

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal(AT) (Insolvency) No. 1009 of 2019

IN THE MATTER OF:

Punjab National Bank

...Appellant

Vs

Kannan Tiruvengadam

....Respondent

Present:

For Appellant: Mr. Rajesh Kumar Gautam and Mr. Sorabh Dahiya, Advocates

For Respondent: Mr. Rishav Banerji and Mr. Dipen Chatterjee, Advocates for Respondent No. 1

Mr. Ratnanko Banerjee, Sr. Advocate along with Mr. Sarad Singhenia, Advocates for Respondent No. 2

ORDER

05.12.2019 Heard Advocate Shri Rajesh Kumar Gautam for the Appellant- Punjab National Bank and Sr. Advocate Mr. Ratnanko Banerji appearing on behalf of Respondent No. 2.

2. This appeal was filed by the Appellant- Punjab National Bank against interim order dated 06.09.2019 passed by the Adjudicating Authority (National Company Law Tribunal) Kolkata Bench, Kolkata in CA(IB) No. 784/KB/2019 in CP(IB) No. 1237/KB/2018.

3. When this matter had come up before this Tribunal on 13.11.2019, this Bench passed the following order:

“ORDER

13.11.2019 In this matter, Section 9 Application was admitted on 12th November, 2018 and moratorium came into

effect from the said date. The Appellant claimed that against margin money, it adjusted the money with the Bank in the form of FDR on 14th and 15th November, 2018. The learned Counsel for the Appellant states that the Bank was not aware of the moratorium but the money adjusted was towards margin money which was available with the Bank in the form of FDRs. The learned Counsel states that in view of the Interim Order of this Tribunal dated 30.09.2019, it was directed to reverse the entries and the Appellant has already reversed the entries. As directed by the Order dated 30th September, 2019, the Appellant Bank has already deposited the amount with the Resolution Professional by way of FDR. The learned Counsel submits that the Impugned Order in addition to reversing the money adjusted, directed payment of interest also as recorded in para – 11 of the Impugned Order (Page – 50) which reads as under: -

“11. We are of the considered view that the Bank could not have done it and, therefore, direct the Respondent Bank to refund the said amount within two weeks from the date of receipt of this order along with notional interest that could have been generated on the said amount if the amount had been lying in an FDR from the date of the adjustment by the Bank till the date of refund because that amount has to be utilized for the purpose of Corporate Insolvency Resolution Process and belongs to the various creditors of the Corporate Debtor. If the Bank has any claim,

against the Corporate Debtor, it can place its claim as Financial Creditor before the Resolution Professional concerned.”

It is stated that under Section 14(3)(b) of Insolvency and Bankruptcy Code, 2016 security in Contract of Guarantee to the Corporate Debtor is exempt from the moratorium. The counsel refers to grounds – para ‘A’ of the Appeal.

The document of concerned Contract of Guarantee and copies of the concerned FDs are not on record. The Appellant may file the same.

Advocate – Shri Rishav Banerjee is present and he states that in the proceeding, already Resolution Plan has been approved on 21st October, 2019 and Almas Global Opportunity Fund SPC has stepped into the shoes of Corporate Debtor.

None present for the Resolution Professional. The Appellant to add the above Successful Resolution Applicant as Respondent No.2 and serve Notice on Respondent No.2.

Advocate – Shri Shambo Narang for the added Respondent is present and dispensed with service of formal Notice.

Reply, if any, may be filed by the added Respondent within 10 days.

List the Appeal ‘for admission (after Notice) hearing’ on 5th December, 2019.”

Thus on that date a legal issue was raised as noted above.

4. Now however, learned Counsel for the Appellant states that in compliance of the impugned order, the Appellant has already made another FDR in the name of Corporate Debtor which has been made from the back date and thus portion of interest is covered. Learned Counsel also referred to the Affidavit filed on 04.11.2019 (Diary No. 15768) and Annexure-A1(Colly) along with copy of the FDR in the name of the Corporate Debtor endorsing the same which can be seen at Annexure-A1(Colly).

5. Learned Counsel for the Appellant states that this appeal can be disposed of as infructuous in view of the compliance keeping the question of law as raised open for decision in some other appropriate proceeding.

6. Learned Counsel for the Respondents are submitting that Resolution Plan has been approved and further action would be required to be taken in compliance of the Resolution Plan. We are leaving those aspects open for being taken up with the Adjudicating Authority with regard to any further implementation required in view of the impugned order. The operative part of the impugned order paragraph-11 we have reproduced above in paragraph-3.

7. Considering the fact that Appellant has reversed entries by creating the FDR in the name of Corporate Debtor from a back date and it stated that the appeal may be treated infructuous, we agree with the contention of learned Appellant to treat the Appeal as infructuous.

8. The Appeal is disposed of as infructuous in view of the compliance stated.
9. The parties are at liberty to move before the Adjudicating Authority for further directions, if any, required on the basis of Impugned Order.

[Justice A.I.S. Cheema]
Member (Judicial)

(Kanthi Narahari)
Member(Technical)

(V P Singh)
Member(Technical)

Akc/Md.