

**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

IA No.174 of 2018
In
CP No.628/IB/CB/2017

In the matter of Section 60 of the Insolvency and Bankruptcy Code, 2016
and Rule 11 of the NCLT Rules, 2016

In the matter of

M/s. Royal Splendour Developers Pvt Ltd. (RSDPL)

Ms.Leelamma & 2 Others

...Applicants/Guarantors

Vs.

1) M/s. Royal Splendour Developers Pvt Ltd

...1st Respondent

2) Mrs.Kavita Surana

...2nd Respondent/RP

3) M/s.Dhanlaxmi Bank Limited

..3rd Respondent/FC

4) Mr.Rahul Raveendran

...4th Respondent/Advocate Commissioner

Order delivered on: 31.08.2018

CORAM

K. ANANTHA PADMANABHA SWAMY, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Applicants : Shri.Avinash Krishnan Ravi, Advocate

*For 3rd Respondent : Shri.Varun Srinivasan, Advocate
(M/s.NVS & Associates)*

Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

- 1) The Applicants are the guarantors of the Corporate Debtor, the 1st Respondent herein. The Applicants have stated that the loans were availed by the 1st Respondent herein from the 3rd Respondent bank for which the applicants stood as guarantors.

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2) This Tribunal vide order dated 04.12.2017 admitted the petition under IBC, 2016 against the 1st Respondent and moratorium under section 14 was declared. It has been stated that after the commencement of CIRP, the 3rd Respondent instituted proceedings before the Hon'ble Chief Judicial Magistrate, Kottayam in CMP No. 885/2018 wherein the 4th Respondent was appointed as Advocate Commissioner for taking possession of the property of the Applicants.

Relief(s) Sought by the Applicant:

a. *Pass an order of ad-interim injunction restraining the 3rd and the 4th Respondents herein to not proceed against the Applicants or their properties pending adjudication of this Application.*

b. *Injunct the 3rd and 4th Respondents herein to not proceed against the Applicants or their properties pending completion of the CIRP process and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

ORDER

3) The Tribunal observes that the amended section 14 of the IBC, 2016 reads as follows;

*“(3) The provisions of sub-section (1) shall not apply to—
(a) such transaction as may be notified by the Central Government in consultation with any financial regulator;
(b) a surety in a contract of guarantee to a corporate debtor.”*

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- 4) The Tribunal further observes that in the case of ***“State of Bank of India v V. Ramakrishnan & Anr”***, the Hon’ble Supreme Court has held that

“21. We are afraid that such arguments have to be turned down on a careful reading of the Sections relied upon. Section 60 of the Code, in sub-section (1) thereof, refers to insolvency resolution and liquidation for both corporate debtors and personal guarantors, the Adjudicating Authority for which shall be the National Company Law Tribunal, having territorial jurisdiction over the place where the registered office of the corporate person is located. This sub-section is only important in that it locates the Tribunal which has territorial jurisdiction in insolvency resolution processes against corporate debtors. So far as personal guarantors are concerned, we have seen that Part III has not been brought into force, and neither has Section 243, which repeals the Presidency-Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920. The net result of this is that so far as individual personal guarantors are concerned, they will continue to be proceeded against under the aforesaid two Insolvency Acts and not under the Code. Indeed, by a Press Release dated 28.08.2017, the Government of India, through the Ministry of Finance, cautioned that Section 243 of the Code, which provides for the repeal of said enactments, has not been notified till date, and further, that the provisions relating to insolvency resolution and bankruptcy for individuals and partnerships as contained in Part III of the Code are yet to be notified. Hence, it was advised that stakeholders who intend to pursue their insolvency cases may approach the appropriate authority/court under the existing enactments, instead of approaching the Debt Recovery Tribunals.”

- 5) In view of the above, the Tribunal observes that the 3rd Respondent can proceed against the properties of the Applicants as per the procedure laid down in para 21 of the above referred case by the Hon’ble Supreme Court and that the guarantors are not protected under section 14 of the IBC, 2016 as per the law laid down by the Hon’ble Supreme Court.

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With the above direction, the Application in IA No.174 of 2018 In
CP No.628/IB/CB/2017 stands disposed of.

S. Vijayaraghavan.

(S.VIJAYARAGHAVAN)
MEMBER (TECHNICAL)

K. Anantha Padmanabha Swamy

(K.ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)

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