

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

**Review Application No. 01 of 2020 in
Company Appeal (AT) (Ins) No. 632 of 2019**

IN THE MATTER OF:

**Reliance Asset Reconstruction Company
Reliance centre, North Wing,
6th Floor, Off Western Express Highway,
Santacruz East, Mumbai – 400 055**

...Applicant/Intervener

Vs.

**1.Bank of Baroda
Mount Road Branch No.1
Club House Road, Anna Salai,
Chennai – 600 002**

...Appellant

**2.Deepa VenkatRamani
Resolution Professional,
Office Address:
Office No. 40, TNHB Complex,
180, Luz Church Road,
Mylapore, Chennai – 600 004**

... Respondent

Present:

**For Applicant : Ms. Usha Singh with Mr. Akhilesh and Ms. Nidhi.S
Advocates and Mr. Vipin Kumar Meena, Chief Manger (Legal)**

**For Appellant : Ms. Praveen Gautam with Ms. Sweety Pandey and
Mr. Pawan Shukla, Advocates.**

JUDGMENT

(29th January, 2020)

Dr. Ashok Kumar Mishra, Technical Member

The Applicant/Intervener i.e. Reliance Asset Reconstruction Company has filed a Review Application under Rule 11 of National Company Law Appellate Tribunal Rules, 2016, by seeking the following reliefs:

a. Allow the present Review Application,

- b. Modify the judgment dated 04.12.2019 to the extent as mentioned in the foregoing paragraphs and allow the submissions of the Applicant/Intervener to be incorporated in the said judgment;
 - c. Stay the operation of impugned judgment 04.12.2019 during the pendency of the present application.
 - d. Pass such other orders as this Hon'ble Appellate Tribunal may deem fit and appropriate in the facts and circumstances of the present case and in the light of justice, equity and good conscience.
2. The Applicant/Intervener seeking review/modification of the Judgment dated 04.12.2019 passed by this Appellate Tribunal in Company Appeal (AT) (Ins) No. 632 of 2019 that the Applicant/Intervener is holding 55.41 % voting share in the Committee of Creditors ('for short CoC') and has provided the following financial facilities to the Corporate Debtor from City Union Bank (Assignor Bank of the Applicant/Intervener herein) during October 2010 which are renewed thereafter from time to time.
- i. Cash Credit of Rs. 22.50 Crore
 - ii. Ad hoc Limit of Rs. 5 Crore
 - iii. Term Loan of Rs. 1.50 Crore
 - iv. Bank Guarantee Limit of Rs. 18 Crore

That to secure the said credit facilities, the Corporate Debtor had hypothecated all its current assets including receivables, stock and movables vide Agreement of Loan cum Hypothecation dated 10.10.2011.

3. They have also submitted that this Appellate Tribunal has failed to consider the submission, made by the Applicant/Intervener. They have filed its claim before the Resolution Professional for an amount of Rs. 83,74,42, 818.56.

- They have also cited the judgment of Mrs. Sonia Khosla Vs. Sameer Kudsia & ors., Company Appeal (AT) No. 36 of 2016 along with Company Appeals (AT) No. 43 to 47 of 2016 passed by this Appellate Tribunal wherein this Appellate Tribunal has been pleased to allow review of orders.
4. The Appellant i.e. Bank of Baroda in Company Appeal (AT) (Insolvency) No. 632 of 2019 has preferred the Appeal under Section 61 (1) of the Insolvency and Bankruptcy Code, 2016 (for short I&BC, 2016) against the impugned order dated 03.05.2019 passed by National Company Law Tribunal (for short Adjudicating Authority) Single Bench Chennai under Section 33 of the I&BC, 2016 in MA /69/2019 in CP 233/IB/2017. The issue raised by the Appellant i.e. Bank of Baroda in the said appeal that the direction given by the Adjudicating Authority in terms of Impugned order dated 03.05.2019 to the extent that the liquidator shall collect the amount of Rs. 5.95 Crores plus interest accrued thereon from DRT-II Chennai for being dealt with under provisions of Section 53 of the I&BC, 2016 is unsustainable, as the Appellant – Bank of Baroda is a secured Creditor which has not relinquished its security interest.
 5. We have observed that the Applicant/Intervener has not been able to establish its security interest advance towards the projects of Southern Railway. It is also nowhere mentioned in the submission of the Applicant/Intervener that they have furnished any security interest against the project of the Southern Railways; even no documents have been submitted to prove that the deposit by the Southern Railway pertains to any receivables as security in connection with the loans or other financial assistance had been advanced by the Applicant.

6. The list submitted by the Resolution Professional in respect of projects assigned to Bank of Baroda was available at *Annexure A/4 page 66* in the main Company Appeal and City Union Bank, the Applicant, has not submitted any statement. Now, they have submitted a copy of the agreement of loan cum Hypothecation dated 10.10.2011 in favour of City Union Bank Ltd., as stated in *Page No. 63 to 82* of the present Review Petition.
7. Presently, Company Appeal (AT) (Ins) No. 632 of 2019 has been remanded back to the Adjudicating Authority to decide the security interest of the Appellant Bank i.e. Bank of Baroda before the Liquidator can be given the assets of the Corporate Debtor to be dealt with under Section 53 of the I&B Code.
8. Hence, the Applicant/Intervener is also directed to approach the Adjudicating Authority and provides the Terms Loan Agreement, Bank Guarantee, Cash Credit & Ad hoc Limit facilities details etc., to the Adjudicating Authority for appropriate adjudication to be dealt with in accordance with Insolvency and Bankruptcy Code, 2016.
9. Thus, the Review Application is disposed of with the aforesaid directions & observations. No order as to costs.

Justice Jarat Kumar Jain
Member (Judicial)

Mr. Balvinder Singh
Member(Technical)

Dr. Ashok Kumar Mishra
Member (Technical)

New Delhi
RK

