

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB) 211 (ND)/2017

CORAM:

PRESENT: SH. S. K. MOHAPATRA
HON'BLE MEMBER(T)

SMT. INA MALHOTRA
HON'BLE MEMBER (J)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 28.09.2017

NAME OF THE COMPANY: M/s M Y Agro Pvt. Ltd. Vs. M/s Amira Pure Foods Pvt. Ltd.

SECTION OF THE COMPANIES ACT: 8 & 9 of IBC, 2016

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
	For the Petitioner (s) :	Mr. RuhinMidha, Advocate Mr. Simranjeet Singh, Advocate Mr. Karthik, Advocate Mr. Ashok Kumar Juneja, Advocate		
	For the Respondent (s):	Dr. U.K. Chaudhary, Sr. Advocate with Mr. Sanjev Pathak, Advocate for Contemnors 1-8 Mr. S.L. Gupta, Advocate for Contemnor No.9 Mr. Rakesh Kumar, Advocate for R-11 Mr. P.K. Sachdeva, Advocate for R-11 Mr. Rahul Dhankar, R-11 Mr. Vikas Yadav, Reader for DM, Gurgaon, R-12 Mr. DevinderAroa, IRP		

ORDER

Reply filed on behalf on behalf of Contemnor No.1 is adopted by the Contemnors No.2 to 8, who are employees of the Contemnor Bank No.1. All the contemnors are duly represented by their Counsels.

The point for consideration in this case is, given the circumstances that the order of Moratorium had been duly served on the Local

(Lekh Raj Singh)



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Commissioner appointed by the District Magistrate, Gurgaon, he continued to remove the stock in trade kept in the godown. The IRP has stated that the same was done in wilful defiance and in scant regard of the orders of this Bench as well as the mandatory requirements of the statute.

The Local Commissioner submitted that he had gone there to take possession of stock in trade pursuant to the specific orders of the concerned District Magistrate, aided and supervised by the local police authority.



In the reply filed by the Contemnors, duly supported by an Affidavit, it is admitted that they had wrongly approached the District Magistrate under SARFAESI and procured the orders from him. It therefore follows that on the basis of false averments, the Ld. District Magistrate had placed the facilities of the state machinery at the beck and call of the contemnors and facilitated the removal of the Corporate Debtor's stock-in-trade by appointing a Local Commissioner to execute his orders. This is notwithstanding the fact that the copy of the order directing a moratorium had been served on the Ld. Distt. Magistrate, who failed to recall his directions. This Bench would like to be apprised as to what steps are contemplated by the concerned Dist. Magistrate against the contemnors for procuring the impugned order and assistance of the state machinery when it is admitted that the action was not taken under S.14 of SARFAESI and that they had falsely mislead him into directing the impugned action.

The IRP also communicated the order directing the Moratorium to the Local Commissioner and the bank officials who completely disregarded the same. We have no reason to disbelieve the IRP about the factum of the Moratorium being brought to the notice of either the District Magistrate, Local Commissioner or the Bank officials.

It would therefore, be expedient to consider whether facts of this case make out a case for contempt.

Ld. Sr. Counsel has argued that the stock in trade being under pledge was in custody of the bank, housed in a property subleased to the Bank.

(Lekh Raj Singh)



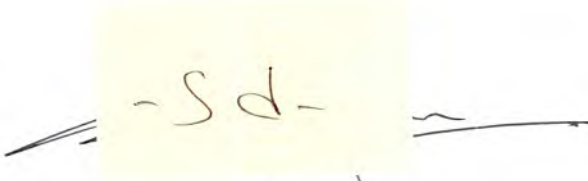
The stock-in-trade was therefore their property which had already been disposed off by an auction and its consideration had been received prior to the initiation of contempt proceedings.

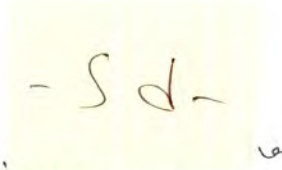
We are, however, of the view that once the moratorium was imposed, goods could not have been removed even in the face of the aforesaid facts. Ld. Counsel for the Corporate Debtor submits that even otherwise, a suit in respect of the title to the goods, is pending adjudication before the District Courts.

Ld. Senior Counsel for the contemnors prays for further time to satisfy this Bench as to why the contemnors are not liable for breach of Moratorium issued under the Code. Notice to the Dist. Magistrate is being effected on his representative present in the Court as to what action is contemplated against contemnors 1 to 8 for falsely invoking his jurisdiction under the SARFAESI giving rise to the impugned action.

To come up for further arguments to be addressed by both sides and for filing of citations in support of the arguments.

At request of the Ld. Counsel, adjourned to 6th October, 2017.


(S. K. Mohapatra)
Member (T)


(Ina Malhotra)
Member (J)