

**National Company Law Appellate Tribunal**

**Principal Bench, New Delhi**

**COMPANY APPEAL (AT) (INSOLVENCY) No. 214 of 2021**

(Arising out of Order dated 19<sup>th</sup> January, 2021 passed by National Company Law Tribunal, Ahmedabad Bench, Ahmedabad, in IA No. 653/2020 in C.P. (IB) No.- 272/NCLT/AHM/2019).

**IN THE MATTER OF:**

**Bank of India**

Rep. by Deputy General Mangar

Having its Office at:

Asset Recovery Management Branch,  
First Floor, Bank of India Building,  
28, S.V. Road, Andheri (W),  
Mumbai – 400058.

**...Appellant**

**Versus**

**Mr. Vinod Kumar P. Ambavat**

Resolution Professional (RP) of  
Actif Corporation Ltd.

Having its Office at:

5-B, Ground Floor, Onlooker Building, 14,  
Sir P.M. Road, Fort, Mumbai – 400001.  
Email: [vinod.ambavat@ajallp.com](mailto:vinod.ambavat@ajallp.com)

**...Respondent**

**For Appellant:**

**Mr. Ashish Rana & Mr. Anurag Kr. Singh,  
Advocates.**

**For Respondent:**

**Mr. Milan Singh Negi, Advocate.**

**J U D G E M E N T**

**[Per; Shreesha Merla, Member (T)]**

1. This Appeal arises out of the Impugned Order dated 19.01.2021, passed by the Learned Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench, Ahmedabad), in IA 653/2020 in C.P. (IB) No.- 272/NCLT/AHM/2019, wherein the Adjudicating Authority has allowed the

Interim Application preferred by the Resolution Professional ('RP') seeking a direction to Bank of India/the Appellant herein to release an amount of Rs.100Lakhs/- held in the 'no lien account' for the purpose of CIRP of the 'Corporate Debtor Company'/'M/s. Actif Corporation Limited'. The Adjudicating Authority allowed the application observing as follows:

*"11. Gone through the application and the reply. It is noted that the Corporate SDebtor, to show their commitment and banafide towards reolution plan (i.e., one time settlement proposal) has furnished a Cheque for Rs.1 Crore to the Respondent/bank on 12.07.2017 along with a letter with a request to keep the poceeds in "No Lien Account" and instructed that the said amount may be adjusted/utilized upon approval of resolution plan (i.e., one time settlement), however, in any case, it should not be adjusted towards interest/other charges/principal till then. The company is committed to bring the balance amount to the extent of 10% as per their commitment once approval is accorded by the lead bank.*

*12. Before the date of commencement of CIRP, the responden tbank has not adjusted this amount in the loan account of the corporate debtor, whereas it has kept the same in a separate account as instructed by the corporate debtor. It shows that the bank has agreed for no lien to this amount till OTS proposal is approved by the bank. Hence, on initiation of CIRP, the amount kept in a separate account as 'No lien Account' by the respondent bank is the asset of the corporte debtor and the RP has to deal with the same as per the provisions of the IB Code."*

**2.** Learned Counsel for the Appellant/Bank of India argued that this amount of Rs.1Crore/- admittedly has come for a third party viz. M/s. Avazy Realcom Private Limited and is not recorded in the Balance Sheet as an asset. The Adjudicating Authority without examining the Balance Sheet arbitrarily came to the conclusion that Rs.1Crore/- forms an asset of the 'Corporate Debtor'. The explanation to Section 18(f) provides that assets shall not include assets owned by a third party in possession of the

'Corporate Debtor' held under trust or under contractual arrangement including bailment. The 'Corporate Debtor' has not shown under what capacity this amount Rs.1Crore/- was received from M/s. Avazy Realcom Private Limited and if it is under some contractual arrangement then it would not be an asset of the 'Corporate Debtor'. It is submitted that 'Bankers Lien' over money held in a customer's account is a Statutory Right. The amount of Rs.1Crore/- was paid for showing the *bona fide* of the 'Corporate Debtor' in pursuant to a Settlement Proposal. This amount was delinked from the proposal and was supposed to be put into a 'no lien account', which is not an account of the 'Corporate Debtor', but an account of the Bank itself. This amount of Rs.1Crore/- was paid against the 5% amount of the proposed One Time Settlement ('OTS') Account by a third party M/s. Avazy Realcom Private Limited. As the Settlement failed, the amount was not appropriated and the amount individually became an asset of the Bank.

**3.** Learned Counsel for the Appellant further submitted that owing to the conduct and the inability of the RP to discharge his duties, the Appellant chose his replacement vide I.A. No. 522/2020 which was disposed of on 05.10.2021. It is submitted that the Appellant challenged the Order on the grounds that Adjudicating Authority failed to appreciate that the related parties have been admitted as Unsecured Creditors thereby changing the composition of the COC.

**4.** Learned Counsel for the Respondent/RP submitted that the 'Corporate Debtor' and the Appellant Bank were discussing OTS terms, when the 'Corporate Debtor' to show his *bona fide* deposited an amount of

Rs.1Crore/- on 15.07.2017. CIRP was initiated on 26.11.2019. During the third CoC Meeting on 08.09.2020, the RP appraised the Members that an amount of Rs.1Crore/- was lying in a 'no lien account' of 'Corporate Debtor'. Despite repeated requests by the RP, the Appellant Bank did not release the said amount and hence the RP filed IA 653/2020 seeking directions to release the said amount. It is argued that the amount lying in the 'no lien account' is not owned by the Bank. The condition precedent for the amount to be considered as property of the Bank was the approval of the OTS/Resolution Plan. However, in the absence of the OTS/Resolution Plan being approved, the Bank had no right on the said money. The amount of Rs.1Crore/- was paid at the behest of the 'Corporate Debtor' and hence the same is to be treated as the property of the 'Corporate Debtor'. The Appellant Bank itself admits that the amount was paid by the 'Corporate Debtor' through another Company to show their *bona fide* towards OTS. The purpose of the 'no lien account' is to avoid realisation of funds lying in such an account and therefore the Bank has no right over such money as the same was deposited with a specific understanding that the said money shall not be utilised by the Bank until approval of the OTS. The Learned Counsel relied on the Judgement of the Hon'ble Supreme Court in '**Kut Energy Private Limited & Ors.' Vs. 'Authorised Officer, Punjab National Bank, Large Corporate Branch, Ludhiana & Ors.'**, (2019) SCC OnLine SC 1057, wherein the Hon'ble Supreme Court has held as under:

*"11. In the present case the deposit of Rs. 40 crores in terms of the order of the High Court on 11.10.2017 was only to show the bona fides of the appellants when a revised offer was made by them. The deposit was not towards satisfaction of the debt in question and that is precisely why the High Court had*

*directed that the deposit would be treated to be a deposit in the Registry of the High Court.*

*12. Going by the law laid down by this Court in Axis Bank the 'secured creditor' would be entitled to proceed only against the 'secured assets' mentioned in the notice under Section 13(2) of the SARFAESI Act. In that case, the deposit was made to maintain an appeal before the DRAT and it was specifically held that the amount representing such deposit was neither a 'secured asset' nor a 'secured debt' which could be proceeded against and that the appellant before DRAT was entitled to refund of the amount so deposited. The submission that the bank had general lien over such deposit in terms of Section 171 of the Contract Act, 1872 was rejected as the money was not with the bank but with the DRAT. In the instant case also, the money was expressly to be treated to be with the Registry of the High Court.*

*13. On the strength of the law laid down by this Court in Axis Bank, in our view, the appellants are entitled to withdraw the sum deposited by them in terms of said order dated 11.10.2017. Their entitlement having been established, the claim of the appellants cannot be negated by any direction that the money may contribute to be in deposit with the Bank."*

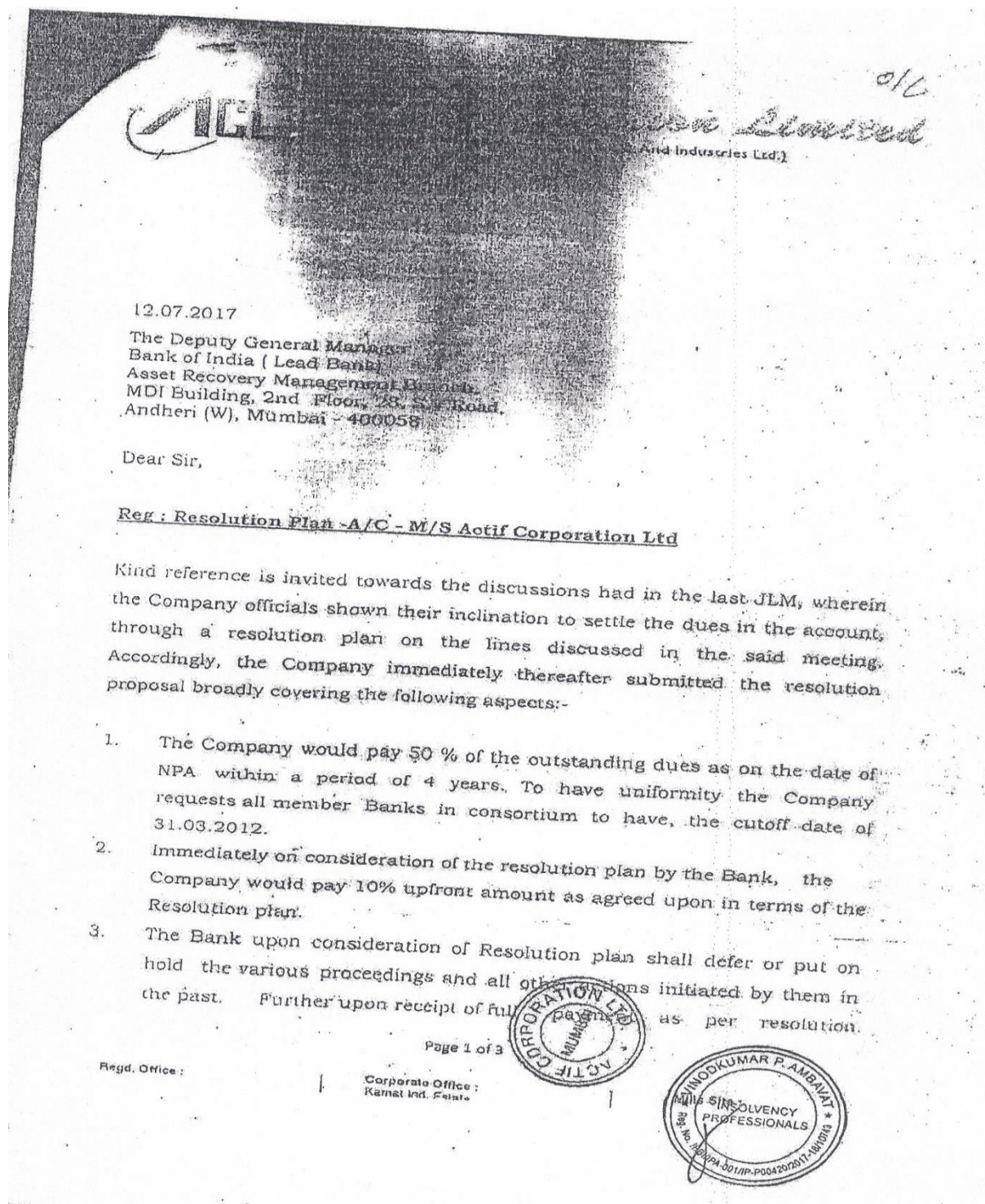
**5.** It is contended that the 'Claim' of the Bank that money lying in 'no lien account' of the 'Corporate Debtor' are assets of the Bank, is baseless.

**6.** Hear both sides at length.

**7.** The brief point that falls for consideration in this Appeal is whether the amount of Rs.1Crore/- lying in the 'no lien account' belongs to the Appellant Bank. At the outset, it is relevant to note that this amount was admittedly paid by the 'Corporate Debtor' pursuant to an OTS Proposal on 15.07.2017 to show its *bona fide*. It is not in dispute that the OTS, as proposed, did not materialise and the amount of Rs.1Crore/- was parked in the 'no lien account' maintained with the Bank. CIRP was initiated on 26.11.2019. Despite repeated requests of the RP, the Appellant Bank did not



release the said amount. At this juncture, it is relevant to reproduce the letter dated 12.07.2017, addressed by the 'Corporate Debtor' to the Bank enclosing the check of Rs.1Crore/- stating as follows:



12.07.2017

The Deputy General Manager  
Bank of India (Lead Bank)  
Asset Recovery Management Branch  
MDI Building, 2nd Floor, 28, S.V. Road,  
Andheri (W), Mumbai - 400058

Dear Sir,

Reg : Resolution Plan -A/C - M/S Actif Corporation Ltd

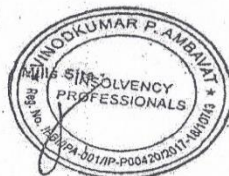
Kind reference is invited towards the discussions had in the last JLM, wherein the Company officials shown their inclination to settle the dues in the account through a resolution plan on the lines discussed in the said meeting. Accordingly, the Company immediately thereafter submitted the resolution proposal broadly covering the following aspects:-

1. The Company would pay 50 % of the outstanding dues as on the date of NPA within a period of 4 years. To have uniformity the Company requests all member Banks in consortium to have, the cutoff date of 31.03.2012.
2. Immediately on consideration of the resolution plan by the Bank, the Company would pay 10% upfront amount as agreed upon in terms of the Resolution plan.
3. The Bank upon consideration of Resolution plan shall defer or put on hold the various proceedings and all other actions initiated by them in the past. Further upon receipt of full payment as per resolution.

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Regd. Office :

Corporate Office :  
Karnat Ind. Estate



*Shera*  
*True Copy*



KIL

*Kamal Industries Limited*  
(Subsidiary Company of KSL And Industries Ltd.)

plan, the bank shall make request to all concerned authorities for closure of the proceedings.

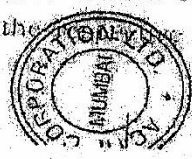
The Company states that thereafter we have received your response on the said resolution plan inter alia advising us to deposit 5% upfront amount with the resolution plan and balance 5% on consideration of the proposal by the Bank. We were also advised to reduce the schedule of the repayment to 3 years instead of 4 years as proposed by us. The Company while expressing their gratitude for broadly accepting the proposal, states that the matter to revise the covenants as directed by the Bank, contained in the resolution plan, has been once again deliberated in the recent meeting of their Board of Directors. The Company submits that in view of the present circumstances and the financial status, the Board has directed us to request you to consider repayment period of 4 years, however the Company would endeavor to pay the dues as per resolution plan within 3 years. On the issue of depositing 5% amount along with the resolution plan, it may kindly be appreciated that the said amount can be arranged from various sources including friends and relatives, provided the Bank conveys its in principle approval so that the funds to the extent of 5% can be arranged on the basis of said assurance.

Kind reference is also invited to the discussions had with the Bank, explaining the circumstances and conveying the views of the Company in the matter of upfront amount as well as reduction in the period of repayment. Keeping in view the said discussions, we are agreeable to deposit a sum of Rs. 1.00 Crore in each account of the group companies with the lead Bank in Na

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Regd. Office :  
1/B 10, Gundee Cornplx

Corporate Office :  
Kamal Ind. Estate,  
Mumbai



Mills St



*True Copy*





(Subsidiary Company of KSL And Industries Ltd.)

Lien" account, to show our commitment and bonafide towards the resolution plan.

Accordingly, please find enclose cheque no.591269 dated 16.07.2017 for Rs. 1,00,00,000/- ( Rupees One Core Only) with the request to keep the proceeds in " No Lien" account. It may kindly be noted that the said amount may be adjusted / utilized upon approval of resolution plan, however in any case it should not be adjusted towards interest/other charges/ principle till then. The Company is committed to bring the balance amount to the extent of 10% as per their commitment once the approval is accorded by the lead bank on behalf of all the consortium Banks.

You are requested to kindly examine the resolution proposal already submitted by the Company and convey us your approval on behalf of the entire consortium as early as possible.

Thanking you,

For Actif Corporation Ltd  
Director/Authorized Signatory  
Copy for information



The Deputy General Manager <b>ORIENTAL BANK OF COMMERCE</b> 181 - A, Maker Tower 'E' 18 <sup>th</sup> Floor, Cliffe Parade, Mumbai - 400 005	Asst. General Manager <b>Indian Overseas Bank</b> Nariman Point Branch P.O. Box No. 11598 Bakhtwar, Nariman Point, Mumbai - 400 021	The Deputy General Manager <b>UCO BANK</b> Mafatala Tower, 1 <sup>st</sup> Floor Nariman point- Mumbai-400 021
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Regd. Office:  
H/B-70, Gurudev Complex,  
1st Phase, Sirasa (U.T.)

Corporate Office:  
Kamal Ind. Estate,  
336, Veer Savarkar Marg,  
Opp. Siddhivinayak Temple,  
Prabhadevi, Mumbai - 400 005



*Area*  
*True Copy*

(Emphasis Supplied)



**8.** From the aforementioned letter, it is clear that the said amount was to be adjusted/utilised upon approval of the Resolution Plan and was not to be adjusted towards 'Interest' or 'Principal' till then. Prior to the commencement of CIRP, this amount was not adjusted by the Bank towards the loan account of Bank as the OTS Proposal had failed. Once the CIRP was initiated, keeping in view that the OTS had failed, the amount lying in the 'no lien account' belongs to the 'Corporate Debtor' and under Section 18(f) of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as 'The Code'), the IRP/RP is obligated to take control and custody of all the assets and properties of the 'Corporate Debtor'. Further, the Bank could not have appropriated this money once the period of Moratorium has commenced on 26.11.2019. As per Section 3(27), 'Property' includes money and therefore RP's action of claiming the money lying in the 'no lien account' of the 'Corporate Debtor' is within the provisions of Section 18(f) of the Code. The contention of the Learned Counsel for the Appellant Bank that the Bankers lien over the money held in a customer's account is a Statutory Right, is unable, keeping in view the facts of the attendant case and also that CIRP had commenced on 26.11.2019, and having regard to the fact that the amount was deposited with a specific understanding that the amount shall not be used by the Bank until approval of OTS. Admittedly, the said amount was paid at the behest of the 'Corporate Debtor' by a third party and it was lying with the Bank for more than five years.

**9.** The submission of the Learned Counsel for the Appellant that an Appeal against IA 522/2020 was also preferred regarding the conduct of the

RP is of no relevance to the facts of this case and therefore we do not consider it fit to make any observations regarding that issue.

**10.** For all the aforementioned reasons, we are of the considered view that there is no illegality or infirmity in the Order of the Adjudicating Authority and therefore this Appeal fails and is accordingly dismissed. No order as to costs.

**[Justice Anant Bijay Singh]**  
**Member (Judicial)**

**[Ms. Shreesha Merla]**  
**Member (Technical)**

**NEW DELHI**  
**15<sup>th</sup> September, 2022**  
*Himanshu*