

Indian Overseas Bank vs Rcm Infrastructure Ltd & Anr on 26 March, 2021

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 736 of 2020

[Arising out of Impugned Order dated 15th July, 2020 passed by the Adjudicating Authority/National Company Law Tribunal, Hyderabad Bench-I, Hyderabad in I.A. No. 832 of 2019 in C.P. (IB) No. 601/10/HDB/2018]

IN THE MATTER OF:

Indian Overseas Bank,
No. 8-2-120/117/F-1,
First Floor, Punnaiah Plaza,
Near Jubilee Hill,
Check Post Road No. 2,
Banjara Hills,
Hyderabad- 500 034

...Appellant/
Financial Creditor

Versus

1. M/S RCM Infrastructure Ltd.,
Through Mr. J. Manivannan,
Resolution Professional,
8-2-622/5/A/2,
Indira Chambers,
2nd Floor,
Hyderabad- 500 034

..Respondent No. 1

2. Koneru Subbiah Chowdry,
H. No. 7-1-638/9, Plot No. 9,
Model Colony,
Sanjeev Reddy Nagar,
Near ESI Hospital
Hyderabad- 500 038

..Respondent No. 2

Present:

For Appellant : Ms. Mayuri Raghuvanshi and Ms. Akshat Singh, Mr. Vyom Raghuvanshi, Advocates

For Respondents : Mr. J. Mani Vannan (RP), Advocate for Respondent No.1

Mr. Shrey Patnaik, Mr. Aditya Verma,
Advocates for Respondent No. 2.

J U D G M E N T

(26th March, 2021) KANTHI NARAHARI, MEMBER (TECHNICAL) The present Appeal is filed against the Order dated 15th July, 2020 passed by the National Company Law Tribunal, Hyderabad Bench-1, Hyderabad (Adjudicating Authority) in I.A. No. 832 of 2019 in C.P. (IB) No.

601/10/HDB/2018, whereby the Hon'ble Adjudicating Authority sets aside the sale of the assets of the Corporate Debtor.

2. Aggrieved by the order passed by the learned Adjudicating Authority, the Appellant - Financial Creditor filed the present appeal praying this Bench to set aside the impugned order for the reasons as stated hereunder:

BRIEF FACTS:

3. Learned Counsel for the Appellant submitted that the Appellant- Bank extended certain credit facilities to the Corporate Debtor- Respondent No. 1 herein. However, the Corporate Debtor failed to repay the dues and the loan account of the Corporate Debtor became irregular and was classified as NPA on 13.06.2016 as per the RBI guidelines.

4. The Appellant issued a Demand Notice under Section 13(2) of the SARFAESI Act, 2002 on 12.01.2018 calling upon the Corporate Debtor and its guarantors to repay the outstanding amount due to the Appellant-Bank. Failing to repay the outstanding debt, the Appellant Bank was constrained to take possession of two Secured assets which were mortgaged exclusively with the Appellant Bank in exercise of powers under Section 13(4) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short SARFAESI Act, 2002). Thereafter, e-auction Notice was issued on 27.09.2018 to auction the said property. However, auction failed as no bids were received. However, on 27.11.2018, second e- auction notice was issued with reserve price of Rs. 16.34 crores each. Upon auction notice, three persons became successful bidders jointly by offering a price of Rs. 32.92 crores for both the secured assets.

5. Learned Counsel for the Appellant further submitted that the sale was confirmed on 13.12.2018 in favour of the successful bidders in the public auction and the successful bidders deposited 25% of the bid amount i.e., Rs. 8.23 Crores with the Appellant Bank and the balance of 75% of the bid amount were asked to pay within 15 days thereafter.

6. While so, the Corporate Debtor herein filed an Application under Section 10 of the Insolvency and Bankruptcy Code, 2016 (in short IBC) before the Hon'ble Adjudicating Authority and the Hon'ble Adjudicating Authority admitted the Application on 03.01.2019 and Corporate Insolvency Resolution Process (in short CIRP) commenced declaring a moratorium under Section 14(1) of IBC and appointed Interim Resolution Professional (in short IRP). The Appellant Bank on 21.01.2019 filed its claim in Form-C with the IRP.

7. The Appellant Bank accepted balance payment of 75% of the bid amount on 08.03.2019 from the successful bidders. After receipt of balance 75% of the bid amount from the successful bidders, the Appellant Bank filed a revised claim in Form-C on 11.03.2019 to the IRP.

8. Learned Counsel for the Appellant submitted that the Respondent No. 1/Corporate Debtor filed an Application being I.A. No. 832 of 2019 in C.P. No. 601 of 2018 praying the Hon'ble Adjudicating Authority to set aside the security realised during the CIRP and sought an order to cancel the

impugned transaction.

9. The Respondents have filed a detailed Counter Affidavit to the said I.A. and the Hon'ble Adjudicating Authority passed the Impugned Order.

10. Learned Counsel for the Appellant submitted that the Application filed by the Respondent/Corporate Debtor under Section 60(5) of IBC was indeed an attempt to redeem the property as the right of redemption stood extinguished as per Section 13(8) of the SARFAESI Act, 2002.

11. Learned Counsel for the Appellant submitted that the Hon'ble Adjudicating Authority failed to appreciate that the auction was conducted on 12.12.2018 and the sale was confirmed in favour of the Auction Purchaser on 13.12.2018 much prior to the commence of CIRP i.e. on 03.01.2019. He further submitted that once the property is sold in public auction and confirmed the sale in favour of the Purchaser, the sale becomes absolute and the title vests in the Purchaser. It is well settled that when an Auction Purchaser derives title on confirmation of sale in his favour and a sale certificate issued evidencing such sale and titled, no further deed of transfer is contemplated or required. Therefore, the sale has to stand completely on the date the sale certificate is issued in favour of Auction Purchaser.

12. Learned Counsel for the Appellant further submitted that the Appellant Bank received 25% of the sale consideration on 13.12.2018 and the balance sale consideration and issuance of sale certificate was only in continuation of sale confirmed, vide their letter dated 13.12.2018 and the same cannot be hit by the moratorium period as sale stood confirmed before the Insolvency Petition. Having confirmed the sale, the Corporate Debtor had a remedy under Section 17 of the SARFAESI Act, 2002 to challenge the sale auction conducted on 12.12.2018. The Corporate Debtor/Respondent No. 1 without availing the remedy available under the SARFAESI Act, 2002, filed the Application before the Hon'ble Adjudicating Authority which is illegal. The Hon'ble Adjudicating Authority ought not to have considered the Application filed by the Corporate Debtor and the same ought not to have set aside.

13. Learned Counsel for the Appellant relied upon the judgment in the matter of "B. Arvind Kumar Vs. Govt. of India and others"

reported in 2007(5) SCC 745. The Hon'ble Supreme Court held in paragraph-12 and the relevant portion from paragraph -12 of the judgment is reproduced:

...

"12. A sale certificate is issued to the purchaser only when the sale become absolute. The sale certificate is merely the evidence of such title. It is well settled that when an auction-purchaser derives title on confirmation of sale in his favour, and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the court is contemplated or required. In this case, the sale certificate itself was

registered, though such a sale certificate issued by a court or an officer authorised by the court, does not require registration. Section 17(2)(xii) of the Registration Act, 1908 specifically provides that a certificate of sale granted to any purchaser of any property sold by a public auction by a Civil or Revenue Officer does not fall under the category of non-testamentary documents which require registration under sub-section (b) and (c) of Section 17(1) of the said Act. We therefor hold that the High Court committed a serious error in holding that the sale certificate did not convey any right, title or interest to plaintiff's father for want of a registered deed of transfer.

14. The Hon'ble Supreme Court in the above judgment had held that the Sale Certificate is merely the evidence of such title and the Auction Purchaser derives title on confirmation of sale in his favour and a Sale Certificate is issued evidencing such sale and title and no further deed of transfer from the Court is contemplated or required.

15. Further, the learned Counsel for the Appellant relied upon a judgment of the Hon'ble Supreme Court in the matter of "Shakeena and Another Vrs. Bank of India and Others" reported in 2019 SCC OnLine SC 1059. At paragraph -32 of the judgment, the Hon'ble Supreme Court held that the Appellants cannot be permitted to assail the auction process on any other count. In view of the above facts, as stated above, the learned Counsel prayed this Bench to allow the Appeal.

16. Respondent No. 1, the IRP filed reply to this appeal and submitted that the Hon'ble Adjudicating Authority admitted the Application filed by the Corporate Debtor under Section 10 of IBC and initiated CIRP by an order dated 03.01.2019 and appointed IRP. After appointment of IRP, the Committee of Creditor (in short CoC) ratified IRP as Resolution Professional (in sort RP). The Appellant Bank submitted claim to the tune of Rs. 79,94,50,634/- on 21.01.2019 and the said claim was duly admitted by the IRP and based on which CoC has been constituted and the Appellant Bank's claim amount is representing 39.83% of voting share in the CoC of the Corporate Debtor. The claim Form of the Appellant was no reference with regard to sale of assets of the Corporate Debtor or the Corporate Guarantor prior to CIRP. Subsequently, the Appellant filed revised claim in Form-C for an amount of Rs. 46,35,42,634/- on 11.03.2019 by disclosing the fact that the collateral security provided by the Corporate Debtor and Corporate Guarantor namely Ravi Crane and Movers were sold and realised an amount of Rs. 24.69 Crores through e-Auction process and thereby reducing total dues owed by the Corporate Debtor to the Appellant. Learned Counsel for the RP submitted that the RP raised objection with regard to the revised claim stating that during CIRP period no security interest shall be realised by any of the Creditors and if it is done so, then the impugned transaction shall be illegal and nonest in the eye of law. He further submitted that the issue with regard to realisation of security was discussed in the 2nd CoC meeting held on 03.05.2019 wherein the representative of the Appellant Bank stated that the sale process commenced prior to the date of CIRP and the sale was completed and proceeds were received during CIRP. It is further stated that since sale process was commenced prior to CIRP, moratorium may not be applicable to this transaction. It is also stated that in the records, still the name of the Corporate Debtor reflects in all revenue records and informed the Appellant Bank that the property belongs to the Corporate Debtor for all the purposes including valuation under IBC. He requested the Bench to dismiss the Appeal.

17. The Respondent No. 2 - Corporate Applicant filed Reply to this Appeal and submitted that the Respondent No. 2 was the former Managing Director of the Corporate Debtor - M/s RCM Infrastructure Limited. Learned Counsel for the Respondent submitted that Hon'ble Adjudicating Authority has rightly set aside the purported sale by the Appellant. He further submitted that the Corporate Applicant filed Application under Section 10 of IBC before the Hon'ble Adjudicating Authority and the Hon'ble Adjudicating Authority passed an order on 03.01.2019 admitting the Application commencing CIRP for the Corporate Applicant and imposed moratorium as per Section 14 of IBC. It is submitted that upon auction of the property of the Corporate Debtor, the Appellant Bank received only 25% of the bid amount on 13.12.2018. Remaining 75% of the bid amount i.e., Rs. 24.69 Crores was only received by the Appellant on 03.03.2019 i.e., after commencement of moratorium in terms of Section 14 of IBC. It is submitted that on the date of commencement of CIRP, the assets of the Corporate Applicant stand in the name of Corporate Applicant and the sale was not completed on the commencement of CIRP as such, the property of the Corporate Applicant stands in the name of Corporate Applicant as on the date of commencement of CIRP. Therefore, the sale of assets of the Corporate Applicant was rightly set aside by the Hon'ble Adjudicating Authority. Learned Counsel further submitted that once moratorium was imposed under Section 14(1)(d) of IBC, no transaction shall take place including any action under SARFAESI Act, 2002. He further submitted that moratorium prohibits actions for realising security interest under SARFAESI Act, 2002. Learned Counsel further submitted that it can be said that the sale of an asset is only complete after complete payment is made and the certificate of sale is issued. However, in the present case the Appellant Bank receives only 25% of the bid amount prior to CIRP and no sale certificate was issued since the Appellant Bank did not receive the full amount. Therefore, in view of moratorium, Appellant is prohibited further transaction with regard to issue of sale certificate since the asset belongs to Corporate Applicant. The Hon'ble Adjudicating Authority rightly set aside the sale by order dated 15.07.2020 and he prayed the Tribunal to dismiss the Appeal.

18. Learned Counsel for the Respondent No. 2 further submitted that in terms of Section 52 of the Indian Contract Act, 1872 demands that full payment is made and certificate of sale is issued for the sale to be completed. As stated supra, in the present case, full payment was not received before the commencement of CIRP/imposition of moratorium.

19. Learned Counsel relied upon the judgement of the Hon'ble Supreme Court in the matter of "Anand Rao Korada, Resolution Professional Vs. Varsha Fabrics (P) Ltd. and Others" reported in 2019 SCC OnLine SC 1508. Hon'ble Supreme Court held that once moratorium has been declared by the NCLT on 04.06.2019, the High Court was not justified in passing the orders dated 14.08.2019 and 05.09.2019 for carrying out auction of the assets of the Respondent No. 4 Company i.e., Corporate Debtor before the NCLT. The relevant paragraphs are 13,14 & 15. Further, the Hon'ble Supreme Court held at paragraph-15 that if the assets of the Respondent No. 4 Company are alienated during the pendency of the proceeding under IBC, it will seriously jeopardise the interest of the stakeholders. The relevant paragraphs are extracted hereunder.

...

"13. In view of the provisions of the IBC, the High Court ought not have proceeded with the auction of the property of the Corporate Debtor -Respondent No. 4 herein, once the proceedings under the IBC had commenced, and in Order declaring moratorium was passed by the NCLT. The High Court passed the impugned Interim Orders dated 14.08.2019 and 05.09.2019 after the CIRP had commenced in this case.

14. The moratorium having been declared by the NCLT on 04.06.2019, the High Court was not justified in passed the Orders dated 14.08.2019 and 05.09.2019 for carrying out auction of the assets of the Respondent No. 4-Company i.e. the Corporate Debtor before the NCLT. The subject matter of the auction proceedings before the High Court is a vast chunk of land admeasuring about 330 acres, including Railway lines and buildings.

15. If the assets of the Respondent No. 4- Company are alienated during the pendency of the proceedings under the IBC, it will seriously jeopardise the interest of all stakeholders."

..

20. Further, learned Counsel for the Respondent No. 2 relied upon the same judgment whereby the Hon'ble Supreme Court held that Section 238 of IBC has overriding effect over all other laws. Further, learned Counsel relied upon judgment of the Hon'ble Supreme Court in the matter of "Duncans Industries Limited Vs. A.J. Agrochem"

reported in 2019(9) SCC 725. At paragraph-7.2, the Hon'ble Supreme Court held that IBC is a complete Code in itself. Further, the Hon'ble Supreme Court also referred to judgment of the Hon'ble Supreme Court in "Swiss Ribbons Pvt. Ltd & Anr. Vs. Union of India & Ors"

reported in 2019(4) SCC 17 and also referred to the judgment in the matter of "Innoventive Industries Ltd. Vs. ICICI Bank & Anr." reported in 2018(1) SCC 407. Hon'ble Supreme Court also referred to the judgement in the matter of "ArcelorMittal (India) Ltd. Vs. Satish Kumar Gupta" reported in (2019) 2 SCC 1.

21. Further, learned Counsel for the Respondent No. 2 relied upon judgment of this Tribunal in the matter of "Encore Asset Reconstruction Company Pvt. Ltd. Vs. Charu Sandeep Desai and Others" reported in 2019 SCC OnLine NCLAT 284. This Tribunal in paragraph -15 & 16 is of the view that SARFAESI Act 2002 being an existing law, Section 238 of IBC will prevail over any of the provisions of the SARFAESI Act 2002 if it is inconsistent with any of the provision of IBC.

22. Heard learned Counsel appearing for the respective parties. Perused the pleadings, documents and citations filed/relied upon by them. The issues felt for consideration is (a) whether after imposition of moratorium any transaction done with respect to the assets of the Corporate Debtor/Corporate Applicant deemed to be valid or not, (b) whether provisions of IBC prevail over

other laws?

23. An Application made by the Corporate Applicant praying the Adjudicating Authority to set aside the security realized during CIRP or in the alternative to cancel the impugned transaction. The Learned Adjudicating Authority, after detailed discussion and after hearing all the parties held that continuing the sale process against the Corporate Applicant after commencement of CIRP is against the order of moratorium. Accordingly, Hon'ble Adjudicating Authority sets aside the sale of the assets of the Corporate Applicant.

24. It is an admitted fact that the Respondent No. 2, erstwhile Managing Director of the Corporate Debtor filed application under Section 60(5) of IBC read with Rule 11 of the NCLT Rules 2016 before the learned Adjudicating Authority. The grievance of the Appellant is that the Respondent No. 2 cannot file an Application seeking direction to set aside the sale of the assets for the reason that Respondent No. 2 was aware of the auction and if he is aggrieved by the auction, he could have filed an Appeal by invoking the statutory provision under the SARFAESI Act, 2002 instead of filing application before the learned Adjudicating Authority. Further, it was also one of the contentions of the Appellant that after commence of CIRP, imposition of moratorium and appointment of IRP, IRP will be at the helm of the affairs of the Corporate Debtor. There is no doubt and we affirm that the RP is duty bound to preserve and protect the assets of the Corporate Debtor under IBC and is also authorised to represent and act on behalf of the Corporate Debtor under Section 25 of IBC and exercise right for the benefit of the Corporate Debtor. However, the stand of the RP is that they received a claim in Form-C on 21.01.2019 for an amount of Rs. 78,94,50,634/- and further received revised claim for an amount of Rs. 46,35,42,634/. According to Respondent No. 2 herein, they have not admitted the revised claim and they restricted the claim made by the Appellant on 21.01.2019 and assigned the vote rights in the CoC on the basis of said claim. It is also on record that they have not altered the percentage of voting rights nor admitted the revised claim. Therefore, it cannot be said that RP only to have filed the Application before the Adjudicating Authority and not Corporate Applicant. We are of the view that Respondent No. 2 herein being the aggrieved person rightly filed Application before the Adjudicating Authority by invoking Section 60(5) of IBC.

25. Other contention of the Appellant is that the sale of the assets of the Corporate Applicant sold through e-auction on 12.12.2019 and the sale was confirmed on 13.12.2018 and 25% of the sale proceeds was paid by the Auction Purchaser. Therefore, the sale was initiated and was in continuation prior to commencement of CIRP i.e., on 03.01.2019. We are of the view that mere receiving of 25% of the sale proceeds does not conclude the sale unless the full amount is paid prior to imposition of moratorium. It is on record that balance 75% of the amount was paid on 08.03.2019 i.e., after imposition of moratorium. Further, it is on record that assets are still in the name of the Corporate Debtor in the revenue records. Therefore, it is evident that as on the date of moratorium, the assets belong to the Corporate Debtor. We are not inclined to accept the submission of the learned Counsel for the Appellant that 25% of the sale proceeds were received thereby the sale was confirmed prior to imposition of moratorium. Admittedly, as on the date of commencement of CIRP, the sale was not complete and the total sale price was not paid to the Auction Purchaser. Further, it is also on record that the Appellant filed its total claim before the IRP on 21.01.2019 after commencement of CIRP. Thus, it explicitly shows that the sale was not

concluded.

26. Going back to the factual matrix of the case, the Corporate Applicant i.e., M/s RCM Infrastructure Ltd filed an Application invoking Section 10 of IBC before the Adjudicating Authority. The Appellant is arrayed as a party to the said proceeding. From the records it is evident that the Appellant filed Counter Affidavit to the Application and it is also on record that the Corporate Debtor availed financial facility and also stated that they have initiated proceeding under SARFAESI Act, 2002 and issued Demand Notice dated 17.01.2017 and also issued possession notice dated 18.04.2018 for Rs. 74,72,73,108/- and took symbolic possession of all the secured assets. From the order of the Adjudicating Authority dated 03.01.2019 it is evident that Appellant had opposed admission of Application.

27. After hearing respective parties, the Adjudicating Authority admitted the Application and imposed moratorium under Section 14 of IBC. In the order at paragraph-10, sub-paragraph-(1) it is clearly stated as under:

...

"10. Hence, the Adjudicating Authority admits this Petition under Section 10 of IBC, 2016, declaring moratorium of the purposes referred to in Section 14 of the Code, with following directions: (1) The Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, Tribunal, arbitration panel or other authority; Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest there; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002); the recovery of any property by any owner or lessor where such property is occupied by or in possession of the Corporate Debtor;

...

28. From the order it is clear that there is a prohibition with respect to the assets of Corporate Applicant including transfer, encumbered, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein. Further, the order prohibits in respect of the Corporate Applicant's property including any action under SARFAESI Act, 2002. Therefore, the Appellant is aware of the order and filed its claim in Form-C dated 21.01.2019 claiming an amount of Rs. 78,92,50,634/-. When the Appellant is having the knowledge of imposition of moratorium, the sale of assets of the Corporate Debtor cannot be proceeded and concluded and they strictly abide by Section 14 of IBC. For beneficial reference, Section 14 of IBC is extracted hereunder:

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: --

- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(54 of 2002);
- (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."

...

29. It is also on record that by filing revised claim in Form-C on 11.02.2019 before the RP by the Appellant, the Appellant clearly violates the order of moratorium. We are of the view that the Appellant Bank lost sight of the fact that IBC is a complete Code itself and Section 238 of IBC has overriding effect over all other laws including SARFAESI Act, 2002. The paragraph-11 of the Judgment of the Hon'ble Apex Court in the matter of "Anand Rao Korada, Resolution Professional Vs. Varsha Fabrics (P) Ltd. and Others" reported in 2019 SCC OnLine SC 1508 is reproduced hereunder:

...

"11. Section 238 gives an overriding effect to the IBC over all other laws. The provisions of the IBC vest exclusive jurisdiction on the NCLT and the NCLAT to deal with all issues pertaining to the insolvency process of a corporate debtor, and the mode and manner of disposal of its assets. Section 238 reads as follows:

"238. Provisions of this Code to override other laws:-

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

...

30. The Hon'ble Supreme Court in paragraph-10 of the aforesaid judgment in - "Anand Rao Korada, Resolution Professional Vs. Varsha Fabrics (P) Ltd. and Others" held as under:

...

"10. Section 14 provides that on the insolvency commencement date, the Adjudicating Authority shall by order, declare a moratorium prohibiting the institution of suits, or continuation of pending suits or "proceedings" against the corporate debtor, including execution of any judgment, decree, or order in any court of law, tribunal, arbitration panel, or any other authority."

..

31. The Hon'ble Supreme Court held that Section 14 IBC on the insolvency commencement date, the Adjudicating Authority shall by order, declare a moratorium prohibiting the institution of suits, or continuation of pending suits or "proceedings" against the Corporate debtor, including execution of any judgment, decree or order in any Court of law, tribunal, arbitration panel, or any other authority. Further, the Hon'ble Supreme held that Section 238 IBC give an overriding effect to the IBC over all other laws.

32. The Hon'ble Supreme Court at paragraph - 14 of the aforesaid judgement in - "Anand Rao Korada, Resolution Professional Vs. Varsha Fabrics (P) Ltd. and Others" clearly held that once the proceeding under IBC had commenced and an order declaring moratorium was passed by NCLT, on 04.06.2019, the High Court was not justified in passing the order dated 14.08.2019 and 05.09.2019 for carrying out auction of the assets of the Respondent i.e., Corporate Debtor before the NCLT.

33. We are of the view that imposition of moratorium as per Section 14 of IBC is to protect the interest of the Corporate Debtor by protecting the assets of the Corporate Debtor for the sole objective to maximisation the value of assets. This Tribunal in the matter of "Encore Asset Reconstruction Company Pvt. Ltd. Vs. Charu Sandeep Desai and Others" reported in 2019 SCC OnLine NCLAT 284 also held that Section 238 of IBC will prevail over any of the provisions of the SURFAESI Act, 2002 if it is inconsistent with any of the provisions of IBC. Paragraphs 12,14 & 15 of the said judgment is reproduced here at:

...

"12. From the explanation below Section 18, it is clear that the terms "assets" do not include the assets owned by a third party in possession of the 'Corporate Debtor'.

14. Decision in "Transcore v. Union of India" was rendered in the year 2008 when the 'I&B Code' was not in existence. The 'I&B Code' came into force w.e.f. 1st December, 2016 and Section 238 read as follows: "238. Provisions of this Code to override other laws:- The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any

instrument having effect by virtue of any such law.

15. 'SARFAESI Act, 2002' being an existing law, Section 238 of the 'I&B Code' will prevail over any of the provisions of the 'SARFAESI Act, 2002' if it is inconsistent with any of the provisions of the 'I&B Code.'"

...

34. From the above judgment of the Hon'ble Supreme Court it is clear that when the Adjudicating Authority commences the CIRP proceeding and imposes moratorium, no proceeding shall be continued or commenced and not to carry out any auction of the assets of the Corporate Debtor. Therefore, in the facts of the present case and upon deliberating the issues as framed in paragraph 22 above, we hold that:

1) When the moratorium was imposed by the learned Adjudicating Authority, receipt of the balance sale consideration is illegal and the learned Adjudicating Authority rightly set aside the sale transaction.

2) Further Section 238 of IBC, have overriding effect over other laws as held by the Hon'ble Apex Court, and this Tribunal in Encore Asset Reconstruction Company Ltd.

35. Therefore, the stand of the Appellant that the Respondent No. 2 should have availed remedy under SARFAESI Act, 2002 is uncalled for.

36. Further, the Hon'ble Supreme Court in the matter of "Duncans Industries Limited Vs. A.J. Agrochem" reported in 2019(9) SCC 725 by referring to the judgment in the matter of "ArcelorMittal (India) Ltd. Vs. Satish Kumar Gupta" reported in (2019) 2 SCC 1 has held as under:

...

28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor, itself thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these

ends."

...

37. Learned Counsel for the Appellant relied upon the judgment of the Hon'ble Supreme Court in the matter of "B. Anand Kumar Vrs. Govt. of India and Others" reported in (2007)5 SCC 745 whereby the Hon'ble Supreme Court held that the sale certificate is merely the evidence of such title. Further, the Hon'ble Supreme Court held that it is a well settled that an Auction Purchaser derives title on confirmation in his favour and the sale certificate is issued evidencing such sale and title, no further deed of transfer from the Court is contemplated or required.

38. In the present case, the sale was not completed and it is evident that balance sale amount was received after imposition of moratorium. Therefore, in the facts of the case, this judgment is not helpful to the Appellant. Further the Appellant relied upon in the matter of "Shakeena and Another Vrs. Bank of India and Others" reported in 2019 SCC OnLine SC 1059, the Hon'ble Supreme Court held that the Appellants cannot be permitted to assail the auction process on any other count. Even this judgment is not helpful to the facts of the present case.

39. We are of the view that the Assets of the Corporate Debtor/Applicant forms part of valuation. Learned Adjudicating Authority has rightly set aside the sale of assets of the Corporate Applicant. We are of the view that the sale of assets of the Corporate Applicant during moratorium is against the spirit of Section 14 of IBC. Accordingly, we do not find any infirmity in the order passed by the learned Adjudicating Authority. The appeal is devoid of merit and liable to be dismissed. Accordingly, the appeal is dismissed. No orders as to cost.

[Justice Jarat Kumar Jain] Member (Judicial) [Mr. Kanthi Narahari] Member (Technical) NEW DELHI Akc