

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

MA 3159 of 2019
In
CP (IB) 190 of 2018

Under section 60(5) of the Insolvency and
Bankruptcy Code, 2016

IN THE MATTER OF

ICICI Bank Limited

BKC, Bandra East,
Mumbai – 400051.

... Applicant

V/s.

Mr. Hiten Mukundbhai Parikh

Resolution Professional, Shrenuj & Co. Ltd.
B-303, GCP Business Center, Navrangpura
Ahmedabad, Gujarat 380009.

... Respondent No. 1

Mr. Ramdas Doiphode

Court Receiver
Padmaja Park, Near Lake Town,
Bibvewadi, Pune.

... Respondent No. 2

Mr. S. M. Bansal

Joint Receiver, c/o Bank of India
Registerest Office, BKC, Mumbai, 400051.

... Respondent No. 3

IN THE MATTER OF

Bank of India

... Original Petitioner

V/s.

Shrenuj & Co. Ltd.

... Corporate Debtor

Order delivered on :- 01.02.2024

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri Anil Raj Chellan, Member (Technical)

Appearances:

For the Applicant : Adv. Malhar Zatakia
For the Respondent/Liquidator : Adv. Yahya Batatawala

ORDER

Per: - Kuldip Kumar Kareer, Member (Technical)

1. The present Interlocutory Application is filed by ICICI Bank Limited under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('the Code') against the Respondent for the following reliefs:-
 - a. Directing Respondent No. 1 to take immediate physical possession of the Seized Assets lying in the Applicant's premises at its safes in BKC and SEEPZ and transfer the same to any

location.

- b. Directing Respondent No. 1 to forthwith reimburse the Applicant for costs incurred for safe keeping of the Seized Assets amounting to Rs. 6,42,505.95 from 12.03.2019 to 31.08.2019 i.e. during the CIRP period.
- c. Directing Respondent No. 1 to forthwith reimburse the Applicant for any further costs that may be incurred for safe keeping of the Seized Assets at its premises after 31.08.2019.
- d. The Tribunal may deem fit and proper in the facts and circumstances of the matter.
- e. Costs of this Application.

Submissions on behalf of the Respondent:

- 2. In reply Respondent No. 2 has denied each and every allegation, contention, claim, averment, statement made by the Applicant and nothing shall be deemed to be admitted unless specifically traversed or not.
- 3. It is further submitted that the Miscellaneous Application No. 3159 of 2019 filed by the Applicant is required to be amended as Liquidator of the Corporate Debtor is not the party to the proceedings. However, assuming that the Applicant shall carry out the amendment, still filed the present Affidavit in reply as Liquidator of the Corporate Debtor.
- 4. According to the Respondent No. 1 the Committee of Creditors in its meeting held on 04.11.2019 decided to take the Corporate Debtor into Liquidation on non-receipt of any Resolution Plan. Accordingly, the erstwhile RP filed an Application bearing IA No. 3992 of 2019 and IA

154 of 2020 for Liquidation of the Corporate Debtor. This Tribunal vide order dated 12.07.2019 allowed the said Applications and appointed the deponent as the Liquidator of the Corporate Debtor. Pursuant to his appointment as Liquidator of the Corporate Debtor, the Liquidator had sent a letter dated 03.12.2021 to the Respondent No. 2 i.e. DRT Receiver thereby requesting to handover the inventory in his possession to the Liquidator. Accordingly, Respondent No. 2 filed Receiver's Report dated 04.12.2021 bearing No. 07 of 2021 in Transfer Original Application No. 407 of 2016 before DRT-I, Mumbai for seeking instructions from the Hon'ble DRT-I for handing over the seized inventories to the Liquidator. The Hon'ble DRT-I, Mumbai vide its order dated 19.04.2022, which was received on or about 23.06.2022, was pleased to direct the Respondent No. 2 to handover the seized assets to the Liquidator and thereafter Respondent Nos. 2 and 3 being the Court Receivers shall stand discharged from their functions.

5. It is further submitted that pursuant to receipt of the said Order dated 19.04.2022, Liquidator engaged an appropriate valuer and in coordination and availability of Respondent Nos. 2 and 3 and Stakeholders of the Corporate Debtor commenced the takeover process w.e.f. 12.09.2022.
6. It is further submitted that the handing over process is being carried out through a systematic route. The DRT Receivers had two trunks kept in ICICI Bank safe custody at BKC, out of which Trunk 1 is handed over to the Liquidator and 3 boxes viz. Box No. 4, 5 and 6 from Trunk 2 has only been handed over to the Liquidator. The balance inventory shall be handed over to the Liquidator later, alongwith the inventories lying at ICICI Bank SEEPZ branch. The

inventory taken by the Liquidation has been kept in 4 trunks, keys of which are with the Liquidator and the same shall be shifted shortly.

7. Further, it was at the behest of the Applicant that the Respondent No. 2 was appointed by Order dated 15.06.2016 in Interim Application No. 1376 of 2016 to take over possession of the seized assets. Therefore, the Liquidator submitted that it was apparently necessary for the Applicant to preserve, protect and safeguard the seized assets of the Corporate Debtor. However, Liquidator vehemently refute that the cost of Rs. 6,42,505/- for the period from 12.03.2019 to 31.08.2019 is part of CIRP cost as incorrectly claimed. Liquidator further submitted that it is a settled law that the cost, fees and/or expenses incurred by the receiver shall be borne by the Applicant at whose behest the receiver has been appointed. In the present case as well, the Applicant had preferred the said Interim Application for appointment of Respondent no. 2 as receiver and therefore, it is the Applicant who will have to bear his cost, fees and/or expenses and not the Corporate Debtor.
8. It is further submitted that by virtue of the order dated 15.06.2016, the erstwhile RP could not take possession of the seized assets as the same was under possession and control of the Respondent Nos. 2 and 3 (Receivers) who were appointed at the behest of the Applicant. Further, Liquidator submitted that it was the Applicant who had to get the said order dated 15.06.2016 vacated and accordingly should have arranged to get the seized assets handed over from Respondent Nos. 2 and 3 to Respondent No. 1.
9. In that view of the matter, the Respondent No. 1 has prayed for the dismissal of the present Application.

10. Further, the Applicant filed rejoinder denying each and every facts of the Respondent given in affidavit in reply and reiterating those made in the application.

Findings:

11. We have heard the Counsel for the parties and have gone through the records.

12. By way of this Application, the Applicant Bank is claiming a direction against the Respondent No. 1 to immediately take the possession of seized assets of the Corporate lying in the premises of the Applicant. The Applicant further seeks a direction against Respondent No. 1 for reimbursement of Rs. 6,42,505/- on account of the cost incurred for safe keeping of the seized assets from 12.03.2019 to 31.08.2019 which is the CIRP period and seeks further reimbursement for the cost incurred after 31.08.2019.

13. It has been contended by the Counsel for the Applicant that the Applicant Bank initiated recovery proceedings against the Corporate Debtor before DRT-3 by filing OA No. 407 of 2016. Along with the said OA an Application for appointment of receiver was also filed. Vide order dated 15.06.2016 the Hon'ble DRT appointed Respondent No. 2 as Court receiver. Subsequently, Respondent No. 3 was appointed by DRT-1 as receiver. It has further been pointed out by the Counsel for the Applicant that between 23.06.2016 and 24.06.2016 Respondent took possession of the asset of the Corporate Debtor in accordance with the order of the DRT.

14. Counsel for the Applicant has further pointed out that on 12.03.2019 the Corporate Debtor was admitted into Insolvency u/s 7 of IB Code,

2016 following which Respondent No. 1 was appointed as the RP by the CoC of the Corporate Debtor on 27.05.2019.

15. According to the Counsel for the Applicant, Respondent No. 1 was under a legal obligation to take possession of the seized assets u/s 18(1)(f) and 25 of the Code, but the Respondent did not take the possession of the said seized assets, the Applicant incurred the cost of 6,42,505.95/- for safe keeping of the seized assets from 12.03.2019 to 31.08.2019. These expenses were incurred by the Applicant during the CIRP period and, therefore, the same amount to CIRP cost.
16. Subsequently, on 12.07.2021 Mr. Brijendra Kumar Mishra was appointed as a Liquidator at the behest of the erstwhile CoC as the Joint Lender Forum had a difference of opinion regarding the Resolution Professional. The Applicant filed a claim with the Liquidator of Rs. 31,09,634/- on account of expenses of safe keeping of the secured assets after March, 2019. Therefore, according to the Counsel for the Applicant, the Applicant is entitled to recover the amount in question on account of expense incurred by it for safe keeping of the assets of the Corporate Debtor.
17. On the other hand, the Counsel for the Respondent No. 1 has argued that the Application is without any merit and deserves to be dismissed. The Counsel for the Liquidator has further argued that after his appointment as Liquidator, the Liquidator sent a letter dated 03.12.2021 to Respondent No. 2/DRT Receiver asking him to handover the inventory in his possession. Respondent No. 2 accordingly filed an Application before DRT-1, Mumbai for seeking instruction for handing over the seized inventories to the Liquidator. The Hon'ble DRT, Mumbai directed Respondent No. 2 to handover

the seized assets to the Liquidator vide order dated 19.04.2022 and after the passing of the said order by DRT-1, the process of handing over of the seized assets was under-taken and DRT receiver has since handed over one trunk to the Liquidator along with three boxes i.e. Boxes no. 4, 5 and 6, and balance inventory will also be handed over to the Liquidator in due course. Under the circumstances, according to the Counsel for the Liquidator, since the assets could be taken over only after the passing of the order of the DRT, the RP or the Liquidator cannot be put to blame, nor the cost and expenses being claimed by Applicant can be ordered to be paid.

18. We have considered the aforesaid contentions raised by the Counsel for the parties and have also carefully gone through the records.
19. It is not disputed that the assets of the Corporate Debtor were seized at the behest of the Applicant after the Applicant filed an OA before the Hon'ble DRT Mumbai for recovery of its outstanding dues. No-doubt, after the commencement of the CIRP, the Resolution Professional appointed to run the CIRP process was under an obligation to take possession of all the assets of the Corporate Debtor under Insolvency as per Section 18 of the IB Code, 2016. However, in the instant case, since the assets of the Corporate Debtor were seized on the specific orders of the Hon'ble DRT, the RP could not have taken possession without the consent of the receivers appointed by the Hon'ble DRT. Therefore, in our considered view, the IRP or the Liquidator for that matter cannot be blamed for not taking possession of the seized assets. As pointed out in the reply, the order of the DRT was passed only on 12.04.2022 following which the process of handing over the possession of the assets to the Liquidator started. Under these circumstances, in our considered view the Applicant bank cannot be

held entitled to claim any storage charges of the seized assets as claimed in the Application nor the claim of the Applicant seems to be justifiable under the circumstances.

20. As a result of the above brief discussion, we find the Application to be devoid of any merit and, therefore, the same is hereby **dismissed**. However, there shall be no order so as to costs.

Sd/-
ANIL RAJ CHELLAN
Member (Technical)

ANKIT

Sd/-
KULDIP KUMAR KAREER
Member (Judicial)