

NCLAT Affirms Non-Reversibility of Payment Made by Co-Applicant from Separate Account during CIRP

Introduction and Background:

The National Company Law Appellate Tribunal (NCLAT), New Delhi bench comprising Justice Ashok Bhushan (Judicial Member) and Mr. Barun Mitra (Technical Member), adjudicated the appeal in the matter of *ICICI Bank Ltd. versus Chanchal Dua & Ors.* The controversy arose from an order of the National Company Law Tribunal (NCLT) directing the reversal of an amount of Rs. 8,92,980/- (Rupees Eight Lakhs Ninety Two Thousand Nine Hundred and Eighty Only) received by the bank during the pendency of Corporate Insolvency Resolution Process (CIRP). The Appellant contended that the said amount was remitted by a co-applicant from an account other than that of the corporate debtor, and on this basis, submitted that neither the moratorium under Section 14 nor the provisions of Section 43 of the Insolvency and Bankruptcy Code, 2016 (IBC) would be attracted.

The Appellant's Submission: Distinction between Corporate Debtor and Co-Applicant Transactions-

The crux of the appellant's submission was founded on the clear demarcation between transactions originating from the corporate debtor and those effectuated by a co-applicant independently. It was argued that the moratorium under Section 14 of the IBC operates exclusively to restrain enforcement actions or realization of security interests against the Corporate Debtor. Since the payment in question was effected from a distinct bank account maintained by the co-applicant, it did not constitute a transaction by the Corporate Debtor subject to the moratorium. Consequently, reversal of such payment was unwarranted and exceeded the jurisdictional ambit of the adjudicating authority.

Respondent's Position:

Enforcement of Moratorium and Need of reversal conversely, the respondent bank maintained that any receipt towards the Corporate Debtor's loan account after imposition of the moratorium was impermissible and constituted violation of Section 14 of the IBC. It was urged that in order to preserve the efficacy of the insolvency resolution process, the amount received should be restored to the corporate debtor's account by reversing the transaction.

Judicial Analysis:

Applicability of Sections 14 and 43 of the IBC upon careful consideration, NCLAT elucidated the statutory contours of Sections 14 and 43 of the IBC in the context of the facts. It was observed that the moratorium under Section 14 specifically restrains financial creditors and other stakeholders from enforcing security interests and realization of assets against the Corporate Debtor itself during CIRP. Here, as the impugned payment emanated from an account maintained by the co-applicant and not from the corporate debtor, there was no breach of the moratorium. The tribunal underscored that Section 14 does not proscribe payments made by third parties or co-applicants.

Regarding Section 43 which deals with avoidance of preferential transactions made by the corporate debtor prior to CIRP the bench held that the precondition is that the transaction must be attributable to the corporate debtor. Since the payment was made by the co-applicant and was not a transaction initiated by the corporate debtor itself, the provision had no application. As such, the direction for reversal lacked a statutory foundation and was unsustainable in law.

Preservation of Rights to Possession and Recovery by Financial Creditors:

The tribunal further indicated that the IBC does not proscribe authorised persons from taking lawful steps to repossess or control the assets of the corporate debtor. The release of the charge on assets allegedly consequent to the payment by the co-applicant does not amount to contravention of the moratorium provided it does not infringe upon the rights of stakeholders under the Code.

Conclusion:

Upholding Jurisdictional and Statutory limits on Reversal Orders - In light of the foregoing, the NCLAT allowed the appeal and set aside the impugned NCLT order directing the reversal of Rs. 8,92,980/- (Rupees Eight Lakhs Ninety Two Thousand Nine Hundred and Eighty Only). This pronouncement clarifies and affirms the principle that:

The moratorium under Section 14 IBC is circumscribed to transactions executed by or enforcement actions against the corporate debtor's own assets and accounts.

Payments made by co-applicants or third parties from their independent accounts do not fall within the ambit of preferential transactions under Section 43 IBC.

Adjudicating authorities ought to exercise jurisdiction consistent with statutory mandates and cannot direct reversal of payments lacking a nexus to the corporate debtor's transactions or assets.

This authoritative ruling reinforces the integrity of the CIRP framework by delineating the permissible scope of transactions during the moratorium period and ensuring that recovery proceedings remain legally compliant. It serves as a guiding precedent on the proper interpretation of Sections 14 and 43 of the IBC, fortifying the balance between insolvency resolution and protection of third-party transactions conducted bona fide and independently of the corporate debtor's control.