IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH,

KOLKATA

I.A. No.853/KB/2020
In
CP (IB) No.1634/KB/2018

In the matter of:

An application under Sec.14 and 74(2) of the Insolvency and Bankruptcy Code,2016.

And

In the matter of:

Alliance Broadband Services Private Limited.

… Financial Creditor

Versus

In the matter of:

Manthan Broadband Service Private Limited

……Corporate Debtor

And

In the matter of

Kuldeep Verma, the Resolution Professional of Manthan Broadband Services Private

Limited, ….Applicant

Versus

Canara Bank , N.S. Road Branch, 33/1 Netaji Subhas Road, Kolkata-700001.

… Respondent

Date of hearing : 04/12/2020

Order Pronounced on :10/12/2020

Coram:

Shri Rajasekhar V.K., Member (Judicial)
Shri Harish Chander Suri, Member (Technical)

1. Mr. Sakya Sen, Advocate } For the Canara Bank
2. Ms.Aparajita Ghosh,
1. Mr. Rahul Auddy } For the RP/Applicant

O R D E R

Per: Harish Chander Suri, Member (T)

1. The Court convened by video conference on 04/12/2020.
2. By way of this application, Mr. Kuldeep Verma, the Resolution Professional has inter alia submitted that CIRP of the Corporate Debtor had commenced on 18th September, 2019 and Mr. Shashi Agarwal was initially appointed as Insolvency Resolution Professional (IRP) but since he resigned and withdrew from the CIRP of the Corporate Debtor, vide order dated 19th February 2020, he was relieved by this Tribunal and the present RP was appointed in I.A.No. 165/KB/2020 on that very day.
3. In the present application, the RP has sought directions to Canara Bank, the respondent herein to reverse the **debit entries wrongfully made which are stated to be to the tune of Rs. 8.75 Lakhs and credited the same to Bank Accounts of the Corporate Debtor**. It has been further prayed that punitive steps should also be taken against the Respondent Bank under section 74(2) of the Code for having violated the provisions of moratorium under Section 14 of the Code.
4. It is stated by the applicant that the Corporate Debtor had 3 types of Bank Account with the Respondent Bank namely:-
   a. *Account No. 2213201020629 Current Account-General,*
   b. *Account No. 2213261050319 Open Cash Credit,*

c. Account No. 2213256050227 Over Draft- General

5. It is stated that the Respondent Bank transferred a sum of Rs.8,75,740/- of the Corporate Debtor without any authority after the onset of moratorium, whereas it was not entitled to deal with the assets of the Corporate Debtor without instructions from the IRP/RP appointed by this Adjudicating Authority, particularly when the RP vide its letter dated 3rd June,2020 had called upon the Respondent Bank to reverse the transactions and to credit back the account of the Corporate Debtor to the tune of Rs.8,75,740/- but in spite of the said email dated 3rd June, 2020 followed by reminder emails dated 15th June 2020, 20th June 2020, 17th July 2020, 18th July 2020 and 6th August 2020, since the Bank had refused to reverse the transactions in violation of the moratorium, action under section 74(2) of the Code has been prayed for against the Respondent Bank.

6. The Applicant has further submitted that the Respondent Bank had reduced its liability in the OD (Overdraft) credit facility from Rs.87.94 Lakhs to Rs.86.66 Lakhs by debiting the account of the C.D, which is a clear violation of Section 14 of the Code. It is stated that the cash at Bank is an asset of the CD and the Bank, a creditor of the CD, has dealt with an asset of the CD in violation of Section 14 of the Code. The Respondent had even debited a sum of Rs.1,26,335/- on 23rd September,2020, after the commencement of the CIRP on 18th September, 2019. The Respondent Bank also debited the OD (Overdraft) account from September, 2019 till May 2020 even though they were aware that the CIRP had already commenced and they were not entitled to charge interest or increase liability of the CD or reduced the assets of the CD. It is stated that increase in liability tantamounts to reduction of corresponding assets and that the charging of interest after the commencement of moratorium is also a violation of Section 14 of the Code.

7. Learned counsel for the RP during the course of arguments submitted that the Bank has reversed the debits to the tune of Rs.5.20 Lakhs but has failed to reverse the interest/debits for the remaining Rs.3.55 Lakhs and such an action in

debiting the amount and inaction in not reversing the entry is a clear violation of Section 14 and 74 of the Code. It is stated that the Respondent Bank has failed to justify why they have reversed only Rs.5.20 Lakhs and not the entire amount. The contention of the Bank that it had enforced 3rd party security to settle the debits which were levied by the Bank after the moratorium, has no force because the Bank has no authority to levy such interest and the Bank has done so unauthorisedly.

8. The Respondent Bank in its reply affidavit and during the course of arguments submitted that the Bank had extended credit facility to the Corporate Debtor in the nature of Overdraft loan to the limit of Rs.86.68 lakhs against two securities being Canara HSBC Policy standing in the name of Mr. Rajiv Dhamija to the tune of Rs.56,75,289.41 and another being FDR (Fixed Deposit) standing in the name of one Mr. Digbijoy Dhar to the tune of Rs.45,84,834.38.

9. It is submitted by the Respondent that as per the terms of sanction, a sum of Rs.1,26,335/- was debited on account of interest for the month of August,2019 before the moratorium period had actually commenced.

10. It is stated that one of the borrowers of the company had intimated the Bank on 10th November 2019 that the company had gone under CIRP vide order dated 18th September 2019 and moratorium under section 14 had been declared from that date. It is further stated that the Bank had charged interest @ 15.50% on the Overdraft account of the Corporate Debtor to the tune of Rs.7,55,586/- but as soon as the Bank came to know about the CIRP declared on 18th September 2019, by way of abundant caution, it reversed a sum of Rs.5,20,691.30 out of the total interest of Rs.7,55,586/- on 27th May 2020 in the Overdraft account. The same would be reflected from all the Loan account statement for the period from 1st September, 2019 to 15th June 2020. It is submitted by the respondent bank that squaring off and making adjustment of the interest from the securities credited by 3rd party is not barred under Section 14 of the Code. The provisions under Section 14(c) of the Code prohibits enforcement of security interest

credited in respect of the Company's property but does not bar enforcement and /or recovery from the security interest created by the Corporate Debtor in respect of the property standing in the name of the third parties and therefore, the Bank has not indulged in any kind of illegal activities or unauthorisedly debited the Bank account of the CD. It is submitted that despite lawfully liquidating the said dues and interest from the securities pledged by the 3rd party Directors, the Respondents Bank, in order to avoid any further complexities, reversed substantial portion of interest in the Overdraft account of the Corporate Debtor.

11. It is submitted that the sum of Rs.1,26,335/- had been unintentionally debited on 23rd September, 2019 being the interest for the month of August,2019 as per regular course of business by the Bank from the current account of the CD as the Bank had no knowledge of the moratorium.

12. It is not in dispute that the Bank had reversed the debit to the tune of Rs.5,20,691.30 out of the total interest of Rs.7,55,586/- on 27th May 2020 in the Overdraft account. It is also not in dispute that a sum of Rs.1,26,335/- had been offered by the Bank to be revered but the RP had not accepted the offer and wanted the Bank to reverse the total remaining amount debited earlier.

13. To substantiate its claim, the applicant has referred to and relied upon the orders passed by the Hon'ble Appellate Tribunal, relevant excerpts whereof are reproduced as under:-

The Hon'ble Appellate Tribunal in its order dated 21.03.2018 in Company Appeal (AT) Insolvency No. 49 of 2018 held as follows:-

> *"We are of the view that the appellant cannot debit any amount from the 'Corporate Debtor's account' after the order of moratorium, as it may amount to recovery amount in spite of the order of moratorium passed by the Adjudicating Authority in violation of Section 14 of the Insolvency and Bankruptcy Code"*

The Hon'ble Appellate Tribunal in its order dated 15.11.2017 in Company Appeal (AT) Insolvency No. 267 of 2017 held as follows:-

> *Having heard learned counsel for the Appellant, we do not accept the*

submissions made on behalf of the Appellant in view of the fact that after admission of an application under Section 7 of the I & B Code', once moratorium has been declared it is not open to any person including 'Financial Creditors' and the appellant bank to recover any amount from the account of the 'Corporate Debtor, nor it can appropriate any amount towards its own dues.

The Hon'ble Appellate Tribunal in its order dated 24.07.2018 in Company Appeal (AT) Insolvency No. 390 of 2018 held as follows:-

In the present case we do not intend to go into question as to when the order of moratorium was received by the Bank. Even if it is assumed that it was received by the Bank on 19.12.2017, it was not open to them to debit any amount from the account of the Corporate Debtor subsequent to order of moratorium. Further, as the order of moratorium came into its effect immediately i.e. on 15.12.2017, the date of receipt of order has no relevancy with the same."

14. We have heard Ld. Counsel for the parties at length and are of the view that in view of the provisions of the Code and the principle of law laid down by the Hon'ble Appellate Tribunal, the Bank could not have debited any amount from the Corporate Debtor's account after the order of moratorium had been passed. The Bank cannot be allowed even to contend that the information regarding the CIRP of the Corporate Debtor reached the Bank at a later stage. Since the moratorium came into effect immediately i.e. on 18th September 2019, the date of receipt of order by the Bank has no relevancy, as sought to be claimed by the Bank. Once the moratorium is declared, it is not open to any person including the Financial Creditor i.e. the Bank herein to recover any amount from the account of the Corporate Debtor nor can it appropriate any amount towards its own dues.

15. In our view, since the action of the Bank in debiting the accounts of the Corporate Debtor was in violation of Section 14 of the Code, the Bank is liable to reverse the entry into the account of the Corporate Debtor, along with the interest having accrued thereon as per the nature of deposit.

16. So far as the question of entitlement of the Bank to adjust the interest from the Security interest created by the 3rd party for the debts of the Corporate Debtor company is concerned, though the Bank claims to be right in doing so, in our view the Bank could not have done so as it was not free to touch the amount lying in any of the accounts of the CD or making any adjustments to its benefit and to the detriment of the CD.

17. We, therefore, direct the Bank to act accordingly and make reverse entries even for the remaining amount as aforesaid with interest, as the same was done after the onset of moratorium i.e. after 18th September, 2019.

18. **I.A. No.853/KB/2020** is disposed of in the aforesaid directions.

19. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.

20. Urgent certified copies of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Harish Chander Suri)	**(Rajasekhar V.K.)**
Member (Technical)	**Member (Judicial)**

Pj.