

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 49 of 2018

IN THE MATTER OF:

State Bank of India

...Appellant

Vs

Debashish Nanda

....Respondent

Present:

For Appellant: Mr. Ramji Srinivasan, Senior Advocate assisted by Mr. P. B. A. Srinivasan, Mr. Naveen Hegde and Mr. Tushar Bhardwaj, Advocates.

For Respondent: Mr. Ankit Sibbal, Advocate.

ORDER

27.04.2018: This appeal has been preferred by State Bank of India (Financial Creditor) against order dated 25th January, 2018 passed by Adjudicating Authority (National Company Law Tribunal) Principal Bench, New Delhi relevant portion of which reads as follows:

“We also place reliance on para 5 of the judgement dated 15.11.2017 of Hon’ble National Company Appellate Tribunal rendered in the case of Indian Overseas Bank Vs Mr. Dinkar T. Venkatsubramaniam Resolution Professional for Amtek Auto Ltd., which is reproduced below:

“Having heard learned counsel for the Appellant, we do not accept the submissions made on behalf of the Appellant in view of the fact that after admission of an application under Section 7 of the ‘I&B Code’, once moratorium has been declared it is not open to any person including ‘Financial Creditors’ and the appellant bank to recover any amount from the account

of the 'Corporate Debtor', nor it can appropriate any amount towards its own dues".

It is thus seen that once the moratorium is in force the financial creditor including the bank has to prefer its claim before the RP, which would be considered alongwith other claims as per law.

We further find that there is direct violation of Section 14(1)(c) which creates a bar prohibiting 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 Act is also prohibited. Besides there is violations of order of moratorium passed by this Tribunal on 01.06.2017. As there is a direct statutory violation we find that it is a fit case for imposing cost. Accordingly, a cost of Rs.25,000/- is imposed on the non applicant / respondent. The cost be deposited in the Prime Minister Welfare Fund.

Keeping aforesaid facts in view the application filed by the Resolution Professional is allowed. The non applicant – State Bank of India / Financial Creditor is directed to roll back all debit entries adjusted in the account of the Corporate Debtor after 01.06.2017 and accordingly restore the account in the same state as it was on 01.06.2017. The needful be done without any delay but not later than 7 days. Likewise it has to roll back the amount of bank guarantee encashed on or after 01.06.2017.

The Resolution Professional shall be liberty to operate the account as per the provisions of the Insolvency and Bankruptcy Code and non-applicant shall defreeze the account immediately.

The application stands disposed of.”

62. On 21st March, 2018 when the matter was heard the following observation was made by this Appellate Tribunal:

“O R D E R

21.03.2018— Prima facie, we are of the view that the appellant cannot debit any amount from the ‘Corporate Debtor’s account’ after the order of moratorium, as it may amount to recovery amount in spite of the order of moratorium passed by the Adjudicating Authority in violation of Section 14 of the Insolvency and Bankruptcy Code.

However, it may be open to the ‘Financial Creditor’ to incorporate the interest against the appropriate head in a separate set of same account in terms with the ‘RBI Guidelines’, which should not be treated to be the amount debited for adjustment.

Further it appears that the Bank cannot freeze the account nor can prohibit the ‘corporate debtor’ from withdrawing the amount, as available on the date of moratorium for its day to day functioning through Resolution Professional.

Heard the parties.


Post the matter for further hearing on 26th March, 2018.

In the meantime, it will be open to the appellant and the respondent to file additional affidavit.”

3. Learned counsel appearing on behalf of the Appellant referred to the statement of bank account of the Corporate Debtor for the period from

01.06.2017 to 31.07.2017 and submits that the order of Moratorium was passed on 01.06.2017 by which dated the Corporate Debtor has overdrawn Rs.8,04,81,486.35/- over the limits beyond Rs.8/- crore and therefore no amount was available in the account of the CoCs for Resolution Professional to draw any amount. The relevant portion of the account statement is as follows:

95T



Account Name : MAINI CONSTRUCTIONS EQ PVT LTD

Address : B- 1/ A-21 , GROUND FLOOR, MOHAN CO - OPERATIVE INDUSTRIAL ESTATE, MATHURA ROAD NEW DELHI, South DELHI DELHI-110044 IN

Date : 3 Aug 2017

Account Number : 00000061031423302

Account Description : MCL-QD SME SARAL SSI>040713

Branch : FARIDABAD

Drawing Power : 0,00

Interest Rate(% p.a.) : 11.95

CIF No. : 78117105389

IFS Code : SBIN0031310

MICR Code : 110002626

Termination Registered : No

Balance as on 1 Jun 2017 : -8,04,80,336.35

Account Statement from 1 Jun 2017 to 31 Jul 2017

Txn Date	Value Date	Description	Ref No./Cheque No.	Branch Code	Debit	Credit	Balance
1 Jun 2017	1 Jun 2017	DEBIT-: 3131017BC0000040 01604111000001 TF78117105389-		31310	1,150.00		-8,04,81,486.35
1 Jun 2017	1 Jun 2017	CORR DEBIT--		31310		1,150.00	-8,04,80,336.35
1 Jun 2017	1 Jun 2017	DEBIT-: 3131017BC0000034 01604111000001 TF78117105389-		31310	575.00		-8,04,80,911.35
1 Jun 2017	1 Jun 2017	TO TRANSFER-: 3131017BC0000034 01604111000001 TF78117105389-	TRANSFER TO 98381313103	31310	9,749.00		-8,04,90,660.35
2 Jun 2017	2 Jun 2017	CHQ RET CHARGES-- 225462	225462	31648	575.00		-8,04,91,235.35
2 Jun 2017	2 Jun 2017	CHQ RET CHARGES-- 224651	224651	31648	575.00		-8,04,91,810.35
3 Jun 2017	3 Jun 2017	TO TRANSFER- MAINI BILL REPLY OF NOTICE	TRANSFER TO 51017073992	31310	5,500.00		-8,04,97,310.35
6 Jun 2017	6 Jun 2017	CHQ RET CHARGES-- 224653	224653	31648	575.00		-8,04,97,885.35
8 Jun 2017	8 Jun 2017	CHQ RET CHARGES-- 224574	224574	31648	575.00		-8,04,98,460.35
8 Jun 2017	8 Jun 2017	CHQ RET CHARGES-- 225319	225319	31648	575.00		-8,04,99,035.35



[Handwritten Signature]

4. The aforesaid fact has not been disputed by the learned counsel appearing on behalf of the Resolution Professional. Learned counsel for the Resolution Professional submits that after order of moratorium a further amount of Rs.2/- crore (approx.) have been deposited by Sales Tax Department towards refund. If that be so, we are of the view that any amount deposited by any person in the account of CoCs after 01.06.2017 cannot be appropriated by bank towards its own dues during the period of Moratorium.

5. Learned senior counsel appearing on behalf of SBI submits that amount if any deposited by any person including Sales Tax Department has been so deposited after the impugned order dated 25th January, 2018 passed by the Adjudicating Authority. Therefore, it cannot be alleged that such amount have been appropriated by the State Bank of India.

6. Having heard Learned Counsel for the parties while we are not inclined to interfere with the impugned order dated 25th January, 2018 but set aside the order whereunder cost of Rs.25000/- has been imposed and make our interim order dated 21st March, 2018 absolute which will continue during the period of moratorium. However, after the period of moratorium is over, it will be open to the bank to act in accordance with guidelines of Reserve Bank of India to manage the account. Appeal is disposed of with aforesaid observations. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansilal Bhat]
Member (Judicial)

am/uk