

201 34578/19
Nammaltha Venkatesh

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF AUGUST 2019

BEFORE

THE HON'BLE MR. JUSTICE ALOK ARADHE

WRIT PETITION NO.26084 OF 2019(GM-RES)

BETWEEN:

NOORUDDIN KHAN
S/O NASEERUDDIN KHAN
AGED ABOUT 53 YEARS
RESIDING AT NO 316 5TH CROSS
1ST BLOCK R T NAGAR
BANGALORE - 560 032

... PETITIONER

(BY MR.DHYAN CHINNAPPA, SR. COUNSEL A/W
MR.NITYA KALYANI, ADV.)

AND:

1. ORIENTAL BANK OF COMMERCE
A BANKING COMPANY REGISTERED
UNDER THE BANKING REGULATION ACT 1949
HAVING ITS REGISTERED OFFICE AT
HARSHA BHAWAN E-BLOCK
CONNAUGHT PLACE NEW DELHI - 110 001
AND A BRANCH OFFICE AT
MAKER TOWER F-WING 14TH FLOOR
CUFFE PARADE MUMBAI - 400 005
REPRESENTED BY MANAGING DIRECTOR
2. CORPORATION BANK LTD
A BANKING COMPANY REGISTERED
UNDER THE BANKING REGULATION ACT 1949
HAVING ITS CORPORATE OFFICE AT
MANGALADEVI TEMPLE ROAD
PANDESHWAR MANGALORE - 575 001
KARNATAKA
REPRESENTED BY MANAGING DIRECTOR
AND ITS CORPORATE BANKING BRANCH AT
BHARATH HOUSE #104 GROUND FLOOR
MS MARG MUMBAI - 400 023



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3. BANK OF BARODA
A BANKING COMPANY REGISTERED
UNDER THE BANKING REGULATION ACT 1949
HAVING ITS HEAD OFFICE AT SURAJ PLAZA 1
SAYAJI GUNJ BARODA - 390 005
AND ITS BRANCH OFFICE AT 1ST FLOOR
3 WALCHAND HIRACHAND MARG BALLARD
PIER MUMBAI - 400 001
REPRESENTED BY MANAGING DIRECTOR

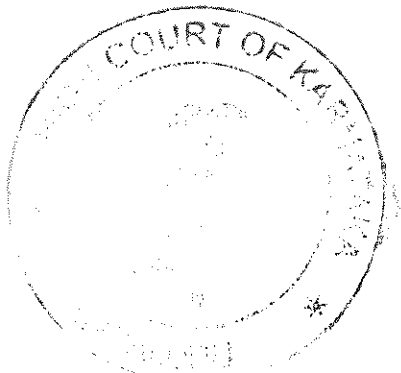
4. ALOK KAILASH SAKSENA
AGE UNKNOWN
FATHER'S NAME UNKNOWN
HAVING OFFICES AT DESAI SAKSENA
AND ASSOCIATES CHARTERED
ACCOUNTANTS 1ST FLOOR LAXMI BUILDING
SIR PM ROAD FORT
MUMBAI - 400 001

... RESPONDENTS

(BY MR. ANIMESH BISHT ADV.
MR. SHARAN A. KUKREJA ADV.
MR. TANVI KISHORE ADV. FOR
MR. CYRIL AADARCHAND MANGALDAS ADVS. FOR R1 TO R3
MS. JAYATI GOYAL ADV. FOR
MR. AJAY SHANKAR ADV. FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR
THE RECORDS OF THE IB PROCEEDINGS AND DECLARE THE SAME
AS VOID AND NON-EST ON ACCOUNT OF THE JUDGMENT OF THE
HON'BLE APEX COURT IN DHARANI SUGARS AND CHEMICALS
LTD., VS. UNION OF INDIA.

THIS WRIT PETITION COMING ON FOR *ORDERS* THIS DAY,
THE COURT MADE THE FOLLOWING:-



ORDER

Mr.K.G.Raghavan, learned Senior counsel along with Mr.Himanshu Satiya, Smt.Varsha S., Smt.Trisha Chandran, learned counsel for the petitioner No.1.

Mr.Dhyan chinnappa, learned Senior counsel along with Mr.Nitya Kalyani P., learned counsel for the petitioner No.2.

Mr.Animesh Bisht, Mr.Sharan A. Kukreja, Mr.Tanvi Kishore, learned counsel for Mr.Cyril A. Aadarchand Mangal Das, learned counsel for respondent Nos.1 to 3.

Mr.Jayati Goyal, learned counsel for Mr.Ajay Shankar, learned counsel for respondent No.4.

In this writ petition under Article 226 & 227 of the Constitution of India, the petitioners *inter alia* seeks a declaration where the proceeding pending before the Company Law Tribunal are void and *non est* in the light of law laid down by Supreme Court in '***DHARNI SUGARS AND CHEMICAL LTD., VS. UNION OF***



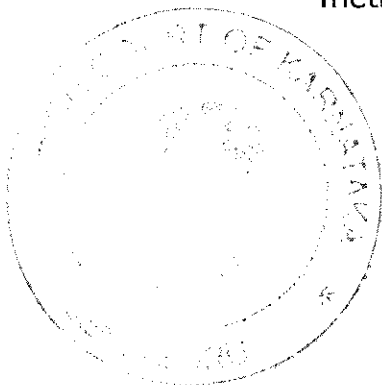
INDIA'. The petitioners also seeks a direction to restore the control and superintendence of the Company to the shareholders of the Company, as it stood prior to 29.10.2018 i.e., an order of admission passed by the National Company Law Tribunal (hereinafter referred to as 'the Tribunal' for short), Bengaluru. In order to appreciate the petitioners grievance, few facts need mention, which are stated hereinafter:

2. The petitioners are shareholders of Associate Decor Limited, a Public Limited Company (hereinafter referred to as 'the Company' for short). The petitioner No.2 is a majority shareholder of the Company holding 51.47% of the equity shares in the Company. The petitioners company executed a term loan agreement on 15.02.2010 with a consortium of banks comprising respondent Nos. 1 to 3 for a term loan facility of Rs.233 Crores. Subsequent to the execution of term loan agreement, the company was in need of additional capital. Therefore, it executed subsequent loan



agreements between the period from 03.12.2010 to 10.07.2014. The company provided substantial collateral securities in respect of credit facilities availed by it from the consortium by creating a mortgage in respect of its assets. The Company also pledged shares to the extent of 73.71%. However, it is averred in the writ petition that in the year 2015-16, the company faced operational difficulties due to which its cash flow was hampered severely. Thereupon the Company's loan account with the consortium came to be declared as 'Non Performing Asset' with respondent Nos.1 to 3 on 31.03.2016, 29.10.2016 and 31.03.2017 respectively.

3. On 25.07.2017, the company submitted a restructuring plan to consortium to standardize the accounts of the company. However, the proposal of the petitioners failed to evoke any response. Thereafter, on 12.02.2018 Reserve Bank of India promulgated a Circular dated 12.02.2018, by which all previous methods and modes of restructuring of debt being



undertaken by the Scheduled Banks were superseded. The respondent No.1 initiated insolvency proceeding against the company before the Tribunal, Bengaluru. The Company in the light of Circular, on 17.02.2018, submitted a restructuring proposal. However, the Deputy General Manager of respondent No.1 vide email dated 09.02.2018 rejected the restructuring proposal. In the meeting of the consortium held on 20.03.2018, the representatives of the company as well as the consortium were present. The Corporation Bank proposed to recover the outstanding debts through invocation of pledge held by consortium over 73.71% shares of the company. The consortium thereafter, invoked the pledge of shares of the company in accordance with the Circular issued by the Reserve Bank of India.

4. The Tribunal on 29.10.2018 admitted the petition filed by respondent No.1 under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as

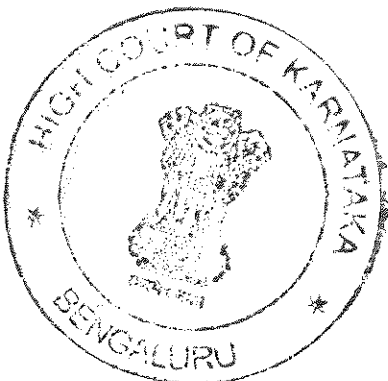


'the Code' for short) and appointed respondent No.4 as an Interim Resolution Professional and triggered the Corporate Insolvency Resolution Process. The restructuring proposal of the company was not considered due to stipulation of requirement of 100% consent of the lenders in the Reserve Bank of India Circular and it is averred that the proposal of the company was rejected even without consulting respondent Nos.2 and 3. It is also pleaded that the proposal had to be discussed at the Board level of respondents, however, the same was rejected by the Deputy General Manager without assigning any cogent reasons. It is also pleaded that on 20.11.2018, the majority shareholders of the company filed a writ petition viz., W.P.No.1391/2018 before the Supreme Court of India, in which challenge was made to the validity of the Circular issued by the Reserve Bank of India dated 12.02.2018. The Supreme Court granted an ad interim order of status quo in respect of the affairs of the Company on 30.11.2018. Thereafter, vide



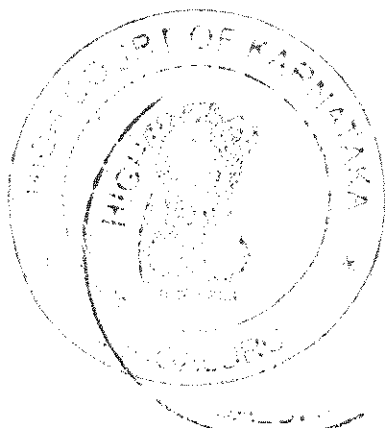
judgment dated 02.04.2019, in all the writ petitions including the writ petition of the petitioners, the Circular issued by the Reserve Bank of India was quashed and it is the case of the petitioners that Supreme Court also quashed all the proceedings initiated under Section 7 of the Code which as initiated on the basis of the Circular issued by Reserve Bank of India as *non est*. It is the case of the petitioners that due to judgment of the Supreme Court, the proceeding initiated against the company under the Code are *non est* and *void ab initio*.

5. The Reserve Bank of India has issued a revised circular dated 07.06,2019 by which fresh and mandatory guidelines for resolution of stressed assets. The company thereupon sent a restructuring proposal to the Consortium. However, the aforesaid proposal once again failed to evoke any response and respondent Nos.1 to 4 have proceeded to issue an Invitation for Expression of Interest for resolution plans for the company in the Mumbai Edition of the Business

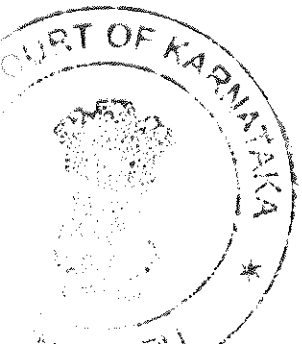


Standard newspaper dated 10.06.2019. In the aforesaid factual background, the petitioners have approached this court seeking the reliefs as stated supra.

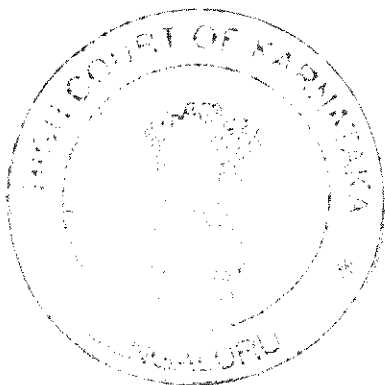
6. Learned Senior counsels for the petitioners submitted that in view of the judgment dated 02.04.2019 passed by the Supreme Court, by which the Circular issued by the Reserve Bank of India dated 12.02.2018 was quashed. The order of admission as well as proceeding initiated by respondent Nos.1 to 3 before the Tribunal under the Code are *non est* and *void ab initio*. While inviting the attention of this Court to Clauses 1, 3, 4, 5, 6 and 18 of the Circular dated 12.02.2018, it is urged that the aforesaid Circular stipulates formulation of resolution plan for resolution of stressed assets and as per Clause 5, the said resolution plan can only be implemented if it is approved by all lenders. It is also urged that the Circular dated 12.02.2018 issued by Reserve Bank of India applies to all debts. It is also pointed out that on 23.07.2018, all



public sector Banks including respondent Nos.1 to 3 in order to give effect and comply with regulatory framework as per Reserve Bank of India's Circular dated 12.02.2018 entered into inter creditor agreement, which defines borrowers as all entities having an aggregate outstanding amount of more than Rs.50 Crores. It is also submitted that in the writ petition, the petitioner No.2 has unequivocally disclosed each and every fact including the fact that its total liability is less than Rs.2000 Crores and its primary grievance is against the arbitrary requirement of 100% consent of lenders for approval of a resolution plan. It is also urged that Supreme Court vide its judgment dated 02.04.2019 held that all actions taken under the said Circular must fall along with the said Circular. Therefore, the proceedings initiated by respondent Nos.2 to 5 cannot continue. It is also submitted that the respondent Nos.1 to 3 be directed to consider the restructuring proposal submitted by the Company afresh and till then, the proceedings before the Tribunal be kept in abeyance. It

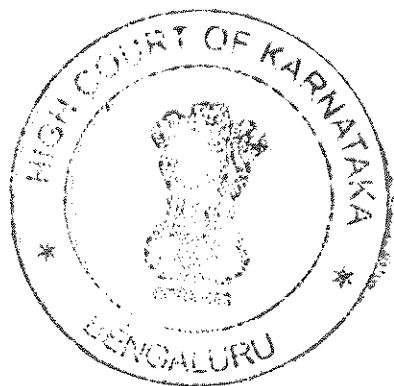


is also submitted that judgment has to be read in its entirety and the stand taken by the respondent Nos.1 to 3 that it did not proceed against the Company on the basis of Circular issued by the Reserve Bank of India dated 12.02.2018 is incorrect. It is also argued that Tribunal has no power under Section 60(5) of the Code to recall / review its order. It is also submitted that at this stage, the remedy of appeal provided under Section 61 of the Code is not available to the petitioners. In support of aforesaid submissions, reliance has been placed on decisions of the Supreme Court in '**COMMISSIONER OF INCOME TAX VS. SUN ENGINEERING WORKS (P) LTD.**', (1992) 4 SCC 363, '**KESAR DEVI (SMT) VS. UNION OF INDIA AND OTHERS**', (2003) 7 SCC 427, and '**LOKHANDWALA KATARIA CONSTRUCTION PRIVATE LIMITED VS. NISUS FINANCE AND INVESTMENT MANAGERS LLP, CIVIL APPEAL NO.9279/2017**' and decision in '**ANANT KAJARE VS.**

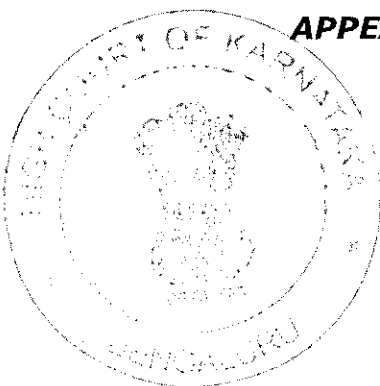


***EKNATH AHER & ANR.', 2017 SCC ONLINE NCLAT
434.***

7. On the other hand, learned counsel for respondent Nos.1 to 3 submitted that the Code confers a statutory right on the consortium to invoke the provisions of the Act. It is also urged that the proceeding before the Tribunal were not initiated on the basis of the Circular dated 12.02.2018 and therefore, the same cannot be termed either *non est* or *ab initio void*. It is further submitted that under Section 60(5)(c) of the Act, the petitioner No.2 has already filed an objection with regard to maintainability of the proceeding which is pending adjudication before the Tribunal and the Tribunal has the power to decide the question of law or facts. It is further submitted that in case, the petitioners are aggrieved they have a remedy of appeal under Section 61 of the Code. It is also pointed out that the Company in order to show its bonafides gave a resettlement proposal under Section



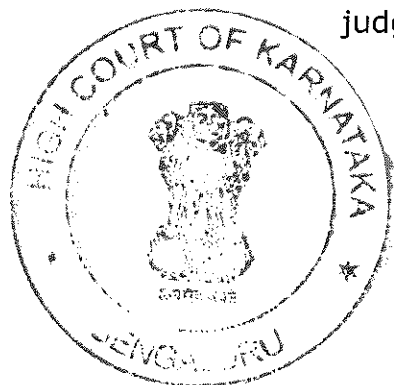
12(a) of the Code or submit a resolution plan under Section 30(4) of the Code. It is also submitted that company is in default since; march 2016 and the prior proposals submitted by it for restructuring of the Company were considered. It is also submitted that from close scrutiny of the judgment of the Supreme Court it is axiomatic that the Supreme Court was dealing with the issue viz., debts with an aggregate exposure of INR 2000 Crore and over on or after 01.03.2018. In this connection, attention of this Court has been invited to para 2 of the order. It is also urged that from perusal of the operative portion of the judgment of the Supreme Court, it is evident that it does not apply to the fact situation of the case and the proceeding filed by the petitioners before the Tribunal under the Code is maintainable. In support of his submissions, learned counsel has referred to decision of the Supreme Court in **'M/S INNOVENTIVE INDUSTRIES LTD. VS. ICICI BANK & ANR., CIVIL APPEAL Nos.8337-8338/2017** and **'SWISS**



**RIBBONS PVT. LTD. & ANR. VS. UNION OF INDIA
& ORS., WRIT PETITION (CIVIL) NO.99/2018.**

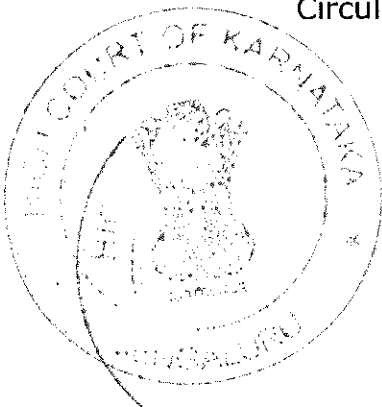
8. By way of rejoinder reply, learned Senior counsels for the petitioners submitted that the Supreme Court has quashed the Circular in its entirety and the petitioners do not have any alternative efficacious remedy as the Tribunal has no power to recall /review its order. It is further submitted that recourse to the remedy under Section 60(5)(c) of the Act can be had on any questions of law or facts, arising out of or in relation to insolvency resolution or liquidation proceeding of the corporate debtor or corporate person under this Code. Therefore, at this stage, the aforesaid remedy is not available to the petitioners.

9. In view of rival submissions made at the bar, the core issue which arises for consideration is whether the proceeding initiated by respondent Nos.1 to 3 under the Code are *non est* and *ab initio void*, in view of judgment dated 02.04.2019 passed in **DHARNI**



SUGARS AND CHEMICALS LTD., supra. It is well settled in law that when an issue involves a pure question of law, a party need not be relegated to alternative remedy. [SEE: '**DR.BALAKRISHNA AGARWAL VS. STATE OF U.P. & ORS., (1995) 1 SCC 614**]. In view of aforesaid enunciation of law by the Supreme Court, I am not inclined to examine the issue with regard to availability of alternative remedy raised on behalf of respondent Nos.1 to 3. A pure question of law viz., whether in view of the order passed by the Supreme Court dated 02.04.2019 in **DHARNI SUGARS AND CHEMICALS LTD.,** supra, the proceeding initiated by respondent Nos.1 to 3 are *non est* and *ab initio void* arises for consideration in this case.

10. Before proceeding further, it is apposite to take note of the Circular dated 12.02.2018 issued by the Reserve Bank of India. From careful scrutiny of the Circular, it is evident that it applies to all the lenders,



however, Clause (D) of the Circular which prescribes timelines for large accounts to be referred under the IBC and contains Clauses 8 to 13 are reproduced below for the facility of reference.

D. Timelines for Large Accounts to be referred under IBC:

8. In respect of accounts with aggregate exposure of the lenders at 20 billion and above, on or after March 1, 2018 ('reference date'), including accounts where resolution may have been initiated under any of the exiting schemes as well as accounts classified as restructured standard assets which are currently in respective specified periods (as per the previous guidelines), RP shall be implemented as per the following timelines:

(i) If in default as on the reference date, then 180 days from the reference date.

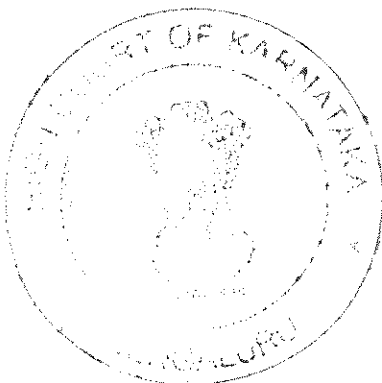
(ii) If in default after the reference date, then 180 days from the date of first such default.



9. If a RP in respect of such large accounts is not implemented as per the timelines specified in paragraph 8, lenders shall file insolvency application singly or jointly, under the Insolvency and Bankruptcy Code, 2016 (IBC) within 15 days from the expiry of the said timeline.

10. In respect of such large accounts, where a RP involving restructuring / change in ownership is implemented within the 180 day period, the account should not be in default at any point of time during the 'specified period', failing which the lenders shall file an insolvency application singly, or jointly, under the IBC within 15 days from the date of such default.

'Specified period' means the period from the date of implementation of RP up to the date by which at least 20 percent of the outstanding principal debt as per the RP and interest or



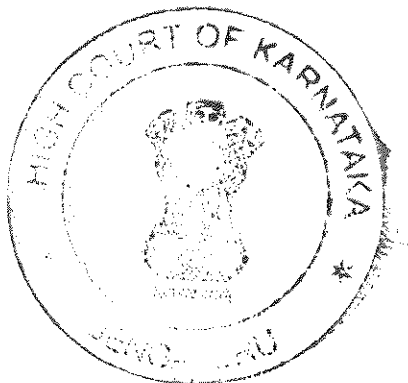
capitalization sanctioned as part of the restructuring, if any, is repaid.

Provided that the specified period cannot end before one year from the commencement of the first payment of interest or principal (whichever is later) on the credit facility with longest period of moratorium under the terms of RP.

11. Any default in payment after the expiry of the specified period shall be reckoned as a fresh default for the purpose of this framework.

12. For other accounts with aggregate exposure of the lenders below Rs.20 billion and at or above Rs.1 billion, the Reserve Bank intends to announce, over a two-year period, reference dates for implementing the RP to ensure calibrated, time-bound resolution of all such accounts in default.

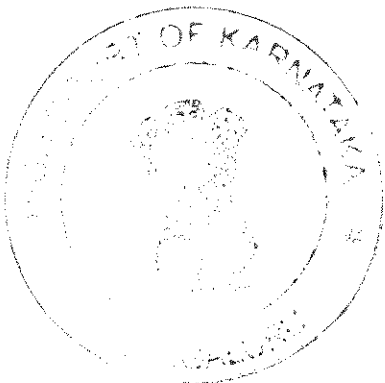
13. It is however, clarified that the said transition arrangement shall



not be available for borrower entities in respect of which specific instructions have already been issued by the Reserve Bank to the banks for reference under IBC. Lenders shall continue to pursue such cases as per the earlier instructions.

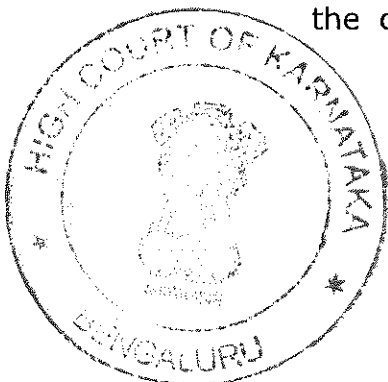
11. Thus, it is evident that clause (D) of the Circular alone deals with the lenders who have an aggregate exposure of Rs.2,000/- Crores. However, it is not necessary for this Court to examine the issue whether or not the Circular applies to the fact situation of the case, as the aforesaid Circular has been quashed in its entirety by the Supreme Court vide its judgment dated 02.04.2019. The relevant extract of the operative portion of the judgment of the Supreme Court writ petition dated 02.04.2019 reads as under:

It is very difficult to segregate the non-banking financial institutions from banks so as to make the Circular applicable to them even if it is ultra vires insofar as banks are concerned.



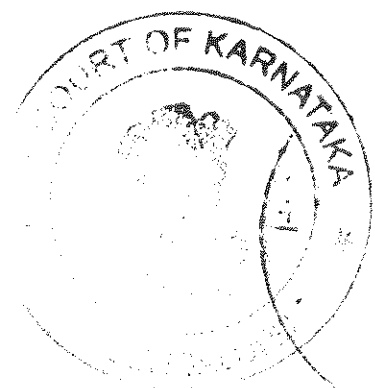
For these reasons also, the impugned Circular will have to be declared as ultra vires as a whole, and be declare to be of no effect in law. Consequently, all actions taken under the said Circular, including actions by which the Insolvency Code has been triggered must fall along with the said Circular As a result, all cases in which debtors have been proceeded against by financial creditors under Section 7 of the Insolvency Code, only because of the operation of the impugned Circular will be proceedings which, being faulted at the very inception are declared to be non est.

12. Thus, from close scrutiny of the operative portion of the judgment of the Supreme Court, it is evident that all actions under the Circular dated 12.02.2018 including the actions in which insolvency has been triggered has been struck down by the Circular. It has further been held that consequently, all the cases in which the debtors have been proceeded

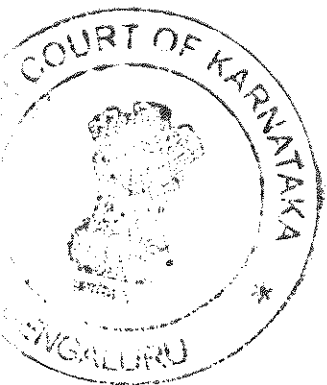


against the financial creditors under Section 7 of the Code only because of the operation of the impugned Circular, which, being faulted at the very inception are declared to be non est.

13. In the instant case, it may be noticed that Section 7 of the Code confers a statutory right for initiation of Corporate Resolution Process on a financial creditor. The aforesaid right is a statutory right and is independent of the Circular dated 12.02.2018 issued by Reserve Bank of India. In the instant case, the decision to invoke the provisions of the Code was taken by respondent No.1 on 20.01.2018, which is evident from the Letter of Authorization, Annexure-A, by which decision was taken in exercise of powers conferred by the Board of Directors to file a claim petition before the Tribunal against the Company. It is pertinent to mention here that the Demand Draft for payment of court fee was prepared on 06.02.2018. Thus, the decision was taken to invoke the provisions of Section 7 of the Code

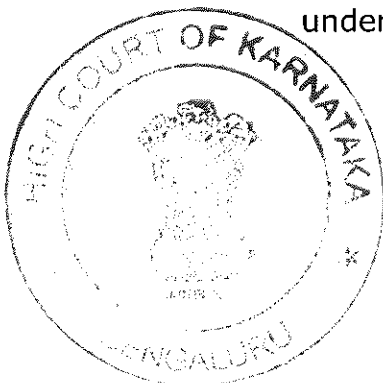


prior to coming into force, the Circular dated 12.02.2018. Undoubtedly, the petition has been filed by respondent Nos.1 to 3 on 12.02.2018. However, the decision to invoke the provisions of the Code is not based on Circular dated 12.02.2018 issued by the Reserve Bank of India, which was quashed by the order passed by the Supreme Court. It is pertinent to note that a Company Petition was filed on 12.02.2018 i.e., before the reference date of 01.03.2018 as prescribed in the Circular. The Company Petition was therefore filed well before 180 days time prescribed under the Reserve Bank of India's Circular. Therefore, for this reason also the respondent No.1's action of initiating the proceeding under Section 7 of the Code cannot be termed as an action taken under the directions of the Reserve Bank of India's Circular as there was no requirement to do so prior to expiry of 180 days from 01.03.2018. For yet another reason, the judgment of the Supreme Court do not apply to the fact situation of the case as the judgment would apply to the proceeding under the

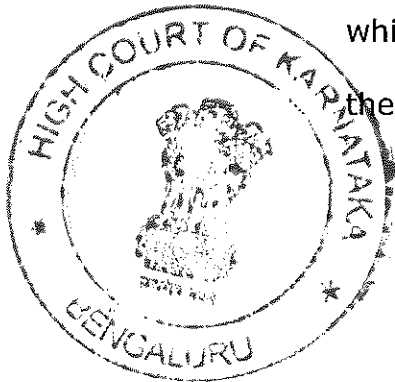


Code, which have been initiated before the Adjudicating Authority against the debtors only because of operation of the Circular issued by Reserve Bank of India and where such proceedings are *non est* and cannot be proceeded with. The proceeding initiated by respondent No.1 is initiated under Section 7 of the Act, which is independent of the Circular issued by the Reserve Bank of India. Therefore, the judgment of the Supreme Court has no impact on the proceeding initiated by respondent Nos.1 to 3 in exercise of the statutory right under Section 7 of the Act as the Supreme Court has quashed the proceedings, which are initiated on the basis of the Circular, as well as the proceeding under Section 7 of the Code, which could be faulted at the inception on account of the impugned Circular.

14. For the aforementioned reasons, the submissions made on behalf of the petitioners that the proceeding initiated by respondents before the Tribunal under the Code are *non est* and *void ab initio* cannot be



accepted. It is also pertinent to mention here that since the Circular dated 12.02;2018 has already been quashed by the Supreme Court in its entirety, therefore, the contention that whether or not it applies to the case of the petitioners need not be gone into. Similarly, the contention that the respondent Nos.1 to 3 be directed to consider the restructuring proposal submitted by the company afresh, until then the proceeding before the Tribunal be kept in abeyance does not deserve acceptance as proceeding before the Tribunal were listed on different dates viz., 22.02.2018, 02.03.2018, 14.03.2018, 03.04.2018, 23.04.2018, 11.05.2018, 25.06.2018, 31.07.2018, 21.07.2018, 30.08.2018, 28.09.2018, 10.10.2018, 23.10.2018 and 29.10.2018 and were adjourned on the aforesaid dates in order to give opportunity to the parties to explore the possibility of resolving the issue in question. Thus, the Company was given sufficient opportunities to resolve the issues, which it failed to avail. However, needless to state that the petitioners shall be at liberty to take recourse to



such statutory remedy, as may be provided to them in law.

With the aforesaid liberty, the petition is disposed of.

Sd/-
JUDGE



TRUE COPY
Y. Prasad Rao
14/8/19
Section Officer
High Court of Karnataka
Bangalore-560 001

a) The date on which the application was made
b) The date on which the application was received
c) The date on which the application was filed
d) The date on which the application was admitted
e) The date on which the application was heard
f) The date on which the application was disposed of
g) The date on which the copy is delivered to the Applicant
h) Examined by

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