

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal(AT) (Insolvency) No. 1484 of 2019

IN THE MATTER OF:

Punjab National Bank

Plot No. 4, Sector-10,
Dwarka,
New Delhi- 110 075

Branch Office amongst others at:
MID-Corporate Branch,
H-1A/11, Sector-63,
NOIDA
Uttar Pradesh- 201 301

...Appellant

Vs

1. State Bank of India

Sam Brnach, New Delhi (Branch Code-04109),
12th Floor, Jawahar Vyaapaar Bhawan,
1, Tolstoy Marg,
New Delhi.

**Financial
Creditor/
Respondent
No. 1**

2. Mr. Anil Kohli,
Resolution Professional,
For Kannu Aditya (India) Limited
409, 4th Floor,
Ansal Bhawan, K.G. Marg,
New Delhi – 110 001

**Resolution
Professional
....Respondents**

Present:

For Appellant: Ms. Swathi. V and Mr. Hashmat Nabi, Advocates

For Respondents: Mr. Abhishek Anand, Ms. Honey Satpal, Mr. Viren Sharma, Advocates for RP

Mr. Ankur Mitta, Ms. Meera Murali and Ms. Aishwarya, Pandey, Advocates for Respondent No. 1/SBI

ORDER

03.03.2020 Heard Advocate Ms. Swati. V for the Appellant- Punjab National Bank and Advocate Mr. Abhishek Anand, on behalf of Respondent No. 2, Resolution Professional and Advocate Ms. Aishwarya Pandey for Respondent No. 1-State Bank of India.

2. Corporate Insolvency Resolution Process (in short '**CIRP**') is pending with regard to the Corporate Debtor- M/s Kannu Aditya (India) Limited. It is stated that there was stock of rice lying in the godown of Corporate Debtor. The Appellant claims that the Corporate Debtor had pledged the stock in favour of the Appellant-Punjab National Bank by a document of pledge (Annexure-A5, page 91) dated 29.09.2015 and because of this, the Appellant was holding a security in this regard.

3. Against this the learned Counsel for the Respondent No. 1-State Bank of India has pointed out that before above document of pledge, the Corporate Debtor had hypothecated its stock in favour of the State Bank of India in consortium by Joint Deed of Hypothecation dated 04.05.2013 (diary No. 18624-pages 71 at 76). It is stated that another Working Capital Consortium Agreement was also executed by the Corporate Debtor on 04.05.2013 and thus the same stocks were hypothecated with the consortium including State Bank of India.

4. There is no dispute between the parties regarding the fact that that during pendency of CIRP, the Committee of Creditors (in short '**CoC**') had considered the dispute being made by State Bank of India which is holding 97.16% voting right and the Appellant- Punjab National Bank which is holding 2.84% voting right and it was decided that stock being rice, being perishable commodity, should be sold.

5. Learned Counsel for the Appellant states that in the CoC meeting even this proposal was opposed by the Appellant but the majority in the CoC prevailed.

Minutes in this regard are being shown by the learned Counsel for the Resolution Professional at Annexure-R-18 (diary no. 18814, Page-241).

6. Learned Counsel for the Resolution Profession states that CoC had further decided as under:

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“It was further decided that though the resolution may be approved but since PNB is in minority and considering their objections, the RP may move an application before the Hon’ble NCLT for appropriate directions regarding the utilization of sale proceeds in order to ensure protection of the interest of all members of the CoC.”

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7. In view of such decision of the CoC, the Resolution Professional moved CA No. 1692(PB)/2019 before the Adjudicating Authority seeking permission to utilize the amount realized from the sale of stock for the purpose of CIRP costs.

8. Learned Counsel for the Appellant submits that the pledged stock being the only security, Punjab National Bank had from the Corporate Debtor, the stocks should not have been sold and the money cannot be utilised by the Resolution Professional for conducting CIRP.

9. We have gone through the Impugned Order and find that learned Adjudicating Authority, after hearing the parties, has accepted the prayer of IRP to utilise the sale proceeds and operate bank account of the Corporate Debtor for the purpose of day to day functioning of the Corporate Debtor including

payment of current bill of supplier, salaries and wages of the employees and workmen. It would also include CIR Process cost.

10. The stock already having been sold, there is no illegality if the Resolution Professional uses the money available from the sale of the stock for the purpose CIRP. The rights and benefits in law claimed by the Appellant of having security by way of pledge and the value of the stock which was pledged are kept open for consideration of the CoC when the Resolution Plan is available before it, and/or in case situation of liquidation arises.

11. The claim as above of Appellant shall be kept in consideration by RP/CoC/Adjudicating Authority while dealing with the Resolution Plan, if any, and/or in case of liquidation.

12. The Appeal is disposed of accordingly. No cost.

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

[Justice Anant Bijay Singh]
Member (Judicial)

(Kanthi Narahari)
Member(Technical)

Akc/Mn