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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ O.M.P.(EFA)(COMM.) 6/2016 & CCP(O) 21/2017 & EX.Appls.(OS) 451/2019, 453-454/2019, 490-491/2019, 667-668/2019, 719/2019, 803/2019, 858-862/2019, 893/2019, 3/2020, 33/2020 & I.As.11066-11066/2017, 2066-2070/2018, 2072/2018, 2075/2018, 2077-2083/2018, 4144-4145/2018, 4410/2018, 6346/2018, 6680-6681/2018, 7005-7006/2018, 7665/2018, 9262/2018, 9264/2018, 14121/2018, 14551/2018, 14554/2018, 15462/2018, 16727/2018, 17282/2018, 885/2019, 1132/2019, 6859/2019, 6933/2019

**39 DAIICHI SANKYO COMPANY, LIMITED ..... Decree Holder**

Through: Mr. Arvind Nigam, Senior Advocate with Mr. Amit K. Mishra, Mr.Mohit Singh, Ms.Kanika Singhal, Mr.Shivam Pandey, Mr.Turab Ali Kazmi, Mr. Shivam Pandey, Mr.Aditya Shanker, Mr.Kunal Chatterji, Mr.Rohan Jaitley and Mr.Jaiveer Shergill, Advocates

versus

**MALVINDER MOHAN SINGH AND ORS. .... Judgment Debtors**

Through: Ms.Suman Yadav, Mr.Aditya Sarin, Mr.Shobhit Ahuja and Ms.Nitya Gupta, Advocates for JD No.1, 3, 4 and 13

Mr.Aditya Dewan, Ms.Neeha Nagpal and Mr.Vishvendra Tomar, Advocates for JD-6 and JD-8

Mr.Akhil Sibal, Senior Advocate and Mr.Varun Mishra, Advocate for JD No.14, 15, 18 and 19

Ms.Udita Singh, Advocate for JD No.16 and 17

Mr.Ramji Srinivasan, Senior Advocate with Ms.Aditi Mittal, Mr.Aditya N. Mahajan, Mr.Rishub and Ms.Sylona Mohapatra, Advocates for COC in EX. APPL. (OS) 858-862/2019

Mr.Darpan Wadhwa, Senior Advocate with Ms.Bihu Sharma, Advocate for Garnishee/Luxury Farm  
Mr.Basit K. Zaidi, Advocate for Religare Capital Markets Ltd. and Religare Enterprises Ltd.  
Mr.Manu Bajaj, Advocate for ICICI Bank  
Mr.Pratyush Miglani and Mr.Nikhil Varma, Advocates for Ranchem Pvt. Ltd.  
Mr.Ankit Agarwal, Advocate for Garnishee No.26/R.C. Nursery  
Ms.K. Gayatri, Advocate for Garnishee No.56  
Mr.Kartikey Gupta, Advocate for applicants I.A. 15462/2018  
Mr.Gaurav Chaudhary, Advocate for HFCL  
Mr.Gurpreet Hora, Advocate for Blue Line

+ O.M.P.(I) (COMM.) 206/2016

**40** DAIICHI SANKYO COMPANY LIMITED ..... Petitioner

Through: Mr. Arvind Nigam, Senior Advocate with Mr. Amit K. Mishra, Mr.Mohit Singh, Ms.Kanika Singhal, Mr.Shivam Pandey, Mr.Turab Ali Kazmi, Mr. Shivam Pandey, Mr.Aditya Shanker, Mr.Kunal Chatterji, Mr.Rohan Jaitley and Mr.Jaiveer Shergill, Advocates

versus

MALVINDER MOHAN SINGH & ORS. .... Respondents

Through: Ms.Suman Yadav, Mr.Aditya Sarin, Mr.Shobhit Ahuja and Ms.Nitya Gupta, Advocates for JD No.1, 3, 4 and 13  
Mr.Akhil Sibal, Senior Advocate and Mr.Varun Mishra, Advocate for JD

No.14, 15, 18 and 19

**CORAM:**  
**HON'BLE MR. JUSTICE J.R. MIDHA**

**ORDER**  
% **15.01.2020**

**EX. Appls. (OS) 858-862/2019**

1. Prius Commercial Projects Pvt. Ltd., Pawan Impex Pvt. Ltd., Payne Realtors Pvt. Ltd., Sharan Hospitality Pvt. Ltd. and SVIIT Software Pvt. Ltd. have filed these applications through their Resolution Professionals seeking stay of these proceedings and modification/variation of the order dated 13<sup>th</sup> November, 2018 passed in I.A. 14554/2018 and order dated 27<sup>th</sup> September, 2019 passed in I.A. 14553/2018 on the ground that a moratorium has been issued by the National Company Law Tribunal under Section 14 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as I & B Code).
2. Learned senior Counsel for the applicants urged at the time of the hearing that these proceedings against the applicants be stayed till the duration of the moratorium under Section 14 of the I & B Code. It is further submitted that the interim orders dated 13<sup>th</sup> November, 2018 and 27<sup>th</sup> September, 2019 be modified/varied to the extent it restrains the applicants from transferring its assets. It is submitted that the National Company Law Tribunal has imposed the moratorium under Section 14 of I & B Code. It is submitted that object of Section 14 is to try and maximise the value of the assets of the corporate debtors. It is further submitted that the orders dated 13<sup>th</sup> November, 2018 and 27<sup>th</sup> September, 2019 shall derail the entire process as no prospective resolution applicant will turn up for resolution of corporate debtor. Reliance is placed on *Alchemist Asset Reconstruction Company Limited v. Hotel Gaudavan Private Limited*, AIR 2017 SC 5124

and *Power Grid Corp. of India v. Jyoti Structures Ltd.*, 246 (2018) DLT 485.

3. Learned senior counsel for the Committee of Creditors of the five corporate debtors support the applicants. It was submitted that the assets of the corporate debtors are required to be free from any encumbrance or injunction to ensure that the prospective resolution applicants provide maximum values in their plans. It is submitted that order dated 13<sup>th</sup> November, 2018 records that the interim direction will not impact the rights of the applicants under any other applicable provisions of law. It was further submitted that the two resolution plans have been received by the resolution professional and both the resolution applicants expressed concern about the injunction order passed by this Court. It was submitted that the provisions of the I & B Code have overriding effect over all other laws. Reference is made to various provisions of I & B Code. Reliance is placed on *Innoventive Industries Ltd. v. ICICI Bank*, (2018) 1 SCC 407, *Swiss Ribbons Pvt. Ltd. v. UOI*, (2019) 4 SCC 17, *Alchemist Asset Reconstruction Company Limited v. Hotel Gaudavan Private Limited*, (2018) 16 SCC 94, *Arcelor Mittal India Pvt. Ltd. v. Satish Kumar Gupta*, (2019) 2 SCC 1, *Power Grid Corporation of India Ltd. v. Jyoti Structures Ltd.*, 246 (2018) DLT 485 and *M/s APCO-TITAN (JV) v. National Highways and Infrastructure Development Corporation Ltd.*, CS(OS) 2015/2019 decided on 22<sup>nd</sup> October, 2019.

4. Learned senior counsel for the decree holder urged at the time of the hearing that Section 14 of the I & B Code prohibits the continuation of pending suits or proceedings including execution of any judgment, decree, order or award from the date of declaration of the moratorium. It is submitted that in view of the aforesaid prohibition, these execution proceedings do not continue against the applicants till the completion of the

corporate insolvency resolution process. With respect to the prayer for modification/variation of the orders dated 13<sup>th</sup> November, 2018 and 27<sup>th</sup> September, 2019, it is submitted that Section 14 of the I & B Code does not contain any provision for passing such an order. It is further submitted that modification/variation of any order would amount to continuation of these proceedings which is strictly barred by Section 14. Without prejudice, it is submitted that the corporate creditors and the judgment debtors have nexus and similar modus was deployed by the judgment debtors for their assets in various group of affiliate companies and the Supreme Court by order dated 05<sup>th</sup> April, 2019 has stayed the CIRPs initiated against such companies. It is submitted that the decree holder was not aware of the moratorium in respect of five applicants at that time. It is submitted that the judgment debtors have played fraud upon this Court and the decree holder is contemplating to approach the Supreme Court for passing similar order in respect of these five applicants.

### **Findings**

5. Section 14 of I & B Code provides that the Adjudicating Authority shall by order declare moratorium for prohibiting the institution of suit 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 or Arbitration panel or other authority and Section 14 (4) provides that the order of moratorium shall have the effect from the date of such order till the completion of such corporate insolvency resolution process. Section 14 of the I & B Code, is reproduced hereunder:

#### **“Section 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.

(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-

(a) to such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

(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.”*

*(Emphasis Supplied)*

6. Section 14 of the I & B Code expressly prohibits the continuation of any suit or proceedings against the corporate debtor including the execution proceedings from the date of the moratorium. The orders declaring moratorium was passed by the learned Tribunal on 08<sup>th</sup> May, 2019, 25<sup>th</sup> July, 2019 and 09<sup>th</sup> August, 2019.

7. The present execution proceedings cannot be continued against these five applicants during the period of moratorium. Section 14 does not require a separate stay order to be passed by this Court to discontinue the proceedings as the continuation of these proceedings stands prohibited from the date of moratorium. Once the moratorium prohibiting the continuation of these proceedings has come into force, there is no provision in the I & B Code for modification/variation of the earlier orders of this Court. The judgments cited by the judgment debtors and Committee of creditors do not support them.

8. In that view of the matter, no further orders are warranted in these applications except noting that the present proceedings are not continuing against the applicants till the continuation of the moratorium by operation of law.

9. The applications are disposed of in the above terms.

**I.As. 5552-5553/2019 & EX. Appls. (OS) 660-661/2019, 31-32/2020**

10. List for directions on 05<sup>th</sup> February, 2020.

11. Copy of this order be given *dasti* to counsel for the parties under the signatures of the Court Master.

**J.R. MIDHA, J.**

**JANUARY 15, 2020**  
**ds**