

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL

I.A. No. 1809 of 2018

IN

Company Appeal (AT) (Insolvency) No. 646 of 2018

IN THE MATTER OF:

Ranvir Ranjit

...Appellant

Vs.

Vijay R. Vakharia & Ors.

...Respondents

Present: For Appellant:- Mr. C.A. Sundaram, Senior Advocate with Ms. Rohini Musa and Mr. Ujas Kumar, Advocates.

For Respondents:- Ms. Amrita Sanghi, Mr. Akshay Sharma, Mr. Tanvir Nayar, Mr. Prashant Singh, Advocates for R-1 to 7.

Mr. K. Anand, Advocate for R-8. Mr. P. Sriram, Resolution Professional.

Mr. E. Omprakash, Senior Advocate with Ms. Madhusmita Bora and Mr. P.K. Singh, Advocates for R-9.

O R D E R

The main appeal has been preferred by the Appellant- Mr. Ranvir Ranjit, Director and Shareholder of 'Rayala Corporation Pvt. Ltd.'- ('Corporate Debtor') against the order dated 12th October, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Single Bench, Chennai, admitting the application of the 1st to 7th Respondents under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('I&B

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Code” for short) and thereby appointing an ‘Interim Resolution Professional’ while passing the order of ‘Moratorium’.

2. The Appeal was listed on 29th October, 2018, wherein after considering the contentions of the Appellant, this Appellate Tribunal was pleased to direct as follows:

“.....Until further orders, the ‘Resolution Professional’ will ensure that the company remains going concern and will take assistance of the (suspended) Board of Directors. The person who is authorised to sign the bank cheques may issue cheques only after authorization of the ‘Resolution Professional’. The bank account(s) of the ‘Corporate Debtor’ be allowed to be operated for day-to-day functioning of the company such as for payment of current bills of the suppliers, salaries and wages of the employees’/workmen electricity bills etc.”

3. This Interlocutory Application has been preferred by the Appellant for modification of the aforesaid order dated 29th October, 2018.

4. Learned Senior Counsel appearing on behalf of the Appellant submits that the ‘Corporate Debtor’ has availed certain credit facilities from ‘LIC Housing Finance Limited’ (“LICHFL” for short). The said loans

have been availed against rental income of the 'Corporate Debtor', as detailed below:

S.NO.	LOAN ACCOUNT NO.	AMOUNT OUTSTANDING AS ON 31.10.2018 [IN RS.]	EMI PAYABLE MONTH ON MONTH [IN RS.]
1	5101004451- 510100004048	44,42,33,368/-	52,52,857/-
2	5101004452- 510100004047	29,65,08,530/-	35,06,078/-
3	5101004453- 510100004046	23,16,23,7527/-	27,38,845/-
4	5101005126- 510100004546	5,51,24,479/-	6,34,862/-
5	5101006302- 510100005441	13,96,50,721/-	14,86,779/-
6	5101004456- 510100004115	15,07,31,981/-	17,76,187/-
	TOTAL	1,31,78,72,807/-	1,53,95,678/-

5. Learned counsel for the Appellant submits that the monthly instalment with regard to the abovementioned loan accounts are payable and the same are discharged in terms of various assignment deeds executed between the 'Corporate Debtor' and 'LICHFL'. The 'Corporate Debtor' has also entered into various tripartite agreements with the tenants and 'LICHFL' in terms of which the rent payable by each tenant is deposited in an Escrow Account maintained with Axis Bank, Mylapore Branch, Chennai, Tamil Nadu.

6. According to learned counsel for the Appellant, after deducting the monthly instalment payable, 'LICHFL' releases the excess amount which is accordingly utilised by the 'Corporate Debtor' for day to day operational expenses including but not limited to the statutory payments.

7. The Appellant apprehends that since the abovementioned transactions do not find mention in the order dated 29th October, 2018, the 'Insolvency Resolution Professional' will most likely not allow the said payments to go through which will result in the 'Corporate Debtor' defaulting in payments with regard to the abovementioned loan accounts and the 'Corporate Debtor' will also not have sufficient funds required for its day-to-day functioning, which will cause great prejudice to the 'Corporate Debtor'.

8. Learned counsel appearing on behalf of the 'Committee of Creditors' opposed the prayer and referred to Section 14(1) (b) & (d) of the 'I&B Code', which reads as follows:

“14. Moratorium.—(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—

xxx

xxx

xxx

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

xxx

xxx

xxx

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.”

9. It was submitted that in view of the order of ‘Moratorium’ passed by the Adjudicating Authority, no amount can be paid to the ‘Financial Creditor’.

10. On the other hand, according to learned counsel for the Appellant, in terms of *Explanation* below Section 18, the assets owned by a third party in possession of the ‘Corporate Debtor’ held under trust or under contractual arrangements including bailment does not come within the meaning of the assets of the ‘Corporate Debtor’.

11. Reliance has been placed on ‘Agreement for Assignment of Rent’ dated 25th October, 2016, wherein parties agreed as under:

“NOW THEREFOR IT IS AGREED BY AND BETWEEN THE PARTIES AS UNDER:

1. In pursuant of the said Loan Agreement, Tripartite agreement and in consideration of the Assignee granting/ agreed to grant the Loan to the Assignor, the Assignor DOTH HEREBY transfer and assign UNTO and in

Favour of the Assignee, to the end and intent that the Assignee shall hereafter be deemed to be the full

and absolute legal owner and as such the only person legally and beneficially entitled to recover the said Receivables or any part thereof upon the due dates, including right to file suit or institute such other recovery proceedings and take such other action as may be required for the purpose of recovery of the said Receivables in its own name/ rights and as a legal assignee or the transferee thereof and not as a representative or agent of the Assignor.

2. That in consideration of the Deed/ Agreement executed between the Lessee/ Licensee and the Assignor, the Assignor hereby warrants and confirms to LICHFL that the Lessee/ Licensee shall henceforth pay to LICHFL directly or through an Escrow Account as defined hereunder the Receivable pertaining to the said Premises falling due by virtue of the Deed/ Agreement as mentioned above....”

12. The ‘Agreement for Assignment of Rent’ shows that the assignment deed has been reached between Mr. Ranjit Pratap, Managing Director and Authorised Signatory of ‘M/s. Rayala Corporation Pvt. Ltd.’, who has been referred to as “Assignor” and the first party to the agreement. ‘LICHFL’,

a Company registered under the provisions of the Companies Act, 1956, has been shown as “Assignee” and the second party.

13. Section 20 of the ‘I&B Code’ deals with ‘*Management of operations of corporate debtor as going concern*’. As per sub-section (2) therein, the ‘Interim Resolution Professional’ has the authority to raise interim finance provided that no security interest shall be created over any encumbered property of the ‘Corporate Debtor’ without the prior consent of the creditors whose debt is secured over such encumbered property. However, no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt.

14. From the aforesaid provisions and the ‘Assignment Agreement’, it is clear that during the ‘Moratorium’ period, the ‘assignee’ also cannot deduct any amount from the assets of the ‘Corporate Debtor’. The *Explanation* below Section 18 does not include the assets generated from the rent paid by the ‘lessee (tenants)’. As the premises belongs to the ‘Corporate Debtor’, the ‘lessee’ pays rent in favour of the ‘Corporate Debtor’, though as per the agreement, the right of ‘LICHFL’ is only that of an ‘assignee’ which cannot recover or deduct any amount during the period of ‘Moratorium’.

15. In this circumstance, we find no ground made out to modify the interim order dated 29th October, 2018 passed by us, though it will be open to the ‘Resolution Professional’ to bring the fact to the notice of the ‘Committee of Creditors’ which may independently decide the matter and

may decide as to how to keep the 'Corporate Debtor' as going concern.
The prayer made in the Interlocutory Application is accordingly rejected.

I.A. No. 1809 of 2018 stands disposed of.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

22nd January, 2019

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