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INSOLVENCY & BANKRUPTCY

Vandana Garg (RP) v. Mysore Petro Chemicals: Scope of Section 14 Moratorium and the Survival of Underlying Real Estate Claims in CIRP

The intersection of the Insolvency and Bankruptcy Code, 2016 (IBC) and sector-specific regulatory regimes continues to generate significant jurisprudential debate, particularly concerning the scope and effect of the moratorium under Section 14 of the Code. The National Company Law Appellate Tribunal (NCLAT), Principal Bench at New Delhi, addressed one such critical interface in Vandana Garg […]

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The intersection of the Insolvency and Bankruptcy Code, 2016 (IBC) and sector-specific regulatory regimes continues to generate significant jurisprudential debate, particularly concerning the scope and effect of the moratorium under Section 14 of the Code. The National Company Law Appellate Tribunal (NCLAT), Principal Bench at New Delhi, addressed one such critical interface in Vandana Garg (RP) v. Mysore Petro Chemicals, Company Appeal (AT) (Ins) No. 361 of 2024, decided on 27 May 2026. The Division Bench comprising Justice N. Seshasayee (Judicial Member) and Mr. Arun Baroka (Technical Member) was confronted with the question of whether a claim founded upon an order of the Maharashtra Real Estate Regulatory Appellate Authority (RERAA) passed during the subsistence of the moratorium could be entertained in Corporate Insolvency Resolution Process (CIRP) proceedings. The judgment not only clarifies the absolute nature of the moratorium under Section 14 but also emphasises the non-expropriatory character of the IBC by directing the Resolution Professional to verify and recognise the underlying bona fide investment made by the allottee.

The factual matrix traces back to 2 July 2015, when Mysore Petro Chemicals Ltd., the respondent herein, entered into an agreement with Raghuleela Builders, the Corporate Debtor, for the purchase of a commercial office unit. The agreed date of delivery was 30 September 2015, and the respondent paid the entire sale consideration amounting to ?12,93,60,000. However, the Corporate Debtor failed to hand over possession within the stipulated timeframe. Consequently, the respondent approached the Real Estate Regulatory Authority (RERA) by filing a complaint seeking redressal for the delay. By an order dated 8 October 2020, the RERA dismissed the complaint, attributing the delay to the Corporate Debtor's failure to obtain the Occupancy Certificate from the relevant authorities and holding that the agreement between the parties contemplated such a contingency. Aggrieved by this dismissal, the respondent filed an appeal before the RERAA on 17 December 2020, well before the commencement of insolvency proceedings against the Corporate Debtor.

While the RERAA appeal was pending, the National Company Law Tribunal (NCLT) admitted the Corporate Debtor to CIRP on 4 October 2021, thereby triggering the moratorium under Section 14 of the IBC. The Interim Resolution Professional (IRP), and subsequently the Resolution Professional (RP), assumed control of the Corporate Debtor's affairs, replacing its Board of Directors. In discharge of statutory obligations under Section 15 read with Regulation 6 of the IBBI (CIRP) Regulations, 2016, the RP issued a public notice on 21 October 2021 inviting claims from creditors, with the last date for submission fixed at 5 November 2021. Meanwhile, the RERAA proceeded to hear the respondent's appeal and, by an ex parte order dated 30 June 2022, directed the Corporate Debtor to pay compensation of ?5,28,22,000 along with interest at the State Bank of India's highest Marginal Cost of Funds based Lending Rate plus two percent. The respondent immediately informed the RP via email on 1 July 2022 and subsequently filed its claim in Form B on 19 July 2022, seeking to have the RERAA award recognised as a claim in the CIRP.

The RP, however, rejected the claim by an order dated 20 October 2022 on two principal grounds. First, the RP contended that the RERAA order was passed during the subsistence of the moratorium and was therefore void and incapable of creating enforceable rights against the Corporate Debtor, relying upon the Supreme Court's dictum in P. Mohanraj & Ors. v. Shah Brothers Ispat Pvt. Ltd. [(2021) 6 SCC 258] and the NCLAT's decision in RERA v. M/s D.B. Corp Ltd. [(2023) ibclaw.in 758 NCLAT]. Second, the RP asserted that the claim was belated, having been filed nearly 198 days after the deadline prescribed in the public notice, and that entertaining such a delayed claim would derail the CIRP process, particularly since the Information Memorandum had already been finalised and circulated to Prospective Resolution Applicants. The respondent thereupon moved the NCLT by filing I.A. 2725 of 2022. The NCLT, by an interim order dated 29 September 2022, directed the RP to consider the claim, and ultimately, by its final order dated 18 December 2023, admitted the claim, holding that it was not belated and that the Corporate Debtor was bound by the RERAA judgment.

In appeal before the NCLAT, the RP reiterated that the moratorium under Section 14(1)(a) of the IBC operates absolutely to prohibit the continuation of pending suits or proceedings against the Corporate Debtor, including the execution of any judgment, decree, or order. The RP further argued that the respondent had suppressed the pendency of the CIRP from the RERAA and had continued to serve notices upon the erstwhile management rather than the RP, thereby keeping the resolution professional in the dark. The RP also emphasised the overriding effect of Section 238 of the IBC and contended that the NCLT had erred in relying upon the Delhi High Court's judgment in Power Grid Corporation of India Ltd. v. Jyoti Structures Ltd. [2017 SCC OnLine Del 12189] while ignoring the subsequent and binding Supreme Court precedent in P. Mohanraj.

Per contra, the respondent forcefully contended that the appeal before the RERAA was instituted in December 2020, long before the CIRP commencement date, and that multiple notices were duly served upon the Corporate Debtor. The respondent placed heavy reliance upon ABG Shipyard Liquidator v. Central Board of Indirect Taxes and Customs [(2023) 1 SCC 472], wherein the

Supreme Court held that adjudicatory proceedings may continue during the moratorium and that only recovery is prohibited. The respondent further submitted that the claim could not have been filed prior to the RERAA order since the liability crystallised only upon the appellate judgment dated 30 June 2022, and that the claim was filed at the earliest possible opportunity thereafter. Additionally, the respondent invoked Sections 18, 25, and 29 of the IBC read with Regulation 36 of the CIRP Regulations to argue that the RP bears a statutory obligation to collect and collate all claims and to keep itself apprised of pending litigation. The respondent also cited State Tax Officer v. Rainbow Papers Ltd. [(2023) 9 SCC 545] to assert that the timelines for claim submission are directory rather than mandatory, and Pioneer Urban Land and Infrastructure Ltd. v. Union of India [AIR 2019 SC 4055] to emphasise the concurrent and complementary nature of RERA and IBC remedies.

The NCLAT, in its careful analysis, identified the core issue as the maintainability of a claim founded upon an order passed during the moratorium. The Tribunal held that the very foundation of the respondent's claim was the RERAA order dated 30 June 2022, which was passed squarely within the period of moratorium commencing 4 October 2021. The NCLAT observed that Section 14(1)(a) of the IBC prohibits the continuation of pending suits or proceedings against the Corporate Debtor, including the execution of any judgment, decree, or order in any court, tribunal, or arbitral forum. The purpose of this provision, as explained in P. Mohanraj, is to freeze the assets and liabilities of the Corporate Debtor during the resolution process to optimise asset value and ensure orderly resolution. The NCLAT distinguished ABG Shipyard on the ground that while adjudicatory proceedings for determination of pre-existing liabilities may continue in certain factual contexts, Section 14 does not permit the creation of any new liability against the Corporate Debtor from the date of commencement of CIRP, except those statutorily treated as CIRP costs. Consequently, the RERAA order, having created a fresh compensation liability during the moratorium, was rendered ineffective against the Corporate Debtor.

On the question of the belated claim, the NCLAT held the issue to be academic since the claim itself was not maintainable. The Tribunal expressly declined to examine the delay aspect, noting that if the foundational order was void against the Corporate Debtor, the timeliness of the claim became irrelevant.

However, the NCLAT introduced a significant alternative reasoning that reflects the humane and non-expropriatory philosophy of the IBC. The Tribunal noted that the respondent had admittedly invested ?12,93,60,000 in a commercial unit and that the RP had not disputed the fact of allotment in the reply filed before the NCLT. The NCLAT emphasised that the IBC is not designed as a statute for the divestiture of individual rights or as an expropriatory instrument. Rather, the Code is keen to recognise every right to claim a debt, even though it holds no promise that the debt will be paid in full. The Tribunal observed that a claim is essentially a notice to the resolution professional that the Corporate Debtor is liable to repay a debt to a creditor, and if such a debt can be ascertained from the records of the Corporate Debtor without a formal claim, the RP ought to investigate and recognise it.

The NCLAT allowed the appeal and set aside the NCLT's order to the extent it admitted the claim based on the RERAA order passed during the moratorium. However, in a balanced and equitable disposition, the Tribunal directed the Resolution Professional to verify whether the respondent had made any payment of consideration to the Corporate Debtor as claimed, and to include the claim accordingly based on the underlying investment rather than the post-moratorium RERAA adjudication. This judgment is an important precedent on the absolute scope of Section 14 moratorium, the limited applicability of ABG Shipyard in the context of fresh liability creation, and the affirmative duty of the RP to identify and recognise bona fide claims from the Corporate Debtor's records even in the absence of strict formal compliance with claim timelines.

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