

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 761 of 2020

With

I.A. No. 2038 of 2020

IN THE MATTER OF:

**UCO Bank,
Rep. by Chief Manager,
Jubilee Hills Branch,
8-2-293/82/A/490,
Road No. 10 and Road No. 22 Corner,
Hyderabad, Telangana-500033**

...Appellant

Versus

**Mr. G. Ramachandran,
IBBI Reg. No. IBBI/IPA-002/IP-
N00167/2017-2018/10437
Resolution Professional,
M/s. Sai Regency Power Corporation Pvt. Ltd.,
F-10, Syndicate Residency No. 3,
Dr. Thomas, First Street, Off South Boag,
Road, T. Nagar, Chennai-600017**

...Respondent

Present:-

For Appellant: Ms. Shalini, Advocate.

For Respondent: Mr. Divyam Agarwal and

Mr. Yohaann Limathwalla, Advocates.

O R D E R
(Virtual Mode)

03.11.2020

I.A. No. 2038 of 2020

Learned Counsel for the Appellant submits that there is some delay in filing of the Appeal. The impugned order was passed on 29th May, 2020 when there was lockdown going on. She submits that there is also an order of Hon'ble Supreme Court extending time due to Pandemic. Learned Counsel for the

Respondent does not object. We hold that considering the submissions, the delay, if any, deserves to be condoned and I.A. No. 2038 of 2020 is disposed of.

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2. Heard Learned Counsel for the Appellant and the Learned Counsel for the Respondent. Learned Counsel for the Appellant is submitting that the Respondent/Resolution Professional filed the Application before the Adjudicating Authority (NCLT, Special Bench, Chennai) having M.A. No. 39 of 2020 in IBA/92/2019 and claimed that the Appellant Bank was required to refund Rs. 2,27,94,706/- which had been adjusted during CIRP by the Appellant Bank from Fixed Deposits of the Corporate Debtor/M/s. Sai Regency Power Corporation Pvt. Ltd. against the outstanding amount in relation to vehicle loans and loans taken by group companies. The Learned Counsel submitted that the Adjudicating Authority has passed impugned order directing the Appellant to restore the credit to the Corporate Debtor's account so as to facilitate Resolution Plan.

3. The Learned Counsel submitted that the Application under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC in short) against M/s. Sai Regency Power Corporation Pvt. Ltd.-Corporate Debtor was admitted on 27th March, 2019. She submitted that the Resolution Professional issued public notice in Tamil and thus the Appellant Bank was not aware of the admission of the Application under Section 7 of IBC.

4. To this, the Learned Counsel for the Respondent stated that with Reply Annexure-B at Page 19 is notice published on 30th March, 2019 in Business Standard in English. The Learned Counsel states that the Copy filed is defective

as portion relating to the Corporate Debtor appears to have got cut in the copy-paste. The Learned Counsel has now sent by WhatsApp the complete copy to the Court Master and the copy is downloaded and is marked as 'X' for identification and taken on record. The document shows publication (regarding initiation of CIRP) on 30th March, 2019, in English Newspaper also.

5. The Learned Counsel for the Appellant then states that the Corporate Debtor had opened two FDRs with the Appellant Bank and had approached for sanction of two car loans. The Appellant Bank had sanctioned the vehicle loans and Company was regularly paying monthly instalments. It is stated that group companies of Corporate Debtor M/s. Kamang Dam Hydro Power Pvt. Ltd. and M/s. J.R. Power Pvt. Ltd. approached the Appellant Bank for sanction of demand loans for which the Corporate Debtor offered two FDRs as security. For the demand loans all the documents were submitted and executed by the Corporate Debtor in 2011. According to the Appellant in good faith the Bank sanctioned demand loans of Rs. 50,00,000/- to one of the group company by name M/s. Kamang Dam Hydro Power Pvt. Ltd. and another demand loan to another Group company by name M/s. J.R. Power Pvt. Ltd. It is claimed that in good faith, the Appellant appropriated the amounts as the Appellant was secured creditor and could appropriate the FDs and set of amounts due. It is stated that the Appeal claims that the Appellant was not aware of the CIRP proceeding.

6. Learned Counsel for the Appellant relies on Section 173 of IBC to submit that there is provision of mutual credit and set of. She also refers to Section 36 (4) (b) of the IBC to submit that set of and appropriation could be accepted.

7. The Learned Counsel for the Respondent submits that Section 173 and Section 36 would be relevant during the stage of liquidation proceedings and not

during pendency of CIRP. He states that Liquidation Order is not yet passed in the matter though period as provided under Section 12 of IBC is over.

8. The Learned Counsel for the Respondent refers to the Impugned Order where the Adjudicating Authority relied on *Indian Overseas Bank Vs. Mr. Dinkar T. Venkatsubramaniam* and in which this Tribunal had made observations that once moratorium has been declared, it is not open to any person including the Financial Creditor and the Appellant Bank to recover any amount from the account of the Corporate Debtor, nor it can appropriate any amount towards its own dues.

9. The Learned Counsel for Appellant has also submitted that she may be given further opportunity to file Rejoinder and Written Submission. We are however not ready to give further time for this. We have already heard the learned counsel for both sides.

10. It is apparent that CIRP was initiated on 27th March, 2019 and later on, the Respondent found that the Appellant Bank had adjusted certain amounts which it could not, considering Section 14 of IBC. The Respondent on 06th December, 2019, wrote to the Appellant Bank Letter Annexure A-2 which reads as under:

“Dear Sir,

- 1. We write to you in the capacity of the Resolution Professional of the Corporate Debtor (“RP”).*
- 2. It has come to our notice that your Bank has, without any Instructions of the RP, adjusted the fixed deposit bearing account number 19050310045848 and 19050310046265 (“Fixed Deposits”) of the Corporate Debtor with your Bank (along with the interest thereon) aggregating to INR 2,07,31,503 (INR Two Crore Seven Lakhs Thirty-One Thousand Five Hundred and Three only) on 09/07/2019 against the outstanding in relation to vehicle loans and loans taken by group companies (“Outstanding Dues”)*

3. *You are aware that the Corporate Debtor is presently undergoing corporate insolvency resolution process and the moratorium period is in effect vide order dated 27th March, 2019 of Hon'ble NCLT Chennai. It is pertinent to note that all the claims as on the Insolvency Commencement Date have to be submitted by way of appropriate claim form to the Resolution Professional. (Order Copy is attached with this letter)*
4. *Kindly note that as per Section 17 (d) of the Insolvency and Bankruptcy Code, 2016 ("Code"), "From the date of appointment of the interim resolution professional, ... the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional."*
5. *It has been held by the Hon'ble National Company Law Appellate Tribunal in the case of Indian Overseas Bank Vs. Mr. Dinkar T. Venkatsubramaniam, Resolution Professional for Amtek Auto Limited {(2018) 145 SCL 0138}, that: "Once the moratorium has been declared it is not open to any person including the 'Financial Creditors and the Appellant bank to recover any amount from the account of the "Corporate Debtor", nor it can appropriate any amount towards its own dues."*

G. Ramachandran

Insolvency Professional – (IBBI/IPA-002/IP-N00167/2017-18/10437)

R/o, F-10, Syndicate Residency No. 3, Dr. Thomas, First Street,

Off South Boag, Road, T. Nagar, Chennai-600017

Email:irp.regency@ibcpprofessionalsolutions.com

6. *In the light of the aforesaid provisions, the said action of your Bank of debiting the above mentioned amount from the Fixed Deposit of the Corporate Debtor (without the approval of the RP) tantamount to appropriation of amount towards its dues during the period of moratorium, and is strictly in contraventions to the provisions of the Code.*
7. *We therefore, hereby call upon you to release payment INR 2,27,94,796 (Inclusive of INR 20,63,293 towards new FD bearing A/C: 19050310060650 and appropriated amount of INR 2,07,31,503) plus interest accrued up to the date of actual transfer to the below mentioned account ("Amount Due") within a period of 3 days of receipt of this notice, failing which we will be compelled to initiated appropriate legal proceedings against you for recovery of the Amount Due as well as for the losses suffered by the Corporate Debtor due to your failure to make timely payment, at your sole risk as to cost and consequences.*

<i>Name of the Beneficiary</i>	<i>: Sai Regency Power Corporation Private Limited</i>
<i>Bank Name & Branch</i>	<i>: Punjab National Bank, Mumbai LCB, Cuffe Parade, Colaba, Mumbai</i>

Account Number : 2175002900000695
IFSC Code : PUNB0217500

8. *This notice is sent without prejudice to our rights and contentions.”*

11. The facts and developments are apparent from the above letter and considering the provisions of Section 14, we have no doubt that the impugned order as passed by the Adjudicating Authority is required to be maintained. Once CIRP was initiated and Section 14 of IBC applied such adjustment by Appellant cannot be maintained. Lack of knowledge of initiation of CIRP would not be relevant. When CIRP was initiated, the Appellant Bank could not have adjusted the amounts as has been done in this matter.

There is no substance in the Appeal. The Appeal is dismissed.

No order as to costs.

[Justice A.I.S. Cheema]
Member (Judicial)

[V.P. Singh]
Member (Technical)

Basant B./nn/