

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 129 of 2017**

**IN THE MATTER OF:**

**Schweitzer Systemtek India Pvt. Ltd.**

**...Appellant**

**Vs.**

**Phoenix ARC Pvt. Ltd. & Ors.**

**...Respondents**

**Present: For Appellant: Mr. Davesh Bhatia, Advocate**

**For Respondent No. 1:- Mr. Rishad A. Chowdhary and  
Mr. Manaswi, Advocates**

**ORDER**

**09.08.2017:** The Appellant-Corporate Applicant has challenged the order dated 3<sup>rd</sup> July, 2017 passed by Ld. Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Mumbai in T.C.P. No. 1059/I&BP/NCLT/MB/MAH/2017, whereby and whereunder the application preferred by appellant under Section 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I & B Code") has been admitted, an order of Moratorium has been passed and Insolvency Resolution Professional has been ordered to be appointed.

2. The grievance of the appellant is that the movable and immovable property of Guarantor (promoter) has been attached pursuant to Corporate Resolution Process initiated under section 10 against the Appellant-Corporate Applicant. However, such statement has been disputed by the Ld. Counsel appearing on behalf of 1<sup>st</sup> Respondent/ 'Financial Creditor'.

3. From the impugned order, we find that the Ld. Adjudicating Authority noticed the provision relating to Moratorium (Sec.14) and clarified as to which property is to be attached, as apparent from the observations and finding as quoted below:

*8.1. On careful reading I have noticed that the term "its" is significant. The plain language of the Section is that on the commencement of the Insolvency process the 'Moratorium' shall be declared for **prohibiting any action to recover or enforce any security interest created by the Corporate Debtor in respect of "its" property.** Relevant section which needs in-depth examination is Section 14 (1) (c) of The Code.*

*There are recognised canons of interpretation. Language of the Statute should be read as it existed. This is a trite law that no word can be added or substituted or deleted from the enacted Code duly legislated. Every word is to be read and interpreted as it exists in the statute with the natural meaning attached to the word. **Rather in this Section the language is so simple that there is no scope even to supply casus omissus.** I hasten to add that the doctrine of *Noscitur a Sociis* is somewhat applicable that the associated words take their meaning from one another so that*

**common sense meaning coupled together in their cognate sense be interpreted.** As a result, "its" denotes the property owned by the Corporate Debtor. **The property not owned by the Corporate Debtor do not fall within the ambits of the Moratorium.** Even Section 10 is confined to the Book of the Accounts of the Corporate Debtor, due to the reason that Section 10(3) has specified that the Corporate Applicant shall furnish "its" Books of Accounts. This Bench has no legislative authority to expand the meaning of the term "its" even under the umbrella of '**Ejusdem generis**'.

8.2 The outcome of this discussion is that the Moratorium shall prohibit the action against the properties reflected in the Balance Sheet of the Corporate Debtor. The Moratorium has no application on the properties beyond the ownership of the Corporate Debtor. As a result, the Order of the Hon'ble Court directing the Court Commissioner to take over the possession shall not fall within the clutches of Moratorium. Even otherwise, the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (the SARFAESI Act) may be having different criteria for enforcement of recovery of outstanding debt, which is not the subject matter of this Bench. **Before I part with it is necessary to clarify my humble view**

**that The SARFAESI Act may come within the ambits of Moratorium if an action is to foreclose or to recover or to create any interest in respect of the property belonged to or owned by a Corporate Debtor, otherwise not.**

9. To conclude the Application under Section 10 of The Code is hereby "Admitted" subject to the exception as carved out supra. The consequential directions shall be that the provisions of Section 14 of The Code i.e. "Moratorium" shall come into operation. Next, the proposed name of Interim Resolution Professional i.e. (Page 4 name) is hereby approved. The IRP shall take appropriate action such as Public Announcement etc. so that the Insolvency Resolution Process shall be initiated expeditiously. He is directed to submit a Progress Report within one month's time from the commencement of Insolvency Resolution Process."

4. Similar question fell for consideration before this Appellate Tribunal in **"Alpha & Omega Diagnostics (India) Ltd. V. Asset Reconstruction Company of India Ltd. & Ors."** in Company Appeal (AT) (Insol.) No.116 of 2017 by judgment dated 31<sup>st</sup> July, 2017, this Appellate Tribunal while upheld such findings, made following observations: -

“4. Ld. Counsel appearing on behalf of the Appellant submitted that the appellant has grievance only relating to qualifying part of the impugned order as quoted above. According to the appellant, the Moratorium should take into its recourse on the subject matters and assets relating to its matters pending before the Debt Recovery Tribunal (DRT) and under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI).

5. However, we are not inclined to accept such submissions as Appellant-Corporate Applicant has sought for “**its**” own insolvency resolution process that will include only the assets of the Corporate Debtor and not any assets, movable or immovable of a third party, like any director or other. In so far as ‘guarantor’ is concerned, we are not expressing any opinion, as they come within the meaning of ‘Corporate Debtor individually’, as distinct from principal debtor who has taken a loan.

6. In the aforesaid background, if Ld. Adjudicating Authority, on careful reading of the provisions has come to the definite conclusion that on commencement of the insolvency process the “Moratorium” shall be declared for prohibiting any action to recover or enforce any security

*interest created by the 'Corporate Debtor' in respect of "its" property, no ground is made out to interfere with the said order."*

5. At this stage, it will be desirable to refer to the relevant portion of Section 60 of the I&B Code, as quoted below: -

***"60. Adjudicating Authority for corporate persons- (1)***

*The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located.*

*(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or bankruptcy of a personal guarantor of such corporate debtor shall be filed before such National Company Law Tribunal.*

*(3) An insolvency resolution process or bankruptcy proceeding of a personal guarantor of the corporate debtor pending in any court or tribunal shall stand transferred to*

*the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.*

*(4) The National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of this Code for the purpose of sub-section (2).*

*(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—*

*(a) any application or proceeding by or against the corporate debtor or corporate person;*

*(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and*

*(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.*

*(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”.*

6. In this respect one may also refer to Section 60 of the I & B Code, as per which under sub-section (2) if Corporate Insolvency Resolution Process, or liquidation proceeding of a corporate debtor is pending before the ‘Adjudicating Authority’, an application relating to the ‘insolvency resolution’ or ‘bankruptcy’ of a personal guarantor required to be filed before the same Bench of Adjudicating Authority, meaning thereby, separate application for initiation of resolution process require to be filed against the guarantor before the same very Bench of the Adjudicating Authority who is hearing the corporate resolution process or liquidation proceeding against principal corporate debtor.

7. Sub-section (3) of Section 60 further makes it clear that if an insolvency resolution process or bankruptcy proceeding of a personal guarantor of the corporate debtor is pending before any other court of law or Tribunal, such as “Debt Recovery Tribunal”, who is the Adjudicating Authority for the purpose of Part-III- Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms all those proceeding shall also stand transferred to the Adjudicating Authority, dealing with insolvency resolution process or liquidation proceeding of the Corporate Debtor.



8. Sub-section (5) of Section 60 further makes it clear that the Adjudicating Authority has jurisdiction to entertain and dispose of an application or proceeding by or against the Corporate Debtor or corporate person including any claim made by or against the Corporate Debtor or Corporate person, including claims by or against any of its subsidiaries situated in India.

9. In view of the observations made above, the impugned order having passed by Ld. Adjudicating Authority in accordance with law, we reject the prayer. The appeal is dismissed. However, in facts and circumstances of the case, the parties shall bear the respective costs.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Balvinder Singh)  
Member(Technical)

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