

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI COURT (COURT NO.IV)**

**CA No. 169/C-IV/ND/2018  
CP C-IV (IB)-275/(ND)/2018**

**In the matter of:**

Pankaj Khaitan, RP	...Applicant
Vs.	
Allahabad Bank, Lajpat Nagar, Branch	...Respondent

AND

**In the matter of:**

M/s. Khandelwal Busar Industries Pvt. Ltd.	...Applicant
Vs.	
Mansfield Cable Company Limited	...Respondent.

**Under Section:** Section 60(5)(c) of IBC.

**CORAM**

**DR. DEEPTI MUKESH,  
HON'BLE MEMBER (J)**

**Order pronounced on 22.02.2019**

For the Applicant (RP)      Mr. Pankaj Khetan.

For secured financial creditor  
(Respondent)                      Mr. R.K. Mishra, Asst. General Manager.

**ORDER**

Present application is filed by the RP of M/s. Mansfield Cable Company Ltd. with following prayer:

“In view of abovesaid facts and circumstances, it is prayed most respectfully to this Hon’ble Tribunal to decide on the question of law or fact or of fact and law that can the FC who issued the BG against the FDR from current account of CD adjust FDR in the claim after discharge of the BG in midst of the Moratorium? and thus direct, if any, the respondent FC, to credit the bank account of the CD, Mansfield Cable Company Limited controlled by the RP, and pass any other order as deem fit and proper to this Hon’ble Tribunal.”

2. It is stated that CIRP against corporate debtor was initiated vide order dated 15<sup>th</sup> May, 2018 and IRP was appointed who was then replaced by present RP with 100% consent of COC.
3. The present respondent being the financial creditor, Allahabad Bank (for brevity the respondent), Lajpat Nagar Branch is the sole member of COC. It is stated that the respondent herein being the Allahabad bank had issued FDR the amount against the bank guarantee towards the corporate debtor. Similarly, on 30<sup>th</sup> February, 2018 the respondent deposited an amount of Rs.5,45,000 respectively for issuing two FDRs but the same

amount was not credited by the respondent even after the money was realized against the bank guarantee.

4. On 21<sup>st</sup> May, 2018 the respondent released the money lying in the same FDR being 45,58,192/- in capacity of the bank guarantee into the current account of CD. It is further stated that the respondent being the sole COC member in the 4<sup>th</sup> meeting of COC held on 17.10.2018 had placed an agenda for transferring of FDR in CR Account which is lying with the respondent as margin money for bank guarantee/LC and further confirmed that there was an error while filing the claim in form 'C' before IRP. The IRP thereafter suggested that amount of FDR should be mentioned in the mutual credit and set off but the same was not done by the respondent and hence he shall file revised claimed. Thereafter the respondent filed a revised claim with RP on 5.11.2018 amounting to Rs.26,80,43,240.69 without adjusting the amount of two FDRs amounting to Rs.50,58,192/- in the total amount of said claim, although the respondent has mentioned the same amount in mutual credit. In the 5<sup>th</sup> meeting of COC held on 12.11.2018, the RP pointed out that respondent in its total claim has again included the amount of FDR as per revised claim filed on 12.11.2018. It is further mentioned by the RP that the respondent again filed the claim amounting to Rs.26,29,85,048.69 on 14.11.2018 and deducted the amount of FDRs from total claim. In spite of several reminders by RP to the Allahabad Bank to transfer the said amount of FDR into TR account of Corporate Debtor during

the moratorium. The respondent has not taken any steps and the set of transferring/converting any amount of the facilities of CD during moratorium is prohibited u/s. 14 of the Insolvency and Bankruptcy Code. It will be appropriate to reproduce terms of Section 14 here:

“14(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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.”

5. The RP further raised an issue with financial creditor,

Allahabad Bank who had given bank guarantee against FDR-cum-current account of corporate debtor, how can an

adjustment of FDR in the discharge of bank guarantee be invoked after the initiation of CIRP and during moratorium period.

6. The respondent herein filed the reply stating that the corporate debtor is availing financial facilities from the bank which reflect as on date as follows till the initiation of CIRP on 15.05.2018.:

i.	Cash credit limit	Rs.20.00 crores
ii.	Bills remitted/inland bills discounted (sublimit of CC)	Rs.3.00 crores
iii	Term loan	Rs.8.05 crores
iv.	Inland letter of Credit (sublimit CC)	Rs.5.00 crores
v.	Foreign Letter of Credit	Rs.3.25 crores
vi.	Bank Guarantee limit	Rs.2.65 crores
vii	Forward Contract-Foreign currency.	Rs.3.25 crores

7. It is further claimed by the bank that apart from other security, the bank guarantee limit of Rs. 2.65 crore was sanctioned to the corporate debtor against stipulated margin of 20% which was in the form of an FDR by the bank. Hence, FDR formed part of the security credit in favour of the bank by the corporate debtor for due repayment of various financial facilities. The bank further claimed that the loan account of corporate debtor maintained with the bank was not classified as NPA till the date of initiation of CIRP. Hence, the amount of FDR was not adjusted towards the recovery of bank's dues.
8. It is further stated by the respondent that loan account of the corporate debtor was classified as NPA on 21<sup>st</sup> May, 2018 with retrospective date as 31<sup>st</sup> March, 2018 and the amount of FDR

of Rs.45,58,192/- got adjusted in cash credit limited by the bank and accordingly on 25.05.2018 a claim of Rs.26,87,75,345/- was filed by the bank.

9. Admittedly, the bank accepts that while filing claim no reference of FDR in Form 'C' was mentioned, as FDRs were adjusted on 21.05.2018 in CC limit of the corporate debtor. When a letter was written by IRP dated 27<sup>TH</sup> June, 2018 instructing the bank to reverse adjustment of FDR explaining that such adjustment is prima facie is impermissible and prohibited under Section 14 of the Insolvency and Bankruptcy Code. Following the instructions of IRP the adjustment of FDR was reversed by the bank and the same was placed in FDR account, once again.
10. The bank further states that in 4<sup>th</sup> COC meeting held on 17.10.2018 the bank again revised the claim on 05.11.2018 and filed the claim in Form 'C' to the tune of Rs.26,80,432.41. Again, in the COC meeting when the resolution professional objected to the same adjustment in the Form 'C' dated 14.11.2018 reflecting the amount of Rs.26,29,85,049/- was accepted by the RP. The bank further states that RP had taken legal opinion and referred to Section 14 of Insolvency and Bankruptcy Code which clearly prohibits adjustment of security by financial creditor during the moratorium.
11. The stand taken by the bank that since the FDR formed part of the security credits in favour of the bank towards repayment of the bank's dues, the IRP is asking for the money to be used

during the CIRP which is lying with the bank in the form of security credit by the corporate debtor. The bank guarantee issued on the request of corporate debtor and no payment was made by the creditor hence the bank has charge/security over FDR and the said money cannot be asked by the RP to be brought in the account of corporate debtor for utilization of said money during CIRP of CD.

12. After going through the contentions raised by both the parties and the documents placed on record in support of thereof and in the light of provisions Section 14 of the Insolvency and Bankruptcy Code more particularly 14(1)(c) clearly covers the same security as claimed by the bank. The financial creditor being the sole member of the COC though passing resolution by 100% for any of the agenda cannot be permitted to transgress the provisions of law.
13. In view of the above, the application is allowed in terms of the prayer which respondent financial creditor (member of COC) allowed. Bank is directed not to adjust the FDR in the claim after discharge of bank guarantee and transfer the said amount of FDR to lie in the bank account of corporate debtor for the purpose of continuing the CIRP.
14. Application is allowed.

Sd/-

**(Dr. Deepti Mukesh)**  
**Member (Judicial)**

