

Indian Overseas Bank vs Mr. Dinkar T. Venkatsubramaniam ... on 15 November, 2017

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 267 of 2017

IN THE MATTER OF:

Indian Overseas Bank

. . .Appellant

Vs.

Mr. Dinkar T. Venkatsubramaniam
Resolution Professional
for Amtek Auto Ltd.

Respondent

Present: For Appellant: - Mr. Karan Khanna and Ms. Asmita
Kumar, Advocates.

For Respondent:- None

ORDER

15.11.2017- The 'Corporation Bank'-'Financial Creditor' preferred an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') for initiation of 'Corporate Insolvency Resolution Process' against M/s. Amtek Auto Ltd ('Corporate Debtor'). The application was admitted on 24th July, 2017, order of moratorium was passed and 'Interim Resolution Professional' was appointed on 27th July, 2017. While declaring moratorium, the following order was passed by the Adjudicating Authority (National Company Law Tribunal) Chandigarh Bench, Chandigarh in terms of Section 14(1) of the 'I&B Code', as under: -

"(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."

2. As per Section 17 (1) (d) of the 'I&B Code', the financial institutions maintaining the accounts of the 'Corporate Debtor' have to act on the instructions of the 'Interim Resolution Professional' in relation to such accounts and furnish all information relating to the 'Corporate Debtor' available with them to the 'Interim Resolution Professional'. The Appellant-'Indian Overseas Bank', Hosur Branch is one of the 'Financial Creditor' of the 'Corporate Debtor' and constitutes 4.08% of the total value of the financial debt. The 'Corporate Debtor' is maintaining an account with the Appellant-'Indian Overseas Bank' in its Hosur Branch to the extent of Rs.6,65,13,958/-. In view of initiation of 'Corporate Insolvency Resolution Process' and in terms of Section 17, the 'Interim Resolution Professional' by letter dated 1st September, 2017 requested the Appellant -'Indian Overseas Bank' to transfer the amount of Rs.6,65,13,958/- through RTGS to the bank account of the 'Corporate Debtor' maintained with the Corporation Bank and cheque No. 870093 dated 1st September, 2017 was also enclosed with the said letter.

3. It appears that in spite of reminder to the Appellant-'Indian Overseas Bank' amount having not been transferred, notice was given to the Appellant-'Indian Overseas Bank'. The Appellant opposed the application and stated that the amount available in the current account of the 'Corporate Debtor' at Hosur Branch is neither a security interest nor an asset of the 'Corporate Debtor' and therefore, it is not liable to release the amount to the 'Corporate Debtor' and the amount available in the said current amount is to be appropriated towards the dues payable to the Appellant- 'Indian Overseas Bank'. The stand taken by the Appellant having rejected by the Adjudicating Authority and the Appellant having been directed to transfer the amount of Rs.6,65,13,958/- to the bank account of the 'Corporate Debtor' maintained with the Corporation Bank, present appeal has been preferred against the impugned order dated 13th October, 2017 in CA No. 142/20 17 in CP (IB) No. 42/Chd/Hry/2017.

4. Learned counsel for the Appellant has taken similar plea as was taken before the Adjudicating Authority that the amount of 'Corporate Debtor' lying in the Hosur Branch of Appellant- 'Indian Overseas Bank' was neither a security interest nor an asset of the 'Corporate Debtor' and the 'Corporate Debtor' having borrowed the amount from the Appellant- 'Indian Overseas Bank', the amount required to be appropriated to the dues.

5. Having heard learned counsel for the Appellant, we do not accept the submissions made on behalf of the Appellant in view of the fact that after admission of an application under Section 7 of the 'I&B Code', once moratorium has been declared it is not open to any person including 'Financial Creditors' and the appellant bank to recover any amount from the account of the 'Corporate Debtor', nor it can appropriate any amount towards its own dues.

6. If the 'Corporate Debtor' has borrowed some amount from the Appellant-'Indian Overseas Bank' and the Appellant- 'Indian Overseas Bank' come within the definition of 'Financial Creditor' as defined in Section 5(7) of the 'I&B Code', it is always open to the Appellant- 'Indian Overseas Bank' to file its claim before the 'Interim Resolution Professional' for getting the amount back. If the

Appellant claims to be 'Financial Creditor' and file's such claim before the 'Interim Resolution Professional' showing the principal amount and interest thereon, the 'Interim Resolution Professional' will consider the same and the Appellant being 'Financial Creditor' may be taken in the Committee of Creditors'.

7. We find no merit in this appeal, therefore, we are not inclined to interfere with the impugned order dated 13th October, 2017. However, liberty is given to the Appellant-'Indian Overseas Bank' to raise its claim before the 'Interim Resolution Professional' and request him to allow it to be a member of the Creditors Committee which should be considered in accordance with law.

8. The Appellant will act in terms with the order passed by the Adjudicating Authority and transfer the amount to the Corporation Bank immediately but not later than 30th November, 2017.

9. The appeal stands disposed of with aforesaid observation. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya) Chairperson (Justice Bansi Lal Bhat) Member(Judicial) Ar/uk