

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 781 of 2018

IN THE MATTER OF:

Srei Infrastructure Finance Ltd.

...Appellant

Vs.

**Sundresh Bhatt,
Resolution Professional
Sterling Biotech Ltd.**

...Respondent

Present: For Appellant: - Mr. Abhijeet Sinha, Mr. Arijit Mazumdar, Mr. Shambo Nandy and Mr. Saikat Sarkar, Advocates.

For Respondent: - Mr. Sandeep Bajaj, Mr. Soayib Qureshi and Mr. Deepanjan Dutta, Advocates.

O R D E R

31.07.2019— The Appellant, a ‘Financial Creditor’ of a related entity of ‘Sterling Biotech Limited’- (‘Corporate Debtor’), challenged the order dated 7th December, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-I, Mumbai, whereby in view of the stand as was taken by the ‘Resolution Professional’ on his application, the Appellant was directed to explain as to why action should not be taken against it under the provisions of the Insolvency and Bankruptcy Code, 2016 (“I&B Code” for short).

2. The ‘Resolution Professional’ filed application under Section 60(5) of the ‘I&B Code’ seeking directions against the Appellant to return the physical possession of the ‘B’ Wing premises of Lakshmi Towers to the

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‘Resolution Professional’ and to restrain the Appellant from taking any action in relation to ‘A’ Wing premises pursuant to the notices issued by the Appellant under Section 13(4) of the ‘SARFAESI Act.’

3. The Adjudicating Authority, on hearing the parties, allowed the application filed by the ‘Resolution Professional’ and directed the Appellant to immediately return the physical possession of the ‘B’ Wing premises to the ‘Resolution Professional’ and restrained the Appellant from taking any further action in relation to ‘A’ Wing premises pursuant to the notices issued by the Appellant under Section 13(4) of the ‘SARFAESI Act.’

4. Learned counsel appearing on behalf of the Appellant submitted that the immovable property, in question, i.e. ‘A’ & ‘B’ Wings premises of ‘Lakshmi Towers’ do not belong to the ‘Corporate Debtor’ and being a third party property, the order of ‘Moratorium’ passed under Section 14 of the ‘I&B Code’ will not be applicable.

5. The ‘Resolution Professional’/ ‘Liquidator’ in its reply has accepted that both ‘A’ and ‘B’ Wing premises of Lakshmi Towers do not belong to the ‘Corporate Debtor’. However, it is stated that the office of the ‘Corporate Debtor’ is running from the said premises and it was the employees of the ‘Corporate Debtor’ who have been evicted persons under Section 13(4) of the ‘SARFAESI Act.’

6. According to learned counsel for the Liquidator, the Appellant should not have evicted the employees from the premises, in question, which amounts to obstruction in the matter of keeping the 'Corporate Debtor' as a going concern. It is informed that the Appellant has already handed over the possession of 'B' Wing of Lakshmi Towers and not disturbed 'Corporate Debtor' from the 'A' Wing of the said Lakshmi Towers.

7. Although 'A' and 'B' Wings premises of Lakshmi Towers do not belong to the 'Corporate Debtor', in view of Section 14(1) (d), the 'Corporate Debtor' cannot be ejected or disturbed from the premises, in question, during the 'Moratorium'.

8. For the said reason, we hold that the Adjudicating Authority has rightly directed the Appellant to hand over the possession of 'B' Wing premises of Lakshmi Towers and rightly prohibited the Appellant from evicting the 'Corporate Debtor' from 'A' Wing premises of Lakshmi Towers.

9. So far as the question as to who is the owner of 'A' and 'B' Wings premises of Lakshmi Towers and whether the Appellant has any right over the said property, such questions are not required to be determined in the proceeding under the 'I&B Code'. If the 'Corporate Debtor' is saved during the liquidation proceeding pursuant to Section

230 of the Companies Act, 2013 or if it is sold to a third party along with the employees then, in such case, one may move before the Competent Court of law for appropriate decision.

10. On the other hand, if action is taken under Section 53 of the 'I&B Code', the Liquidator cannot sell the assets of the premises in question.

11. In view of the aforesaid position of law, we feel that no further explanation is required to be given by the Appellant. The Adjudicating Authority will close the matter against the Appellant.

The appeal stands disposed of. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

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

(Kanthi Narahari)
Member(Technical)

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