

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1970 of 2024
& I.A. No. 7346 of 2024

IN THE MATTER OF:

Punjab National Bank

...Appellant

Versus

**West Bengal State Electricity Distribution
Company Ltd. & Ors.**

...Respondents

Present:

For Appellant : Present but appearance not marked.

For Respondents : Mr. Kunal Chatterji, Advocate.

O R D E R
(Hybrid Mode)

04.12.2024: Heard learned counsel for the Appellant as well as Shri Kunal Chatterji, learned counsel appearing for Respondent. This appeal has been filed against order dated 24.07.2024 passed by the Adjudicating Authority in IA No.699/KB/2023. The IA was filed by the Respondent herein for following reliefs:

“(a) Direct the respondent bank to forthwith release payment of the amount of the Bank Guarantee bearing no. 0089ILG005612 for the sum of Rs. 3,00,00,000/- Rupees Three Crore only] in favour of the applicant, within a particular time frame;

(b) Direct the respondent no. 4 his no objection to the payment of the Bank Guarantee amount in favour of the applicant:

(c) Costs and incidental expenses incurred by the applicant to be borne by the respondent bank;

Cont'd.../

(d) Such further or other order or orders be made and/or direction or directions be given as to this Hon'ble Tribunal may deem fit and proper.”

2. Bank guarantee amounting to Rs.3 Crores was issued to the Corporate Debtor. The bank guarantee was invoked and the Adjudicating Authority by the impugned order has held that the Applicant is right in invoking the bank guarantee and Respondent may not come in the way of invoking the same. In para 24 of the judgment, the Adjudicating Authority held following:

“24. In view of the law laid down above, we are of the view that the applicant has the right to invoke such Bank Guarantee of Rs.3,00,00,000/- and the Respondents should not come in the way of invoking the same. It shall not amount to dual claim as the amount recovered by invoking such Bank Guarantee can be adjusted and the admitted claim shall be revised accordingly.”

3. Learned counsel for the Appellant challenging the order submits that invocation would have adverse effect on the claim of the Financial Creditor which has to be received under the waterfall mechanism under Section 53 of the IBC and the invocation of the bank guarantee shall put additional financial burden on the Appellant. It is submitted that the Respondent has filed claim in the CIRP, hence, they have no right to invoke the bank guarantee.

4. Learned counsel for the Respondent submits that even the IRP while admitting the claim has intimated on 22.12.2022 that in case any amount is

received by bank guarantee, the same may be informed to the IRP to revise the claim.

5. We have considered the submissions of learned counsel for the parties and perused the record.

6. There is no dispute that irrevocable bank guarantee was issued by the Bank which was independent and separate contract between the parties. The Adjudicating Authority in Para 23 of the order has relied on judgment of this Tribunal in *"IDBI Bank Ltd. Vs. Indian Oil Corporation Ltd."*. Following was held in Para 23 of the order:

"23. Further in the matter of IDBI Bank Ltd. v. Indian Oil Corporation Ltd., the Hon'ble NCLAT, Delhi has held as hereunder:

10. Bank Guarantees are outside the scope of the moratorium under Section 14 of the Code and Section 3 (31) specifically excludes Performance Bank Guarantees (PBGs).

11. We also find it a fit case to place reliance on the Judgment of the Hon'ble Supreme Court in the case of U.P. Cooperative Federation Ltd. vs. Singh Consultants and Engineers Pvt. Ltd. reported in [(1988 1 SCC 174)] in which it is held as follows:

"When irrevocable and unconditional bank guarantee payable on demand without demur then, whenever such bank guarantee is sought to be encashed by the beneficiary, bank is bound to honour the bank guarantee irrespective of any dispute raised by the customer (at whose instance the guarantee was issued) against the beneficiary"

13. Having regard to the ratio of the Hon'ble Apex Court in the aforementioned Judgments, and keeping in view the provisions of the Code, we are of the considered view that an irrevocable and unconditional Bank Guarantee can be invoked even during moratorium period in view of the amended provision under Section 14 (3) (b) of the Code.”

7. It is well settled that the moratorium under Section 14 shall not come in the way of invocation of bank guarantee which is independent and separate contract. Email dated 22.12.2022, which was written by the IRP is as follows:

“Acceptance of claim

IPPL <cirp.ipppl@gmail.com> Thu, Dec 22, 2022 at 5:06 PM
To: chief Engineer Commercial <commercial.chief@gmail.com>

Good Evening sir,

I would like to inform you that the claim amount of Rs.3,20,12,379 submitted by you in the CIRP of M/s Indian Pulp & Paper Pvt. Ltd. (in CIRP) has been accepted in full i.e., accepted claim amount is Rs. 3,20,12,379 based on our verification and the supporting documents provided by you.

Please note : There has been a Bank guarantee issued to you amounting to 3.00 crore. In case any amount is recovered by you by invoking the bank guarantee, you are requested to inform us and revise your claim accordingly.

From the office of,

*Avishek Gupta
Resolution Professional
Indian Pulp & Paper Private Limited (in CIRP)”*

8. In event, the bank guarantee is invoked and any amount is received by Respondent No.1, the claim of Respondent No.1 has to be revised as intimated by the IRP by his email dated 22.12.2022. Recording the aforesaid, we are of the view that there is no error committed by the Adjudicating Authority in allowing the application filed by the Respondent herein.

9. Learned counsel for the Appellant submits that the Resolution Plan is pending consideration for approval before the Adjudicating Authority.

10. It will be open for the parties to point out order dated 24.07.2024 passed by the Adjudicating Authority in IA No.699/KB/2023. Appeal is dismissed with observations as made above.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

Archana/km