

National Company Law Appellate Tribunal, New Delhi

Principal Bench

COMPANY APPEAL (AT) (Insolvency) No. 590 of 2020

&

I.A. No. 156 of 2020

(Arising out of Order dated 02nd March, 2020 passed by National Company Law Tribunal, Cuttack Bench, Cuttack in C.A (IB) No.- 92/CTB/2019 Connected with TP No. 42/CTB/2019 Arising out of C.P (IB) No. 251/KB/2017.)

IN THE MATTER OF:

1. Bank of India

**Through the Assistant General Manager,
Vishakhapatnam Branch
Rednam Estate, 1st lane Dwarakanagar,
Vishakhapatnam, Andhra Pradesh – 530016**

...Appellant No. 1

2. Central Bank of India

**Through the Assistant General Manager,
Vishakhapatnam Main Branch,
JK Centre, Door No. 50-81-25,
Sithampeta, Vishakhapatnam,
Andhra Pradesh - 530020**

...Appellant No. 2

3. State Bank of India,

**Through the Bank Manager,
Overseas Branch,
9-14-1, Block-1, Kotu Empire,
Behind Visakha Central, VIP Road, Siripuram,
Vishakhapatnam, Andhra Pradesh – 530003**

...Appellant No. 3

4. Syndicate Bank

**Through the Bank Manager,
Daba Garden Branch,
D No. 30-15-141. 1st and 2nd Floor,
Pavan Commercial Complex,
Main Road, Daba Gardens,
Vishakhapatnam, Andhra Pradesh-530020**

...Appellant No. 4

Versus

Mr. Bhuban Madan

**Resolution Professional of Ferroy Alloys
Corporation Limited**

**Office at: PricewaterhouseCoopers Professional
Services LLP,**

**Building No. 10, 17th Floor, Tower C,
DLF Cyber City, Gurugram-122002.**

...Respondent

Appellants: Mr. Rajiv Ranjan, Sr. Advocate alongwith Dr. Sudhir Bisla and Mr. Rahul Adlakha, Advocates.
Respondent: Mr. Abhinav Vashisht, Sr. Advocate alongwith Mr. Rajat Bector and Ms. Charu Bansal, for R-1. Ms. Malak Bhatt, Mr. Saurav Panda and Ms. Anannya Ghosh, Advocates.

J U D G E M E N T

[Per; Shreesha Merla, Member (T)]

1. This Appeal is preferred by M/s. Bank of India, Central Bank of India, Syndicate Bank and State Bank of India, against the Impugned Order dated 02.03.2020 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Cuttack Bench, Cuttack), whereby the Learned Adjudicating Authority has allowed the Application filed by the Resolution Professional under Section 14 read with Section 17 and Section 60(5) of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as the ‘Code’) with the following directions:-

“11. (i) Central Bank of India (Respondent No. 1) is directed to reverse the due amount i.e. to the tune of Rs. 1,419.89 lakhs.

(ii) Syndicate Bank (Respondent No. 2) is directed to reverse the due amount i.e. to the tune of Rs. 326.87 lakhs.

(iii) Bank of India (Respondent No. 3) is directed to reverse the due amount i.e. to the tune of Rs. 1.827.17 lakhs.

(iv) State Bank of India (Respondent No. 4) is directed to reverse the due amount i.e. to the tune of Rs. 599.78 lakhs.

(v) This order shall be complied by all the respondents, within five weeks of receipt of this order.”

Facts in brief:

2. Vide Order dated 06.07.2017, the Learned Adjudicating Authority has admitted the Section 7 Application. This Order of Admission was challenged vide *Company Appeal (AT) (Insolvency) No. 92 of 2017* and this Tribunal has dismissed the Appeal and concurred with the finding of the Adjudicating Authority. Appeals challenging Admission Order were dismissed by NCLAT on 08.01.2019 and Supreme Court on 11.02.2019. Subsequently, the 'Resolution Plan' was approved on 30.01.2020.

3. While so, an Application CA(IB) 92/CTB/2019 was filed by the Resolution Professional seeking direction against the Appellant Banks and Financial Institutions to reimburse all the amounts appropriated by them after the Insolvency Commencement Date, together with the amount appropriated towards interest payments and further to resume the working capital limits as available to the 'Corporate Debtor' as on the Insolvency Commencement Date. The Learned Adjudicating Authority while passing the aforementioned directions observed as follows;

“8. The 3rd Respondent, Bank of India in its reply has stated that the Corporate Debtor does not have any current account. Bank of India never appropriated any amount of the cash credit account of the Corporate Debtor. However, the erstwhile Resolution Professional himself has remitted some amount in the credit of the cash credit account. Hence, there is no contravention of Section 14 and Section 17 (1) of the Insolvency and Bankruptcy Code, 2016. In respect to the claim of Rs. 25.32 crores as on 18.07.2019, which included fund-based outstanding of Rs. 12.86 crores and NFB outstanding or Rs. 12.46 crores. The respondent further states that there is no question of appropriation of any amount. However, the erstwhile Resolution Professional had paid the amount and settled the dues.

9. The 4th respondent, the State Bank of India in its reply states that they have recalled the loan accounts on 21.03.2017 much before the initiation of the Corporate Insolvency Resolution Process. The State Bank of India further states that the Corporate Debtor does not maintain any current account with this respondent. However, the Corporate Debtor availed various credit facilities which include cash credit from Overseas Vishakhapatnam Branch of State Bank of India. The loans were recalled on 21.03.2017 as on date of insolvency commencement, the debit balance in cash credit account was sum of Rs. 20.53 crores. The respondent further submits that 1.0033 crores are debit balance in cash credit account held in SBBJ, Kannayapeta Branch. The sum of Rs. 2053 includes the non-fund-based limits i.e. LC & Bill discounting facilities granted to the Corporate Debtor. In view of the fact that the erstwhile Resolution Professional himself remitted the amounts towards the credit of the cash credit account, this respondent has not violated/ contravened provisions of Section 14 and Section 17 (1) (d) of the Insolvency and Bankruptcy Code, 2016. In respect to the claim of Rs. 20.52 crores as on 13.07.2017 which included fund based outstanding of Rs. 1.46 crore and non-fund-based outstanding of Rs. 19.06 crore. The fund-based facilities have been paid off by the company management i.e. the erstwhile Resolution Professional. Hence, it is incorrect to states that the respondent has appropriated the fund towards the loan account during the Corporate Insolvency Resolution Process. Since, it was a unilateral act of the erstwhile Resolution Professional who has paid during the moratorium period. So, this respondent categorically states that they have not violated the provisions of Section 14 and 17 of the Insolvency and Bankruptcy Code, 2016. However, the erstwhile Resolution Professional has inadvertently paid the loan amount.

10. There is no representation for Syndicate Bank. However, from the foregoing submissions of the respondents, it is clear that during the moratorium period various payments towards non-fund and fund-based accounts of the respondents were credited by the erstwhile Resolution Professional. Hence, these payments ought to be reversed as receivables of the

Corporate Debtor. The meeting to sort out the issue between them have failed. The applicant has submitted the amount due and reversal by each respondent as given below: -

(In Lakhs)

Particulars	Fund Based * (including Term Loan)	Non-Fund Based	Total
Bank of India	590.95	1,236.22	1,827.17
Central Bank of India	36.50	1,383.39	1,419.89
Syndicate Bank	--	326.87	326.87
State Bank of India	99.61	500.17	599.78
Total	727.06	3,446.65	4,173.71

Submissions on behalf of the Learned Counsel for the Appellant.

- The 'Corporate Debtor' was granted fund based (Cash Credit Hypothecation Facility 'CCHF') and non-fund based facilities (Bank guarantee /LC Facility) of credit through a consortium of lenders comprising the Appellant Banks namely Bank of India (the lead Bank), State Bank of India, Central Bank of India and Syndicate Bank since 13.09.2011. The 'Corporate Debtor' created first charge over its Fixed Assets and Current Assets.
- This Tribunal vide an Order dated 09.08.2017 directed the Resolution Professional to keep the Company as a going concern and also directed the bankers to co-operate with the Resolution Professional in this regard.
- The Consortium of Banks submitted their claims on 18.07.2017 detailed as hereunder;

(i) That the Financial Creditor, Rural Electrification Corporation Limited (REC) filed an Application u/s 7 of the Insolvency and Bankruptcy Code, 2016 for the initiation of Corporate Insolvency Resolution Process (CIRP) against Ferro Alloys Corporation Ltd. (Corporate Debtor) before the Hon'ble National Company Law Tribunal, Kolkata and the application was admitted by the Hon'ble Tribunal vide its order dated 06.07.2017. Mr. K.G. Somani was appointed as the Interim Resolution Professional. That the Financial Creditor, REC was an unsecured creditor and had no security interest over the assets of the Corporate Debtor. That REC Limited invoked its Corporate Guarantee against the Corporate Debtor.

(ii) That the Corporate Debtor was granted Fund-based [Cash Credit Hypothecation Facility] and Non-Fund based facilities [Bank Guarantee/ LC facility] of credit through a consortium of lenders comprising the Appellant banks, viz., Bank of India, State Bank of India, Central Bank of India and Syndicate Bank since 13.09.2011. The consortium was operating under the leadership of Bank of India. For availing the various facilities from the member banks of the consortium, the Corporate Debtor created first charge over its fixed assets and current assets.

(iii) That the Corporate Debtor filed an Appeal before this Tribunal challenging the order of admission and this Tribunal vide its order dated 09.08.2017 directed the Resolution Professional to keep the company as a going concern and the bankers were also directed to cooperate with the Resolution Professional in this regard. **[Annexure R-1, Pg 18-19 of Rejoinder]**

(iv) That the Consortium of banks submitted their claims on 18.07.2017 and the same was as follows:

S. No.	Name of Financial Creditor/ Bank	Fund-Based Exposure (In Rs. Lakhs)	Non-Fund based Exposure (In Rs. Lakhs)	Total Admitted Amount by RP, Mr. Somani
1.	Bank of India	1285.68	1246.77	2532.45

2.	Central Bank of India	1329.28	1277.48	2606.76
3.	State Bank of India	147.07	1905.54	2052.61
4.	Syndicate Bank	323.07	436.33	759.40

(v) That all the member banks allowed operation in the account as per the direction of the Hon'ble NCLAT's order dated 09.08.2017. **[Minutes of COC meetings, Annexure R-2, R-3 Pg 20-34 of Rejoinder]**

(vi) That the banks allowed continuous operations in the company's account through which the company was also routing all the business cash in the normal course of its business. The bills under letter of credit facility maturing during the CIRP were also honored by the erstwhile RP from the revenue generated by the Corporate Debtor. In the course of these operations, the Corporate Debtor's outstanding dues under the said accounts got gradually liquidated through its surplus cash flows accruing out of its increasing cash profits. As the corporate debtor company was making good profit and had accumulated adequate cash balance, the erstwhile RP chose to reduce the utilization of the Fund-based facilities and thus squared off the Cash Credit (CC) facilities with all the banks.

(vii) That the Hon'ble National Company Law Tribunal, Kolkata in its order dated 04.03.2019 directed that the CIRP be completed by 18.04.2019 excluding a period of 45 days spent in unnecessary litigation. In the 16th COC meeting held on 12.03.2019; REC suggested PwC as the Process advisor, which was not accepted by RP nor by any other creditors. In the 22nd COC held on 08.04.2019, REC having a voting share of 92% in the COC passed a resolution for the replacement of the existing RP Mr. K.G. Somani with Mr. Bhuvan Madan. The NCLT Bench at Cuttack allowed the Application of REC and thus Mr. Bhuvan Madan became the Resolution Professional and is the Respondent herein.

(viii) That the Respondent herein asked the banks to reverse the amounts remitted by the previous RP

while discharging his duties as per the provisions of the IBC and regulations thereof. The lenders consortium contended that the operation in the accounts was allowed as per the Directions of this Tribunal vide order dated 09.08.2017 and that the credit was received in the normal course of business. The Non-Fund based facilities were also retired by the Corporate Debtor in the normal course of business. The Fund-based exposures were brought down by the erstwhile RP in order to reduce the interest expenses. It was the commercial decision of the erstwhile RP to reduce the fund-based exposure to the minimum than to hold liquid cash without any earing. Thus, the erstwhile RP squared off the liabilities with the lender banks. The Corporate Debtor as in turn made profit of Rs. 54.92 crores as on 31.03.2018 and also of Rs. 27.43* crores as on 31.03.2019. This clearly indicates that the Corporate Debtor Company had enough liquidity to maintain the company as a going concern and didn't require any working capital finance.*

- The Bills under Lender of Credit (LC) facility maturing during the CIRP were also honored by the erstwhile RP from the revenue generated by the 'Corporate Debtor Company' which was making good profits and had accumulated enough cash balance. Hence, the erstwhile RP chose to reduce the utilization of the fund based facilities and had squared off the Cash Credit Facilities with all the Banks.
- Mr. Bhuvan Madan, the Resolution Professional, had requested the Banks to reverse the amounts remitted by the previous IRP while discharging his duties as per the provisions of IBC. The lenders consortium noted that the operation in the accounts was allowed as per the directions of this Tribunal vide an Order dated 09.08.2017 and the credit was received in the normal course of business. It was the commercial decision of the erstwhile RP to reduce the fund based exposure to the minimum and to hold

liquidity cash without any earning to reduce the interest expenses. The 'Corporate Debtor' made a profit of Rs. 54.92 Crs., as on 31.03.2018 and Rs. 27.43 Crs. as on 31.03.2019, which shows that the 'Corporate Debtor' had enough liquidity to maintain the Company as a going concern.

- The Respondent filed CA (IB) No. 92/CTB/2019 alleging that the amount received by the Appellants were preferential transactions as defined under Section 43 of the IBC and that the Appellant has violated Section 14 of IBC. Since, amount received by the Appellants were directly remitted by the Respondent and there was a conscious business decision to reduce the interest expenses as a prudent business manager would do, the amount remitted by the erstwhile RP and received by the Appellant during CIRP does not qualify to be treated as preferential transaction and hence, the amount of such credit is not reversible. Therefore, the amount utilized after the Insolvency Commencement Date is to be treated as Insolvency Resolution Process Cost and need not be reversed. The Banks' liability in respect of NFB was never invoked and was honored by the 'Corporate Debtor'. Reversal of such amounts allowing exclusion of NFB Facilities utilized after the Insolvency Commencement Date and refusal to allow the deduction claimed by Appellants in respect of NFB Facilities, has no legal basis.

- The Counsel drew our attention to the details of the fund based and the non-fund based exposure of the various Banks detailed as hereunder:-

Name of the Bank	Fund-Based Exposure (in Rs. Lakhs)	Non-Fund Based Exposure (in Rs. Lakhs)	Total (in Rs. Lakhs)
<i>Bank of India</i>	590.95	1,236.22	1,827.17
<i>Central Bank of India</i>	36.50	1,383.39	1,419.89
<i>Syndicate Bank</i>	--	326.87	326.87
<i>State Bank of India</i>	99.61	500.17	599.78
Total	727.06	3,446.65	4,173.71 (Rs. 41.73 Cr)

- The Adjudicating Authority in the Impugned Order did not make any observation with respect to preferential transaction under Section 43 of IBC.
- As per the document detailing the implementation of 'Resolution Plan', the total liquidation value is Rs. 305.23 Crs., the liquidation value of WC consortium is Rs. 210.100 Crs. and the cash available for distribution among all creditors is Rs. 44.47 Crs. So, the share and the cash component ought to be 68.85 per cent of Rs. 45.47 Crs. which is Rs. 31.30 Crs. whereas the distribution pattern allocated is Rs. 4.69 Crs. for the Secured Creditors, the details of which are as follows;

<i>Syndicate Bank</i>	<i>0.47 cr</i>
<i>Bank of India</i>	<i>2.63 cr</i>
<i>State Bank of India</i>	<i>0.86 cr</i>
<i>Central Bank of India</i>	<i>0.76 cr</i>
<i>Total</i>	<i>4.69* crores (approx. 10.31% of the total cash component)</i>

- As per the security holding the Bank should have get Rs. 31.30 Crs. but only Rs. 4.69 Crs. was allocated which is against the spirit of IBC. The

admitted claim amount of dissenting Secured Creditors is Rs. 27.54 Crs. against the cash component arrived at Rs. 31.30 Crs. and therefore, the total admitted claim of the dissenting Creditors can be met from the available cash components and no amounts need be reversed. The sharing pattern was never made a part of the 'Resolution Plan' and the RP put his own interpretation in devising the distribution pattern which is against the spirit of the Code.

Submissions on behalf of the Learned Counsel for the Respondent:

- Once moratorium under Section 14 of the Code has been declared, it is not open to any person including the 'Financial Creditor' and the Appellant Bank to recover any amount from the account of the 'Corporate Debtor' nor can it appropriate any amount towards its own dues.
- Learned Counsel, to buttress his submissions also took us through the following Judgements;
 - *'Indian Overseas Bank' V/s. 'Mr. Dinakar T. Venkatsubramaniam Resolution Professional for Ambtek Auto Ltd.'* in Company Appeal (AT) (Insolvency) No. 267 of 2017.
 - *'MSTC Ltd.' V/s. 'Adhunik Mettaliks Ltd and Ors.'* in Company Appeal (AT) (Insolvency) No. 519 of 2018.
 - *'Liberty House Group Pvt. Ltd.'* V/s. *'State Bank of India and Anr.'* in Company Appeal (AT) (Insolvency) No. 53 & 54 of 2019.
 - *'ICICI Bank Ltd.'* V/s. *'Mr. Shailendra Ajmera, Resolution Professional for Ruchi Soya Industries Ltd. & Anr.'* in Company Appeal (AT) (Insolvency) No. 370 of 2019.

- *'Bank of Baroda' V/s. 'Mr. Sundaresh Bhatt RP of ABG Shipyard Ltd.'* in Company Appeal (AT) (Insolvency) No. 635 of 2019.

- It is submitted that even if certain amounts were remitted to the Cash Credit Account of the 'Corporate Debtor' by the erstwhile IRP, the same was not meant to be adjusted against the outstanding dues of the Creditors during CIRP Process. It is also incorrect on the part of the Appellant lead Bank to state that the LC outstanding has expired during the CIRP Process. The commitments of the 'Corporate Debtor' were honored partly by margin held as FDR and partly by funds arranged by the 'Corporate Debtor'. It is submitted that the Appellant Banks had already included the value of such LCs in the claim filed before the RP.

- It is submitted that appropriation of amounts by the Appellant Banks constitutes preferential treatment over other Creditors. Against the admitted amounts of Rs. 25.32 Crs., Rs. 26.07 Crs., Rs. 20.53 Crs. and Rs. 7.59 Crs. as on the Insolvency Commencement Date, Appellant Nos. 1 to 4 being Bank of India, Central Bank of India, State Bank of India and Syndicate Bank have recovered amounts of Rs. 18.27 Crs., Rs. 14.19 Crs., Rs. 5.59 Crs. and Rs. 3.26 Crs. respectively out of the money received by the 'Corporate Debtor' in the accounts maintained with the respective Banks. Appropriation of amounts by the Appellant Banks towards repayment of pending dues results in the Appellants enjoying a preferential treatment over other Creditors which is in violation of the Code.

- Learned Counsel strenuously submitted that unilateral appropriation of amounts is in violation of Section 17(1)(d) and Section 28 of the Code.

Section 17(1)(d) provides that the Financial Institutions shall act on the instructions of the Resolution Professional with respect to working capital facilities. Section 28 of the Code provides that the Resolution Professional during the CIRP cannot take certain decisions without the prior approval of the CoC and hence, such transfers are not valid as no prior approval of the CoC was taken by the erstwhile IRP.

Assessment:

4. For better understanding of the case the chronological order of events material to the case is detailed as hereunder;

<i>Date</i>	<i>Events</i>
<ul style="list-style-type: none">• On 13.09.2011	<i>Ferro Alloys (Corporate Debtor) was granted Fund based [Cash Credit Hypothecation Facility] and Non-Fund based facilities [Bank Guarantee/ LC Facility] by the Appellant Banks.</i>
<ul style="list-style-type: none">• On 06.07.2017	<i>NCLT, Kolkata passed an order for commencement of Corporate Insolvency Resolution Process (CIRP) against M/s. Ferro Alloys (Corporate Debtor) under S. 7 of the Code, filed by Rural Electrification Corporation.</i> <ul style="list-style-type: none">• <i>K.G. Somani was appointed as the Interim Resolution Professional (IRP).</i>• <i>Appeals preferred before NCLAT were dismissed.</i>• <i>Supreme Court too dismissed the Appeal on 11.02.2019.</i>
<ul style="list-style-type: none">• On 18.07.2017	<i>Consortium of Appellant Banks, led by Bank of India,</i>

	<i>submitted their 'Claims'.</i>
<ul style="list-style-type: none">• On 27.07.2017	<i>NCLAT vide Orders dated 27.07.2017 and 09.08.2017 and NCLT Kolkata vide Order dated 10.11.2017, had directed all banks having accounts of the Corporate Debtor to ensure that Corporate Debtor remains a 'going concern'. Erstwhile RP had also sent various emails to the Appellant banks requesting that working capital limits as on Insolvency Commencement Date should be made available to the Corporate Debtor during the whole course of CIR Process.</i>
<ul style="list-style-type: none">• On 08.04.2019	<i>The COC passed a Resolution in its 22nd meeting to replace the Resolution Professional.</i>
<ul style="list-style-type: none">• On 08.07.2019	<i>NCLT, Cuttack allowed the Application and Mr. Bhuvan Madan was appointed as the RP, who requested the Banks to reverse the amounts remitted by the previous RP during the CIRP.</i>
<ul style="list-style-type: none">• On 27.08.2019	<i>RP filed an Application being CA (IB) 92/CTB/2019 under S. 14 r.w. S. 17 & S.60 (5) of the Code seeking reversal of amounts received by the Appellants Banks during the CIRP from the current accounts of the Corporate Debtor, on the following grounds:</i> <ul style="list-style-type: none">• <i>Appellant Banks appropriated receivables deposited in the cash credit account and working capital account of the Corporate Debtor.</i>• <i>Amounts were</i>

	<p>credited towards the loan accounts of Corporate Debtor during the CIRP when moratorium was in place.</p> <ul style="list-style-type: none">• Amounts received by the Appellants were preferential transactions under S.43, and in violation of S.14 of the Code.
<ul style="list-style-type: none">• On 30.01.2020	<p>NCLT, Cuttack approved the Resolution Plan submitted by Sterlite Power Transmission Limited.</p>
<ul style="list-style-type: none">• On 02.03.2020	<p>NCLT Cuttack allowed the Application filed by the Respondent and directed the Appellant Banks to reverse the amounts within 5 weeks.</p> <p>[Page 45]</p>

5. This Tribunal in *Company Appeal (AT) (Insolvency) No. 272 of 2020* preferred by the unsuccessful intervenor seeking direction for reconsideration of the 'Resolution Plan', has dismissed the Appeal vide an Order dated 08.06.2020 observing that *'it is a settled proposition of law that approval and rejection of 'Resolution Plan' depends upon the commercial wisdom of the CoC, which involves evaluation of the 'Resolution Plan' based on its feasibility and such commercial wisdom of the CoC with the requisite voting majority is non-justiciable and dismissed the Appeal'*.

6. This Tribunal in *Company Appeal (AT) (Insolvency) Nos. 207-208 of 2020*, arising out of the Impugned Order dated 30.01.2020, passed by the Adjudicating Authority, National Company Law Tribunal, Cuttack Bench in IA No. 157/CTB/2019 and IA No. 175/CTB/2019 arising out of CP (IB) No.

251/KB/2017 dismissed both the Appeals on the ground that there is 'no material irregularity demonstrated in the CIRP before the Resolution Professional and that merely because the Adjudicating Authority has declined to direct reconsideration of the party rejected settlement proposals of the Appeals does not impinge upon the liquidity and conformity of the approved 'Resolution Plan' with the condition stated in Section 30(2) of the I&B Code'. IA 157/CTB/2019 was filed challenging the approval of the 'Resolution Plan' and IA 175/CTB/2019 was filed seeking direction to the CoC to consider the settlement proposal which came to be rejected by virtue of another Order passed on the same date 30.01.2020.

7. This Tribunal in *Company Appeal (AT) (Insolvency) No. 340 of 2020 and Company Appeal (AT) (Insolvency) No. 462 of 2020*, once again upheld the Order of the Learned Adjudicating Authority and observing that the legal possession is well settled that an approved 'Resolution Plan' can deal with a related party claim and extinguish the same which shall ensure that the Successful Resolution Applicant can take over the 'Corporate Debtor' on a clean slate. The related parties are kept out to ensure continuity on operation of both *Ferroy Alloys Corporation Ltd. and Facor Alloys Ltd.* following the provisions of the Code and therefore, the 'Resolution Plan' is in conformity with the provisions of the Code as provided under Section 30(2) of the Code.

8. It is the main case of the Appellant Banks that this Tribunal vide an Order dated 09.08.2017 passed an Interim Order directing the Company to be run as a going concern, engaging all Banks where the Company had

accounts, to co-operate with the IRP for operation of the accounts. In compliance of that direction, the erstwhile IRP Mr. K. G. Somani, vide a Letter dated 02.09.2017 requested the Banks to make available the limits which were subsisting as on the date of commencement of the process of Resolution. The LC facility was continued on request of the erstwhile RP and the LC Bills negotiated by the beneficiary Banks were retired by the 'Corporate Debtor'. The amount was paid by the Company into their Cash Credit Account so that fresh LCs could be opened within the sanctioned limits to purchase necessary raw materials to keep the Company a going concern.

9. The Resolution Professional, Mr. Bhuvan Madan after assuming charge as the RP requested the Banks to resume the working capital limits and to reimburse all the amounts which were appropriated. It is the stand of the Appellants that the 'Corporate Debtor' did not maintain any Current Account from the date of commencement of the CIRP and hence, the question of appropriation from the Current Account does not arise. Since the Company was a going concern, and generating Profits it did not have any issue in servicing the bills under LC. Since the Company has not been issued any fresh LCs, the liability under LC became NIL. It was strenuously argued by the Learned Counsel for the Appellant that the ratio of '**Andhra Bank' V/s. 'M/s. F.M. Hammerle Textiles Ltd.' in Company Appeal (AT) (Insolvency) No. 61 of 2018** is squarely applicable to the facts of this case, as it was held in that Order dated 13.07.2018 that the Creditors may chose not to file claim if the NFB Facilities have not matured and decide to submit

claim on its maturity after the completion of moratorium period subject to survival of the 'Corporate Debtor'.

10. It is the Respondent's case that during the CIRP of the 'Corporate Debtor', the Appellant recovered an amount of Rs. 41.73 Crs. in preference over the other Creditors. This issue was discussed in the 25th CoC Meeting and it was brought to the Notice of the Appellant Banks by the Resolution Professional vide e-mails dated 20.07.2019 and 24.07.2019 that the action of the Banks of recovering the receivables from the Cash Credit Account towards repayment of working capital limits has resulted in preferential payment in their favor. We note that 'Preferential treatment' in the instant case is not strictly as per what is provided under Section 43 but in terms of giving preference to the Appellants Banks over and above the dues of other Creditors.

11. At this juncture, it is relevant to reproduce Section 14(1) of the I&B Code as under;

"14. Moratorium - (1) Subject to provisions of sub-sections (2) and (3), on the Insolvency Commencement Date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.”

12. As per Section 17(1)(d) of the I&B Code, the Financial Institutions maintaining the accounts of the ‘Corporate Debtor’ have to act on the instructions of the Interim Resolution Professional in relation to such accounts and furnish all information relating to the ‘Corporate Debtor’. This Tribunal in a catena of Judgements has held that Banks cannot debit any amounts from the account of the ‘Corporate Debtor Company’ after the Order of moratorium, as it amounts to recovery of amount.

13. It was also held that the Banks cannot freeze accounts nor can they prohibit the ‘Corporate Debtor’ from withdrawing the amount as available on the date of moratorium for its day-to-day functioning. Section 14 of the I&B Code overwrites any other provision contrary to the same and any amount due prior to the date of CIRP cannot be appropriated during the moratorium period. It is seen from the record that payments due under the LCs have been made out of the funds of the ‘Corporate Debtor’ as is established from the reduction of liabilities under non-fund based facilities.

14. This Tribunal in *Company Appeal (AT) No. 267 of 2017 in ‘Indian Overseas Bank’ V/s. ‘Mr. Dinakar T. Venkatsubramaniam Resolution Professional for Ambtek Auto Ltd.’* held as follows:-

“... Once Moratorium has been declared, it is not open to any person including ‘Financial Creditor’ and the Appellant Bank to recover any amount from the account of the ‘Corporate Debtor’, no it can appropriate any amount towards its own dues”...

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15. It is also noted that the amounts were honored partly by margin held as FDR and partly by funds of the 'Corporate Debtor' deposited in its Cash Credit Accounts. We are of the view that merely because the 'Corporate Debtor' had enough liquidity to run the Company as a going concern, the act of the Appellant Banks to adjust the credit balance in the Cash Credit Account towards the debit balance after CIRP commenced, cannot be justified. If the Appellant's argument is accepted, then the act of recovering receivables, under the garb of normal course of business will change the status of all the claims which would be in complete violation of Section 14 of the Code.

16. The Case of '**Andhra Bank**' (*Supra*) has no applicability to the facts of the attendant case as it is seen from the record that the Banks have already included the value of non-fund based in their 'Claim' before the IRP. The Code provides that 'Claims' filed by the Creditors during the CIRP shall stand crystallized and will not be settled during the CIRP in preference over other Creditors. We hold that as 'Claims' were already preferred by the Appellant Banks and filed before the RP, they are not entitled to recover the amounts otherwise available in the Credit Accounts or Working Capital Accounts of the 'Corporate Debtor'. We are of the considered view that adjusting of the 'Claims' by the Appellant Banks during the CIRP out of the funds of the 'Corporate Debtor' results in unjust enrichment of the Banks and further, crediting amounts towards non-fund and fund based accounts during the moratorium period is against the provisions of Section 14 of the Code.

17. Hence, we are of the view that there is no illegality or infirmity in the Order of the Learned Adjudicating Authority. Therefore, this Appeal fails and is accordingly dismissed. No order as to costs.

18. I.A. No. 156 of 2020 is preferred in *Company Appeal (AT) (Insolvency) No. 590 of 2020* by the new management of the 'Corporate Debtor Company' namely Ferroy Alloys Corporation Limited seeking release of the title deeds of the Immovable Properties of the Company which are in possession of Bank of India.

19. It is not in dispute that on 21.09.2020 *Vedanta Limited (Group Company of the Resolution Applicant)* implemented the plan and took over the management of the Company. It is the case of the Applicant that in the meeting of the Debenture Holders held on 21.12.2020, the non-Applicant Bank declined to release the title deeds as conformation from Canara Bank was pending though the other consortium lenders had confirmed the release of the title deeds. Vide an e-mail dated 31.12.2020 Bank of India cited 'Issuance of No Objection Certificate by Canara Bank' as the ground for non-release of the title deeds.

20. In the Reply filed by the Consortium of Lenders on 09.02.2021, it was submitted that as the Appeal challenging the reversal of the amounts, the subject matter of the Impugned Appeal, is pending before this Tribunal, it would be against the interest of the Consortium of Lenders to release the title deeds.

21. At this juncture, it is relevant to reproduce Section 31 of the Code:-

“31. Approval of Resolution Plan --- (1) If the Adjudicating Authority is satisfied that the resolution plan

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as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

(2) *Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.*

(3) *After the order of approval under sub-section (1),—*

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.”

(Emphasis Supplied)

22. Section 31 of the Code provides that the terms of the ‘Resolution Plan’ is binding on the Company, its employees, creditors and all stakeholders. A perusal of Clause 3(c)(iv) of the ‘Resolution Plan’ evidences issuance of non-convertible Debentures to the Financial Creditors which was required to be secured *inter-alia* by creating security interest over all Immovable Properties of the ‘Corporate Debtor’. It is significant to mention that Clauses 3(c)(vii) and 3(c)(viii) of the Plan contemplate that title deeds are required to be released immediately upon distribution of Resolution Process.

23. It is pertinent to mention that this Tribunal in four different Appeals Bearing Nos. *Company Appeal (AT) (Insolvency) No. 462 of 2020, Company Appeal (AT) (Insolvency) No. 340 of 2020, Company Appeal (AT) (Insolvency) No. 272 of 2020 and Company Appeal (AT) (Insolvency) No. 207-208 of 2020* have upheld the ‘Resolution Plan’ an Appeal challenging the Order of this

Tribunal in *Company Appeal (AT) (Insolvency) No. 272 of 2020*, was dismissed by the Hon'ble Supreme Court in Civil Appeal No. 2720 of 2020 and the Plan has been duly implemented on 21.09.2020. We are of the view that the debt has been legally extinguished and therefore withholding of the title deeds preventing the Company from being able to create security interest for securing the non-convertible Debentures issued to the Debenture Holders, in terms of the Plan, is unjustifiable.

24. For all the aforementioned reasons specially keeping in view that the 'Resolution Plan' has been implemented on 21.09.2020, we allow this I.A. and direct the non-Applicants to release the title deeds for effective implementation of the terms of the 'Resolution Plan' as provided for under Section 31 of the Code.

25. Hence, I.A. No. 156 of 2020 in *Company Appeal (AT) (Insolvency) No. 590 of 2020* is allowed accordingly. No order as to costs.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

NEW DELHI
28th May, 2021

ha/sim