2022 INSC 486

'REPORTABLE'

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3470 OF 2022
(Arising out of SLP (C) No. 8302 of 2021)

NEW DELHI MUNICIPAL COUNCIL **APPELLANT (S)**

VERSUS

MINOSHA INDIA LIMITED **RESPONDENT(S)**

J U D G M E N T

K. M. JOSEPH, J.

1. Leave granted.

2. The foremost question which falls for determination by this Court is the impact of Section 60(6) of the Insolvency and Bankruptcy Code (hereinafter referred to as 'IBC' for brevity) and whether the aforesaid provision gives rise to a new lease of life to a proceeding at the instance of the corporate debtor on the basis of a moratorium which is put in place by virtue of the order passed under section 14 of the IBC and whether corporate debtor can take advantage of the same to bring the application in this case filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the 1996 Act').

3. Pursuant to an agreement dated 20.02.2015, the appellant placed a purchase order of Rs.16,20,00,000/- with the respondent.

The appellant, however, issued a termination notice to the respondent on account of its alleged inaction and conduct which is described as non-responsive. This led to the respondent approaching the High Court of Delhi which finally culminated in a direction by the High Court to afford an opportunity of hearing to the respondent and to consider its representation. The appellant, however, rejected the representation by communication dated 17.05.2016. Invoking the provision in the contract providing for arbitration, the respondent addressed communication dated 07.06.2016. The appellant sent its reply on 20.7.2016 where it, inter alia, did not consent for either of the names suggested by the respondent and instead proposed to proceed for arbitration through the Delhi International Arbitration Centre (DIAC). On 14.5.2018 the National Company Law Tribunal (NCLT) Mumbai admitted an application under Section 10 of the IBC and declared the moratorium. On 28.11.2019, a resolution plan was approved by the NCLT. On 25.11.2020, the respondent filed an application under Section 11(6) of the 1996 Act. By the impugned order dated 14.12.2020, the High Court of Delhi has allowed the application filed under Section 11(6) and appointed a former Chief Justice of a High Court to be the arbitrator. It is apposite at this point itself to notice certain parts of the impugned order in this regard:

> **"6. Learned counsel are also *ad idem* that, in view of Section 12(5) of the 1996 Act read with the Seventh Schedule thereto, the arbitral mechanism, contemplated by the afore-extracted Clauses from the Purchase Order**

> **and the Agreement, cannot be allowed to operate, as the Chairperson of the NDMC would be disabled from appointing the arbitrator. This position stands crystallized in a number decisions, including the judgments of the Supreme Court in *Bharat Broadband Network Ltd.* v. *United Telecoms Ltd. (2019) 5 SCC 755* and *Perkins Eastman Architects DPC* v. *IISCC (India) Limited AIR 2020 SC 59,* and of this Court in *Proddatur Cable TV DIGI Services* v. *SITI Cable Network Limited MANU/DE/0178/2020.***
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> **7. The petitioner wrote to the respondent on 7th June, 2016, suggesting the names of two retired Judges of this Court as the sole arbitrator to arbitrate on the dispute.**
>
> **8. The respondent, however, *vide* its response, dated 20th July, 2016, suggested that the matter could be referred to the Delhi International Arbitration Centre (DIAC), for being arbitrated.**
>
> **9. Today, before me, learned counsel request the Court to appoint an independent arbitrator, who would conduct the arbitration under the aegis of the DIAC, and in accordance with the procedure established in that regard.**
>
> **10. Learned counsel are also agreeable to pay the fees of the learned sole arbitrator in accordance with the Fourth Schedule to the 1996 Act."**

It is in view thereto that the appointment of the arbitrator was made.

4. **We have heard Shri Gourab Banerjee, learned senior counsel for the appellant, and Shri N. K. Kaul, learned senior counsel on behalf of the respondent.**

Shri Gourab Banerjee, learned senior counsel, would contend that being a plea relating to limitation and since the aspect of limitation pertains to jurisdiction the mere fact that the counsel for the appellant in the High Court has consented to the order

appointing the arbitrator will not stand in the way of the appellant pointing out that the application under section 11(6) was clearly beyond time. In this regard, Section 3 of the Limitation Act, 1963 (hereinafter referred to as '1963 Act') is harnessed. It is pointed out that irrespective of whether the parties set up the case of limitation, it is the bounden duty of the Court to dismiss the suit or an application or proceeding which is barred by limitation. In this regard, learned senior counsel also relied upon the judgment of this Court reported in *Noharlal Verma* v. *District Cooperative Central Bank Limited, Jagdalpur* (2008) 14 SCC 445:

> **"32. Now, limitation goes to the root of the matter. If a suit, appeal or application is barred by limitation, a court or an adjudicating authority has no jurisdiction, power or authority to entertain such suit, appeal or application and to decide it on merits.**
>
> **33. Sub-section (1) of Section 3 of the Limitation Act, 1963 reads as under:**
>
> > **"3. *Bar of limitation*.—(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period *shall be dismissed although limitation has not been set up as a defence*."**
> >
> > **(emphasis supplied)**
>
> **Bare reading of the aforesaid provision leaves no room for doubt that if a suit is instituted, appeal is preferred or application is made after the prescribed period, it has to be dismissed even though no such plea has been raised or defence has been set up. In other words, even in absence of such plea by the defendant, respondent or opponent, the court or authority must dismiss such suit, appeal or application, if it is satisfied that the suit, appeal or application is barred by limitation."**

5. **He apparently anticipates the contention based on Section 60(6) of the IBC. Learned senior counsel for the appellant would point out that no reliance should be permitted to be placed on Section 60(6) of the IBC by the respondent. He would point out that Section 60(6), no doubt, appears to, in so many words, countenance the exclusion of the period during which there is a moratorium in effect in the launching of the proceeding even by the corporate debtor. He would point out that a perusal of the scheme of the IBC would reveal that upon an application being admitted under Sections 7, 9 or 10, the moratorium springs into existence. However, the contents of Section 14 and the result it produces would show that in no way does it forbid or act as an embargo against the corporate debtor launching a proceeding. There is, in other words, *no warrant* for exclusion of the period for a suit or proceeding by the corporate debtor. In this regard, he seeks further reinforcement by virtue of the fact that IBC contemplates that the resolution professional is clothed with the power to conduct proceedings including the proceedings under the 1996 Act. In this regard, support is sought to be drawn from provisions of Section 25 of the IBC. Section 25(2)(b) *inter alia* reads as follows:**

> **"25**
> **……**
> **……..**
>
> **(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely:—**
> **……**
> **……..**

> **(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;**
> **……**
> **…….”**

He would, therefore, contend that when not only there is no express embargo against the corporate debtor from pursuing any proceeding but the law, in fact, contemplates the resolution professional launching the proceedings and representing and acting on behalf of the corporate debtor in judicial, quasi-judicial or arbitration proceedings during a moratorium, the present application under section 11(6) which is admittedly barred but for exclusion of the time under Section 60(6) is to be treated as time barred. In this regard, he would commend to the Court that the Court may employ the principles of interpretation which have commended itself of late, in particular, viz., an interpretation, which advances the object and the purpose of the law. A mere adherence to the literal meaning of the law should be avoided particularly in the context of the provision of the IBC having regard to the deleterious results, which it would produce on third parties like the appellant. In other words, when there was no barrier on the corporate debtor during the period of limitation to lay an application under Section 11(6) in the facts of this case, and the period would at any rate expire on 20.07.2019 on the basis of reply dated 20.07.2016 of the appellant to the respondent, Section 60(6) will not assist the respondent.

6. **He would submit that this Court may bear in mind the admonition of this Court on an earlier occasion contained in the judgment of this Court reported in Reserve Bank of India v. Peerless General Finance & Investment Co. Ltd. and others[1]:**

> **"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasonsfor it that the Court construed the expression "Prize Chit" in *Srinivasa* [(1980) 4 SCC 507 : (1981) 1 SCR 801 : 51 Com Cas 464] and we find no reason to depart from the Court's construction."**

7. **In this regard, he would point out that the Court may contemplate that there may be suits which a corporate debtor**

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1 **(1987) 1 SCC 424**

also during the period of the moratorium may not be in a position to bring. He gives an example of interpleader suit. It may be in such cases alone that the Courts must give meaning to the exclusion of the period of limitation in favour of a corporate debtor in Section 60(6). He would further contend that the acceptance of the case of the respondent under Section 60(6) would render the phrase in section 60(6), viz., *'for which an order of moratorium has been made under this part' otiose*. The said phrase, in other words, is employed in order to confine the benefit of the exclusion to only suits which would be covered by or come under a cloud as a result of the moratorium. The present application under section 11(6) is clearly not one such proceeding. In other words, it is his case that the words *'for which an order of moratorium has been made under this part'* which is to be treated as a descriptive part, describes the case of such proceedings to which the third part will apply, the third part being the period during which the moratorium is in place, shall be excluded. The Court may place an interpretation which gives meaning to each word/phrase in the provision. If a blanket benefit was contemplated by the Legislature applicable to all suits and applications by or against the corporate debtor, the provision would be differently worded. He would illustrate this with reference to examples by adding and rewriting the provisions. Section 60(6) is intended to confer the consequential benefit upon the corporate debtor and, hence, the scope of Section 60(6) should not be wider than the scope of

the moratorium itself. An interpretation which balances the competing public interest of third parties subserved by limitation and the corporate debtors financial benefit may be placed. In this regard, he contended that the very object of the law of limitation or rather the policy which underlies it, is that the long dormant claims must not be allowed to be brought in a Court or other authority. Another principle which is pressed into service is that the defendant or the respondent, as the case may be, would have lost materials or evidence to bolster its case if a stale claim is sprung on him causing grave prejudice to him. Reasonable diligence must inform actions brought. In this case, this aspect has special relevance according to the learned senior counsel for the appellant for the reason that the matter relates to the year 2015. The respondent not having brought the application for appointment of an arbitrator within the period of limitation which is ordinarily available, the appellant is disabled from establishing its case before the arbitrator as many of the documents are not available and witnesses may not be available as appellant's employees have retired. All of this would produce substantially adverse results on the appellant. None of this was in the contemplation of the law giver and the acceptance of the respondent's case would involve giving a free run to those who sleep on their rights and bring a delayed claim much beyond the period of limitation.

8. **In this regard, it is also pointed out that there is a**

resolution plan which is approved and its impact may be perceived. The case of the respondent, it is pointed out, even according to the respondent, is that the respondent discovered late on going through the files that the application had to be filed. All of this is incomprehensible when the corporate debtor continued during the period of the moratorium, i.e., the corporate body continued and it was under the management of the Resolution Professional who was duly clothed with the authority to proceed for the appointment of an arbitrator under Section 11(6), even during the moratorium. By reason of the fact that the management is taken over, the corporate body does not vanish. So all throughout, there is a corporate body and there is nothing in law which stood in the way of it lodging an application under Section 11(6). The moratorium certainly has nothing to do with the delayed launching, as it did not bar the launching of proceedings under Section 11(6). It is therefore, contended that the Court may not accept the case based on Section 60(6) of the IBC.

9. ***Per contra*, Shri N. K. Kaul, learned senior counsel for the respondent would stoutly oppose the appeal. In the very first place he would submit that the conduct of the appellant which is a public authority should not commend itself to the Court. He would point out that in the letter dated 20.07.2016, actually the stand of the respondent was that it agreed for arbitration but it wanted the arbitration to be carried out through DIAC. Thereafter, he would draw our attention to the finding in the**

impugned Order, which reads:

> **“25. That the Respondent vide its letter dated 20.07.2016 replied to the aforesaid Notice dated 07.06.2016, wherein the Respondent did not provide consent for either of the names suggested by the Petitioner and instead proposed to proceed with arbitration through Delhi Arbitration Centre. Thus, there has been no mutual agreement between the parties in respect of the appointment of an independent Sole arbitrator.”**

10. **Not unnaturally, he also took us to paragraphs 6 to 10 which we have already adverted to. The matter does not end there. He would submit that following the order of the High Court, proceedings were commenced before the Arbitrator. 19.02.2021, 25.03.2021, 06.07.2021 and a date in May, 2021 are pointed to as dates on which proceedings were held before the Arbitrator. He would complain that the conduct of the appellant does not reflect honesty as is expected of the State. It is further pointed out that the fact that arbitration proceedings had commenced was not brought to this Court’s notice when this Court issued notice in the matter and passed an interim order.**

11. **He would further highlight that in effect, the impugned order is a consent order. Therefore, irrespective of the Court’s decision on the question of law which has been raised relating to the ambit of Section 60(6), the appeal cannot be permitted to succeed. As far as the true scope of Section 60(6) is concerned, he would submit that section 14 brings in a period which he describes as a ‘calm period’. In other words, he would contend that when an order of moratorium is passed in a**

Corporate Insolvency Resolution Process (CIRP) under the IBC, it is intended to bring about a period during which a resurrection or revival of the corporate body is attempted. A hiatus is put in place in respect of other proceedings as contemplated under Section 14. He would contend that be it a literal interpretation that this Court may place or a contextual interpretation, the result is inevitable that the period of moratorium will stand excluded even as far as a suit or an application by a corporate debtor is concerned. As far as the literal interpretation goes, the law giver has not left anything for imagination and there would be no merit in the case of the appellant. As far as the object of the Code is concerned, Parliament contemplated that every attempt should be made to bring back an ailing corporate debtor to life. The argument based on Section 25(2)(b) of the IBC is sought to be met by pointing out that while it does give power to the Resolution Professional to represent the company in proceedings including proceedings under the 1996 Act and there can be no doubt that the Resolution Professional could have taken steps under Section 11(6), that should not be the end of the inquiry. The question must be answered with reference to the express words used in Section 60(6) and also bearing in mind what actually happens on the ground once a moratorium is put in place and the corporate debtor undergoes a CIRP.

12. **The learned senior counsel for the respondent also enlists in his support, the report of the Joint Committee of the**

Insolvency and Bankruptcy Code 2015, which reads as follows:

> **"29. <u>Adjudicating Authority for Corporate persons – Clause 60 and 79 (14(e)</u>**
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> **FICCI in the memorandum submitted to the Committee was of the view that the exclusion of moratorium period from calculation of limitation period applies only in the context of suit or application in the name or on behalf of the corporate debtor. It is not clear as such exclusion also applies in respect of suits against the company by the creditors which are also subject to stay under the moratorium provisions._ It was, therefore, suggested that the words "or against the corporate debtor" may be added after the words "corporate debtor" under Clause 60(6) of the Bill.**
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> **The Committee while agreeing to the suggestion of FICCI, decide that clause 60(6) may be modified as under: -**
>
> > **"Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded'.**
>
> **Further clause 6091) provides that Adjudicating Authority for corporate persons including personal guarantors shall be National Company Law Tribunal. Since clause 79(14)(e) is contrary to clause 60(1), as a consequential amendment, clause 79(14)(e) may be omitted."**

13. **Learned senior counsel for the respondent does not dispute that the moratorium in any way stands in the way of a proceeding being launched by the corporate debtor. In the facts of this case, the application being one under Section 11(6) of the 1996 Act, such an application could have been maintained during the**

period of the moratorium. It could have been maintained as we have already noted by the Resolution Professional but this does not whittle down the benefit of the exclusion under Section 60(6).

14. **It is, therefore, according to him, clear that the provision, even originally, did provide for the exclusion of time for proceedings by the corporate debtors while exclusion of time against the debtor, was a later addition. The law always was that the exclusion under Section 60(6) was contemplated in favour of the corporate debtors.**

15. **The learned senior counsel for the appellant did attempt to emphasise the impact of the following sentence:**

> **"……..It is not clear as such exclusion also applies in respect of suits against the company by the creditors which are also subject to stay under the moratorium provisions."**

The appellant would also contend that the fact of the arbitration being on going was disclosed to this Court.

ANALYSIS

16. **Section 14 of the IBC reads as follows:**

> **"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;**
> **(b) transferring, encumbering, alienating or disposing of by the corporate debt or 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.

17. Section 60(6) of the IBC must next be noticed:

"60……
……..

(6) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded."

18. We must, in the first place, notice that the Courts would not indulge in interpretation of a report of a body and when

there is better material in the form of the Act itself available for interpretation.

19. The principles of interpretation of statutes have been invoked in the varying contexts and are to be applied on the basis of the facts of the case, the nature of the law and a host of principles. Undoubtedly, the golden rule of interpretation is the interpretation which thrives on the ordinary meaning of the words as they are used. This principle of literal interpretation of statutes has over a period of time indeed yielded to an interpretation which is purposive or which seeks to accommodate the object of the law giver. Suffice it to say that if the words of a statute are not ambiguous, the scope of interpretation dwindles. It is not for the Court to rewrite a statute. There may be occasions where the Court may even go to the extent of leaving out a word or not giving effect to certain part in order to give full meaning to the law by way of gleaning and giving effect to the intention of the legislature. The principle that literal meaning must be accepted is undoubtedly subject to the principle that it will make way when such interpretation will lead to an absurdity or grave injustice which a law giver could not have contemplated.

20. It is necessary to refer to the Principles of Interpretation of Statute in context of the submissions, which have been made. In (1976) 3 All England Law Reports 611, Lord Simon of Glaisdale, in the case of Suthendran v. Immigration Appeal Tribunal has given an exposition of the golden rule of interpretation, which is the same as understanding the words of a Statute in their natural and

ordinary sense, with reference to the grammatical meaning and the same has been adverted and approved by this Court in Harbhajan Singh v. Press Council of India and others[2]:

> **"9. …**
> **'Parliament is prima facie to be credited with meaning what is said in an Act of Parliament. The drafting of statutes, so important to people who hope to live under the rule of law, will never be satisfactory unless courts seek whenever possible to apply "the golden rule" of construction, that is to read the statutory language, grammatically and terminologically, in the ordinary and primary sense which it bears in its context, without omission or addition. Of course, Parliament is to be credited with good sense; so that when such an approach produces injustice, absurdity, contradiction or stultification of statutory objective the language may be modified sufficiently to avoid such disadvantage, though no further'."**

21. No doubt, another principle, which has rightfully vied for the Court's approval in this regard, is that, an interpretation which furthers the object and purpose of the law, must weigh with the Court, the most. In this regard, we may notice the following view expressed by Justice S. B. Sinha in New India Assurance Co. Ltd. v. Nusli Neville Wadia and another[3]:

> **"51. … With a view to read the provisions of the Act in a proper and effective manner, we are of the opinion that literal interpretation, if given, may give rise to an anomaly or absurdity which must be avoided. So as to enable a superior court to interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable legislator/author. So done, the rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act is fulfilled, which in turn would lead the beneficiary under the statutory scheme to fulfil its constitutional obligations as held by the Court inter alia in Ashoka**

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2 **(2002) 3 SCC 722**
3 **(2008) 3 SCC 279**

Marketing Ltd. [(1990) 4 SCC 406]

52. Barak in his exhaustive work on "Purposive Construction" explains various meanings attributed to the term "purpose". It would be in the fitness of discussion to refer to Purposive Construction in Barak's words:
"Hart and Sachs also appear to treat 'purpose' as a subjective concept. I say 'appear' because, although Hart and Sachs claim that the interpreter should imagine himself or herself in the legislator's shoes, they introduce two elements of objectivity : First, the interpreter should assume that the legislature is composed of reasonable people seeking to achieve reasonable goals in a reasonable manner; and second, the interpreter should accept the non-rebuttable presumption that members of the legislative body sought to fulfil their constitutional duties in good faith. This formulation allows the interpreter to inquire not into the subjective intent of the author, but rather the intent the author would have had, had he or she acted reasonably."
(Aharon Barak, Purposive Interpretation in Law, (2007) at p. 87.)"

22. In Justice G.P. Singh's Principles of Statutory Interpretation 14th Edition, page 145 while dealing with the application of Heydon's Rule, we find the following statements:

"It has also been said that the application of the rule in Heydon's case should not be taken to extremes; that if there were many problems before the enactment of the statute it does not follow that in an effort to solve some of them the Parliament intended to solve all; and that loyalty to the rule does not require the adoption of a construction which leads manifestly to absurd results. These propositions stated by LORD ROSKILL in Anderton v. Ryan [(1985) 2 ALL ER 355] are unexceptional but their misapplication may lead to a narrow construction defeating the object of the statute as actually happened in that case which was overruled within a year in R. V. Shivpuri [(1986) 2 ALL ER 334]. <u>Further, if the statutory language in its primary or ordinary meaning in the context has a wider effect, it cannot be artificially confined to remedy the single identified mischief which is conceived to have occasioned the statutory provision for once a mischief has been drawn to the attention of the parliamentary</u>

> **draftsman he would have considered whether any concomitant mischiefs should be dealt with as a necessary corollary.”**

23. This Court in Tirath Singh v. Bachittar Singh and Others [4] approved of the following statement in Maxwells Interpretation of Statues 10th Edition Page 229.

> **“Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.”**

24. Under the IBC, by virtue of the order admitting the application, be it under Sections 7, 9 or 10, and imposing moratorium, proceedings as are contemplated in Section 14 would be tabooed. This undoubtedly does not include an application under Section 11(6) of the 1996 Act by the corporate debtor or for that matter, any other proceeding by the corporate debtor against another party. At least there is no express exclusion of the jurisdiction of the Court or authorities to entertain any such proceeding at the hands of the corporate debtor. However, we must not be oblivious to the other provisions as well. Under Section 17, the management of the affairs of the corporate debtor is taken over by the interim resolution professional. The powers of the Board of Directors or the partners of the corporate debtor shall stand suspended and it would be exercised by the interim

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4 **AIR 1955 SC 830**

resolution professional. When the authority changes hands from the interim resolution professional to the resolution professional, the previous management continues to be excluded. The committee of creditors comes into being. Under the supervision, 'as it were', of the committee of creditors, all the matters are proceeded with. The resolution plans are received by the resolution professional and the resolution plan which is finally approved by the committee of creditors and still further at the hands of the adjudicating authority, would result in the curtains being wrung down on the moratorium under Section 31(3). During this entire period, what is noteworthy is that while in law and in form, the corporate debtor continues to exist and represented by the interim resolution professional to begin with and the resolution professional thereafter, the erstwhile management of the corporate debtor is displaced. When the resolution plan is approved, a new management takes over. All this is contemplated when the CIRP is successful. Undoubtedly, if it is unsuccessful, the corporate debtor slips into liquidation. Therefore, on the one hand, an application under Section 7, 9 or 10, does bring in a period which is intended to bring a corporate debtor back to life if possible, 'a period of calm', in the words of the respondent. But this is a period during which the management of the corporate debtor is displaced, ironically, a period of turbulent churning. While it may be true that proceedings by the corporate debtor through the resolution professional is contemplated, it is not impossible to contemplate

that the resolution professional for whatever reason it may be, does not discharge his duties and conduct proceedings in all matters as he should. We are noting this as this can be the rationale for the Law Giver excluding the period of limitation in regard to suits or applications at the instance of the corporate debtor under Section 60(6).

25. As far as understanding the meaning of Section 60(6) is concerned, there cannot be a slightest doubt that the period of Moratorium is excluded even in the case of a suit or application brought by a corporate debtor, viz., in regard to the period of the moratorium. It is true that on the one hand what is tabooed in Section 14 when a Moratorium is put into place is inter alia the institution of suits or continuance of pending suits or proceedings against the corporate debtor including proceeding in execution of inter alia, the decree or order of an arbitration panel. So, also the provision prohibits 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002. Still further, the recovery of any property by an owner or lessor in the occupation of the corporate debtor is forbidden. These provisions do not in any manner appear to stand in the way of the corporate debtor instituting or proceeding with a suit or a proceeding against others. Section 60(6) on the other hand excludes the period during which the Moratorium under Section 14 is in place in computing the

period of limitation. An ambiguity is introduced, namely the need to exclude the period of limitation for a suit or an application, at the instance of the corporate debtor when a Moratorium ushered in by an order under Section 14 does not pose any bar against a suit or an application at the instance of the corporate debtor. The words for which an order of Moratorium has been made under this part is intended to be the point of reference or the premise for the exclusion of the time for the purpose of computing the period of limitation. Besides being the point of reference and being the sine qua non for applying Section 60(6), it also specifies the period of time which will be excluded in computing of the period of limitation. In other words, present an order of Moratorium under Section 14, the entire period of the Moratorium is liable to be excluded in computing the period of limitation even in a suit or an application by a corporate debtor.

26. The contention of the learned Senior Counsel for the appellant based on the approval of the resolution plan and the effect of Section 31 apparently of the IBC does not appeal to us. What Section 31 of the Act, IBC undoubtedly proclaims is that on approval of the resolution plan by the adjudicating authority the plan becomes binding on a corporate debtor, its employees, members, creditors, the Central Government any State Government or any local authority as provided therein, guarantors and others stakeholders involved in the resolution plan. We are unable to perceive how the appellant can derive support from the said provision. In fact, taking the scheme of the IBC Section 60(6)

would become an integral part of the scheme which will enure to the benefit of the resolution applicant which is enabled to take suitable measures to ventilate its legitimate grievances by excluding the period during which a Moratorium was enforced for the purpose of computing the period of limitation.

27. In other words, notwithstanding the period of limitation under the Limitation Act, the Law Giver has thought it fit to provide that in respect of a corporate debtor if there has been an order of moratorium made in Part II, the period during which such moratorium was in place shall be excluded. 'For which an order of moratorium' cannot bear the interpretation which is sought to be placed by the appellant. The interpretation placed by the appellant is clearly against the plain meaning of the words which have been used. We have already undertaken the task of understanding the purport of the Code and the context in which section 60(6) has been put in place. This Court cannot possibly sit in judgment over the wisdom of the Law Giver. The period of limitation is provided under the Limitation Act. The law giver has contemplated that when a moratorium has been put in place, the said period must be excluded. We cannot overlook also the employment of words 'any suit or application'. This is apart, no doubt, from the words 'by a corporate debtor'. Interpreting the statute in the manner which the appellant seeks would result in our denying the benefit of extending the period of limitation to the corporate debtor, a result, which we think, would not be warranted by the clear words used in the statute.

28. Therefore, we are of the view that section 60(6) of the IBC

does contemplate exclusion of the entire period during which the moratorium was in force in respect of corporate debtor in regard to a proceeding as contemplated therein at the hands of the corporate debtor.

29. In light of the view we have taken, we consider it unnecessary to go into the question relating to whether in view of the consent given by the appellant to the appointment of the arbitrator, the appellant should be debarred from raising the plea of limitation. The appeal will stand dismissed. There will be no orders as to costs.

……., J.
[K.M. JOSEPH]

……., J.
[HRISHIKESH ROY]

New Delhi;
April 27, 2022.

ITEM NO.3 COURT NO.10 SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No. 8302/2021
(Arising out of impugned final judgment and order dated 14-12-2020 in ARBP No. 668/2020 passed by the High Court of Delhi at New Delhi)

NEW DELHI MUNICIPAL COUNCIL Petitioner(s)

VERSUS

MINOSHA INDIA LIMITED Respondent(s)

(FOR ADMISSION and I.R.)[TO BE TAKEN UP AS FIRST ITEM]
(With IA No. 110666/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 27-04-2022 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE K.M. JOSEPH
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s) Mr. Gourab Banerji, Sr. Adv.
Mr. Harsha Peecharra, Adv.
Mr. Yoginder Handoo, AOR
Mr. Rakesh Talukdar, Adv.
Mr. Ashwin Kataria, Adv.
Mr. Garvit Solanki, Adv.

For Respondent(s) Mr. Neeraj Kishan Kaul, Sr. Adv.
Mr. Mahesh Agarwal, Adv.
Ms. Sayree Basu Mullik, Adv.
Mr. Rishabh Parikh, Adv.
Mr. Rohan Talwar, Adv.
Mr. Deepak Joshi, Adv.
Mr. Raghav Agrawal, Adv.
Ms. Aarzoo Aneja, Adv.
Mr. E. C. Agrawala, AOR

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The appeal will stand dismissed in terms of the signed reportable judgment.

Pending application stands disposed of.

(NIDHI AHUJA) (RENU KAPOOR)
AR-cum-PS BRANCH OFFICER

[Signed reportable judgment is placed on the file.]