

**IN THE NATIONAL COMPANY LAW TRIBUNAL,**  
**MUMBAI BENCH, COURT I**

Interlocutory Application No. 3290/2024  
IN  
Company Petition No. (IB) 322 of 2023

M/s. Perfect Infraengineers Ltd.

... Applicant/Corporate Debtor

Vs.

Technology Development Board

... Respondent/Financial Creditor

Order delivered on: **15.07.2024**

**Coram:**

Hon'ble Justice (Retd.) Sh. Virendrasingh Bisht, Member (Judicial)

Hon'ble Shri Prabhat Kumar, Member (Technical)

**Appearance:**

For the Financial Creditor : Mr. Sumedh Ruikar, Advocate  
i/b Mr. Pradip Yadav, Advocate

For the Corporate Debtor : Mr. Mathews Nedumpara, Advocate

**ORDER**

1. The present Interlocutory Application has been filed by the Applicant/Corporate Debtor, praying for the following reliefs:

- a. recall the order of this Court dt. 18.03.2024, adjourning the case for pronouncement of orders and to list the same for further hearing after the final disposal of W.P. No. 4667 of 2024, pending before the Hon'ble High Court.
2. It is submitted that the Petitioner is an MSME entitled to the protection of the Notification dt. 29.05.2015, issued by the Central Government u/s 9 of the MSMED Act and in terms of the said notification, neither the ICICI Bank nor the TDB could have initiated any recovery proceedings, much less even classified the account as NPA without making an Application to the Committee for resolution of stress, which the Board of Directors of the ICICI Bank was dutybound to do.
3. It has been further averred that the Petitioner in all humility believes that if this Tribunal were to pronounce orders in the Interlocutory Application of the Respondents, TDB, that too, without ever having afforded an opportunity of being heard to the Petitioner as to the non-maintainability of the Petition, and without hearing and adjudicating upon an Application filed on 09.02.2024, for bringing the ICIC Bank and its officers on the party array and still worse, without hearing an Application filed on 30.03.2024 for recall of the order dt. 18.03.2023, adjourning the case for pronouncement of orders and for hearing the matter afresh, denial of justice is a fait accompli.
4. Hence, this Application.

5. Heard the Ld. Counsel and perused the material on record.
6. The present Interlocutory Application has been filed on 30.03.2024, seeking recall of the order dt. 18.03.2024 and to list the same for further hearing after the disposal of the writ petition (WP) No. 4667 of 2024, stated to be pending before the Hon'ble High Court. It is the case of the Applicant that it was not afforded an opportunity of hearing and the concept of propriety/estoppel mandates that the further proceedings in the above case be kept in abeyance till the Hon'ble High Court adjudicates one way or other the Writ Petition bearing (WP) No. 4667 of 2024. We note that the Hon'ble High Court has finally passed the Order on 02.07.2024, dismissing the said writ petition. This Writ Petition was filed *inter alia* for direction to ICICI Bank to consider the Application of the Petitioner for exploring all the possible modes to provide nursing and care to the Applicant's Unit.
7. On perusal of the case records, we find that the Applicant had earlier filed a Writ Petition (L) No. 35792 of 2022, before the Hon'ble High Court seeking protection under Notification dt. 29.05.2015, issued by the Central Government u/s 9 of MSMED Act and the same was dismissed on 11.01.2024.
8. The Company Petition CP (IB) 322 of 2023 was filed on 17.03.2023. u/s 7 of the Code and was listed on various occasions and reply therein was filed by the Corporate Debtor on 13.07.2023 and it was recorded in the order dt. 21.08.2023 when the Corporate Debtor was not represented, that

*“Corporate Debtor is directed to remain present in the Court on the next date of hearing and advance their argument without fail, failing which, the matter shall be decided as per the material available on record”.*

Thereafter, since the Hard Copy of the Reply was not available on record, the Corporate Debtor was again directed to bring on record their Reply on 05.09.2023, however, the Hard Copy of the Reply was not placed on the next date of hearing held on 09.10.2023 and the Corporate Debtor was granted another opportunity.

9. On the next date of hearing held on 10.11.2023, the Ld. Counsel for the Corporate Debtor informed that this matter cannot be proceeded any further because the Writ for the interpretation of the Provisions of the MSME Act qua IBC is pending before the Hon’ble High Court, where the decision has been reserved and the orders are awaited. Even though there was no stay, this Bench considered it appropriate to adjourn the matter on 01.12.2023 because the Counsel for the Corporate Debtor was not ready to make any argument on merits of the case.

10. On 01.12.2023, the Ld. Counsel for the Corporate Debtor repeated the same. On 23.01.2024, the Corporate Debtor was not represented and the matter was again placed on 08.02.2024, on which date also the Corporate Debtor was not represented by the Counsel to argue the matter but was represented by one Ms. Manisha Nimish Mehta. On 29.02.2024, the Ld. Counsel for the Corporate Debtor informed that their Writ Petition has

been dismissed and they have filed review petition and sought adjournment. It is pertinent to note that there was no stay but the counsel chose to prolong the matter on one pretext or another and never came forward to make arguments on the merits of the Case.

11. On 12.03.2024, again the Corporate Debtor sought adjournment contending that the Arguing Counsel is not well. On 18.03.2024, one Counsel representing the Corporate Debtor repeated the same submissions and sought adjournment, however, taking note of the fact that there is no stay from the Hon'ble High Court and the Corporate Debtor instead of arguing the matter on merits, is harping on the proposition that MSME Act overrides IBC, which has already been decided by the Hon'ble High Court, this Bench arrived at conclusion that the Corporate Debtor is dragging the issue and sufficient time having already been granted in the matter, this Bench proceeded to hear the Counsel for the Petitioner present and Reserved the matter.

12. At this juncture, it is pertinent to note that the Reply of the Corporate Debtor is already on record and filed way back in July 2023. The Corporate Debtor has been able to drag the hearing in the matter for last 8 months on one pretext or other. The issue involved in the Writ Petition No. 4667 of 2024, which finally came to be dismissed after Reserving the order, is not relevant for adjudication of Section 7 Application.

13. Aforesaid clearly demonstrates that the Corporate Debtor was granted several opportunities to argue their case, however, they chose not to come forward for the reasons best known to them. The conduct of the Corporate Debtor speaks in volume and clearly demonstrates that its intention was to derail the process of the Resolution by dragging it to the extent they can by taking pretext of irrelevant matters.

14. In view thereof, we are of the considered view that no case is made out to recall the order dt. 18.03.2024. Accordingly, the Interlocutory Application bearing IA No. 3290 of 2024 is disposed of as dismissed.

**Sd/-**  
**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**JUSTICE VIRENDRASINGH BISHT**  
**MEMBER (JUDICIAL)**

*Sapna*