

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.45 of 2021

(Under Section 61 of the Insolvency and Bankruptcy Code 2016)

[Appeal arising out of the Impugned Order dated 04.03.2021, passed in IA No.337/2020, in CP (IB) No.199/7/HDB/2019, passed by the Ld. National Company Law Tribunal, Hyderabad Bench, Hyderabad]

IN THE MATTER OF:

POWER GRID CORPORATION OF INDIA LTD.

Government of India Enterprise,
Having its Registered Office at:
B-9, Qutab Institutional Area, Katwaria Sarai,
New Delhi – 110016.
And its Corporate Office at:
Saudamini, Plot No.2, Near IFFCO Chowk,
Gurgaon, Haryana – 122001

... APPELLANT

V.

1. ASTER PRIVATE LIMITED

(Corporate Debtor)
(CIN:U32204TG1998PTC029457)
Having its registered Office at:
Plot No.141/11, Phase II, IDA, Cheriapally,
Hyderabad, Telangana – 500051
Represented by Resolution Professional
Shri Naren Sheth

...RESPONDENT 1

2. Punjab National Bank
Large Corporate Branch,
Centenary Building,
28, M.G. Road Branch,
Bangalore – 560001

...RESPONDENT 2

3. IDBI BANK LIMITED
Hyderabad Main Branch
5-9-89/1, Chapel Road,
Post Box No.370,
Hyderabad – 500001

...RESPONDENT 3

4. AXIS BANK LIMITED
Credit Management Centre,
6-3-879-B, First Floor,

G Pulla Reddy, B1
Greenlands, Begumpet Road,
Hyderabad – 500016

...RESPONDENT 4

Present:

For Appellant : Mr.Joshua Samuel, Advocate
For M/s.Paul &Paul
J Hudson Samuel & Partner

ORDER

VIRTUAL MODE

Heard the Learned Counsel Mr.Joshua Samule, appearing for the Appellant/Petitioner in I.A.No.97/2021.

According to the Learned Counsel for the Appellant, the 1st Respondent/Corporate Debtor filed interlocutory application No.337 of 2020 before the Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench, Hyderabad) in CP(IB)199/7/HDB/2019 praying for the relief of Injunction against the Appellant from encashing the 'Bank Guarantees', which was granted by means of the Impugned Order dated 24.03.2021.

Assailing the validity, legality and correctness of the Impugned Order dated 24.03.2021 in I.A.No.337 of 2020 in CP(IB)199/7/HDB/2019 passed by the Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench, Hyderabad) the Learned Counsel for the Appellant submits that the 'Adjudicating Authority' while passing the Impugned Order had failed to appreciate that a 'Bank Guarantee being a surety' in a contract of Guarantee is 'ex facie' excluded from the purview of 'Moratorium' as per Section 14(3)(b) of the I & B Code.

Advancing his arguments, the Learned Counsel for the Appellant contends that the finding of the 'Adjudicating Authority' that ultimately, a 'Bank Guarantee' is to be reduced into financial terms and dealt with on merits is not only contrary to the code but also the settled law governing the 'Encashment of Bank Guarantees' independent of the code. Also that, the finding that the 'Encashment of Bank

Guarantee' will diminish the 'value of assets' of the Corporate Debtor and cause irretrievable loss to the 'Corporate Debtor' is also an incorrect one because of the fact that these pleas were rejected by the Parliament by the enactment of Section 3(31) and 14(3)(b) of the Code.

The other contention projected on behalf of the Appellant is that the 'Adjudicating Authority' despite noting that a 'Bank Guarantee is not covered under the Moratorium' incorrectly passed an 'injunction' restraining the Appellant from invoking the 'Bank Guarantee' in issue.

Besides the above, it is the stand of the Appellant that 'Performance Guarantee' is explicitly and unequivocally excluded from the term 'Security Interest' as it appears in Section 14(1)(c) of the Code and therefore, the same is not covered under the Moratorium' under Section 14 of the Code. Moreover, 'Bank Guarantee' is not an 'asset' of the Corporate Debtor and is a third party contract between the 1st Respondent and the Bank and therefore, it is contended that the 'Adjudicating Authority' has no jurisdiction under Section 60(5) of the Code while being seized of the 'Insolvency Proceedings' against the 'Corporate Debtor' in as much as neither the Bank nor the Respondent No.1 is a 'Corporate Debtor', in fact, upon encashment the money gets debited from the 'Account of the Guarantor' (Issuing Bank) and not from the account of the 'Corporate Debtor'. Also that, the effect of encashment upon the 'Corporate Debtor' is that the 'Guarantor' steps into the shoes of the Respondent as a 'Creditor' claiming the amount of the encashed 'Bank Guarantee'.

The Learned Counsel for the Appellant comes out with an argument that a 'Bank Guarantee' is outside the remit of the Resolution Professional' as per Section 18 of the I & B Code, and therefore, not being an asset of the 'Corporate Debtor', cannot be subject matter of any examination, much less under Section 60(5) of the Code.

The Learned Counsel for the Appellant submits that the Impugned Order passed by the Adjudicating Authority is contrary to law, equity and good conscience and hence, the same is liable to be set-aside, in the interest of justice.

On a careful consideration of the contentions advanced on behalf of the 'Appellant' and also this Tribunal, on going through the Impugned Order dated 24.03.2021 in I.A.No.337 of 2020 in C.P.(IB)No.99/7/HDB/2019, passed by the 'Adjudicating Authority' is of the considered view that till the next date of hearing on 16.06.2021, the implementation of the Impugned Order is to be stayed in the interest of justice and accordingly, the implementation of the Impugned Order dated 24.03.2021, in I.A.No.337 of 2020 in C.P.(IB)No.99/7/HDB/2019, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Bench, Hyderabad) is stayed till the next hearing date 16.06.2021. In the meanwhile, Let notice be issued to the 'Respondents' returnable by 16.06.2021 through Speed Post. Let the requisite together with process fees be filed before the 'Office of the Registry' within 3 days from today. If the appellant provides email address of the Respondents then notice may also be served on that mode. Also, the Appellant shall furnish the Mobile Number(s) of the Respondents to the 'Office of the Registry'.

The 'Office of the Registry' is directed to list the matter on 16.06.2021.

**[Justice Venugopal M]
Member (Judicial)**

**[V.P. Singh]
Member (Technical)**

**28.04.2021
SE**