(2020) 02 NCLT CK 0085

In the National Company Law Appellate Tribunal

Case No : (IB) No. 401(ND) Of 2017

Deepak Khanna APPELLANT

Vs

Earth Infrastructure Ltd RESPONDENT

Date of Decision : 18-02-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 60(5), 238

Citation : (2020) 02 NCLT CK 0085

Hon'ble Judges : Ch. Mohd. Sharief Tariq, J;Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : Anurag Bhat, Lokesh Pathak, Bilal Ali, K.S. Rawat

Final Decision : Disposed Of

Judgement

CA 721 of 2020 filed in IB 401 of 2017.

The present application has been filed under Section 60(5) of the IBC 2016. The Counsel for the Resolution Professional prayed for a direction to the Income-Tax Dept. to refund the entire amount of Rs. 1,24,54,364/- debited by the I.T. department during the CIRP from the bank accounts of the Corporate Debtor maintained by the Resolution Professional. The detail of the amount is as follows;

Date

Amount Debited (INR)

Bank

Account No.

12/6/2018

1,02,744

Kotak Mahindra

5.88011E+11

19/07/2018

49,158

Bank of Maharashtra

60097898876

27/07/2018

1,32,829

Indian Bank

6084668353

27/07/2018

1,08,02,280

Indian Bank

6084668353

31/08/2018

32,547

Kotak Mahindra

5.88011E+11

5/9/2018

53,748

HDFC Bank

5.02E+13

26/10/2018

12,48,511

HDFC Bank

1.59286E+13

19/11/2018

32,547

Kotak Mahindra

5.88011E+11

Total

1,24,45,364

The reason stated in the CA is that during the CIRP the Respondent were not authorized to debit any amount which is available with the Corporate Debtor for the purpose of seeking any Resolution Plan. It is further averred that the provision of Section 238 of the IBC 2016 override the provisions of the Income-Tax Act 1961. The reference is made to the observation of the Hon'ble Supreme Court made in the matter of Pr. Commissioner of Income-Tax vs. Monnet Ispat and Energy Ltd. in SLP (c) No. (6483/2018) wherein it has has been observed that Section 238 of IBC overrides the provisions of the Income-Tax Act 1961.

The Representative for the Income-Tax Deptt., has filed reply affidavit stating therein that the Income-Tax Dept. has filed the claim before the Interim Resolution Professional for an amount of Rs. 64,05,45,281/- in Form 'B' which has been admitted. But in order to discharge the official functions, the accounts of the Corporate Debtor were freezed. It is also recorded in the reply that no transaction was made by the department with respect to the bank accounts of the company, but the banks were advised to mark lieu on the accounts.

It is admitted factual position that CIRP was initiated against the Corporate Debtor viz., M/s. Earth Infrastructure Ltd. on 6.6.2018 and the Respondent viz. Income-Tax Dept. has debited/freezed and marked lien on the accounts on various dates during the moratorium, which is in violation of the moratorium.

In view of the factual and legal position stated above, the application filed by the Resolution Professional is hereby allowed. The Income Tax Department, Central Circle-28, New Delhi and Tax Recovery Officer, CIT (TDS-1) are directed to refund the entire amount of Rs. 1,24,54,364/- debited along with interest accrued thereon till the date of refund of entire amount and file an affidavit of compliance in the Registry within two weeks from the date the copy of this order is received. Consequently, orders of defreezing/marking of lien on the accounts of the CD by the Income Tax Department are hereby set aside.

A copy of this order free of cost shall be provided to the Income-Tax Deptt. - Central Circle -28 (Income-Tax Dept.) and TDS-1 by the counsel representing the RP for information and compliance. Accordingly, the application stands disposed off.