

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

**Company Appeal (AT) (Insolvency) No.239 of 2018**

(arising out of order dated 25<sup>th</sup> April, 2018 passed by National Company Law Tribunal, Principal Bench, New Delhi in C.P. No. IB-378 (PB)/2017 in C.A. No. 207(PB)/2018 & CA No. 247(PB)/2018)

**IN THE MATTER OF:**

**Oriental Bank of Commerce,**  
Sub Cluster, South Delhi,  
92-E/1, R.K. Market,  
Post J.N.U., Munirka,  
New Delhi – 110 067.

**...Appellant**

**Versus**

**Devendra Singh,**  
Resolution Professional of  
Moser Baer India Limited,  
Witworth Insolvency Professional Pvt. Ltd.,  
99, DDA Site-1,  
Shankar Road,  
New Rajinder Nagar,  
New Delhi.

**...Respondent**

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**Oriental Bank of Commerce**  
Sub Cluster, South Delhi,  
92-E/1, R.K. Market,  
Post J.N.U., Munirka,  
New Delhi – 110 067.

**...Appellant**

**Versus**

1. **Moser Baer India Ltd.,**  
43B, Okhla Industrial Estate,  
New Delhi – 110 020.

2. **Devendra Singh,**  
Resolution Professional of  
Moser Baer India Limited,  
Witworth Insolvency Professional Pvt. Ltd.,  
99, DDA Site-1,  
Shankar Road,  
New Rajinder Nagar,  
New Delhi.

**...Respondents**

**Present:**

**For Appellant :** **Mr. Saran Suri, Ms. Adrija Das and Mr. Roshan Kumar, Advocates**  
**Ms. Seema Jangid, C.S.**

**For Respondent:** **Mr. Abhishek Anand, Mr. Tushar Tyagi and Ms. Chetna Singh, Advocates**

**J U D G M E N T**

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

In the ‘Corporation Insolvency Resolution Process’ against ‘Moser Baer India Limited’ (Corporate Debtor) an application was filed by the ‘Resolution Professional’ for direction to the Appellant – ‘Oriental Bank of Commerce’ to prematurely cancel the Fixed Deposit Receipt Nos. 06193031032707, 06193031032714, 06193031032721, 06193021014928 and 06193031032691 lying with it in the name of the ‘Corporate Debtor’ and transfer the proceeds of the ‘Fixed Deposit Receipts’ into the account known as the Trust and Retention Account with the ‘Central Bank of India’.

2. The ‘Oriental bank of Commerce’ also filed an application to consider it as a ‘Financial Creditor’ as guarantee given by the ‘Corporate Debtor’ having invoked by it.

3. The Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi by common impugned order dated 25<sup>th</sup> April, 2018 while allowed the prayer made by the 'Resolution Professional', rejected the prayer of the 'Oriental Bank of Commerce' with the following observations:

*“When we have examined the endorsements sent to the Corporate Debtor M/s Moser Baer India Limited, it becomes evident that the OBC has indicated to the Corporate Debtor that it had given Corporate Guarantee to secure the credit facilities sanctioned to M/s Halio Photo Voltaic Limited and they were advised to get the account adjusted failing which the OBC was to initiate legal action. Similarly, endorsement has been made in the letter dated 01.12.2015. It has been rightly contended by Mr. K. Dutta, learned counsel for the Resolution Professional that these endorsements cannot be regarded as invocation of Corporate Guarantee. We entirely agree with the submission made by the learned counsel and do not feel persuaded to accept the contention advanced by Mr. Suri on behalf of the OBC.*

*We are further of the view that the Corporate Insolvency Resolution Process in this case was triggered on 14.11.2017 and the amount from the FDRs has been appropriated after the aforesaid date on 30.11.2017 and intimation was sent on 17.12.2017. In any case*

*this was barred by Section 14 of the Code and the directions issued by us in the order dated 14.11.2017. In the case of AXIS bank Limited (supra), the Principal Bench has taken the view that in accordance with the provisions of Regulation 13 of the Insolvency and Bankruptcy Board of India (Corporate Resolution Process for Corporate Persons) Regulations, 2016 the Interim Resolution Professional/ Resolution Professional has to verify every claim as on the insolvency commencement date. Therefore, as per the books of account, on 14.11.2017 the amount in Fixed Deposits stood in the name of the Corporate Debtor. Any withdrawal from the account/FDR by appropriation by OBC has to be regarded as violative of Regulation 19 also. In the absence of such a bar, it will not be possible for the Resolution Professional to verify the claim and the object of moratorium as contemplated under Section 14(1) (c) would stand defeated. The Appellate Tribunal in the **Indian Overseas Bank vs. Mr. Dinkar T. Venkatsubramaniam (supra)** has also taken the same view in para 5 of its judgement which reads as under:-*

*“Having heard learned counsel for the Appellant, we do not accept the submissions made on behalf of the*

*appellant in view of the fact that after admission of an application under Section 7 of the “I&B Code”, once moratorium has been declared it is not open to any person including ‘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.”*

*We are further constrained to observe that the OBC has unnecessarily contested this litigation and the Interim Resolution Professional/ Resolution Professional was merely performing his duties imposed on him by Section 17(1) (d) of the Insolvency and Bankruptcy Code, 2016. Therefore, the claim made by the OBC in its application No. 247(PB)/2018 is devoid any merit.”*

3. The case of the Appellant is that the Bank has granted credit facilities to the ‘Helios Photo voltaic Limited’ (HPVL). While giving such credit facilities

'Moser Baer India Limited' (Corporate Debtor) had stood as 'corporate guarantor' pursuant to which an 'Agreement of Guarantee' was executed on 12<sup>th</sup> September, 2008.

4. The 'Corporate Debtor' during 2012-13 created 5 Fixed Deposits aforesaid with the Appellant amounting to Rs. 2,45,45,832/-. In the meantime, the principal borrower was declared 'Non-Performing Asset (NPA)' on 31<sup>st</sup> March, 2013 and by Demand Notices dated 22<sup>nd</sup> July 2014 and 1<sup>st</sup> December, 2015 the amount was recalled by the Appellant from the principal borrower. A copy of the said notice was sent to the 'Corporate Debtor' to which 'Corporate Debtor' replied by letter dated 24<sup>th</sup> December, 2015 accepting its indebtedness towards the Appellant. Thereafter, the 'Corporate Insolvency Resolution Process' was initiated against the 'Moser Baer India Limited' (Corporate Debtor). Pursuant to the invocation aforesaid, the Appellant Bank sent notice dated 30<sup>th</sup> November, 2017 subject to encashment of the FDRs to the 'Corporate Debtor' with a copy to the 'Resolution Professional' and pursuant to the commencement of the 'CIRP', the Appellant filed its claim to the tune of Rs. 8,49,94,18,669.25 as on 14<sup>th</sup> November, 2017 vide Form-C dated 28<sup>th</sup> November, 2017. Learned counsel appearing on behalf of the Appellant submitted that the Adjudicating Authority failed to appreciate the distinction and the true meaning of the terms 'Invocation', 'Appropriation' and

‘Encashment’. The ‘Resolution Professional’ given the view that the principles of the bankers’ general lien, Section 171 of the Contract Act, 1872 and agreed terms of the ‘Corporate Guarantee’, the Appellant was not entitled to stake its claim over the said FDRs to the tune of Rs. 3,58,09,820/- after the demand/invocation. It was submitted that the Appellant has exercised its right having control over the property (FDRs).

5. Insofar as the claim of the Appellant as ‘Financial Creditor’ is concerned, the Appellant having invoked the guarantee, this Appellate Tribunal in interim order dated 25<sup>th</sup> May, 2018 allowed the Appellant to attend the meeting of the ‘Committee of Creditors’ subject to the decision of both the appeals. However, the Appellant was not given a right of voting with the condition that if the ‘resolution plan’ approved in the meantime that shall be subject to the decision of these Appeals.

6. Learned counsel appearing on behalf of the Appellant brought to our notice that during the pendency of the appeal, ‘Moser Baer India Limited’ (Corporate Debtor) has undergone the ‘Liquidation’ vide order dated 20<sup>th</sup> September, 2018 passed by the Adjudicating Authority. The said order of the ‘Liquidation’ is not under challenge in these appeals. The Appellant has also brought to the notice of this Appellate Tribunal that the Appellant has filed

the claim before the 'Liquidator' which is now being accepted in view of Email dated 3<sup>rd</sup> December, 2018.

7. In view of aforesaid development, we are not inclined to interfere with the impugned order. The 'Liquidator' and the Adjudicating Authority are required to act in accordance with law. Both the appeals stand disposed of with aforesaid observations. No costs.

[Justice S.J. Mukhopadhaya]  
Chairperson

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

New Delhi

31<sup>st</sup> May, 2019

/ns/