

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 159 of 2017

IN THE MATTER OF:

State Bank of India

...Appellant

Versus

S. Muthuraju & 3 others.

...Respondent

Present:

For Appellant : **Shri Om Prakash, Senior advocate assisted by Shri Pawan Kishore Singh and Shri S. Sethuraman, Advocates**

For R-2 & R-3 : **Shri Nikhil Nayyar and Shri Divyanshu Raz, Advocates**

ORDER

23.10.2017 Heard learned counsel for the appellant and the learned counsel for Respondent Nos. 2 and 3. The impugned order passed in this matter by NCLT, Chennai Bench, Chennai was as under:

“Counsel for IRP present. Counsel for Financial creditor (State Bank of India) present. Section 18 contains the duties of the IRP and under clause (f) and f(ii) of the section, it is provided that the IRP shall take over the control and custody of any asset over which the Corporate Debtor has ownership right as recorded in the Balance Sheet of the Corporate Debtor, assets that may or may not be in the possession of the Corporate Debtor. In view of this, financial Creditor (State Bank of India) is directed to hand over the physical possession of the assets of the Corporate Debtor to the IRP within two days from today, failing which the Adjudication Authority shall be constrained to take action against the financial Creditor under section 74 of the IBC, 2016, for contravention of the moratorium. Accordingly, application No. 9 of 2017 stands disposed of.”

Learned counsel for the appellant referred to the order passed earlier by this Tribunal in Company Appeal (AT) (Insolvency) No. 105 of 2017 and submitted that this Tribunal on that occasion made it clear that the Financial Creditor if it has taken over the possession of the land of the Corporate Debtor under the SARFAESI Act, 2002 the said Financial Creditor can be asked to hand over the possession of such land, which may be decided by the learned Adjudicating Authority, if such question is raised by Insolvency Resolution Professional or any Creditor or any other aggrieved person. The learned counsel submitted that this issue is yet to be decided.

Learned counsel for the respondent submitted that the appellant had objected to the continuation of Respondent No. 1 – S. Muthuraju as Interim Resolution Professional. The said person is at present no more looking after the affairs of the Corporate Insolvency Resolution Process and the new Resolution Professional has already taken over and further steps regarding possession have also been taken and thus according to him the impugned order in this matter no more requires any further consideration and the appeal should be treated as infructuous. Learned counsel for the appellant states that fresh application has been filed by Respondent Nos. 2 and 3 before the Adjudicating Authority for seeking action for violation of the earlier order dated 7th July, 2017.

The appellant may pursue its remedies with the NCLT. In view of the submissions made, nothing survives in this appeal with reference to impugned order and thus the appeal is treated as infructuous.

In view of this, the appeal stands disposed of.

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

[Justice Bansi Lal Bhat]
Member(Judicial)

[Balvinder Singh]
Member (Technical)

/ns/