



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 20<sup>TH</sup> DAY OF JANUARY, 2023**

**PRESENT**

**THE HON'BLE MR. JUSTICE G.NARENDAR**

**AND**

**THE HON'BLE MR. JUSTICE S RACHAIAH**

**COMMERCIAL APPEAL NO. 250 OF 2021**

**BETWEEN:**

M/S G.K. ISPAT PVT. LTD.  
A COMPANY REGISTERED UNDER  
THE COMPANIES ACT, 1956  
HAVING ITS REGISTERED OFFICE AT:  
2NC DUTTA SARANI,  
KOLKATA-700001.

ALSO AT:  
NO.44, BRIGADE BUSINESS SUITES  
5<sup>TH</sup> FLOOR, T.MARIYAPPA ROAD,  
(100 FEET ROAD),  
JAYANAGAR 2<sup>ND</sup> BLOCK,  
BENGALURU - 560011,  
REPRESENTED BY ITS DIRECTOR  
MR. ROHAN AGARWAL.

...APPELLANT

(BY SRI. AJESH KUMAR S., ADVOCATE)

**AND:**

M/S CONSOLIDATED CONSTRUCTION  
CONSORTIUM LIMITED  
A COMPANY INCORPORATED UNDER THE  
COMPANIES ACT, 1956  
HAVING ITS REGISTERED OFFICE AT:  
#5, 2<sup>ND</sup> LINK STREET, C.I.T. COLONY,  
MYLAPORE, CHENNAI-600004  
AND ALSO, IT'S BRANCH AT:  
NO.1018, 16<sup>TH</sup> MAIN, 1<sup>ST</sup> STAGE,

Digitally signed by  
C HONNUR SAB  
Location: High  
Court of  
Karnataka



1<sup>ST</sup> PHASE, BTM LAYOUT  
BENGALURU - 560029  
REPRESENTED BY ITS  
MANAGING DIRECTOR  
MR. S. SHIVARAMAKRISHNAN.

...RESPONDENT

(BY SRI. P.S.RAJAGOPAL, SR. COUNSEL FOR  
SRI. H.MUJTABA, ADVOCATE)

THIS COMAP IS FILED UNDER SECTION 13 (1A) OF COMMERCIAL COURTS ACT 2015 PRAYING TO CALL FOR THE RECORDS AND SET ASIDE THE JUDGMENT AND DECREE PASSED BY LXXXIII ADDL. CITY CIVIL AND SESSION JUDGE BENGALURU IN COMMERCIAL O.S.NO. 5512/2016 DATED 30.03.2021 AS PER ANNEXURE A FILED BY THE RESPONDENT AND ALLOW THE PLAINT IN COMMERCIAL O.S.NO. 25647/2016 FILED BY THE APPELLANT BY THE LXXXIII ADDL. CITY CIVIL AND SESSION JUDGE BENGALURU ON 30.03.2021 AS PE ANNEXURE A.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, G.NARENDAR J., DELIVERED THE FOLLOWING:

### **JUDGMENT**

Heard the learned counsel for the petitioner and the learned senior counsel Sri P.S. Rajagopal.

2. The Commercial Appeal is resisted by the respondent on the short ground of the statutory bar imposed by Section 14 of the Insolvency and Bankruptcy Code, 2016 (for short 'IB Code'). The facts are not in dispute.



3. The short facts necessary are as under:-

A suit came to be preferred by the respondent herein on 29.07.2016 which came to be registered as O.S. No.5512/2016 and which also came to be decreed whereby, the appellant was made liable to pay certain sums along with interest.

It is also not in dispute that another suit came to be preferred by the appellant herein which came to be registered as O.S. No.25647/2016 before the Civil Court, Bengaluru seeking for recovery of certain sums by the appellant from the respondent herein. It is not in dispute that the said suit came to be rejected. Aggrieved, the appellant is before this Court mounting a challenge to both the decrees i.e. the decree in the suit by the respondent decreeing certain amounts as due from the appellant to the respondent and the decree rejecting the suit for recovery of certain sums by the appellant from the respondent. Aggrieved, this appeal is preferred challenging both the



decrees which the learned senior counsel contend is impermissible by a single appeal.

4. It is not in dispute that in 2020 the State Bank of India, a Financial Creditor who had extended assistance to the respondent initiated proceedings before the NCLT, Chennai under Section 9 of the IB Code. That the said proceedings have been registered as IBA No.483/2020. That subsequently, notices were ordered and it is also not in dispute that an Interim Resolution Professional was also came to be appointed in terms of Section 14 (1) of the IBC Code. It is also not in dispute that the application came to be admitted by the NCLT on 20.04.2021 and the instant appeal is filed on 24.11.2021. The provisions of Section 13 and 14 of the Insolvency and Bankruptcy Code, 2016, read as under:-

**"13. Declaration of moratorium and public announcement.-**(1) *The Adjudicating Authority, after admission of the application under Section 7 or Section 9 or Section 10, shall, by an order-*



*(a) declare a moratorium for the purposes referred to in Section 14;*

*(b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under Section 15; and*

*(c) appoint an interim resolution professional in the manner as laid down in Section 16.*

*(2) The public announcement referred to in clause (b) of sub-section (1) shall be made immediately after the appointment of the interim resolution professional*

**14. Moratorium.** *-(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely-*

*(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*

*(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*



*(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

*(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

*Explanation. - For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.*

*(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during*



*moratorium period.*

*(2-A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.*

*(3) The provisions of sub-section (1) shall not apply to-*

*(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;*

*(b) a surety in a contract of guarantee to a corporate debtor.*

*(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:*

*Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan*



*under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”*

5. Section 13 of the IB Code declares a moratorium after admission of the application under Section 7 or Section 9 or Section 10 of the IB Code. It is also not in dispute that the Tribunal has declared a moratorium by its order dated 20.04.2021. Section 14 of the IB Code provides for the consequences of such declaration of moratorium and Section 14 (1)(a) of the IB Code prohibits the institution of suits and continuation of pending suits or proceedings against the corporate debtor i.e. the respondent herein.

6. The fact remains that the IRP was unable to obtain a resolution plan within the specified time and the resolution plan not having manifested and the request for extension of time has been rejected by the Tribunal, the





consequences as provided by the proviso to Section 14 of the IB Code is deemed to have taken effect. The proviso stipulates that if the Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 of the IB Code or passes an order for liquidation of corporate debtor under Section 33 of the IB Code, the moratorium shall cease to have effect. Section 33 of the Insolvency and Bankruptcy Code, 2015, reads as under:-

**"33. Initiation of liquidation.-**(1) *Where the Adjudicating Authority,-*

*(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub- section (6) of section 30; or*

*(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,*

*it shall-*



- (i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;*
- (ii) issue a public announcement stating that the corporate debtor is in liquidation; and*
- (iii) require such order to be sent to the authority with which the corporate debtor is registered.*

*(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors 1 [approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).*

*(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).*

*(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of*



*the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).*

*(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:*

*Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority. **[Emphasis added]***

*(6) The provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

*(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator."*

7. A conjoint reading of the proviso to Section 14 of the IB Code and the provisions of Section 33 of the IB Code, would show that where the resolution plan is rejected



or not accepted, the Tribunal is required to pass an order requiring corporate debtor be liquidated in the manner laid down in the chapter and carry out such other actions as mandated therein.

8. From a reading of the above, it is apparent that the prohibition under Section 14 of the IB Code prohibiting the initiation of proceedings or continuation of proceedings was in place as on the date of filing of the appeal.

9. In that view of the matter, we are of the considered opinion that the instant appeal could not have been registered and the parties ought to have awaited the result of the proceedings pending before the NCLT, Chennai in IBA No.483/2020.

10. In that view of the matter, we direct the Registry to return the papers with liberty to the appellant to re-present the same before this Court or before the Competent Forum, in accordance with law.



11. The appeal stands ordered accordingly and disposed off, for statistical purpose.

In view of disposal of the appeal, pending I.A. if any, does not survive for consideration and hence, disposed off.

Sd/-  
JUDGE

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