

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI**

**Dated 2<sup>nd</sup> December, 2021**

**MA No.119 of 2021**

**In**

**Broadcasting Petition No.499 of 2018**

Union of India

.....Petitioner

Versus

Noida Software Technology Park Ltd.  
(Through: The Liquidator)

....Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON**

**HON'BLE MR. SUBODH KUMAR GUPTA, MEMBER**

For Petitioner(UOI)

: Mr. Sumit Srivastava, Advocate

For Respondent(Liquidator)

: Mr. Kunal Godhwani, Advocate

**ORDER**

**By S.K. Singh, Chairperson** – After hearing learned counsel for the petitioner and learned counsel for the Liquidator, vide order dated 06.10.2021 the petition has been finally decided by passing the operative order to the effect that in the facts of the case, since the claim of the petitioner stands admitted by the Liquidator, further jurisdiction lies with the Liquidator and NCLT and other authorities in terms of Insolvency & Bankruptcy Code 2016(“Code” for short) and not with this Tribunal. It was clarified that a detailed judgment is reserved in which the reasons for the view taken in respect of jurisdiction of the Tribunal will be dealt with at some length. This order/judgment is hereby being delivered separately in the light of the order passed on 06.10.2021 which shall be treated as a part of this order.

**2.** Union of India had filed the present petition on 20.09.2018 against Noida Software Technology Park Ltd. for recovery of Rs.4,34,13,865/- only with interest @ 18% per annum. Instead of filing its reply, the respondent company informed the Tribunal in February 2019 that the Hon’ble National Company Law Tribunal (NCLT) by order dated 08.02.2019 has declared moratorium in terms of Section 14

of the Code and has appointed an Interim Resolution Professional (IRP). Because of the moratorium order and its further extension the petition remained pending/in abeyance. Hon'ble NCLT appointed a Liquidator by order dated 04.09.2020. This Tribunal allowed an application of the petitioner and impleaded the Liquidator and gave liberty to the petitioner to approach the Liquidator also, if it is so inclined. After the filing of reply on behalf of the Liquidator, petitioner filed an MA No.119/2021 wherein it was pointed out that the respondent/liquidator has admitted the same very pending claim of the petitioner, filed in appropriate form in the Liquidation Proceedings, for a total amount of Rs.6,21,08,510/-. On the basis of such admission, through the MA the petitioner sought a decree for the said amount of Rs.6,21,08,510/- with a direction to the respondent to make payment to the petitioner in accordance with law. The said MA along with the petition was heard and on the basis of admission, the order dated 06.10.2021 already referred earlier was passed.

**3.** The combined effect of admission of the respondent/liquidator of the amount claimed in the liquidation proceeding and the order dated 06.10.2021 passed on the basis of admission is to hold the petitioner entitled to a decree of Rs.6.21 crores approximately. But the petitioner's prayer to direct the Liquidator to pay the decretal amount was not entertained by this Tribunal and it was declared that for

the purpose of payment of decretal amount/execution the petitioner has to pursue the matter further with the Liquidator and the NCLT and other authorities as per provisions in the Code.

4. This Tribunal has taken the aforesaid view by following the judgment rendered by this Tribunal dated 07.09.2017 passed in the case of **Dishnet Wireless Ltd. Vs. S.Tel Pvt. Ltd.** In that judgment it was held that matter falling within the jurisdiction of this Tribunal requiring adjudication will not be affected by provisions of the Companies Act 2013 but after judgment, at the stage of execution, this Tribunal does not act as an expert Tribunal and hence any right, an admitted or declared will have to be considered for the purpose of execution etc. by the authority or the Court as per provisions of the Companies Act. In this case, the same analogy was applied and operative order was passed accepting the submission on behalf of Liquidator that further proceedings will lie within the jurisdiction of the authorities under the Code and not with this Tribunal.

5. No doubt there are various differences in the provisions of the Companies Act and those of the Code but those differences do not have any material effect on the view taken by this Tribunal that power of execution vested in this Tribunal is not a power given to the Tribunal as an expert; it can be effectively exercised even

by sending an execution proceeding to ordinary civil court. After a claim is decided under the Companies Act or under the Code, the estate of the wound-up company or a bankrupt company has to be dealt with in a manner specified and mentioned in detail in the Companies Act or under the Code. Such provisions relating to administration and distribution of the estate of the bankrupt in Chapter V of the Code is in the interest of all concerned and for ensuring justice to various competing claims which may have to be adjusted depending upon the availability of funds in the estate of the bankrupt. Such administration and distribution provided in a later Act (the Code) is unique and is not to be found in the Telecom Regulatory Authority of India Act, 1997 (TRAI Act) which governs the powers and procedures of this Tribunal. Further, the Code of 2016 contains various provisions such as Section 14 providing for an order of moratorium, power of liquidator to accept or reject the claim under Section 68 to 42 and power of adjudicator under Section 40 wherein he can admit or reject a claim in whole or in part after recording reasons for rejection. However, the order of moratorium is of limited duration though capable of being extended. Section 60(5) creates an obligation upon NCLT to conclude the liquidation proceedings within one year. As per Section 63, no civil court or authority shall have jurisdiction to entertain any suit or proceeding in respect of any matter over which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under

the Code. Section 231 also creates a similar bar upon civil court in respect of matters in which the Adjudicating Authority or the Board is empowered to pass any order under the Code. No injunction can also be granted in such matters by any court or other authorities. Section 238 further provides that 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.

**6.** In view of aforesaid provisions including one for moratorium, this Tribunal has so far consistently accepted an order of moratorium till it is in force. The aforesaid provisions provide additional grounds for the view taken by this Tribunal in the order of 06.10.2021. The Code being a Parliamentary law of later date has to be followed in case of conflict of jurisdiction, in preference to the TRAI Act of 1997. For this reason, the bar on jurisdiction flowing from Section 63 and/or Section 231 cannot be disregarded by this Tribunal once it is found that there is irreconcilable conflict of jurisdiction, like at the stage of execution as in the present matter.

**7.** Some judgments cited by the parties are being discussed hereinbelow. Learned counsel for the Liquidator has highlighted a judgment of Hon'ble Bombay

High Court dated 10.12.2018 in the case of **Urban Infrastructure Trustees Ltd. Vs. Bhavik Bhimjiyani & Ors.; (2018) SCC Online Bom 20447** in support of his submission that under Section 35 the powers and duties of the Liquidator include the power to institute or defend any suit, prosecution or other legal proceedings, civil or criminal in the name of and on behalf of the corporate debtor; Section 33 deals with initiation of liquidation and its effect as evident from Section 33(5) which bars institution of suit or any other legal proceeding against a corporate debtor after a liquidation order has been passed and under the proviso, institution of a suit etc. can be done by the Liquidator but with the prior approval of the Adjudicating Authority. The above aspect is clear and hence need not detain us any further. Hon'ble Madras High Court in its judgment dated 15.10.2020 in the case of **Chennai Metro Rail Ltd. Vs. Lanco Infratedch Ltd. & Ors.(MANU/TN/5712/2020)** further highlighted the amplitude of Section 33(5) of the Code and pointed out that this section clearly omits to consider and hence does not apply to case of pending matters.

**8.** So far as judgment of this Tribunal in the case of **Dishnet Wireless(supra.)** is concerned, it has been referred to earlier. It involved the issue of jurisdiction of this Tribunal and whether its adjudicatory jurisdiction will be affected by the provisions of Companies Act, 2013. While holding that adjudicatory jurisdiction is

not affected by the Companies Act, 2013, this Tribunal proceeded to hold that at the stage of execution this Tribunal will not have jurisdiction and at that stage the matter will require consideration by the authority or court as per the provisions of the Companies Act. In the present case, no adjudication is required any further and hence even on the same analogy, matters relating to execution have to be decided by the competent authority under the Code. As held above, there are further provisions in the Code which limit the jurisdiction of this Tribunal in view of specific purpose and wordings used in the relevant provisions and also because the Code is a later Act, complete in itself for the specified and special purpose. It requires due primacy wherever applicable in respect of jurisdiction and purpose provided therein vis-à-vis the TRAI Act.

9. Learned counsel for the Liquidator has relied upon judgment of Apex Court in the case of **Innoventive Industries Ltd. Vs. ICICI Bank & Anr.; (2018) 1 SCC 407**. In this case the Hon'ble Supreme Court held the Code to be an exhaustive Code on the subject matter of insolvency in relation to corporate entities made under Entry 9, List III of Seventh Schedule of the Constitution. In Para 60 the Court gave several reasons by referring to various provisions and held that "the later *non obstante* clause of the Parliamentary enactment will also prevail over the limited *non obstante* clause contained in Section 4 of the Maharashtra

Act”. Ultimately it was held that the Maharashtra Act cannot stand in the way of the corporate insolvency resolution process under the Code.

**10.** So far as the *quasi* or *non obstante* clause in the TRAI Act vis-à-vis that in the Code is concerned, as per Section 15, civil court’s jurisdiction has been ousted and it has been prohibited to entertain any suit or proceedings in respect of any matter which this Tribunal is empowered to determine as per provisions of the TRAI Act. Section 15 also provides that no injunction shall be granted by any Code or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the TRAI Act. Such a clause protects the exclusive jurisdiction of this Tribunal by barring the civil courts or any authority to issue injunction mainly because it is an expert Tribunal. The later Parliamentary statute, the Code, is a complete Code in itself and also contains *non obstante* clause. In such a situation, authorities under the Code and the Tribunal under the TRAI Act have the freedom to exercise their respective jurisdiction so long as there is no clash. However, in case of a conflict, *non obstante* clause in the later Parliamentary Act will prevail and affect, to the extent of conflict, the jurisdiction of this Tribunal under the TRAI Act.

11. It is noted that learned counsel for the petitioner in his reply arguments emphasized that Section 60(1) of the Code has been given limited area of operation, only in relation to insolvency resolution and liquidation for corporate persons including corporate debtors etc. He also placed reliance upon the judgment of the Hon'ble Supreme Court in the case of **Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka & Ors.; (2020) 13 SCC 309**. In Paras 37 to 45, the Apex Court considered various provisions including duties of Resolution Professional under Section 25 of the Code and highlighted that under Section 25(2)(b) there is a duty upon the Resolution Professional to act on behalf of the corporate debtor with third parties and exercise the rights for the benefit of corporate debtor in judicial, quasi judicial and arbitration proceedings. Such provisions led to the conclusion that wherever the corporate debtor has to exercise rights in judicial, quasi judicial and arbitration proceedings, the Resolution Professional "cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5)". The first question was answered in Para 45 by holding that "NCLT do not have jurisdiction to entertain an application against the Government of Karnataka for a direction to execute Supplemental Lease Deeds for the extension of the mining lease". It was further held that since NCLT exercised a jurisdiction not vested in it in law, the High Court of Karnataka was justified in entertaining the writ petition.

**12.** Learned counsel for the petitioner appears to be correct in submitting on the basis of aforesaid judgment in the case of **Embassy Property (supra.)** that NCLT and NCLAT are authorities of limited jurisdiction, governed by provisions of the Code and they do not have plenary jurisdiction to adjudicate upon disputes covered by some special Acts like MMDR Act, 1957. So far as TDSAT is concerned, it also exercises special jurisdiction as an expert body and therefore, unless there is a clear conferment of jurisdiction by the Court upon the authorities under the Code leading to conflict, the jurisdiction of this Tribunal will not be affected, especially the adjudicatory jurisdiction.

**13.** However, so far as the present controversy is concerned, no adjudication was required any further and hence for matters relating to execution of the right already found in the petitioner the matter had to be relegated to authorities under the Code which is a complete Code in itself dealing with the assets and liabilities of a corporate entity under liquidation. For such matters clearly covered under the jurisdiction of authorities under the Code, it would not be legal and permissible for this Tribunal to exercise the jurisdiction and powers of execution under the TRAI Act for the reasons already discussed and indicated above.

**14.** The aforesaid discussion and reasoning are to be read as a supplement to the operative order already passed by this Tribunal on 06.10.2021. These are our further reasons in support of the said order. It is clarified that the MA and the main petition have already been disposed of and hereafter nothing further survives in relation thereto before this Tribunal.

.....**J**  
**(Shiva Kirti Singh)**  
**Chairperson**

.....  
**(Subodh Kumar Gupta)**  
**Member**

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