NATIONAL COMPANY LAW APPELLATE TRIBUNAL

AT CHENNAI

(APPELLATE JURISDICTION)

TRANSFER APPEAL (AT) NO. 227/2021
(Company Appeal (AT) (Ins) No. 326/2020)
(Filed under Section 61 of the Insolvency and Bankruptcy Code, 2016)

(Arising out of the Impugned Order dated 16/01/2020 in C.P. No. IB 86/BB/2018, passed by the National Company Law Tribunal, Bengaluru Bench)

In the matter of :

Tricolite Electrical Industries Limited,
Through its Authorised Representative,
Mr. S.N. Singh
Having its Registered Office at 70A/13,
Najafgarh Road Industrial Area,
New Delhi – 110015. **…Appellant**

Versus

WIPRO Limited
Having its Registered Office at
Doddakannelli, Sarjapur Road,
Bangalore – 560035 **….Respondent**

Present :

For Appellant : Mr. Shikhil Suri, Advocate
For Respondent : Mr. Yugank Goel, Advocate

J U D G M E N T

(Virtual Mode)

[Per: Shreesha Merla, Member (Technical)]

1. Challenge in this Appeal is to the Impugned Order dated 16/01/2020, in C.P. (IB) No. 86/BB/2018, whereby the 'Adjudicating Authority' has dismissed the

Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code'), filed by 'M/s Tricolite Electrical Industries Limited' / the Appellant herein, in its capacity as an Operational Creditor.

2. It is submitted by the Learned Counsel for the Appellant that the Appellant is a Manufacturer of 'LT/ HT Electric Panels' and is a provider of technological services. It is stated that in respect of a project being implemented by 'M/s Wipro Limited' / the Respondent herein, for the Government of India bids were invited and the Appellant was awarded the work of design, manufacture, supply and installation of MV Panels. Pursuant thereto, it is stated that the Respondent had placed the following purchase Orders for a total supply worth Rs. 13,43,08,141/-.

3. The Learned Counsel for the Appellant submitted that the Appellant had supplied the goods in a timely manner and raised various invoices, for which, the Respondent had made a payment of 97 % of the value of the invoices, but 3 % of the total value of the invoices, which is a substantial amount, was kept outstanding and the same was also admitted in their email dated 26/08/2015, wherein it was stated that 'payment held as we are yet to get final sign-off from the end customer (approx. 3 %)'. It is the case of the Appellant that despite several remainders the amount remained unpaid and hence a Demand Notice dated 18/11/2017, under Section 8 of the Code was issued to the Respondent, for which there was no response and

thereafter, the Appellant filed an Application under Section 9 of the Code on 21/03/2018.

4. The Learned Counsel for the Appellant vehemently argued that the 'Adjudicating Authority' had erroneously held that there was a pre-existing dispute between the Parties, merely because the Respondent had belatedly claimed that the said amount had been withheld as liquidated damages. The Learned Counsel drew our attention to the email dated 26/08/2015 which reads as hereunder:

> *"Subject : Discussions for closure of pending tasks in UIDAI project Supply and Service*
>
> *Dear Mr. Rajeev,*
>
> *Greetings from Wipro.*
>
> *We value the time spared by your team during our multiple discussions earlier & today. We have gone through the documentation provided by your organization and evaluated them.*
>
> *Based on these, we would like to inform the following:*

Total outstanding from earlier billing	*4,025,611.87*
Total value of extra PO to be placed (provided supporting documents are there)	*3,600,000.00*
Payment held as we are yet to get the final Signoff from end customer (Approx. 3 %)	*4,025,611.87*
Total Payable	*0.01*

Upon WIPRO getting the final signoff(2-3months) we will be able to discuss and conclude on the payment and CR which is being held.

Trust this is in line with the discussions and there are no other open points.
We truly appreciate your support and look forward for building this business relationship to a much stronger one.
Thanking you.

Thanking you.

Reena Bhatnagar
Wipro Limited"

5. It is submitted by the Learned Counsel that there is a clear cut admission in the aforenoted email which has not been considered by the 'Adjudicating Authority' rendering the Impugned Order perverse.

6. The Learned Counsel relied on the Judgment of the Hon'ble Supreme Court in the matter of ***'Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd.'*** reported in ***[(2018) 1 SCC 353]***, in which it is held as follows:

"51. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating

Authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is a mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application."

7. It is submitted that there was no dispute which existed between the Parties and only a clear-cut admission by the Respondent that this 3 % was withheld awaiting the final sign-off from the end customer. Without taking this admission into account, the 'Adjudicating Authority' had erred in concluding that the products as requisition were delivered to the customer location within the agreed timelines, thereby, delaying the entire project and therefore, there was a pre-existing dispute. It is also the case of the Appellant that the finding given by the 'Adjudicating Authority' that the Respondent Company is a Commercially Solvent Company and therefore, Section 9 Petition of the 'Code' cannot be admitted, is perverse. In support of his case, the Learned Counsel placed reliance on the Judgment of the Tribunal in the matter of **'Monotrone Leasing Pvt. Ltd. Vs. PM Cold Storage Pvt. Ltd.'** reported in **[(2020) SCC Online NCLAT 581],** wherein it was held as hereunder:

> *27. We are bound to emphasize that a presumption cannot be drawn merely on the basis that a company, being solvent, cannot commit any default. As observed in financial and economic parlance, the inability to pay off debts and committing default are two different aspects which are required to be adjudged on equally different parameters. Inability to pay debt has no relevance for admitting or rejecting an application for initiation of CIRP under the IBC.*
>
> *……*
>
> *29. Given the law laid down in Swiss Ribbon case (supra), it becomes clear that rather than the "inability to pay debts", it is the "determination of default" that is relevant for allowing or disallowing an Application filed under Section 7, 9 or 10 of IBC. The said shift enables the Financial Creditor to prove by solid documentary evidence, that there was an obligation to pay the debt and that the debtor has failed to fulfill its obligation. Therefore, to allow the application under Section 7, it is not relevant to see the inability of the Corporate Debtor to pay the debt."*

8. It is submitted that the aforenoted Judgment is challenged before the Apex Court which in its order dated 11/08/2020, dismissed the Civil Appeal No. 2906/2020 and therefore, this ratio is binding. The Learned Counsel vehemently contended that the Corporate Debtor did not choose to reply to the Demand Notice dated 18/11/2017, which was duly served at their Corporate Office and therefore, did not raise any pre-existing dispute.

9. The Learned Counsel appearing for the Respondent submitted that the purported Notice dated 18/11/2017 was never delivered to the Respondent and even

if it had been delivered, the same does not fulfil the mandatory statutory criteria prescribed under Section 8 of the Code, read with Rule 5 of the NCLT Rules, 2016, as the Demand Notice ought to be served either at their Registered Office or to their Key Managerial Personnel of the Corporate Debtor. It is submitted that the Notice was admittedly sent to No. 11th, K.M. Hosur Road, Bommanahalli, No. 38/5/B Hyland, Industrial Estate, Bengaluru – 68 which is one of the warehouses of the Respondent and not the Corporate Office; that the Postal Code of the Respondent's Registered Office is 560035, whereas the Postal Code of the Warehouse premises is 560068.

10. It is also argued that there is a pre-existing dispute between the Parties which is reflected in the emails dated 18/06/2015, 26/08/2015 & 28/01/2016. Admittedly, the Respondent had paid 97 % of the amounts due and the Appellant had sought to question the basis and the right of the Respondent to levy liquidated damages to the tune of 3 % of the Contract value. It is submitted that the correspondence exchanged between the Parties clearly shows that there is a dispute in existence much before the issuance of the purported Demand Notice. The Appellant cannot use the Code as a tool for recovery of its dues which is impermissible as per settled law. In support of his arguments, the Learned Counsel paced reliance on the Judgment of Hon'ble Supreme Court in the matter of ***'Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Anr.'*** reported in ***[(2019) 4 SCC 17]***. The Learned Counsel drew our attention to

the balance sheets which are part of the record to establish that the Respondent is a commercially Solvent Company and submitted that is a well reputed Organization publicly listed on NSE and NYSE.

ASSESSMENT :

11. The Main point which arises for consideration in this Appeal is whether the 'Adjudicating Authority' was justified in dismissing the Section 9 Application, filed by the Appellant herein on the ground of pre-existing dispute and that the Respondent Company was a Commercially Solvent Company.

12. At the outset, the issue whether there was a pre-existing dispute between the Parties is to be adjudicated on the touch stone of the ratio laid down by the Hon'ble Apex Court in the matter of ***'Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd.', (Supra)*** and in the matter of ***'Transmission Corporation of Andhra Pradesh Limited Vs. Equipment Conductors and Cables Limited'*** reported in ***[(2019) 12 SCC 697],*** wherein the Hon'ble Apex Court has held in Para 19 as follows:

> *19. In a recent judgment of this Court in Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd. [Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353 : (2018) 1 SCC (Civ) 311] , this Court has categorically laid down that IBC is not intended to be substitute to a recovery forum. It is also laid down that whenever there is existence of real dispute, the IBC provisions cannot be invoked. We would like to reproduce the following discussion from the said judgment: (SCC*

pp. 392-95, 398 & 402, paras 33-34, 37, 42-45 & 51)

> *"33. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e. on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be [Section 8(1)]. Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute [Section 8(2)(a)]. What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice, as the case may be. In case the unpaid operational debt has been repaid, the corporate debtor shall within a period of the selfsame 10 days send an attested copy of the record of the electronic transfer of the unpaid amount from the bank account of the corporate debtor or send an attested copy of the record that the operational creditor has encashed a cheque or otherwise received payment from the corporate debtor [Section 8(2)(b)]. It is only if, after the expiry of the period of the said 10 days, the operational creditor does not either receive payment from the corporate debtor or*

notice of dispute, that the operational creditor may trigger the insolvency process by filing an application before the adjudicating authority under Sections 9(1) and 9(2). This application is to be filed under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 in Form 5, accompanied with documents and records that are required under the said form. Under Rule 6(2), the applicant is to dispatch by registered post or speed post, a copy of the application to the registered office of the corporate debtor. Under Section 9(3), along with the application, the statutory requirement is to furnish a copy of the invoice or demand notice, an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt and a copy of the certificate from the financial institution maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor. Apart from this information, the other information required under Form 5 is also to be given. Once this is done, the adjudicating authority may either admit the application or reject it. If the application made under sub-section (2) is incomplete, the adjudicating authority, under the proviso to sub-section (5), may give a notice to the applicant to rectify defects within 7 days of the receipt of the notice from the adjudicating authority to make the application complete. Once this is done, and the adjudicating authority finds that either there is no repayment of the unpaid operational debt after the invoice [Section 9(5)(i)(b)] or the invoice or notice of payment to the corporate debtor has been delivered by the operational creditor [Section 9(5)(i)(c)],

or that no notice of dispute has been received by the operational creditor from the corporate debtor or that there is no record of such dispute in the information utility [Section 9(5)(i) (d)], or that there is no disciplinary proceeding pending against any resolution professional proposed by the operational creditor [Section 9(5)(i)(e)], it shall admit the application within 14 days of the receipt of the application, after which the corporate insolvency resolution process gets triggered. On the other hand, the adjudicating authority shall, within 14 days of the receipt of an application by the operational creditor, reject such application if the application is incomplete and has not been completed within the period of 7 days granted by the proviso [Section 9(5)(ii)(a)]. It may also reject the application where there has been repayment of the operational debt [Section 9(5)(ii)(b)], or the creditor has not delivered the invoice or notice for payment to the corporate debtor [Section 9(5)(ii)(c)]. It may also reject the application if the notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility [Section 9(5)(ii)(d)]. Section 9(5)(ii)(d) refers to the notice of an existing dispute that has so been received, as it must be read with Section 8(2)(a). Also, if any disciplinary proceeding is pending against any proposed resolution professional, the application may be rejected [Section 9(5)(ii)(e)].

34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

(i) Whether there is an "operational debt" as defined exceeding Rs 1 lakh? (See Section 4 of the Act)
(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? And

(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any one of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.

37. It is now important to construe Section 8 of the Code. The operational creditors are those creditors to whom an operational debt is owed, and an operational debt, in turn, means a claim in respect of the provision of goods or services, including employment, or a debt in respect of repayment of dues arising under any law for the time being in force and payable to the Government or to a local authority. This has to be contrasted with financial debts that may be owed to financial creditors, which was the subject-matter of the judgment delivered by this Court on 31-8-2017 in Innoventive Industries Ltd. v. Icici Bank [Innoventive Industries Ltd. v. Icici

Bank, (2018) 1 SCC 407 : (2018) 1 SCC (Civ) 356] . In this judgment, we had held that the adjudicating authority under Section 7 of the Code has to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor within 14 days. The corporate debtor is entitled to point out to the adjudicating authority that a default has not occurred; in the sense that a debt, which may also include a disputed claim, is not due i.e. it is not payable in law or in fact. This Court then went on to state: (SCC p. 440, paras 29-30)

> *'29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing — i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.*
>
> *30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial*

creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.'

42. This being the case, is it not open to the adjudicating authority to then go into whether a dispute does or does not exist?

43. It is important to notice that Section 255 read with the Eleventh Schedule of the Code has amended Section 271 of the Companies Act, 2013 so that a company being unable to pay its debts is no longer a ground for winding up a company. The old law contained in Madhusudan [Madhusudan Gordhandas & Co. v. Madhu Woollen Industries (P) Ltd., (1971) 3 SCC 632] has, therefore, disappeared with the disappearance of this ground in Section 271 of the Companies Act.

44. We have already noticed that in the first Insolvency and Bankruptcy Bill, 2015 that was annexed to the Bankruptcy Law Reforms Committee Report, Section 5(4) defined "dispute" as meaning a 'bona fide suit or arbitration proceedings...'. In its present avatar, Section 5(6) excludes the expression "bona fide" which is of significance. Therefore, it is difficult to import the expression "bona fide" into Section 8(2)(a) in order to judge whether a dispute exists or not.

45. The expression "existence" has been understood as follows:
'Shorter Oxford English Dictionary gives the following meaning of the word "existence":

> *(a) Reality, as opp. to appearance.*
> *(b) The fact or state of existing; actual possession of being. Continued being as a living creature, life, esp. under adverse conditions. Something that exists; an entity, a being. All that exists. (Page 894, Oxford English Dictionary)'*

* * *

51. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied

that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.""

13. In the instant case, admittedly 97 % of the amount due for the invoices raised by the Appellant was paid and 3 % of the Invoices amount was withheld by the Respondent Company. It is the case of the Appellant that despite service of Notice on the Respondent Company at the address 'No. 11th, K.M. Hosur Road, Bommanahalli, No. 38/5/B Hyland, Industrial Estate, Bengaluru – 68', there was no reply and hence, a pre-existing dispute cannot be raised subsequent to the filing of the Section 9 Petition. A perusal of the material on record shows that this address with the Pincode 560068 is that of the warehouse of the Respondent Company. It is not denied by the Appellant that the postal code of the Respondent's Registered Office Company is 560035. Be that as it may, in their Reply to this Section 9 Petition, the Respondent Company has raised a pre-existing dispute for having withheld the 3 % amount towards liquidated damages.

14. At this juncture, we find it apposite to reproduce the relevant emails / correspondence which would aid in deciding whether there was any pre-existing dispute. The email dated 18/06/2015 sent by the Respondent Company to the

Appellant stating that 3 % was kept on hold for the Appellant Company to submit Justification with all supporting documents is detailed as hereunder:

> *"From: punit.khare@wipro.com*
> *Date: 18 June 2015 23:04:42 IST*
> *To: abhishek@tricolite.com*
> *Cc: nagaraja.kr01@wipro.com,*
> *harsha.a@wipro.com,*
> *ranen.chattopadhyay@wipro.com,*
> *subramanian.krishnan1@wipro.com*
> *Subject: Discussions for closure of pending tasks in UIDAI project Supply and Service*
> *To,*
> *Mr. Abhishek*
> *Tricolite*
>
> *Subject: Discussions for closure of pending tasks in UIDAI project Supply and Service*
>
> *Dear Mr. Abhishek,*
>
> *Greetings from Wipro*
>
> *We value the time spared by your team during our discussion on 16th June 2015 at our office in Delhi. We would like to re-iterate the points discussed related to the UIDAI project execution by you.*
> *The summary is as below*
>
> 1. *Price escalation details for extra work executed to be shared with supporting documents/price comparison/market trend of price/incremental BoQ/ Old mails with approval for execution.*
> 2. *Tricolite to submit justification with all supporting documents on email. Hardcopy to be sent to Bangalore.*
> 3. *97 % of payment released. 3 % on hold.*
>
> *Penalty applicable: 3% on total order value.*

Please provide relevant justification with all supporting documents if you differ in our understanding. These documents have to be submitted before Monday, 22 June 2015.
Kindly share your acceptance for points mentioned above and actions.
We truly appreciate your support and look forward for building this business relationship to a much stronger one.
Thanking You.

Regards
Punit Khare
Mob: +91-9582158872"

15. The contention of the Learned Counsel for the Appellant that the email dated 26/08/2015 was not considered by the 'Adjudicating Authority' and that it amounts to an admission by the Respondent Company, is untenable, keeping in view that the correspondence exchanged between the Parties should be read as a whole and not in parts. In the email relied upon by the Appellant it is only stated that payment was withheld to get the final sign-off from the customer. Subsequent to this, there was an email addressed on 28/01/2016 by the Respondent Company that they are evaluating the work done by the Appellant and the letter dated 28/01/2016 was addressed to the Appellant Company in which it is stated that liquidated damages were being levied because there was a delay of six weeks from the side of the Appellant in executing the job. The said letter is reproduced as hereunder:

M/s : Tricolite Electrical Industries Ltd
Plot no 18/1-A, Site – IV Industrial area,
Sahibabad - 201010
INDIA

28 Jan 2016

Sub: IBMS Works for UIDAI Project

Mr. Abhishek N,

With reference to our earlier communications sent and the discussions we had, we have internally evaluated and found there is total delay of 6 weeks and more from your side in executing the job.

This has resulted in delaying the project completion. Hence we are levying LD/PENALTY of Rs. 40,56,539 which is as per the contract and PO.

Trust the same is in line with the discussion held.

Thanking you

For WIPRO LIMITED

Nagaraja Rao K R
National Alliance Manager

16. It is the consistent stand of the Respondent Company that 97% of the Amount was paid and the balance 3 % was kept on hold only on account of evaluating customer satisfaction and it was established that there was a delay of six weeks on behalf of the Appellant Company in executing the job assigned to them on account of which liquidated damages / Penalty of Rs. 40,56,539/- which is as per the terms of the Contract was levied. Therefore, this Tribunal is of the considered view that there is a pre-existing dispute which is not a spurious defence which is a mere bluster. In the aforenoted judgment of ***'Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd.', (Supra)***, it is clearly held that *the Court does not at this stage examine the merits of the dispute, but as long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the Adjudicating Authority has to reject the Application.* This Tribunal is of the considered view that the aforenoted ratio is applicable to the facts of this case as we are satisfied that a 'dispute' truly existed for the Respondent Company to have withheld 3% of the total invoice amount.

17. Regarding whether Section 9 Application can be entertained against a Solvent Company, the scope and objective of the Code has to be kept in mind before admission of such an Application. The spirit of the Code is maximization of the assets and Resolution and not Recovery. The Hon'ble Supreme Court in the matter of ***'Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Anr.' (Supra)*** has held 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.'

18. For all the foregoing reasons, this T.A. (AT) No. 227/2021 (Company Appeal (AT) (CH) (Ins) No. 326/2020) is dismissed as devoid of merit. No Order as to Cost. All Connecting Pending Interlocutory Applications, if any, are closed.

[Justice M. Venugopal]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

04/09/2023
SPR/TM