



## **HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA**

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

### **EXECUTION NO: 1433 OF 2018 IN COMPLAINT NO: 75 OF 2018**

Desh Raj Mangal

**....DECREE HOLDER**

**VERSUS**

Aerens Jai Realty Pvt Ltd.

**.....JUDGMENT DEBTOR**

**CORAM:**

**Parneet S. Sachdev  
Nadim Akhtar**

**Chairman  
Member**

**Date of Hearing:** 11.09.2025

**Hearing:** 21

**Present:** None for the decree holder  
None for the judgement debtor

### **ORDER (PARNEET S. SACHDEV-CHAIRMAN)**

1. Today, the case was fixed for hearing arguments on the point of maintainability of the present execution as Ld. Adjudicating Officer via order dated 30.01.2025, had made following observations to question the maintainability of this execution of the order.

*“Before proceeding further, this Forum has specifically asked decree holder, if the proceedings are pending before Hon'ble National Company Law Tribunal, New Delhi and also decree holder has filed a claim before Interim Resolution Professional, how proceedings before any other Forum like this Forum, for recovery of some amount, is maintainable? In other words, when the decree holder is going to get the amount subject to the present execution through the office of IRP which has accepted claim petition, how could the same amount, decree holder recover through the present execution as if second refund is given, it would amount to unjust enrichment to decree holder, which is legally incorrect.*

*On request, now, to come up on 01.07.2025 for arguments on the point of maintainability of the present execution”*

2. As per the office records, under order dated 01.07.2025 in execution complaint no. 61 of 2020, wherein the decree holder who is also the same decree holder in the present execution, has submitted that the judgment debtor's company i.e. M/s Aerens Jai Realty Pvt. Ltd. (corporate debtor) is under liquidation as per liquidation order no.A-20/2024 in the matter of IB-867(ND)/2022 titled as "M/s Kisten Realtech Pvt. Ltd. v/s M/s. Aerens Jai



Realty Pvt Ltd.”, passed on dated 01.10.2024 by the Hon'ble National Company Law Tribunal, New Delhi, Court no.3. The Ld. Adjudicating Authority had gone through the order dated 01.10.2024 passed by Hon'ble NCLT, New Delhi, Court no.3. For ready reference, the relevant order passed on dated 01.10.2024 by Hon'ble NCLT, New Delhi are reiterated below (para no.19);

*“19) In light of the above facts and circumstances, it is hereby ordered as follows:*

- i. The Liquidation. A.-20/2024 filed by Mr. Prabhakar Kumar, the Resolution Professional of the Corporate Debtor is allowed and the Corporate Debtor is ordered to be liquidated in terms of Section 33(2) of the Code read with sub-clause (i) of clause (b) thereof;*
- ii. The Insolvency and Bankruptcy Board of India ("IBBI") vide its circular number Liq-12011/214/2023-IBBI/840 dated 18/07/2023 in the exercise of its powers conferred under Section 34(4)(b) of the Code had recommended that an IP other than the RP/IRP may be appointed as Liquidator in all the*



*cases where Liquidation order is passed henceforth and the Liquidator can be appointed from the panel list of the IBBI.*

- iii. Therefore, this Adjudicating Authority appoints Mr. Reetesh Agarwal as the Liquidator of the Corporate Debtor. The Registration number of the Liquidator is IBBI/IPA-001/IP-P00878/2017-2018/11475.*
- iv. Mr. Prabhakar Kumar, the Resolution Professional of the Corporate Debtor is relieved from the present assignment as the Resolution Professional. The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed Liquidator forthwith.*
- v. The Liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the Liquidation estate as specified by the IBBI and the same shall be paid to the Liquidator from the proceed of the Liquidation estate under Section 53 of the Code.*
- vi. The Liquidator shall initiate the Liquidation process as envisaged under Chapter-III of the Code and the Insolvency &*



*Bankruptcy Board of India (Liquidation Process) Regulation  
2016*

- vii. The Liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed of the Liquidation order timely.*
- viii. All the powers of the Board of Directors, and key managerial personnel, shall cease to exist in accordance with Section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.*
- ix. The personnel of the Corporate Debtor is directed to extend all assistance and cooperation to the Liquidator as required by him in managing the Liquidation process of the Corporate Debtor.*
- x. The Order of Moratorium passed under Section 14 of the Code shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Code shall commence. On initiation of the Liquidation process but subject to Section 52 of the Code, no suit or other legal proceeding shall be*



*instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute the suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in Section 33(5) of the Code read with its proviso.*

- xi. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.*
- xii. The Liquidator shall also follow up on the pending applications for disposal during the process of Liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.*
- xiii. The Liquidator shall keep in view the provisions of Regulation 32A of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and shall endeavor to first sell the Corporate Debtor or its business as a going concern. However, if he is unable to sell the Corporate Debtor or its business within 90 days from the liquidation commencement date, the Liquidator shall proceed to sell the assets of the Corporate Debtor under clauses (a) to (d) of Regulation 32 of Insolvency*



*and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.*

- xiv. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;*
- xv. The Liquidator and the Registry are hereby directed to send a copy of this order within 3 days from the date of this order to the Registrar of Companies, NCT of Delhi & Haryana. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.*
- xvi. The Registry is directed to send a copy of this order to the IBBI for their record.*
- xvii. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.*

*No orders as to cost”*

- 3. The above detailed order of Hon'ble NCLT, at New Delhi makes it clear that though the order of moratorium passed under Section 14 of the Insolvency and Bankruptcy Code has ceased to have its effect in the case in hand but



there is also fresh moratorium which has commenced under Section 33(5) of the Insolvency and Bankruptcy Code. Now, it is relevant to see what does Section 14 of Insolvency and Bankruptcy Code as well as Section 33(5) Insolvency and Bankruptcy Code denotes. For ready reference, both the Sections are reproduced below;

Section 14: Moratorium

*Section 14(1): (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:--*

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

*(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

*(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

*(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor*

Section 33: Initiation of liquidation.



Section 33(5): Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

*Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.*

4. The above two described provisions indicate that both deals with subject of moratorium which means temporary stay or suspension of activities. Further, Section 14 of the IBC speaks about bar on institution of suits, continuation of pending suits, executions against judgment debtor etc, whereas Section 33(5) speaks about bar on institution of suits after liquidation but it does not speak about the impact of moratorium on the pending litigations against the corporate debtor. It is not out of place to mention here that an additional provision has also been made in Section 33(5) of the IBC that during the period of liquidation, corporate debtor may initiate legal proceedings through the liquidator and/or can continue with litigation with the prior approval of the Tribunal. Having two provisions in mind, it is appropriate to hold that Section 14 and Section 33(5) of the IBC have distinct applications. This view of this Authority is duly fortified by the observations made by Hon'ble Delhi High Court in CS(COMM) 151/2017 titled as "*Elecon Engineering Company Limited v/s Energo Engineering Projects*" dated



13.09.2022, wherein Hon'ble Delhi High Court has commented about correlation of moratorium between Section 14 and Section 33(5) of the IBC in the following manner;

*"That a moratorium under Section 14 applies to CIRP, whereas Section 33 applies to a liquidation process and hence they are entirely distinct in application. It was held that by express language of IBC, a moratorium prohibits continuation of pending suits as well, whereas Section 33(5), IBC is only a bar on institution of new suits during the liquidation process. This line of reasoning was also followed by NCLT, Ahmedabad Bench in IA 361 of 2018 in C(IB) 67 of 2017 dated 25.11.2020 titled as "Bhavarlal Mangilal Jain v/s Metal Link Alloys Ltd."*

However, there is a different view given on this subject by the Insolvency Law Committee (February 2020) in its report, wherein it has been stated that;

*"the legislative intent was provided for initiation as well as continuation of suit or other proceedings but the term 'continuation' was omitted as 'inadvertent error'. The committee pointed out that the provisions of liquidation*



*under the Companies Act, 2013 also bar continuation of proceedings during liquidation."*

Having two different views of the subject, it is safe to conclude that general idea on legal proceedings being initiated or continued by or against the Corporate Debtor during CIRP or liquidation process by reason of a subsisting moratorium is still unclear.

5. Now, the question arises whether this Authority in execution could presume that it was an inadvertent omission on the part of Legislature to add the word 'pending litigation'?

To answer this question, this Authority while placing reliance on the law laid down in "*Ebix Singapore Pvt. Ltd. v/s Committee of Creditors of Educomp Solutions Ltd. and Anr. (2022) 2 SCC 401, Babita Lila and Anr. v/s Union of India (2019) 9 SCC 647, Padma Sundara Rao (Dead) & Ors. v/s State of Tamil Nadu & Ors. (2002) 3 SCC 533, Rohitash Kumar and Ors. v/s Om Prakash Sharma and Ors. (2013) 11 SCC 451,*" holds that since even after the report of Insolvency Law Committee (February 2020), though IBC has been amended many times thereafter but the Legislature in its wisdom has not made any amendments in respect of Section 33(5) of the IBC as recommended by Committee, resultantly, the provisions of Section 33(5) of the IBC has to be interpreted in the manner it speaks of as an omission in a



statute cannot be supplied by a judicial interpretation. In other words, even if it is assumed that there was an omission on behalf of the Legislature in not applying the moratorium under Section 33(5) of the IBC to pending suits, the same cannot be supplied by the Courts. It is for the legislature to amend the statute. To hold so, this Authority has taken strength from the observations made by Hon'ble High Court of Delhi in CS(COMM) 151/2017 titled as "*Elecon Engineering Company Limited v/s Energo Engineering Projects*" decided on 13.09.2022.

In nutshell, in view of the observations made above, it is concluded that since Section 33(5) of the IBC, speaks about new institution or litigations and not of the one instituted prior to order of liquidation, as the case in hand is, the initiation of liquidation proceedings against the present Corporate Debtor, would not debar the decree holder from pursuing the present execution filed prior to order dated 01.10.2024, provided he had not approached the IRP under Section 14 of the IBC to claim for the amount due against the corporate debtor. Since, the decree holder has admittedly processed his claim for the amount due as per the IBC Code, this Authority cannot in the given circumstances allow the decree to proceed further with the present execution as the decree holder cannot pursue two separate remedies in respect of the same claim. Since opportunities have already been



granted to the decree holder to submit his arguments with regard to the maintainability of the execution petition which, the decree holder has failed to submit on account of his non-appearance, this authority, will henceforth, not allow the decree holder to continue with the parallel recovery proceeding for the same claim before this authority in execution. Therefore, the present execution proceeding is disposed of on the ground that two parallel proceedings for recovery of the same amount cannot run simultaneously.



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**NADIM AKHTAR**  
**[MEMBER]**



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**PARNEET S. SACHDEV**  
**[CHAIRMAN]**