

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 1366 of 2019

IN THE MATTER OF:

Morgan Securities & Credits Pvt. Ltd. ...Appellant

Vs

**Resolution Professional of
Videocon Industries Ltd.Respondent**

Present:

For Appellant: Mr. Krishnendu Datta, Mr. Abhishek Puri and Ms. Surbhi Gupta, Advocates.

For Respondents: Ms. Misha, Mr. Vaijayant Paliwal and Ms. Moulshree Shukla, Advocates for RP.

With

Company Appeal (AT) (Insolvency) No. 1367 of 2019

IN THE MATTER OF:

Morgan Securities & Credits Pvt. Ltd. ...Appellant

Vs

**Videocon Industries Ltd. through
Resolution ProfessionalRespondent**

Present:

For Appellant: Mr. Krishnendu Datta, Mr. Abhishek Puri and Ms. Surbhi Gupta, Advocates.

For Respondents: Ms. Misha, Mr. Vaijayant Paliwal and Ms. Moulshree Shukla, Advocates for RP.

With

Company Appeal (AT) (Insolvency) No. 1366 of 2019, 1367 of 2019, 1368 of 2019 & 20 of 2020.

Company Appeal (AT) (Insolvency) No. 1368 of 2019

IN THE MATTER OF:

Morgan Securities & Credits Pvt. Ltd. ...Appellant

Vs

Venugopal N. Dhoot & Anr.Respondent

Present:

For Appellant: Mr. Krishnendu Datta, Mr. Abhishek Puri and Ms. Surbhi Gupta, Advocates.

For Respondents: Ms. Misha, Mr. Vaijayant Paliwal and Ms. Moulshree Shukla, Advocates for RP.

With

Company Appeal (AT) (Insolvency) No. 20 of 2020

IN THE MATTER OF:

**Videocon Industries Ltd.
Resolution Professional ...Appellant**

Vs

Morgan Securities & Credits Pvt. Ltd.Respondent

Present:

For Appellant: Ms. Misha, Mr. Vaijayant Paliwal and Ms. Moulshree Shukla, Advocates for RP.

For Respondents: Mr. Krishnendu Datta, Mr. Abhishek Puri and Ms. Surbhi Gupta, Advocates.

ORDER

22.01.2020: Appellant – ‘Morgan Securities & Credits Pvt. Ltd.’ (Financial Creditor) in their respective appeals have challenged common order dated 11th November, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench whereby its Miscellaneous Application seeking release of amount of Rs.20 Crores deposited with the Registrar General of the Hon’ble High Court of Delhi upon invocation of the Bank Guarantee issued by the Allahabad Bank, in favour of it, has been rejected.

2. The Adjudicating Authority held that the amount will be deposited with the Resolution Professional of ‘Videocon Industries Ltd.’ (Corporate Debtor) and observed that the said amount of Rs.20 Crores is an asset of the Corporate Debtor given as ‘*security interest*’ to ‘Morgan Securities & Credits Pvt. Ltd.’.

3. Part of the impugned order has been challenged by the Resolution Professional wherein the Adjudicating Authority observed that the amount of Rs.20 Crores has been given as security interest by the Corporate Debtor to ‘Morgan Securities & Credits Pvt. Ltd.’.

4. Before initiation of the Corporate Insolvency Resolution Process, in an arbitration proceeding arbitral award was passed by the Arbitral Tribunal on 29th April, 2013 in favour of the Appellant - ‘Morgan Securities & Credits Pvt. Ltd.’ against the Corporate Debtor.

5. Pursuant to an order passed by Hon'ble High Court of Delhi on 13th November, 2013 under Section 9 of the Arbitration and Conciliation Act, 1996, in petition filed on behalf of the Appellant, the Corporate Debtor was directed to deposit a Bank Guarantee of Rs.20 Crores with the Registrar General, during the pendency of the challenge to Arbitral Award, which was so deposited.

6. Pursuant thereto, on the request of the Corporate Debtor, Allahabad Bank executed a Deed of Guarantee on 6th December, 2013 in favour of the Registrar General of the Hon'ble High Court of Delhi for a sum of Rs.20 Crores.

7. The Corporate Insolvency Resolution Process was initiated against 'Videocon Industries Ltd.' (Corporate Debtor) on 6th June, 2018. During the Corporate Insolvency Resolution Process, an application under Section 34 of the Arbitration and Conciliation Act, 1996 was filed by the Corporate Debtor, which was rejected and the amount of Rs.20 Crores was ordered to be retained in the account of the Registrar General of Hon'ble High Court of Delhi, subject to further order as may be passed in insolvency proceedings.

8. An appeal under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 was moved by 'Morgan Securities & Credits Pvt. Ltd.' only with regard to the part of the order passed by the Single Bench of the Hon'ble High Court of Delhi relating to the fixed deposit amount of Rs.20 crore which was ordered to

be retained with the Registrar General subject to the decision of insolvency proceeding. The Division Bench of the Hon'ble High Court of Delhi dismissed the said appeal under Section 37(1)(b) with following observations:-

“11. To that extent, the Learned Single Judge was right in concluding that as on the date of passing of the impugned order i.e. 7th February, 2019 with the insolvency proceedings having already commenced, the moratorium in terms of Section 14 of the IBC would be in place. How the said amount of Rs. 20 Crores together with interest accrued thereon should be dealt with would, therefore, be subject to the orders passed by the NCLT in such insolvency proceedings.

12. Consequently, this Court rejects the submission on behalf of Appellant that since the sum of Rs. 20 Crores together with interest thereon is not the asset of the VIL, it should not be dealt with or made subject to orders of NCLT, Mumbai. The impugned order does not call for interference. The appeal is dismissed. The applications are also dismissed.”

9. The Appellant - 'Morgan Securities & Credits Pvt. Ltd.' thereafter challenged the said order dated 28th August, 2019 before the Hon'ble Supreme Court, which was dismissed by the Hon'ble Supreme Court in SLP (C) No. 21259 of 2019 with observation that any observation made will not come in the way of final adjudication of the matter by the National Company Law Tribunal.

10. Thereafter, the Resolution Professional moved application for release of amount of Rs.20 Crores. The Appellant - 'Morgan Securities & Credits Pvt. Ltd.' appeared and opposed it. It was submitted, as Appellant submitted before this Appellate Tribunal, that the Bank Guarantee dated 6th December, 2013 furnished by Allahabad Bank to secure the payment of 'Morgan Securities & Credits Pvt. Ltd.' and is not asset of the Corporate Debtor because the Allahabad Bank has issued the Bank Guarantee without recourse to the Corporate Debtor.

11. It was further submitted on behalf of the Appellant - 'Morgan Securities & Credits Pvt. Ltd.' that the amount of Rs. 20 Crores was not covered under moratorium in terms of Section 14(3) of the I&B Code.

12. Stand of the Resolution Professional is that the Corporate Debtor furnished the Bank Guarantee in favour of the Registrar General of the High Court of Delhi, pursuant to order dated 13th November, 2013 passed by the Delhi High Court. The Allahabad Bank has issued the Bank Guarantee at the

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instance of the Corporate Debtor and renewed it from time to time on the request of the Corporate Debtor. Lastly, it was renewed on the request of the Corporate Debtor on 2nd December, 2017 valid upto 5th December, 2018. It was further submitted that the 'Morgan Securities & Credits Pvt. Ltd.' has filed a claim amounting to Rs.325 Crores with the Resolution Professional which includes the amount as awarded. The Resolution Professional collated and verified the claim of the Appellant and admitted an amount of Rs.76.45 Crore, which was the amount awarded by the Arbitral Tribunal in favour of the - 'Morgan Securities & Credits Pvt. Ltd.' (Financial Creditor). As per the said claim, the Appellant - 'Morgan Securities & Credits Pvt. Ltd.' has joined as part of the Committee of Creditors with voting share of 0.13% without any objection.

13. It was further submitted that any lien or arrangement in force against the Corporate Debtor prior to commencement of Corporate Insolvency Resolution Process is not enforceable during the moratorium, therefore, 'Morgan Securities & Credits Pvt. Ltd.' cannot claim any priority or lien in the aforesaid amount of Rs.20 Crores, which is lying deposited with the Registrar General.

14. From the facts as discussed above, it is clear that the amount of Rs.20 Crores deposited by way of Bank Guarantee was against the sum of Rs.76.45 Crores awarded, therefore, said amount of Rs.20 Crores, if payable to the

Financial Creditor will be out of Rs.76.45 Crores as awarded in its favour. Even if, it is accepted that said amount of Rs.20 Crores, as deposited with the Registrar General of Delhi High Court, is meant for payment to the Appellant - 'Morgan Securities & Credits Pvt. Ltd.' against the awarded amount of Rs.76.45 Crores, in light of the decision of Hon'ble Supreme Court in "*Himachal Pradesh Housing & Urban Development Authority Vs. Ranjit Singh Rana, (2012) 4 SCC 505*", we hold that the Bank Guarantee of Rs.20 Crores given by the Bank on behalf of the Corporate Debtor, relates to the claim of the Appellant - 'Morgan Securities & Credits Pvt. Ltd.' which has been taken care by the Resolution Professional against the claim preferred in the Corporate Insolvency Resolution Process. Such being the position, during the Corporate Insolvency Resolution Process, the amount will be deposited with the Resolution Professional and the Appellant's claim can be taken care by the Successful Resolution Applicant, if a resolution plan is approved. During the liquidation stage the amount of Rs.20 Crores cannot be treated as 'Security Interest', merely because it was deposited against award amount of Rs.76.45 Crores.

15. The submission of the Appellant - 'Morgan Securities & Credits Pvt. Ltd.' that the amount of Rs.20 Crores belongs to the Allahabad Bank, cannot be accepted, as it was issued by the Bank on the request of the Corporate Debtor against the security interest. Further, even if it is accepted that it belongs to the Allahabad Bank, the bank being not aggrieved, the Appellant - 'Morgan

Securities & Credits Pvt. Ltd.’ (Financial Creditor) cannot file appeal raising cause of another Financial Creditor (Allahabad Bank).

16. For the reason aforesaid, while we uphold the finding given by the Adjudicating Authority that the amount of Rs.20 Crore is an asset of the Corporate Debtor, we hold that the observation that the amount was ‘*a security interest in Morgan’s favour*’ being against the facts and law is set aside.

17. We make it clear that aforesaid Rs.20 Crores be added in the total assets of the Corporate Debtor, which may be taken care by the Resolution Professional for finalizing the resolution plan and / or during the liquidation process, if any plan is not approved. Appeals filed by the Financial Creditor - ‘Morgan Securities & Credits Pvt. Ltd.’ being Company Appeal (AT) (Ins.) No. 1366 of 2019, 1367 of 2019, 1368 of 2019 are dismissed. Company Appeal (AT) (Ins.) No.20 of 2020 filed by Corporate Debtor – ‘Videocon Industries Ltd.’ is allowed. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Anant Bijay Singh]
Member (Judicial)

am/gc

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