

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
NEW DELHI

Company Appeal (AT) (Insolvency) No.41 of 2017

IN THE MATTER OF:

Vasan Healthcare Pvt Ltd.

...Appellant

Vs

Alcon Laboratories (India) Pvt Ltd

...Respondents

Present: Mr. Sudipto Sarkar, Sr. Advocate with Mr. S. Santanam Swaminadhan, Mr. Rohan Rajasekaran and Ms Nishtha Khurana, Advocates for the appellant.

Mr. Arun Kathpalia, Sr. Advocate with Mr. C.A. Sinha and Mr. D. Philip, Advocates for the Respondents.

ORDER

19.05.2017 - Learned counsel for the appellant submits that the Madras High Court has passed an order in Company Application Nos 462 and 463 in Company Petition No.267 of 2015 staying the operation of insolvency proceedings initiated by Adjudicating Authority, Chennai Bench.

We have perused the order of 4th May, 2017 passed by the Hon'ble Madras High Court and perused the record.

Before deciding the issue, it is necessary to notice the relevant provisions, as discussed below.

Section 14 of the Insolvency and Bankruptcy Code, 2016 reads as follows:

14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the

2.

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;

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

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

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

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

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

3.

In view of the aforesaid provision of Clause (a) of sub-section (1) of Section 14 all pending suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law shall stand stayed.

Section 238 of the Insolvency and Bankruptcy Code, 2016 read as follows:

“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.”

From the said provision it would be evident that Insolvency and Bankruptcy Code, 2016 will prevail over all other law in force, including the Company Act, 1956 under which winding up proceedings have been initiated.

It appears that the aforesaid provisions have not been brought to the Hon'ble Judge of the Madras High Court. In the circumstances we give liberty to the parties to bring this fact to the notice of the Hon'ble Madras High Court, Chennai. Thereafter, the order of stay is not vacated the Appellate Tribunal will decide the case on merit.

Further as the appellant has already moved before the Hon'ble Madras High Court and have obtained an order of stay on 4th May, 2017 from the High Court, then in such circumstances the appellant

will reply as to why the appeal be dismissed, the appellant having already moved before the Hon'ble High Court?

Post the matter on 30th May, 2017.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member (Technical)

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