

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL AT
CHENNAI**

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins.) No. 316/2021

**(Appeal Under Section 61 of the Insolvency and Bankruptcy Code, 2016)
(Arising out of the Impugned Order dated 01.11.2021 passed by the ‘Adjudicating
Authority’, National Company Law Tribunal, Chennai Bench, in
IA(IBC)/926(CHE)/2021 in IBA/1423/2019)**

In the matter of:

Beauty Etiole Pvt. Ltd.

... Appellant

Vs

C. Sanjeevi & 2 Ors.

... Respondents

Present:

For Appellant : Mr. Ramakrishnan Viraraghavan, Senior Counsel
Mr. Chetan Sagar, Advocate

For Respondents : Ms. M. Savitha Devi, Advocate for R2
R1 & R3 – Not Appeared

ORDER
(VIRTUAL MODE)

07.06.2022:

Heard the Learned Senior Counsel Mr. Ramakrishnan Viraraghavan appearing for the Appellant and Learned Counsel Ms. M. Savitha Devi appearing for the Respondent No.2.

There is no representation on the side of the Respondent No.1 at the time of calling of the matter. The notice of service was effected upon the

Respondent No.1 on 12.02.2022, as evidenced by the 'Affidavit' of service dated 18.02.2022 filed on behalf of the Appellant and the same is hereby recorded.

According to the Learned Senior Counsel for the Appellant, the Appellant is a Real Estate Developer, who had entered into a Joint Development Agreement with the Respondent No.3 for constructing a multi-storeyed housing complex comprising of 557 Flats on 4.23 Acres of land at Perungudi, Chennai. In this connection, it is represented on behalf of the Appellant that the Appellant had borrowed money from the Respondent No.2 for the project and the said 'Borrowee' for secured by mortgage of the aforesaid land to and in favour of the Respondent No.2.

The prime grievance of the Learned Senior Counsel for the Appellant is that the First Respondent / Resolution Professional had issued a letter dated 16.06.2021 addressed to the ICICI Bank and the Respondent No.2 for freezing four 'Bank Accounts' belonging to the Appellant and utilised for the aforesaid project. In this regard, the submission of the Appellant is that the Resolution Professional / Respondent No.1 had issued a freezing Letter dated 16.06.2021 under the mistaken and wrong impression that the 'Bank Accounts' belong to the Corporate Debtor. In this connection, it is not out of place for this 'Tribunal' to make the pertinent mention that the Respondent No.1/Resolution

Professional had stated in his letter dated 16.06.2021 to the effect that he had asked the Bank not to operate the said 'Accounts' under any instructions from the 'Corporate Debtor' and also restrain the 'Corporate Debtor' from operating the said 'Accounts' under any circumstances (vide page No.47 of the Appeal paper).

The primordial contention addressed on behalf of the Appellant by the Learned Senior Counsel for the Appellant is that Respondent No.1/Resolution Professional (RP) does not have 'any authority' to freeze the Four Bank Accounts viz., (1) The operations of Applicant's Bank Account bearing Escrow Current Account No.777705220088, (2) Master Escrow Account No.777705220066, (3) RERA Account No. 777705220077, (4) Current Account No.777705220055 and hence, the Impugned order passed by the 'Tribunal' in IA(IBC)/926(CHE)/2021 in IBA/1423/2019 dated 01.11.2021 passed by the 'Adjudicating Authority' (National Company Law Tribunal) Division Bench-II, Chennai is liable to be set aside.

For a better and a fuller appreciation of the impugned order dated 01.11.2021 in IA(IBC)/926(CHE)/2021 in IBA/1423/2019 passed by the 'Adjudicating Authority' (National Company Law Tribunal) Division

Bench-II, Chennai, the same is reproduced as under: -

“On hearing the Applicant and the particulars furnished by way of Memo, the payments to the employees, suppliers are to be made in the following manner.

S.No.	Particulars	Amount (Rs.)	Payments
1.	Salary Payments (including PF/TDS/Medical/Insurance & Perks)	1,68,53,902	To be paid in full
2.	Project Loan interest payment	72,69,964	To be paid in full
3.	Vendor/Supplier payment (including main contractor/sub-contractor/channel partner/marketing/statutory/utility/maintenance/admin/property management related payments).	20,75,29,662	50% to be paid
4.	Customer Cancellation refund payment	41,67,943	To be paid in full

Accordingly, this IA(IBC)/926(CHE)/2021 stands **disposed of**”.

It is to be noted that the ‘Appellant’ is the only ‘Account Holder’ and the Appellant’s name is found in the ‘Statement of Accounts’ (vide Page No.55 - 59 of the Appellant’s Paper Book). As such, it is latently and patently quite clear and evident that the Respondent No.1 / Resolution Professional has ‘No Authority’ in Law to exercise his power over the Four ‘Bank Accounts’ and as a consequence thereof, he cannot freeze these ‘Bank Accounts’ in the considered opinion of this ‘Tribunal’.

To fortify his contention that the Respondent No.1 / Resolution Professional has ‘no authority’ to freeze the Four Bank Accounts of the Appellant, by the Respondent No.1 / Resolution Professional, the Learned

Senior Counsel for the Appellant refers to Section 18(1)(f) of the I&B Code, 2016, which unerringly points out that the ‘Interim Resolution Professional’ can take control and custody of these assets over which the ‘Corporate Debtor’ has ownership rights as recorded in the balance sheet of the Corporate Debtor or its information, utility for the depository of securities or any other registry that records their ownership of assets etc.,

At this stage, a mere perusal of the impugned order dated 01.11.2021 passed by the ‘Adjudicating Authority’ (National Company Law Tribunal) Division Bench-II, Chennai in IA(IBC)/926(CHE)/2021 in IBA/1423/2019 exhibits that the ‘Adjudicating Authority’ had partly accepted the Appellant’s point of view but ordered to release of 50% of the amount available in the Bank Accounts.

On going through the impugned order dated 01.11.2021 in IA(IBC)/926(CHE)/2021 in IBA/1423/2019 passed by the ‘Adjudicating Authority’ (National Company Law Tribunal) Division Bench-II, Chennai, it is clear that the ‘Adjudicating Authority’ had not addressed the legal aspect(s) of the matter that whether the Respondent No.1 / Resolution Professional had any authority in Law to freeze Bank Account belonging to the Appellant. Since that aspect of the matter was not addressed by the ‘Adjudicating Authority’ and the same is conspicuously absent at the time of passing of the

impugned order dated 01.11.2021 in IA(IBC)/926(CHE)/2021 in IBA/1423/2019, this ‘Tribunal’, is constrained to interfere with the said order, and sets aside the same because of the fact that the Respondent No.1 / Resolution Professional, in Law has only ‘An Authority’ to exercise control over Bank Accounts operated by the ‘Corporate Debtor’ and not otherwise.

Viewed in the above perspective, the impugned order dated 01.11.2021 in IA(IBC)/926(CHE)/2021 in IBA/1423/2019 is hereby set aside by this ‘Tribunal’, to secure the ends of justice. Resultantly the ‘Appeal’ succeeds.

In fine, the Company Appeal (AT) (CH) (Ins.) No. 316/2021 is allowed. The impugned order dated 01.11.2021 in IA(IBC)/926(CHE)/2021 in IBA/1423/2019 is hereby set aside for the reasons assigned in this ‘Appeal’.
No costs.

[Justice M. Venugopal]
Member (Judicial)

[Mr. KanthiNarahari]
Member (Technical)

TS/TM