

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 533 of 2021

[Arising out of the Impugned Order dated 03.05.2021 in IA 696/2020 in C.P.(IB) No. 266/NCLT/AHM/2019 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench, Ahmedabad)]

In the matter of:

Bank of India

Rep. by Deputy General Manager
Having its office at:
Asset Recovery Management Branch,
First Floor, Bank of India Building,
28, S.V. Road, Andheri(W),
Mumbai-400058.

... Appellant

Versus

Mr. Naren Sheth

Resolution Professional,
Jaybharat Textiles & Real Estate Ltd.
Having its office at: Prasad Chamber,
Tata Road No. 1, Opera House,
Charni Road (East) Mumbai-400001.

... Respondent

Present:

For Appellant : Mr. Ashish Rana, Advocate.

For Respondents : Mr. Milan Singh Negi, Mr. Nikhil Kumar Jha, Ms. Aakriti Gupta, Advocates for RP.

J U D G M E N T
(Hybrid Mode)

[Per: Ajai Das Mehrotra, Member (Technical)]

The present appeal is filed against the impugned order dated 03.05.2021 in I.A. No. 696 of 2020 wherein the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench, Ahmedabad) in CP(IB) No.

266/NCLT/AHM/2019 has allowed the said application for release of an amount of Rs. 1 Crore held in the “No Lien Account” by the Appellant.

2. The application for initiation of Corporate Insolvency Resolution Process (hereinafter called as ‘**CIRP**’) in CP(IB) No. 266/NCLT/AHM/2019 was allowed and the Corporate Debtor, M/s Jaybharat Textiles & Real Estate Ltd. was admitted into CIRP on 03.01.2020. The Interim Resolution Professional (hereinafter called as ‘**IRP**’) was appointed who called for the claims and thereafter constituted Committee of Creditors (hereinafter called as ‘**COC**’). As per provisions of Section 18 of Insolvency and Bankruptcy Code, 2016, the IRP initiated steps to takeover the assets of the Corporate Debtor. The IRP corresponded with the Appellant to allow the operation of “No Lien Account” and release of the amount of Rs. One crore held in the said account for the purpose of CIRP. The issue was taken up in the 3rd COC meeting held on 05.09.2020 and the Appellant was requested to release the said amount, but the Appellant refused to release it.

3. On the other hand, the Appellant filed its claim as a Financial Creditor which was admitted by the IRP. Since the Appellant was not releasing the said amount and was not allowing operation of the Bank account, the Resolution Professional filed IA No. 696 of 2020 for release of the said amount lying in “No Lien Account” which was allowed by the Adjudicating Authority and the relevant portion of the order is reproduced below for reference:

“13. Heard both sides. Gone through the records.

14. Admittedly, the amount of Rs. 1 crore is paid by the Corporate Debtor to show his bona fide against the OTS amount.

Thereafter, an admission order has been passed against the Corporate Debtor and Corporate Debtor went under CIRP. Section 18(f) of the IB Code provides for taking control and custody of any asset over which the Corporate Debtor has ownership right as recorded in the balance sheet of the corporate debtor. For the sake of convenience, Section 18(f) is reproduced herein below:

Section 18(f) :- take control and custody of any asset over which the Corporate Debtor has ownership rights as recorded in the balance sheet of the Corporate Debtor, or with information utility or the depository of securities or any other registry. that records the ownership of assets including-

- i. assets over which the Corporate Debtor has ownership rights which may be located in a foreign country;**
- ii. assets that may or may not be in possession of the corporate debtor;**
- iii. tangible assets, whether movable or immovable;**
- iv. intangible assets including intellectual property;**
- v. securities including shares held in any subsidiary of the Corporate Debtor, financial instruments, insurance policies;**
- vi. assets subject to the determination of ownership by a court or authority.**

15. It is also a matter of record that on admission of C.P. (IB) No. 266/2019 the COC is constituted and the Bank of India being the part of the COC has also put forth his claims before the COC, and being the member of the COC, the claim has been admitted. The Respondent has not produced any documents, so as to show that the claim which is made before the COC is/are minus this amount received by way of OTS. Thus, when the claim of the members has already been considered during the CIRP period by the COC, under such circumstances, the Bank of India cannot claim or detain this amount paid against the OTS by the Corporate Debtor. In that event, the Bank would be doubly benefited.

16. Under the facts and the circumstances, the Respondent is hereby directed to release the amount in favour of Applicant being the asset of the Corporate Debtor.”

4. In its oral and written submissions, the Appellant, Bank of India has submitted as under:

- i) Amount of Rs. 1 Crore so deposited is not the asset of the Corporate Debtor as the cheque was issued by Wellworth Apparels Private Limited.
- ii) As per Explanation appearing below Section 18 of IBC, 2016, the “Assets” shall not include assets owned by a third party in possession of the Corporate Debtor held under trust or under contractual arrangement including bailment.
- iii) The Corporate Debtor has not shown under what capacity this amount of Rs. 1 Crore has been received from Wellworth.
- iv) Banker’s lien over money lying is a statutory right. The money lying in the account is actually asset of the Bank itself.
- v) The amount of Rs. 1 Crore was paid for showing the bona-fides of the Corporate Debtor, in pursuance to a settlement proposal.
- vi) The “No Lien Account” is an account of the Bank itself wherein Bank receives money from the various sources.

5. In its oral and written submissions, the Learned Counsel for the Respondent submitted that the amount of Rs. 1 Crore was paid by the Corporate Debtor to show its bona-fide towards ‘One Time Settlement’ (hereinafter called ‘**OTS**’) made by the Appellant on behalf of the Corporate Debtor. A copy of the cheque No. 852249 dated 16.07.2017 appears at page 246 of Appeal Paper Book, which clearly shows that the payment was made to Bank of India on account of

Jaybharat Textiles & Real Estate Ltd., though the cheque has been issued by Wellworth Apparels Private Limited. The Appellant, Bank of India has not adjusted the said amount of Rs. 1 Crore in its claim, acknowledging thereby that this amount remains the asset of the Corporate Debtor. The Corporate Debtor in its letter dated 12.07.2017 had specifically made it clear that the said amount may be adjusted upon approval of OTS/Resolution Plan. In absence of OTS/Resolution Plan having been approved, the bank has no right to claim this money. The Appellant/Bank by its conduct in not encashing/adjusting the said money has admitted that it has no right over the said money. The Respondent denied that the money in "No Lien Account" belongs to the Bank and submitted that it was specific understanding that the said money will not be used until approval of the OTS. It was submitted that the Hon'ble Supreme Court in *Kut Energy Pvt. Ltd. and Ors. Vs. Authorized Officer, Punjab national Bank, Large Corporate Branch, Ludhiana and Ors*, reported in 2019 SCC OnLine SCC 1057, has held as under:

"11. In the present case the deposit of Rs. 40 crores in terms of the order of the High Court on 11.10.2017 was only to show the bona fides of the appellants when a revised offer was made by them. The deposit was not towards satisfaction of the debt in question and that is precisely why the High Court had directed that the deposit would be treated to be a deposit in the Registry of the High Court.

12. Going by the law laid down by this Court in Axis Bank the 'secured creditor would be entitled to proceed only against the secured assets' mentioned in the notice under Section 13(2) of the SARFAESI Act. In that case, the deposit was made to maintain an appeal before the DRAT and it was specifically held that the amount representing such deposit was neither a 'secured asset' nor a 'secured debt' which could be proceeded against and that the appellant before DRAT was entitled to refund of the amount so deposited. The submission that the bank had general lien over such deposit in terms of Section 171 of the Contract Act, 1872 was

rejected as the money was not with the bank but with the DRAT. In the instant case also, the money was expressly to be treated to be with the Registry of the High Court.

13. On the strength of the law laid down by this Court in Axis Bank, in our view, the appellants are entitled to withdraw the sum deposited by them in terms of said order dated 11.10.2017. Their entitlement having been established, the claim of the appellants cannot be negated by any direction that the money may continue to be in deposit with the Bank

(Emphasis supplied)

6. It was further submitted that once the CIRP has commenced, the Appellant/Bank could not have adjusted/encashed the said amount. It is further submitted that a co-ordinate Bench of this Tribunal while dealing with the similar issue in *Bank of India Vs. Vonod Kumar P. Ambavat, Resolution Professional (RP) of Actif Corporation Ltd. in Company Appeal (AT) (Ins.) No. 214 of 2021* vide its judgment dated 15.09.2022 held as under:

“8. From the aforementioned letter, it is clear that the said amount was to be adjusted/utilised upon approval of the Resolution Plan and was not to be adjusted towards ‘Interest’ or ‘Principal’ till then. Prior to the commencement of CIRP, this amount was not adjusted by the Bank towards the loan account of Bank as the OTS Proposal had failed. Once the CIRP was initiated, keeping in view that the OTS had failed, the amount lying in the ‘no lien account’ belongs to the ‘Corporate Debtor’ and under Section 18(f) of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as ‘The Code’), the IRP/RP is obligated to take control and custody of all the assets and properties of the ‘Corporate Debtor’. Further, the Bank could not have appropriated this money once the period of Moratorium has commenced on 26.11.2019. As per Section 3(27), ‘Property’ includes money and therefore RP’s action of claiming the money lying in the ‘no lien account’ of the ‘Corporate Debtor’ is within the provisions of Section 18(f) of the Code. The contention of the Learned Counsel for the Appellant Bank that the Bankers lien over the money held in a customer’s account is a Statutory Right, is unable, keeping in view the facts of the attendant case and also that CIRP had commenced on

26.11.2019, and having regard to the fact that the amount was deposited with a specific understanding that the amount shall not be used by the Bank until approval of OTS. Admittedly, the said amount was paid at the behest of the ‘Corporate Debtor’ by a third party and it was lying with the Bank for more than five years.

9. *The submission of the Learned Counsel for the Appellant that an Appeal against IA 522/2020 was also preferred regarding the conduct of the RP is of no relevance to the facts of this case and therefore we do not consider it fit to make any observations regarding that issue.”*

(Emphasis supplied)

7. We have heard both sides and have perused the records. The brief point for our consideration in this appeal is whether the amount of Rs. 1 Crore lying in the “No Lien Account” with the Appellant/Bank belongs to the Appellant bank or to the Corporate Debtor. It is admitted fact that the said amount was paid on behalf of the Corporate Debtor pursuant to an OTS proposal on 16.07.2017. The purpose of the said payment was to show bona-fide of the Corporate Debtor towards the OTS. It is also admitted fact that OTS did not materialize and the money lying in the “No Lien Account” was not adjusted/enchased by the Bank. Subsequently, the CIRP was initiated on 03.01.2020 and despite repeated requests of the Resolution Professional, the Appellant bank did not release the said amount.

8. Once the CIRP was initiated, the amount lying in the “No Lien Account”, which on that date belonged to the Corporate Debtor, by natural corollary is an asset of the Corporate Debtor which the IRP/RP was obliged to take under his control/custody as per provisions of Section 18 of IBC, 2016. Since the moratorium had commenced, on initiation of CIRP on 03.01.2020, the Bank in

any case could not have appropriated this money. Following the judgment of the Co-ordinate Bench in the case of *Bank of India Vs. Vinod Kumar P. Ambavat (supra)* and on consideration of the facts of this case, we find that the Adjudicating Authority has rightly held that the said amount of Rs. 1 Crore lying in “No Lien Account” with the Appellant bank is an asset of the Corporate Debtor. The IRP/RP has rightly claimed the said deposit for its utilization in CIRP. We find no reason to interfere in the order of the Adjudicating Authority and accordingly, this appeal is dismissed. No order as to costs. Pending application(s), if any, are disposed of.

[Justice Yogesh Khanna]
Member (Judicial)

[Mr. Ajai Das Mehrotra]
Member (Technical)

Place: New Delhi
Dated: 13.12.2024
Ram N.