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## INSOLVENCY AND BANKRUPTCY CODE, 2016

NCLT HAS THE POWER TO **INITIATE INSOLVENCY PROCEEDINGS** AGAINST A **SUBSIDIARY COMPANY** WHILE INSOLVENCY PROCEEDINGS ARE **PENDING** **AGAINST THE PARENT HOLDING COMPANY** SINCE THEY ARE DISTINCT CORPORATE LEGAL ENTITIES





## IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL

ASHOK B. JIWRAJKA, DIRECTOR OF ALOK INDUSTRIES LTD. VS. AXIS BANK LTD.

(COMPANY APPEAL (AT) (INSOLVENCY) No. 683 OF 2018) DATED:16.01.2019

### FACTS OF THE CASE

This appeal has been preferred by Mr. Ashok B. Jiwrajka (herein after referred to as Appellant) erstwhile 'Director' of 'Alok Industries Limited' against the order passed by the National Company Law Tribunal, Mumbai Bench (hereinafter referred to as 'NCLT') on 24.10.2018.

The NCLT admitted the Application of Axis Bank, under Section 7 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as 'the IBC'),

**Alok Infrastructure Limited is the subsidiary company of Alok Industries Limited (the Holding Company).**

The Corporate Insolvency Resolution Process (CIRP) was still pending against

**Alok Industries Limited** at the time of filing of the Application against its subsidiary company being **Alok Infrastructure Limited**.

The NCLT Mumbai Bench, by its impugned order held that Alok Infrastructure Limited had defaulted in repaying the loan availed by Axis Bank Limited (the Creditor therein). It further observed that since the creditor had complied with all the requirements for filing an Application under Section 7 of the IBC, the same was taken to be complete and accordingly admitted.

Hence, the Appellant herein has challenged the admission of the Application under Section 7 while stating that it is in violation of the provisions of the Moratorium period imposed in the



CIRP pending against the Holding Company, that is, **Alok Industries Limited**.

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### ISSUE BEFORE NCLAT

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The issue for consideration before the Appellate Tribunal was as follows:

*Whether the NCLT has the power to initiate CIRP against the Subsidiary Company during the pendency of a CIRP against the Holding Company after the imposition of Moratorium under Section 14 of the IBC?*

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### OBSERVATION

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The NCLT, in its impugned order had referred to **Section 14(1)(a)** of the IBC which provides that:

#### ***"14. Moratorium***

*1. Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by*

*order declare moratorium for prohibiting all of the following, namely:—*

*(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority."*

Section 14(1)(a) of IBC prohibits the institution of suits or continuation of pending suits against the **Corporate Debtor**, including execution of any judgment, etc.

**However, it does not speak about initiation of CIRP against the subsidiary of the Corporate Debtor.**

The present case is not hit by Section 14(1)(a) of the IBC by any stretch of imagination since it involves the initiation of CIRP against a subsidiary of a Corporate Debtor.

Furthermore, the NCLT went on to clarify that a Subsidiary Company is a distinct legal entity, separate from the Holding



Company which is also a separate legal entity.



The only concern of the NCLT was that there existed a debt and a default of the same. Hence, the NCLT went on to hold that the CIRP against Alok Industries Limited is different from the CIRP against Alok Infrastructure Limited.

Therefore, provisions of Section 14 of the IBC have not been violated in any manner.

The NCLAT took the same opinion while upholding the observations and order of the NCLT, Mumbai Bench, dated 24.10.2018.

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### CONCLUDING VIEW

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The NCLAT concluded that:

- The Corporate Insolvency Resolution Proceeding initiated against Alok Infrastructure Limited (the Subsidiary Company) is completely separate from the Corporate Insolvency Resolution Proceeding pending against Alok Industries Limited (the Holding Company).
- The NCLAT observed that if the resolution plan had been filed in the CIRP pending against Alok Industries Limited and the Resolution Professional therein had approved the resolution plan, then the Adjudicating Authority therein is preferably required to decide it within 3 weeks.
- No stay would be on the CIRP initiated against the Subsidiary Company i.e. Alok Infrastructure Limited and CIRP would continue in accordance with the procedure under the IBC.



Therefore, NCLAT dismissed the appeal without any costs and held that the NCLT Mumbai Bench would continue with the CIRP initiated against Alok Infrastructure Limited in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016.

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#### AMLEGALS REMARKS

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In this case, the NCLAT has reiterated the following legal aspects:

- a. that a Holding Company and a Subsidiary Company are distinct legal entities and should not be considered as the same,
- b. the CIRP initiated against the two entities, however related to each other, are actually separate proceedings since they both have a different debt and default thereof,
- c. that trite law for CIRP being a nexus of existence of a debt and its default without any dispute, and
- d. that if the aforesaid situation exists then CIRP against the

subsidiary will be outside the purview of Moratorium under Section 14(1)(a) of the IBC.

It has interpreted the provisions related to imposition of Moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 to hold that a **blanket prohibition cannot be imposed on all legal proceedings in association with the Corporate Debtor.**

**It is pertinent to note that neither the NCLT nor the NCLAT can decide anything over and above the power specified under the provisions of the IBC or the Regulations specified by the Board.**

NCLAT's judgment in this case will help avoid confusion in adjudicating similar disputes in the future.

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In case of any queries or feedback, please feel to connect with us on [anand@amlegals.com](mailto:anand@amlegals.com) and/or [easha.manchanda@amlegals.com](mailto:easha.manchanda@amlegals.com).

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*Correct Knowledge & Legal Strategy matters the most in law.*

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**AMLEGAL'S - Attorneys & Advisors**

An “ISO 9001: 2015” Certified Law Firm

206, Advait, Besides Sandesh,

Vastrapur, Ahmedabad - 380 015,

Gujarat, INDIA.

Website: [www.amlegals.com](http://www.amlegals.com)

E-mail: [info@amlegals.com](mailto:info@amlegals.com).

Tele: +91 – 79 –4800 5359/4003 3359

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