

NATIONAL COMPANY LAW APPELLATE TRIBUNAL**NEW DELHI****COMPANY APPEAL (AT)(INSOLVENCY) NO.502 OF 2018****IN THE MATTER OF:**

Amandeep Singh Bhatia & Ors

Appellants

Vs

Vitol S.A. & Anr

Respondents

Present:

For Applicant:-Mr Alok Dhir, Ms Varsha Banerjee, Mr. Milan Singh Negi and Mr. Kunal Godhwani, Advocates.

For Respondent: None

ORDER

30.08.2018 - The appellants are the ex-Directors of 'Asian Natural Resources (India) Ltd, Corporate Debtor, which is undergoing liquidation. The appellants are also personal guarantors on behalf of the Corporate Debtor.

2. In the pending liquidation proceedings one of the operational creditors filed application under Section 60(5)(c) r/w Section 67 of I&B Code with prayer to seek directions on the 2nd respondent including appellants to deposit their passports with the Registry of the Tribunal during the pendency of the said application. The Adjudicating Authority by impugned order dated 9th August, 2018 taking into consideration the fact that the CBI has registered the cases and investigation is still going on with regard to the Ex-Directors of the Company and taking into consideration the fact that the company is under liquidation and in similar cases the Hon'ble Supreme Court and Adjudicating Authority (NCLT) Mumbai, has passed order of prohibition ordered as follow:-

“On perusal of the record, it is found that CBI has registered the cases and its investigation is still going on with regard to the Ex-Directors of the company.

Heard the petitioner, seen the record, it is found that company is under liquidation vide order dated

09.12.2018, the main contention of the applicant is that if any, restrain order is not passed against the Ex-director Nos 2 to 5 then in that event they may leave the country consequent upon which it is difficult to unearth the fraud undertaking by the Ex-Director, as they have syphoned out huge money of the company and to that effect the RP has made various communication but of result.

Ld. Lawyer appearing on behalf of the RP relied upon two citations, similar case (i) Hon'ble Supreme Court of India (ii) Hon'ble NCLT, Mumbai Bench, Mumbai which are as under:

The Hon'ble Supreme Court of India in Writ Petition (s) (Civil(S) No.744/2017 wherein, it is held:

“(c)the managing Director and Directors JIL and JAL shall not permit to leave the country without prior permission of this Court.....”

Another order passed by Hon'ble NCLT, Mumbai Bench, where in it is held that:

“....this bench is of the view that to protect the interest of all the stakeholders and also to facilitate the proceedings these person should not be allowed to leave the country without prior permission of this Bench of Hon'ble NCLT, Mumbai Bench....”

On perusal of the prayer in the application, it is seen that there is no such prayer for seeking restrain order against respondent No.2 to 5 except seeking direction to deposit their passport with the Registry of this Tribunal, during the pendency of the case. However, for the sake of brevity, this Bench is of the view that to protect the interest of all the stack holders and also to facilitate the liquidation proceeding undertaking by the liquidator,

the respondent No.2 to 5, are not allowed to leave the country without prior permission of this Bench till next date of hearing i.e. 06.09.2018.”

3. Learned counsel appearing on behalf of the appellants submits that the Hon'ble Supreme Court of India has jurisdiction under Article 142 of the Constitution of India to direct the Managing Director or Director or any officer of the Corporation Debtor not to leave the country without the prior permission of the Hon'ble Supreme Court. According to him the Adjudicating Authority has not been conferred with powers under the I&B Code, 2016 to pass such interim order. It is also submitted that the impugned order is also against Article 21 of Constitution of India.

4. We have heard learned counsel appearing on behalf of the appellants and perused the record. In the present case we are not going to decide as to what will be the outcome of the investigation of the CBI with respect to ex-Directors of the Corporate Debtor including the appellants. However, if they leave the country, it may affect the investigation.

5. At this stage it is desirable to refer Section 66 of the Insolvency and Bankruptcy Code, which is as under:-

“66.Fraudulent trading or wrongful trading-(1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if—

(a) before the insolvency commencement date, such director or partner knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and

(b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.

Explanation.—For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.

As per the aforesaid provision, after the investigation if any report is filed against the Ex-Director it will always open to the Adjudicating Authority to pass appropriate order under Section 66 read with Section 67 of the I&B Code.

6. In view of provisions aforesaid, it cannot be stated that the Adjudicating Authority is not empowered to direct the ex-Directors not to leave the country without prior permission of the Adjudicating Authority.

7. Further any order is passed under the law it cannot be held to be violative of Article 21 of Constitution of India. Further, we find that the Adjudicating Authority has not stayed the movement of the appellants, but has only observed that if they intend to leave the country should take the permission of the

Adjudicating Authority. Therefore, the order can not be held to be an order of permanent injunction on the appellants.

8. We find no merit in this appeal, it is accordingly dismissed. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member (Judicial)

Bm/uni