

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT 3, MUMBAI BENCH**

**IA 513/2020 in
CP(IB)-2640/2019**

Under Section 60(5) r/w Section
18(1)(f) of the Insolvency and
Bankruptcy Code, 2016

In the matter of

M/s IFFCO Tokio General
Insurance Co. Ltd
Gurgaon,
Haryana

..... Applicant

In the matter of

Rattan India Finance Pvt Ltd
Aerocity
New Delhi – 110037

**.... Petitioner/ Financial
Creditor**

V/s

M/s Cox & Kings Ltd
Mumbai – 400 023.

... Respondent/Corporate Debtor

Order delivered on : 16.12.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Nirmay Dave, Advocate.

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For the Respondent: Mr. Nirman Sharma, Advocate Resolution Professional

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. MA 513/2020 in CP-(IB)2640/2019 has been filed by M/s IFFCO Tokio General Insurance Co. Ltd seeking to treat its claim amount of about Rs.83 crore as an “Asset in Trust” under the IB Code and not as a claim of an Operational Creditor or Financial Creditor.
2. The International Air Transport Association (IATA), on behalf of its members had obtained an Insurance policy from the Applicant, M/s IFFCO Tokio for the defaults committed by its agents, one such agent being the Corporate Debtor. Due to the default committed by the Corporate Debtor, IATA submitted the Insurance claim to the Applicant for an amount of Rs.83 crore under the Insurance policy. On November 1st 2019, the Applicant made payment to IATA for its insurance claim and on the same day, vide IATA letter dated 01.11.2019 the Applicant was subrogated and empowered to recover the above mentioned amount.
3. The Applicant M/s. IFFCO Tokio relies on Clause 7.2 of the Agreement to claim the said outstanding amount of Rs.83,16,80,230/- be classified as “Asset in Trust” u/s 18(f) of the Code. Section 7.2 of the Passengers Sales Agency Agreement signed between IATA and the Corporate Debtor reads as under:-

*“7.2. all monies collected by the Agent for transportation
and ancillary services sold under the Agreement,*

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including applicable remuneration which the Agent is entitled to claim thereunder, are the property of the Carrier and must be held by the Agent in trust for the Carrier or on behalf of the Carrier until satisfactorily accounted for the Carrier and settlement made;”

4. The Applicant claims that its claim is covered in terms of Section 18(f) Explanation 1(a) of the IBC. The said Section reads as under:-

“(a) assets owned by a third party in possession of the Corporate Debtor held under trust or under contractual arrangements
....”

The contention of the Applicant is that since it is “asset in trust” it should be paid in priority immediately.

5. The Bench is of the view that mere stipulation contained in Clause 7.2 of the Agreement that all the monies collected by the Company shall be held in trust does not lead to an understanding that the money in fact is held in trust for the Carriers or IATA by the Corporate Debtor. In the event it was so, then the parties would have taken steps for formation of a separate trust and a retention account where the amounts received under the Agreement would have been held. The Applicant in that event would have obtained an NOC from the lenders of the Company who have a charge on the cash and bank balance of the Company.

The Bench notes that admittedly none of these has been done. Therefore, it is clear to the Bench that it was not the intention of the parties that the amount shall be held in trust by the Company and a mere stipulation in Clause 7.2 of the

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Agreement does not lead to an understanding that the amounts in fact will be held in trust, in the absence of any consequential safeguards to that effect. In fact, the Bench notes that Clause 7.4 of the Agreement clearly specified that in the event of the Agent become bankrupt, the debt shall become immediately due and payable.

6. The Bench here would like to refer to Clause 7.4 of the Agreement which reads as under:-

“In the event that the Agent becomes the subject of bankruptcy proceedings is placed in receivership or judicial administration, goes into liquidation or becomes subject to a similar legal process affecting the normal operation of the Agent, then notwithstanding the normal remittance procedures under this Agreement, all monies due to the Carrier or held on behalf of the Carrier in connection with this Agreement shall become immediately due and payable.”

The Bench notes that Clause 7.4 at best provide for acceleration of claim in the event of default. The Corporate Debtor being Agent under the Agreement is undergoing CIRP. As a consequence of which, all the monies due to IATA Trust/ Carriers as per Clause 7.2 of the Agreement has become immediately due and payable from the Insolvency commencement date. Therefore, the Bench is of the view that the Applicant's claim of approximately Rs. 83 crores qualifies as a debt u/s 3(11) of the Code which reads as under:-

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*“3(11) “debt” means a liability or obligation in respect
of claim which is due from any person and
includes a financial debt and operational debt;”*

Further, since the purpose of the Agreement was to provide Air Passenger Transport on the services of the Carriers of IATA as per Clause 3.1 of the Agreement, the claim of IFFCO Tokio would come under Section 5(21) of the Code which defines Operational Debt as “a claim in respect of the provisions of goods or services”

7. The Bench also notes that the Applicant, i.e. IFFCO Tokio, has already filed its claim as an Operational Creditor. The essence of the underlying Agreement was to provide air services and, therefore, subsequent to commencement of Corporate Insolvency Resolution Process, as per Clause 7.2 of the Agreement, the monies owed to the Carrier has become an ‘Operational debt’ under Section 5(21) of the Code.
8. In view of the above, the Bench ‘rejects’ the claim of the Applicant that money due from the Corporate Debtor is held as an asset held in trust u/s 18(f) of the Code. Therefore, this Application deserves to be dismissed.
9. **IA 513/2020** in CP(IB)-2640/2019 is “**dismissed**” accordingly.

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
H V Subba Rao
Member (Judicial)