

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

**I.A. No. 1273/(ND)/2021
Connected with IB-376/(ND)/2020**

Application under Section 60(5) of Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016.

In the matter of:

STATE BANK OF INDIA

...Financial Creditor

versus

M/s WORLD WINDOW IMPEX PVT. LTD.

...Corporate Debtor

M/s World Window Impex

Registered Office at:
75, Khirki Village, Malviya Nagar,
New Delhi- 110017

...Applicant

versus

State Bank of India

Local Head Office at:
1st Floor, B- Block, 11,
Sansad Marg, Janpath,
New Delhi- 110001

... Respondent

Coram:

SH. P.S.N. PRASAD, Hon'ble Member (Judicial)

SH. HEMANT KUMAR SARANGI, Hon'ble Member (Technical)

I.A. No. 1273 of 2021
Connected with IB no. 376(ND) of 2020
State Bank of India v. M/s World Window Impex Pvt. Ltd.



Counsel for Applicant: Mr. Virender Ganda, Senior Advocate, Mr. Prashant Mehta, Mr. Shagun Singh, Mr. Vishal Ganda, Mr. Anand Singh Sengar and Ms. Anushka Sarker, Advocates

Counsel for Respondent: Mr. Ajay Gaggar, Mr. Robin Singh Sirohi and Mr. Uttiyo Mallick, Advocates

ORDER

Per SH. P.S.N. PRASAD, MEMBER (JUDICIAL)

Date: 27.07.2021

1. This is an application filed by the Applicant seeking to direct the State Bank of India (Financial Creditor/Respondent) to not to take over the possession of the said premises and not to take any coercive action during the pendency of this petition. The details of transactions leading to the filing of this application as averred by the Applicant (Corporate Debtor) are as follows:

- i. That the main matter i.e., IB NO. 376 /(ND)/2020 is pending adjudication before this Hon'ble Tribunal. The matter was taken up on 01.03.2021 and the matter is further posted on 11.03.2021.



2



ii. That the Applicant has received notice from the Karan Kaushal dated 20.02.2021 informing the applicant as follows:

" Please be informed that the undersigned has been appointed by the learned CMM Saket Courts, Delhi as court receiver vide order dated 10/08/2020 in State Bank of India vs M/S World Window Impex India Pvt. Ltd and others, and fresh order dated 18.02.2021 issuing extention of compliance period in respect to previous order passed under sections of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, to take over physical possession of : "Current assets including stocks, book debts, receivable, consumable store, spare and hypothecated moveable plant and machinery etc., of the company which are kept/lying in the premises of the mortgaged properties, offices and godown and EM of commercial property at E-403, Phase II, Okhla Industrial Area, New Delhi, in the name of Vastustar Trading Pvt. Ltd.



As per the aforesaid order, you are hereby given 21 days' time to remove your article from the said property and hand over the possession to the Receiver/ undersigned.

I hereby also inform you that as per the above order, the undersigned has been empowered to break open the locks for the purpose of taking over possession in case the above said property is found locked. Any goods lying in the said premises shall be kept inside after preparing an inventory. Thereafter the property will be sealed and keys of the same along with the broken locks will be handed over to the Authorized Officer of the bank.

Please note that the undersigned shall take over possession of the above-mentioned property on 26.03.2021 along with local Police as per order. In case there is any order or stay from the DRT, you are required to provide a copy of the same to the undersigned."

- iii. The applicant submitted that the notice sent by the court through appointed receiver to shut down the operation of

 4

the Applicant/Corporate Debtor will completely make any proposed CIRP absolutely futile.

- iv. The applicant further submitted that the purpose of the present proceedings is to keep the company as a going concern and secondly to ensure that the corporate insolvency resolution process of the Corporate Debtor is successful.
- v. That in case the court appointed receiver takes over the possession of the Head Office it will completely shut down the operations of the Applicant/Corporate Debtor making it an impossibility to have any corporate insolvency resolution process and to keep the company as a going concern.
- vi. The applicant further submitted that once a Financial Creditor is exercising its right under Insolvency and Bankruptcy Code, 2016 and simultaneous exercise right under Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 would be defeating the purpose of Insolvency and



Bankruptcy Code and making the petition completely futile.

2. We have gone through the application as well as the arguments advanced by the learned counsels for the parties.

Section 238 of the IBC, 2016 is as follows:

238. The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

It is settled law that section 238 shall prevail over any provisions of the SARFAESI Act, if there is any inconsistency between IBC, 2016 and SARFAESI Act.

3. The fact that the main petition filed under section 7 of the IBC, 2016 has not been admitted yet and no moratorium as per section 14 of IBC, 2016 has been imposed on the Corporate Debtor thus, the financial creditor has all the rights to institute or continue with the proceedings under the SARFAESI Act, 2002 when the proceedings under the IBC, 2016 are pending for adjudication.

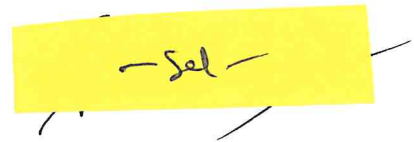


4. Thus, in light of the above, after giving careful consideration of the entire matter we have no option but to reject the prayer of the Applicant.

5. Accordingly, we hereby **Dismiss** the present application.



(SH. HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)



(SH. P.S.N. PRASAD)
MEMBER (JUDICIAL)

RDS