Duncans Industries Ltd. vs A.J. Agrochem on 4 October, 2019

Equivalent citations: AIR 2019 SUPREME COURT 5472, AIRONLINE 2019 SC 1173, (2019) 13 SCALE 535, (2019) 4 BANKCAS 456, (2019) 7 MAD LJ 748, 2019 (9) SCC 725, (2020) 1 ANDHLD 179, AIR 2020 SC (CIV) 562

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Bench: B. R. Gavai, M. R. Shah, Arun Mishra

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5120 OF 2019

Duncans Industries Ltd. .. Appellant

Versus

A. J. Agrochem .. Respondent

JUDGMENT

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 20.06.2019 passed by the National Company Law Appellate Tribunal (for short "NCLAT") by which the learned Appellate Tribunal has allowed the said appeal preferred by the respondent herein and has quashed and set aside the order dated 05.10.2018 passed by the National Company Law Tribunal, Kolkata (for short "NCLT"), holding that the respondent's application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short "IBC") would be maintainable, the original respondent has preferred the present appeal.

2. The facts of the case in nutshell are as under:

> 2.1 That the appellant is a Corporate Debtor. It is a company which owns and manages 14 tea gardens. Out of 14 tea gardens, the Central Government vide notification dated 28.01.2016, in exercise of its power under Section 16E of the Tea Act, 1953 has taken over the control of 7 tea gardens.

2.2 That the respondent is an operational creditor of the appellant. It used to supply pesticides, insecticides, herbicides etc. to the appellant. According to the respondent operational creditor, a sum of Rs.41,55,500/ was due and payable by the appellant corporate debtor to the respondent operational creditor. That the respondent initiated the proceedings against the appellant corporate debtor before the NCLT under Section 9 of the IBC. Initiation of the proceedings under the IBC by the respondent operation creditor was opposed by the appellant corporate debtor mainly and solely on the ground that, as provided under Section 16G(1)(c) of the Tea Act, once the management of tea unit has been taken over by the Central Government, then the proceedings for winding up or appointment of receiver cannot be initiated without the consent of the Central Government. It was the case on behalf of the appellant corporate debtor that, in the present case, as the prior approval of the Central Government has not been taken, as required under Section 16G of the Tea Act, the insolvency proceeding under Section 9 of the IBC would not be maintainable. That, by an order dated 05.10.2018, learned NCLT held that in view of the statutory provisions under Section 16G of the Tea Act and as the prior consent of the Central Government has not been obtained, the proceedings under Section 9 of the IBC shall not be maintainable. In an appeal before the NCLAT by the respondent operational creditor, by the impugned judgment and order, the NCLAT has reversed the order passed by the NCLT, Kolkata and has held that the respondent's application under Section 9 of the IBC would be maintainable even without the consent of the Central Government in terms of Section 16G of the Tea Act. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 20.06.2019 passed by the learned NCLAT, allowing the respondent's appeal thereby holding that the insolvency petition filed under Section 9 of the IBC would be maintainable, the original respondent corporate debtor has preferred the present statutory appeal.

3. Shri Shyam Divan, learned Senior Advocate has appeared on behalf of the appellant corporate debtor and Shri Amar Dave, learned Advocate has appeared on behalf of the respondent operational creditor.

4. Shri Shyam Divan, learned Senior Advocate appearing on behalf of the appellant corporate debtor has taken us through the relevant provisions of the Tea Act, 1953, more particularly Section 16. He has also taken us through the objects and the purpose of the Tea Act.

4.1 It is submitted by Shri Shyam Divan, learned Senior Advocate appearing on behalf of the appellant that the Tea Act is a special Act for the purpose of providing control by the Union of India of the Tea Industry. It is submitted that Section 16D(1) of the Tea Act, 1953 provides for taking over the tea unit and the tea undertaking inter alia if the Central Government is of the opinion that the tea unit is being managed in a manner highly detrimental to the tea industry or to public interest. It is submitted that Section 16D(4) provides that the Central Government shall take such steps as may be necessary for the purpose of efficiently managing the business of the

undertaking.

It is submitted that any notification under Section 16D is to have effect for a period not exceeding five years which can only be extended if the Central Government is 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 is 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. It is submitted that Section 16G specifically deals with a situation such as in the present application. It is submitted that an insolvency process is also meant to culminate in liquidation, if there is no revival. It is submitted that since the Tea Act permits for the Central Government to take over the management of a tea estate which is not run properly, the prior permission under Section 16G is applicable to such an estate, the management of which has been taken over by the Government.

4.2 It is further submitted by Shri Shyam Divan, learned Senior Advocate appearing on behalf of the appellant that the "winding up" process under the Companies Act, 1956 includes the insolvency proceedings under the IBC. It is submitted that, therefore, initiation of any proceedings for winding up or liquidation by way of insolvency proceedings under the IBC shall be maintainable only after the consent of the Central Government is obtained, as required under Section 16G of the Tea Act which, in the present case, is lacking.

4.3 It is further submitted by Shri Shyam Divan, learned Senior Advocate appearing on behalf of the appellant that, in the present case, in the proceedings challenging the Central Government notification dated 28.01.2016 authorising the Tea Board to take over the management and to take control of the 7 tea estates of the appellant□corporate debtor, the High Court of Calcutta though has not stayed the notification, but only made an interim arrangement for the management of 7 tea estates and the High Court has directed/permitted the appellant to run the gardens in a prudent business□like manner and to pay both the current and arrear dues of the workers. It is submitted that the interim order has been passed for improving the conditions of the workers as also that of the tea estates.

4.4 It is further submitted by Shri Shyam Divan, learned Senior Advocate appearing on behalf of the appellant that the provisions of the Tea Act, 1953 apply to tea units, the management of which have been taken over for the purpose of stimulating the production and manufacturing of tea. It is submitted that the control by the Tea Board of the manufacturing of tea from the tea units is in public interest. It is also a welfare legislation. The Tea Act is a Central Act and applies only to companies which are having tea gardens or tea units. It is submitted that if the provisions of the Tea Act are applicable, then on a conjoint reading of Section 16G, Section 16J and Section 16M of the Tea Act, an application under Section 7 or Section 9 of the IBC would not be maintainable and cannot be proceeded with without the consent of the Central Government.

4.5 It is further submitted by Shri Shyam Divan, learned Senior Advocate appearing on behalf of the appellant that, in the present case, by passing the impugned judgment and order, the learned NCLAT has erroneously relied upon Section 238 of the IBC to hold that the IBC will have an overriding effect over the Tea Act. It is submitted that Section 238 of the IBC will be applicable if

there is any conflict between the two legislations. It is submitted that, in the present case, there is no such conflict between the Tea Act and the IBC. It is submitted that even the learned NCLAT in the impugned order recognizes and/or records that the provisions of the IBC and the Tea Act are not inconsistent with each other. It is submitted that the IBC process can be started if the permission is obtained from the Central Government by a financial creditor or an operational creditor. It is submitted that the provisions of Section 7 or Section 9 may not require the consent of the Central Government to initiate such proceedings, but when the management of the tea gardens have been taken over by the Central Government under the Tea Act, one will have to consider the provisions of the Tea Act which requires the consent of the Central Government. It is submitted that, therefore, the process of insolvency resolution under the IBC has not been stopped, but what it requires is an additional permission under the Tea Act for the purpose of initiation of such insolvency proceeding. It is submitted that this should be logical as the management of the tea gardens is already under the Central Government under the Tea Act for public interest and for the interest of workers of the tea gardens. 4.6 It is further submitted by Shri Shyam Divan, learned Senior Advocate appearing on behalf of the appellant that both IBC and the Tea Act are welfare legislations. IBC is a general Act for corporate resolution process for all corporates, but the Tea Act protects corporates which have tea gardens. The Tea Act is a special legislation enacted by the Parliament for protecting the Tea Industries and Tea Gardens and provides for taking over the management by the Tea Board or the Central Government or any person authorized by the Central Government for running the tea gardens or protection of the workers. It is submitted that, therefore, its provisions can be harmoniously construed along with the IBC.

4.7 Shri Shyam Divan, learned Senior Advocate appearing on behalf of the appellant has heavily relied upon the decision of this Court in the case of Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd. (2018) 2 SCC 674 as well as the recent decision of this Court dated 14.08.2019 in the case of K. Kishan v. M/s. Vijay Nirman Company Pvt. Ltd. (2018) 17 SCC 662, on non□ applicability of Section 238 of the IBC. Making the above submissions and relying upon the above decisions of this Court, it is submitted by Shri Shyam Divan, learned Senior Advocate appearing on behalf of the appellant□corporate debtor that since there is no inconsistency between the Tea Act and the IBC, there is no occasion to apply Section 238 of the IBC to give overriding effect.

4.8 Making the above submissions and relying upon the above decisions of this Court, it is prayed to allow the present appeal and quash and set aside the impugned judgment and order passed by the learned NCLAT and restore the order passed by the NCLT, Kolkata by holding that in absence of the consent of the Central Government as provided under Section 16G of the Tea Act, the insolvency proceedings initiated by the respondent□operational creditor under Section 9 of the IBC shall not be maintainable.

5. The present appeal is vehemently opposed by Shri Amar Dave, learned Advocate appearing on behalf of the respondent□operational creditor.

5.1 It is vehemently submitted by Shri Amar Dave, learned Advocate appearing on behalf of the respondent□operational creditor that the IBC is a complete Code in itself. It is submitted that the IBC is a consolidating and amending law relating to re□organization and insolvency resolution and

for matters connected therewith or incidental thereto. It is submitted that the Code, which was promulgated in 2016, has not provided for the pre-requisite of obtaining consent from the Central Government for initiating corporate insolvency resolution process like the Tea Act, which is an earlier Act enacted in 1953. It is submitted that, thus, such a pre-requisite of obtaining consent cannot be imported and/or read into the Code when the self-contained Code itself does not provide for it.

5.2 It is further submitted that importing the requirement of obtaining consent of the Central Government prior to initiating the corporate insolvency resolution process would be completely contrary to the over-riding nature of the Code, and of the clear legislative intent of keeping the arms of the Government away from the resolution process and of not delaying the process of resolution. It is further submitted that an examination of Chapter IIIA of the Tea Act reveals that the object of restarting/revival of the tea company is a writ large in the scheme of the Tea Act. It is submitted that the said object of restarting/revival is borne out from Section 16B(2), Section 16E(1)(b), Section 16I(1) and Section 16K of the Tea Act. It is submitted that restarting/revival of the company is also the object of the IBC, as is clear from the Preamble of the IBC and also as observed by this Court in the case of Swiss Ribbons Pvt. Ltd. v. Union of India [AIR 2019 SC 739 : (2019) 4 SCC 17]. It is submitted that therefore in the event of any conflict between the two legislations, the provisions of the IBC would prevail by virtue of Section 238 of the IBC. 5.3 It is submitted by Shri Dave, learned Advocate appearing on behalf of the respondent-operational creditor that the present case is not one where Section 16G of the Tea Act applies at all, as the management has not been "taken over" by the Central Government or the Tea Board. It is submitted that the notification dated 28.01.2016 was issued under Section 16E(1) of the Tea Act. It is submitted that, according to the sub-section (2) thereof, the provisions of Section 16G shall apply to a notified order made under Section 16E(1). It is submitted that Section 16G(1) shall be applicable when the management of a tea undertaking or tea unit owned by a company has been taken over by the Tea Board. It is submitted that thus Section 16G(1) of the Tea Act does not automatically get triggered with the issuance of a notification under Section 16E(1) of the Tea Act, but becomes applicable once the management of a tea undertaking or tea unit owned by a company has been taken over by the Tea Board. It is submitted that, in the present case, pursuant to the interim order passed by the Division Bench of the High Court of Calcutta in which the notification dated 28.01.2016 is challenged by the corporate debtor, the appellant-corporate debtor continues to be in management and control of the tea units/gardens. It is submitted that therefore application of Section 16E(1) is no longer prevalent and consequently Section 16G of the Tea Act shall not be applicable at all.

5.4 It is further submitted by Shri Dave, learned Advocate appearing on behalf of the respondent-operational creditor that Section 16G(1)(c) of the Tea Act is applicable to a proceeding for "winding up" and not to proceeding for initiation of "corporate insolvency resolution process", as the both are not one and the same proceedings. It is submitted that winding up of a company is provided for, and governed by, the Companies Act. It is submitted that, on the other hand, initiation of corporate insolvency resolution process is provided for, and governed by, the Insolvency and Bankruptcy Code, 2016. It is submitted that both these processes are distinct from one another and not synonymous with one another. It is submitted that the power of the Parliament to make any law relating to winding up can be traced to Entry nos. 33 and 34 of the Union List of the Seventh

Schedule of the Constitution. It is submitted that, on the other hand, the power of the Parliament to make any law relating to insolvency can be traced to Entry no. 9 of the Concurrent List of the Seventh Schedule of the Constitution. It is submitted that, thus, winding up and insolvency proceedings are not one and the same as they have been mentioned under two separate entries in two separate lists in the Seventh Schedule. It is submitted that, as such, Section 16G(1)(c) of the Tea Act, which mandates that no winding up proceeding can lie in any court against a company which has been taken over by the Tea Board without consent of the Central Government, does not and cannot be interpreted to mean that the said section applies to any proceeding for initiation of corporate insolvency resolution process against a company which has been taken over by the Tea Board. It is submitted that the learned NCLAT has rightly held that Section 16G(1)(c) relates to winding up and, on the other hand, Section 9 of the IBC is not a proceeding for winding up, but for initiation of "corporate insolvency resolution process" to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from corporate debt by liquidation. In support of his above submissions, Shri Dave, learned Advocate appearing on behalf of the respondent□operational creditor, has heavily replied upon the decisions of this Court in Innoventive Industries Ltd. v. ICICI Bank [AIR 2017 SC 4084 at paras 16, 51 and 56 : (2018) 1 SCC 407], Swiss Ribbons Pvt. Ltd. [AIR 2019 SC 739 at paras 10 to 12 : (2019) 4 SCC 17] and a decision in PCIT v. Monnet Ispat and Energy Ltd. (2018) 18 SCC 786. Making the above submissions and relying upon the above decisions of this Court, it is prayed to dismiss the present appeal and to confirm the impugned judgment and order passed by the learned NCLAT.

6. The short question which is posed for consideration of this Court is whether before initiation of the proceedings under Section 9 of the IBC, a consent of the Central Government as provided under Section 16G(1)(c) of the Tea Act, 1953 is required and/or whether in absence of any such consent of the Central Government the proceedings initiated by the respondent□operational creditor under Section 9 of the IBC would be maintainable or not?

7. Sections 16G of the Tea Act reads as under:

> "16G. Application of Act 1 of 1956.—(1) Where the management of a tea undertaking or tea unit owned by a company has been taken over by any person or body of persons authorised by the Central Government under this Act, then, notwithstanding anything contained in the said Act or in the memorandum or articles of association of such company,—
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> (a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;
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> (b) no resolution passed in a meeting of the shareholders of such company shall be given effect to unless approved by the Central Government;
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> (c) no proceeding for the winding up of such company or for the appointment of receiver in respect thereof shall lie in any court except with the consent of the Central Government.

> (2) Subject to the provisions contained in sub-section (1), and to the other provisions contained in this Act, and subject to such other exceptions, restrictions and limitations, if any, as the Central Government may, by notification in the Official Gazette specify in this behalf, the Companies Act, 1956, shall continue to apply to such company in the same manner as it applied thereto before the issue of the notified order." 7.1 In the present case, it is true that by notification dated 28.01.2016 issued under Section 16E of the Tea Act, the Central Government authorised the Tea Board to take over the management or the control of the seven tea estates mentioned in the said notification. However, the appellant challenged the said notification before the High Court of Calcutta and the learned Single Judge of the High Court dismissed the said petition.

However, in an appeal, the Division Bench of the High Court of Calcutta vide the interim order dated 20.09.2016 has permitted the appellant-corporate debtor to continue with the management of the said tea estates. Therefore, in effect, the appellant herein has been continued to be in management and control of the tea estates, despite the notification under Section 16E dated 28.01.2016. At this stage, it is required to be noted that notification under Section 16E of the Tea Act was issued by the Central Government and the Central Government authorised the Tea Board to take steps to take over the management and control of the seven tea estates, having satisfied that the said seven tea gardens were being managed by the appellant in a manner highly detrimental to the tea industry and public interest. Despite the same, very surprisingly, by an interim arrangement, the Division Bench of the High Court of Calcutta has handed over the management and control of the seven tea gardens to the appellant, because of whose mis-management, it has deteriorated the condition of the tea gardens run by the appellant. Be that as it may, the fact remains that, pursuant to the interim arrangement/order passed by the Division Bench of the High Court dated 29.09.2016, the appellant-corporate debtor is continued to be in management and control of the seven tea gardens and they are running the tea gardens. Therefore, in the facts and circumstances of the case, and more particularly when, despite the notification under Section 16E of the Tea Act, the appellant-corporate debtor is continued to be in management and control of the tea gardens/units and are running the tea gardens as if the notification dated under Section 16E has not been issued, Section 16G of the Tea Act, more particularly Section 16G(1)(c), shall not be applicable at all. On a fair reading of Section 16G of the Tea Act, we are of the opinion that Section 16G of the Tea Act shall be applicable only in a case where the actual management of a tea undertaking or tea unit owned by a company has been taken over by any person or body of persons authorised by the Central Government under the Tea Act. Therefore, taking over the actual management and control by the Central Government or by any person or body of persons authorised by the Central Government is sine qua non before Section 16G of the Tea Act is made applicable. Therefore, in the facts and circumstances of the case, Section 16G(1)(c) shall not be applicable at all, as the appellant-corporate debtor is continued to be in management and control of the tea units/gardens.

7.2 Now, so far as the main issue, namely, whether before initiation of the proceedings under Section 9 of the IBC, a prior consent of the Central Government as provided under Section 16G(1)(c) of the Tea Act is required or not and/or in absence of any such consent of the Central Government, the proceedings under Section 9 of the IBC shall be maintainable or not, is concerned, at the outset,

it is required to be noted that the IBC is a complete Code in itself. In a recent decision of this Court in the case of Swiss Ribbons Pvt. Ltd. (supra), this Court had an occasion to consider the Statement of Objects and Reasons of the IBC and also the Preamble of the IBC, which when noted by this Court in its earlier decision in Innoventive Industries Ltd. (supra), in paragraphs 25 and 26 in the case of Swiss Ribbons Pvt. Ltd. (supra), this Court has referred to the Statement of Objects and Reasons of the IBC and the Preamble of the IBC. Paragraphs 25 and 26 are as under:

> 25. The Statement of Objects and Reasons for the Code have been referred to in Innoventive Industries [Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407 : (2018) 1 SCC (Civ) 356] which states: (SCC pp. 421□22, para 12) "12. ... The Statement of Objects and Reasons of the Code reads as under:
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> 'Statement of Objects and Reasons.— There is no single law in India that deals with insolvency and bankruptcy. Provisions relating to insolvency and bankruptcy for companies can be found in the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act, 2013. These statutes provide for creation of multiple fora such as Board of Industrial and Financial Reconstruction (BIFR), Debts Recovery Tribunal (DRT) and National Company Law Tribunal (NCLT) and their respective Appellate Tribunals. Liquidation of companies is handled by the High Courts. Individual bankruptcy and insolvency is dealt with under the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920 and is dealt with by the courts. The existing framework for insolvency and bankruptcy is inadequate, ineffective and results in undue delays in resolution, therefore, the proposed legislation.
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> 2.The objective of the Insolvency and Bankruptcy Code, 2015 is to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time□bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of government dues and to establish an Insolvency and Bankruptcy Fund, and matters connected therewith or incidental thereto. An effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship. It would also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development.
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> 3. The Code seeks to provide for designating NCLT and DRT as the adjudicating authorities for corporate persons and firms and individuals, respectively, for resolution of insolvency, liquidation and bankruptcy. The Code separates commercial aspects of insolvency and bankruptcy proceedings from judicial aspects. The Code also seeks to provide for establishment of the Insolvency and Bankruptcy Board of

India (Board) for regulation of insolvency professionals, insolvency professional agencies and information utilities. Till the Board is established, the Central Government shall exercise all powers of the Board or designate any financial sector regulator to exercise the powers and functions of the Board. Insolvency professionals will assist in completion of insolvency resolution, liquidation and bankruptcy proceedings envisaged in the Code. Information Utilities would collect, collate, authenticate and disseminate financial information to facilitate such proceedings. The Code also proposes to establish a fund to be called the Insolvency and Bankruptcy Fund of India for the purposes specified in the Code.

4. The Code seeks to provide for amendments in the Indian Partnership Act, 1932, the Central Excise Act, 1944, Customs Act, 1962, the Income Tax Act, 1961, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Finance Act, 1994, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, the Payment and Settlement Systems Act, 2007, the Limited Liability Partnership Act, 2008, and the Companies Act, 2013.

5. The Code seeks to achieve the above objectives.'"

26. The Preamble of the Code states as follows:

"An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto." 7.3 After noticing and considering the Statement of Objects and Reasons for the IBC and the Preamble to the Code, thereafter this Court has observed and held in paragraphs 27 and 28 as under:

"27. As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganisation and insolvency resolution of corporate debtors. Unless such reorganisation is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximisation of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution

> scheme —workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximise their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets. Since more investment can be made with funds that have come back into the economy, business then eases up, which leads, overall, to higher economic growth and development of the Indian economy. What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern.
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> (See ArcelorMittal [ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1] at para 83, fn 3).
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> 28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management.

Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends.

7.4 Section 16G(1)(c) refers to the proceeding for winding up of such company or for the appointment of receiver in respect thereof. Therefore, as such, the proceedings under Section 9 of the IBC shall not be limited and/or restricted to winding up and/or appointment of receiver only. The winding up/liquidation of the company shall be the last resort and only on an eventuality when the corporate insolvency resolution process fails. As observed by this Court in Swiss Ribbons Pvt. Ltd. (supra), referred to hereinabove, the primary focus of the legislation while enacting the IBC is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate debt by liquidation and such corporate insolvency resolution process is to be completed in a time□bound manner. Therefore, the entire “corporate insolvency resolution process” as such cannot be equated with “winding up proceedings”. Therefore, considering Section 238 of the IBC, which is a subsequent Act to the Tea Act, 1953, shall be applicable and the provisions of the IBC shall have an over□riding effect over the Tea Act, 1953. Any other view would frustrate the object and purpose of the IBC. If the submission on behalf of the

appellant that before initiation of proceedings under Section 9 of the IBC, the consent of the Central Government as provided under Section 16G(1)(c) of the Tea Act is to be obtained, in that case, the main object and purpose of the IBC, namely, to complete the "corporate insolvency resolution process" in a time□bound manner, shall be frustrated. The sum and substance of the above discussion would be that the provisions of the IBC would have an over□riding effect over the Tea Act, 1953 and that no prior consent of the Central Government before initiation of the proceedings under Section 7 or Section 9 of the IBC would be required and even without such consent of the Central Government, the insolvency proceedings under Section 7 or Section 9 of the IBC initiated by the operational creditor shall be maintainable.

8. In view of the above and for the reasons stated above, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed. The impugned judgment and order dated 20.06.2019 passed by the learned NCLAT holding that insolvency petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 initiated by the respondent□operation creditor shall be maintainable, is hereby confirmed. No costs.

.....J. (ARUN MISHRA) .....J. (M. R. SHAH) New Delhi .....J. October 04, 2019 (B. R. GAVAI)