

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 218
(IB)-2240(ND)2019
CA-06/2024

IN THE MATTER OF:

M/s. Hi Tech Resource Management Limited ... Applicant/Petitioner

Versus

M/s. Overnite Express Limited ... Respondent

Under Section: 7 of IBC, 2016 (Liq.)

Order delivered on 15.05.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH
HON'BLE MEMBER (T)

PRESENT:

For the Applicant :

For the Respondent :

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

CA-06/2024: The prayer made in the captioned appeal reads thus:

- “a) Allow the present appeal.*
- b) Quash the Impugned Decision dated 09.01.2024 issued by the Respondent.*
- c) Direct the Respondent to realize the Secured Asset/Mortgage Property to the Appellant.*
- d) Direct the Respondent to not proceed with the sale the Secured Asset/Mortgaged Property till the disposal of the present Appeal.*
- e) Allow the Appellant to pay the liquidation cost or any other cost, if at all payable by the Appellant after final decision in the present Appeal.*
- f) Allow the Appellant 90 (ninety) days to make the payment of dues as per the Regulation 21 (A)(2) of IBBI (Liquidation Process) Regulations, 2016 from the date of realizing of the secured asset/Mortgaged Asset by the Respondent.”*

As can be seen from the impugned decision dated 09.01.2024 communicated to the Appellant, by the Liquidator, the issue involved in the matter is regarding realisation of the security pledged with the Appellant and its liability towards the CIRP/liquidation cost as also the entitlement of the stakeholders

in terms of the provisions of Section 53(1) of IBC, 2016 i.e. claim of EPFO and the gratuity of the workman.

The Ld. Counsels for the parties are ad idem that the Appellant would pay an amount of Rs. 1,07,00,000/- (Rupees one crores seven lakhs only) to the Liquidator within 60 days and in turn, the Liquidator would hand over the physical possession of the secured/mortgage assets referred to in para 5 of the application, immediately a payment of said amount. Para 5 of the application reads thus:

5. It is submitted that the brief facts leading of filing the present Appeal are as under:-

- i) It is submitted that the Appellant Bank is the Secured Financial Creditor of the Corporate Debtor. The Corporate Debtor had availed various Loan Facilities from the Appellant Bank. Out the said facilities, the Corporate Debtor has availed one Loan against Property to the tune of Rs.6,00,00,000/- (Rupees Six Crores only) from the Appellant Bank.
- ii) In order to secure the said loan, the Corporate Debtor had created an equitable mortgage of the property bearing Plot No.4/25, First, Shanti Niketan, New Delhi – 110021 in favour of the Appellant Bank (hereinafter referred as the “**Mortgage Property**”).
- iii) It is submitted that this Hon’ble Tribunal vide Order dated 02.03.2020 appointed the Interim Resolution Professional and *inter-aila* directed Moratorium in terms of Section 14 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the “**Code**”). Copy of Order dated 02.03.2020 passed by this Hon’ble Tribunal is annexed herewith and marked as **ANNEXURE-A4**.
- iv) Accordingly, the Resolution Professional (hereinafter referred to as “**RP**”) invited the Claims and on 26.10.2021 the Appellant Bank filed its claim before the RP. It is submitted that the RP who is hand in gloves with the suspended Board of Directors of the Corporate Debtor rejected the claim of the Appellant Bank by wrongly recording that there was a delay of 603 days in filing the Claim by the Appellant Bank.



- v) Aggrieved by the same, the Appellant Bank approached this Hon'ble Tribunal by filing an Application i.e. I.A. No.1552 of 2021 seeking directions to the RP to admit the Claim of Appellant Bank. It is submitted that vide Order dated 21.12.2022, this Hon'ble Tribunal allowed the said Application and directed the RP to consider the Claim of the Appellant Bank. Copy of Order dated 21.12.2022 passed by this Hon'ble Tribunal is annexed herein and marked as ANNEXURE-A5.
- vi) As per the directions of this Hon'ble Tribunal, the Appellant Bank has filed the revised Claim before the RP. Copy of the Claim filed by the Appellant is annexed herein and marked as ANNEXURE-A6. It is submitted that the RP had admitted the Claim of the Appellant Bank for an amount of Rs.6,00,26,716.30/- (*Rupees Six Crores Twenty Six Thousand Seven Hundred Sixteen and Thirty Paise only*) against the Corporate Debtor and had apprised this Hon'ble Tribunal by filing an Additional Affidavit. A copy of the Additional Affidavit filed by the RP before this Hon'ble Tribunal is annexed herein and marked as ANNEXURE-A7.
- vii) It is pertinent to mention that as per the directions of the Hon'ble Tribunal has directed the RP to consider the claim of the Appellant herein. Despite the said fact, RP has not prepared or filed any addendum to the Resolution Plan while including the Claim of the Appellant and other Creditors, even after admitting the Appellant's as a Secured Financial Creditor. It is further submitted that the RP has not bothered to take steps to include the Appellants

for the meeting of the COC after admitting the claim of the Appellant.

- viii) That the RP filed IA no. 1175 of 2022 before this Hon'ble Tribunal seeking approval of the Resolution Plan submitted by Mr. Om Prakash Rajgharia who is a member of Suspended Board of Directors. It was submitted by the RP that the Corporate Debtor was registered as an MSME on 12.11.2021 which allows a member of suspended Board of Directors to submit Resolution Plan.
- ix) The Appellant Bank filed an Application i.e. IA No. 3846 of 2023 before this Hon'ble Tribunal for rejection of the Resolution Plan of the Corporate Debtor proposed by the Member of Suspended Board of the Corporate Debtor and also requested the Hon'ble Tribunal to direct the liquidation process to be started against the Corporate Debtor.
- x) It is relevant to point out that this Hon'ble Tribunal vide its order dated 18.09.2023 allowed the objections/ Application of the Appellant and rejected the Application of the RP for approval of the Resolution Plan. This Hon'ble Tribunal further directed the liquidation of the Corporate Debtor and appointed Mr. Tarun Jain as the Liquidator of the Corporate Debtor to carry on the liquidation process as per the relevant provision of the IBC, 2016. Copy of the Order dated 18.09.2023 passed this Hon'ble Tribunal is annexed herein and marked as ANNEXURE-A8.

- xi) It is submitted that the Respondent herein issued a public announcement dated 23.09.2023 inviting claims against the Corporate Debtor wherein the last date of submission of the Claims to the Respondent was on 18.10.2023. Copy of the public announcement dated 23.09.2023 issued by the Respondent is annexed and marked as ANNEXURE-A9.
- xii) On 18.10.2023, the Appellant Bank submitted its Claim before the Respondent for Rs.8,78,84,313.44/- (*Rupees Eight Crores Seventy Eight Lacs Eighty Four Thousand Three Hundred Thirteen and Forty four Paise only*) wherein, the Appellant also informed the Respondent its decision not to relinquish its Security Asset/ Mortgage Property. Copy of Claim i.e. Form D dated 18.10.2023 submitted by the Appellant is marked and annexed as ANNEXURE-A10.
- xiii) On 04.12.2023, the Respondent herein responded to the Claim of the Appellant and communicating the Impugned Decision taken under Section 40, Section 52 of the Insolvency & Bankruptcy Code, 2016 read with IBBI (liquidation Process) Regulations, 2016.
- xiv) As stated above, upon receipt of the said Communication, the Appellant sought oral clarification from the Respondent with regards to the amount of expenses claimed by the Respondent in the said Communication. On 14.12.2023, the Respondent and the officials of the Appellant Bank scheduled a conference call to discuss the matter. In the conference call held on 14.12.2023, the

Respondent informed that the Secured Asset belonging to the Appellant is the sole Secured Asset of the Corporate Debtor. The Appellant requested the Respondent to share all the information, documents pertaining to such claim by the Respondent for the Appellant to make its informed decision as soon as possible.

xv) Since, the Appellant has not received any response from the Respondent as discussed during the conference call, therefore, on 16.12.2023, the Appellant vide its Letter raised objections to the Decision dated 04.12.2023 and the same was duly communicated to the Respondent. By way of said Letter/ Objections, the Appellant objected to the Respondent's unreasonable demand for realize of the Secured Asset/ Mortgage Property of the Appellant Bank. It is submitted that vide the said Letter/ Objections, the Appellant requested the Respondent to share the following documents/ information to secure the interest of the Appellant Bank being the largest Secured Financial Creditor:-

- a) Claims filed by the workmen claiming Provident Fund and Gratuity;
- b) All minutes of the Meetings of the CoC (as per the Rules, the same must have been handed over to you by the RP) held till date including the voting results and the remuneration decided with respect to the RP/Liquidator;
- c) Details of other assets of the Corporate Debtor;
- d) Documents showing expenses incurred as CIRP/Liquidation costs;
- e) Provide transaction/ Forensic audit reports of the Corporate Debtor;
- f) Details of the Gratuity/PF Fund created by the Corporate Debtor, if any;
- g) Pro-rata share of remaining 2 Financial Creditors

- xvi) It is relevant to mention that after expiry of more than 20 days, the Respondent communicated to the objections of the Appellant through Impugned Decision. Vide the Impugned Decision, the Respondent disposed off the objections of the Appellant in a mechanical manner and has also failed to provide the necessary documents/ information sought by the Appellant in its objection letter. The Respondent also failed to release the Secured Asset/ Mortgage Property to the Appellant. It is also pertinent to mention that the Impugned Decision also informs the Appellant that since the Appellant has failed to deposit the liquidation costs of Rs.1,07,09,145/- under Regulation 21A(2) of IBBI (Liquidation Process) Regulations, 2016 within a period of 90 days from liquidation commencement date i.e. by 18.12.2023 as communicated by the Respondent in its Decision dated 04.12.2023, the Secured Asset/ Mortgaged Property now forms a part of the Liquidation estate.
- xvii) It is submitted that the Respondent only communicated their decision on 04.12.2023, after expiry of more than 35 days from the date of submission of the Claim of the Appellant. Pursuant to the same, the Appellant was in regular communication with the Respondent with regards to the disagreement over the amount claimed by the Respondent. As mentioned above, the Respondent and the officials of the Appellants discussed doubts in the Decision dated 04.12.2023. However, the liquidation costs and CIRP costs being massive amounts can only be paid after the sale of mortgaged property of the Corporate Debtor.

It is also agreed between the parties that the payment of balance amount i.e. payable in terms of the provisions of Regulation 21A of IBBI (Liquidation Process) Regulations, 2016 i.e qua gratuity and provident fund would be paid by the Appellant viz. Rs. 4,20,16,948/- towards gratuity of Rs. 1,02,54,531/- towards provident fund, as and when the secured assets/properties to be

handed over by the Liquidator to the Appellant on payment of CIRP cost and the sale proceeds are received by the Appellant.

The CA stands disposed of.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)