

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH-I**

**IA No. 3788/MB/C-I/2022**

**In**

**C.P (IB) No.571/MB/C-I/2019**

An application under Section 60(5) of the Insolvency and  
Bankruptcy Code, 2016  
Filed by

Bhaskar Gopal Shetty  
Resolution Professional of,  
Mirage Ceramics Private Limited                      ...Applicant

Versus

Abhyudaya Co-operative Bank Limited              ...Respondent

In the matter of  
STPM Logistics LLP

...Operational Creditor

Versus

Mirage Ceramics Private Limited  
... Corporate Debtor

Order Pronounced on: 28.02.2024

***Coram:***

Hon'ble Member (Judicial)	:	Justice V. G. Bisht (Retd.)
Hon'ble Member (Technical)	:	Mr. Prabhat Kumar

***Appearances:***

For the Applicant/Resolution Professional	:	Mr. Sushant Chavan, Advocate
For the Respondent	:	Mr. Sanjiv, Advocate.

**ORDER**

*Per: Prabhat Kumar, Member (Technical)*

1. The present Application is filed by the Resolution Professional of the Corporate Debtor. The following relief is sought by the Applicant:
  - i. Direction to Abhyudaya Co-operative Bank Limited to release the share money of Rs.15,00,000 along with the accumulated dividend.

**Backdrop of facts**

2. The Corporate Debtor was admitted in CIRP vide Order dated 14.02.2020 and Mr. Bhaskar Gopal Shetty i.e. the Applicant herein was appointed as the Resolution Professional. On 11.03.2020, the CoC was constituted with one Mr. Kamlesh Mehta with a voting share of 56.86%, claim amounting to Rs.32,29,25,000/- and Abhyudaya Co-operative Bank Limited with a voting share of 43.14% along with claim amounting to Rs.24,50,16,867.42/-
3. The Applicant submits that the Corporate Debtor holds 1,50,000/- shares of Rupees Ten each in Abhyudaya Co-operative Bank Limited. The Respondent Bank assigned the loan to M/s ARSEC India Limited.
4. The Applicant submits that an amounting of Rs.15,00,000/- being share money is still with the Respondent Bank and accordingly had requested them to release the same with the accumulated dividend. The

Applicant submits that he requested the bank on multiple occasions to release the share money however the bank refused. Accordingly, the present Application is preferred by the Applicant.

**Submissions advanced by the Respondent:**

5. The Respondent submits that since it is Multi State Co-operative Society carrying out the business of banking, the provisions of both special acts namely Multi State Co-Operative Society Act 2002 and Banking Regulation Act 1949 have been made applicable in terms of section 120B of Multi State Co-Operative Society Act 2002. Secondly, in terms of section 105A of Multi State Cooperative Society (MSCS) Act 2002 the provisions of MSCS Act 2002 are in addition to and not in derogation of any other laws for the time being in force. Therefore, the Respondent submits that a conjoint reading of section 105A and 120B of MSCS Act 2002, makes it amply clear that the Respondent Bank being a Multi State Co Operative Society carrying on banking business is also required to observe the provision of Banking Regulation Act 1949.
6. However, by the Banking Regulation amendment 2020 (i.e. Act no. 39 of 2020), the said section 56 was amended and it was provided that section 12 of the Principle Act (i.e. BR Act) shall stand substituted. Under sub-section 2 (ii) of section 12 of BR Act, which is now incorporated in section 56, it is provided that a Co-operative bank shall

not withdraw or reduce its share capital, except to the extent and subject to such condition as the RBI may specify in this behalf. The Respondent submits that by virtue of the said amendment, which is binding upon the Respondent Bank, the Respondent Bank is therefore barred from effecting any reduction in share capital unless and until section 12 (2(ii)) is complied with.

7. The Respondent submits that the Corporate Debtor had availed the following credit facility from the Abhyudaya Bank- i. Cash Credit Facility-1700 Lakhs and ii. Term Loan Facility-300 Lakhs, for availing aforesaid credit facilities the Corporate Debtor executed various loan and securities documents including Membership form.
8. Further, the Respondent submits that for the purpose of availing any loan, the intending borrower will have to first become the member of the Respondent Bank, for which they will have to pay the requisite fees to the Respondent Bank. The Respondent Bank upon receipt of requisite fees issued the Membership of the Respondent Bank to the said intending borrower. In the instant case, the Corporate Debtor became the member of the Respondent Bank (by paying the requisite membership fees with the Respondent Bank) for the purpose of availing the above credit facilities.
9. The Respondent submits that though the aforesaid debt has been assigned to ASREC, however the liability of Corporate Debtor against

the Respondent Bank is yet not closed in the books of account maintained with the Respondent Bank, since the security receipts (SR) issued by Assignee in favour of the Respondent Bank is still outstanding, in the books of account of the Respondent Bank. Also, under the Assignment Agreement the Debt alongwith securities was assigned for consideration as set out in the said Assignment Agreement, so that the Assignee could recover the outstanding and pay to the Respondent Bank in terms of the Assignment Agreement. Hence till the last penny towards the debt is recovered by the Assignee and pay it to the Respondent Bank in terms of the Assignment Agreement, the debt under the books of account of Corporate Debtor maintained by the Respondent Bank will continue to be outstanding. The membership of the Corporate Debtor would continue and therefore the membership amounts / fees cannot be deposited in this Tribunal.

10. The Respondent has placed reliance on section 55 and 56 Multi State Co-operative Societies (MSCS) Act, 2002. Section 55 and 56 of MSCS Act, 2002 reads as follow:

*“55. Charge and set-off in respect of share or contribution or interest of members.—A multi-State co-operative society shall have a charge on the share or contribution or interest in the capital and on the deposits of a member or past or deceased member and on any dividend, bonus or profits payable to a member or past member or the estate of a deceased member in*

*respect of any debt due from such member or past member or the estate of such deceased member to the society and may set-off any sum credited or payable to a member or past member or the estate of deceased member in or towards payment of any such debt.*

*56. Share of contribution or interest not liable to attachment.—(1) Subject to the provisions of section 55, the share or contribution or interest of a member or past or deceased member in the capital of a multi-State co-operative society shall not be liable to attachment or sale under any decree or order of any court in respect of any debtor liability incurred by such member, and an official assignee or a receiver under any law relating to insolvency shall not be entitled to, or have any claim on, such share or contribution or interest. (2) The reserve fund, or the bad debt reserves, or the provident fund of the employees, of a multi-State co-operative society invested by such society in accordance with the provision of this Act and the bye-laws shall not be liable to attachment under any decree or order of a court in respect of any debt or liability incurred by the society.”*

11. The Respondent submits that unless the outstanding account of the Corporate Debtor in the books of account with Respondent Bank is closed, the membership of the said Corporate Debtor could not be terminated. The said Membership amount would be diluted only after the outstanding is recovered as per the books of account of the Corporate Debtor maintained with the Respondent Bank.

**Findings and Directions:**

12. Before we proceed, it is useful to summarize the facts and the issue arising thereon in a nutshell. The Resolution Professional i.e. the Applicant seeks refund of share money amounting to Rs.15,00,000/- invested in the shares of Abhyudaya Co-operative Bank, who is also the Financial Creditor of the Corporate Debtor, in terms of Corporative Law requiring the financial creditor society to lend money to its members only.
13. Section 55 of the MSCS Act, 2002 clearly provides that a multi-State co-operative society shall have a charge on the share or contribution or interest in the capital and on the deposits of a member or past or deceased member and on any dividend, bonus or profits payable to a member or past member or the estate of a deceased member in respect of any debt due from such member and further clause (1) of Section 56 makes it aptly clear that subject to the provisions of section 55, the share or contribution or interest of a member or past or deceased member in the capital of a multi-State co-operative society shall not be liable to attachment or sale under any decree or order of any court in respect of any debtor liability incurred by such member, and an official assignee or a receiver under any law relating to insolvency shall not be entitled to, or have any claim on, such share or contribution or interest.

14. Subsequently, the debt was assigned to ARSEC. The following clause of the assignment agreement is relevant for consideration:

*“2.1.2 The Assignor hereby further assigns in favour of the Assignee, all its rights, title and interest in the Financing Documents, all agreements, deeds and documents related thereto and all collateral and underlying Security Interests and / or pledges created to secure, and/or guarantees issued in respect of, the repayment of the Loans, which the Assignor is entitled to. The Assignee shall have the right to enforce such Security Interests, pledges and / or guarantees and appropriate the amounts realized therefrom towards the repayment of the Loans and to exercise all other rights of the Assignor in relation to such Security Interests, pledges and / or guarantees. The Assignor shall transfer / deliver or cause to be transferred / delivered or hold for and on behalf of the Assignee, all such original documents, deeds and/or writings, including but not limited to the Financing Documents, and produce the same promptly upon any request by the Assignee.”*

15. In terms of the above clause the security interest in the form of charge over the share certificate in terms of Section 55 of the MCS act gets vested in the assignee.
16. Alternatively, the Respondent Bank inter alia argues that the provisions of Banking Regulation Act would also apply to the Respondent Bank. More particularly reliance is placed on section 12(ii) of the Banking Regulation Act incorporated in Section 56, it is provided that the share

capital of Corporate Bank shall not be reduced except to the extent the RBI may provide.

17. The RBI has clarified this issue with refund of share capital vide notification bearing number RBI/2021-22/179 DOR.CAP.REC.92/09.18.201/2021-22. The relevant clause is reproduced hereinbelow for reference:

*“7. In terms of Section 12 (2) (ii) read with Section 56 of the BR Act, a co-operative bank shall not withdraw or reduce its share capital, except to the extent and subject to such conditions as the Reserve Bank may specify in this behalf. Accordingly, it has been decided to permit UCBs to refund the share capital to their members, or nominees / heirs of deceased members, on demand, subject to the following conditions:*

*a) The bank’s capital to risk-weighted assets ratio (CRAR) is 9 percent or above, both as per the latest audited financial statements and the last CRAR as assessed by RBI during statutory inspection*

*b) Such refund does not result in the CRAR of the bank falling below regulatory minimum of 9 per cent.*

*8. It is clarified that for the purpose of computing CRAR as above, accretion to capital funds after the balance sheet date<sup>1</sup>, other than by way of profits, may be taken into account. Any reduction in capital funds, including by way of losses, during the aforesaid period shall also be considered.”*

18. Accordingly, we notice that the share capital can be refunded by the Corporate Society to its members under certain specified circumstances. However, at this juncture this is not relevant for us whether the Respondent Bank meets the stated criteria because we

have already noted that the security interest in the form charge of over the said shares is vested in the assignee and till such time such charge is satisfied the property subject to charge cannot be redeemed. It is trite law that a secured creditor has a right of set-off as well as right to realize its securities in the liquidation proceedings

19. Further, the said shares shall not be liable to attachment or sale under any decree or order of any court even arising out of insolvency proceedings. Accordingly, the Applicant cannot claim the share money as ARSEC has a lien over the said amount in view of assignment agreement. The amount is recoverable by ARSEC from the Respondent Bank herein after discharging its payment obligations as contemplated under the assignment agreement. However, we make it clear that the said amount receivable by ARSEC is liable to be set-off against the claim amount of ARSEC in the Liquidation process of the Corporate Debtor.

20. Accordingly, IA No. 3788 of 2022 is dismissed as rejected.

**Sd/-**

**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**

28.02.2024

Priyal

**Sd/-**

**JUSTICE V.G. BISHT**  
**MEMBER (JUDICIAL)**