

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI**

**Comp. App. (AT) (Ins) No. 505 of 2023 & I.A. No. 1650, 1651, 3599 of
2023**

IN THE MATTER OF:

State Bank of India

...Appellant

Versus

Ritesh Prakash Adatiya & Ors.

...Respondents

Present:

For Appellants : Mr. Avrojoyoti Chatterjee, Mr. Rajiv S. Roy, Ms. Jayasree Saha, Mr. Siddharth, Mr. Zoheb Khan, Advocates

**For Respondent : Mr. Abhinav Tyagi, Adv. for R2
Mr. Alok Kumar K., Advocate for R1 (IRP)**

O R D E R

Per: Justice Rakesh Kumar Jain: (Oral)

09.10.2023

This appeal is directed against the order dated 29.03.2023 passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Bench – II) whereby an application bearing IA (IB)/537/KB/2023 filed in CP (IB) No. 1986/KB/2019 by the IRP of McLeod Russel India Limited (Corporate Debtor) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (in short ‘Code’) r/w Regulation 33 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short ‘Regulations’) has been disposed of with the following observations:-

“7. In such circumstances, in order to keep the corporate debtor as a going concern in the interim and to prevent adverse consequences for the corporate debtor, the IRP is permitted to do the needful in regard to the release of the said dues as would be required in accordance with various legal provisions and if nothing else stands in the way.

8. In case any assistance is required from the Personnel of the corporate debtor, including the promoters and any other persons associated with the management of the CD in running CD as a

going concern, the same shall be sought by the IRP under Section 19 of the Code.”

2. In brief, CP (IB) No. 1986/KB/2019 was filed under Section 7 of the Code by IL & FS Infrastructure Debt Fund (Financial Creditor) against McLeod Russel India Limited (Corporate Debtor). This petition was admitted by the Adjudicating Authority on 10.02.2023.

3. The said order dated 10.02.2023 was challenged in appeal i.e CA (AT) (Ins) No. 198 of 2023 by the suspended director. The said appeal was ultimately disposed of by the order dated 15.05.2023 which is reproduced as under:-

“This appeal has been filed against the order dated 10.02.2023 by which Section 7 Application has been admitted. In this appeal, on 22.02.2023, an Interim Order was passed. A Supplementary Affidavit has been filed by the Appellant whereby an Agreement between the parties dated 05.05.2023 has been brought on record. It is submitted that in the agreement there are certain portions which are redacted at the instance of the Respondent for the commercial reasons.

Learned Counsel for the Respondent, however, submits that the Financial Creditor has already settled the matter and there are no issues between the parties. He only submits that in the event of default, liberty be given to revive the appeal.

Learned Counsel for the IRP submits that certain dues have not yet been paid.

Learned Counsel for the Appellant has submitted that considerable amount of expenses has been paid and if any amount is unpaid, that shall be taken care of.

In view the aforesaid, settlement agreement is taken on record, we close CIRP initiated by order dated 10.02.2023. Order dated 10.02.2023 is set aside.

Appeal is disposed of accordingly.”

4. While the appeal was pending in this Court, the IRP of the Corporate Debtor filed the aforesaid application i.e. IA (IB)/537/KB/2023 wherein he made a following prayers:-

“a. Allow the instant Application.

b. Pass necessary directions to the extent that the IRP/Applicant be permitted to make the following payments with respect to dues partly related to period prior to Insolvency Commencement date and becoming due after the Insolvency Commencement date:

i. Payment of Rs.23,17,16,202/- (Rupees Twenty Three Crores Seventeen Lakhs Sixteen Thousand Two Hundred and Two only) for Bonus cum Ex-gratia to applicable workmen of the Corporate Debtor, pursuant to the Memorandum of Settlement, out of the Cash Flow of the Corporate Debtors.

ii. Payment of Rs.23,41,07,910/- (Rupees Twenty-Three Crores Forty One Lacs Seven Thousand Nine Hundred and ten only) pending Provident Fund and Gratuity of thirteen (13) tea estates in order to ensure that the Corporate Debtor can retain its Export License, out of the Cash Flow of the Corporate Debtors.

iii. Payment of Rs.7,40,36,547/- (Rupees Seven Crores Forty Lacs Thirty Six Thousand Five Hundred and Forty Seven only) in relation to pending 'Green Leaf purchases to various vendors, out of Cash Flow of the Corporate Debtors.

c. Pass Necessary directions to the extent that the following payments may be made by the Financial Creditor for the first month of CIR Process and thereafter from the funds of the Corporate Debtor:

i. Payment of fees and costs and expenses incurred/to the incurred by the IRP/Applicant in relation to running the Corporate Debtor and discharging his obligations under the Code.

ii. Payment of fees and costs and expenses incurred/to be incurred by the IRP/Applicant in relation to engaging professionals for providing assistance/support in discharging his obligations under the Code.

iii. Payment of costs and expenses incurred or to be incurred from time by the IRP/Applicant on account of engaging legal counsel for requisite representation, aid and advice in the CIR Process.”

5. The said application was decided on 29.03.2023 and the said order has been impugned herein by one of the Financial Creditor (State Bank of India).

6. The case set up by the Appellant is that the Adjudicating Authority had no jurisdiction to pass an order in regard to payment of pre-CIRP dues during the CIRP.

7. On the other hand, Counsel for the Respondents have submitted that this appeal has become infructuous with the afflux of time and more

particularly in view of the decision rendered by this Tribunal in CA (AT) (Ins) No. 198 of 2023 on 15.05.2023 by which the CIRP proceedings initiated vide order dated 10.02.2023 has ultimately been closed and at present there is no CIRP proceedings, therefore, the reins of the company are in the hands of the company itself and not in the hands of the IRP.

8. We have heard counsel for the parties and after examining the record are of the considered opinion that though the issue raised by the Appellant may be attractive but in the present case, no such issue survives after the order dated 15.05.2023 is passed, therefore, the same is dismissed. No costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

Sheetal/Ravi