Municipal Corporation Of Greater ... vs Abhilash Lal on 15 November, 2019

Equivalent citations: AIRONLINE 2019 SC 1570, (2019) 16 SCALE 507 (2020) 1 BANKCAS 342, (2020) 1 BANKCAS 342

Author: S. Ravindra Bhat

Bench: S. Ravindra Bhat, Vineet Saran, Arun Mishra

1

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 6350 OF 2019

MUNICIPAL CORPORATION OF GREATER
MUMBAI (MCGM) ...APPELLANT(S)

VERSUS

ABHILASH LAL & ORS. ...RESPONDENT(S)

JUDGMENT

S. RAVINDRA BHAT, J.

1. The Municipal Corporation of Greater Mumbai (hereafter “MCGM”) appeals under Section 62 of the Insolvency and Bankruptcy Code, 2016 (hereafter “IBC” or “the Code”) against the order of the National Company Law Appellate Tribunal (hereafter variously “NCLAT” and “the Appellate Tribunal”), rejecting its plea NATARAJANwith respect to a resolution plan approved by the National Company Law Tribunal (“NCLT”) under the provisions of that Code.

2. MCGM owns inter alia, Plot Nos. 155□156, 162 and 168 (all plots hereafter called “the lands”) in village Marol, Andheri (East) Mumbai. By a contract (dated 20th December, 2005) SevenHills Healthcare (P.) Ltd. (the company facing insolvency proceedings, hereafter “SevenHills”) agreed to develop these lands (which were to be leased to it for 30 years) and construct a 1500 bed hospital.

MCGM stipulated several conditions, including that 20% of the beds had to be reserved for use by the economically deprived, and that SevenHills had to complete the construction in 60 months (excluding monsoons). The sixty-month period ended on 24 th April, 2013; the project however, was not completed. In terms of Clause 15(g), the lease deed had to be executed within a month after completion. However, the deed was not executed as the project was not completed. Further, SevenHills had to pay lease rent at the annual rate of 10,41,04,000. MGCM alleges that there were defaults in these payments. In these circumstances, MCGM issued a show cause notice on 23rd January, 2018, proposing termination of the contract/agreement. It is submitted that SevenHills owed MCGM an amount of 76,05,07,780.

3. On the strength of the contract, SevenHills had borrowed from banks and financial institutions. It had created security by way of mortgage of the said lands, citing Clause 5, which enabled the creation of such encumbrances. SevenHills' inability to repay its debts led to the initiation of insolvency proceedings by Axis Bank. On 13th March, 2018, before the period given by MCGM's show-cause notice ended, the Petition (CP (IB) No. 282/7/HBD/2017) was admitted by the Hyderabad Bench of the NCLT. The first respondent was appointed as the Resolution Professional (hereafter "RP"); this was approved by the Committee of Creditors ("CoC") as required by the Code, on 12 April, 2018. A publication for expression of interest ("EOP") was issued on 14 May, 2018; later, on 25th June, 2018 and 16th July, 2018, the terms of the Request for Proposal (RFP) and criteria for evaluation (of RFPs received) were approved. As a result of the RFP published, a resolution plan was submitted by Dr. Shetty's New Medical Centre ("SNMC"). After discussion with the CoC, a revised RFP was submitted by the RP. The revised resolution plan was approved by the CoC on 4th September, 2018.

4. The resolution plan projected infusion of over 1000 crores by SNMC. That amount was to be borrowed; for this purpose, SevenHills' properties -movable and immovable, were proposed to be secured by hypothecation and mortgage respectively. Operational creditors were to be paid off to the extent of 75%. Further, the plan proposed payout to the tune of 102.3 crores to MCGM as against its total claim of 140.88 crores, and also committed to honouring the terms of the agreement entered into by SevenHills and providing 20% of the beds (of the hospital to be constructed) to the poor and weaker sections of society. The net-worth certificate furnished by SNMC indicated that it possessed sufficient funds.

5. MCGM filed an application (I.A. No. 207/ 2018) claiming that it ought to be declared as a Financial Creditor and a Member of the Committee of Creditors. It made several submissions, which indicated that subject to stipulations with respect to completion of the hospital project in a timebound manner, and subject to SNMC providing 20% beds in the completed hospital, for use by the economically weaker sections (and at the disposal of MCGM) and, lastly subject to clearing its (MCGM's) claims to the tune of 140.88 crores, it was agreeable to the resolution plan. However, later during the proceedings, it opposed the resolution plan, arguing that being a public body as well as a planning authority, it had to comply with the provisions of the Mumbai Municipal Corporation Act, 1888 ("MMC Act"), which meant that all action and approval had to be taken by the Improvement Committee of the Corporation. It was also stated that the show cause notice ("SCN") dated 23 rd January, 2018 had been already issued by MCGM proposing to terminate the contract

(with SevenHills) to which there was no response and that in the absence of a lease, the provisions of Section 14(1)(d) of the Code could not prevent the MCGM from terminating the agreement. Another argument made was that the period of CIRP in the case began on 13 th March, 2018 when the petition was admitted and the period of 270 days expired on 8 th September, 2018; an extension of 90 days provided in Section 12(3) was granted by the Adjudicating Authority on 4 th September, 2018 and the extended period came to an end on 7th December, 2018; thus the CIRP has lapsed by efflux of time.

6. The NCLT, after considering the views of the RP, MCGM, the creditors and SNMC, held that:

> "29. It may be relevant to note here that the Application for approval of the resolution plan was filed on 07.09.2018. The MCGM at a belated stage has come up with its objections to the Resolution Plan with the contention that it is undisputed owner of the plot on which one of the hospitals of the Corporate Debtor in Mumbai is built. The various objections raised by MCGM as enumerated hereinabove at a belated stage are neither tenable nor acceptable. It is clear from the record that MCGM is taking a stand which is totally contrary to its own decisions and factual submissions. The final prayer of MCGM is to reject the 'resolution plan' and order for liquidation of the Corporate Debtor. The RP in his submissions has clearly pointed out as to why the averments of MCGM are erroneous and incorrect. For the sake of briefness, the submissions made by RP as stated supra are not discussed in detail once again. This Adjudicating Authority is of the view that the contentions raised by MCGM cannot be accepted due to the conflicting and contradictory stands taken by it in the course of hearings. Further, the contention of MCGM relating to expiry of the period of 270 days is untenable and unacceptable for the reason that the Application by the Resolution Professional for the approval of the Resolution Plan has been made well before the expiry of the period of CIRP and the same is in accordance with the provisions of the Code. Therefore, the objections raised by the MCGM are hereby rejected."

7. The NCLT also held that the plan filed along with the application met the requirements of Section 30(2) of the Code, and Regulations 37, 38, 38(IA) and 39(4) of IBBI (CIRP) Regulations, 2016. It also held that the resolution plan did not contravene any of the provisions of Section 29A and was unanimously approved by that CoC; it provided for 78.07% of payment to financial creditors and 75% of payment to operational creditors including doctors, irrespective of claims in incorrect forms. Further, the resolution applicant is also addressing the dues payable to MCGM as stated in the resolution plan. Further, that NCLT observed that on comparison of the amount offered in the resolution plan with Form□H submitted by the RP, it was seen that the amount proposed in the plan was more than that of the value of liquidation of the Corporate Debtor. It accordingly approved the plan.

8. Aggrieved by NCLT's order, MCGM approached the Appellate Tribunal, before which several grounds were urged, including that since the conditions stipulated in the contract (with SevenHills Healthcare) had not been complied with, there was no lease deed and consequently no interest

inured in the land, in favour of the Corporate Debtor. It was also urged that the resolution applicant was aware that the property belonged to MCGM, and had not vested in the Corporate Debtor. Despite these circumstances, the proposal and revised proposal incorporating encumbrances of the lands were made contrary to law. It was also specifically urged that mandatory provisions of the MMC Act requiring express authorization by the corporation for transfer or creation of any interest in land had not been complied with and resultantly, the proposal and revised proposal approved by the NCLT, so far as they dealt with the property and lands, were not enforceable against MCGM.

9. The NCLAT in its impugned order, took note of a memo filed on behalf of the MCGM on 20th April, 2019 (before the NCLT), that the revised resolution plan had been accepted and all terms specified in its written submissions, were to be incorporated. As a result, the NCLAT was of the opinion that there was no scope for interference with the order of the Adjudicating Authority/NCLT.

10. It is argued on behalf of MCGM by its learned senior counsel, Mr. Neeraj Kaul, that no lease deed was executed in favour of SevenHills, the Corporate Debtor. MCGM was the undeniable owner of the land; as there were no assets of the Corporate Debtor, it stated that a duly registered lease deed would be executed. The proposal and revised proposal seeking direction with regard to the lease deed, had to be necessarily dealt with in accordance with law. This meant that unless MCGM, expressly approved the revised plan, whereby a lease deed could be executed in favour of the SevenHills Healthcare Pvt. Ltd. (or in favour of the resolution applicant SNFC), neither the adjudicating authority nor the NCLAT could issue any direction seeking to bind MCGM with respect to the manner it had to deal with properties that belonged to it.

11. It was emphasised that the effect of the impugned order is to prevent MCGM from violating the law. The direction which was highlighted was in violation of Section 92 of the MMC Act. Learned senior counsel underlined that the written submissions filed on behalf of MCGM could not be construed as an admission, or that MCGM was bound to agree to the revised proposal. It was alternatively argued that at best, these submissions could be considered as concessions of law which were never binding on MCGM.

12. It was argued that there was no question of incorporating any direction or approving the revised plan, which in any manner affected MCGM's properties. In this context, Mr. Neeraj Kaul, learned Senior Counsel, urged that the terms of the original contract (dated 20th December, 2005) had been violated; the 1500 bed hospital had not been completed by the stipulated date. Furthermore, arrears of lease rentals had mounted together every attendant liability. In these circumstances, even before the insolvency proceedings were initiated, MCGM issued a show cause notice proposing to terminate the contract. It was further emphasised that since the terms of the contract were infringed, in fact, there was no subsisting lease which could have been dealt with by the revised proposal and later by the Adjudicating Authority. It was submitted that the impugned order has completely noted these salient aspects.

13. On behalf of the RP (who has been arrayed as the first respondent) it is argued by Mr. C.A. Sundaram, learned senior counsel that MCGM had categorically consented to the resolution plan in writing before the NCLT and the Appellate Tribunal. He points out that in the written submissions

dated 28th November, 2018, 29th April, 2019 and 14th May, 2019 MCGM categorically stated that the resolution plan be approved and its application before the NCLT ought to be disposed of in terms of the commitment given by the resolution applicant/SNMC. It is pointed out that the Appellate Tribunal, after hearing the submissions of MCGM that it had no objections to the resolution plan, affirmed it. MCGM, counsel submitted, has not refuted that such a statement was made before the NCLAT. It is therefore the undisputed position that MCGM had no objections to the resolution plan. That being the case, counsel argues that the appeal is not maintainable.

14. Mr. Sundaram argued that MCGM's contentions that no interest or leasehold rights in the land were created in favour of the Corporate Debtor, flies in the face of its letters and also its application to the NCLT, which in para 4, admitted that the lands were leased to the Corporate Debtor. In fact, MCGM filed the application claiming that the lease was a capital or finance lease and the unpaid lease rentals were a financial debt within the meaning of the Code. Unlike the written submissions, MCGM did not even explain on what basis it had filed the application to the NCLT regarding its position that no leasehold rights subsisted.

15. Learned senior counsel submitted that MCGM was invited to attend and participate in CoC meetings due to its position as owner of the land on which the Mumbai hospital of the Corporate Debtor is located. The issue of whether or not the corporate debtor has any leasehold rights under the contract (of 2005) is a disputed question of fact which can only be adjudicated upon in civil proceedings after conducting a civil trial.

16. It is also argued alternatively, that assuming for the purpose of argument that no leasehold rights were created in favour of the Corporate Debtor, the resolution plan does not create any leasehold rights in favour of the respondent applicant/SNMC. Learned senior counsel argued that the resolution plan merely envisages a change in the shareholding of the Corporate Debtor but does not transfer any of MCGM's assets to SNMC. Therefore, it is false to suggest that the resolution plan transfers MCGM's assets to SNMC. It was argued furthermore that though MCGM was not entitled to, nor treated as a financial creditor, it was nevertheless invited to participate in CoC meetings, interact as well as negotiate favourable terms with potential resolution applicants. To further safeguard MCGM's interests, the RFP also required all prospective resolution applicants to submit their plans to resolve the dispute with MCGM.

17. Mr. Sundaram also submitted that SNMC's revised proposal to MCGM assured repayment of its entire dues. In light of a proposal of this nature, MCGM's stand seeking liquidation of the Corporate Debtor appears not only arbitrary but also prima facie vindictive.

18. It is also submitted that the resolution plan is absolutely unconditional in nature and in no manner contingent on the resolution of the dispute with MCGM. It is submitted that such unconditionality is the most fundamental aspect of the resolution plan. This unconditional nature is recorded in the minutes of meetings of the 8th meeting of the CoC held on 20 th August 2018. MCGM participated in the meetings of the CoC, including the 8th CoC meeting, and was provided a copy of the minutes contemporaneously. These minutes record SNMC's categorical statement that the negotiations with MCGM are in progress and that the resolution plan is unconditional and in no

manner dependent on the outcome of such negotiations. Further, there is no provision in the resolution plan (and none has been cited by MCGM) which suggests that the plan is conditional on settlement with it (i.e. MCGM).

19. It is also submitted that any dispute with MCGM in relation to the lease of the underlying land has no bearing on the validity of the resolution plan, under Section 31 of the Code. Having been approved by the CoC and the NCLT on merits, the plan attained finality and binds MCGM as a stakeholder in the Corporate Debtor. MCGM therefore, cannot hold the entire CIRP of the Corporate Debtor to ransom despite not even having raised a single objection on the validity of any specific term in the resolution plan under Section 30(2) of the Code.

20. Mr. Ramji Srinivasan, appearing on behalf of the CoC, argued that the financial creditors were interested in ensuring that their dues were paid, preferably in full. SNFC's resolution plan held out the best assurance toward that end. He also argued that the question of obtaining any approval under Section 92A either for creation of charge, or for any other purpose did not arise, because the terms of the contract, which in fact amounted to a lease (as it was a registered instrument and MCGM had received over 10 crores as initial lease consideration). Therefore, the resolution plan approved by the NCLT, and later, NCLAT, were sound and did not call for interference.

21. It was argued, furthermore, that the reliance on Section 92 of the MMC Act is misguided as it seeks to superimpose provisions of the MMC Act on the provisions of the Code. This is clearly impermissible in terms of the non□obstante provision contained in Section 238 of the Code.

22. Mr. K.V. Vishwanathan, learned senior counsel for SNFC, argued that the plan approved provided the best solution for the financial woes of the Corporate Debtor. It was argued that SNFC never represented that it would mortgage or obtain any loan on the strength of the lease. Nor did it ever urge that MCGM's permission was not necessary. He pointed to the terms of the resolution plan and submitted that they were subject to MCGM's obligations to follow the law.

23. It was submitted that the proposed plan contemplates compliance with the various conditions of the contract agreement including without limitation, 20% reservation of beds for MCGM's employees and settlement of MCGM's claimed dues. The resolution plan proposed payment to MCGM (which was enhanced to 100% by a later proposal) at clause 2.2.2(b). Further, clause 2.2.3(f) of the resolution plan again records the proposed payment to MCGM by stating that while the resolution professional has not admitted the claims submitted by MCGM, SNMC recognizes such dues payable to it and shall pay 102 crores in terms of the offer made to MCGM as recorded.

24. In the present case, Section 92 of the MMC Act has no bearing on the validity of the resolution plan, the approval order or the impugned order. Section 92 of the MMC Act mandates and prescribes the manner in which disposal of land belonging to the appellant would take place. However, the resolution plan does not contemplate any disposal of the said land or creation of any additional rights and obligations of MCGM or the Corporate Debtor in relation to the lands. It is merely the shareholding of the Corporate Debtor which undergoes a change pursuant to the resolution plan. MCGM cannot place any embargo on such shareholding changes by resorting to

proceeding under the Code.

25. It was urged that SNMC does not acquire any interest in the said land and only acquires managerial control over the Corporate Debtor by way of holding equity shares in the Corporate Debtor. Therefore, there arises no question of Section 92 of the MMC Act being violated through the resolution plan.

Discussion regarding the insolvency process and relevant provisions of the MMC Act

26. On admission of an insolvency application preferred by a financial creditor/operational creditor, a moratorium is declared on the continuation and initiation of all legal proceedings against the debtor. The NCLT appoints an interim resolution professional ("IRP"). The moratorium operates till the completion of the insolvency resolution process which, by law should be completed within a mandated time frame. During the moratorium period, the debtor cannot transfer, encumber or sell any asset. Upon appointment of an IRP, the board of directors stands suspended and management vests with the IRP. These professionals (IRPs) have to conduct the insolvency resolution process, take over the assets and management of the company, assist creditors in collecting information and manage the insolvency resolution process. The term of the IRP continues until an RP is appointed under Section 22. The IRP has to first determine the debtor's financial position through information collection regarding assets, finances and operations. Information may include data relating to operations, payments, list of assets and liabilities. The IRP further has to receive and collate claims submitted by creditors.

27. The RP selected by the NCLT has to constitute a committee of creditors (CoC) comprising all the financial creditors of the corporate debtor. This provision is aimed at creditors adopting a collective approach towards insolvency resolution instead of proceeding individually. Key decisions of the process, and the plan to be eventually finalized are to be approved by the CoC upon its satisfaction that the provisions of the most acceptable plan would ensure that their dues are cleared.

28. The Code is principally aimed at aiding a corporate debtor in the resolution of its insolvency condition without approaching liquidation. The key to this process is the finalization of an insolvency resolution plan. A suitably structured plan would provide for repayment of the debtor's outstanding liabilities after evaluating its financial worth, at the same time ensuring its survival as a going concern. The resolution plan must necessarily provision for repayment of the debt of operational creditors in a manner such that it shall not be lesser than the amounts that would be due, should the debtor be liquidated per Section 30(2) of the Code. Also, the plan should identify the manner of repayment of insolvency resolution costs, the implementation and supervision of the strategy, and should be in compliance with the law. If the terms (including the terms of repayment) under the resolution plan are approved by the committee of creditors, it has to be further approved by the NCLT, which is the adjudicating authority.

29. In this case, it is not the provisions of the IBC which this court has to primarily deal with; it is rather whether the process and procedure adopted by the NCLT and later the NCLAT, in overruling MCGM's concerns and objections with regard to the treatment of its property (i.e. the lands) is in

accordance with law. The relevant provisions of the Municipal Corporation of Greater Mumbai Act, 1888 are extracted below:

> Provisions governing the disposal of municipal property:
>
> Section 92. With respect to the disposal of property belonging to the corporation other than property vesting in the corporation for the purposes of the Brihan Mumbai Electric Supply and Transport Undertaking, the following provisions shall have effect, namely: —
>
> (a) the Commissioner may, subject to the regulations made in this behalf, dispose of, by sale or otherwise, any movable property belonging to the corporation not exceeding in value, in each instance, five lakh rupees, of grant a lease of any immovable property belonging to the corporation, including any right of fishing or of gathering and taking fruit and the like, for any period not exceeding twelve months at a time :
>
> Provided that every lease of immoveable property granted by the Commissioner (other than a contract for a monthly tenancy) the annual rent where of at a rack rent exceeds 6 [fifty thousand rupees] shall be reported by him, within fifteen days after the same has been granted, to the Improvements Committee;
>
> (b) the Commissioner may, —
>
> (i) with the sanction of the concerned Committee, dispose off, by sale of otherwise any movable property held by the Corporation, the value of which exceeds rupees five lakhs ;
>
> (ii) with the sanction of the 9[Standing Committee], dispose off any moveable property held by the Corporation, the value of which exceeds rupees two crores ;
>
> (iii) with the sanction of the concerned Committee, grant a lease (other than a lease in perpetuity) of any immovable property belonging to the Corporation, including any such right as aforesaid; or sell, or grant a lease in perpetuity of any immovable property, the value of which does not exceed 50,000 rupees or the annual rent of which does not exceed 3,000 rupees ;
>
> (c) with the sanction of the corporation, the Commissioner may lease, sell or otherwise convey any immovable property belonging to the corporation (cc) the consideration for which any immovable property or any right belonging to the corporation may be sold, leased or otherwise transferred shall not be less than market value of such premium, rent or other consideration;

(d) sanction of the corporation under clauses (b) and (c) may be given either generally for any class of cases or specially in any particular case ; (dd) notwithstanding anything contained in this section, the Commissioner may, with the sanction of the Corporation, and with the approval of the State Government, grant a lease of immovable property belonging to the Corporation to a Co□operative Housing Society formed exclusively by the officers and servants of the Corporation, or to a public trust exclusively for medical and educational purposes registered under the Bombay Public Trust Act, 1950 or to a society registered under the Societies Registration Act, 1860 or the Maharashtra Co□operative Societies Act, 1960, a public trust registered under the Bombay Public Trust Act, 1950, or a company registered under the Companies Act, 1956 3[or any person for the purposes of provision of public latrines, urinals and similar conveniences or construction of a plant for processing excrementitious and other filthy matters of garbages] or to a person who is dishoused as a result of the implementation of any Development Scheme of the Corporation or to a Co□operative Housing Society formed exclusively by the persons who are dishoused as a result of the implementation of any Development Scheme of the Corporation, at such rent, which may be less than the market value of the premium, rent, or other consideration, for the grant of such lease, and subject to such conditions, as may be provided by the bye□laws made under section 461;

(ddd) notwithstanding anything contained in this section, the Commissioner may, with the sanction of the Corporation, and with the approval of the State Government, grant a lease for a period not exceeding 60 years, of municipal land which is declared as a slum area under the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Re□development) Act, 1971 to a co□operative society of slum dwellers occupying such land, at such rent, which may be less than the market value of the premium, rent, or other consideration, for grant of such lease, and subject to such conditions, as the Corporation may impose. The approval of the State Government under this clause may be given either generally for any class of cases of such lands or specifically in any particular case of such land : Provided that, the Commissioner may in like manner renew, from time to time ; the lease for such period and subject to such conditions as the Corporation may determine and impose ; (dddd) All leases granted by the corporation of the immovable properties belonging to the corporation for whatever term shall be subject to the following conditions in addition to the conditions stipulated in the Lease□deed or Lease□agreement executed by the corporation, namely: —

(i) Leasehold rights in respect of the properties belonging to the corporation and given on lease may be further assigned or transferred only with the prior permission of the Commissioner, on payment of such premium on account of unearned income and transfer fees or charges at such rates as may be specified by the corporation, from time to time.

(ii) In the case of any contravention of the provisions of sub-clause (i), the lessee or transferor of such leasehold rights, shall be liable to pay penalty in addition to such premium and transfer fees or charges, at such rates as may be specified by the corporation, from time to time.

(e) the aforesaid provisions of this section shall apply, respectively, to every disposal of property belonging to the Corporation made under or for any purpose of this Act;

Provided that nothing in this section shall apply Dr. Bhau Daji Lad Museum or to the site thereof referred to in section 89C except with the previous sanction of 5[the 6[State] Government].

Section 92A. Where— (1) the Commissioner has transferred by way of sale or exchange any immovable property belonging to the Corporation and the terms of such transfer direct that the property shall be applied or enjoyed in a particular manner or the use or enjoyment thereof shall be restricted in a particular manner, or (2) the owner of any immovable property has entered into an agreement with the Corporation concerning the application, enjoyment or use of the property in a particular manner, such term, condition or obligation shall be held to be annexed to the property which is the subject-matter of the transfer or agreement and shall be enforced against the transferee or owner and all persons deriving title or interest under or through him, notwithstanding—

(a) any law for the time being in force, and

(b) that the Corporation are not in possession of or interested in any immovable property for the benefit of which, the term, condition or obligation was agreed to, entered into or imposed."

30. At this stage, it would be relevant to notice certain conditions in the contract. Clause 2(i) stipulates the minimum lease rent as 10.40 crores for which SHCL agreed to pay 0.1% over and above the minimum lease rent. Clause 5 of the agreement permitted SevenHills to mortgage and/or create charge of the schedule property. The conditions read as follows:

"5. The Owner hereby agrees to permit and allow the SHCL on the terms and conditions to be approved by the Owner which permission/approval shall not be unreasonably withheld, to mortgage and/or create charge on the Schedule Property and/or SHCL's leasehold right thereon with or without the Buildings on the Schedule property during the lease period or prior thereto i.e. during the project period) in any manner whatsoever either in whole or in part as SHCL may require from time to time to the satisfaction of the lenders, for the purpose of raising financial assistance from the Financial Institutions/Banks/NBFOs/Co-operative Societies/ Trust/ UF/ Partnership/Proprietary Firm and any other lending individuals/institutions, whether incorporated or not, for any purpose for and in connection with the said Project including for the purpose of commencing, carrying out and completing the construction of the Buildings, setting up of hospital, Medical Educational institutions commercial and other establishments within the Frame work of Development

Control Regulations in force, in such Buildings, their running, maintenance, renovation, reconstruction etc. For this purpose, the SHCL shall have to apply for permission not mortgage and/or create charge to Municipal Commissioner two months in advance and if the approval is not received within two months from the date of receipt of such a request by the Commissioner, it will be deemed as approved and SHCL shall be at liberty to create the mortgage of the Schedule Property in favour of the Lenders without any recourse to the Owner."

31. Clause 15(a) which stated that the lease deed had to be entered into upon on completion of the project and contained other conditions, pertinently, reads as follows:

"15. LEASE OF PLOT:

a) Lease period:

i) The SHCL shall enter into a Lease Deed on completion of project period for leasing the plot to SHCL for the period of 60 years. After 60 years, the lease period will be extended with the mutual consent of Owner and SHCL on the terms that may be mutually agreed upon by both the parties for further period.

ii) The lease period of 60 years shall commence from the date of completion of the Project period.

iii) On completion of the said Project the Owner shall issue to SHCL 'Project Completion Certificate'. Till the completion and commissioning of the project and running of the Project facilities, till the end of lease period, this Contract Agreement is to be read, in conjunction with the said Lease Deed which both Parties will enter into on completion of the project period.

iv) The SHCL shall complete the construction of the hospital building within the project period of 60 months excluding monsoon. the MCGM shall be liable to issue the Project Completion Certificate on written application by SHCL to that effect after completion of the project.

xxxxxx xxxxxx xxxxxx

e) Penalty for delay:

i) SHCL shall complete the entire Project and open the facility to public use within the approved time limit. SHCL shall submit the work programme with defined milestones. the progress of the work shall be strictly as per the programme of construction submitted by SHCL and approved by the Commissioner.

In case SHCL fails to complete the Project as aforesaid within the said Project Period of 60 (sixty) months excluding monsoon from issuance of Commencement Certificate, and unless such failure is due to force Majeure conditions, penalty for delay shall be charged for the period of delay which will be equivalent to 25% of Lease Rent which SHCL would have paid to the Owner for that period, had the Project been completed within the Project Period and this shall be in addition to lease rent.

ii) SHCL shall have to separately pay the compensation for delay to the Owner at the end of notice period.

iii) However, in case any delay occurs because of circumstances beyond the control of SHCL only suitable extension in the period of the Project without imposing penalty or demand for compensation for delay shall be granted for completing the Project. No other claim or compensation of whatsoever nature shall be entertained.

xxxxxx xxxxxx xxxxxx

g) Lease Deed:

A Lease Deed shall be executed as per draft annexed to this Contract Agreement as Annexure□II' within one month from the expiry of the Project period or on intimation from the owner whichever is earlier.

17. MORTGAGE OF PLOT AND BUILDINGS

a) The SHCL is hereby allowed to sublease;

mortgage and create a charge on the said plot and buildings either in part or in total to the satisfaction of lenders for the purpose of raising financial assistance to commence, progress, complete, commission and run the hospital complex and other commercial activities during the Pendency of the lease period, from the financial institutions/ FIIS/Banks/Mutual Funds/Co□ operative Societies, Trusts/individuals/HUFs/Partnership Firms, other lending institutions and lenders of any constitution for the said Project with the prior permission of the Commissioner, which permission shall not be unreasonably withheld, during the Project period and/or during the subsistence of the lease and the Owner shall be kept informed of such deals after permission by the Commissioner and SHCL shall file relevant documentary evidence to that effect for record of the owner.

The permission which shall be granted by the Owner to SHCL to mortgage the Schedule Property in favour of the lender (s) for raising finance will remain irrevocable and irreversible during the tenure of the Project period and lease period except when the contact is terminated. In case the contract is terminated for valid reason, the Owner shall not bear any cost and consequences of resultant termination of mortgage by SHCL to any Financial Institution. While the right of ownership will remain with the Owner, the leasehold rights to the property will remain free from encumbrances and dedicated to the lenders during the currency of loan or the lease period whichever is earlier and

the lenders shall continue to enjoy the same rights and privileges as that of SHCL.

SHCL is also hereby allowed, with prior written permission from Commissioner to sublet the whole or part thereof and/or the buildings on the Schedule Property. The SHCL shall be entitled to sublet the Schedule Property and the Building/s thereon from time to time in whole or in part for any duration (not beyond the lease period) to any other Party/ies (sub□lessee/s) on such terms and conditions, as may be agreeable to SHCL within the frame work of the tender and this Agreement and for the same or similar purposes for which agreement is intended, by means of duly registered Deed/s. SHCL shall have to apply for permission to Municipal Commissioner two months in advance and if the approval is not received within two months from the date of receipt of such a request by the Commissioner, it shall be deemed as approved."

32. A cumulative reading of the stipulations reveals that the contract/agreement contemplates that the lease deed was to be executed after the completion of the project. The contract reveals that (a) the project period was for 60 months starting from the date excluding the monsoon period; (b) by Clauses 5 and 17, SevenHills could mortgage the property for securing advances from financial institutions for the construction of the project and thereafter towards its working. Such mortgage/charge or interest was subject to approval by MCGM. In the event the contract was to be terminated, it was agreed that MCGM would not in any manner be liable towards the mortgaged amount and all its rights and ownership would continue to vest in it free from encumbrances (Clause 17).

33. The show cause notice in this case preceded admission of the insolvency resolution process. In view of the clear conditions stipulated in the contract, MCGM reserved all its rights and its properties could not have therefore, in any manner, been affected by the resolution plan. Equally in the opinion of this Court, the adjudicating authority could not have approved the plan which implicates the assets of MCGM especially when SevenHills had not fulfilled its obligations under the contract.

34. The argument of the RP, the financial institutions (CoC), and the SNMC with regard to MCGM's interest not being affected, in this court's opinion is insubstantial. SNMC's proposed insolvency plan on the one hand no doubt provided for the liquidation of MCGM’s liabilities initially to the tune of 102 crores (later revised to over 140 crores). However, the provisions of the resolution plan clearly contemplated infusion of capital to achieve its objectives. One of the modes spelt out in the plan for securing capital was mortgaging the land. Initially, no doubt, SNMC stepped into the shoes of SevenHills and assumed its control. What is important to notice is that the corporate restructuring was a way of taking over of the company’s liquidation by SNMC as it was not only Seven Hills’ project with shares and liquidation of debts, but also the restructuring of the company’s liabilities if necessary, by creating fresh debts and mortgage of the land which directly affected MCGM.

35. Section 92 unequivocally prescribes the method whereby MCGM’s properties can be dealt with through lease or by way of creation of any other interest. The only mode permitted is through prior permission of the corporation. It is a matter of record that in the present case, the resolution plan

was never approved by the corporation and that it was put to vote. The contesting parties, including the RP and CoC were unable to point out to anything on the record to establish that a valid permission contemplated by Section 92 was ever obtained with regard to the proposal in the resolution plan. The proposal was approved by the NCLT and MCGM's appeal was rejected by NCLAT. The proposal could be approved only to the extent it did not result in encumbering the land belonging to MCGM.

36. It is evident from a plain reading of Section 92(c), that the Commissioner (of MCGM) is empowered to, with the sanction of the corporation, "lease, sell or otherwise convey any immovable property belonging to the corporation." It is not in dispute that the original contract entered into on 20□12□2005 contemplated the fulfilment of some important conditions, including firstly, the completion of the hospital project within a time frame; and secondly, timely payment of annual lease rentals. It is a matter of record that the hospital project was scheduled to be completed by 24 th April, 2013. MCGM cites Clause 15(g) of the contract to urge that within a month of this event, i.e. completion of the hospital, a lease deed had to be executed. This event never took place. Therefore, the terms of the contract remained, in the opinion of the court, an agreement to enter into a lease; it did not per se confer any right or interest, except that in the event of MCGM's failure or omission to register the lease (in the event SevenHills had complied with its obligations under the contract), it could be sued for specific performance of the agreement, and compelled to execute a lease deed. That event did not occur; SevenHills did not complete construction of the 1600 bed hospital. Apparently, it did not even fulfill its commitment, or pay annual lease rentals. In these circumstances, MCGM was constrained to issue a show cause notice before the insolvency resolution process began, and before the moratorium was declared by NCLT on 13th March, 2018. According to MCGM, in terms of Clause 26 (of the contract), even the agreement stood terminated due to default by SevenHills. This court does not propose to comment on that issue, as that is contentious and no finding has been recorded by either the adjudicating authority or the NCLAT.

37. In Ram Singh Vijay Pal Singh & Ors. v. State of U.P. & Ors (2007) 6 SCC 44, this court dealt with a similar provision, requiring prior approval of the statutory authority without which the property could not be disposed of. The court held that:

> "The proviso to Sub□section (1) of Section 12 of the Act would show that the Mandi Samiti (Committee) is not empowered to transfer any immovable property without the previous approval in writing of the State Agricultural Produce Markets Board (Mandi Parishad). Section 26□L of the Act deals with the powers and functions of the Board. The Director of Mandi Parishad (Board) has not been conferred any power whereunder he may issue a general direction that the shops, godowns and sheds of the Mandi Parishad shall be transferred or sold to the traders on hire□purchase basis. Therefore, the appellants can derive no benefit from the letter of the Director dated 4.11.1995, wherein it was mentioned that a decision had been taken to give the shops on hire□purchase basis. In the counter affidavit the respondents have specifically asserted that the Board never took any such decision to sell the property of the Mandi Samiti to the traders either on hire□purchase basis or otherwise. No document has been filed to show that the Board ever took any such decision. It is the case of the

respondents that the letter sent by the Director was his own action which had never been authorized by the Board. At any rate the proposal made by the Director never fructified as no such decision was taken by the Board and the Board never authorized the Mandi Samities (Committees) of various districts in the State to transfer the property of the Samiti in favour of the traders of agricultural produce who had been allotted the shops, godowns and sheds by the Mandi Parishad. In this view of the matter, the appellants have no legal right to claim that the property be given to them on hire-purchase basis."

38. In Essar Bulk Terminal Limited & Anr. v. State of Gujarat & Ors. (2018) 3 SCC 750, again, this court held as follows:

"16. Despite this, what is clear from the record is that the Appellants appear to have actually dredged the channel to a depth of 14 meters and appear to have reclaimed an area of 164 hectares plus 170 hectares to the south of the mangroves, without any permission at all. When this was pointed out to Shri Mihir Joshi, the answer given was that when permission is granted Under Section 35(1) of the Gujarat Maritime Board Act, a letter granting such permission specifically says that it is permission that is granted Under Section 35(1) and for this purpose, a letter dated 2nd August, 2008 was referred to. According to him, therefore, the letter dated 14th June, 2007, which referred only to an NOC for reclamation, could not be given the status of permission Under Section 35(1). According to the learned Counsel, therefore, if Section 35(1) were to be read with Section 35(2), it would be clear that permission for reclamation would only be necessary if a private asset were to be created in the hands of a private person. However, it is clear that the asset to be created belonged only to the Government of Gujarat and it was for the GMB to grant permission to the Appellants to use the same. We are afraid that it is difficult for us to accept this line of argument. Section 35(1) is couched in negative language and does not refer to private rights being created. Section 35(2) cannot be read so as to throw light on Section 35(1), as Under Section 35(2), the GMB is only given a discretionary power to require a person, who has acted in contravention of Section 35(1), to remove the illegal erection. The wide language of Section 35(1) cannot be whittled down by Section 35(2) in the manner argued by Shri Joshi, as the GMB may or may not utilise the discretionary power granted to it Under Section 35(2). The plain language of Section 35(1) cannot be curtailed by reading by inference, into Sub-section (2), the fact that the GMB may, by notice, require a person to remove an erection, only when it has been made without previous permission, so as to create a private asset in the hands of a private person. The wide language of Section 35(1) makes it clear that any reclamation within the limits of the GMB cannot be carried out except with the previous permission in writing of the GMB. It is clear, therefore, that dredging to a depth of below 8 meters and reclamation of any area to the south of the mangroves was done by the Appellants in the teeth of Section 35(1) of the Gujarat Maritime Board Act.

17. Mr. Sibal laid great stress on the letter dated 15th November, 2012 to show that, in point of fact, what the Appellants were really angling for was to conduct commercial operations beyond the captive requirements of the Essar Steel plant at Hazira. This letter, while asking for an addition of 3700 meters in addition to the existing 1100 meters waterfront, also went on to speak of developing a 700 meters berth, along with the GMB, for handling commercial cargo. Apart from this, Essar planned to build a world class container terminal and a dry dock, which would serve the shipping industry generally. It also proposed to reclaim a further 334 hectares land on the southern side with the additional dredged material. A perusal of this letter would leave no doubt about the fact that despite Essar Steel's production being at much less than what was projected, the Appellants' continued demands would show that the real motive was to go beyond a captive jetty and to develop a commercial port which, as we have seen, cannot be done without a global tender under the Gujarat Infrastructure Development Act.

18. As stated hereinabove, as many as three MOUs were executed between the Appellants, the GMB and the State Government, which MOUs were valid only for a period of 12 months and were stated not to have granted any right to the Appellants, who would incur all the expenditure for the same. This being the case, it is a little difficult to appreciate Shri Joshi's contention that any legitimate expectation could be based on any of the aforesaid expired MOUs. The High Court is correct in its conclusion that no such expectation could possibly have arisen out of the aforesaid MOUs or the correspondence between the Appellants and the GMB referred to.

19. It is also important to note from the correspondence between the Appellants and the GMB, that the Appellants were clearly told that the land to be reclaimed by the Appellants would not only belong to the Government of Gujarat, but also that the GMB could utilize the aforesaid land for any purpose. What seems to emerge on a reading of the letters between the parties is that the Appellants wished to dredge the canal, at their own cost, which was next to their captive jetty, for their own purposes, for which they obtained the necessary permission. However, since dumping of earth, which would emerge as a consequence of dredging, into the open sea would be extremely expensive, it was stated that instead this earth could be dumped to create reclaimed land next to the captive jetty, which would then benefit both the Appellants and the GMB. In point of fact, 140 hectares out of 195 hectares that is reclaimed by the Appellants is allocated to the Appellants for their own purposes, the balance to be given as and when a jetty of 1100 meters plus 3700 meters of waterfront is constructed. The argument that huge amounts had been spent to reclaim land is wholly fallacious□huge amounts were spent to dredge a canal which was permitted as the Appellants alone were to bear the cost, and as an increased draft would benefit all, as the canal was open to all to use. Therefore, any plea as to a legitimate expectation of reclaimed land being allocated for the Appellants' own use, thanks to large amounts being spent, is contrary to the correspondence by the Appellants themselves."

An identical approach was adopted in Saroj Screens Pvt. Ltd. v Ghanshyam & Ors., (2012) 11 SCC 434.

39. The principle that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all, articulated in Nazir Ahmad v. Emperor, AIR 1936 PC 253, has found widespread acceptance. In the context of this case, it means that if alienation or creation of any interest in respect of MCGM's properties is contemplated in the statute through a particular manner, that end can be achieved only through the prescribed mode, or not at all.

40. This Court also notices that an initial No Objection Certificate was issued by MCGM voluntarily, for creation of interest in respect of its properties. Upon its refusal to grant approval, SevenHills filed proceedings under Article 226 before the Bombay High court (W.P. No 1728 of 2011), in which the Court directed to grant issuance of certificate. At the same time, the High Court observed as follows:

> "11. ..... It is, however, required to be noted here that the Corporation is nor borrowing any amount for its purpose....If the petitioners want financial assistance from the Bank, naturally, it cannot mortgage only the superstructure but the entire property is required to be mortgaged. Aprart from that even if there is a defect in the title in the matter of creating mortgage, the Corporation is not going to suffer in any manner and it is for the concerned Bank to consider the same while giving financial assistance. The Corporation is not going to get any financial assistance from the Bank and, therefore, whatever documents which the petitioners may execute in favour of the Bank, the Corporation is not bound by the same....The said NOC can be granted by the Corporation without prejudice to its rights and contentions that the land in question belongs to them and, therefore, no mortgage could have been created for the same. It is always open to the Corporation to ascertains right to the extent that they are not bound by execution of such documents with the Bank....However, such grant of NOC, would be without prejudice to the rights and contentions of the Corporation. The Corporation may also mention such aspect while giving NOC to the petitioners that such NOC is given without prejudice to the rights and contentions that their land could not have been mortgaged by the petitioners with the Bank. (emphasis supplied)
>
> 12. .....Apart from the same, by granting NOC it cannot be construed that the Corporation has also mortgaged its property in favour of Axis Bank in any manner....
>
> 15. ....It is clarified that this order is passed without prejudice to the rights and contentions of both the sides and it will have no effect so far as deciding the matter on merit is concerned....." ********** **********

41. The material placed on record by MCGM before this Court also reveals that the meeting held by the Corporation on 14 th December, 2018, referred back to the resolution proposal given by SNMC. The minutes of the meeting records that three members were unanimous in their view that since SevenHills had not complied with the terms and had even sought to encumber the property by

mortgage, SNMC, a UAE based company, ought not be granted approval to take over the plot and proceed with its project.

42. Now, this court proposes to deal with the contention that the provisions of the Code override all other laws and hence, that the resolution plan approved by the NCLT acquires primacy over all other legal provisions. Facially, this argument appears merited. Section 238 enacts that:

> "238. Provisions of this Code to override other laws. — The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

43. The scope of this provision has been the subject matter of debate in several judgments of this court. In Jaipur Metals & Electricals Employees Organization v. Jaipur Metals & Electricals Ltd. (2019) 4 SCC 227, the correctness of a High Court's view which refused to transfer winding up proceedings pending before it and set aside the NCLT's order admitting an insolvency resolution application at the behest of a financial creditor, was in issue. This court held as follows, setting aside the judgment impugned in that case:

> "It is clear that Respondent No. 3 has filed a Section 7 application under the Code on 11.01.2018, on which an order has been passed admitting such application by the NCLT on 13.04.2018. This proceeding is an independent proceeding which has nothing to do with the transfer of pending winding up proceedings before at any time before a winding up order is passed to apply under Section 7 of the Code. This is clear from a reading of Section 7 together with Section 238 of the Code which reads as follows:
>
> "238. Provisions of this Code to override other laws. — The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."
>
> 18. Shri Dave's ingenious argument that since Section 434 of the Companies Act, 2013 is amended by the Eleventh Schedule of the Code, the amended Section 434 must be read as being part of the Code and not the Companies Act 2013, must be rejected for the reason that though Section 434 of the Companies Act, 2013 is substituted by the Eleventh Schedule of the Code, yet Section 434, as substituted, appears only in the Companies Act, 2013 and is part and parcel of that Act. This being so, if there is any inconsistency between Section 434 as substituted and the provisions of the Code, the latter must prevail. We are of the view that the NCLT was absolutely correct in applying Section 238 of the Code to an independent proceeding instituted by a secured financial creditor, namely, the Alchemist Asset Reconstruction Company Ltd. This being the case, it is difficult to comprehend how the High Court could have held that the proceedings before the NCLT were without

jurisdiction. On this score, therefore, the High Court judgment has to be set aside."

44. In the recent judgment in Duncans Industries v. A.J. Agrochem 2019 SCC Online (SC) 1319, the issue was that action under Section 16D(4) of the Tea Act, which provides that the Central Government could take such steps as may be necessary for the purpose of efficiently managing the business of the undertaking, had been taken. It was urged that any notification under Section 16D has effect for five years, which could only be extended if the Central Government was of the opinion that it is expedient to do so in public interest, for such period not exceeding one year at a time, and for total period not exceeding six years. It was submitted that Section 16E refers to the power of the Central Government to restart the tea undertaking if it is found necessary in the interest of the general public. The argument was that an insolvency process is also meant to culminate in liquidation, if there is no revival, and that since the Tea Act permits the Central Government to take over the management of a tea estate which is not run properly, prior permission under Section 16G is applicable to such an estate, the management of which has been taken over by the Government. This contention was negatived, by this court, which relied on Section 238 of the Code.

45. In Macquaire Bank Ltd. v. Shilipi Cable Techologies Ltd. (2018) 2 SCC 674, one of the issues was the interplay between Section 9 of the Code and provisions of the Advocates Act. It was argued that a demand notice issued through an advocate was not permissible and that the provisions of the Code overrode all other laws. This court negative the contention, holding that it is only in the case of inconsistency, that by reason of Section 238 of the Code would its provisions prevail. On a harmonious construction of the seemingly inconsistent provisions, if the court could give effect to both, it would do so.

46. Dharani Sugars & Chemicals Ltd. v. Union of India & Ors. (2019) 5 SCC 480 is a relevant recent decision of this court. The question which arose in that case was the legality and constitutionality of directions issued by the Reserve Bank of India, through a circular of 12th February, 2018 regulating resolution of stressed assets of debtors. This court elaborately dealt with provisions of the Banking Regulation Act, 1949 and the Reserve Bank of India Act, 1934 and held that the power to issue directions regarding initiation of insolvency proceedings vested in the RBI, subject to the approval of the Central Government. The court significantly held that the power was contained "within the four corners" of Section 35AA and observed as follows:

> "A conspectus of all these provisions shows that the Banking Regulation Act specifies that the Central Government is either to exercise powers along with the RBI or by itself. The role assigned, therefore, by Section 35AA, when it comes to initiating the insolvency resolution process under the Insolvency Code, is thus, important. Without authorisation of the Central Government, obviously, no such directions can be issued.
>
> 30. The corollary of this is that prior to the enactment of Section 35AA, it may have been possible to say that when it comes to the RBI issuing directions to a banking company to initiate insolvency resolution process under the Insolvency Code, it could have issued such directions Under Sections 21 and 35A. But after Section 35AA, it may do so only within the four corners of Section 35AA.

31. The matter can be looked at from a slightly different angle. If a statute confers power to do a particular act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any manner other than that which has been prescribed. This is the well-known Rule in Taylor v. Taylor, [1875] 1 Ch. D. 426, which has been repeatedly followed by this Court. Thus, in State of U.P. v. Singhara Singh, (1964) 4 SCR 485, this Court held:

'The Rule adopted in Taylor v. Taylor [(1875) 1 Ch D 426, 431] is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the Rule is that if this were not so, the statutory provision might as well not have been enacted. A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down. If proof of the confession by other means was permissible, the whole provision of Section 164 including the safeguards contained in it for the protection of Accused persons would be rendered nugatory. The section, therefore, by conferring on Magistrates the power to record statements or confessions, by necessary implication, prohibited a Magistrate from giving oral evidence of the statements or confessions made to him. (at pp. 490-491) Following this principle, therefore, it is clear that the RBI can only direct banking institutions to move under the Insolvency Code if two conditions precedent are specified, namely, (i) that there is a Central Government authorisation to do so; and (ii) that it should be in respect of specific defaults. The Section, therefore, by necessary implication, prohibits this power from being exercised in any manner other than the manner set out in Section 35AA."

47. In the opinion of this court, Section 238 cannot be read as overriding the MCGM's right – indeed its public duty -to control and regulate how its properties are to be dealt with. That exists in Sections 92 and 92A of the MMC Act. This court is of opinion that Section 238 could be of importance when the properties and assets are of a debtor and not when a third party like the MCGM is involved. Therefore, in the absence of approval in terms of Section 92 and 92A of the MMC Act, the adjudicating authority could not have overridden MCGM's objections and enabled the creation of a fresh interest in respect of its properties and lands. No doubt, the resolution plans talk of seeking MCGM's approval; they also acknowledge the liabilities of the corporate debtor; equally, however, there are proposals which envision the creation of charge or securities in respect of MCGM's properties. Nevertheless, the authorities under the Code could not have precluded the control that MCGM undoubtedly has, under law, to deal with its properties and the land in question-which undeniably are public properties. The resolution plan therefore, would be a serious impediment to MCGM's independent plans to ensure that public health amenities are developed in the manner it chooses, and for which fresh approval under the MMC Act may be forthcoming for a separate scheme formulated by that corporation (MCGM).

48. The last contention of the respondents, that MCGM was bound by the statement made by its counsel, in the opinion of this court, cannot prevail. As held earlier, there is no approval for the plan, in accordance with law; in such circumstances, the written plea accepting the plan, by a counsel or other representative who is not demonstrated to possess the power to bind MCGM, is inconclusive. In this regard, the court notices the well-known principle that there can be no estoppel against the express provisions of law. (Ref. Kasinka Trading v. Union of India (1995) 1 SCC 274, Darshan Oils (P) Ltd. v. Union of India (1995) 1 SCC 345, Shrijee Sales Corporation v. Union of India (1997) 3 SCC 398, Shree Sidhbali Steels Ltd. v. State of U.P. (2011) 3 SCC 193, Pappu Sweets and Biscuits v. Commr. of Trade Tax, U.P. (1998) 7 SCC 228 and Commr. of Customs v. Dilip Kumar & Co. (2018) 9 SCC 1.)

49. In view of the foregoing reasons, this court holds that the impugned order and the order of the NCLT cannot stand; they are hereby set aside. The appeal is accordingly allowed, without orders on costs.

.....J. [ARUN MISHRA] .....J. [VINEET SARAN] .....J. [S. RAVINDRA BHAT] New Delhi, November 15 , 2019.