

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH-III
NEW DELHI

CA-295/C-III/ND/2019
In
CP(IB)-189(ND) of 2017

Section: Application on behalf of the Applicant (Liquidator) Under
Section 33(5) of the Insolvency and Bankruptcy Code, 2016 for
seeking Appropriate Directions.

In the matter of:

State Bank of India

.....Financial Creditor

VERSUS

Namdhari Food International Pvt. Ltd.

.....Corporate Debtor

AND IN THE MATTER OF

Rakesh Kumar Gupta
Liquidator for
Namdhari Food International Pvt. Ltd.

.....Applicant

Coram:

R.VARADHARAJAN,
Hon'ble Member (JUDICIAL)

CA-295/C-III/ND/2019

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State Bank of India vs. Namdhari Foods International Pvt. Ltd.

K.K.VOHRA,
Hon'ble Member (TECHNICAL)

Counsel for the Applicant/Liquidator : Mr. Abhishek Anand, Advocate

Delivered on:30.09.2019

ORDER

An Application has been moved by the Liquidator of the Corporate Debtor (CD) appointed by this Tribunal vide order dated 13.3.2019 seeking to invoke the provisions of Section 33(5) of Insolvency Bankruptcy Code, 2016 (IBC) as reproduced below:

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor;

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority,

2. The facts, in brief, leading to the filing of this Application are given hereunder. Based on the complaints received from a number of depositors/investors in relation to National Spot Exchange Limited with regard to collection of monies and failure to



return the monies made by the depositors/investors on demand, the Economic Offence Wing (EoW) is stated to have offered to investigate the matter which was numbered as EOW.C.R.No.89/13 in terms of the Maharashtra Protection of Interest of Depositors in Financial Establishment Act, 1999 (MPID). Pursuant to the Notification issued by the State Govt. in exercise of its powers, the bank accounts of the CD namely, the Company in liquidation stood attached and the details of the bank accounts of which have been attached have also been given in the Application. Also pursuant to the liquidation order passed by this Tribunal, Liquidator wants to approach Hon'ble High Court of Judicature at Mumbai in relation to the order of attachment dated 30.11.2018 in Miscellaneous Application No.1512 of 2017 of MPID Special Case No. 1 of 2014.

3. During the course of submissions in relation to the Application, Ld. Counsel for the liquidator brings to the notice of this Tribunal that in another matter namely, Roofit Industries Ltd. v. State of Maharashtra, MPID Spl.Case No.34 of 2004, Order dated 18.08.2017 wherein under similar circumstances based on an Application filed by the Resolution Professional (RP), the MPID

Court had directed the competent authority and EoW to hand over the custody and charge of the properties to the IRP. A copy of the said citation has also been produced before this Tribunal by Ld. Counsel for the Liquidator in compliance with the directions as issued by MPID relying upon the decision of the Hon'ble High Court, Mumbai giving predominance to IBC which has held that in relation to assets of the CD therein in the said order, moratorium will apply and the assets are required to be handed over to the RP. Ld. Counsel for the Liquidator also represents that in view of the above said order as passed in Roofit Industries Ltd. v. State of Maharashtra by MPID and taking into consideration the facts and circumstances in the instant case on hand which are similar to the facts in the above cited order as rendered by MPID in Roofit Industries Ltd. v. State of Maharashtra, there is every chance of success in appeal for which leave is sought before this Tribunal for filing and without the leave, the Liquidator will not be able to proceed in view of Section 33(5) as extracted in paragraph (supra) and go ahead to take control and custody of any asset in view of the order passed by MPID dated 30.11.2018.





At the time of hearing the Application one of the Operational Creditor (OC) who had opposed the approval of resolution plan seeks to intervene in this Application suo moto without any notice having been ordered by this Tribunal and in the circumstances, we are unable to appreciate the intervention made orally even without an Intervention Application having been filed on behalf of the said OC and in the circumstances we are not in a position to consider the objections in relation to the Application as filed by the Liquidator seeking for the relief.

From the facts as averred in the Application as well as taking into consideration the decision of the MPID Court made in Roofit Industries Ltd. v. State of Maharashtra case as well as taking into consideration the order of the MPID Court passed in relation to the CD/Company in liquidation on 30.11.2018 no prejudice it is seen would be caused if leave is granted to file an Appeal by the Liquidator which in any case the CD, if not in liquidation was entitled to file if permitted by law and subject to compliance of all the provisions of law and hence we allow this Application seeking leave to file an Appeal before the Hon'ble High Court of Judicature at Mumbai in relation to order dated 30.11.2018 as passed by



MPID, Mumbai in Misc. Application No.1512 of 2017 in MPID
Special Case No.1 of 2014 as sought by the Liquidator of the CD.


(K.K.VOHRA)
MEMBER (Technical)



30/09/2019
(R.VARADHARAJAN)
MEMBER (Judicial)

U.D.Mehta
30.09.2019