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IN THE HIGH COURT OF DELHI AT NEW DELHI

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**Reserved on: 22nd November, 2017
Pronounced on: 11th December, 2017**

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O.M.P.(COMM.) 397/2016

POWER GRID CORPORATION
OF INDIA LTD.

..... Petitioner

Through : Mr.K.K.Rai, Sr. Advocate with
Mr.P.K.Mishra and Mr.Anshul
Rai, Advocates

versus

JYOTI STRUCTURES LTD.

..... Respondent

Through : Mr.Ashim Sood, Ms.Payal
Chandra, Mr.Dhruv Sood and
Mr.Rhythm Buaria, Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This petition is under section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'the Act') for setting aside the arbitral award dated 20.05.2016 passed by the arbitral tribunal in favour of the respondent herein. The award is in nature of a pure money decree in favour of the respondent.

2. During the pendency of these proceedings under section 34 of the Act, an application under Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred as 'the Code') was filed by a financial creditor against the respondent company before

the National Company Law Tribunal – Mumbai, (hereinafter referred as ‘the NCLT’) seeking initiation of the corporate insolvency resolution against the respondent and by an order dated 04.07.2017 the NCLT has admitted such application and has declared a moratorium in terms of Section 14 of the Code.

3. The question now has arisen is *if the present proceedings under Section 34 of the Act, need to be stayed, per Section 14 (1)(a) of the Code?*

4. The respondent’s case is if the proceedings are stayed, the respondent would be unable to execute the award given in its favour for an extended period till the moratorium exists and be unable to recover its dues thereby further impeding its financial condition. Hence, the issue is if the word ‘*proceedings*’ used in Section 14 (1) (a) of the Code be read to mean ‘*all legal proceedings*’ or be read restrictively to mean a particular type of legal proceedings viz., ‘*debt recovery action*’ which may have an effect of dissipating or diminishing the debtor’s assets during the period of its insolvency resolution.

5. Section 14 (1) (a) of the Code runs as under:-

“14. (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;”

6. Admittedly the term ‘*proceedings*’ as is mentioned in Section 14 (1) (a) of the Code is not preceded by the word ‘*all*’ to indicate the moratorium provisions would apply to *all* the proceedings against the corporate debtor.

7. In *Canara Bank vs Deccan Chronicle Holdings Limited* Company Appeal No.147/2017, the court has already recognized the moratorium provision does not apply to *all* proceedings viz to proceedings under Article 32 or 226 of the Constitution of India.

8. The object of the Code is to provide relief to the corporate debtor through ‘*standstill*’ period during which its assets are protected from dissipation or diminishment, and as a corollary, during which it can strengthen its financial position, extending of the unexecutability of the award would rather prevent the corporate debtor from recovering money due to it and adding to its financial corpus. Such a consequence would infact be directly contrary to the object of the Code. To determine the true meaning of the statute, the provision would have to be construed in the context of the statute as a whole, for which purpose interpretative criteria may have to be applied even when the statutory language is apparently free from any semantic ambiguity.

9. The meaning and purpose of Section 14 (1) (a) of the Code may also be reliably ascertained from the context of its surrounding provisions. Sub-clauses (b), (c) and (d) of Section 14 (1) of the Code are reproduced below for ease of reference would further demonstrate the moratorium provision would apply only to protect the assets of the corporate debtor. The provisions read as under:-

“14. (1) xxxx

(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.”

10. In the light of above purpose or object behind the moratorium, Section 14 of the Code would not apply to the proceedings which are in the benefit of the corporate debtor, like the one before this court in as much these proceedings are not a ‘*debt recovery action*’ and its conclusion would not endanger, diminish, dissipate or impact the assets of the corporate debtor in any manner whatsoever and hence shall be in *sync* with the purpose of moratorium which includes keeping the corporate

debtor's assets together during the insolvency resolution process and facilitating orderly completion of the process envisaged during the insolvency resolution process and ensuring the company may continue as a going concern.

11. The report of the Bankruptcy Law Reforms Committee on the rationale and design of the Code also demonstrates the moratorium is to apply to recovery actions and filing of new claims against the corporate debtor and the purpose behind moratorium is there should be no additional stress on the assets of the corporate debtor. The report of the Bankruptcy Law Reforms Committee has been relied upon by the Supreme Court in *M/s Innovative Industries Limited vs. ICICI Bank & another* 2017 SCC OnLine SC 1025.

12. The learned counsel for the respondent has though argued that once the moratorium comes into effect, no proceedings against the corporate debtor may continue. No doubt to the said proposition of law as stated above, but one need to see the nature of the proceedings; if such proceedings is against the corporate debtor or is in its favour. Stay of proceedings against an award in favour of the corporate debtor would rather be stalking the debtor's effort to recover its money and hence would not fall in the embargo of Section 14 (1) (a) of the Code.

13. The fact the petitioners did file a counter claim before the learned arbitrator, admittedly, is disallowed. An extreme scenario

would be allowing of such counter claim but in that eventuality Section 14 (1) (a) of the Code would immediately come into play and the decree would not be executable against the corporate debtor. However in apprehension of such an eventuality the proceedings under Section 34 of the Act cannot be kept in abeyance, especially when such counter claim has been rejected by the Learned Arbitrator and the claim of the corporate debtor being upheld.

14. Hence for following reasons I conclude the present proceeding would not be hit by the embargo of Section 14(1)(a) viz., **(a)** ‘proceedings’ do not mean ‘all proceedings’; **(b)** moratorium under section 14(1)(a) of the code is intended to prohibit debt recovery actions against the assets of corporate debtor; **(c)** continuation of proceedings under section 34 of the Arbitration Act which do not result in endangering, diminishing, dissipating or adversely impacting the assets of corporate debtor are not prohibited under section 14(1)(a) of the code; **(d)** term ‘including’ is clarificatory of the scope and ambit of the term ‘proceedings’; **(e)** the term ‘proceeding’ would be restricted to the nature of action that follows it i.e. debt recovery action against assets of the corporate debtor; **(f)** the use of narrower term “against the corporate debtor” in section 14(1)(a) as opposed to the wider phrase “by or against the corporate debtor” used in section 33(5) of the code further makes it evident that section 14(1)(a) is intended to have restrictive meaning and applicability; **(g)** the Arbitration

Act draws a distinction between proceedings under section 34(i.e. objections to the award) and under section 36(i.e. the enforceability and execution of the award). The proceedings under section 34 are a step prior to the execution of an award. Only after determination of objections under section 34, the party may move a step forward to execute such award and in case the objections are settled against the corporate debtor, its enforceability against the corporate debtor then certainly shall be covered by moratorium of section 14(1)(a).

15. Hence, the continuation of these proceedings shall cause no harm to either party's rights to seek determination of issues under section 34 of the Act and object of the code shall be preserved rather than defeated. The question posed is thus answered.

16. Second limb of objection raised is once the moratorium is declared the decision to continue with the objections need to be taken only by the Resolution Professional, since per Section 17 of the Code from the date of the appointment of the interim resolution professional, the management of the affairs of the corporate debtor shall vests with the interim resolution professional and hence in the peculiar circumstances of this case where a counter claims was preferred by the objector, though rejected, it would be appropriate if the interim resolution profession be made aware of these proceedings and he consents to its continuation.

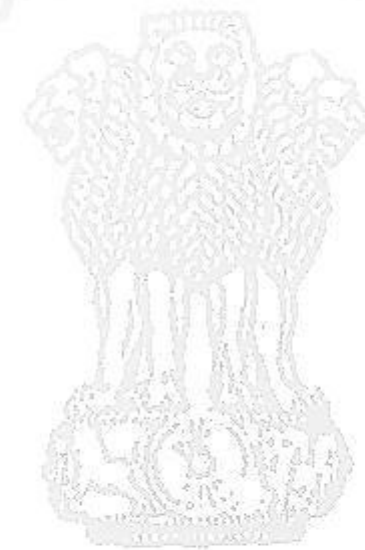
17. Thus consent/permission of interim resolution professional be obtained and be filed in this Court within four weeks from today.

18. List for further orders on 22.03.2018.

YOGESH KHANNA, J

DECEMBER 11, 2017

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