THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

MA/73/KOB/2020
In
TIBA/31/KOB/2019 connected with TIBA 10/KOB/2019

(Under Section 60(5) of IBC, 2016**)**

Order delivered on 16th July 2020

Coram:

Hon'ble Shri Ashok Kumar Borah, Member (Judicial)

Applicant/RP

Shri P.D.Vincent
Resolution Professional of Kerala Housing Finance Ltd
Ist Floor, 65/2364A, Ponoth Road, Kaloor,
Ernakulam, Kerala 682 017.

Vs.

Respondents

1. The Assistant Commissioner of Income Tax
   Circle 1(1), Trivandrum

2. The Principal Commissioner of Income Tax,
   Circle 1(1), Trivandrum

3. The DGM(B&O)
   State Bank of India
   Thiruvananthapuram

In the matter of

Mr. Vijayakumar J & others	] Financial Creditors
Vs.	
Kerala Housing Finance Limited	] Corporate Debtor

Parties/Counsel present:

Counsel for the applicant : Shri P.D.Vincent, RP

1. This order has arisen out of the MA filed by the Resolution Professional with the prayers (a) to pass an order directing the Office of the Principal Commissioner of Income Tax and the Office of the Assistant Commissioner of Income Tax, Circle 1(1), Trivandrum to reverse all amounts withdrawn from the Bank Account maintained with State Bank of India, Kaloor Branch and reverse all amounts withdrawn from the other attached Bank accounts of the Corporate Debtor to enable the Resolution Professional to exercise his duties and meet the requirements as contemplated under the provisions of Insolvency and Bankruptcy Code, 2016 and (b) to pass order directing the Office of the Principal Commissioner of Income Tax and the Office of the Assistant Commissioner of Income Tax, Circle 1(1), Trivandrum to not to initiate any action against the Corporate Debtor including attachment of other Bank accounts of the Corporate Debtor during the CIRP of the Corporate Debtor.

2. The brief facts of the case is that this Tribunal vide order dated 16.3.2020 has extended the period of CIRP for a period of 30 days. Further, due to the recent unprecedented pandemic caused by the Covid 19, the Hon'ble NCLAT, New Delhi vide its order dated 30.03.2020 in Suo Motu – Company Appeal (AT) (Insolvency) No.01 of 2020 passed an order that the period of lockdown ordered by the Central Government and the State Governments including the period as may be extended either in whole or part of the country, where the registered office of the Corporate Debtor may be located, shall be excluded for the

purpose of counting of the period for "Resolution Process under Section 12 of the IBC, 2016, in all cases where Corporate Insolvency Resolution Process" has been initiated and pending before any Bench of the NCLT or in Appeal before the NCLAT. Hence, the CIRP of the Corporate Debtor shall continue till such period.

3. The RP further submitted that he is attempting to procure all the information relating to the assets, finances and operations of the Corporate Debtor for determining the financial position of the Corporate Debtor including business operations, financial and operational payments, list of assets and liabilities, etc. Further, the RP is in process of taking steps for better resolution of the CD through participation of the SEBI Recovery Officer in the meeting of Committee of Creditors. However, due to the recent unprecedented pandemic caused by the Covid 19, the RP is unable to conduct the meeting of Committee of Creditors as the financial creditors are widely spread throughout the State of Kerala and many of them are depend upon public networking facilities and is unable to exercise the e-voting facility provided to them. In this endeavour the RP is having serious impediments since the Ist Respondent, ie. The Office the Assistant Commissioner of Income Tax, Circle 1(1), Trivandrum has vide their letter dated 24.2.2020 attached the Bank Account of the Corporate Debtor maintained with the 3rd Respondent ie. State Bank of India as a sum of Rs. 5,15,98,285/- was due from the Corporate Debtor on account of Income Tax/Wealth Tax/Interest/Penalty. Further the Ist Respondent had withdrawn an amount of Rs.1,07,316.50 from the above-mentioned designated Bank Account of the Corporate Debtor without any intimation to the RP. The Resolution

Professional has also not received any communication from the Bank ie. the 3rd Respondent with reference to withdrawal of the said amount by the 1st Respondent.

4. On the other hand, this Tribunal vide order dated 6.12.2019 directed SEBI Recovery Officer to lift the attachment order passed on Kerala Housing Finance Ltd to enable the RP to continue the CIR Process within the time mandated under IBC 2016 and permitted the RP to open a Bank account in the name and style of "Kerala Housing Finance Limited under CIRP" with the power to withdraw amounts for the requirements contemplated under the provisions of IBC and the newly opened account shall not be subjected to attachment by SEBI. Accordingly, the Resolution Professional had opened the Bank account with the 3rd Respondent, ie. State Bank of India in the name of Kerala Housing Finance Limited under CIRP under Account No. 39021183297, Kaloor Branch.

5. The Resolution Professional on approaching the Bank for initiating payments with regard to CIR Process came to know about the attachment of Bank account. Immediately, on 23.3.2020 the RP has intimated the 1st Respondent through email about the CIR Process against the Corporate Debtor and further requested the Ist respondent to lift the attachment of the Bank Account maintained with the 3rd Respondent. The RP further communicated with the Ist respondent on 29.4.2020 through email since no action was initiated as per the confirmation from the 3rd Respondent. The 1st Respondent vide email dated 4.5.2020 communicated to the RP that only the attachment of Bank account of

the CD maintained with the 3rd respondent for specific purpose as provided above was lifted. No other attachments of Bank accounts were lifted by the Ist respondent.

6. Accordingly, the Bank account of the Corporate Debtor opened with the 3rd respondent by the RP as per the order of this Tribunal was lifted. However, an amount of Rs.1,07,316.50 which was withdrawn from the afore-mentioned Bank account was not refunded/reversed by the 1st respondent. The RP was made aware that the 1st respondent could not reverse the amount and was asked to take up the matter with the Principal Commissioner of Income Tax ie. the 2nd respondent. The RP immediately communicated to the 2nd Respondent through email on 11.5.2020 requesting immediate reversal of amounts to the Bank account maintained with the 3rd respondent.

7. The 2nd respondent through email on 20.5.2020 communicated that the Assessing Officer had tried to reverse the amount and was not possible as per the provisions in ITBA (Income Tax Business Application), the module through which the refunds are issued by department. The RP was further informed that the bank authorities can reverse the payment made only upto the end of the month in which such payment was made.

8. Due to the afore-mentioned actions of the Respondents, the RP was unable to exercise his duties including collection of the loan instalments / loan closures / settlements during the period of attachment of Bank Account. Further the

Resolution Professional was unable to meet the expenses of the CD including payment of electricity, rent, staff salary and to meet the CIRP Cost.

9. In this connection the RP has submitted that the Hon’ble Supreme Court by its order dated 10.8.2018 in *Pr.Commissioner of Income Tax Vs. Monnet Ispat and Energy Ltd* has held that the provisions of the moratorium stipulated under section 14 of the IBC Code 2016 would override anything inconsistent contained in any other enactment, including Income Tax Act,1961. The Hon’ble Supreme Court in arriving at its decision in this matter, made reference to its decision in the case of *Dena Bank Vs. Bhikkabhai Prabhudas Parekh and Co.* wherein it was held that income tax dues, being in the nature of crown debts, do not take precedence even over secured creditors who are private persons.

10. Therefore, the Resolution Professional has filed the present application under section 60(5) of the IBC 2016 for appropriate direction to The Principal / Assistant Commissioner of Income Tax to lift the attachment of Bank Accounts of the Corporate Debtor and to reverse the amount deducted.

11. After hearing the Resolution Professional and also thoroughly perusing the whole case records, this Tribunal pass the following order:

O R D E R

(i) Respondent Nos. 1 and 2 are directed to reverse all amounts withdrawn from the Bank account maintained with State Bank of India, Kaloor Branch and reverse all amounts withdrawn from the other attached Bank accounts of the Corporate Debtor M/s. Kerala Housing Finance Limited.

(ii) Respondent Nos 1 and 2 are also directed not to initiate any action against the Corporate Debtor including attachment of other Bank accounts of the Corporate Debtor during the Corporate Insolvency Resolution Process of the Corporate Debtor.

With the above direction MA/73/KOB/2020 IN TIBA10/KOB/2019 & TIBA/31/KOB/2019 is disposed of.

Dated this the 16th day of July 2020.

Sd/-
Ashok Kumar Borah
Member (Judicial)