

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

[Arising out of Order dated (03.05.2019) passed by National Company Law Tribunal, Single Bench, Chennai in MA/69/2019 in CP/233/IB/2017]

Company Appeal (AT) (Insolvency) No. 632 of 2019

IN THE MATTER OF:

Bank of Baroda

...Appellant

Versus

Mrs. Deepa Venkat Ramani Anr

....Respondents

Resolution Professional

**Present: For Appellant : Ms. Praveena Gautam with Ms.Sweety Pandey and
Mr. Pawan Shukla, Advocates**

**For Respondents : Mr.Rajiv Shankar Dvivedi, Advocate for R-1.
Mr. K.S. Madhavan, with Ms.Swati Bansal, Mr.Ankit
Gosain, CJ Sathish Kumar, Advocates for R2 along with
Liquidator in person.
Ms.Usha Singh and Ms.Nidhi Saini,
Advocates for Intervener**

J U D G E M E N T

(4th December, 2019)

Dr. Ashok Kumar Mishra, Member Technical

1. The present Appeal is preferred under section 61 (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the I&B Code, 2016') against the impugned order dated 03.05.2019 passed by National Company Law Tribunal, Single Bench, Chennai(hereinafter referred to as Adjudicating Authority) under Section 33 of the I& B Code in MA/69/2019 in CP/233/IB/2017.

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2. The issue raised by the Appellant in this appeal is that the direction given by the Adjudicating Authority (National Company Law Appellate Tribunal), Single Bench Chennai in terms of the Impugned order dated 03.05.2019 to the extent that the Liquidator shall collect the amount of Rs 5.95 Crores plus interest accrued thereon from DRT –II Chennai for being dealt with under provisions of Section 53 of I&B Code is unsustainable, as the Appellant- Bank of Baroda is a secured Creditor which has not relinquished its security interest.

3. The DRT in O.A. No.131/2013 by its order dated 02.08.2019 passed an interim order giving a direction to the General Manager, Southern Railway, Park Town, Chennai restraining them from releasing any payment without any further direction from tribunal in this regard. The Corporate Debtor Challenged the aforesaid order of DRT, Chennai in W.P. No. 29206 of 2013 before the High Court of Madras. The list of Railway Project mortgaged to the Appellant Bank were submitted by the Southern Railway , Chennai and Corporate debtor.

4. The Hon'ble High Court after hearing the parties at length, in W.P. No. 29206 of 2013, vide the order dated 28.11.2013 modified the aforesaid order passed by the DRT, Chennai to direct the Southern Railway (Garnishee) to deposit Rs. 7.50 Crores out of the funds, that will be released after completion of measurement and other formalities with the DRT-I which was later transferred to DRT – II for want of territorial jurisdiction. No order relating to the merits of the claim was passed.

5. Thereafter, the Appellant submits that M/s. L&T Finance Ltd.(Financial Creditor) filed an application under section 7 of the I & B Code, against the Corporate Debtor to initiate the Corporate Insolvency Resolution Process (CIRP). The Adjudicating Authority vide its order dated 21.11.2017 admitted the said application

and initiated the Corporate Insolvency Resolution process against the Corporate Debtor by appointing the IRP. The Adjudicating Authority vide order dated 30.05.2018 appointed Mrs. Deepa Venkatramani as Resolution professional on application filed by one of the directors and promoters.

6. The Adjudicating Authority passed an order of liquidation of Corporate Debtor due to lack of receipt of Resolution Plan under Section 30 (6) of the I&B Code, 2016.

X. "As regards the issue raised by the resolution Professional; in the Additional Affidavit filed on 01.02.2019, it is noted that section 35 (1) (b) and (d) of the I&B Code, 2016 contemplates that it is the duty of the Liquidator to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor and to take such measures to protect and preserve the assets and properties of the corporate Debtor as he considers necessary. A cursory glance of the Additional Affidavit filed by the Applicant / Resolution professional reveals that the amount of Rs 7.50 Crores deposited with the DRT – 1 Chennai is transferred to DRT forms part of an estate of the assets of the corporate Debtor for the purpose of Liquidation as per Section 36 (3) of the code."

7. The Appellants submits that the appellant never relinquished its right or security interest to liquidate. The Appellant further submitted that in case the said amount deposited with DRT – II in the OA filed by the bank is released in its favor towards the claim filed by them, the appellant bank shall move out of liquidation process without claiming any further amount from the company.

8. The Adjudicating Authority erred in determining the security interest of the Appellant bank pending over the Corporate Debtor before passing an order of liquidation. The provision of Section 52 of the I&B code enumerates:

Section 52.

(4) A secured creditor may enforce, realize, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.

(5) If in the course of realizing a secured asset, any secured creditor faces resistance from the corporate debtor or any person connected therewith in taking possession of, selling or otherwise disposing off the security, the secured creditor may make an application to the Adjudicating Authority to facilitate the secured creditor to realize such security interest in accordance with law for the time being in force.

(6) The Adjudicating Authority, on the receipt of an application from a secured creditor under sub-section (5) may pass such order as may be necessary to permit a secured creditor to realize security interest in accordance with law for the time being in force.

9. The Adjudicating Authority failed to take the right of the Appellant of realizing the security interest and sit out of liquidation, under consideration before passing an order of liquidation and assigning the assets of the company to the liquidator. The provisions of Section 52 of the I&B code were not complied with.

10. The Corporate Debtor by way of Hypothecation agreement had pledged his assets to the Appellant bank as Bank Guarantee for availing cash credit of Rs.20 Crores. The Charge is also registered with the ROC as appearing on the MCA website. Such charge on the assets of corporate debtor can also be seen in ROC records in “assets

under charge”. Under the said agreement outstanding money, receivables, claims, bills, contracts, engagements and securities which are due or become due during the course of business of corporate debtor are furnished as security with the Appellant bank.

11. The impugned order passed by the Adjudicating Authority to the extent it directed the liquidator to collect the aforesaid amount with interest accrued thereon from OA. No. 426 of 2014 on the file of DRT Chennai was stayed on 17.06.2019 by this Appellate tribunal. On 1.07.2019 this Appellate tribunal directed that the interim order passed on 17.06.2019 shall continue until further orders.

12. The following are the completed railway projects assigned to Appellant Bank for security from the list filed by the Corporate Debtor in the Hon’ble High Court –

- i. LOA No. W/496/SNK/103/CN (7192) Agmt No. 49/CN/2009 with receivables of Rs.85 lacs
- ii. LOA No.168/2008-09 Agmt. No. 28/2008-09 with receivables of Rs.170 lacs

The project no. 1 herein is also mentioned in the list of completed projects filed by the Southern Railway in the Hon’ble High Court. The above are the completed projects whose security was furnished by the Appellate bank and final bill is pending therein which are submitted in High Court by the Corporate Debtor himself.

13. On the perusal of documents it can be ascertained that the corporate debtor gave as security to the appellant bank the sums it had to receive from Southern Railways for such projects so executed. The submission of the Corporate Debtor that the sums deposited by the Southern Railways, into the credit of the account in O.A.

No. 131 of 2013 were all receivables from projects for which no loans were taken from the appellant is untenable.

14. Therefore, we set aside the order dated 03.05.2019 of the Adjudicating Authority and remand back the matter to them to decide the security interest of the Appellant Bank before the liquidator can be given the assets of the corporate debtor to be dealt with under section 53 of the I&B Code.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

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New Delhi