(2021) 11 NCLT CK 0025

In the National Company Law Appellate Tribunal

Case No : I .A. No. 2712/2021 In IB 717(ND)/2019

Punjab National Bank APPELLANT

Vs

Sidhartha Buildhome Pvt. Ltd RESPONDENT

Date of Decision : 02-11-2021

Acts Referred:
Insolvency and Bankruptcy Code, 2016 — Section 7, 12A, 18(l)(f), 36(3)(a)

Citation : (2021) 11 NCLT CK 0025

Hon'ble Judges : P.S.N. Prasad, Member (J);Narender Kumar Bhola, Member (T)

Bench : Division Bench

Advocate : Alok Dhir, Varsha Banerjee, Kanishk Khetan, S.K. Sharma

Final Decision : Allowed

Judgement

P.S.N. Prasad. Member (Judicial)

l. The present application has been filed by the Applicants/Interim Resolution Professional under section 18(l)(f) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC") seeking direction of this Adjudicating Authority to Punjab National Bank, i. e., Respondent, to transfer the amount of Rs. 3 crores as deposited on 25.03.2019 in account bearing No. 00071131004748 by the name of Sidhartha Buildhome Private Limited maintained with Punjab National Bank to account no. 51770200000053 by the name of Sidhartha Buildhome Private Limited with Bank of Baroda i.e., the account maintained in the ongoing insolvency resolution process of the corporate debtor.

2. The facts that led to the filing of the present application are as follows:

a. The background of the application under consideration is that the corporate debtor is a company engaged in the construction, development and promotion of residential buildings, flats and housing complexes in northern India. The corporate debtor approached the respondent for financial assistance and thereby, the Respondent, vide its sanction letter dated 25.09.2014, advanced a term loan of Rs. 75 crores to the corporate debtor and the corporate debtor to repay the amount sanctioned by the respondent in 10 quarterly instalments of Rs. 7.50 crore each, commencing after 15 months of moratorium. The corporate debtor was unable to pay the terms loan as per terms and conditions. The Petition u/s Section 7 of IBC, 2016 was filed as a result by the respondent, in the meanwhile corporate debtor approached the respondent for settlement, initially an amount of Rs. 61.25 crore towards the OTS scheme for settlement of the dues, however, the same was not acceptable by the Respondent. Thereafter, the settlement amount was further revised by the corporate debtor from Rs. 61.25 crores to Rs. 71 crores. In lieu of the revised settlement being proposed, the corporate debtor, through its subsidiary company i.e., CSN Estates Private Ltd., deposited a sum of Rs. 3 crores in the Escrow No-Lien Account on 25.03.2019.

b. It is submitted that in the escrow No-Lien account no. 00071131004748 maintained with Punjab National Bank in the name of corporate debtor an amount of Rs. 3 crores deposited is an asset of the corporate debtor and critical for the ongoing insolvency resolution process. It is stated that the said amount was deposited towards the One Time Settlement (OTS) proposed by the Corporate Debtor, however, the said amount was not accepted by the Respondent and continued to be in the current account of the corporate debtor,

c. It is further submitted that the said amount being an asset of the corporate debtor was duly reflected in the balance sheet of the corporate debtor. It is further stated that the said amount was deposited by the CSN Estates Private Limited (CSN Estates/ Subsidiary Company) against the amount which was due and payable by CSN Estates to Corporate Debtor and same is evidence from ledger and Balance Sheet of the Corporate Debtor and financial statement of subsidiary company reflecting the said amount. The said amount was deposited by the CSN Estates as per agreement dated 22.11.2012 entered with corporate debtor, according to it the corporate debtor had advanced the substantial amount for the purpose of acquisition of land. According to ledger account maintained by the corporate debtor for the period 01.04.2011-04.03.2021, it clearly reflected that a sum of Rs. 68,07,16,232.14/- (Sixty Eight Crore Seven Lakhs Sixteen Thousand Two hundred thirty two and fourteen paisa only) is due and payable by CSN Estates.

d. It is averred that the several emails were sent to Respondent seeking due access to the above- mentioned account, however, the Respondent till date failed to grant access of the said account of the Applicant. The IRP also submitted that he has admitted the entire claim of respondent amounting to Rs. 110,31,36,105/- (Rupees one hundred ten crore thirty one lakh thirty six thousand one hundred and five)

e. The Applicant has relied on order passed by the Mumbai Bench of this Adjudicating Authority namely, IRP for Ruchi Soya Industrial Limited versus ICICI Bank Limited. It was held that once the monies lying in the current account of the corporate debtor are construed as the assets of the corporate debtor, moratorium will trigger in over the said assets as well,

f. The Applicant further quoted the order dated 20.10.2017 of Chandigarh Bench of this Adjudicating Authority namely, Mr. Dinkar T. Venkastubramanium versus India Overseas Bank. It was held that any amount lying in the current account of the corporate debtor has to be placed at the disposal before the resolution professional, without any scope of any adjustment in any manner. Hence, the Applicant/Interim Resolution Professional prayed that the application may be allowed in view of the facts and circumstances above discussed.

3. The respondent has filed its reply and submitted that as per section 18(l)(f) of the IBC, 2016 IRP is to take control and custody of any asset over which the corporate debtor has ownership rights. It is stated that the said Rs. 3 crores were deposited by "CSN Estates Private Limited" a subsidiary company of corporate debtor on no-lien account of the respondent bank for the purpose of OTS proposal of Rs. 72 crores submitted by corporate debtor. It is further submitted that the respondent had not adjusted the amount of Rs. 3 crores lying in the non-lien escrow account in the term loan account of the corporate debtor as the said amount was deposited by "CSN Estates Private Limited" and shall continue to remain its assets. It is further submitted that director Siddharth Chauhan approached the respondent bank with OTS proposal for the sum of Rs. 65.00 Crore on 05.04.2021 which is still pending. It is stated that OTS proposal includes the sum of Rs. 3 crores deposited by CSN Estates Private Limited on behalf of corporate debtor. It is averred that the said amount is the asset of CSN Estates Private Limited and not of corporate debtor and until the OTS is admitted by the respondent, the said amount shall remain the asset of the CSN Estates Private Limited and only it can ask for refund. Hence, prayed that application may be dismissed keeping in view the facts and circumstances discussed above.

4. The Applicant also filed the rejoinder and reiterated all the facts as mentioned in the application and further submitted that on the 8th CoC held on 17.08.2021, the representative of the respondent bank confirmed that no proposal by the promoter/director was received and/or pending for consideration before the respondent bank, however, in the reply the respondent has taken contradictory stand. It is further submitted that proposal u/s 12A of IBC, 2016 of promoter/director was rejected by CoC in its 9th CoC dated 18.09.2021. The Applicant also relied upon section 18 (1) (f) (duties of interim resolution professional) and section 36(3)(a) (liquidation estate) of IBC, 2016. It is further submitted that any amount held in the bank account of the corporate debtor is deemed to be an asset of the corporate debtor and said amount of Rs. 3 crores is deposited in the bank account of corporate debtor held with the Respondent and the corporate debtor had credited the account of CSN in its books of accounts to give effect to the amount received by the corporate debtor. It is submitted that as on commencement of CIRP on 04.03.2021, the said amount of Rs. 3 crores was lying in the bank account, hence, the said amount was and continues to be an asset of the corporate debtor.

5. We have gone through the Application, reply and rejoinder and also heard the

arguments advanced by both the parties. Before arriving to any conclusion it is necessary to look into section 18(1)(f), which reads as under:

"(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including-

i. assets over which the corporate debtor has ownership lights which may be located, in the foreign country.

ii. rights that may or may not be in possession of corporate debtor.

Hi. tangible assets, whether movable or immovable,

iv. intangible assets including intellectual property.

v. securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

vi. assets subject to the determination of ownership by the court or authority. "

It is evident from the financial statements of the corporate debtor for the year 2018-2019, 2019-2020 and balance sheet for the period 2020-2021 (annexed as annexure A-2 (Colly.) that the corporate debtor has

advanced the Loan to CSN Estates Private Limited. Secondly, it is to be seen whether the payment advanced by the CSN Estates is with respect to the payment of Loan advanced by the Corporate Debtor to CSN Estates. From the above documents it is clear that the said amount was paid in discharge of the loan advanced by the corporate debtor to CSN Estates, therefore, the said amount of Rs. 3 crores forms the part of the asset of corporate debtor. The Law is clear that IRP has to take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor. The Applicant/IRP has proved its case, hence, the respondent bank is directed to transfer the amount of Rs. 3 crores as deposited in Escrow No Lien Account No. 00071131004748 deposited on 25.03.2017 to Account No. 51770200000053 maintained with Bank of Baroda. Accordingly, the IA-2712/2021 in CP (IB)-717(ND)/2019 is Allowed.

6. The order is pronounced by this Adjudicating Authority through Video Conferencing.

