

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE JUSTICE GADI PRAVEEN KUMAR**

COMMERCIAL COURT APPEAL No.3 OF 2026

DATE OF JUDGMENT: 15.04.2026

Between:

Kaizen Power Limited, through its Resolution
Professional and Another

.....Appellants

AND

Andhra Pradesh Industrial Corporation Limited,
Basheerbagh, Hyderabad.

.....Respondent

Mr. Avinash Desai, learned Senior Counsel representing Mr. Mayur Mundra, learned counsel appearing for the appellants (Online).

Mr. Sunil B Ganu, learned Senior Counsel representing Mr. P.H.P. Sai, learned counsel appearing for the respondent.

JUDGMENT: (Per Hon'ble Justice Moushumi Bhattacharya)

1. The Commercial Court Appeal assails a Docket Order dated 04.03.2025 whereby the learned Commercial Court at Hyderabad dismissed the Commercial Original Petition (COP No.45 of 2019) filed by the appellant No.1 (Kaizen Power Limited). The appellant No.1 filed the COP under section 9 of The Arbitration and Conciliation Act, 1996 ('1996 Act') for restraining the respondent (APIIC) from acting on a Show Cause Notice dated 03.04.2019 and taking steps for termination of a Lease Deed dated 25.10.2010

executed between the appellant No.1 and the respondent. The appellant No.2, Resolution Professional, appointed under The Insolvency and Bankruptcy Code, 2016 ('IBC') on 13.12.2019 represents the appellant No.1/Corporate Debtor.

2. The Commercial Court had initially passed an *ex parte* ad interim order of injunction against the respondent on 03.05.2019 and the same had been extended thereafter from time to time. However, by the impugned Docket Order, the Commercial Court refused to grant any further extension in favour of the appellant No.1 and proceeded to dismiss the COP. The primary reason stated in the impugned Docket Order for dismissal of the COP is that the appellant No.1 had not taken any steps for initiating arbitral proceedings in terms of the Arbitration Agreement between the appellant and the respondent - which is contrary to section 9(2) of the 1996 Act. The Commercial Court also noted that the proceedings under the IBC were initiated against the appellant No.1 and Moratorium was imposed on 30.12.2019. The Commercial Court was hence of the view that the interim order granted to the appellant No.1 on 03.05.2019 could not indefinitely be continued for years together.

3. Learned Senior Counsel appearing for the appellants submits that the impugned Docket Order is in violation of section 14(1)(a) of the IBC which bars continuation of proceedings and passing of any Order, Decree or Award against the Corporate Debtor (appellant No.1 herein) during subsistence of Moratorium. Counsel relies on section 14(1)(d) of the IBC to urge that recovery of any property by a Lessor during the Moratorium period is prohibited where such property is occupied or in possession of the Corporate Debtor. Counsel argues that the appellant had referred the dispute to arbitration pursuant to which the High Court appointed Justice Madan B.Lokur, Former Judge of the Supreme Court as the Sole Arbitrator on 02.01.2020. The Sole Arbitrator passed a procedural order on 19.05.2020 but was thereafter constrained to adjourn the arbitration proceedings *sine die* on 22.05.2020 in view of the Moratorium imposed by the National Company Law Tribunal (NCLT), Kolkata.

4. Counsel seeks to argue on the urgency of the matter on the ground that the Resolution Plan involves the leasehold rights of the appellant No.1 over the subject land, which is a major asset of the appellant No.1. The primary argument, however, is that the impugned Docket Order and the Show Cause Notice issued by the respondent on 03.04.2019 is in violation of the Moratorium under

the IBC which continues till approval of a Plan or passing of a Liquidation Order.

5. Learned Senior Counsel appearing for the respondent submits that the appellant No.1 enjoyed the interim order dated 03.05.2019 for almost six years but failed to pursue arbitral proceedings despite appointment of the Sole Arbitrator by this Court on 02.01.2020. Counsel submits that the appellant No.1 also failed to take any steps in terms of filing an appropriate application under section 17 of the 1996 Act before the Sole Arbitrator for interim relief. Counsel argues that the conduct of the appellant No.2 is contrary to the duty cast upon the Resolution Professional in section 25(2)(b) of the IBC under which a Resolution Professional is under an obligation to exercise rights for the benefit of the Corporate Debtor (the appellant No.1 herein) in judicial, quasi-judicial and arbitration proceedings. It is also argued that the appellant No.1 has not given any explanation as to why the Resolution Professional chose to pursue proceedings under section 11(6) and presently under section 37 of the 1996 Act, but was disinclined to continue arbitration proceedings before the Sole Arbitrator.

6. We have heard the arguments made by learned Senior Counsel appearing for the Parties. We have considered the material placed before us.

7. The dates which culminated to the present adjudication are briefly stated below:

- 02.08.2010 The respondent (APIIC) issued Provisional Allotment Orders in favour of the appellant No.1 (Kaizen Power Limited) for Plot Nos.57-61, admeasuring Acs.153-00 guntas in APSEZ, Achutapuram, on a lease on 'as is where is' basis.
- 25.10.2010 A Registered Sale Deed was executed between the Parties on 25.10.2010 and physical possession as well as Possession Certificate was handed over to the appellant No.1.
- 03.04.2019 The respondent issued a Show Cause Notice to the appellant No.1 proposing cancellation of allotment and termination of lease due to alleged non-implementation of the project.
- 02.05.2019 The appellant No.1 filed COP No.45 of 2019 under section 9 of the 1996 Act before the Commercial Court seeking a restraint on the respondent from acting on the Show Cause Notice and terminating the lease.
- 03.05.2019 The Commercial Court granted an *ex parte ad interim* order in favour of the appellant No.1.
- 29.07.2019 The appellant No.1 issued a Notice invoking arbitration for a claim of Rs.50 crores against the respondent.
- 03.09.2019 The appellant No.1 filed Arbitration Application seeking appointment of an Arbitrator.

- 13.12.2019 CIRP Proceedings were initiated against the appellant No.1 by UCO Bank and appellant No.2 was appointed as the Resolution Professional.
- 02.01.2020 The High Court appointed learned Sole Arbitrator.
- The respondent took an objection that the *ad interim* protection granted to the appellant No.1 had expired on 04.03.2025 and no subsisting lease hold rights remained as part of the CIRP Estate.
- 04.03.2025 The Commercial Court passed the impugned Docket Order dismissing the appellant No.1's COP by vacating the interim order dated 03.05.2019.

8. Admittedly, the appellant No.1 had filed two proceedings under the 1996 Act. The first was the application under section 9 of the 1996 Act wherein the *ex parte* interim order was passed on 03.05.2019. The second was the application for appointment of Arbitrator under section 11 of the 1996 Act which was allowed by the High Court on 02.01.2020. Hence, the Commercial Court made an erroneous factual finding in holding that the appellant No.1 had not taken any steps to initiate arbitration proceedings.

9. The other implications of the impugned Docket Order would have to be tested under the relevant provisions of the IBC along with the relevant provisions of the 1996 Act.

10. Section 14 of the IBC provides for declaration of 'Moratorium' for prohibiting certain actions in respect of the Corporate Debtor.

Section 14(1) enumerates four kinds of actions which would prejudicially affect the Corporate Debtor after declaration of Moratorium. It is evident from Clauses (a) – (d) of section 14(1) that the Corporate Debtor is protected against initiation of new proceedings as well as continuation of pending proceedings or alienating any of the assets of the Corporate Debtor or any recovery from the Corporate Debtor including of any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). We are hence in agreement with the contention of Senior Counsel appearing for the respondent that initiation of proceedings under section 11(6) of the 1996 Act for appointment of Arbitrator would not be covered within the ambit of section 14(1) of the IBC. Similarly, continuation of section 9 proceedings under the 1996 Act initiated by the appellant No.1 would also lie outside the scope of section 14(1) of the IBC which primarily seeks to protect the assets and interests of the Corporate Debtor (appellant No.1 in the present Appeal) during pendency of the Moratorium.

11. On the other hand, we accept the submission made by Senior Counsel appearing for the appellants that vacating of the order dated 03.05.2019, by which the respondent had been restrained from acting upon the Termination Notice dated

03.04.2019, would prejudicially affect the appellant No.1/Corporate Creditor and run contrary to the beneficial protection of the Moratorium. Pendency of the Moratorium, *per se*, would not entitle the Commercial Court to vacate the interim order dated 03.05.2019 to the prejudice of the appellant No.1. The argument that the appellant No.1 does not need a double shield of protection is legally untenable.

12. The appellant No.1 would be squarely covered by section 14(1)(d) of the IBC which prohibits recovery of any property by the Owner/Lessor where the property is in the possession of the Corporate Debtor (the appellant No.1 herein). However, the Commercial Court proceeded to vacate the interim protection granted to the appellant No.1 for reasons un-connected to the Moratorium. In *P.Mohanraj v. Shah Bros. Ispat (P) Ltd.*¹, the Supreme Court interpreted the coverage of section 14 of the IBC as also including proceedings which have the potential of culminating in orders/judgments affecting the rights of the Corporate Debtor and overruled *Power Grid Corpn. of India Ltd. v. Jyoti Structures Ltd.*² on the ground that the Delhi High Court did not state the law correctly. Therefore, in vacating the interim protection, the

¹ (2021) 6 SCC 258

² 2017 SCC OnLine Del 12189

Commercial Court overlooked the protection available to the appellant No.1 as a Corporate Debtor during pendency of the Moratorium.

13. Therefore, we conclude that lifting the protection which was available to the appellant No.1 for almost six years by the interim order dated 05.09.2019 is certainly against the statutory mandate of section 14(1) of the IBC and particularly, clause (d) thereunder. The appellant No.1 would be vulnerable to any coercive steps taken by the respondent for recovery of the property which was granted by the lease to the appellant No.1.

14. Notwithstanding the above, we note that the Sole Arbitrator was appointed on an Application filed by the appellant No.1 itself. The Resolution Professional (the appellant No.2), acting for the appellant No.1, however failed to prosecute the pending arbitration proceedings for almost six years. The arbitral mechanism was in place since January, 2020; the Resolution Professional was appointed by the NCLT, Kolkata, on 13.12.2019. The Resolution Professional (appellant No.2) was fully aware of the pending arbitration but failed to take steps for its continuation after January, 2020. Further, the appellant No.1 had itself quantified the claim against the respondent at Rs.56 crores approx in its

notice invoking arbitration. Hence, the appellant No.1 does not have even a logical basis to stall the arbitration; since that would also have a direct bearing on value maximization. We fail to see as to how the continuation of arbitration proceedings by the appellant No.1 would be contrary to section 14(1) of the IBC or be to the appellant No.1's disadvantage. The Resolution Professional/Appellant No.2 must discharge his duties even during a period of turbulent churning³.

15. Our view is fortified by the provisions of the IBC read with the 1996 Act. First, section 25 of the IBC relates to duties of the Resolution Professional. Section 25(2) enumerates the actions which the Resolution Professional are mandated to undertake. Clause (b) of Section 25(2)(b) of the IBC provides that the Resolution Professional shall represent and act on behalf of the Corporate Debtor with third parties and exercise rights for the benefit of the Corporate Debtor in judicial, quasi-judicial or arbitration proceedings. Hence, the appellant No.2, being the Resolution Professional of the appellant No.1, was under a statutory obligation to continue with the arbitration.

³ New Delhi Municipal Council v. Minosha India Limited; (2022) 8 SCC 384

16. Section 9(2) of the 1996 Act further mandates that arbitral proceedings shall be commenced within 90 days from the date of the interim protection granted under section 9(1) where the interim protection was granted before commencement of the arbitral proceedings.

17. In the present case, the appellant No.1 obtained the interim protection on 03.05.2019 under section 9 of the 1996 Act, but failed to take any steps within the prescribed timeline under section 9(2) - or even six years thereafter. The learned Arbitrator adjourned the arbitration proceedings *sine dine* on 22.05.2020 in view of the Moratorium imposed by the National Company Law Tribunal, Kolkata. The inaction of the appellants in proceeding with the arbitration despite obtaining interim protection in May, 2019 and despite the arbitral mechanism being in place, defeats both section 9(2) of the 1996 Act and also section 25(2)(b) of the IBC. The appellants do not have any explanation as to why the appellants jettisoned the statutory mechanism available to them including under section 17 of the 1996 Act.

18. Therefore, we are of the considered opinion that the parties should be directed to resume the arbitration without any further delay. The appellant No.1 cannot be permitted to cause the

arbitral proceedings to be eclipsed on the pretext of the Moratorium after obtaining interim protection on 03.05.2019.

19. We do not wish to delve into the merits of the disputes, including the order of the NCLT dated 12.12.2026 whereby it was held that the Resolution Plan is not contingent upon the leasehold right of the appellant No.1/Corporate Debtor in the subject property, as that would be venturing into the arena of the ongoing CIRP.

20. We also do not wish to reopen the argument on section 60(6) of the IBC relating to the overriding effect of the IBC on all prevailing Laws including The Limitation Act, 1963, for the purpose of computing the period of limitation for any Suit/Application by or against a Corporate Debtor under an order of Moratorium: *Minosha* (supra). We have already given our reasons for condoning the delay in filing of the Appeal in terms of section 60(6) of the IBC in the order dated 22.01.2026.

21. We deem it fit to dispose of the Appeal by setting aside the impugned Docket Order dated 04.03.2025 for being passed on a factually erroneous premise. The Commercial Court also failed to consider the implication of vacating the interim protection granted

to the appellant No.1 on 03.05.2019 as being contrary to the declared mandate of section 14(1) of the IBC (Moratorium).

22. COMCA No.3 of 2026 is accordingly disposed of by setting aside the impugned Docket Order dated 04.03.2025. We however, deem it fit to direct the appellants as well as the respondent to resume the arbitration proceedings forthwith from the stage at which it was adjourned, preferably within three weeks from the date of this judgment. It is made clear that none of the Parties shall cause any impediment to or delay the arbitration proceedings. The interim protection granted to the appellant No.1 on 03.05.2019 by the Commercial Court shall continue during the pendency of the arbitration or until orders passed by the Sole Arbitrator in keeping with the Moratorium provisions of the IBC.

MOUSHUMI BHATTACHARYA, J

GADI PRAVEEN KUMAR, J

DATE: 15.04.2026
TJMR