

Case Snippets

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Indian Overseas Bank Vs. Arvind Kumar 2020

Company Appeal (AT) (Insolvency) No. 558 of 2020

The Corporate Debtor had no right to claim the margin money after the invocation of Bank Guarantee during the Moratorium under Section 14 of IBC



The Appellant, is one of the Financial Creditors of the Corporate Debtor from whom the Corporate Debtor had availed various loan facilities including an irrevocable Bank Guarantee. The CD deposited margin money of Rs.40,50,000/- in the form of FDR to secure the said Bank Guarantee. One of the Operational creditor initiated the CIRP against the Corporate Debtor. The Application was admitted by order of the Adjudicating Authority dated 17th December 2018 and Moratorium declared under Section 14 of the I&B Code, 2016.

The Bank Guarantee in question, was issued in favour of the Operational creditor was invoked, given the request, received vide letter dated 24th December 2018 and 26th December 2018 and the payment was made to the beneficiary to the tune of Rs.4,01,94,954/-. The margin money of the CD amounting to Rs.40,50,000/- accrued interest of Rs.10,77,591/-, and as such the total margin lying with the Appellant bank was Rs.51,27,591/-.

During CIRP, the RP(Respondent) demanded the aforesaid margin money from the Bank. The Appellant Bank, after the invocation of the Bank Guarantee by operational creditor, adjusted the margin money amount in honouring the bank guarantee.

Since the bank guarantee was invoked during the moratorium period and FDR relating to margin money was broken, and margin money was adjusted in making payment of Bank Guarantee amount; thus the Interim Resolution Professional objected to this. Given the demand raised by the IRP, the margin money amount was kept by Appellant Bank in fresh FDR issued on 14th January 2019.



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After that an Application was filed by the RP, under Section 60 (5) read with Section 74(2) of the Code, seeking direction against the Appellant, to release all the funds of the Corporate Debtor, which were retained by the Appellant bank in violation of the Code. The Adjudicating Authority/NCLT Chandigarh Bench passed the impugned order dated 29th April 2020 and ordered the Appellant Bank to release of the margin money amount, and the same order was under challenge before NCLAT.

NCLAT heard both the parties and observed that admittedly, Rs.51,27,591/- was the margin money, which was deposited by the Corporate Debtor to secure Bank Guarantee in favour Operational creditor an amount of Rs.4,01,94,954/- . The said Bank Guarantee was invoked during the moratorium period, i.e. on 27th December 2018. Given Section 14(3) of the I&B Code, 2016 invocation of the said guarantee could not be stopped by the Bank. The 'Security Interest' does not include the 'Performance Bank Guarantee'. The Performance Bank Guarantee is not covered by Section 14 of the Code.

NCLAT held that the 'margin money' is the contribution on the part of the borrower who seeks 'Bank Guarantee'. The said margin money remains with the Bank, as long as the Bank Guarantee is alive. If the Bank Guarantee expires without being invoked, then the margin money reverse back to the borrower, and in case the bank guarantee is invoked by the beneficiary, the margin money goes towards payment of bank guarantee to the beneficiary, and nothing remains with the financial institutions, which can be reversed to the Corporate Debtor.

In this case, Bank Guarantee was invoked on 27th December 2018 by the beneficiary M/s Tata Steel Processing & Distribution Limited, and the margin money amount was used towards the payment of the Bank Guarantee. Once this margin money was used to honour the bank guarantee, nothing remained with the Bank, and as such, the Respondent Resolution Professional cannot demand that amount.

Resolution Professional/IRP is only entitled to those payments to which the Corporate Debtor is entitled if no orders of Moratorium would have been passed under Section 14 of the Code. The Corporate Debtor had no right to claim the margin money after the invocation of Bank Guarantee.

Appeal was partly allowed.

