

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 319 of 2018**

**IN THE MATTER OF:**

**GAIL (India) Limited**

**...Appellant**

**Vs.**

**Rajeev Manaadiar & Ors.**

**...Respondents**

**Present: For Appellant: - Mr. Vikas Mehta, Advocate.**

**For Respondents:- Mr. P.V. Dinesh with Mr. Sunil Tripathi, Advocate for R-1.**

**ORDER**

**24.07.2018—** The Appellant- 'GAIL (India) Ltd.' intended to invoke the 'Performance Bank Guarantee' against the 'Corporate Debtor'- 'M/s. Petron Engineering Construction Limited'. The 'Resolution Professional' moved before the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, to stay the invocation of the 'Performance Bank Guarantee'. The Adjudicating Authority by impugned order dated 15<sup>th</sup> September, 2016 prohibited the Appellant-'GAIL (India) Ltd.' from invoking the 'Performance Bank Guarantee' on the ground that it cannot be revoked during the period of 'Moratorium'.

2. Learned counsel appearing on behalf of the Appellant submitted that the Appellant intended to invoke part of the 'Performance Bank Guarantee' and not the whole of it.

3. The stand of the ‘Resolution Professional’ is that the ‘Performance Bank Guarantee’ cannot be invoked during the ‘Moratorium’.

4. Section 14 of the Insolvency and Bankruptcy Code, 2016 (for short “I&B Code”) relates to ‘Moratorium’. Clause (c) of sub-section (1) of Section 14 empowers the Adjudicating Authority to declare ‘Moratorium’ for prohibiting any action to foreclose, recover or *enforce any security interest created by the ‘Corporate Debtor’* in respect of its property etc., which reads as follows:

**“14. Moratorium.** – (1) *Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: —*

*Xxx*

*xxx*

*xxx*

*(c) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002”*

5. The expression ‘security interest’ has been defined in sub-section (31) of Section 3 of the ‘I&B Code’, which reads as follows:

**“3. Definitions.—** xxx                      xxx                      xxx

*(31) "security interest" means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person:*

*Provided that security interest shall not include a performance guarantee”*

6. From sub-section (31) of Section 3, it is clear that the ‘security interest’ do not include the ‘Performance Bank Guarantee’, therefore, we hold that the ‘security interest’ mentioned in clause (c) of Section 14(1) do not include the ‘Performance Bank Guarantee’. Thereby the ‘Performance Bank Guarantee’ given by the ‘Corporate Debtor’ in favour of the Appellant- ‘GAIL (India) Ltd.’ is not covered by Section 14. The Appellant- ‘GAIL (India) Ltd.’ is entitled to invoke its ‘Performance Bank Guarantee’ in full or in part.

7. If it is invoked, the Appellant will inform it to the ‘Interim Resolution Professional’ who will maintain the record and make it clear

that the 'Performance Bank Guarantee' in full or part has been invoked by the Appellant which should also be brought to the notice of the 'Resolution Applicant(s)'.

8. Learned Adjudicating Authority having failed to consider the relevant provisions as discussed above, we set aside the order dated 12<sup>th</sup> June, 2018 passed in MA No. 521/2018 in CP 1374/I&BC/MNCLT/MB/MAH/2017. Concerned persons will allow the Appellant to extend the period of 'Bank Guarantee' for another six months to ensure completion of the period of 'Moratorium'. The Appeal is allowed with the aforesaid observations and direction.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

Ar/uk