

**(2018) 11 BOM CK 0020**

**In the Bombay High Court**

**Case No :** Company Application No. 10 of 2017 In Company Petition No. 6 of 2012

**Murli Industries Ltd. Nagpur Thr. Mr. Vijaykumar Iyer APPELLANT  
@Hash Primo Pick N Pack Pvt. Ltd. Jabalpur And Another**

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**Date of Decision :** 02-11-2018

**Acts Referred:**

Companies Act, 1956 — Section 391, 419(4), 433, 433(e), 439, 446, 446(1), 446 (2) (a), 529A, 529(1), 529(1)(c)  
Companies (Court) Rules, 1959 — Rule 26  
Companies Act, 2013 — Section 434  
Companies (Transfer of Pending Proceedings) Rules, 2016 — Rule 5, 5(2)  
Insolvency and Bankruptcy Code, 2016 — Section 1(3), 7, 8, 9, 10, 11, 11(d), 13, 22, 30(4), 31, 64(2), 238, 239, 255  
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 16, 20

**Citation :** (2018) 11 BOM CK 0020

**Hon'ble Judges :** S. B. Shukre, J

**Bench :** Single Bench

**Advocate :** S. V. Manohar, H. V. Thakur, A. C. Dharmadhikari, Anjan De, M. G. Bhangde, R. M. Bhangde, S. P. Dharmadhikari, S. N. Kumar, Vaishali Chhabra, K P S Kohli, H. R. Gadhia?? S. V. Manohar, H. V. Thakur, A. C. Dharmadhikari, Anjan De, M. G. Bhangde, R. M. Bhangde, S. P. Dharmadhikari, S. N. Kumar, Vaishali Chhabra, K P S Kohli, H. R. Gadhia

**Final Decision :** Partly Allowed

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## **Judgement**

S. B. Shukre, J

1.Â The applications being Company Applications No. 3 of 2018, 15Â of 2018 and 4 of 2018 filed by the interveners are allowed, the applicants

being interested persons or having stakes in the insolvency resolution process and liquidation which is the Corporate Debtor Tribunal. of the Company

before this Court, before the National Company Law

2.Â Company Application No. 10 of 2017 : This application has been filed under Section 446 of the Companies Act, 1956 (for short the â??Act of

1956) in Company Petition No. 6 of 2012 by the Resolution Professional on behalf of the Corporate Debtor, Murli Industries Limited, seeking leave to

proceed with or continue with the ongoing Corporate Insolvency Resolution process of the Corporate Debtor under the Insolvency and Bankruptcy

Code, 2016 read with rules and regulations framed thereunder, before the National Company Law Tribunal, Mumbai Bench. Similar applications under

Section 446 of the Act of 1956 have been filed by the Resolution Professional being Company Applications No. 13 of 2017, 14 of 2017 and 15 of 2017

in connected Company Petitions.

3. The facts of the case, insofar as they are relevant for the present purpose, are stated in brief as follows :

(a) The creditors of the Corporate Debtor have filed the present Company Petition No. 6 of 2012 as also Company Petitions No. 8 of 2011, 9 of

2011, 10 of 2011, 3 of 2012 and 10 of 2012 for winding up of the Corporate Debtor under Section 433 (e) read with Section 439 of the Companies

Act, 1956 because of inability of the Corporate Debtor to pay its debts.

(b) In all these petitions, by the order passed by this Court on 21.3.2017, this Court appointed respondent no. 2, attached to this Court, as the

Provisional Liquidator directing him to take charge of all the property and effects of the Corporate Debtor with immediate effect. It may be pointed

out here that there is no dispute about the fact that the winding up petitions having been served upon the Corporate Debtor under rule 26 of the

Companies (Court) Rules, 1959 before the cutoff date, have not been transferred to the National Company Law Tribunal (NCLT) and have been

retained by this Court.

(c) One of the financial creditors of the Corporate Debtor, viz. Edelweiss Asset Reconstruction Company Limited (EARC) filed an application,

registered as C.P. No. 66/I&BP/NCLT/MAH/2017, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short, the "IBC") before

the NCLT, Mumbai Bench seeking initiation of Corporate Insolvency Resolution process against the Corporate Debtor. By an order dated 5th April

2017, the NCLT admitted the application filed by the EARC and thus initiated the insolvency resolution process against the Corporate Debtor. It

appointed the present applicant Vijaykumar Iyer as an Interim Resolution Professional ("IRP" for short). Pursuant to the Admission Order, the

IRP published a Public Announcement dated 12th April 2017 as per Section 13 of the IBC read with Regulation 6 (2) (b) (I) of the Insolvency and

Bankruptcy Board of India (Insolvency Process for Corporate Persons) Regulations, 2016 (for short the "Regulations, 2016) in English and Marathi

newspapers calling for submission of claims from the creditors of the Corporate Debtor. The IRP also took necessary steps in the matter in terms of

the provisions of the IBC read with Regulations, 2016 and he was later on also appointed as the Insolvency Resolution Professional in terms of Section

22 of the IBC.

(d) While all this was going on under the provisions of the IBC, it appears, the Resolution Professional was not aware of the order dated 21.3.2017

passed by this Court appointing a provisional liquidator in respect of the Corporate Debtor. The Resolution Professional was made aware of the same

by the former Director of the Corporate Debtor Bajranglal Maloo, on 10th May 2017. The Resolution Professional almost immediately thereafter

swung into action and addressed a communication dated 12th May 2017 to respondent no. 2 apprising him of various facts such as, his appointment as

an Insolvency Resolution Professional, the Resolution Professional being unaware of the order dated 21.3.2017 passed by this Court, the powers and

duties conferred and placed upon him under the IBC, the steps taken by him in pursuance of initiation of the corporate insolvency resolution process of

the Corporate Debtor and requested him to address all future communications to the Resolution Professional.

(e) The Resolution Professional also made aware the Committee of Creditors (for short, the "CoC") of the order of this court dated 21.3.2017.

The CoC in its second meeting held on 6th June 2017 considered the ramifications of the order of this Court dated 21.3.2017 and unanimously resolved

that the Resolution Professional must initiate steps to seek leave of this Court under Section 446 of the Act of 1956 to continue with the on-going

proceedings of the resolution process.

(f) On 27th June 2017, the financial creditor, EARC, intimated the Resolution Professional about the report dated 6th June 2017 submitted by the

Official Liquidator (respondent no.2) to this Court informing this Court of the relevant developments that took place in relation to the initiation of the

Corporate Insolvency Resolution Process and further making a request to this

Court that till completion of insolvency resolution process under the IBC, liquidation proceedings may be dispensed with.

(g)Â In pursuance of the provisions of the IBC, on the one hand, the Resolution Professional proceeded with the process and took various steps, and

on the other, respondent no. 2 refrained from taking steps regarding taking possession of the assets of the Corporate Debtor on account of resolution process having been commenced.

(h)Â The resolution professional's contention has been that the IBC is a complete Code by itself and it has come into being as an effective alternative

to the proceedings under the Act of 1956 and the Companies Act, 2013 regarding winding up of the Corporate Debtor on the ground of inability of the

Corporate Debtor to pay its debts. The Resolution Professional also feels that interests of the Corporate Debtor and its various stakeÂholders

including its financial creditors would be seriously hampered if the parallel proceedings in the nature of winding up of the Corporate Debtor under

Section 433 of the Act of 1956 are proceeded with. The Resolution Professional is of the view that the IBC, a special law, has been enacted to aid the

rehabilitation and revival of the financial companies in order to maximize the value of assets and to make best efforts to save the company from going

into liquidation and so the first attempt that would have to be made in the resolution process would be of revival and rehabilitation of the Company and

only as a last resort, if the revival is not found to be a viable option, the liquidation process of the Corporate Debtor can be initiated. The Resolution

Professional contends that the same advantages are not to be found in the scheme of the Act of 1956 and the whole focus of that scheme is upon

liquidation of the Company with a view to pay the debts of the creditors of the Company, to the extent it is possible.

(i)Â Under the circumstances as narrated earlier, the Resolution Professional filed this application in Company Petition No. 6 of 2012 and also similar

applications in the connected Company Petitions.

(j)Â The reliefs claimed in all these applications are identical. The Resolution Professional firstly seeks recall of the order dated 21st March 2017

passed by this Court appointing respondent no. 2 as the provisional official liquidator. The Resolution Professional, in the alternative to the first prayer,

seeks stay of the order dated 21st March 2017 passed by this Court pending

completion of the Corporate Insolvency Resolution Process of the Corporate Debtor and further seeks leave of this Court under Section 446 of the Act of 1956 to continue with the ongoing Insolvency Resolution process.

4. Respondent no. 1, the original petitioner in Company Petition No. 6 of 2012, is one of the financial creditors of the Corporate Debtor. It has opposed this application on the ground that the whole process initiated for resolution of insolvency of the Corporate Debtor being without jurisdiction, having been initiated without obtaining leave of this Court and also taken in suppression of the material facts by the Resolution Professional and the financial creditor, is not tenable under Section 7 of the IBC. The other ground of opposition is that respondent no. 1 has a right to realize its debt which has been fructified into a decree passed by the Civil Court at Jabalpur which has been transferred to the Nagpur District Court for its execution and this right cannot be taken away by allowing a third person to go ahead with the Corporate Insolvency Resolution Process.

5. Respondent no. 2 has already submitted his report dated 6.6.2017 making a request for dispensing with the liquidation proceedings till completion of the resolution process under the IBC.

6. The interveners in Company Applications No. 3 of 2018 and 4 of 2018 have vehemently opposed this application and other similar applications.

But, the intervener CoC, in Company Application No. 15 of 2018, is in favour of granting of the application.

7. I have gone through the applications, replies filed by the respondents and all interested parties and also the written submissions filed by them. I

have heard learned Senior Advocates and learned counsel for the respective parties.

8. Shri S. V. Manohar, learned Senior Advocate for the applicant/Resolution Professional submits that even though no leave under Section 446 of

the Act of 1956 to proceed with the Insolvency Resolution Process is required in view of the provisions of the IBC, as a matter of caution, the

Resolution Professional has filed this application. He submits that this is because of the fact that under Section 238 of the IBC, the provisions of the

IBC have been given an overriding effect over all other laws to the extent of inconsistency of the provisions in the other laws with the provisions of

the IBC. He further submits that even in the case of Jotun India Private Ltd. & ors v. PSL Limited reported in (2018) 1Â Bom. C.R. 524, learned

single Judge of this Court has considered the overÂriding effect of the IBC and held that no injunction can be granted against any action taken or to

be taken in pursuance of any power conferred upon the NCLT or the National Company law Board.

9.Â Learned Senior Advocate further submits as an alternate argument that the NCLT being a special tribunal conferred with much wider powers

under the IBC than the Company Tribunal or the Court is under the Act of 1956, it would be more in the interest of the Company that the issues

relating to rehabilitation and liquidation of the Company are allowed to be decided by the NCLT. In support of his argument he has taken me through

the various provisions of the IBC. According to him, the focus under the IBC is upon revival of the Company unlike the Act of 1956 where the main

object is to oversee winding up process of a Company. Learned Senior Advocate submits that the resolution plan submitted by the resolution

professional makes a provision of substantial sum which is sufficient to satisfy all claims involved in these cases and also of the workers. This plan,

according to him, is reasonable and balanced and it holds out a promise to brighten up the prospect of bringing back the Corporate debtor from the

edge of death.

10.Â Shri Manohar, learned Senior Advocate further submits that what can be done under the provisions of the IBC possibly cannot be done under

those of the Act of 1956 as there are comprehensive provisions in the IBC which lay down a detailed procedure to be adopted in a stageÂ wise

manner. The IBC has been enacted to consolidate and amend the law relating to reÂorganization and insolvency resolution of corporate persons,

partnership firms and individuals in a timeÂbound manner and it aims at maximization of value of assets of such persons, so submits Shri Manohar. He

further submits that the IBC, apart from emphasizing on undertaking of the process which increases value of assets, the IBC also seeks to promote

entrepreneurship, availability of credit and balance the interests of all the stakeholders. Shri Manohar submits that the aims and objects of the IBC

along with the efforts made by the Resolution Professional would provide a good reason for this Court to grant leave in the matter.

11.Â Shri De, learned counsel for respondent no. 2 submits that the provisional liquidator has already been appointed in this case after the company petitions were retained by this Court and so this Court need not wait till NCLT decides the matter. I must say, this submission of learned counsel for respondent no. 2 is contrary to written submission dated 6th June 2017 filed on record of the case by respondent no. 2. In the written submission, respondent no. 2 has stated that in view of order dated 5.4.2017 passed by the NCLT under the IBC and also the fact that the Resolution Professional had taken possession of the property of the Company, no possession of Registrar's office of the Company was taken by the Official Liquidator on 17.5.2017. It is further submitted therein that Section 238 of the IBC has given overriding effect to the IBC. Finally, it is submitted in the written submission that till completion of the Insolvency Resolution Process under the IBC, liquidation proceedings may be dispensed with.

12.Â Shri M. G. Bhangde, learned Senior Advocate for the intervener in Company Application No. 3 of 2018 submits that the Resolution Professional cannot be permitted to say that no leave under the Act of 1956 is required. He submits that if the Resolution Professional was of the view that no leave was required, he ought not to have filed an application before this Court seeking such a leave. He submits that in any case, the intervener has no objection as to the tenability of the application and, therefore, there is no need for this Court to decide the issue as to whether or not any leave under Section 446 of the Act of 1956 is required.

13.Â Shri Bhangde, learned Senior Advocate further submits that overÂriding effect of the IBC under Section 238 operates only when there is inconsistency between the two laws and in the present case, the company petitions having been retained under rule 5 of the Companies (Transfer of Pending Proceedings) Rules, 2016 (for short, the â??Rules of 2016â?) are required to be dealt with, in terms of clause 2 of the Companies (Removal of Difficulties) Fourth Order, 2016 (for short, the â??Order, 2016â?), in accordance with the Act of 1956 and the Company (Court) Rules, 1959. He submits that these provisions of law make the retained or saved company petitions and pending before the Company Tribunal or the Company Court under the Act of 1956 independent, remaining unaffected by the proceedings, if any, initiated under the IBC and, therefore, it cannot be said that any

inconsistency exists between the provisions of the Act of 1956 and that of IBC to the extent the provisions of the Act of 1956 apply to the winding up

petitions pending before the Company Tribunal. He submits, these provisions rather would show that the proceedings relating to resolution process

pending before the NCIT would themselves be governed by Section 446 of the Act of 1956, meaning thereby that no suit or other legal proceedings

can be commenced or continued in respect of a company under liquidation in a retained petition, without the leave of the Company Tribunal and

subject to such terms as the Company Tribunal may prescribe, while granting leave.

14. Shri Bhangde, learned Senior Advocate further submits that it would be wrong to say that the provisions of the Act of 1956 are not so effective

when it comes to rehabilitation of a dying company. According to him, the provisions of Section 391 of the Act of 1956 are very effective in this

regard. He also submits that the whole process of liquidation of a company under the provisions of the Act of 1956, which also includes a possibility of

revival of the company, is more objective and inexpensive as compared to the resolution process undertaken under the IBC, for, according to the

applicant-intervener, the Resolution Professional is a private person and crores of rupees are required to be paid as fees to the Resolution

Professional and ultimately, the amount of fees will be taken from the sale proceeds of the assets of the Company which will proportionately decrease

the amount to be distributed amongst the creditors towards discharge of their respective debts. He also submits, the resolution process under the IBC

is quite complicated.

15. Shri Bhangde further submits that apart from the expenses and certain degree of complexity of the resolution process, the settled law would tell

us that at any cost, two parallel proceedings must be avoided, which, otherwise would be inevitable, if the leave is granted. He submits that in any

case, if the leave is granted, it would be effective only from the date of leave and, therefore, resolution process would have to be started afresh from

the date of leave and this would only add to inconvenience, delay and complications.

16. Learned Senior Advocate has also criticised the written submission dated 6th June 2017 of the Official Liquidator. He submits that in spite of the

order of appointment of the provisional liquidator having been passed prior to filing of the application by the financial creditor under Section 7 of the

IBC, the Official Liquidator has made a prayer that the liquidation proceedings be dispensed with. According to him, this is nothing but abdication of

duties and in any case, such stand of the Official Liquidator taken in the written submission cannot be taken as admission about primacy of the IBC as

admission against law is no admission in legal terms.

17.Â Shri Bhangde further submits that the judgment rendered by the learned single Judge in Jotun India (supra) has no application to the facts of this

case because the facts in Jotun India were different as in that case an application had been filed initially under Section 22 of the Sick Industrial

Companies Act, 1985 (for short, the â??SICAâ?), which Act was later on repealed by the IBC and, therefore, the applicant had to approach the

NCLT under the provisions of the IBC. He further submits that the objects and reasons of the IBC need not be considered as there is no ambiguity in

understanding any of the provisions of the provisions of the IBC or for that matter, Section 446 of the Act of 1956.

18.Â Shri S. P. Dharmadhikari, learned Senior Advocate for another intervener, CoC in Company Application No. 15 of 2018, submits that the

objects and reasons of IBC are relevant in this case, at least for knowing the sweep of IBC and how beneficial would it be to grant leave under

Section 446 of the Act of 1956. He submits that for this purpose, it would also be useful for all of us to consider the scheme of IBC and the scheme of

windingÂup proceedings under Part VII of the Act of 1956. According to him, if the objects and scheme of IBC as well as scheme of the provisions

of Part VII of the Act of 1956 are considered, one would get an answer as to how useful would it be to grant leave as that would only give the

Company a chance to revive itself and also chance to all the creditors to see the value of assets maximised to the advantage of each and every

stakeholder. He submits that the CoC has approved the resolution plan of Rs. 400 crores out of which Rs. 12.03 crores are provided for 27% of the

creditors and Rs. 44.15 are towards admitted claims of the workers. He further submits that the amount reserved for settling the claims of the

workers appears to be more than what the workers would probably get if they confine themselves only to windingÂup proceedings. He also submits

that under the scheme of IBC, the Resolution Professional is not a private person, but a qualified professional who can secure interests of all the stakeholders in a much better way and that he functions under the supervision and control of the Insolvency and Bankruptcy Board of India. He further submits that the resolution plan under the scheme of IBC is required to be approved by the CoC under Section 30 (4) of the IBC and then it is required to be considered by the Adjudicating Authority in terms of Section 31 of the IBC. These provisions, learned Senior Advocate further submits, would ensure transparency, efficiency and serving of interests of all the stakeholders in a best possible manner, which does not appear to be so in case the leave is not granted. He also submits that the IBC being a better legislation, the leave deserves to be granted.

19.Â Shri S. P. Dharmadhikari further submits that pendency of the company petitions before this Court and carrying out of the resolution process before the NCLT are entirely two different actions and do not amount to carrying out of parallel proceedings before two different authorities. He submits that Section 11 of the IBC itself contemplates duality of proceedings when clause (d) thereof which lays down that the Corporate Debtor in respect of whom a liquidation order has been made, is not entitled to make an application to initiate the Corporate Insolvency Resolution Process under Chapter II of the IBC.

20.Â Shri A. C. Dharmadhikari, learned counsel for respondent no. 1 submits that the provisions of the Companies Act are equally effective and under these provisions rehabilitation of the sick company can always be explored and made possible. He submits that all the proceedings which have been undertaken before the NCLT are void ab initio as they have been taken without obtaining any leave of this Court. He submits that as the provisions of Part VII Act of 1956 are applicable here, there is no inconsistency with the IBC and as such, it cannot be said that there are any two parallel proceedings being continued in the present case. He also submits that the whole proceedings before the NCLT are very expensive and inconvenient for the Company under liquidation.

21.Â Shri Kohli, learned counsel for the workers has submitted his argument more or less on similar lines as Shri M. G. Bhangde, learned Senior Advocate for the intervener and Shri A. C. Dharmadhikari, learned counsel for

respondent no. 1 and, therefore, I do not think it necessary to reproduce his submissions in the matter. His other submission is that where a secured creditor has opted to realize security, then so much of the debt due to such secured creditors as could not be realized by him by virtue of statutory charge created in favour of the workmen shall, to the extent indicated in clause (c) of the proviso to sub-section (1) of Section 529 of the Act of 1956 would rank pari passu with workmen's dues for the purposes of Section 529A of the Act of 1956.

22.Â Considering the fact that the question as to whether leave under Section 446 of the Act of 1956 is required to be obtained or not in view of the provisions of Section 238 of the IBC, is a question of law, I am of the view that it needs to be answered by this Court irrespective of the alternate prayer made on behalf of the Resolution Professional.

23.Â Section 238 of the IBC, Rule 5 of the Rules of 2016 and Clause (2) of the Order, 2016, in my view provide sufficient guidance for us to find out the answer to the question. They read as follows:

Section 238 of IBC

â??238. Provisions of this Code to override other laws. Â 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. â??

Rule 5 of Rules of 2016

â??5. Transfer of pending proceedings of Winding up on the ground of inability to pay debts. Â (1) All petitions relating to winding up under clause (e) of section 433 of the Act on the ground of inability to pay its debts pending before a High Court, and where the petition has not been served on the respondent as required under rule 26 of the Companies (Court) Rules 1959 shall be transferred to the Bench of the Tribunal established under sub-section (4) of section 419 of the Act, exercising territorial jurisdiction and such petitions shall be treated as applications under sections 7,8 or 9 of the Code, as the case may be, and dealt with in accordance with Part II of the Code: Provided that the petitioner shall submit all information, other than information forming part of the records transferred in accordance with Rule 7, required for admission of the petition under sections 7, 8 or 9 of the Code, as the

case may be, including details of the proposed insolvency professional to the Tribunal within sixty days from date of this notification failing which the petition shall abate.

(2) All cases where opinion has been forwarded by Board for Industrial and Financial Reconstruction, for winding up of a company to a High Court

and where no appeal is pending, the proceedings for winding up initiated under the Act, pursuant to section 20 of the Sick Industrial Companies

(Special Provisions) Act, 1985 shall continue to be dealt with by such High Court in accordance with the provisions of the Act.

Clause 2 of Order, 2016

2. In the Companies Act, 2013, in Section 434, in sub-section (1), in clause (c), after the proviso, the following provisos shall be inserted,

namely:

Provided further that only such proceedings relating to case other than winding up for which orders for allowing or otherwise of the proceedings

are not reserved by the High Courts shall be transferred to the Tribunal:

Provided further that

(i) all proceedings under the Companies Act, 1956 other than the case relating to winding up of companies that are reserved for orders for allowing

or otherwise such proceedings; or

(ii) the proceedings relating to winding up of companies which have not been transferred from the High Courts; shall be dealt with in accordance

with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959.

24. It would be clear from Section 238 of the IBC that its provisions have been given overriding effect over any other law for the time being in

force or any instrument having force of law so long as same is inconsistent with any of the provisions of the IBC.

25. But, the issue does not rest here. Although Section 238 of IBC gives primacy to the IBC over any other law, the question as to what extent and

with effect from what date such predominance will have its effect also needs to be considered. This is because of the fact that several provisions of

the IBC have come into effect not on one single date, but different dates in view of provision of Section 1 (3) of the IBC and not all the pending

company petitions have been transferred to the NCLT and some petitions, in terms of rule 5 of the Rules of 2016, have been permitted by law to be

retained by the High Court. Under rule 5, only those petitions in which there is no service made upon the respondent as required under rule 26 of the

Companies (Court) Rules, 1959 have been transferred to the Tribunal established under sub-section (4) of Section 419A of the Companies Act,

2013. However, those company petitions in which service has been effected in the manner as contemplated under rule 5, have been retained by the

Company Court and, therefore, they are required to be dealt with in accordance with the provisions of the Act of 1956. Clause 2 to the Order, 2016

settles this aspect of the matter. It lays down in no uncertain terms that those proceedings relating to winding-up of the Company which have not

been transferred to the NCLT, shall be dealt with in accordance with the provisions of the Act of 1956 and the Company (Court) Rules, 1959.

26. Now, we have a situation where Section 238 prescribes that the IBC shall prevail upon any other law for the time in force and also the rules

framed by the Central Government in exercise of its rule-making power under Section 239 of the IBC and Section 434 of the Companies Act, 2013

as amended by Section 255 of the IBC diluting the rigour of Section 238 IPC. This situation is quite perplexing as there is a legislative declaration that

IBC shall have overriding effect and at the same time, there is also legislative allowance of retained or saved company petitions being governed by the

provisions of the Act of 1956. In my view, a situation like this could be dealt with by seeking guidance from the judgment of the Division Bench of this

Court rendered in Jotun India Private Limited v. PSL Limited (Appeal Lodging No. 68 of 2018, decided on 26th July 2018 and other provisions of law

such as Sections 11 and 238A of IBC and Rules of 2016 and Order, 2016.

27. The Division Bench in Jotun India (supra), in paragraph 35, observed that the Act of 1956 could be treated as general law and IBC a special

statute to the extent of the provisions relating to revival or resolution of the Company under Chapter II of IBC. The Division Bench, however, held

that even if the Act of 1956 and IBC are considered as special statutes operating in their respective fields, the IBC being a later enactment and in

view of its objects and purpose for which it has been enacted, the provisions relating to revival of the company incorporated under Chapter II will have

to be given primacy over the provisions relating to the winding up proceedings pending before the Company Courts, referred to as saved petitions.

After having so observed, the Division Bench, relying upon the law laid down by the Hon'ble Apex Court in the case of Commercial Tax Officer,

Rajasthan v. Binani Cements Limited reported in (2014) 8 SCC 319, observed that when a general law and a special law dealing with some aspect

already dealt with by the general law are on collision course, the rule adopted and applied is one of harmonious construction made to the extent

possible, to uphold validity of both laws and declare as a last resort only, the general law, only to the extent dealt with by the special law, as impliedly

repealed. The Division Bench took a view 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 the resolution issue or revival issue and also opined that in case the forum under the

IBC would fail to revive or successfully implement the resolution plan, then only the Company Judge seized of winding up petitions, would deal with

those petitions in accordance with law.

28. Such a harmonious interpretation would also have to be made in the present case in view of the provisions of Section 238 IBC and also the

provisions made under rule 5 of the Rules of 2016 and clause (2) of Order, 2016 which owe their origin to the same enactment, the IBC.

29. 1st December 2016 is the date from which provisions of Section 238 have come into force. This Section gives overriding effect to the IBC. A

later date, 15th December 2016, prescribed under Rules of 2016 and Order, 2016 brings into force from this date onward rule 5 and clause 2. These

provisions pave the way for transfer of company petitions as well as retention of the company petitions and also lay down that all retained and pending

petitions be dealt with, not by the provisions of IBC, but in accordance with the Act of 1956, which is the case here.

30. So, by a later rule, made in exercise of the rule-making power given by the same Statute which is to have complete sway over all other laws,

the monopolistic dominance of that Statute is toned down and a dual regimen is initiated, one that would follow the IBC and the other that would pay

heed to the Act of 1956. A fair hint about such duality of proceedings contemplated by the IBC can also be had, as rightly submitted by Shri S. P.

Dharmadhikari, learned Senior Advocate, from Section 11 (d) which lays down that a Corporate Debtor in respect of whom a liquidation order has

been made is not entitled to make an application for initiating corporate insolvency resolution process. That means, a Corporate Debtor like Murli

Industries Limited, undergoing liquidation in the present retained petitions, cannot think of resolution of its insolvency under the IBC and if any effort in

that direction is to be made, it has to come from other stakeholders and the Corporate Debtor has to stay put in and be satisfied with whatever comes

its way in the pending liquidation proceedings. Such disability is not made applicable to a financial or operational creditor or corporate applicant and he

or it can make an application under Part II, Chapter II of the IBC to initiate resolution process. As and when such a creditor or applicant, in the

present case the EARC, makes an application for resolution of insolvency of the Corporate Debtor involved in a saved company petition filed under

Part VII of the Act of 1956, what becomes applicable to it is the IBC by virtue of its overriding effect in terms of Section 238, but only to the extent it

is not taken away by rule 5 of Rules of 2016 and clause 2 of Order, 2016.

31. Section 238 IBC, we have seen, came into force with effect from 1st December 2016 and from that date onwards, it eclipsed the provisions of

other laws in force including the Act of 1956. But, later came a relief, at least for the Act of 1956 in its application to pending liquidation proceedings.

Rule 5 of the Rules of 2016 and clause 2 of Order, 2016 proved to be the ambrosia for the provisions of the Act of 1956 in their application to retained

petitions filed for liquidation of a Company by removing the shadow of Section 238 over them with effect from 15th December 2016. This was also in

consonance with Section 11 (d) of the IBC.

32. Now, it is here the dilemma arises. If the provisions of IBC apply to an application filed for insolvency of a Corporate debtor under chapter II,

against whom a liquidation proceeding is pending before the Company Court, why any leave to initiate or continue with such process is required,

especially when the IBC contains no such provision ? Any negative answer to this question, to my mind, would be a naivety. A harmonious

interpretation of the IBC and the Act of 1956, in my view, should go a long way in finding out a reasonable answer to the question.

33. The IBC, as held in the case of Innoventive Industries Ltd. v. ICICI Bank &

ors reported in AIR 2017 SC 408, 4 is a complete Code in itself, and is exhaustive of what it provides for. So, the IBC would apply with full force to any application filed for resolution of insolvency of a Company facing liquidation before the Company Court. But, such complete dominance of the IBC would start the moment the resolution application is filed and not before that and it would continue till the resolution process ends one way or the other. This is because of the fact that the Company or the Corporate Debtor, which cannot file a resolution application and which is already facing a liquidation proceeding in a saved petition, in respect of whom resolution process is sought to be initiated, is governed by a different set of rules for its liquidation, in terms of clause 2 of Order, 2016 read with rule 5 of the Rules of 2016. To such a Company, the Act of 1956, to the extent of its liquidation process, applies and Section 446 is an intrinsic part of that process. It mandates that leave of the Company Court to file or continue with any such proceeding, must be obtained. The rationale being that the Company Court must be made aware of any other claims raised against the Company so that it can effectively go about its job of liquidation of the Company. If this is not to happen, there would be a reasonable possibility of two conflicting claims being made and allowed in respect of the Company and authorities allowing such claims would be at their wit's end in implementing them. Resolution of insolvency of a Company and liquidation of a Company are two processes which pull at each other. Former is about rejuvenation of life and the latter is about termination of life. In such a case, the logic of law, here Section 446 of the Act of 1956, would require that a forum dealing with a proceeding more drastic in consequences is allowed to take a call on the revival possibility of the Company before it is too late in the day. This would mean that no application can be filed or continued with regard to initiation of resolution process under Chapter II of Part II of the IBC without leave of the Company Court under Section 446 (1) of the Act of 1956. It would then follow that if any resolution process is initiated without leave of the Company Court, it would be a defective proceeding in the eye of the IBC read with the Act of 1956. Such a proceeding will acquire sanctity only when leave under Section 446 (1) of the Act of 1956 is granted and till that time, it cannot be said that the prohibition contained in Section 64 (2) of the IBC would have its application.

34.Â Such an interpretation, in my considered view, is also consistent with the legislative intent as broadly reflected by the aims and objects of the

IBC. Of course, Shri Bhangde, learned Senior Advocate has a different opinion.

35.Â Shri Bhangde, placing reliance on Govind Saran Ganga Saran v. Commissioner of Sales Tax & ors reported in 1985 (Supp) SCC 20,5 submits

that it is not permissible to consider the statement of objects and reasons for interpreting a provision of law when the language of the provision is clear.

With due respect, I must submit that in the present case, the statutory language of the provisions of law discussed earlier, is not so clear as not to

restrain us from resorting to the aims and objects of the IBC. The Hon'ble Apex has also considered them in the case of Innoventive Industries

(supra). So, it would be useful for us also to bear them in mind while resolving the conflict between the IBC arising from Section 238 and the

provisions of Part VII, in particular Section 446, of the Act of 1956.

36.Â The object of the IBC is to consolidate and amend the law relating to reÂorganization and insolvency resolution of the corporate persons,

partnership firms and individuals in a timeÂ?bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability

of credit and balance the interests of all the stakeholders. The whole theme of IBC is based upon efficacy and speed to be achieved in making efforts

to revive a dying Company, and securing protection of the interests of its creditors and other stakeholders. The object of the IBC is not to repeal the

Companies act, 1956 and substitute it by another enactment, but it is to consolidate and amend relevant laws. Such an object of the IBC should

underline the need for attaining harmony while interpreting the provisions of Section 238 of the IBC read with rule 5 of the Rules of 2016 and clause 2

of Order, 2016 qua Section 446 of the Act of 1956 so that what is in the best of interests of the Company and its stakeholders is allowed to happen in

a natural way. This is what I have done in the present case and accordingly, I conclude that leave to continue with the proceedings before the NCLT,

under Section 446 (1) of the Act of 1956, is necessary. The question is answered accordingly.

37.Â The decision of learned single Judge in Jotun India (supra), relied upon by Shri Manohar, is only confined to the question of grant of injunction or

otherwise in view of the prohibition prescribed under subÂ section (2) of Section

64 of IBC and it does not provide any answer as to in what way the conflict between two enactments should be resolved and, therefore, I do not think that any useful reference to this case can be made.

38. Shri S.P. Dharmadhikari, learned Senior Advocate for the intervenor CoC, has placed his reliance upon the case of Madura Coats Limited v. Modi

Rubber Limited & anr reported in (2016) 7 SCC 603 wherein it is held that whenever the reference is made to B.I.F.R. under Section 15 and 16 of

the SICA, provisions of SICA would come into play and they would prevail over the provisions of the Companies Act and proceedings under

Companies Act must give way to proceedings under the SICA. In my respectful submission, same analogy cannot be drawn to understand the

provisions of the IBC and the Act of 1956 for the reason that IBC itself makes a room for saving of the petitions pending before the Company Court

and their governance by the Act of 1956. Therefore, in my opinion, the decision of Madura Coats (supra) would have no application to the facts of the

instant case.

39. Now, the next question is as to whether or not leave under Section 446 of the Act of 1956 be granted. Shri Sunil Manohar, learned Senior

Advocate for Resolution Professional and Shri S.P. Dharmadhikari, learned Senior Advocate for the intervenor CoC, would submit that it must be

granted and whereas, Shri M.G. Bhangde, learned Senior Advocate for the other intervenor, Shri A.C. Dharmadhikari, learned Advocate for

respondent No.1, and Shri Kohli, learned Advocate for the workers, strongly oppose the grant of leave. Learned Senior Advocates for the resolution

professional and intervenor CoC have adverted to the various advantages that are to be found in the IBC as against the Act of 1956 to make out a

case for grant of leave. On the other hand, learned Senior Advocate for the other intervenor, director of the Company under liquidation, learned

Advocates for respondent No.1 and the workers have spoken about equally efficacious provisions of law allowing rehabilitation of a company being

present under the Act of 1956 and also about the need for avoiding at any cost the multiplicity of proceedings and the NCLT having lost its jurisdiction

altogether to deal with the process initiated for resolution of insolvency and possibly the liquidation as well. As regards the argument about NCLT

having no jurisdiction, I would say, the issue has already been answered by me.

But the other arguments require consideration.

40.Â In the present case, creditors of Corporate Debtor have initiated proceedings for winding up of the Company or the Corporate Debtor under Part VII of the Act of 1956 and not for a compromise and making arrangements for reconstruction of the company under Section 391Â which is a part of Part VI, Chapter V of the Act of 1956. Although there can be no dispute about the proposition that during the pendency of the winding up proceeding, an application for compromise and making arrangements for rehabilitation of the Company can be filed under Section 391 of the Act of 1956, (See: Meghal Homes (P) Ltd. v. Shree Niwas Girni K. K. Samiti & ors reported in (2007) 7 SCC 753) the issue does not appear to be so simple as one may think.

41.Â As rightly submitted by learned Advocate for the intervenor COC that even though principally revival of a sick company is possible under Section 391 of the Act of 1956, the possibility depends for it to take birth only upon volition of the parties and not upon the unilateral action of any creditors or the process of law, as envisaged under the IBC. Under the IBC, the revival of a Company is possible even at the behest of a financial creditor or an operational creditor or a corporate applicant as contemplated under Sections 7,8,9 and 10 of the IBC. This resolution process, as seen from the scheme of the IBC, particularly from the provisions contained in Part II, considers as a first step the possibility of resolution of the insolvency of the Corporate Debtor as provided under Chapter II and then as a second step only, when such resolution is not possible, that it mandates through the provisions made in Chapter III that Adjudicating Authority shall pass an order requiring the Corporate Debtor to be liquidated. Chapter II, Part II of the IBC contains detailed and exhaustive provisions laying down the manner in which and the extent to which the effort to resolve the issue of insolvency of a sick company be dealt with by the Resolution Professional and Committee of Creditors and as to how the Adjudicating Authority should go about its job of approving the resolution plan. The provisions contained in Sections 12 to 32 of the IBC, which are part of Chapter II, Part II, lay down the procedure and the powers of the authorities created under the Act. These provisions are exhaustive and infuse professionalism in the whole process. They take help of an expert like the Resolution Professional who

works under the supervision and control of the Board appointed under the IBC. Then, he also has to seek approvals of the CoC and ultimately, the Adjudicating Authority. No doubt, he is a private person and the process is somewhat expensive as compared to liquidation process under the Act of 1956. But, the control exercised over the Resolution Professional would not allow him to compromise his independence and the output that he is going to give, using his expertise, would far outweigh the cost of the resolution process. Besides, this whole process takes care of interests of all the creditors, which should allay the apprehension expressed by respondent no. 1 in this case.

42.Â As regards the process of liquidation, it would be seen that it has been dealt with in a separate chapter, Chapter III , Part II of the IBC.

Presently, so far as the proceedings before the IBC are concerned, the provisions contained in Chapter III, Part II of the IBC should not be and are not the subject matter of our attention. That stage would arrive only upon the rejection of the resolution plan by the Adjudicating Authority and if that happens, the situation then obtaining would have to be dealt with by considering the fact that the issue of liquidation of Corporate Debtor is also being dealt with by this Court in accordance with the provisions of the Act of 1956.

43.Â At the cost of repetition, I would say, an overall consideration of the provisions contained in Chapter II of Part II of the IBC reveals that such matters as resolution of the insolvency of the Corporate Debtor and exploring the possibility of the revival of Corporate Debtor having been exhaustively and effectively dealt with by the IBC, it is a complete Code in itself for these matters. The IBC, as regards the liquidation process also contains exhaustive provisions and has been considered as a Code complete in itself. But, the provisions of the IBC also make way for the saved company petitions to be dealt with under the provisions of the Act of 1956 and, therefore, through the process of harmonious interpretation it has to be ensured that the Company Court uses its discretion in such matters in such a manner as would let the parties have the best of both the worlds, which is so much necessary in the interests of the sick company, its creditors and all stake holders.

44.Â Earlier, I have referred to the case of Innoventive Industries Ltd. (supra). In that case, it is held that the IBC is a Code complete in itself and

exhaustive of the matters dealt with therein and, therefore, it is the duty of the Court to ascertain as to what is the true scope of the provisions of the

IBC. If the IBC is an enactment which also allows the saved petitions to be dealt with by the provisions of the Act of 1956, one would see no

difficulty in holding that the Parliament intended that true scope of the IBC should be that whatever the Courts be, they direct their efforts to secure

the best of interests of the Company proposed to be liquidated and its stakeholders. This would mean that if there is an expert like Resolution

Professional available for reviving the Company, he should be allowed to try his hand at that first, for rejuvenation is preferable to obliteration. Revival

has a healthier cascading effect on the economy while the termination has a weakening ripple effect on the economy. It follows that best of interests

of the Company under liquidation and its stakeholders lie in allowing a process for resolving its insolvency to go on as a first step and if it fails, in taking

the liquidation process to its logical end as a last resort. So, generally speaking, wisdom would lie in granting leave under Section 446 (1) of the Act of

1956 to continue with the process of insolvency resolution.

45.Â In a given case, however, depending on the facts and circumstances of that case, the discretion to grant leave may not be justifiably exercised.

Considering the myriad colours the facts and circumstances of each case may display, it is not possible to state a few of such situations to illustrate the

point. Suffice it to say it here that in the instant case, the facts and circumstances do justify the grant of leave. The reasons being that though

Provisional Official Liquidator has been appointed, he has not taken over the possession of assets and so the liquidation process has not even taken off

the ground and that what has been said about Rs. 400 crore or so resolution plan prepared or being prepared would hold out a reasonable assurance

about taking care of interests of all creditors and stakeholders, in the resolution process.

46.Â The discussion made thus far would lead me to hold that in the situation the Corporate Debtor is presently going through, it would be in the best

of interests of the Corporate Debtor as well as its creditors and all stake holders that leave under Section 446 (1) of the Act of 1956 is granted for at

least continuing with the insolvency Resolution Process under Chapter II of Part II of the IBC and if the Resolution Process is not successful, as held

by the Division Bench of this Court in the case of Jotun India Private Limited vs. PSL Limited (Appeal Lodging No.68/2018), decided on 26th July,

2018, this Court having been already seized of the winding up petitions (saved petitions), would proceed to deal with these petitions in accordance with

law and till that time, the effect of the order dated 21st March, 2017 passed by this Court appointing Provisional Official Liquidator would have to be

kept in abeyance.

47. It is the submission of Shri Bhangde, learned Senior Advocate for the other intervenor, that the multiplicity of litigation is required to be avoided

at any cost and any grant of leave would certainly result in multiplicity of proceedings as well as pendency of parallel proceedings.

He relies upon the cases of Amresh Tiwari vs. Lalta Prasad Dubey and another (2000)4 SCC 440 and State of H.P. and others vs. Surinder Singh

Banolta (2006)12 SCC 484. Shri Sunil Manohar, learned Senior Advocate for the Resolution Professional disagrees. He submits that if the leave is not

granted, this Court would have to get the proceeding relating to the Resolution Process transferred to it for being tried and disposed of under Section

446 (2)(a) of the Act of 1956, which would not only add to complications but also suffer from severe limitations under the Act of 1956 regarding

revival of a Company and this may not augur well for the Company and its stakeholders.

48. In my view, the learned Senior Advocate for the Resolution Professional is right. The scope and ambit of the IBC as well as of the Act of 1956,

would show that the nature of a proceeding carried out for resolution of the insolvency of the Corporate Debtor under the IBC is entirely different

from that of a proceeding aimed at rehabilitation of a sick Company under the provisions of the Act of 1956. The revival of a Company under the Act

of 1956 is possible only in terms of its Section 391 which depends upon the will of the parties, unlike the detailed and comprehensive provisions

contained under Chapter II, Part II of the IBC. When two proceedings are not comparable in form and substance, such proceedings cannot be termed

as parallel proceedings. Such proceedings could be multiple proceedings but only in number and not in terms of their impact and efficacy for injecting

life into an otherwise a dying Company. Therefore, if the parties are allowed to make an attempt of revival by resorting to best possible procedure,

which is under the IBC, the net result would only be of avoidance of unnecessary litigation and multiplicity of further proceedings.

49. In the case of Harihar Nath and others vs. State Bank of India and others, (2006) 4 SCC 45, 7 the Hon'ble Apex Court elaborating upon the

object and scope of Section 446 of the Act of 1956 has held that the object of this Section is not to cancel, nullify or abate any claim against the

Company and its object is to save the Company which has been ordered to be wound up, from unnecessary litigation and multiplicity of proceedings

and also provide effective assistance for equitable distribution of money generated in the process amongst creditors and shareholders of the Company.

The relevant observations of the Hon'ble Apex Court as they appear in paragraph 18 are reproduced thus :

“The object of Section 446 of the act is not to cancel, nullity or abate any claim against the company. Its object is to save the company which has

been ordered to be wound up, from unnecessary litigation and from multiplicity of proceedings and protect the assets for equitable distribution among

its creditors and shareholders. This object is achieved by compelling the creditors and others to come to the court which is winding up the company

and prove their claims in the winding up. For this purpose, all suits and proceedings pending against the company are also stayed subject to the

discretion of the winding up court to allow such suits and proceedings to proceed. When a winding up order is passed, the effect is that all the

affairs pertaining to the company in liquidation, including all suits/proceedings by or against the company, come within the control and supervision of

the winding up court. The winding up court has to decide whether it will let the suit/proceeding to continue in the court where it is pending, or it will

itself adjudicate the suit/proceeding. Thus, under Section 446(1), the winding up court only decides about the forum where the suit has to be tried and

disposed of.”

50. The law so laid down by the Hon'ble Apex Court in Harihar Nath (supra) would be a clear indicator of the fact that grant of leave under

Section 446 in a given case, is only for avoiding unnecessary litigation and creation of multiplicity of proceedings.

51. Converse situation that would arise from refusal of leave under Section 446 (1) of the Act of 1956, is also required to be borne in mind by us.

Section 446 (2)(a) of the Act of 1956 empowers the Company Court to have jurisdiction to entertain or dispose of, amongst others, any suit or proceeding by or against the Company. The Hon'ble Apex Court in the case of Hariharnath (supra), in paragraph 20, has held that the Company Court would have to decide as to whether or not the other proceeding, in the present case the proceeding relating to resolution process of insolvency of the Corporate Debtor, be transferred to it under Section 446(2)(a) of the Act of 1956. The Hon'ble Apex Court has also held that if suit or such proceeding is proceeded with, without obtaining leave of the Company Court, either not being aware of the order of winding up or ignoring the provisions of Section 446(1), the resultant decree would not be void but only be voidable at the instance and option of the Official Liquidator of the Company. So, the possibility of the creditors who have initiated proceedings relating to liquidation of the Corporate Debtor before this Court seeking transfer of the resolution proceeding pending before NCLT cannot be ruled out and in the event any such application is moved, this Court would have to decide as to whether or not to exercise its power under Section 446(2)(a). On the other hand, the proceeding pending before NCLT for resolution of the insolvency of the Corporate Debtor would also become vulnerable in law. The best resolution of this dilemma, in my considered opinion, would occur by deciding to grant leave under Section 446(1) of the Act of 1956 so that whatever possibly can be done in the best interests of the Corporate Debtor and all the stakeholders is done and speedily too. All this, in my opinion, would make out a case for grant of leave under Section 446 (1) of the Act of 1956.

52. Shri Bhangde, learned Senior Advocate for the other intervenor has submitted that even if leave under Section 446(1) of the Act of 1956 to continue with the proceeding before the NCLT is granted, it would be effective only from the date of the leave as any proceeding initiated without leave is without jurisdiction. He has relied upon the case of State of J & K vs. UCO Bank and others , (2005)10 SCC 331.

53. With due respect, I must say that in view of the later law laid down by the Hon'ble Apex Court in the case of Harihar Nath and others (supra) in the year 2006, the proceeding initiated before the NCLT by the financial creditor EARC, having been taken up being unaware of the order of this

Court dated 21st March, 2017 appointing a Provisional Official Liquidator, would not be void but only voidable at the instance and option of the Official

Liquidator of the Company. The Official Liquidator, respondent No.2, has already made his stand clear in the written submission wherein he has said

that the present winding up proceeding be dispensed with. Therefore, whatever has been done so far by the Resolution Professional in his effort to

carry forward process of resolution of insolvency of the Corporate Debtor cannot be said to be void and it would have to be taken to its logical end in

accordance with law. Of course, while granting leave under Section 446(1), this Court would be under a duty to consider imposition of suitable terms

as provided in this very Section.

54. Shri Bhangde, learned Advocate for the other intervenor, has also relied upon the case of Sunil Gandhi and another vs. A.N. Buildwell Private

Limited, Co. APPL.(M) 115/2016, decided on 15. 3. 2017 to support his argument that it is only the Company Court which would have exclusive

jurisdiction for adjudicating applications in relation to revival of the Company in liquidation. The view so taken by the learned Single Judge of the Delhi

High Court was in the context of an application which was filed by the parties under Section 391 of the Act of 1956. No such application, in any of the

Company Petitions has been filed here and, therefore, I do not think that any useful reference could be made to this case while deciding the question

involved in the present matter.

55. In the case of M/s. Ashok Commercial Enterprises, vs. Parekh Aluminex Limited (2017) SCC Online Bom. 421, learned Single Judge of this

Court has held that there is no inconsistency in the provisions of the IBC and the Companies Act 2013 or Company Act, 1956 in respect of the

jurisdiction of the Company Court or the NCLT insofar as winding up proceedings are concerned. The view commends to me and following the same

that I have drawn my conclusions as stated earlier in the present case. Learned Senior Advocate Shri Bhangde for the other intervenors, has further

referred to me the case of Indorama Synthetics (I) Ltd. Nagpur vs. State of Maharashtra and others 2016(4) Mh.L.J. 249 wherein the Division

Bench of this Court has held that the main purpose of Section 446(1) of the Act of 1956 is to see that assets of the Company are not frittered away

and to ensure that payment of debts of secured, unsecured creditors and

shareholders takes place in an equitable manner and in accordance with law,

I have borne in mind this decision as well while recording my findings so far.

56.Â Learned Senior Advocate Shri M.G. Bhangde for the other intervenors, has further relied upon the cases of *E scorts Ltd. vs. Commissioner of*

*Central Excise, Delhi*ÂII (2004)8 SCC 33,5 *Sumtibai and others vs. Paras Finance Co. Regd. Partnership firm Beawer (Raj.)*, through Mankanwar

(Smt) w/o. *Parasmal Chordia (dead) and others* (2007)10 SCC 82, *Union of India and others vs. Dhanwanti Devi and others* (1996) 6 SCC 44. Shri

Sunil Manohar, learned Senior Advocate for the Resolution Professional has also relied upon the case of *Erach Boman Khavar vs. Tukaram Shridhar*

*Bhat and another* (2013)15 SCC 655. In all these cases, it has been held that in order to understand the ratio decidendi or the principles of law,

contextual settings are important and the judgments are not to be read as Statutes. Following these principles only that I have made my inferences in

the present case.

57.Â Shri Kohli, learned Advocate for the workers has relied upon the case of *Amrit Bhikaji Kale and others vs. Kashinath Janardhan Trade and*

*another* (1983)3 SCC 437 to support his contention that whatever has been done by the NCLT so far, being without obtaining any leave under Section

446(1) of the Act of 1956 from this Court, is without jurisdiction. I have already found as to how, the proceeding held so far by the NCLT could be

considered only as voidable at the option of the respondent No.2, Official Liquidator, and how it has been made voidable by him, by following the latest

law laid down in *Harihar Nath* (supra).

58.Â Shri Kohli, learned counsel for the workers also submits that the charge of the workers on the assets of the Corporate Debtor ranks *pari passu*

with that of the other secured creditors in terms of Section 529(1) of the Company Act. He places his reliance upon the case of *UCO Bank vs.*

*Official Liquidator, High Court, Bombay and another* (1994) 5 SCC 1 and *A.P. State Financial Corporation vs. Official Liquidator* (2000)7 SCC 29.1

The law so laid down by the Hon'ble Apex Court in these cases would have to be borne in mind by the Adjudicating Authority while taking its decision

in respect of the resolution plan submitted as a result of implementation of the process of resolution of insolvency of the Corporate Debtor by the

Resolution Professional.

59. In view of above, I am inclined to grant leave under Section 446(1) of the Act of 1956. However, leave to be granted would have to be in

accordance with law holding the field and also the view taken by the Division Bench of this Court in the case of Jotun India Private Limited vs. PSL

Limited, Appeal Lodging No.68/2018, decided on 27th July, 2018. In Jotun India, the Division Bench has held that as the Company Judge, in saved

petitions, would exercise jurisdiction in case revival effort by the NCLT fails, a condition would have to be imposed that in case resolution process

fails, this Court already seized of the winding up petitions (saved petitions) would proceed to deal with the saved petitions in accordance with law. This

would mean that the application would have to be allowed partly, by imposing suitable conditions. Hence, the following order:

#### ORDER

(1) Company Application No. 10 of 2017 is partly allowed and leave is granted to continue with the Corporate Insolvency Resolution Process to the

extent it is carried out under Chapter II, Part II of the Insolvency and Bankruptcy Code, 2016.

(2) All the creditors and also the operational creditors including the workers having preferential claims under Section 529A of the Companies Act,

1956 shall be allowed to submit their respective claims by the Resolution Professional by suitably extending the last date of submission of such claims

in accordance with the provisions of the IBC, 2016 and relevant regulations and thereafter the Resolution Professional shall take necessary steps for

completion of the resolution process in accordance with law.

(3) In case the forum under the IBC of 2016 which is National Company Law Tribunal, fails to revive or successfully implement the resolution plan,

this Court seized of the winding up petitions would proceed to deal with these petitions in accordance with law and till then the effect of the order

dated 21.3.2017 passed by this Court appointing provisional Official Liquidator is kept in abeyance.

(4) All the connected applications being Nos. 12 of 2017, 13 of 2017, 14 of 2017, 15 of 2017 and 17 of 2017 are disposed of accordingly.

(4) Company Application No. 11 of 2017 is also disposed of accordingly.

Learned counsel for the applicant in Company Application No. 3 of 2018 prays for grant of stay to the effect and operation of this order for a period

of six weeks in order to approach the Hon'ble Apex Court in the matter.

However, considering the fact that Resolution Professional has been directed to suitably extend the last date of submission of claims of the creditors

and the fact that resolution process is likely to take some more time, I do not think that there is any need for accepting the request. Request is

accordingly rejected.