



RUCHI SOYA INDUSTRIES LIMITED

CIN : L15140MH1986PLC038536

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RSIL/2018

6th June, 2018

BSE Ltd.
Floor No.25,
Phiroze Jeejeebhoy Tower,
Dalal Street,
Mumbai – 400 001

Dear Sir,

Sub: News Clarification – “NCLT directs ICICI Bank to reverse Rs.48 Crores in Ruchi Soya’s Current Account”

Dear Sir,

We may confirm that the Company remains under Corporate Insolvency Resolution Process (CIRP). In accordance with the regulations, there is a moratorium granted towards protection of the Company’s property and assets. As mentioned in the news report, certain amounts received from the on-going operations of the Company during CIRP were debited by ICICI Bank, without due and prior permissions from the Committee of Creditors and Resolution Professional (RP). Accordingly, the RP had submitted an application to seek appropriation of funds from ICICI Bank and moved before NCLT, Mumbai seeking reversal of such amounts into the current accounts of the Company to enable the RP to use such amounts for operations during CIRP.

In this connection, NCLT, Mumbai in its hearing on June 5, 2018 (yesterday), held that the appropriation of monies of the Company against the loan account is bad in law and invalid and accordingly directed ICICI Bank to deposit the same in the account of the Company. While we have received your mail dated June 6, 2018, desiring certain clarification on the above issue pursuant to media reports in this regard, a copy of the detailed order, as published only today, is attached for your perusal and records.

At this juncture, we hereby affirm that while the above is in line with the duties and powers conferred upon the Resolution Professional under the Insolvency & Bankruptcy Code, 2016, all relevant controls are put in place to ensure no material, non-public or price sensitive information is published in compliance with the SEBI (LODR) Regulations. Further, any material event shall be notified to the stock exchanges in accordance with SEBI (LODR) Regulations.

Thanking you,

Yours faithfully,
For RUCHI SOYA INDUSTRIES LTD.,


COMPANY SECRETARY

Encl. As above.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

MA 84/2018 in
C.P.(IB)1371&1372(MB)/2017

Under section 60(5) of the IBC, 2016

In the matter of
Interim Resolution Professional
for Ruchi Soya Inds. Ltd.
..... Applicant

v/s.

ICICI Bank Ltd. Respondent

in the matter between
Standard Chartered Bank &
DBS Bank Ltd.

....Applicants/
Financial Creditors

v/s.

Ruchi Soya Inds. Ltd.
....Corporate Debtor

Order delivered on 05.06.2018

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

For the Petitioner : Sr. Adv. Navroz Seervai a/w Adv. Chetan
Kapadia i/b Adv. Alok Patel for AVP
Partners.

For the Respondent : Adv. Andhyarjina i/b Adv. Meghna
Rajadhyaksha and Adv. Sukriti Jaiswal
of Shardul Amarchand Mangaldas & Co.

Per: B.S.V. Prakash Kumar, Member (Judicial)

ORDER

Order pronounced on 05.06.2018

It is a Miscellaneous Application filed by the Interim Resolution Professional (IRP) stating that since ICICI Bank debited an amount of ₹12.41crores on 16.12.2017, ₹28.56crores on 18.12.2017 and ₹6,77,98,120.55 on 26.12.2017 aggregating to ₹47.75crores from the current account of the Corporate Debtor subsequent to declaration of moratorium on 15.12.2017, this Applicant/IRP has



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sought relief to direct ICICI Bank to reverse the amounts that have been debited by ICICI bank after 15.12.2017 from the current account of the Corporate Debtor and transfer the same to current account bearing No. 004105013333 of the Corporate Debtor maintained with ICICI.

2. The sum and substance of this Application is for this Bench passed an order admitting CP1371/2017 filed by DBS Bank and CP/1372/2017 filed by Standard Chartered Bank against the Corporate Debtor u/s 7 of the Insolvency & Bankruptcy Code on 08.12.2017 by declaring moratorium over the assets of the Corporate Debtor on 15.12.2017, the monies lying in the current account maintained by the Corporate Debtor with the present respondent i.e. ICICI Bank Ltd. being the asset of the Corporate Debtor, ICICI should not have debited the aforesaid monies from the current account of the Corporate Debtor in the name of LCs availed by the Corporate Debtor subsequent to declaration of moratorium u/s 14 of the Code. Since ICICI has consciously debited the money from the current account of the Corporate Debtor subsequent to declaration of moratorium, the applicant's counsel says those transfers should be reversed to the current account of the Corporate Debtor.

3. To fortify his stand, Sr. Counsel Mr. Seervai appearing on behalf of the Applicant says ICICI could not have debited the aforesaid amount from the current account of the debtor even in the name of realization against the LCs given by ICICI because, by the time, these monies are debited from the current account of the debtor, moratorium has already kicked in on 15.12.2017, moreover, he has further added by the time they debited the aforesaid money from the current account, the declaration of moratorium was already notified to ICICI. This asset i.e. current account of the Corporate Debtor, according to this Counsel, is governed by section 14(1)(b) of the IBC prohibiting transferring, encumbering, alienating or disposing of the assets or any legal rights or beneficial interest by the Corporate Debtor. He says, as to the asset of the Corporate Debtor, since the Corporate Debtor has been explicitly debarred from dealing with the asset of it in any manner as stated u/s 14(1)(b) of IBC, it makes no



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difference as to whether the transfer has been made by the Corporate Debtor or by somebody else when the current account of the Corporate Debtor is construed as the asset of the Corporate Debtor, in view of the same, the Counsel of the applicant has sought for the reversal of the impugned transaction.

4. To which reply of ICICI is, it has already provided various loan facilities including non-funding facility i.e. LCs in this case, it says as long as money is lying in the current account of the Corporate Debtor, ICICI being the creditor, it has every right to debit the monies against LC grants paid to the third parties by the Bank, accordingly ICICI bank debited the monies from the current account of the Corporate Debtor against the LCs granted in the ordinary course of business.

5. To buttress his argument, this Counsel has relied upon a Supreme Court judgment on the matter between Shanti Prasad Jain & another vs. Director of Enforcement, Foreign Exchange Regulation Act & another (AIR 1962 SC 1764) para 37, saying that the relation between the Corporate Debtor and the respondent herein is not trustee and beneficiary, indeed it is a creditor and debtor relation, therefore, as long as the money lying in the bank, it has to be treated as an asset of the bank, not as an asset of the Corporate Debtor. The Corporate Debtor will not have any right to say that asset is at the disposal of the debtor. The Counsel Andhyarjina appearing on behalf of the Respondent Bank submits that money being fungible and not identifiable as an asset of the Corporate Debtor, it has to be treated as an asset of the bank not as an asset of the Corporate Debtor.

6. On hearing such an argument from this respondent bank counsel, when this Bench has put a question to him as to what would happen in case a cheque has been issued by the Corporate Debtor for payment to be made to a third party from his account, to which the counsel has admitted if such an instrument has come from the Corporate Debtor, it has to be paid as directed by the Corporate Debtor from its current account.



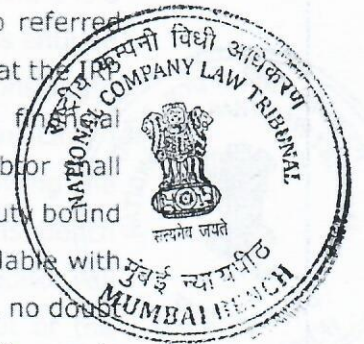
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7. Another argument strongly relied upon by the counsel of ICICI is section 14 is a prohibiting section debarring the rights of many people against the assets of the Corporate Debtor, this prohibition has to be read plainly and to be executed as stated in the section but not to give any liberal construction to the section so as to read something into the section in the name of giving meaningful interpretation. He says on careful reading of section 14(1)(b), it is evident that the Corporate Debtor alone is prohibited from dealing with the asset of it, it has not been said anywhere that others should not deal with the asset of the Corporate Debtor, saying so, he has also made it clear that it is an additional argument to his argument saying that the monies lying in the current account of the Corporate Debtor is not an asset of the Corporate Debtor.

8. On weighing the arguments of either side, the short point for discussion is as to whether the money lying with the Corporate Debtor with the respondent bank is an asset of the Corporate Debtor or not, if it is an asset of the Corporate Debtor, whether the persons other than Corporate Debtor can deal with such an asset stating that it is not falling within the ambit of section 14(1)(b) of IBC.

9. I must also say that the Applicant counsel has also referred section 17(1)(d) and section 28(1)(e) of the Code saying that the IRP has right under these two sections to say that the financial institutions maintaining the accounts of the Corporate Debtor all act on the instructions of the IRP and such institutions are duty bound to furnish all information in respect to those accounts available with them to the IRP. As to these two provisions are concerned, no doubt IRP is conferred with right to deal with the accounts of the Corporate Debtor lying with the financial institutions but it is a supplementary right, not a right conferred under section 14 of the Code, so it is clear that rights conferred under those two sections cannot be stretched to say that duty conferred upon IRP is to be treated as mandate of prohibition u/s 14(1)(b) of the Code.



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10. In view thereof, the only point to be seen is what rights are conferred upon with the party in respect to the monies lying in the bank account of a person. For this, if characteristics of ownership is read into the given situation, since right of disposal is the basic characteristic of ownership, as long as monies are at the disposal of a person, such person has to be treated as a person having right of disposal over the given monies.

11. If the same analogy is applied here saying that the corporate debtor is treated as debtor, the creditor will have right of recovery, not right of disposal over the monies lying in its current account. The right of the creditor being a remedy for realization and that remedy being suspended in the period of moratorium, I don't believe that such right of remedy could be exercised soon after declaration of moratorium. Once the monies lying in current account is construed as the asset of the Corporate Debtor, section 14 will trigger in over the said asset as well.

12. Of course, doctrines like set-off, reclamation, withholding recognised under insolvency jurisprudence of USA, UK and Germany are not available in the Code, under those jurisprudences, there is a possibility to set off or withhold funds of insolvent, creditor is entitled to exercise any of the doctrines mentioned above to arrest onslaught against creditors. But the same not yet being applied to our Law, I have a fear that this Tribunal is conferred with the power of allowing the creditor to appropriate it against its dues. Therefore, this Bench hereby construed that once moratorium is kicked in, the creditor will have no right to exercise its right of lien upon the asset of the Corporate Debtor.

13. For it has been admitted that the respondent/the creditor appropriated the monies lying in the account of Corporate Debtor against the loan account soon after moratorium has been declared, such transaction has to be held as hit by sec 14 of the Code, for this reason, this Bench hereby holds that the appropriation of the monies of the Corporate Debtor against the loan account of the Corporate Debtor by the creditor herein is bad in law, hence it is hereby



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declared invalid directing the Respondent/ICICI Bank to deposit the same in the account of the Corporate Debtor.

14. Accordingly, this application is hereby **allowed**.

Sd/-

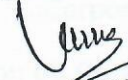
RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

Sd/-

B.S.V. PRAKASH KUMAR
MEMBER (JUDICIAL)



Certified True Copy
Copy Issued "free of cost"
On 06/06/2018


Deputy Director
National Company Law Tribunal, Mumbai Bench