

FIT FOR INSOLVENCY.

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

ITEM No. 115
(IB)-547(PB)/2018

IN THE MATTER OF:

Mr. Bhanu Ram & Ors. Applicant/petitioners
v.
M/s. HBN Daries & Allied Ltd. Respondent

SECTION:

Under Section 7 of Insolvency & Bankruptcy Code, 2016(CIRP)

Order delivered on 30.04.2019

Coram:

CHIEF JUSTICE (RTD.) M. M. KUMAR
HON'BLE PRESIDENT

SH. S. K. MOHAPATRA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the RP Mr. Krishnendu Datta, Ms. Deepti Bhardwaj, Advs.
Mr. Rohit Sehgal, RP in person
For the Respondent Mr. Sanyan Saxena, Mr. J.D. Bahuah, Advs for R-9,
Mr. Shel Rishabh for Mr. Ritesh Agarwal, for R-3 & 8.
For the ITD Ms. Lakshmi Gurung, Sr. standing counsel with Easha
Kadian

ORDER

M.M. KUMAR, PRESIDENT (Oral)

CA-359(PB)/2019

This is an application filed by the Resolution professional with a prayer for issuance of direction to SEBI-respondent No. 1 to de-attach the immovable property belonging to the corporate debtor which have been attached vide order dated 29.09.2017 passed by the Recovery Officer, SEBI, Northern Regional Office, New Delhi and thereafter, to hand over the original title deeds of the immovable properties to the Resolution Professional. Another prayer has also been made seeking direction to Department of Income Tax-respondent No. 2 to de-attach immovable properties belonging to the



corporate debtor which have been attached by the department and consequently to handover the original title deeds of the immovable properties to the Resolution Professional along with the whole record.

2. It is appropriate to mention that the petition under Section 7 against the corporate debtor was admitted on 14.08.2018 and Mr. Rohit Sehgal was appointed as IRP who continues to function as RP. The order dated 14.08.2018 makes it clear that institution of suit or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority would come to halt. An order of moratorium as provided by Section 14 has also been passed by us.

3. It is not disputed before us that SEBI-respondent No. 1 in pursuance of order dated 12.02.2015 passed by Adjudicating Officer in exercise of powers under Section 11 & 11 B of the SEBI Act read with Regulation 65 of the Securities & Exchange Board of India (Collective Investment Scheme) Regulations, 1999 has attached the assets of the corporate debtor and there are other directions issued by the Securities Appellate Tribunal (SAT) to SEBI to sell the assets of the corporate debtor. The stand taken by the SEBI in its reply is that it is bound to follow the order of the Securities Appellate Tribunal until and unless it is modified. It has also been urged that Appeal against the order of the SAT could be filed before the Hon'ble Supreme Court as per the provision of Section 15Z of the SEBI Act.

4. No reply by Income Tax Department-respondent No. 2 has been filed. However, some documents have been placed on record in a letter addressed to the standing counsel on 09.04.2019 by the Office



of the Tax Recovery Officer (TDS-1). It has been informed that the property which was attached has already been de-attached as per the details given and the letter reads as under:-

“In this regard, please find enclosed copy of de-attachment/Releasement letters of property attached under second Schedule of the Income Tax Act, 1961 vide letters F. No.: TRO/TDS-1/DEL/HBN/Revoc. Order/2019-20/21 & 22 dated 09.04.2019 for your kind perusal and necessary action.”

A copy of the revocation order of 09.04.2019 has also been placed on record and the following properties have been de-attached:-

Sl.No.	Specification of Property
1.	Shop No. 118 to 124, 1 st Floor, D-Mall, Plot D, Distt. Centre, Paschim Vihar, New Delhi – 110087
2.	Shop No. 12, 13, 20, 21, 23, 25, 26, 26A, 27, 32, 33, 55, 68, 69, 77, & 79 Ground Floor, D-Mall, Plot D, Distt. Centre, Paschim Vihar, New Delhi – 110087
3.	123456 Sq. ft. area in 2 nd Floor, D-Mall, Plot D, Distt. Centre, Paschim Vihar, New Delhi – 110087
4.	6/73, 5F, Plot No. 6, Road No. – 73, West Punjabi Bagh, New Delhi – 110063

Sl.No.	Specification of Property
1.	302 & 303 Vardhman Chambers, Sonia Complex, Janakpuri, New Delhi – 110 018.

5. The letter further shows that no bank account of the defaulter/corporate debtor has ever been attached by the Tax Recovery Officer.

6. We have heard Ld. Counsel for the parties and peruse the paper book with their assistance. In support of his submission Mr. Datta, Ld. Counsel for the Resolution Professional has placed firm reliance



on the judgment rendered by Hon'ble the Supreme Court in the case of *Pr. Commissioner of Income Tax v. Monnet Ispat and Energy Ltd.* SLP(C) No. 6487/2018 decided on 10.08.2018 and has argued that on account of non-obstante clause contained in Section 238 of the Insolvency & Bankruptcy Code, 2016 all other statutes and enactment have to give way to the Insolvency & Bankruptcy Code. The aforesaid contention of Mr. Datta find ample support from the view taken by the Hon'ble Supreme Court in *Monnet Ispat (supra)*. The short order passed by the Lordship of the Supreme Court reads as under:-

“Given Section 238 of the Insolvency and Bankruptcy Code, 2016, it is obvious that the code will override anything inconsistent contained in any other enactment, including the Income-Tax Act.

We may also refer in this connection to Dena Bank v. Bhikhabhai Prabhudas Parekh and Co. & Ors. (2000) 5 SCC 694 and its progeny, making it clear that income tax dues, being in the nature of crown debts, do not take precedence even over secured creditors, who are private persons.

We are of the view that the High Court of Delhi, is therefore, correct in law.”

It is clear from the reading of the aforesaid observations of Hon'ble the Supreme Court that the Insolvency & Bankruptcy Code would override anything inconsistent contained in any other enactment including the Income Tax Act Section 238 is a non-obstante clause with widest amplitude. The Income Tax Department has already de-attached the properties belonging to the corporate debtor and accordingly, the possession by the Resolution Professional may be taken.



7. It is directed that the title deed be handed over to the Resolution Professional at the earliest but not later than ten days. However, in respect of SEBI-respondent No. 1 the stand taken is that it is bound by the directions issued by the Securities Appellate Tribunal. The aforesaid stand is in the teeth of the observation of Hon'ble the Supreme Court in Monnet Ispat case (Supra). There is only one condition imposed by Hon'ble the Supreme Court that the code is to override anything inconsistent in any other enactment. It is obvious that various provisions in the Insolvency & Bankruptcy Code would require the Resolution Professional to run the affairs of corporate debtor on day to day basis and to take possession of the property belonging to the corporate debtor. It need not be to emphasised that the provisions of the Insolvency & Bankruptcy Code would come in conflict with the stand taken by the SEBI-respondent No. 1. In other words, the provisions of Section 11 & 11 B of the SEBI Act read with Regulation 65 of the Securities & Exchange Board of India (Collective Investment Scheme) Regulations, 1999 would be directly in conflict with Section 238 as well as Sections 14, 15, 17, 18 & 25 of the Insolvency & Bankruptcy Code. The omnibus provision made in Section 14 would also be in conflict with the stand taken by SEBI as no execution proceedings under the provisions of SEBI Act or its regulation can take place during the CIR Process under the Code. In view of the provisions of non-obstante clause of Section 238 of the Code, any right under any other law cannot come in the way of the Insolvency & Bankruptcy Code. In the absence of records and possession of the property belonging to the corporate debtor, the Resolution Professional would not be able to perform his statutory duties in a time bound manner and there would be no possibility of



any resolution which is the primary object of the Insolvency & Bankruptcy Code as emphasised by the Hon'ble Supreme Court in various judgments including *Arcelor Mittal India Private Limited v. Satish Kumar Gupta & Ors. (2019) 2SCC1* and *Innoventive Industries Ltd. v. ICICI Bank & Anr. (2018) 1SCC 407*.

8. As a sequel to the above discussion the application is allowed. SEBI is directed to de-attach the properties of the corporate debtor and hand over the possession to the Resolution Professional along with all its record so as to enable the Resolution Professional to conduct the CIR Process expeditiously in accordance with the time line given in the Code.

9. CA-359(PB)/2019 disposed of, accordingly.

CA-1128(PB)/2018

List on 13.05.2019.


(M.M.KUMAR)
PRESIDENT


(S. K. MOHAPATRA)
MEMBER (TECHNICAL)