(2023) 05 NCLT CK 0080

In the National Company Law Tribunal

Case No : IA No. 252 Of 2022 In CP (IB) No. 5/Chd/Hry/2019

Mr. Madan Gopal Jindal Vs Bank of India ?

Date of Decision : 26-05-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 3(31), 14(3)(b), 18, 19(1), 19(2), 36

Citation : (2023) 05 NCLT CK 0080

Hon'ble Judges : Harnam Singh Thakur, Member (J);Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Nahush Jain, Vinish Singla

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

1. The present application is filed by Mr. Madan Gopal Jindal (herein referred to as 'Applicant') against Bank of India (herein referred to as 'Respondent') under Section 19(2) of the Insolvency and Bankruptcy Code, 2016 seeking direction against respondent to cooperate with Resolution Professional for supply of requisite documents/ information and release of fixed deposit receipts of Corporate Debtor.

2. The brief facts of the case are that the Corporate Insolvency Resolution Process was initiated and the applicant was appointed as Resolution Professional. The moratorium was imposed vide order dated 29.05.2020. The Resolution Professional took control over the business of the Corporate Debtor. The applicant sought the following bank account details.

Branch

Account Number

Faridabad

670820110000011

Kochi

850120110000102

Gurugram

670420110000299

The respondent failed to provide bank statement details. The applicant vide letters dated 14.07.2020 and 06.08.2020 requested to provide the bank statement. However, an email dated 06.08.2020 from the Kochi branch of the respondent bank informed that account no. for which details are sought was maintained by the Faridabad branch. The applicant further requested details of the fixed deposit receipt. The applicant after receiving details of FDRs from the respondent wrote a letter dated 22.07.2021 requesting the respondent to release the balance amount of Rs. 86,14,599.94/- after deducting the lien amount of Rs. 87,40,000/- till the issue of lien discharge was resolved. Vide letter dated 11.11.2021, the applicant again requested the release of FDRs which belong to the Corporate Debtor, the issue of chequebook, and a copy of Lien Agreements/ Bank Guarantees. However, despite a number of requests and reminders, the respondent has not been cooperating.

3. The affidavit of service was filed by Diary no. 00274/1 dated 13.09.2022. The reply was filed by learned counsel for the respondent by Diary No. 0274/04 dated 06.03.2023 wherein the details of the FDRs as communicated to the respondent bank are enumerated as below:

Sr. No.

FDR No.

Lien Remarks

1.

670845110000019

Linked to performance bank guarantee issued in favour of President of India through Commissioner of Customs (BG No. 6708IPEBG110044).

2.

850145110001115

As prime security to Commercial Tax Officer, Ernakulum.

3.

670845110000004

Linked to Financial guarantee issued in favour of the President of India through Commissioner of Customs (BG No. 6708IPEBG110003).

The FDRs lying with the Bank pertaining to CD-BHIIPL were kept in trust to secure the various guarantees issued by the Bank in favour of Government departments. As per Section 18 of the IBC provides that the term assets shall not include assets owned by a third party and held under trust or under contractual arrangements including bailments. It is submitted that the bank has provided all details of bank accounts and FDRs available with it to the applicant from time to time. The respondent bank has never denied the issuance of Cheque book for current account no. 670820110000011 of the CD-BHIIPL and the applicant-RP can collect the same from the Branch. The entire principal FDRs amount has been put on lien by the respondent bank.

4. We have heard the learned counsels for the applicant as well as the respondent and perused the material available on record.

5. The issue to be adjudicated here is whether any Fixed Deposit of the Corporate Debtor which is given as a performance bank guarantee can be released to the corporate Debtor after the initiation of CIRP. In this connection, we refer to the definition of security interest in Section 3(31) which specifically excludes performance guarantee from the definition of security interest. Section 14 (3) (b) of the Code, states that the provisions of this section shall not apply to a surety in a contract of guarantee to a corporate debtor. The provisions of the aforementioned Sections read along with Section 18 of the IBC make it clear that the performance bank guarantee can not be termed as an asset to the Corporate Debtor. We also note that Section 3(31) of the Code which defines security interest categorically excludes "performance guarantee".

6. This issue is also clarified by the provisions of Section 36 of the Code which envisages that code envisages that an asset held in trust for third parties cannot be counted as an asset of the corporate debtor and will not be used for recovery in the liquidation.

7. As per Section 19(1) of the Code, the respondent bank is under obligation to extend all assistance and cooperation to the IRP/RP as required in managing the affairs of the company.

8. We direct the respondent bank to provide assistance as required by the IRP/RP and complete the process. In view of the above discussion, such amounts, if any, except related to the performance guarantee and also the amount held in trust for third parties furnished by the Corporate Debtor be released within 14 days of this order.

9. Accordingly, IA No. 252/2022 is partly allowed and disposed of accordingly.