

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.127 of 2019

IN THE MATTER OF:

Canara Bank

...Appellant

Versus

Valecha Engineering Ltd.

...Respondent

For Appellant: Shri Sunil Fernandes and Shri Darpan Sachdeva,
Advocates

For Respondent: Ms. Sneha Arya, Shri Ramakant Gaur and Presana
Agarwal, Advocates

ORDER

12.02.2020 Heard Counsel for the Appellant. It is stated that the Respondent Company - Valecha Engineering Ltd. filed M.A.No.907 of 2019 before the learned National Company Law Tribunal, Mumbai Bench in CP No.2111/(MB)/2018. The Company Petition was relating to Application under Section 73(4) of the Companies Act, 2013 which was filed by fixed deposit holders – M/s. Shilpa Sakharram Gawai and others against the Respondent Company. The fixed deposit holders want their money of fixed deposit returned and for the said purpose, the Petition was pending. It is stated that in the said Petition, the Respondent Company filed M.A. No.907 of 2019, copy of which is at Annexure R-4 (Diary No.13483), claiming that Canara Bank had appropriated Rs.15.41 Crores, which had come as tax refund of TDS to the account of the Company held with Canara Bank, towards its outstanding dues of the Bank and that the Company intends to utilize Rs.13.19 Crores to repay fixed deposit holders and that the entry should be reversed to extent of Rs.13.19 Crores so that the Respondent Company could pay the fixed deposit holders.

2. It is stated that in such Application, even going beyond the prayer of the Application without legal basis to pass such Order, the present Impugned Order came to be passed wherein it was observed and directed as under:-

- “9. That the Applicant submits that they intend to utilize the entire amount to repay to the said F.D. Holders. The said Bank has illegally, unilaterally and independently without recourse to the applicant utilized the amount towards the outstanding applicant company’s overdraft account.
9. It is prayed to this Bench to issue directions to Canara Bank holding current Account No.2677256000011 maintained with Canara Bank, Lokhandwala Branch, Mumbai – 400 053 to refund the amount to HDFC Bank in the name of Valecha Engineering Limited holding Account No. 00602230006328 IFSC Code HDFC0000060, Fort Branch, Mumbai so that the refunded amount will be paid to the F.D. Holders. Hence the following order is passed:-

ORDER

- (i) MA No.907/2019 is allowed.
- (ii) It is directed to Canara Bank holding Current Account No.2677256000011 maintained with Canara Bank, Lokhandwala Branch, Mumbai-400 053 to refund the amount to HDFC Bank in the name of Valecha Engineering Limited holding Account No.00602230006328 IFSC Code HDFC0000060, Fort Branch, Mumbai so that the refunded amount will be paid to the F.D. Holders.
- (iii) The HDFC Bank Authorities are hereby directed to convert the said account as referred supra into “Lien Account” which shall be in the nature of “Escrow Account” so that each withdrawal be monitored not to be used other than repayment/refund of F.D. Holders.
- (iv) M.A. No.907/2019 stands disposed of accordingly. Adjourned to **25.06.2019**.

- (v) A Certified Copy of this Order to be served upon the Bank Authorities “DASTI” for their respective records.”

3. The submission of the learned Counsel for the Appellant is that against the present Respondent, M/s. Siemens Financial Services Pvt. Ltd. had moved winding up proceedings - Company Petition No.761/2015 with Company Petition No.861/2015 under the old Companies Act, 1956 which have continued even after the new Companies Act, 2013 came into force and passing of Insolvency and Bankruptcy Code, 2016 (IBC – in short). The learned Counsel pointed out Order of the High Court at Annexure A-3 (Page – 70) dated 1st March, 2018 to submit that the High Court had in Para -6 of the Order held that the Company was indebted to the Petitioner and unable to discharge its debts and required to be wound up. The High Court allowed prayers in the Petition whereby the Respondent Company was ordered to be wound up under the directions of the High Court as per provisions of the Companies Act, 1956 and the Official Liquidator was to be appointed. The learned Counsel states that when the winding up proceeding was pending, the Respondent could not have moved NCLT with such Application – MA 907/2019 in the proceeding filed by the fixed deposit holders so as to direct the Appellant to reverse the entries.

4. The learned Counsel for the Respondent is pointing out that the Order dated 1st March, 2018 (Annexure – A3) was stayed in Appeal filed by the Respondent Company having Appeal No.126 of 2018 and in the said Order dated 06.04.2018, the Order dated 1st March, 2018 was stayed. The learned Counsel for the Respondent states that the effect was that the Official Liquidator was stopped from taking further actions. The learned Counsel,
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however, accepts that effect of Section 283 of the Companies Act, 2013 would still be there because of the winding up Order.

5. Having heard Counsel for both sides and going through the matter, it appears to us that by the Impugned Order under the Companies Act in a Petition pending under Section 73(4) of the Companies Act, 2013, the NCLT could not have passed such Order directing the Bank to reverse the entry when the bank claims that it had dues of more than Rs.30 Crores which were to be recovered from the Respondent Company. There appears no source of power giving jurisdiction to give such direction to the Bank in the facts of this matter. According to us, this Order needs to be set aside.

6. The learned Counsel for the Respondent submits that Notice of Motion in Appeal (L) No.126 of 2018 is pending. In this view of the matter, keeping in view Section 283 of the Companies Act, 2013, although we are proceeding to set aside the Impugned Order, the Canara Bank would have to hold money to the extent of Rs.15.41 Crores in interest bearing Account which is said to have been appropriated from the account of Respondent subject to directions to be obtained from the Hon'ble High Court in the Petition mentioned above which is stated to be pending. Both the parties are at liberty to seek directions from Hon'ble High Court in the Company Petition No.761/2015 regarding appropriation of this amount of Respondent against whom winding up Order has been passed.

7. The Appeal is disposed accordingly. The Impugned Order is quashed and set aside and the Canara Bank is directed to hold the amount of Rs.15.41 Crores, which is said to have been appropriated from the account of

Respondent Company, in interest bearing Account. Parties are at liberty to take further steps as per observations made above.

The Appeal is disposed accordingly. No costs.

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

(Justice A.B. Singh)
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

/rs/md