

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI

MA/645/2019
In
MA/142/2019
IN
CP/550/IB/2018

Application filed under section 60(5) of the IBC, 2016

In the matter of Surana Corporation Limited

C. Ramasubramaniam, Liquidator ...Applicant
Representing to Corporate Debtor
(Surana Corporation Limited)

Vs

Head of Central Bureau of Investigation
ACB, 3rd Floor, Shastri Bhavan, 26,
Haddows Road, Nungambakkam,
Chennai-600006.

---Respondent-1

and

Union of India
Ministry of Commerce and Industry,
Office of Development Commissioner,
MEPZ Special Economic Zone & HEOUs in Tamil Nadu
Administrative office Building
National Highway-45, Tambaram, Chennai-600045

---Respondent-2

Order delivered on: 27.12.2019

CORAM:

B.S.V PRAKASH KUMAR, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Counsel for Applicant : *Shri. Vipin Warriar, Advocate*
For Shri. C. Ramasubramaniam, RP

Counsel for Respondent-2 : *Shri. V. Chandrasekaran, Advocate*
Ms. Joshna Christie, Advocate

ORDER

Per: B.S.V PRAKASH KUMAR, MEMBER (JUDICIAL)

Heard and dictated in Open Court on: 19.12.2019

It is an application filed by the Resolution Professional for a direction against Central Bureau of Investigation (CBI) and Office of Development Commission, MEPZ Special Economic Zone in Tamilnadu to comply with the order of this Bench on 14.03.2019 made in MA/142/2019 by handing over the gold from the custody of CBI Court so as to enable this applicant to complete the process.

2. On perusal of this application, it appears that this application is based on an order passed by learned CBI Court on 12.12.2017 directing the CBI to deliver the case property of 400.47 Kgs of gold to SBI on the settlement arrived at between the Corporate Debtor. This criminal case came before CBI Court on a complaint given by CBI under IPC sections stating that the said gold was imported in violation of relevant rules and regulations and laws relating to imports. This case was closed by the CBI court on the final report filed by CBI with the direction of delivery of case property as mentioned above. Based on the Order, when the Resolution Professional has

sought for release of this gold as per the order passed by CBI Court on 12.12.2017 to one of the Financial Creditors i.e. State Bank of India, this Bench in MA/142/2019, on hearing the submissions of this applicant as well as CBI Officer, ordered for release of the aforementioned property to the Resolution Professional. Upon which, on having R2 (MEPZ) filed criminal revision petition under CrPC before the Hon'ble High Court of Madras challenging the CBI order, the Hon'ble High Court of Madras, on 16.07.2019, set aside the order passed by CBI Court with a direction to R2 to place its grievance before this Bench for CIRP has already been initiated against the Corporate Debtor.

3. Now, R2 has issued show cause notice to the Corporate Debtor represented by the Resolution Professional, on the Gold seized in 2011, stating that the Corporate Debtor violated the procedure laid under Foreign Trade (Development and Regulation) Act 1992 in importing Gold, which is as follows:

"a) Non-compliance of time limit prescribed for filing of period returns stipulated in the Policy Circular No.39 related to monitoring of Nominated agency certificate.

b) Taking mala fide advantage of the indiscernible time between the issue of Policy Circular No.14 and SCL's application for renewal, albeit being in cognizance of the fact that there was a void of procedures to renew its NAC, which is supported by the fact that SCL did not supply the required share of precious metal that it had imported to exporters as mandated in the earlier policy circulars.

c) For consciously importing precious metal from the period 01.02.2011 to 19.08.2011 when the procedures for import of such metals by nominated agencies were not available due to void in any valid guidelines during that period.

d) For maliciously making use of only the benefits of above mentioned policy circulars and not executing the obligations specified.

NOW, THEREFORE, in the exercise of the powers conferred in me under Section 13 of the Foreign Trade (Development and Regulation) Act, 1992 (as amended), M/s. Surana Corporation Ltd., is hereby called upon to show cause within 30 days of the receipt of this Notice as to why action should not be taken against it for imposition of penalty, confiscation of 400.47 Kg of Gold and

cancellation of IEC under Section 11 of the Foreign Trade (Development and Regulation) Act, 1992".

4. On looking at this show cause notice in the light of IBC provisions, it appears that this Corporate debtor being in selling gold, imported Gold in the year 2011, at that point of time, since CBI was of the view that this Corporate Debtor violated import laws, it had initiated a complaint and seized the Gold, finally the CBI having filed final report on mistake of fact, CBI court accordingly closed it giving directions to the CBI to deliver the Gold to the Creditor of the Corporate Debtor i.e., SBI, for CIRP being initiated against the Corporate Debtor, the RP filed an application for release of gold to its creditor for that Gold being part of the liquidation estate. That MA was allowed.

5. Now since MEPZ raised objection for release of it to the SBI by showing the show cause notice above mentioned, we have dealt with it. It is evident that if any penalty is to be paid over the gold imported by the Corporate Debtor, since liquidation is in progress, R2 first of all has to prove that this penalty is to be paid by the

corporate debtor, after coming to such conclusion, then it can make its claim before the liquidator as an operational debt because it is not the case of R2 that the Corporate Debtor has fraudulently obtained the property of somebody else. Therefore if any violation of procedure under Foreign Trade Development Regulation Act 1992 has committed by the corporate debtor, R2 is at liberty to proceed against suspended directors for violation of the procedure and if any penalty is to be recovered out of it, if such penalty is claimable from the corporate debtor, R2 can make its claim before the liquidator but not to hold back the liquidation estate asset of the corporate debtor which has to be distributed to the stake holders of the corporate debtor as envisaged under this Act.

6. In view thereof, for the 1st respondent having already withdrew the criminal case filed before CBI Court, the respondent shall deliver the custody of the asset to the liquidator within one week hereof and the liquidator shall take all precautions to keep the gold in the safe custody of SBI. To complete this process smoothly, the liquidator shall do paper work in compliance with law. At the

time of delivery of this gold to SBI by the CBI, Bank of Baroda, Punjab National Bank, Standard Chartered Bank, Industrial development Bank of India (IDBI) and Central Bank of India shall be present at the time of handing over this gold by CBI to SBI in the presence of Resolution Professional.

7. Accordingly, this MA/645/2019 is hereby disposed of.

-Sd-

(S. VIJAYARAGHAVAN)
Member (Technical)

-Sd-

(B. S.V. PRAKASH KUMAR)
Member (Judicial)

KNP/TJS