

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL), COURT NO. I
KOLKATA**

I.A. (IB) No. 501/KB/2022
And
I.A. (IB) No. 500/KB/2022
In
C.P. (IB) No. 595/KB/2017

IN THE MATTER OF:

Allahabad Bank	Verses	... Financial Creditor.
SPS Steels Rolling Mills Limited		... Corporate Debtor.

AND

I.A. (IB) No. 501/KB/2022

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

IN THE MATTER OF:

SPS Steels Rolling Mills Limited		... Applicant.
	Verses	
Indian Overseas Bank		... Respondent No. 1.
	And	
Assistant Commissioner of Customs		... Respondent No. 2.
	And	
Director general of Foreign Trade		... Respondent No. 3.

AND

I.A. (IB) No. 500/KB/2022

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

IN THE MATTER OF:

SPS Steels Rolling Mills Limited		... Applicant.
	Verses	
Central Bank of India		... Respondent.

Date of Pronouncement: December 21, 2023.

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CORAM:

**SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)
SHRI D. ARVIND, MEMBER (TECHNICAL)**

APPEARANCE:

**For Customs Authority in Company Petition: Mr. Abhradip Maity, Adv. and
Mr. Vipul Kundalia, Adv.**

For Successful Resolution Applicant: Ms. Sinthia Bala, Adv.

**For Respondent: Mr. Devajyoti Barman, Adv. and Mr. Sudhir Kumar Senapati,
Adv.**

COMMON ORDER

Per: D. Arvind, Member (Technical)

1. The Court is congregated through hybrid mode.
2. Heard the Ld. Counsels appeared.

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Brief facts of the case:

3. This application has been preferred by the Successful Resolution Applicant of the Corporate Debtor (in short “SRA”). The applicant is Successful Resolution Applicant in respect of Insolvency resolution of the Corporate Debtor SPS Steels Rolling Mills Limited and by an order dated 8th April, 2019 the NCLT, Kolkata

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Bench in C.A. (IB) No. 871/KB/2018 (arising out of C.P. (IB) 595/KB/2017) approved the resolution plan.

4. Pursuant to the Resolution Plan, payments were made to the creditors, and the Applicant took over the management of the Corporate Debtor.
5. Around March, 2020, the Applicant came to know about certain Fixed Deposit Receipts (in short “FDRs”) lying in the name of the corporate debtor with the respondent Indian Overseas Bank.
6. The Applicant states that said FDRs might have been deposited by the Corporate Debtor with the respondent Bank as margin against issuance of Bank Guarantees in favour of statutory authorities at the instance of the corporate debtor in connection with the business operations.
7. It is the submission of the Applicant that said Bank Guarantees were issued before for commencement of the Corporate Insolvency Resolution Process (in short “CIRP”). The Applicant submits that all such Bank guarantees have expired and hence requested that said FDRs may be liquated and the corresponding amount with commercial interest may be returned to the corporate debtor which is now under the management and control of the SRA.
8. It is the submission of the Applicant that in view of the implementation of resolution plan and payment of dues to the Creditors as per the Plan by the Applicant, the amount representing the FDRs should be returned to the corporate debtor owned now by the SRA. For this purpose, SRA has been writing letters to the Respondent Bank.
9. In response to the letters of the Applicant, the respondent Bank replied demanding the return of original Bank Guarantees furnished against such FDRs to consider returning the amount.
10. In response to the letter of the Respondent Bank, the Applicant pointed out that the originals of the said Bank Guarantees were directly furnished by the Respondent Bank in favour of the beneficiaries thereof. In any event, the said

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Bank Guarantees have already expired, and therefore, the return original Bank Guarantees to the respondent Bank will not be material to the return of amounts lying credit in the FDRs placed with the Bank.

11. Copies of the letters exchanged between the Applicant and the respondent are in Annexures B, C, D and E of the application.
12. After prolonged correspondence between the parties, the respondent Bank paid partial proceeds in favour of the Applicant's CD to the extent of Rs. 79,24,041/- out of the total amount of FDR worth Rs. 1,30,00,000/-.
13. However, as per the Applicant the balance amount is yet to be paid as on the date of filing this application and approximately of Rs. 50,00,000/- is liable to be paid to the Applicant along with commercial interest till the date of payment.

Submission of the Ld. Counsel for the Applicant:

14. The Applicant submitted that the respondent Bank has not made payment of the balance of amount lying in the form of Fixed Deposit under the pretext that original Bank Guarantees have not been returned by the beneficiaries of the Corporate Debtor. Beneficiaries of such BGs are Customs department and DGFT. It is the submission of the Ld. Counsel that BGs issued by the respondent Bank have expired, even before commencement of CIRP without invocation and therefore, the balance amount should be returned forthwith with commercial interest.

Submission of the Ld. Counsel for the Respondent:

15. Ld. Counsel for the respondent submits that they are not in a position to return the balance amount due to non-cancelation of original BGs issued on behalf of CD to the beneficiaries who are statutory authorities. He further submits that return of the balance amount would result in unjust enrichment for SRA when SRA has paid all the lenders including the Applicant with significant "haircuts".

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Analysis and Findings of this Adjudicating Authority:

16. We have heard both the Ld. Counsels and gone through the records submitted along with the application and the replies.
17. On a query from the Bench, both the counsels confirmed that Fixed Deposit Receipts were not forming part of information memorandum as “assets”.
18. In fact, in para (iv) of the facts of the case made in the application, it has been confirmed that the applicant was not provided with the details of the said FDRs by the Resolution Professional and consequently it was not in the information memorandum as “assets” of the Corporate Debtor.
19. When it was pointed out by the Bench that, had this FDR been included as assets in the information memorandum, the resolution plan value would have been higher to that extent and, consequently, the creditors of the Corporate Debtor would have been paid accordingly to which the Ld. Counsel for the Applicant agreed.
20. So, in the absence of FDR details, based on the assets and liabilities mentioned in information memorandum of the Corporate Debtor, resolution plan was submitted and the Applicant becomes successful resolution applicant and the plan value along with distribution of such plan value was approved by the Adjudicating Authority.
21. It is not the case of the respondent Bank that they have not made full claim of their dues before Resolution professional to be placed before the CoC.
22. In other words, the respondent Bank did not adjust the amount available with them in the form of Fixed Deposits against their dues while making their claim during CIRP.
23. If the information memorandum contained the details of FDR, the resolution plan would have been enhanced and accordingly all the creditors of the Corporate Debtor would have been paid, on the basis of enhanced value.

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24. We have gone through the resolution plan approved by the NCLT, Kolkata Bench and in the plan, there is no scope for the SRA to realise any extra amount on account of such deposits or for that matter any other amount apart from whatever is there as assets is in the information memorandum.
25. Therefore, we are of the view that the Corporate Debtor which is now under the control of SRA is not entitled to get the proceeds of the Fixed Deposits lying with the Respondent Bank. In fact, whatever amount they have already received to the tune of Rs. 79,24,041/- will have to be refunded by them along with rate of Interest applicable to the FDR. Once the matter is be placed before the erstwhile members of the CoC of Corporate Debtor, and the distribution of this amount is decided by them in the CoC meeting which will include the respondent Bank as well, the amount so refunded will have to be distributed, as per the commercial wisdom of the Committee of Creditors.
26. The Respondent Bank have made full claim of their dues before Resolution Professional during CIRP without adjusting the Fixed deposits amounts lying with them and their claims were settled as per the Resolution plan. Therefore, even the Respondent Bank is not entitled to retain the balance amount and will have to refund it along with rate of Interest applicable to the FDR, once the matter is be placed before the erstwhile members of the CoC of Corporate Debtor, and the distribution of this amount is decided by them in the CoC meeting which will include the respondent Bank as well.
27. In view of the above, this application being **I.A. (IB) No. 501/KB /2022** filed by the applicant is **dismissed** with above directions.
28. The distribution of the amount representing FDR as indicated above may be carried out within 3 months from the date of this order.
29. The Affidavit of Compliance shall be filed within seven (7) days upon the distribution of the amount with the Registry of this Adjudicating Authority. The Registry is directed to consign the Affidavit of Compliance to the record.

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30. This instant application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with other provisions of laws by the SRA in respect of the Corporate Debtor seeking the following direction upon the Respondent Bank (Central Bank of India) to credit the proceeds of the FDR along with the commercial interest accrued thereon up to the date of actual payment at Commercial rates in favour of the applicant, which have been purported illegally adjusted towards the purported settlement of the dues of the Bank, post implementation of the Resolution Plan; in utter violation of the provisions of IBC and Regulation of CIRP and Order dated 08.04.2019 of this Adjudicating Authority.
31. The Ld. Counsel for the Applicant taken a plea in favour of its reliefs sought for that the respondent bank has illegally and deliberately adjusted the proceeds of the FDR lying at credit with the same, towards adjustment of dues, post implementation of the Resolution Plan, for its wrongful gains violating all norms and guidelines of IBC, 2016, CIRP and the order of this Adjudicating authority.
32. We find that the respondent bank has adjusted the Fixed Deposit against the dues payable by the Corporate Debtor as on 26.06.2019, i.e., after the implementation of the resolution plan of the applicant has approved by the Committee of Creditors, one of the members being the respondent bank itself.
33. The Respondent bank has not only made full claims before the resolution professional but also adjusted the FDRs against the settlement of dues payable by the Corporate Debtor.
34. We are of the view that once a resolution plan is approved by the Adjudicating Authority under Section 31(1) of the I&B, Code the claims as provided in the approved resolution plan shall stand frozen and will be binding on all the stakeholders having interest. We rely upon the judgement passed by the Hon'ble

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Apex Court in *Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited* reported in (2021) 9 SCC 657: MANU/SC/0273/2021 that:

*“95. In the result, we answer the questions framed by us as under:
(i) That once a resolution plan is duly approved by the Adjudicating Authority Under Sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;
(ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;
(iii) Consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval Under Section 31 could be continued.”*

(Emphasis Added)

35. In view of above finding, we direct the respondent bank to refund along with rate of interest applicable to the FDR and the refund may be made, once the matter is placed before the erstwhile member of the CoC of the Corporate Debtor and the distribution of this amount is decided by them in the CoC meeting which may include the Respondent, herein as well.
36. In terms of view of the above, we **dismiss** this application being **I.A. (IB) No. 500/KB/2022.**

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37. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 21th Day of December, 2023.

Bose, R. K. [LRA]
Abhishek_Steno