

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 298 of 2019

IN THE MATTER OF:

SREI Equipment Finance Ltd.

...Appellant

Vs

Amit Gupta

....Respondent

Present:

**For Appellant: Mr. Vivek Kohli, Mr. Sandeep Bhuraria and
Mr. Subhadeep Podder, Advocates.**

For Respondent: Mr. Savar Mahajan, Advocate for RP.

ORDER

27.03.2019: During the pendency of the Corporate Insolvency Resolution Process against 'Provogue (India) Ltd.' (Corporate Debtor) two post dated cheques were encashed by Appellant – 'SREI Equipment Finance Ltd.' withdrawing sum of Rs.11,56,396/- and another sum of Rs.11,01,590/-. In this background, the Resolution Professional moved an application before the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench for direction against the Appellant to refund the aforesaid two amounts withdrawn during the period of moratorium. The Adjudicating Authority by impugned order dated 8th March, 2019, on hearing the parties, accepted the prayer and held that the payment received by the Appellant from the Corporate Debtor on the basis of post dated cheques encashed during the Corporate Insolvency Resolution Process is hit by Section 14 of the I&B Code.

2. Learned counsel appearing on behalf of the Appellant submitted that the post dated cheques were issued by the Corporate Debtor well before the initiation of Corporate Insolvency Resolution Process and the liability arose at the time of handing over the post dated cheques, therefore according to him the debt in question arose at the time of handing over of post dated cheques and not after initiation of Corporate Insolvency Resolution Process and the same is not hit by Section 14 of the I&B Code.

3. Further, according to learned counsel for the Appellant in terms of decision of Hon'ble Supreme Court in '*K. Saraswathy Alias K. Kalpana (Dead) by L.Rs. Vs. P.S.S. Somasundaram Chettiar*' reported in (1989) 4 Supreme Court Cases 527, the payment of a cheque relates back to date of delivery of the Cheque, therefore, such post dated cheques were not barred by Section 14 of I&B Code. He further argued that the decisions of this Appellate Tribunal as cited by the Adjudicating Authority are not related to post dated cheque and are not applicable.

4. We have heard learned counsel for the Appellant and perused the order.

5. Section 14 of the I&B Code relates to moratorium and reads as follows:-

"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.”

6. Clause (b) of Section 14(1) prohibits transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein. As per Clause (c) of Section 14(1) any action to

foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under SARFAESI Act, 2002 is also prohibited. Clause (d) of sub-section (1) of Section 14 prohibits the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

7. From the simple reading of the provisions it is evident that after initiation of Corporate Insolvency Resolution Process once moratorium starts no person can recover any amount from the account of the Corporate Debtor. It is true that the cheque dates back to the date of handover but it cannot be encashed after the moratorium starts, in view of the specific provisions, to recover the amount from the Corporate Debtor as referred above.

8. For the aforesaid reason, we are not inclined to interfere with the impugned order. However, order passed by the Adjudicating Authority or this Appellate Tribunal will not come in the way of the Appellant to move before a court of appropriate jurisdiction for appropriate relief, after refunding the amount in terms of order dated 8th March, 2019 passed by the Adjudicating Authority.

9. On the request made by learned counsel for the Appellant, we extend the period to refund the amount with direction to pay the amount by 15th April, 2019. The appeal stands disposed of with aforesaid observations and directions. No cost.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice A. I. S. Cheema]
Member (Judicial)

am/gc

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