

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 13 of 2018

IN THE MATTER OF:

ICICI Bank Ltd.

...Appellant

Vs

Vista Steel Pvt. Ltd.

....Respondent

Present:

For Appellant: Mr. Ramji Srinivasan, Mr. Anand Shankar Jha, Mr. Md. Ali, Mr. Naveen Hegde and Mr. Tushar Bhardwaj, Advocates.

For Respondent: Mr. S. Chakraborty, Ms. Harsita Verma and Ms. Sonia Dube, Advocates

ORDER

02.05.2018: 'ICICI Bank Ltd.' (Appellant – 'Financial Creditor') filed an application under section 7 of Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process against 'M/s Vista Steel Pvt. Ltd.' ('Guarantor – Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata by impugned order dated 15th December, 2017 dismissed the application on the ground that during the pendency of the proceeding against the Principal Borrower no Corporate Insolvency Resolution Process can be initiated against the Guarantor.

2. Similar issued fell for consideration before this Appellate Tribunal in '**State Bank of India V/s. Mr. V. Ramakrishnan & Ors. in Company Appeal (AT) (Insolvency) No. 213 of 2017**', where in this Appellate Tribunal by judgment dated 28th February, 2018' observed and held as follows:

"13. Therefore, a 'Financial Creditor', including Appellant-State Bank of India, if intends to proceed against the 'Personal

Guarantor’ of the ‘Corporate Debtor’, may file an application relating to ‘Bankruptcy’ of the ‘Personal Guarantor’ before the same Adjudicating Authority (‘Division Bench, Chennai’ herein). Though, Part III of the ‘I&B Code’ has not yet notified but the Adjudicating Authority is vested with all the powers of the Debt Recovery Tribunal (Adjudicating Authority under Part III) as contemplated under Part III of the ‘I&B Code’ for the purpose of sub-section (2) as apparent from sub-section (4) of Section 60 of the ‘I&B Code’ as quoted below: -

“60. Adjudicating Authority for corporate persons. –

(4) The National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of this Code for the purpose of sub-section (2).”

14. Section 14 of the ‘I&B Code’ empowers the Adjudicating Authority to declare ‘Moratorium’ for prohibiting all of the matters as stipulated thereunder and quoted below:

“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:—

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(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;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

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’.”*

2. This Appellate Tribunal subsequently by its judgment in **‘State Bank of India V/s. D.S. Rajendra Kumar, etc. in Company Appeal (AT) (Insolvency) No. 87-91 of 2018’** having noticed the aforesaid decision in ‘State Bank of India V/s. V. Ramakrishnan & Ors.’ while reiterated the decision by judgment dated 18th April, 2018, further observed and held as follows:

“5. The case of the Appellant and the Respondents being covered by the aforesaid decision, no further order is required to be passed in these appeals. However, it is made clear that order of ‘Moratorium’ will be applicable only to the proceedings against the ‘Corporate Debtor’ and the ‘Personal Guarantor’, if pending before any court of law/Tribunal or authority but the order of ‘Moratorium’ will not be applicable for filing application for triggering ‘Corporate Insolvency Resolution Process’ under Sections 7 or 9 or 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “I&B Code”) against the ‘Guarantor’ or the ‘Personal Guarantor’ under Section 60(2).”

3. The case of the Appellant – 'ICICI Bank Ltd.' being covered by the decision of this Appellate Tribunal as referred to above, we hold that the order of Moratorium will be applicable to the proceedings against the 'Corporate Debtor' and the 'Guarantor', if pending before any court. However, such order of Moratorium will not be applicable for triggering 'Corporate Insolvency Resolution Process' under Section 7 or 9 of the Insolvency and Bankruptcy Code, 2016 against the 'Guarantor' or the 'Personal Guarantor'.

4. Learned counsel appearing on behalf of the Respondent submits that the Resolution Plan has already been approved, wherein it is stated that during the implementation of Resolution Plan, guarantors/ financial creditor/ corporate debtor shall not pursue any legal proceeding or objections made before any court of law or tribunal in respect of any issues relating to or arising out of debt of financial creditors of the company.

5. However, we are of the view that the aforesaid Resolution Plan having approved subsequently on 12th February, 2018 in CP (IB) No. 37/KB/2017 will not affect the rights of Appellant- Financial Creditor, who filed the application under Section 7 much prior to approval of the Resolution Plan. Infact the impugned order was passed on 15th December, 2017 i.e. much prior to the approval of Resolution Plan.

6. The decision of the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench being against the decision of this Appellate Tribunal in '**State Bank of India V/s. Mr. V. Ramakrishnan & Ors.**' (*Supra*) and '**State Bank of India V/s. D.S. Rajendra Kumar**' (*Supra*), are set aside. The case is remitted to the Adjudicating Authority (National Company Law Tribunal),

Kolkata Bench, Kolkata for admission of the application, if the application is complete, after notice to the parties. If there is any defect, the Adjudicating Authority will allow the Appellant to remove the defects within a reasonable time. The appeal is allowed with aforesaid observations. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/uk