

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 323 of 2018

IN THE MATTER OF:

M/s. Navbharat Castings LLP.

...Appellant

Versus

M/s. Moser Baer India Ltd. & Anr.

...Respondents

Present:

For Appellant : **Mr. Prashnto Sen, Mr. R.K. Bansal, Ms. Isha Bhalla
and Mr. Kamal Budhiraja, Advocates**

ORDER

30.07.2018 The appellant has challenged the order dated 8th May, 2018 whereby and whereunder the application preferred by the appellant (landlord) for direction to the ‘Corporate Debtor’ through the ‘Resolution Professional’ to vacate the premises belonging to the decree holder has been rejected in view of the order of moratorium passed.

2. On 29th June, 2018, this Appellate Tribunal passed the following order :-

“The question arises for consideration in this appeal is whether the order of ‘Moratorium’ will be applicable to the lease hold property of a land-lord in which the ‘Corporate Debtor’ is a tenant, particularly after decree of eviction passed in favour of the land lord against the ‘Corporate Debtor’. In this respect, one may notice the provision of Section 14(1)(d) of the Insolvency and Bankruptcy Code, 2016, which 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. *However, just to give an opportunity to the counsel for the Appellant, we adjourn the case.”*

3. On hearing the learned counsel for the appellant and in view of sub-clause (1) of clause (d) of Section 14 of the Insolvency and Bankruptcy Code, 2016, the recovery of property by the owner occupied by the ‘Corporate Debtor’ is not permissible during the period of moratorium.

4. Learned counsel appearing on behalf of the appellant submits that the ‘Corporate Debtor’ through ‘Resolution Professional’ should pay current rent for

the period of moratorium as the 'Corporate Debtor' is occupying the premises. However, such issue has not been raised before the Adjudicating Authority. Let the appellant bring such fact before the 'Resolution Professional' or the 'Adjudicating Authority', who may consider the same.

5. It was then contended that the period of moratorium is coming to an end on 15th August, 2018 thereafter the appellant has right to pursue for recovery of arrears of rent. We don't express any opinion in this regard as such issue can be decided by the court of competent jurisdiction.

6. The appeal stands disposed of with the aforesaid observation. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/sk/