

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 87 of 2018

IN THE MATTER OF:

State Bank of India **...Appellant**

Vs.

D.S. Rajendra Kumar **...Respondent**

Company Appeal (AT) (Insolvency) No. 88 of 2018

IN THE MATTER OF:

State Bank of India **...Appellant**

Vs.

R. Siddharth Kumar **...Respondent**

Company Appeal (AT) (Insolvency) No. 89 of 2018

IN THE MATTER OF:

State Bank of India **...Appellant**

Vs.

R. Arihant **...Respondent**

Company Appeal (AT) (Insolvency) No. 90 of 2018

IN THE MATTER OF:

State Bank of India **...Appellant**

Vs.

D.S. Raj Kumar **...Respondent**

Company Appeal (AT) (Insolvency) No. 91 of 2018

IN THE MATTER OF:

State Bank of India

...Appellant

Vs.

R. Inderjeeth

...Respondent

Present: For Appellant: - Mr. P.V. Dinesh and Mr. Rajender Beniwal, Advocates.

For Respondents:- Mr. K.B.S. Bedi, Advocate.

O R D E R

18.04.2018- These appeals have been preferred by the State Bank of India against common order dated 23rd January, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Chennai, which reads as follows:

“All the petitions have been filed by the applicant/financial creditor/State Bank of India for recovery of the financial credit extended to the Corporate Debtor M/s. Brilliant Alloys Private Limited vide order No. CP/582/(IB)/CB/2017 dt.28.09.2017 the moratorium under Sec. 14 of the IBC 2016 was declared and Shri.Martin S.K.Golla was appointed as an Interim Resolution Professionals and in the meantime the financial creditor has sought to move this Tribunal under Section

60(2) of the IBC to initiate the insolvency proceedings against the personal guarantors to the corporate debtor with respect the guarantee for the loan which was extended for the financial creditor vide loan agreement dated 05.03.2012 for the following financial credit together with applicable interest thereon.

| Sl. No. | Facility | Limit |
|----------------------------|-----------------|----------------|
| Fund Based Limits | | (Rs. in lacs) |
| <i>a</i> | Term Loan | 1275.00 |
| <i>b</i> | Cash Credit | 1200.00 |
| Total of Fund Based Limits | | 2475.00 |

In similar circumstances, the Hon'ble High Court of Allahabad has held that

IN THE HIGH COURT OF ALLAHABAD
 writ - C Nos. 30285 and 30033 of 2017
 Decided On: 06.09.2017
 Appellants: Sanjeev Shriya and Ors.
 Vs.
 Respondent: State Bank of India and Ors.
 Sanjeev Shriya and Ors. Vs. State Bank of India and Ors.
 (06.09.2017 - ALLHC) : MANU/UP/2243/2017

The operative portion of Hon'ble High Court's orders are reproduced below:

“This Court is of the considered opinion that in the aforementioned facts and circumstances once the sufficient safeguards are provided in the IBC, 2016 & the regulations framed thereunder to the bank, and even the liability has not been crystallized either against the principal debtor or guarantors/mortgagors at present, then the proceeding, which is pending before the Debt Recovery Tribunal, Allahabad cannot go on and the same is stayed till the finalization of corporate insolvency resolution process or till the NCLT approves the resolution plan under sub-section (l) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, as the case may be. With the aforesaid directions/observations, both the writ petitions are disposed”

In view of this, the financial creditor/SBI should not proceed against the personal guarantors till the moratorium period comes to an end or till the adjudicating authority approves a resolution plan under Sub Section 1 of Section 31 or passes an order for liquidation of corporate debtor under Section 33.

*In terms of the above, all the five **CP/703/IB/2017, CP/704/1B/2017, CP/705/1B/2017, CP/706/1B/2017, CP/707/1B/2017** are **disposed of**.*

There will be no order as to costs.”

2. Learned counsel appearing on behalf of the Appellant submits that the aforesaid directions given by the Adjudicating Authority is against the observations of this Appellate Tribunal as made in Para 13 in the **“State**

Bank of India V/s. V. Ramakrishnan & Ors.— Company Appeal (AT) (Insolvency) No. 213 of 2017”.

3. According to learned counsel for the Respondents, the ‘Moratorium’ will cover the ‘Personal Guarantor’ in view of the decision of this Appellate Tribunal in **“State Bank of India V/s. V. Ramakrishnan & Ors. (Supra)”** .

4. The issue fell for consideration before this Appellate Tribunal in **“State Bank of India V/s. V. Ramakrishnan & Ors. (Supra)”**, wherein this Appellate Tribunal by its 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'.

16. Sub-section (1) of Section 31 relates to 'approval of resolution plan', which reads as follows: -

“31. Approval of resolution plan. – (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.”

17. From the aforesaid provisions, it is clear that 'Resolution Plan' if approved by the 'Committee of Creditors' under sub-section (4) of Section 30 and if the same meets the requirements as referred to in sub-section (2) of Section 30 and once approved by the 'Adjudicating Authority' is not only binding on the 'Corporate Debtor', but also on its employees, members, creditors, guarantors and other stakeholders involved in the 'Resolution Plan', including the 'Personal Guarantor'.

18. In view of the aforesaid provisions, we hold that the 'Moratorium' will not only be applicable to the property of the 'Corporate Debtor' but also on the 'Personal Guarantor'."

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).

6. We have noticed that Part-III of 'I&B Code' has not been given effect but Part-II Section 60(2) having come into force, if 'Corporate Insolvency Resolution Process' has been initiated against the 'Corporate Debtor', the Insolvency and Bankruptcy Resolution Process against the 'Personal Guarantor' can be filed under section 60(2) before the same Adjudicating Authority (National Company Law Tribunal) and not before the Debt Recovery Tribunal (DRT).

7. All these appeals stand disposed of with aforesaid observations and clarifications. However, in the facts and circumstances of the case there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

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