

MA 1090/2021[in CrI. Appeal No.447/2021]

"According to the petitioner, the directions issued in the judgment dated 22.4.2021 are not being complied with and the amount of Rs.32.50 lakhs has not been made over.

Considering the facts and circumstances on record in our view, it would be better if an application is preferred by the petitioner before the NCLT, Gauhati.

We, therefore, give liberty to the petitioner to prefer an application within seven days from today. We direct the NCLT, Gauhati to pass appropriate directions as early as possible.

List the matter on 20.08.2021."

Criminal Appeal No.447/2021

"25. It would appear to us that having regard to the orders passed by the NCLT admitting the application, under Section 7, and also the ordering of moratorium under Section 14 of the IBC and the orders which have been passed by the tribunal otherwise, the impugned order of the High Court resulting in Respondent No.1 being allowed to operate the account without making good the amount of Rs.32.50 lakhs to be placed in the account of the Corporate Debtor cannot be sustained. The Learned Counsel for the Applicant has also no objection in the Respondent No.1 being allowed to operate its account subject to it remitting an amount of Rs.32.50 lakhs into the account of the Corporate Debtor. In such circumstances, Appeal is allowed. The impugned order is modified as follows:

- i. The Respondent No.1 is allowed to operate its account subject to it to first remitting into the account of the Corporate Debtor, the amount of Rs.32.50 lakhs which stood paid to it by the management of the Corporate Debtor. The assets of the Corporate Debtor shall be managed strictly in terms of the provisions of the IBC. The Appellant as RP will bear in mind the provisions of Section 14(2A) and the subject of IBC. We however, make it clear that our order shall not be taken as our pronouncement on the issues arising from the FIR including the petition pending under Section 482 of the Cr. P.C.*
 - ii. We also make it clear that the judgment will not stand in the way of the Respondent No.1 pursuing its claim with regard to its entitlement to a sum of Rs.32.50 lakhs and any other sum from the Corporate Debtor or any other person in the appropriate forum and in accordance with law. There will be no order as to costs".*
- 4. During the proceedings, the learned Counsel for the Respondent has submitted that the Respondent Company is an MSME Unit and they want to comply with the order of the Hon'ble Supreme Court to refund the amount of Rs.32.50 lakhs to the CD's account but it does not have money as because the entire money of the unit is lying with the ICICI Bank, Chandrashekharpur Branch, Bhubneswar and the company is not able to withdraw money*

reportedly on account of lien made from the instructions of the RP. Hence, he has prayed that the Hon'ble Bench may direct the ICICI Bank to remit Rs.32.50 lakhs to the CD's account first and allow the Respondent to operate the account as per the Judgment of the Hon'ble Supreme Court. He has submitted that the Respondent is requesting the ICICI Bank to remit Rs.32.50 lakhs to the CD's Account. The learned Counsel has also further requested that they are complying with the order of the Hon'ble Supreme Court but they have prayed that this amount should not be utilised by the CD or the RP till IA No.34 of 2021 and 30 of 2021, filed before this Hon'ble Bench relating to this transaction, is disposed of.

5. He has also submitted that the Hon'ble Supreme Court has made it clear in its Order dated 20.04.2021 that the Judgment will not stand in the way of the Respondent herein i.e. JSVM Plywood Industries Ltd. pursuing its claim with regard to its entitlement to a sum of Rs.32.50 lakhs and any other sum from the Corporate Debtor or any other person in the appropriate forum and in accordance with law.

6. Heard he submissions of the Respondent and it is felt that arrangement of Rs.32.50 lakhs immediately by an MSME may be difficult. Hence, his submission is accepted to the extent that the ICICI Bank, Chandrashekharpur, Branch Bhubaneswar is hereby directed to remit Rs.32.50 lakhs to the CD's account immediately and thereafter the said account may be made free for the Respondent herein to operate the same.

7. Since the matter is to be listed before the Hon'ble Supreme Court on 20.08.2021, the Respondent is hereby directed to send the copy of this Order to the ICICI Bank for immediate compliance and the Respondent is also directed to file compliance report of remittance of Rs.32.50 lakhs by an Affidavit on or before 17.09.2021. The Petitioner is also hereby directed not to utilise the amount of Rs.32.50 lakhs till further instructions as the IAs filed earlier by the Respondent herein in this regard are being heard by this Hon'ble Bench.

8. List the matter on 17.08.2021".

3. The matter was once again taken up on 17.07.2021. During the course of the proceeding, the learned Counsel for the Respondent has submitted the said Bank is not functioning due to COVID 19 restrictions in the area. Hence, he prayed for one more day to comply with the order. One day was granted yesterday.

4. Today the learned Counsel for the Respondent has confirmed that the amount of Rs.32.50 lakhs has been remitted in to the CD's account as per the directions of the Hon'ble Supreme Court dated 23.07.2021 passed in MA No.1090/2021 and 22.04.2021

passed in Criminal Appeal No.447 of 2021 and the direction of this Tribunal dated 16.08.2021. The learned Counsel appearing for the Petitioner has also confirmed receipt of the said amount.

5. Hence this IA is disposed as Orders complied.

S/d

(Prasanta Kumar Mohanty)
Member (Technical) &
Adjudicating Authority
/Deka-18.08.2021/

S/d

(H. V. Subba Rao)
Member (Judicial) &
Adjudicating Authority