SL. No.1

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ – HON'BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON'BLE MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH, HELD ON 06.01.2025 at 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	**IA(IBC)/1384/2023 in CP (IB) No. 10/7/HDB/2017**
NAME OF THE COMPANY	**Kadevi Industries Limited**
NAME OF THE PETITIONER(S)	**Indian Bank**
NAME OF THE RESPONDENT(S)	**Kadevi Industries Limited**
UNDER SECTION	**7 of IBC**

ORDER

IA(IBC)/1384/2023

Orders pronounced, recorded vide separate sheets. In the result, this application is dismissed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

Vamsi

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

IA No.1384 of 2023 in
CP(IB) No.10/07/HDB/2017

In the matter of:

INDIAN BANK, FINANCIAL CREDITOR
vs
M/S KADEVI INDUSTRIES LIMITED, CORPORATE DEBTOR

Between:

CS Dr Ahalada Rao Vummenthala,
Liquidator of
M/s Kadevi Industries Limited.

….Applicant

And

The Branch Manager,
Axis Bank, AS Rao Nagar,
Hyderabad.

….Respondent

Date of order : 06.01.2025

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel present:

For the Applicant	:	Mr D Gopala Krishna CS Dr Ahalada Rao Vummenthala, Liquidator
For the Respondent	:	Mr VVSN Raju

Per : Sanjay Puri, Member (Technical)

O R D E R

1. This application seeks to direct the Respondent Bank to deposit the funds towards Fixed Deposits of the Corporate Debtor (**CD**) with accrued interest, into the Liquidation Account.

Application

2. It is submitted that, the main CP was admitted into CIRP[1] vide this Tribunal order dated 23.02.2018, and in the subsequent proceedings, the Applicant was appointed as Liquidator on 31.03.2022.

3. On verification of the records, the Applicant came to know that the CD was having the Fixed Deposits in the Respondent Bank worth Rs 69,305, Rs 1,97,53,689 and Rs 41,81,056. In this respect, the Applicant requested the Respondent Bank through various letters to transfer the total amount of Fixed Deposits of Rs 2,40,04,050 along with accrued interest to the liquidation account. But the Respondent Bank has not transferred the said Fixed Deposits to the liquidation account on the pretext that, the said Fixed Deposits were attached with the Maharashtra Sales Tax Department, Income Tax Department and Customs & Central Excise Departments. Hence, this application.

Reply

4. It is stated that, despite being aware of the settled legal position, the present application is filed based on irrelevant, unsustainable and unreasonable grounds. It is further asserted, that the Respondent

[1] Corporate Insolvency Resolution Process

vide letter[2] dated 05.08.2023 informed the Applicant regarding attachment of amounts of the CD by the IT Department, and requested the Applicant to obtain statutory orders, to enable the Respondent to lift the lien on the said amounts. Nevertheless, the Applicant without obtaining any orders from the statutory authorities, filed the instant Application, which is liable to be dismissed at the threshold.

5. It is stated that, the CD's Current Account bearing No.427010200010496 with the Respondent Bank, has a balance of Rs 18,61,866.11 paise. It is averred that, the Respondent had received a garnishee order under Section 226(3) of the Income Tax Act, 1961 from the Office of the Dy Commissioner of Income Tax vide Notice[3] dated 16.06.2016 for an amount of Rs 1,97,53,689, and Clause 4 of the said Notice states that, if the Respondent disburses any amount to the CD after receipt of the said Notice, the Respondent shall become liable to the extent of amounts disbursed. Therefore, the balances available in the said bank account of the CD, cannot be released without lifting the orders issued by the Income Tax Department.

6. It is further asserted that, upon receipt of Notice dated 15.09.2016 from the Office of the Assistant Commissioner of Customs & Central Excise for recovery of tax arrears of Rs 41,31,055, and a Notice dated 09.01.2018 from Sales Tax Officer, Maharashtra Sales Department towards tax arrears of Rs 59,305, the Respondent marked lien on the said Bank account of the CD as per the banking practice.

[2] Page 5 of the Counter
[3] Pages 7 to 13 of the Counter (all statutory notices)

7. Further, it is submitted that the said Notices were issued much prior to the admission of the CD into CIRP, and the amounts were not accessible to the CD even before the commencement of the CD into CIRP and consequently, the said amounts do not form part of the Liquidation estate and cannot be transferred to the Liquidation estate of the CD.

8. It is asserted that, the erstwhile Liquidator of the CD filed an IA No. 794 of 2021 before this Tribunal for similar reliefs, and this Tribunal adjudicated on merits and disposed of vide order[4] dated 25.06.2024 wherein held that;

> "The Current Account balance of Rs. 38,73,342 in Axis Bank was subjected to a Garnishee order by the Income Tax Department under section 226(3) of the Income Tax Act before the CIRP date. Since this amount was to be paid to the Income Tax Department against the pending tax arrears of the CD, the ownership of these funds by the CD ceased on the date prior to the CIRP. Therefore, this amount does not form part of the liquidation estate and cannot be transferred to the liquidation account of the CD."

The said provision was substantiated by the Hon'ble Supreme Court in the matter of **Daryao and Others vs The State of U. P. and Others,** and **Swamy Atmananda Ors. V. Sri Ramakrishna Tapovanam and Ors.**

9. Therefore, it is claimed that the present Application is hit by Res-judicata as per Section 11 of the Civil Procedure Code 1908, and in view of the above legal position, the said amounts/balances available in the bank account of the CD cannot form part of the liquidation estate or be transferred to the liquidation account of the CD and the instant Application is liable to be rejected.

[4] Pages 14 to 24 of the Counter

Rejoinder

10. It is averred that, a perusal of the Notices of the Statutory Authorities clearly show that the said Departments directed the bank to remit/pay the amounts mentioned in the Notices forthwith, but not requested the bank to mark a lien. Further stated that, as on the date of admission of the CD into CIRP, the bank has not remitted the amount to the concerned Departments, and as such the bank is expected to remit the said amount to the liquidation account.

11. It is asserted that, the facts raised in this IA and in IA 794 of 2021 are different. Further, there is no bar to take a different stand from the earlier judgment by the same court if it is satisfied about the various points raised in the latest case and the parties satisfies the legal position.

12. With the above submissions, the Applicant once again prays this Tribunal to allow the present application as prayed for.

Decision

13. We have heard both parties and gone through their pleadings. In his application, the Liquidator states that "The records show that a sum of Rs 69,305 and a sum of Rs 1,97,53,689 and Rs 41,81,056 are standing in the name of the Corporate Debtor and the said deposits with the respondent bank", but does not identify the records he is referring to. In one of the emails[5], attached with the application, only two accounts of the CD are reported by the Respondent Bank. These are:

[5] Email dated 29.08.2022 at page 14 of the application

Account No.916026020009277263 with a balance of Rs 1000, and Account No.427010200010496 with a balance of Rs 1861866.11.

14. Against account No.427010200010496, the Respondent had received Notice[6] dated 16.06.2016 from the Income Tax Department for recovery of Rs 1,97,53,689. Against the same account, another Notice[7] dated 15.09.2016 was received by the Respondent from the Customs and Central Excise Department for recovery of Rs 41,31,055. Yet another recovery Notice[8] was served upon the Respondent on 18.01.2018 by the Sales Tax Officer, Pune for the same account for a sum of Rs 59,305.

15. The Applicant Liquidator seems to have assumed the amounts mentioned on the Notices by different Tax Authorities to be the amounts kept as "deposits with the respondent bank". The actual amount lying with the bank is only Rs 18,61,866 in one account and Rs 1000 in another.

16. As we have already held in another IA No.794 of 2021 that

> "Before CIRP, if the Respondent Axis Bank was holding any amount of money of CD in any Account and the tax demand specified in the Notice under Section 226(3) was more than that amount, the entire amount held by the Bank was required to be paid to the Income Tax Department. The ownership of the CD on such amount would cease to exist, once the Notice under Section 226(3) was served upon the Bank which was holding that money on behalf of the CD."

17. In the present instance, the account having a balance of Rs 18,61,866 was under the garnishee orders of much larger amounts

[6] under Section 226(3) of Income Tax Act 1961 at Page 7 of the Counter
[7] under Section 11(2) of Central Excise Act 1944 at Page 8 of the Counter
[8] under Section 33(1) of Maharashtra Value Added Tax Act 2002 at Page 10 of the Counter

from the different Tax Authorities from the dates prior to initiation of CIRP against the CD. This amount was unavailable to the CD prior to the commencement of the CIRP, and as such, it does not form part of the liquidation estate. The application is therefore without merit and is hereby dismissed.

Sd/-
(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-
(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

VL