing Ink, Printing Plates, Printing Blanker, Solvents etc. will also come under the purview of exemption and thus prayed to exempt above goods/services from moratorium. We are convinced with the prayer of the Respondent that the above goods and services would come under exemption under this Section. Hence, we clarify that goods/services viz., Water, Electricity, Printing Ink, Printing Plates, Printing Blanket, Solvents etc., will come under this Section and these essential goods or services to Corporate Debtor shall not be terminated or suspended and interrupted during the moratorium period.”*

2. Ld. Counsel appearing on behalf of the Appellant submits that the Adjudicating Authority cannot exclude any court from the purview of Moratorium for the purpose of recovery of amount or execution of any judgement or decree, including the proceeding, if any, pending before the Hon’ble High Courts and Hon’ble Supreme Court of India against a ‘corporate debtor’.

3. Notice was issued to the Respondent limited to the aforesaid question. But in spite of service of notice, none appeared on behalf of the Respondent.

4. We have heard Ld. Counsel for the Appellant and perused the provisions of I&B Code.

5. Section 14 relate to ‘Moratorium’ which the Adjudicating Authority is required to declare at the time of admission of the application for ‘corporate insolvency resolution process’, which reads as follows:-

“14. Moratorium - (1) Subject to provisions of sub-sections (2) and (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; (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.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process: Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

6. From clause (a) of sub-Section (1) of Section 14, it is clear that institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order by any court of law, tribunal, arbitration panel or other authority come within the purview of ‘moratorium. The said provision specifically do not exclude any Court, including the Hon’ble High Courts or Hon’ble Supreme Court of India.

7. There is no provision to file any money suit or suit for recovery before the Hon’ble Supreme Court except under Article 131 of the Constitution of India where dispute between Government of India and one or more States or between the Government of India and any State or States on one side and one or two or more States is filed. Some High Courts have original jurisdiction to entertain the suits, which may include money suit or suit for recovery of money. The Hon’ble Supreme Court has power under Article 32 of the Constitution of India and Hon’ble High Court under Article 226 of Constitution of India which power cannot be curtailed by any provision of an Act or a Court. In view of the aforesaid provision of law, we make it clear that ‘moratorium’ will not affect any suit or case pending before the Hon’ble Supreme Court under Article 32 of the Constitution of India or where

an order is passed under Article 136 of Constitution of India. 'Moratorium' will also not affect the power of the High Court under Article 226 of Constitution of India. However, so far as suit, if filed before any High Court under original jurisdiction which is a money suit or suit for recovery, against the 'corporate debtor' such suit cannot proceed after declaration of 'moratorium, under Section 14 of the I&B Code.

8. In view of the aforesaid position of law, the impugned order passed by Tribunal, as mentioned at clause (c) (i) of the last paragraph relating to 'moratorium', stands clarified to the extent above. The appeal stands disposed of with aforesaid observations. No. cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice A.I.S. Cheema)
Member (Judicial)

(Balvinder Singh)
Member (Technical)

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