

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal(AT)(Insolvency) No. 635 of 2019

IN THE MATTER OF:

Bank of Baroda

Corporate Financial Services Branch,
Mumbai Samachar Marg, Fort,
Mumbai- 400 001

...Appellant

Vs

Mr. Sundaresh Bhatt,

Resolution Professional,
BDO India LLP, Level 9,
The Ruby, North West Wing,
Senapati Bapat Road,
Dadar (W),
Mumbai- 400 028.

....Respondent

Present:

**For Appellant: Mr. Raunak Dhillon, Ms. Ananya Dhar Choudhury,
 and Mr. Parikalp Gupta, Advocates**

**For Respondent: Mr. Kirat Singh Nagra and Mr. Satendra K. Rai,
 Advocate.**

O R D E R

20.02.2020 This Appeal has been filed by Bank of Baroda being aggrieved by the Impugned Order passed in I.A. No. 303 of 2018 in CP(IB) No. 53 of 2017 which relates to Corporate Insolvency Resolution Process (in short '**CIRP**') proceeding pending against ABG Shipyard Ltd.

2. Respondent had filed the said application before the Adjudicating Authority and after hearing the parties, the Adjudicating Authority has directed the Bank to reverse the entry vide which the Bank had appropriated margin money which was kept in the form of three Fixed Deposits (in short '**FDs**'). The Impugned order is short and may be reproduced to set out the facts and what has been held. It reads as under:

..

"IA 303 of 2018

5.5.1 *The instant IA is filed by the Applicant, the Resolution Professional of the Corporate Debtor, ABG Shipyard Limited under Section 50(5) read with Section 14 & 74 of the Code seeking necessary directions against the Respondent, the Bank of Baroda to deposit an amount of Rs. 9,73,83,818/- (Rupees Nine Crore Seventy-Three Lakh Eighty-Three Thousand Eight Hundred and Eighteen Only) appropriated by the Respondent Bank in violation of the order passed by this Tribunal on 01.08.2017 under Section 14 of the IBC.*

5.5.2 *It is stated by the Applicant that before passing of the aforesaid order by this Tribunal, Company, the Corporate Debtor, had maintained a fixed deposit of Rs. 9,73,83,818/- towards margin money with the respondent Bank for various Non Fund Based facilities sanctioned and availed by the Company, the Corporate Debtor, the details of the same are given hereunder:*

1. FD No. 29100300001777 for Rs. 9,29,31,603/-
2. FD No. 29100300001820 for Rs. 43,51,081/-
3. FD No. 29100300001821 for Rs. 1,01,134/-

Total for Rs. 9,73,83,818/-

5.5.3 *On enquiry by the RP with the Respondent bank about the status of the aforesaid FDs, it was stated by the Respondent Bank vide their email dated 19.07.2018 that the aforesaid FDs were terminated and appropriated by the Bank on 02.08.2017 towards loan liability.*

5.5.4 *it is stated by the Applicant that Respondent Bank was aware of the proceedings initiated by the ICICI Bank, the Financial Creditor against the Company, the Corporate Debtor and the Respondent Bank has also confirmed that as on 01.08.2017, an amount of Rs. 9.64 crores were kept as margin money and that the Respondent Bank would not be able to adjust the same if the application filed by ICICI bank is accepted by NCLT without the consent of the IRP/CoC.*

5.5.5 *It is further submitted by the Applicant that pursuant to the declaration of the moratorium, the lead bank i.e., ICICI bank had vide email dated 03.08.2017 forwarded the order dated 01.08.2107 to all banks including the Respondent. The Applicant has submitted that despite received the aforesaid requests and having complete knowledge about the existence of the moratorium, the Respondent Bank-*

the Bank of Baroda, has failed to reverse/roll back the amounts of the aforesaid fixed deposits wrongfully appropriated by the Respondent Bank.

Findings:

5.5.6 *We, the Adjudicating Authority, on the facts and circumstances of the case, agree with the Applicant that Respondent Bank was aware of the proceedings initiated by ICICI Bank, the financial Creditor against the Company, the Corporate Debtor, therefore, the Respondent bank should have exercised due diligence and respected the moratorium imposed by this Tribunal vide its order dated 01.08.2017.*

5.5.7 *Accordingly, the instant IA is disposed of with the following directions:*

a) *The Respondent Bank is directed to roll back/reverse the wrongfully appropriated amount of Rs. 9.74,62,608/- (Rupees Nine Crore Seventy-Four Lakh Sixty-two Thousand Six Hundred and Eight only) into the TRA account of the Corporate Debtor Company maintained with ICICI Bank.*

b) *The Respondent Bank is directed to pay the Applicant accrued interest on the wrongfully*

appropriated amount of Rs. 9,74,62,608/- (Rupees Nine Crore Seventy-Four Lakh Sixty-two Thousand Six Hundred and Eight only) from the date of wrongful appropriation of the fixed deposit till the actual date of the reversal/roll back into the TRA account of the Corporate Debtor Company maintained with ICICI bank.

*5.5.8 Accordingly, the IA filed by the Resolution Professional under Section 60(5) read with Section 14 & 74 of the IBC is **allowed**.”*

...

3. Learned Counsel for the Appellant is submitting that the Bank had an Agreement with the Corporate Debtor (Annexure-2, Page-74) and in view of the Agreement, which is 'Master Restructuring Agreement', the Bank had issued Bank Guarantees in favour of the Corporate Debtor assuring other parties. The three FDs, which are relevant for the present matter, had been issued and when a Bank Guarantee got invoked by third party on 17.06.2017 the Bank was required to honour the Bank Guarantee. It is stated that in view of this, the Bank had right to immediately appropriate the margin money which had been kept in the form of FDs. Learned Counsel states that the Bank had internally given instruction to appropriate money on 01.08.2017 itself which was the date of Application under Section 7 of Insolvency and Bankruptcy Code, 2016 (in short '**IBC**') got admitted. Learned Counsel stated that before coming to know of the admission of the Application, the instruction had been given internally and in

fact, the FDs account were closed on 02.08.2017 after appropriating the margin money. Document on this count is pointed out by the learned Counsel at page 407 of the Appeal to demonstrate that the Accounts were closed on 02.08.2017. Learned Counsel further states that in this view of the matter, the Account could not have stated to be hit by Moratorium.

4. Learned Counsel for Resolution Professional/Liquidator refers to Reply (Diary No. 13508) where at Annexure-2, there is Account Statement of the Appellant Bank (at Page 57) and is pointing out entries dated 09.08.2017 to show that the Bank had actually appropriated amounts of the FDs only on 09.08.2017. Learned Counsel for Appellant states that those FDs were appropriated on 02.08.2017.

5. Learned Counsel of Respondent submits that when the Bank had approached the Resolution Professional at the time of CIRP, the Resolution Professional had taken photo of the alleged internal instruction of the Bank dated 01.08.2017, a copy of which is at page 54 of the Reply. Learned Counsel is demonstrating that this document shows that on 01.08.2017, the Bank was aware regarding initiation of CIRP and even noted that in the event of Application filed by ICICI being accepted by NCLT, they may not be able to adjust the margin money without the consent of Committee of Creditors/Interim Resolution Professional. It is stated that these documents show that the Bank was aware and still appropriated the money after CIRP was initiated and under Section 14 of IBC, the Bank could not have done so.

6. Considering the submission made by both the sides, looking into the documents and keeping in view the reasons recorded by the Adjudicating Authority, it does appear that money which was lying with the Bank as margin money in the Form of 3 FDs in the name of Corporate Debtor were appropriated after the CIRP was initiated and thus the same could not have been done under Section 14 of IBC. What internal instructions Bank gave on 01.08.2017 is not relevant. Admittedly, F.D. Accounts were closed on 02.08.2017 when Moratorium was in force. We do not find any error in the Impugned Order passed by the Adjudicating Authority.

7. There is no substance in the Appeal. Appeal is dismissed. No costs.

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

[Justice Anant Bijay Singh]
Member (Judicial)

(Kanthi Narahari)
Member(Technical)

Akc/Mn