* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Order reserved on : 27 February 2025**
Order pronounced on: 03 March 2025

\+ FAO 226/2022

M/S MINOSHA INDIA LTD. .....Appellant
Through: Ms. Sangeet Sondhi, Mr. Daksh Jain and Mr. Amit Patra, Advs.

versus

M/S MISRA AUTOMATICS PVT. LTD. .....Respondent
Through: Mr. Rohit Chaudhary, Adv.

\+ FAO 228/2022

M/S MINOSHA INDIA LTD .....Appellant
Through: Ms. Sangeet Sondhi, Mr. Daksh Jain and Mr. Amit Patra, Advs.

versus

M/S MISRA AUTOMATICS PVT. LTD. .....Respondent
Through: Mr. Rohit Chaudhary, Adv.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

O R D E R

1. This common order shall decide the above-noted two appeals preferred by the appellant/plaintiff under Order XLIII Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 ["**CPC**"]. These appeals assail the impugned order dated 28.07.2022, passed by the learned Additional District Judge-07, South-East, Saket Courts, New Delhi ["**trial Court**"] to the ditto effect separately in the two

suits between the same set of parties, whereby their applications filed in the two suits under Order IX Rule 9 of the CPC were dismissed.

2. Suffice it to state that two Civil Suits, *viz.,* CS No. 6555/2016 and CS No. 6549/2016, for recovery of money were instituted by the appellant/plaintiff against the respondent. The facts and issues espoused by the same set of parties raise common questions of law and fact and can be conveniently disposed of by this common order. For the purpose of adjudication, FAO[1] No. 226/2022 shall be the lead appeal.

3. Shorn of unnecessary details, the two civil suits, which were at the stage of recording the plaintiff's evidence, with PW-1 to be tendered for cross-examination, were dismissed in default for want of prosecution *vide* order dated 04.06.2018 by the learned Trial Court. The appellant/plaintiff then filed an application under Order IX Rule 9 of the CPC on 06.12.2018, which was dismissed by the learned trial Court after issuing notice to the respondent and hearing the parties.

4. It is pertinent to note that the appellant/plaintiff, in its application under Order IX Rule 9 of the CPC seeking restoration of the suit, submitted that due to financial difficulties, it, as the corporate debtor, had initiated proceedings under Section 10 of the Insolvency and Bankruptcy Code, 2016 [**IBC**], before the National Company Law Tribunal, Mumbai ["**NCLT**"] on 29.01.2018 and *vide* order dated 14.05.2018, the NCLT appointed an Insolvency Resolution Professional ["**IRP**"] to conduct the insolvency proceedings. It was only upon receiving an email dated 05.10.2018 from the IRP that the

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applications for restoration of the two suits were moved. The learned Trial Court dismissed the applications filed in the two suits based on the following reasons:

> "**5.** Firstly, both the aforesaid applications are liable to be dismissed because a plaintiff, facing financial problems, has no right to withdraw from the suit for recovery filed by it and leave the Court as well as the defendant, in dark. In my view, it was the duty of the applicant herein to inform this Court that it was facing financial problems, which were impeding its ability to pursue CS No.6555/16.
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> 6. Secondly, both the aforesaid applications are liable to be dismissed because upon receipt of the email dated 07.11.2017, it was the duty of the Ld. Advocate(s) for the applicant to inform this Court that owing to financial problems the applicant is unable to pursue CS No.6555/16 and to seek their discharge from CS No.6555/16, instead of simply abandoning CS No.6555/16. In this regard, reference is craved to the judgment in Lai Bahadur Gautam v State of U.P., (2019)) 6 SCC 441 wherein the Hon'ble Supreme Court has highlighted the duty of an Advocate towards the Court.
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> **7.** Thirdly, both the aforesaid applications are liable to be dismissed because upon service of the Court notice (referred in the Order dated 04.06.2018, passed in CS No.6555/16), the applicant should have appeared in this Court, on 04.06.2018 and in so far as the said misdemeanor is concerned, the position of the applicant is indefensible.
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> **8.** Fourthly, both the aforesaid applications are liable to be dismissed because in the aforesaid applications, the applicant has not even bothered to explain the delay between 05.10.2018 (the date when the IRP, Sh. Krishna Chamadia had given requisite instructions to the Ld. Advocate(s) for the applicant) and 06.12.2018, when the aforesaid applications were filed in this Court.
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> **9.** In view of the aforesaid four reasons, both the applications identified in paragraph 1 of this Order are dismissed. After completion of necessary formalities by the Ahlamd, the file shall be consigned to the Record Room."

LEGAL ARGUMENTS

5. It is pointed out by the learned counsel for appellant/plaintiff that due to certain financial issues, it had to invoke proceedings under the IBC before the NCLT on 14.05.2018 and subsequently Resolution

Plan was approved on 28.11.2019. She further alluded to the contents of the email dated 07.11.2017, wherein the Ex-Management instructed the representing counsel to put all litigations on hold until further instructions. It is contended that after the Resolution Plan was approved on 28.11.2019, and in the interregnum instructions were given to the counsel on 05.10.2018 to file an application for restoration of the suit, which was eventually filed on 06.12.2018. It is thus urged that the period of moratorium w.e.f. 14.05.2018 to 28.11.2019 ought to have been excluded for excluding the time for filing of the applications under Order IX Rule 9 of the CPC.

6. *Per contra*, the learned counsel appearing for the respondent, appearing *via* video conferencing, contended that a hearing had taken place in the two matters on 18.08.2017, on that day PW-1 was produced for cross-examination, but the matters were adjourned to 06.11.2017. It is submitted that no appearance was put on 06.11.2017, and although no adverse order was passed, the matter was subsequently listed for hearings on 09.01.2018, 07.02.2018, 21.04.2018 and lastly on 04.06.2018 when the suits came to be dismissed for non-prosecution.

7. It is vehemently urged that apart from the fact that the applications were filed long after the expiry of the prescribed period of limitation, the moratorium period referred to by the appellant company was not applicable, drawing the attention of the Court to the order dated 14.05.2018, which clearly provided that the moratorium applied only to suits or proceedings filed against the Corporate Debtor, not in respect of suits or legal proceedings initiated by it.

DECISION:

8. Having heard the learned counsels for the parties and after a meticulous perusal of the record, this Court finds that the impugned order dated 28.07.2022 cannot be sustained in law. Indeed, even if the plea of the learned counsel for the respondent is accepted that no appearance was put on 06.11.2017 as well as on three successive dates thereafter by/on behalf of the appellants, and that the suit was dismissed for non-prosecution on 04.06.2018, the fact remains that evidently an email dated 07.11.2017 had been sent to the learned counsel representing the appellant/plaintiff instructing them to hold all proceedings due to financial constraints.

9. It is also borne out from the record that proceedings under the IBC were initiated by the appellant/plaintiff, i.e., the erstwhile Corporate Debtor on 29.01.2018. Thus, there is no merit in the plea that the application under Order IX Rule 9 of the CPC was filed by the same set of counsels, for the simple reason that the moratorium that crept in on filing of the proceedings under the IBC left no legal right or power in the Ex-Directors/Management to continue with the civil suit. The plea by the learned counsel for the respondent that the order dated 14.05.2018 applied moratorium only to suits or legal proceedings instituted against the Corporate Debtor, and not to those initiated by the Corporate Debtor, is only recorded to be rejected.

10. The repercussions of the moratorium that arose by virtue of Section 14, read with Sections 7, 9 and 10 of the IBC, were discussed by the Supreme Court in the cited case of **New Delhi Municipal Council v. Minosha India Limited** [Civil Appeal No. 3470 of 2022

(arising out of SLP (C) No. 8302 of 2021) dated 27.04.2022]. It was a case where the Supreme Court addressed the impact of Section 60(6)[2] of the IBC to determine whether this provision provides a new lease of life to proceedings initiated by the Corporate Debtor, based on the moratorium imposed under Section 14 of the IBC. The case involved the Corporate Debtor seeking an extension of the limitation period to file an application under Section 11(6) of the Arbitration and Conciliation Act, 1996. It would be expedient to refer to the observations made by the Supreme Court, which are as follows: -

> "24. Under the IBC, by virtue of the order admitting the application, be it under Sections 7, 9 or 10, and imposing moratorium, proceedings as are contemplated in Section 14 would be tabooed. This undoubtedly does not include an application under Section 11(6) of the 1996 Act by the corporate debtor or for that matter, any other proceeding by the corporate debtor against another party. At least there is no express exclusion of the jurisdiction of the Court or authorities to entertain any such proceeding at the hands of the corporate debtor. However, we must not be oblivious to the other provisions as well. Under Section 17, the management of the affairs of the corporate debtor is taken over by the interim resolution professional. The powers of the Board of Directors or the partners of the corporate debtor shall stand suspended and it would be exercised by the interim resolution professional. When the authority changes hands from the interim resolution professional to the resolution professional, the previous management continues to be excluded. The committee of creditors comes into being. Under the supervision, 'as it were', of the committee of creditors, all the matters are proceeded with. The resolution plans are received by the resolution professional and the resolution plan which is finally approved by the committee of creditors and still further at the hands of the adjudicating authority, would result in the curtains being wrung down on the moratorium under Section 31(3). During this entire period, what is noteworthy is that while in law and in form, the corporate debtor continues to

[2] 60(6) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.

exist and represented by the interim resolution professional to begin with and the resolution professional thereafter, the erstwhile management of the corporate debtor is displaced. When the resolution plan is approved, a new management takes over. All this is contemplated when the CIRP is successful. Undoubtedly, if it is unsuccessful, the corporate debtor slips into liquidation. Therefore, on the one hand, an application under Section 7, 9 or 10, does bring in a period which is intended to bring a corporate debtor back to life if possible, 'a period of calm', in the words of the respondent. But this is a period during which the management of the corporate debtor is displaced, ironically, a period of turbulent churning. While it may be true that proceedings by the corporate debtor through the resolution professional is contemplated, it is not impossible to contemplate that the resolution professional for whatever reason it may be, does not discharge his duties and conduct proceedings in all matters as he should. We are noting this as this can be the rationale for the Law Giver excluding the period of limitation in regard to suits or applications at the instance of the corporate debtor under Section 60(6).

25. As far as understanding the meaning of Section 60(6) is concerned, there cannot be a slightest doubt that the period of Moratorium is excluded even in the case of a suit or application brought by a corporate debtor, viz., in regard to the period of the moratorium. It is true that on the one hand what is tabooed in Section 14 when a Moratorium is put into place is inter alia the institution of suits or continuance of pending suits or proceedings against the corporate debtor including proceeding in execution of inter alia, the decree or order of an arbitration panel. So, also the provision prohibits 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002. Still further, the recovery of any property by an owner or lessor in the occupation of the corporate debtor is forbidden. These provisions do not in any manner appear to stand in the way of the corporate debtor instituting or proceeding with a suit or a proceeding against others. Section 60(6) on the other hand excludes the period during which the Moratorium under Section 14 is in place in computing the period of limitation. An ambiguity is introduced, namely the need to exclude the period of limitation for a suit or an application, at the instance of the corporate debtor when a Moratorium ushered in by an order under Section 14 does not pose any bar against a suit or an application at the instance of the corporate debtor. The words for which an order of Moratorium has been made under this part is intended to be the point of

reference or the premise for the exclusion of the time for the purpose of computing the period of limitation. Besides being the point of reference and being the sine qua non for applying Section 60(6), it also specifies the period of time which will be excluded in computing of the period of limitation. In other words, present an order of Moratorium under Section 14, the entire period of the Moratorium is liable to be excluded in computing the period of limitation even in a suit or an application by a corporate debtor. 26. The contention of the learned Senior Counsel for the appellant based on the approval of the resolution plan and the effect of Section 31 apparently of the IBC does not appeal to us. What Section 31 of the Act, IBC undoubtedly proclaims is that on approval of the resolution plan by the adjudicating authority the plan becomes binding on a corporate debtor, its employees, members, creditors, the Central Government any State Government or any local authority as provided therein, guarantors and others stakeholders involved in the resolution plan. We are unable to perceive how the appellant can derive support from the said provision. In fact, taking the scheme of the IBC Section 60(6) would become an integral part of the scheme which will enure to the benefit of the resolution applicant which is enabled to take suitable measures to ventilate its legitimate grievances by excluding the period during which a Moratorium was enforced for the purpose of computing the period of limitation.

27. In other words, notwithstanding the period of limitation under the Limitation Act, the Law Giver has thought it fit to provide that in respect of a corporate debtor if there has been an order of moratorium made in Part II, the period during which such moratorium was in place shall be excluded. 'For which an order of moratorium' cannot bear the interpretation which is sought to be placed by the appellant. The interpretation placed by the appellant is clearly against the plain meaning of the words which have been used. We have already undertaken the task of understanding the purport of the Code and the context in which section 60(6) has been put in place. This Court cannot possibly sit in judgment over the wisdom of the Law Giver. The period of limitation is provided under the Limitation Act. The law giver has contemplated that when a moratorium has been put in place, the said period must be excluded. We cannot overlook also the employment of words 'any suit or application'. This is apart, no doubt, from the words 'by a corporate debtor'. Interpreting the statute in the manner which the appellant seeks would result in our denying the benefit of extending the period of limitation to the corporate debtor, a result, which we think, would not be warranted by the clear words used in the statute."

11. In view of the aforesaid provision of law, this Court finds merit in the plea advanced by the learned counsel for the appellant/plaintiff that the period of moratorium, i.e., from 14.05.2018 to 28.11.2019, must be excluded. It is during such period that the two suits were dismissed for non-prosecution on 04.06.2018. The fact that the application was filed on 06.12.2018, despite instructions from the IRP on 05.10.2018, does not carry significant weight, especially considering that the appellant/plaintiff was entangled in the Corporate Insolvency Resolution Process ["**CIRP**"], which was eventually successful and resulted in the revival of the company. The said delay, if any, ought to be condoned.

12. In view of the foregoing discussion, the present appeals filed by the appellant/petitioner are hereby allowed, and the impugned order dated 28.07.2022 passed by the learned Trial Court in the two suits are hereby set aside. The matter is remanded back to the learned Trial Court for further trial of the matter in accordance with law.

13. The parties are directed to appear before the learned Trial Court for further proceedings/directions regarding leading of evidence on the matters in issue in accordance with law on 01.04.2025.

DHARMESH SHARMA, J.

MARCH 03, 2025
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