IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

CP 1239/I&B/NCLT/MAH/2018

(Under Section 7 of the I&B Code, 2016)

In the matter of
Bank of Baroda
...Financial Creditor
v/s
Topworth Pipes & Tubes Private Limited
...Corporate Debtor

Order Delivered on 11.12.2018

Coram: Hon'ble Shri V. P. Singh, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Mr Animesh Bisht Advocate, Mr Dhananjay Kumar, Advocate, Ms Saloni Kapadia, Advocate and Mr Anish Mathur, Advocate

For the Respondent: Krushi N. Barfiwala, Advocate

Per V. P. Singh, Member (Judicial)

ORDER

1. It is a Company Petition filed u/s 7 of Insolvency & Bankruptcy Code, 2016 (**IBC**) by Bank of Baroda, Financial Creditor against Topworth Pipes & Tubes Private Limited, Corporate Debtor, to initiate Corporate Insolvency Resolution Process (**CIRP**) against the Corporate Debtor on the grounds that, as on 31.03.2018, Corporate Debtor has defaulted in making repayment of ₹2,16,67,77,458.86/- which is due pursuant to the various loan agreements.

2. This Petitioner had granted certain term loan and working capital facilities to the Corporate Debtor from time to time which were reviewed and restructured on the terms and conditions set out under the Sanction Letter ("**Restructuring Sanction Letter**" or "**RSL**") dated 27.03.2015 and the Common Debt Restructuring Agreement ("**CDRA**") dated 30.03.2015 entered among the Corporate Debtor, the Financial Creditor and certain other consortium lenders. There are Working Capital Facilities agreed upon in sanction letter dated 11.04.2014 which were unchanged in the RSL.

3. Under the RSL and CDRA the Bank has sanctioned Term Loan to the tune of Rs.28.25crore; Funded Interest Term Loan – I to the tune of Rs.6.22crore; Cash Credit facility to the tune of Rs.13crore; Letter of Credit facility to the tune of Rs.95crore; and Bank Guarantee to the tune of Rs.46crore.

4. The Petitioner has submitted the certified copy of the Board Resolution of the Petitioner Bank dated 14.11.2017 in which the Chief Managers of Bank of Baroda is authorised to file this petition. The petition has been submitted by Mr Dilip Anantrao Wankhede, Chief Manager of the Bank of Baroda.

5. The amounts in default under Term Loan is of Rs.37,01,50,302.38/-; under Funded Interest Term Loan – I is of Rs.5,08,55,913.73/-; under Cash Credit facility is of Rs.1,45,19,01,581.75/-; Letter of Credit facility is of Rs.29,38,69,661/-. It is submitted that total amount in default under all the various facilities extended to the Corporate Debtor amounts to Rs.2,16,67,77,458.86/- and the date of default under all these facilities is 31.10.2015. The Petitioner has submitted a summary of computation of amount of default along with the date of default on part of the Corporate Debtor. The Petitioner has also submitted the financial contracts through which the facilities above were granted to the Corporate Debtor. A summary of immovable properties mortgaged in favour of the Petitioner along with other lenders of the Corporate Debtor and the copies of certificate of registration of charge created by the Corporate Debtor in respect of the securities created for the benefit of the Financial Creditors of the Corporate Debtor is also submitted by the Petitioner.

6. The petitioner has submitted record of default as shown in the data available with Trans Union CIBIL Limited credit information companies.

7. The Ld. Counsel for the Corporate debtor has submitted that she does not want to file any reply in this matter and she has no objection if the petition is admitted.

8. We have heard the argument of Ld. counsel for both the parties and perused the record.

Facts stated in the petition shows that Bank of Baroda, who happens to be financial creditor had granted certain term loan and working capital facilities to Topworth Pipes & Tubes Private Ltd. ("Corporate Debtor") from time to time under a Working Capital Consortium Agreement dated 27th April 2011 (Exhibit-8, pages 124 to 170 of the Application) and supplemented by the First Supplemental Working Capital Consortium Agreement dated 27th October 2014 (Exhibit-8, pages 171 to 198 of the Application). The said facilities were reviewed and restructured on the terms and conditions set out under the sanction letter dated 27th March 2015 ("Restructuring Sanction Letter") (Exhibit-8, pages 199 to 215 ofthe Application) and the common debt restructuring agreement dated 30th March 2015 ("CDRA") (Exhibit-8, pages 216 to 266 of the Application) entered into, inter alia, amongst the Corporate Debtor, Applicant and certain other consortium lenders ("Lenders"). Under the Restructuring Sanction Letter and the CDRA, the Applicant's exposure to the Corporate Debtor is as under (Exhibit-8, page 248 and page 261 of the Application):

(a) Term loan facility- Rs. 28.25 Crores;
(b) Funded interest term loan - I or "FITL - I" - Rs. 6.22 Crores;
(c) Cash credit - Rs. 13 Crores;
(d) Letter of credit - Rs. 95 Crores; and (e) Bank guarantee - Rs. 46 Crores.

The facilities above will be collectively referred to as the "Facilities". The Applicant submits that the limits described above of the working capital facility were set out in the Sanction Letter dated 11 th April 2014 (Exhibit-8, pages 110 to 123 ofthe Application). The Applicant submits that such limits have not been changed in the Restructuring Letter.

Under the Facilities, the Applicant disbursed the following amounts to the Corporate Debtor (Exhibit-3, pages 26 to 28 ofthe Application):

a. Rs. 47,28,22,672/- under the term loan facility;

b. Rs. 3,52,84,410/-under the Funded Interest Term Loan —1;

c. Rs. 13,00,00,000/- (limit of Cash Credit facility was reviewed and kept at the existing limit ofRs. 13,00,00,000/-as on March 27, 2015);

d. Rs. 83,04,99,674/- under the letter of credit (Letter of Credit facility is the first LC issued after restructuring on March 27, 2015. The said LC was opened on May 27, 2015 (Open Date) and was valid till June 25, 2015 (Expiry Date) and has not been paid).

e. Rs. 28,41,53,812/- under the guarantee (Bank Guarantee (0696FGFN001611) is the first bank guarantee opened and was valid from October 5, 2010 (Effective Date) till April 4, 2011 (Expiry Date). The said bank guarantee had devolved and payment was made to the Bank by the Corporate Debtor. There are no bank guarantees that are open/valid as on March 31, 2018).

It is alleged that the Corporate Debtor committed default in its repayment obligations under the said Facilities. The amount of default in relation to the Facilities is as under (Exhibit-4, pages 29 to 30 of the Application):

Facility	Loan numbers and drawdown numbers	Amount in default
Term Loan	06960600000896	**Rs. 37,01,50,302.38/-**
Funded Interest Term Loan I	06960600001283	**Rs. 5,08,55,913.73/-**
Cash Credit	06960500000074	Rss. **1,45,19,01,581.75/-**
Letter of Credit	06960900000062, 25850900000057	**Rs. 29,38,69,661/**
The total amount in default		**Rs. 216,67,77,458.86/-**

The factum of default on the part of Corporate Debtor in repayment of the Facilities is evident from the following documents annexed to the Application:

a. Recall notice dated 1 February 2016 issued by the Applicant to the Corporate Debtor. (Exhibit-Il, page 428 to 429 of the Application).

b. Record of default under the report of the Central Repository of Information on Large Credits dated 1 st September 2017 ("CRILC Report") (Exhibit-9, pages 276 to 278 of the Application) (inter alia entry no. 6).

c. Record of default under the report of the CBIL dated 1 st September 2017: (i) Cash Credit- Credit Facility 1 (06960500000074) (Exhibit-9, page 268269 of the Application);

(ii) Term Loan (06960600000896)- Credit Facility 2 - (Exhibit-9, page 269 of the Application);

(iii)FITL-1 (06960600001283) - Credit Facility 3 (Exhibit-9, page 270 of the Application); and

(iv) Letter of Credit (06960900000062)- Credit Facility 4 (Exhibit-9, pages 270 and 271 of the Application).

d. Entries in the bankers' book maintained by State Bank of India in accordance with Bankers' Book Evidence Act, 1891 (Exhibit-10, pages 279 to 425 of the Application).

e. Standalone financial statement of the Corporate Debtor for the financial year ending 31 st March 2016 proving existence of financial debt and default. (Exhibit-11, pages 430 to 548 of the Application- relevant page 483).

The financial creditor has proposed Mr K. G. Somani to be the interim resolution professional for the corporate insolvency resolution process of the Corporate Debtor (Annexure-Il, pages 549 to 555). The undertaking of Mr K. G. Somani that there are no disciplinary proceedings pending against him with the Insolvency and Bankruptcy Board or Indian Institute of Insolvency Professional of ICAI is at page 550 of the Application.

During course of argument the counsel appearing on behallf of the corporate debtor submitted that he has no objection if the petition for initiation of CIRP is admiited.But after argument was over, the corporate debtor Topworth Pipes & Tubes Private Ltd. ("Corporate Debtor") have placed on record an Affidavit dated 27th November, 2018 by which they have confirmed that inter alia by order dated 7th June 2016 read-with subsequent orders passed by the Hon'ble Bombay High Court in Company Petition No. 175 of 2015, the Company Petition No. 175 of 2015 had been admitted against the Corporate Debtor, and a provisional liquidator had been appointed by the Hon'ble Bombay High Court for the Corporate Debtor.

After that the Bank of Baroda , financial creditor , has filed Written Submissions raising following points in reply to the facts brought on record by the corporate debtor.

1. The National Company Law Appellate Tribunal ("NCLAT") in India bulls Housing Finance Ltd. vs Shree Ram Urban Infrastructure Ltd [Company Appeal (AT) (Insolvency) No. 252 of 2018] ("Indiabulls") has taken a view that an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("Code") is not maintainable once an order for winding up has been passed against the 'corporate debtor'. The NCLAT has held as under:

"In the present case, admittedly the High Court of Bombay has already been ordered for winding up respondent- 'Corporate Debtor', which is the second stage of the proceeding. For the said reason, we hold that initiation of 'Corporate Insolvency Resolution Process ' which is the ,first stage of resolution process against the same 'Corporate Debtor, does not arise."

2. A similar view has been taken by the Hon'ble NCLAT inter alia in the case of Innoventive Industries Ltd. vs. Kumar Motors Pvt. Ltd. [2018 SCC Online NCLAT 86] , Forech India Pvt Ltd vs. Edelweiss Asset Reconstruction Company Ltd & Anr [2017 SCC Online NCLAT 316] , Unigreen Global Pvt Ltd vs. Punjab National Bank & Ors [2017 SCC Online NCLAT 566], ("Unigreen and Arise India Limited vs. TCI Freight [2018 SCC Online NCLAT 223] .

3. The Hon'ble Bombay High Court in the PSL and the Jotun Appeal has taken a divergent view from that of the Hon'ble NCLAT after considering the decisions of the Hon'ble Supreme Court on applicability of the provisions of the erstwhile Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA") to companies under winding up.

4. It is further pertinent that the Hon'ble Bombay High Court's judgment in the Jotun Appeal is the latest judgment on the point and has been passed after the latest judgment of the Hon 'ble NCLAT in the Arise matter.

5. The Hon' ble Bombay High Court had the occasion to consider the provisions of the Code and its applicability in case of a winding up order being passed against a corporate debtor. In the case of Jotun India Pvt Ltd V PSL CA No. 572/2017 he the Hon'ble Bombay High Court has inter alia held that:

53. "**It has now been held by the Supreme Court in Bank of New York Mellon (Supra) that by virtue of Section 252 of IBC, even in the case of a company where a winding up order has been passed, it is open to such a company, whose reference was deemed to be pending with BIFR, to seek remedies under IBC before NCLT**" (para 53)

57. "It was submitted, and I agree with Mr. Dwarkadas, that admission of the winding up petition by the ,jurisdictional High Court would not mean that NCLT either loses . jurisdiction or cannot exercise jurisdiction in case of a petition which is filed by another creditor (financial, operational or the company itself under section 10 of IBC). The legislature is deemed to be aware of the provisions of an existing law, i.e., the Companies Act, whilst enacting the provisions of IBC as well as the fact that company petitions that may have been filed prior to IBC coming into force may have been admitted and pending final disposal in the jurisdictional High Court." (Para 57)

62." In fact, the Hon'ble Supreme Court in the case of Madura Coats Ltd. v. Modi Rubber Ltd. (supra) has held that the provisions of SICA would prevail over the provisions of the Companies Act and proceedings under the Companies Act must give way to proceedings under SICA. Therefore since SICA is repealed and replaced by IBC (S. 252 read with VIll Schedule of IBC), the provisions of IBC should prevail over the provisions of the Companies Act, 2013."

" 71.Furthermore, this transitional provision cannot in any way affect the remedies available to a person under IBC, vis-å-vis the company against whom a winding up petition is filed and retained in the High Court, as the same would amount to treating IBC as if it did not exist on the statute book and would deprive persons of the benefit of the new legislation. This is contrary to the plain language of IBC. If the contentions of petitioner were to be accepted, it would mean that in respect of companies, where a post notice winding up petition is admitted or a provisional liquidator appointed, provisions of IBC can never apply to such companies for all times to come. "

"72. Even under the 29th June 2017 Notification, it is only those petitions pending in the High Court where a notice may not have been issued which would not get transferred if a winding up petition against such a company has already been admitted. But even in such a case, there is no express or implied bar from other creditors of such a company or the corporate debtor from filing fresh proceedings under IBC. If at all such creditors/corporate debtors are barred from approaching the High Court and not NCLT under IBC. "

(8) The order passed by the Hon'ble Bombay High Court in the Jotun India v 's PSL matter was upheld by the Hon'ble Division Bench of the Bombay High Court 2018 SCC Online Bomb 1952 which held as under:

"42. The general legal principles of interpretation of statute state that the general law should yield to the special law. In the context of the present statute i.e. IBC 2016, we are of the view that the Companies Act 1956 could be treated as general law and IBC, 2016 to be a special statute to the extent of the provisions relating to revival or resolution of the company as per provision under Chapter 11 of the IBC. Even if the Companies Act and the IBC 2016 are considered as special statutes operating in their respective field, we are of the view that the IBC 2016 being later enactment and in view of the statement and objects and the purpose [or which it was enacted the provisions relating to revival/resolution of the company incorporated under Chapter Il will have to be given primacy over the provisions of the winding up proceeding pending before the Company Courts which are referred as saved petitions. " (para 42)

"45. In view of the afore-stated reasoning and the case laws cited, we are of the considered opinion that the Company Court while dealing with the winding up petitions (saved petitions) shall have no jurisdiction to stay the proceedings before the NCLT in respect of revival or resolution issue. We may further state that in case the forum under the IBC, 2016 i.e. NCLT fails to revive or successfully implement the resolution plan, then the Company Judge seized with the winding up petitions (saved petitions) would deal with the petition in accordance with law. We are of the view that allowing both the forums i.e. Company Court and NCLT to go ahead with liquidation proceedings/winding up proceedings simultaneously would not serve any likely situation,we observe that the Company Judge,in saved petitions ,would exercise jurisdiction in case revival efforts by NCLT fails. " (para 45)

"46. We find that the learned Single Judge approached the issue in its proper perspective and harmoniously considered various provisions of the relevant enactments keeping in view the object behind the special statutes. We do not find any error or perversity in the view adopted by the learned Single Judge. " (para 46)

(9) The Code itself contemplates a bar on filing an application for insolvency resolution under specific circumstances by certain entities. Section 11 (d) of the Code inter alia prohibits a corporate debtor against which a liquidation order has been passed from making an application for initiating corporate insolvency resolution process. Notably, a financial creditors and operational creditors are not barred from filing an application against a corporate debtor undergoing the process of liquidation after admission of a company winding up petition but prior to the order of liquidation being passed. The intention of the legislation is clear from Section 1l(d) of the Code, which only bars insolvency proceedings against a corporate debtor, after an order of liquidation against it, in case of an application by the said corporate debtor itself and conspicuously omits any such restriction for applications by financial or operational creditors.

(10) The Indiabulls, Kumar Motors etc. decisions of the Hon'ble NCLAT rely on the rationale that once winding up order is passed the stage of any resolution or revival of the company is over and the company must now necessarily be liquidated. However, this proposition also is not consistent with the provisions of the Companies Act, 1956 ("Companies Act") itself as well as the decisions of the Supreme Court which have consistently held that an order of winding up is not a culmination of proceedings but in effect the commencement of the process of winding up.

(11) The Hon'ble Supreme Court in the case of Rishab Agro Industries Ltd. vs P.N.B. Capital Services Ltd. [(2000) 5 SCC 515] has held that:

"1l. It may also be noticed that winding up order passed under the Companies Act is not the culmination of the proceedings pending before the Company Judge but is in effect the commencement of the process. The ultimate order to be passed in such a petition is the dissolution of the company in terms of Section 481 of the Companies Act. The words "shall be deemed to commence " in Section 441 of the Companies Act clearly show the intention of the legislature that although the winding up of a petition does not in fact commence at the time of presentation of the petition itself but it shall be presumed to commence from that stage. The word "deemed" used in the Section would thus mean, "supposed", "considered","construed", "thought", "taken to be" or "presumed". "

(12) The aforesaid findings in the matter of Rishab Agro Industries Ltd. vs P.N.B. Capital Services Ltd. [(2000) 5 SCC 5 1 5] have been relied upon by the Hon'ble Supreme Court in paragraph 25 in the case of Madhura Coats Ltd. vs Modi Rubber Ltd. & Anr.[(2016) 7 SCC 603].

(13) The Hon'ble Supreme Court in the case of Bank Of New York Mellon London Branch vs Zenith Infotech Limited [(2017) 5 SCC l] has held as under:

> "The core principles laid down in the said decisions of the Court, namely, that immediately on registration of a reference under Section 15 of the erstwhile SICA, the enquiry under Section 16 is deemed to have commenced and that the winding up proceedings against a company stood terminated only after orders under Section 481 of the Companies Act, 1956, are passed, will have to be noticed to adjudge the correctness of the said view of the High Court.„

(14) **In light of the aforesaid , the position seems settled that an order of winding up or liquidation in no manner means a culmination of proceedings and it is only once an order under Section 481 of the Companies Act is passed for dissolution of the company that the proceedings culminate.**

(15) Accordingly, it is submitted that not only can a company be revived post an order of winding up but the 'proceedings' post an order of winding up would be covered under the term "proceedings" under Section 14 of the Code and would necessarily be stayed upon admission of an insolvency application under the Code.

(16) Prior to the enactment of the Code, a 'Sick Industrial Company' as defined under SICA could file a reference before the Board of Industrial and Financial Reconstruction ("BIFR"). Once a reference was filed, the moratorium under Section 22 of SICA kicked in,

as a result whereof proceedings such as winding up, execution and the like could neither be filed nor proceeded with. While SICA was applicable only to industrial companies, the registration of reference under SICA offered similar protection to a sick company as under the Code to a corporate debtor under insolvency resolution as the provisions of Section 22 of SICA are pari materia to Section 14 of the Code.

(17) The question of applicability of the moratorium under SICA to 'proceedings' post a winding up order was before the Hon'ble Supreme Court in the case of Madhura Coats Ltd. vs Modi Rubber & Anr. [(2016) 7 SCC 603]. The Hon'ble Supreme Court has held as under:

"25. With regard to the merits of the controversy before it, this Court took the view that it could not be said that the provisions of Section 22 of the SICA would not be attracted after an order of winding up is passed. While referring to this Section it was held that there was no doubt that the provision would be applicable even after the winding up order is passed and no proceedings even thereafter could be taken under the Act.

27. From the above it is quite clear that different situations can arise in the process of winding up a company under the Companies Act but whatever be the situation, whenever a reference is made to the BIFR under Sections 15 and 16 of the SICA, the provisions of the SICA would come into play and they would prevail over the provisions of the Companies Act and proceedings under the Companies Act must give way to proceedings under the SICA. "

28. In this state of the law, in so far as the present appeal is concerned, we do not find any error in the view taken by the High Court in concluding that the winding up proceedings before the Company Court cannot continue after a reference has been registered by the BIFR and an enquiry initiated under Section 16 of the SICA. " (paras 25 to 28)

(18) The Hon'ble Supreme Court in the case of Rishab Agro Industries Ltd. vs P.N.B. Capital Services Ltd. [(2000) 5 SCC 515] examined the operation of the moratorium under SICA to 'proceedings' post winding up in greater detail and held as under:

"9. It is true that for invoking the applicability of Section 22 it has to be established that an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or sanctioned scheme is under implementation or an appeal

under Section 25 to an industrial company is pending. But it cannot be said that despite existence of the aforesaid exigencies the provision of Section 22 would not be attracted after the order of winding up of the company is passed. "

7. "Hence, we find it difficult to agree with the findings of the High Court to the effect: "The expression "proceeding"appearing in Section 22, sub- section (1) of the Act means the proceeding up to the stage of passing of winding up order by the Court. In terms of Section 22(1) the proceedings for winding up of the company cannot be proceeded with and all such proceedings shall remain stayed till the conclusion of the proceedings before the BIFR if an enquiry is pending under Section 16 of 1985 Act or any scheme is framed under Section 17 of the said Act. This provision is not attracted in a case in which the order of winding up has already been made because once the winding up of the company comes to an end, and other provisions in the Companies Act, 1956, relating to the company in liquidation comes into play and the official liquidator, after taking possession of the assets of the company in liquidation has to discharge the functions as specified in various provisions of the Companies Act, relating to the company in liquidation. "

(19) The Supreme Court, has held the proceedings that are undertaken post a winding up order to also fall within the scope of the moratorium under SICA. The Hon'ble Supreme Court has upheld the said position in the case of Bank Of New York Mellon London Branch vs Zenith Infotech Limited [(2017) 5 SCC ll.

(20) In the aforementioned decisions, the Hon'ble Supreme Court has categorically upheld the reference and the consequential moratorium under SCIA even after an order of liquidation/winding up had been passed against a company. An application under the Code, which has replaced SICA, must therefore also be allowed to be admitted even after an order of winding up has been passed on the same reasoning as rendered by the Supreme Court in relation to SICA

(21) The object of the Code, as evident from its "Statement and Objects" is to provide a consolidated legal framework for insolvency resolution in a time bound manner. Under the winding up provisions of the Companies Act a single creditor, whose debt was undisputed could wind up a company, thus bringing about its untimely financial death of a debtor. The Code on the other hand mandatorily requires that an attempt at revival be made by appointing an IRP to examine whether such a company can be revived.

(22) It is hence clear that the object of the Code would be defeated in its entirety if a petition for insolvency resolution could not be admitted after an order of winding up has been

passed. As discussed above, till an order under Section 481 of the Companies Act is passed there is scope to revive a company.

(23) Hence, it could never be the intention of the legislature that despite the existence of the provisions of the Code, a company should be wound up without giving it a chance for resolution of its insolvency. Such revival has been held to be possible even post a winding up order under the erstwhile provisions of SICA.

The Ld counsel arguing on behalf of the petitioner has also relied on the case law of Hon'ble Bomaby High Court in case of HDFC Bank Vs The Deputy Commissioner of Income Tax Mumbai 2016 SCC ONLINE Bombay 1109 ,wherein it has been held that:

> **"26.** We are conscious of the fact that we are fallible and, therefore, an order passed by us may not meet the approval of all and some may justifiably consider our order to be incorrect. However the same has to be corrected/rectified in a manner known to law and not by disregarding binding decisions of this Court. In fact our court in *Panjumal Hassomal Advani* v. *Harpal Singh Abnashi Singh Sawhney* AIR 1975 (Bom) 120 has observed that a coordinate bench cannot refuse to follow an earlier decision on the ground that it is incorrect and/or rendered on misinterpretation. This for the reason that the decision of a co-ordinate bench would continue to be binding till it is corrected by a higher Court. This principle laid down in respect of a co-ordinate Court would apply with greater force on subordinate Courts and Tribunals**. We are also conscious of the fact that we are not final and our orders are subject to appeals to the Supreme Court. However, for the purposes of certainty, fairness and uniformity of law, all authorities within the State are bound to follow the orders passed by us in all like matters, which by itself implies that if there are some distinguishing features in the matter before the Tribunal and, therefore, unlike, then the Tribunal is free to decide on the basis of the facts put before it. However till such time as the decision of this court stands it is not open to the Tribunal or any other Authority in the State of Maharashtra to disregard it while considering a like issue. In case we are wrong, the aggrieved party can certainly take it up to the Supreme Court and have it set aside and/or corrected or where the same issue arises in a subsequent case the issue may be re-urged before the Court to impress upon it that the decision rendered earlier, requires reconsideration. It is not open to the Tribunal to sit in appeal from the orders of this Court and not follow it. In case the doctrine of precedent is not strictly followed there would complete confusion and uncertainty. The victim of such arbitrary action would be the Rule of law of which we as the Indian State are so justifiably proud.**

27. It is in the above circumstances that we are of the view that we have to exercise our powers under Article 227 of the Constitution of India. This is in view of the manner in which the impugned order of the Tribunal has chosen to disregard and/or circumvent the binding decision of this Court in respect of the same assessee for an earlier assessment year. This is a clear case of judicial indiscipline and creating confusion in respect of issues which stand settled by the decision of this Court.

28. It is in the above view, that we set aside the impugned order of the Tribunal dated 23rd September, 2015 in its entirety and restore the issue to the Tribunal to decide it afresh on its own merits and in accordance with law. However the Tribunal would scrupulously follow the decisions rendered by this Court wherein a view a has been taken on identical issues arising before it. **It is not open to the Tribunal to disregard the binding decisions of this Court, the grounds indicated in the impugned order which are not at all sustainable. Unless the Tribunal follows this discipline, it would result in uncertainty of the law and confusion among the tax paying public as to what are their obligations under the Act**. Besides opening the gates for arbitrary action in the administration of law, as each authority would then decide disregarding the binding precedents leading to complete chaos and anarchy in the administration of law."

Given the law laid down by the Hon'ble High Court in HDFC Bank (supra) it is clear that the judgement of the Honble High Court has a binding effect on the Tribunal. Order by the Hon'ble High Court of Bombay passed in the matter of Jotun India Pvt Ltd (supra), which has been passed after the judgement of the Hon'ble NCLAT passed in the cases of "India bulls Housing","Kumar Motors","Arise India Ltd", "Forech India Pvt Ltd", "Unigreen Global India Ltd", is binding on this tribunal.

The position seems settled that an order of winding up or liquidation in no manner means a culmination of proceedings and it is only once an order under Section 481 of the Companies Act is passed for dissolution of the company that the proceedings culminate.

9. In this case the existence of debt and default is reasonably evidenced in the documents supporting the petition as well as from the statement of the ld. Counsel for the Corporate Debtor of not having any objection if the petition is admitted. Further the Petition under section 7 is complete. The Petitioner having named the Interim Resolution Professional with his consent, and there being no disciplinary proceedings against the same. We are of the view that the present case is fit for admission under the Insolvency and Bankruptcy Code, 2016.

10. We hereby admit this petition filed under Section 7 of IBC, 2016, against the corporate debtor for initiating corporate insolvency resolution process against the corporate debtor and declare moratorium with consequential directions as mentioned below:

I. That this Bench hereby prohibits:

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 Securitization 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.

II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

IV. That the order of moratorium shall have effect from 11.12.2018 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.

VI. That this Bench hereby appoints Mr. Kishan Gopal Somani, having Registration Number [IBBI/IPA-001/IP-P00300/2017-18/10544] as Interim

Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

11. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or whatsapp.

Sd/-
RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-
V.P.SINGH
Member (Judicial)

11th Dec, 2018