

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 390 of 2018

IN THE MATTER OF:

ICICI Bank Ltd.

...Appellant

Vs

**Interim Resolution Professional for
Ruchi Soya Industries Ltd.**

....Respondent

Present:

For Appellant: Mr. Ramji Srinivasan, Sr. Advocate with Ms. Misha, Mr. Shantanu Chaturvedi, Mr. Naveen Hegde, Ms. Aishwarya Nabh and Mr. Parth Gokhale, Advocates.

For Respondents: Mr. Jayant Mehta, Mr. Swapnil Gupta, Ms. Ankita Sinha and Mr. Sajal Jain, Advocates.

ORDER

24.07.2018: A Miscellaneous Application was moved by the Interim Resolution Professional before the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench alleging that the 'ICICI Bank' has debited certain amount on 16.11.2017, 18.12.2017 and 26.12.2017 from the current account of the Corporate Debtor subsequent to the declaration of moratorium which was declared on 15.12.2017.

2. Taking into consideration the relevant facts, the Adjudicating Authority by impugned order dated 5th June, 2018 in MA 84/2018 in C.P.(IB)1371&1372 (MB)/ 2017 directed the Appellant – 'ICICI Bank Ltd.' to deposit the debited amount in the account of the Corporate Debtor.

3. Learned senior counsel appearing on behalf of the Appellant submits that order of moratorium passed on 15.12.2017, but it was communicated on

19.12.2017. However, the aforesaid stand taken by the Appellant has been disputed by learned counsel for the Resolution Professional.

4. In the present case we do not intend to go into question as to when the order of moratorium was received by the Bank. Even if it is assumed that it was received by the Bank on 19.12.2017, it was not open to them to debit any amount from the account of the Corporate Debtor subsequent to order of moratorium. Further, as the order of moratorium came into its effect immediately i.e. on 15.12.2017, the date of receipt of order has no relevancy with the same.

5. Similar issue fell for consideration of this Appellate Tribunal in “*State Bank of India V/s Mr. V. Ramakrishnan, Company Appeal (AT) (Insolvency) No. 213 of 2017*” wherein taking into consideration the relevant law and the facts by judgment dated 28.02.2018 this Appellate Tribunal held as follows:

“15. On bare perusal of the aforesaid provisions, it is clear that not only institution of suits or continuation of pending suits or proceedings against the ‘Corporate Debtor’ are prohibited from proceedings, in terms of clause (b) of sub-section (1) of Section 14 of the ‘I&B Code’, transfer, encumbrance, alienation or disposal of any of its assets of the ‘Corporate Debtor’ and/**or any legal right or beneficial interest therein** are prohibited. Clauses (c) & (d) of sub-section (1) of Section 14 of the I&B Code’ prohibits recovery or enforcement of any security interest created by the corporate debtor in respect of its property including the property occupied by it or in the possession of the ‘Corporate Debtor’.”

6. In another case of “*State Bank of India V/s Debashish Nanda, Company Appeal (AT) (Insolvency) No. 49 of 2018*”, this Appellate Tribunal by order dated 21.03.2018 observed that the Bank cannot debit any amount from the Corporate Debtor’s account after the order of moratorium, as it amounts to recovery of amount after the order of moratorium. However, the Appellate Tribunal allowed to the Financial Creditor to incorporate the debited amount in a separate set of Ledger, in accordance with the ‘RBI Guidelines’, but not to be treat the amount debited for adjustment. This Appellate Tribunal further observed that the Bank cannot freeze the account nor can prohibit the ‘Corporate Debtor’ from withdrawing the amount, as available on the date of moratorium for its day to day functioning.

7. However, once Resolution Plan is approved or rejected by the Adjudicating Authority under Section 31 of I&B Code and as the order of moratorium comes to an end, it is always open to the Bank to rewrite its ledger book including accrued of interest and may debit the amount as recorded in a separate record/ ledger.

8. In view of the aforesaid decisions and observations, while we are not inclined to interfere with the impugned order dated 5th June, 2018, allow the Bank to act in accordance with the observations made in the case of “*State Bank of India V/s Debashish Nanda*”, as noticed above. The Resolution Professional is directed not to withdraw any amount during Resolution Process except for day to day functioning of the Corporate Debtor to ensure that the Corporate Debtor remains ongoing concern. However, if any amount is withdrawn during the period of Corporate Insolvency Resolution Process, such amount can be debited, for the purpose of maintaining the Books of Account, to ensure that excess withdrawal is not made beyond the available balance.

9. The order dated 5th June, 2018 passed in MA 84/2018 in C.P.(IB)1371&1372 (MB)/ 2017 by the Adjudicating Authority stands clarified to the extent above. The appeal is disposed of with aforesaid observations. No cost.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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