

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 132 of 2021

[Arising out of order dated 04.01.2021 In IA-2069(PB)/2020 in Company Petition (IB)-170(PB)/2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Principal Bench.]

IN THE MATTER OF:

Kotak Mahindra Bank Limited

Registered Office at:

27BKC, C-27, G-Block,
Bandra Kurla Complex,
Bandra (E), Mumbai - 400051

..... Appellant.

Versus

1. Ravindra Loonkar,

Resolution Professional of ACIL Ltd.

(IP Reg. No. IBBI/IP-002/IP-N00433/2017-18/11206)

Resident at:

Flat No. C-49c, Gangotri Enclave,
Alaknanda, New Delhi-110019.

..... Respondent No. 1.

2. ACIL Ltd.

Registered Office at:

Ground Floor, Building No. 108/B,
Madangir Village, New Delhi-110062.

..... Respondent No. 2.

3. Ramkrishna Forgings Limited

Registered Office at:

23, Circus Avenue, Kolkata,
Kolkata, WB – 700017-IN

Email: neha.gupta@ramkrishnaforgings.com

..... Respondent No. 3.

Present:

For Appellant: Mr. Ravi Gupta, Sr. Advocate with Mr. Mahip Datta Parashar, Mr. Dhruv Gupta, Mr. Sachin Jain, Advocates.

For Respondent: Ms. Anjali Sharma, Ms. Ashly Cherian, Advocates for R1 and R-2(RP).

Mr. Sumant Batra, Advocate for R-1.

Mr. Ravindra Loonkar, for R-1 (in person).

Ms. Ruchi Goyal, Advocate for R-1.

J U D G M E N T

(7th January, 2022)

Justice Anant Bijay Singh;

This Appeal has been preferred by the Appellant being aggrieved and dissatisfied by the order dated 04.01.2021 passed by the Ld. Adjudicating Authority (National Company Law Tribunal), New Delhi, Principal Bench, in IA-2069(PB)/2020 in Company Petition (IB)-170(PB)/2018 whereby and where under the Application filed by the Resolution Professional (Respondent No. 1 herein) against 'Kotak Mahindra Bank Limited' under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (***for short IBC***) 'for closure of its Fixed Deposit in A/c. No. 7511872416 and 7511874557 on the ground that since Corporate Insolvency Resolution Process has been initiated against the Corporate Debtor' was allowed IA-2069(PB)/2020 and further, the Respondent Bank i.e. the Appellant herein was directed to transfer the amount payable (including interest accrued thereon) on closure of Fixed Deposits in account Nos. 7511872416 and 7511874557 to TRA A/c No. 0127103000016223 held

by the Corporate Debtor with IDBI Bank, Videocon Tower, 1st Floor, E-1, Jhandewalan Extension, New Delhi-110055.

2. The facts giving rise to this Appeal are as follows:

i) The Respondent No. 1 filed an Application in the month of May, 2020, against the Appellant Bank bearing IA No. 2069(PB)/2020 (Annexure A-3 at page 53 to 177 of the Appeal Paper Book) praying for directions to the Appellant Bank to close the Fixed Deposits in Account Nos. 7511872416 and 7511874557 placed by the Respondent No. 2 company with the Appellant and further to direct the Appellant Bank to transfer the amount payable (including interest accrued thereon) on closure of Fixed Deposits in account Nos. 7511872416 and 7511874557 to TRA A/c No. 0127103000016223 held by the Corporate Debtor with IDBI Bank, Videocon Tower, 1st Floor, E-1, Jhandewalan Extension, New Delhi-110055 with an intention to use the said money for meeting the expenses being borne to run the affairs of the Respondent No. 2 company as a going concern.

ii) Further case is that the Appellant herein brought to the notice of the Ld. Adjudicating Authority that the Resolution Plan is pending for approval by the Ld. Adjudicating Authority and thus requested to the Hon'ble Bench to make the Resolution Applicant as a Respondent or else the interest of the Resolution Applicant would be adversely affected. Therefore, the Hon'ble Bench directed the Respondent No. 1 herein to make the Resolution Applicant as a Respondent, vide order dated 29.05.2020.

iii) Further case is that the Appellant Bank filed its detailed Reply dated 25.06.2020 against the IA No. 2069(PB)/2020 seeking its dismissal as being

completely devoid of merits and highly prejudicial to the interest of the Appellant Bank (Annexure A-4 at page 179 to 237 of the Appeal Paper Book).

iv) Further case is that the Respondent No. 1 herein, filed an Additional Affidavit bringing on record the Form G and the Information Memorandum of the Respondent No. 2 Corporate Debtor Company.

v) The Respondent No. 2/Corporate Debtor being ACIL Limited had banking relationship with the Vysya Bank since 2001 which later on changed its name to ING Vysya Bank Limited in 2003 and the same was amalgamated with the Appellant Bank i.e. Kotak Mahindra Bank Limited w.e.f. 01.04.2015, therefore, all rights arising out of the said credit facility fell upon the Appellant Bank.

vi) The Corporate Debtor was formerly known as M/s. Amtek Siccardi India Limited in 2001, the name of the same was later on changed to M/s Amtek Crankshaft India Ltd. and the same is presently known as M/s ACIL Limited since 2013.

vii) Further case is that the Appellant Bank provided various financial facilities to the Corporate Debtor being ACIL Limited, which were renewed from time to time on such terms and conditions as agreed between the parties since the very inception of grant of loan in the year 2001.

viii) In the year 2009 on the request made by the Corporate Debtor, a fixed deposit of Rs. 75,00,000/- was credited into current account no. 503011008601 styled as "Amtek Crankshafts (India) Limited" along with interest.

ix) The Corporate Debtor requested to create a fresh fixed deposit of Rs. 75,00,000/- for 91 days by debiting current account no. 503011008601 styled as "Amtek Crankshafts (India) Limited and another FDR for a sum of Rs. 15,00,000/- was also created by ACIL in order to support the debt security ratio with a right of set off to be exercised at that relevant point of time. The said FDRs were never encashed and were always left with the Bank since 2009. The Bank has exercised the general lien over these FDRs along with the right of set off. The value of these FDRs were never appropriated with the Loan Account, since the right to set off can be exercised only at the time of final demand and the payment to be made. The Appellant Bank has lien over these FDRs till such time the right to set-off is exercised by the Bank while appropriating the amount and since then both FDR continued to be with Appellant Bank till date in form of security for the loan advances.

x) Further case is that the limit of credit facility granted to the Corporate debtor was revised and renewed from Rs. 131 Crore to 201 Crore at the request of the Corporate Debtor vide sanction communication dated 23.06.2014.

xi) The financial facilities availed by the Corporate Debtor, various loan documents were duly signed and executed in favour of Appellant Bank from the year 2001 and on each renewal separate loan documents were executed to that effect and Facility Agreements dated 02.07.2014 and 08.07.2014 are one amongst many such loan transaction documents which were executed from time to time.

xii) That according to the terms of the Facility Agreements relied upon by the Corporate Debtor and which are duly signed and executed by the Corporate Debtor in favour of the Appellant Bank, the Appellant Bank is at liberty to exercise its right over the Additional Security of the Appellant Bank. That in terms of Clause 1.1 of the facility Agreement "Additional Security" shall mean such additional security as may be posted pursuant to Clause 10(c) of the Facility Agreement. In terms of the said clause "If, in the opinion of the Bank, the Security constituted by the Security Documents is insufficient or becomes insufficient to cover the Borrower's obligation under this Agreement, the Bank may ask the Borrower to furnish or arrange such additional security as the Bank may determine/stipulate from time to time."

xiii) That according to clause 18 of the Facility Agreement, the Appellant Bank has the right of set off. That as per the clause, "the borrower agrees without prejudice to all of the Bank's rights and remedies as bankers or otherwise against the Borrower, the Bank shall be entitled to set Bank under any transaction/agreement at any time in satisfaction of payment of any indebtedness or liability of the Borrower under or pursuant of this Agreement".

xiv) That the Appellant Bank started observing acts of misconduct on part of the Corporate Debtor including breach of term and conditions of the sanction. The Appellant Bank also observed acts of misappropriation of funds and falsification of accounts by the Corporate Debtor with a view of deceive and induce Appellant Bank in order to continue to avail credit facilities.

xv) The Corporate Debtor in terms of the Sanction Letters and loan documents was required to repay the loan amount on such terms and conditions as duly agreed between the parties, however, the Corporate Debtor failed to repay the outstanding amount and various defaults were committed by them and therefore, the account of the Corporate Debtor has been declared as NPA in the Books of the Appellant Bank as on 31.03.2017 as per guidelines of Reserve Bank of India.

xvi) The Appellant Bank in view of various defaults committed by the Corporate Debtor and the account of the Corporate Debtor being declared NPA, issued a Loan Recall Notice dated 22.09.2017 whereby the Appellant Bank recalled the facilities extended to the Corporate Debtor and demanded payment of Rs. 205,84,10,198.70/- as on 24.08.2017, together with further interest and other charges thereon at the contractual rates upon the footing of compound interest from 25.08.2017 within seven days from receipt of the Loan Recall Notice.

xvii) The Corporate Debtor has failed to pay the outstanding amount and the current outstanding Financial Debt as on 01.06.2020 in Rs. 401,54,10,733.70/-

xviii) The Ld. NCLT passed an order commencing Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor on 08.08.2018 and appointed Mr. Ravinder Loonkar, the Respondent No. 1 herein, as the Interim Resolution Professional vide order dated 08.08.2018. Thereafter, the Respondent No. 1 vide letter dated 21.08.2018 requested the Appellant Bank for closure of fixed deposit placed by the Corporate Debtor with the Appellant

Bank and transfer of funds to TRA A/c No. 0127103000016223 held by Corporate Debtor with the Appellant prior to 02.07.2014.

xix) The Appellant Bank submitted its financial claim i.e. FORM-C on 27.08.2018 to the Interim Resolution Professional wherein the Appellant Bank declared the details of mutual credit, mutual debts, or other mutual dealings between the Corporate Debtor and the creditor which may be set off against the claim. The Appellant Bank clearly mentioned that as part of the Security over which the Appellant Bank has a right of general lien, Corporate Debtor fixed deposits with the Appellant Bank as on date:

FD No. 75118774557 for an amount of Rs. 97,66,718.40

FD No. 75118724116 for an amount of Rs. 43,39,304.99

xx) On 14.08.2019 the Final Resolution Plan was approved by the Committee of Creditors (CoC) by e-voting with a majority of 88.56% and the said Plan was taken on record by the Hon'ble Tribunal vide order dated 16.08.2019. The Appellant Bank has a total voting right of approx. 14.81% in the CoC formed by the Resolution Professional to govern the CIRP of the Corporate Debtor herein and the Appellant Bank had assented for the Resolution Plan being submitted by M/s Ramkrisha Forgings Ltd. and thus the Resolution Plan was approved by the CoC through its commercial wisdom.

xxi) The Respondent No. 1 vide its letter dated 03.10.2019 requested the Appellant Bank to close the Fixed Deposit Account No. 7511874557 and transfer the amount payable on closure to TRA A/c No. 0127103000016223 held by ACIL Limited with IDBI Bank. Thereafter, the Appellant Bank replied

to the said letter vide letter dated 11.11.2019 wherein it was stated that the Fixed Deposits are exclusively charged to the Appellant Bank and the same was also mentioned in the FORM-C submitted by the Appellant Bank. The Appellant Bank laid emphasis on the clause of "Additional Security" and the right of the Appellant Bank to exercise set-off as per the terms and conditions of the Facility Agreement duly signed and executed by Corporate Debtor in favour of the Appellant Bank. Thereafter, the request made by the Respondent No. 1 was rejected and communicated vide letter dated 11.11.2019.

xxii) The Respondent No. 1, replied to the letter dated 11.11.2019 issued by the Appellant Bank vide the letter dated 05.12.2019 wherein the Applicant claimed that the Fixed Deposits in Account No. 7511872416 and 7511874557 are free of any such lien/charge as claimed by the Appellant Bank and no lien/charge has ever been created over the Fixed Deposits by the Corporate Debtor.

xxiii) The Appellant Bank vide letter dated 11.12.2019 denied all the contentions raised by the Respondent No. 1 in letter dated 05.12.2019 and further reiterated that Fixed Deposits are forming part of security of the Appellant Bank and the Bank has priority over redemption of such Fixed Deposits for adjustment of debt of Corporate Debtor and further has a right of general lien and therefore the request made by the Respondent No. 1 was rejected. The letter dated 07.01.2020, same request was made by the Respondent No. 1 on such grounds as mentioned therein. The said request made by the Respondent No. 1 was rejected by the Appellant Bank vide reply dated 27.01.2020.

xxiv) The Respondent No. 1 once again issued a letter dated 27.01.2020 which was replied by the Appellant Bank on 06.03.2020, reiterating the stand taken by the Appellant Bank in its earlier communication with regard to 'Additional Security' and Bank's right of set off as per the terms and conditions of the Facility Agreement duly signed and acknowledged by the Corporate Debtor.

xxv) Vide letter dated 06.03.2020 the Appellant Bank clarified that subsequent to initiation of CIRP process against the Corporate Debtor, the Appellant Bank filed Financial Claim through FORM-C on 27.08.2018 thereby mentioning about the financial position to ACIL Ltd. including security created by ACIL Ltd. in favour of Appellant Bank and till date no dispute was brought on record either by the Respondent No. 1 or by the Corporate Debtor or by the Company through Suspended Board of Directors.

xxvi) Further case is that the Respondent No. 1/Resolution Professional has no statutory authority to realize the assets, moveable or immovable without prior consent of the Financial Creditors/members of the CoC of the Corporate Debtor. Further, the FDRs being sought to be realized by the Resolution Professional are already covered under the proposed Resolution Plan submitted by the Successful Resolution Applicant which has already been approved by the commercial wisdom of the 88.56% of the CoC and is pending approval before the Ld. Adjudicating Authority.

xxvii) The Ld. Adjudicating Authority passed the impugned order dated 04.01.2021 allowed the Application filed by the Respondent No. 1/Resolution Professional. Hence this instant Appeal.

Submissions on behalf of the Appellant

3. The Learned Sr. Counsel for the Appellant during the course of argument and his memo of Appeal submitted that the Ld. Ld. Adjudicating Authority has failed to appreciate that the financial facilities availed by the Corporate Debtor, various loan documents were duly signed and executed in favour of Appellant Bank from the year 2001 and on each renewal separate loan documents were executed to that effect and Facility Agreements dated 02.07.2014 and 08.07.2014 are one amongst many such loan transection documents which were executed from time to time.

4. It is further submitted that the terms of the Facility Agreements relied upon by the Corporate Debtor and which are duly signed and executed by the Corporate Debtor in favour of the Appellant Bank, the Appellant Bank is at liberty to exercise its right over the Additional Security of the Appellant Bank. That in terms of Clause 1.1 of the facility Agreement "Additional Security" shall mean such additional security as may be posted pursuant to Clause 10(c) of the Facility Agreement.

5. It is further submitted that in terms of the Clause 10(c) "If, in the opinion of the Bank, the Security constituted by the Security Documents is insufficient or becomes insufficient to cover the Borrower's obligation under this Agreement, the Bank may ask the Borrower to furnish or arrange such additional security as the Bank may determine/stipulate from time to time".

6. It is further submitted that according to clause 18 of the Facility Agreement, the Appellant Bank has the right of set off. That as per the clause,

"the borrower agrees without prejudice to all of the Bank's rights and remedies as bankers or otherwise against the Borrower, the Bank shall be entitled to set Bank under any transaction/agreement at any time in satisfaction of payment of any indebtedness or liability of the Borrower under or pursuant of this Agreement".

7. It is further submitted that the Appellant Bank started observing acts of misconduct on part of the Corporate Debtor including breach of term and conditions of the sanction. The Appellant Bank also observed acts of misappropriation of funds and falsification of accounts by the Corporate Debtor with a view of deceive and induce Appellant Bank in order to continue to avail credit facilities.

8. It is further submitted that the Appellant Bank in view of various defaults committed by the Corporate Debtor and the account of the Corporate Debtor being declared NPA, issued a Loan Recall Notice dated 22.09.2017 whereby the Appellant Bank recalled the facilities extended to the Corporate Debtor and demanded payment of Rs. 205,84,10,198.70 (Rupees Two Hundred Five Crores Eighty-Four Lakhs Ten Thousand One Hundred Ninety-Eight and Seventy paise only) as on 24.08.2017, together with further interest and other charges thereon at the contractual rates upon the footing of compound interest from 25.08.2017 within seven days from receipt of the Loan Recall Notice.

9. It is further submitted that the Corporate Debtor has failed to pay the outstanding amount and the current outstanding Financial Debt as on 01.06.2020 in Rs. 401,54,10,733.70 (Rupees Four Hundred and One Crores

Fifty-Four Lacs Ten Thousand Seven Hundred Seventy-Three and Seventy paise only).

10. It is further submitted that the Ld. Adjudicating Authority passed an order commencing Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor on 08.08.2018 and appointed Mr. Ravinder Loonkar, the Respondent No. 1 herein, as the Interim Resolution Professional vide order dated 08.08.2018.

11. It is further submitted that the Respondent No. 1 vide letter dated 21.08.2018 requested the Appellant Bank for closure of fixed deposit placed by the Corporate Debtor with the Appellant Bank and transfer of funds to TRA A/c No. 0127103000016223 held by Corporate Debtor with the Appellant prior to 02.07.2014.

12. It is further submitted that the Appellant Bank submitted its financial claim i.e. FORM-C on 27.08.2018 to the Interim Resolution Professional wherein the Appellant Bank declared the details of any mutual credit, mutual debts, or other mutual dealings between the Corporate Debtor and the creditor which may be set off against the claim. The Appellant Bank clearly mentioned that as part of the Security over which the Appellant Bank has a right of general lien, Corporate Debtor fixed deposits with the Appellant Bank as on date: FD No. 75118774557 for an amount of Rs. 97,66,718.40 and FD No. 75118724116 for an amount of Rs. 43,39,304.99.

13. It is further submitted that on 14.08.2019 the Final Resolution Plan was approved by the Committee of Creditors (CoC) by e-voting with a majority

of 88.56% and the said Plan was taken on record by the Hon'ble Tribunal vide order dated 16.08.2019. The Appellant Bank has a total voting right of approx. 14.81% in the CoC formed by the Resolution Professional to govern the CIRP of the Corporate Debtor herein and the Appellant Bank had assented for the Resolution Plan being submitted by M/s Ramkrisha Forgings Ltd. and thus the Resolution Plan was approved by the CoC in its commercial wisdom.

14. It is further submitted that the Ld. Adjudicating Authority has failed to consider that the based on the clause of additional security and bank's right of set off as per the terms and conditions of the Facility Agreement duly signed and acknowledged by the Corporate Debtor.

15. It is further submitted that in view of the facts and submissions the impugned order cannot be sustained in the eye of law, therefore the impugned order is set aside and the Appeal be allowed.

Submissions on behalf of the Respondent No. 1.

16. The Learned Counsel for the Respondent No. 1 during the course of argument and his Reply Affidavit along with Written Submissions submitted that the Fixed Deposits are the assets of the Corporate Debtor and were never offered as additional security to the Appellant Bank for availing facilities in terms of Clause 10(c) of the Facility Agreements (at page 86 of the Appeal Paper Book), as the same requires the Appellant Bank to first ask from the Corporate Debtor to furnish additional security.

17. It is further submitted that the Appellant has failed to place on record any document to establish that a request was ever made for creating additional security in terms of Clause 10(c).

18. It is further submitted that the Appellant has relied on Clause 14 of the Facility Agreements (at page 90 of the Appeal Paper Book) which states that in the event of default in repayment of the financial facilities, the Appellant has the right to take possession of Charged Assets. Charged Assets as per Clause 1.1 (at page 81 of the Appeal Paper Book) mean “*the assets over which Security is expressed to be created pursuant to any Security Document*”.

19. It is further submitted that the asset in question must therefore be charged to the Appellant. Since the Fixed Deposits were never charged to the Appellant neither originally as “Charged Assets” nor subsequently as “Additional Security”, the Bank has no right over these Fixed Deposits even when loan is recalled by the Bank. Further, no such charge was registered by the Corporate Debtor or even by the Appellant in terms of Section 77 of the Companies Act, 2013.

20. It is further submitted that the purported right of “set off” in terms of Clause 18 of Facility Agreements (at page 91 of the Appeal Paper Book) has never been invoked by the Appellant on default committed by the Corporate Debtor in failing to repay the loan.

21. It is further submitted that even if a right of set-off was available, it should have been exercised when the Loan Recall Notice was issued on 24.08.2017 (at page 49 to 53 of the Reply Affidavit)

22. It is further submitted that the right of set off was exercised by the Appellant only after initiation of CIRP and when the Resolution Professional, the Respondent No. 1 herein requested to transfer the amounts in Fixed Deposits.

23. It is further submitted that the Appellant cannot unilaterally withhold the possession of Fixed Deposits after the commencement of CIRP in view of the Judgment passed by **Hon'ble High Court of Bombay** in the case of **"State Bank of India Vs. Javed Akhtar Hussain and Anr. AIR 1993 130M 87"**.

24. It is further submitted that even the statement/Certificate of Balance for the Fixed Deposits as on 31.01.2021 and 31.03.2020 issued by the Appellant (at page 67-68 of the Reply Affidavit) do not show or carry any charge or lien over the Fixed Deposits.

25. It is further submitted that the right of lien cannot be exercised over Fixed Deposits since money placed in Fixed Deposit is a debt in the hands of the bank, and therefore a debt cannot be subjected to lien nor a debtor can exercise such a right in view of the Judgment passed by **Hon'ble High Court of Kerala** in the case of **"Union Bank of India Vs. K.V. Venugopalan, 1990 SCC OnLine Ker 12"**.

26. It is further submitted that once an order of moratorium in terms of Section 14(1)(c) is declared, it creates a bar on enforcement of any security interest in respect of Corporate Debtor. No recovery action in form of lien or set-off can be exercised by banks in discharge/settlement of their pre-CIRP dues as held by this **Appellate Tribunal** in the case of **"Indian Overseas**

Bank Vs. Mr. Dinkar T. Venkatsubramaniam, Company Appeal (AT) (Insolvency) No. 267 of 2017” .

27. The Learned Counsel for the Respondent No. 1 further submitted that based on these submissions the Ld. Adjudicating Authority has rightly passed the impugned order. There is no merit in the instant Appeal, the Appeal is fit to be dismissed.

FINDINGS

28. After hearing the parties and having gone through the pleadings made on behalf of the parties, we are of the considered view that the following facts are admitted in the instant Appeal.

- The Corporate Insolvency Resolution Process (CIRP) was initiated against Respondent No. 2 (Corporate Debtor) on 08.08.2018 and appointed Mr. Ravinder Loonkar, the Respondent No. 1 herein, as the Interim Resolution Professional.
- The Respondent No. 2 have two Fixed Deposits with the Appellant Bank for amount of Rs. Rs. 97,66,718.40 and FD No. 75118724116 for an amount of Rs. 43,39,304.99.
- The Respondent No. 1 vide letter dated 21.08.2018 requested the Appellant Bank for closure of fixed deposit placed by the Corporate Debtor with the Appellant Bank and transfer of funds to TRA A/c No. 0127103000016223 held by Corporate Debtor with the Appellant prior to 02.07.2014.

- The Appellant Bank submitted its financial claim i.e. FORM-C on 27.08.2018 to the Interim Resolution Professional wherein the Appellant Bank declared the details of mutual credit, mutual debts, or other mutual dealings between the Corporate Debtor and the creditor which may be set off against the claim.
- The Appellant Bank clearly mentioned that as part of the Security over which the Appellant Bank has a right of general lien, Corporate Debtor fixed deposits with the Appellant Bank.
- From the perusal of Clause 10(c) of the Facility Agreements (at page 86 of the Appeal Paper Book), the Appellant Bank is required to first ask from the Corporate Debtor to furnish additional security.
- It is an admitted fact that the Appellant has failed to place on record any document to establish that a request was ever made for creating additional security in terms of Clause 10(c).
- From the perusal of the Clause 14 of the Facility Agreements (at page 90 of the Appeal Paper Book) which states that in the event of default in repayment of the financial facilities, the Appellant has the right to take possession of Charged Assets. Charged Assets as per Clause 1.1 (at page 81 of the Appeal Paper Book) mean “*the assets over which Security is expressed to be created pursuant to any Security Document*”.
- The Fixed Deposits were never charged to the Appellant neither originally as “Charged Assets” nor subsequently as “Additional Security”, hence the Bank has no right over these Fixed Deposits even when loan is recalled by the Bank. No such charge was registered by

the Corporate Debtor or even by the Appellant in terms of Section 77 of the Companies Act, 2013.

- Order of moratorium in terms of provisions of Section 14(1)(c) is declared, it creates a bar on enforcement of any security interest in respect of Corporate Debtor. No recovery action in form of lien or set-off can be exercised by banks in discharge/settlement of their pre-CIRP dues.
- The Final Resolution Plan was approved by the Committee of Creditors (CoC) on 14.08.2019 by e-voting with a majority of 88.56% and the said Plan was taken on record by the Ld. Adjudicating Authority vide order dated 16.08.2019. The Appellant Bank has a total voting right of 14.81% in the CoC formed by the Resolution Professional to govern the CIRP of the Corporate Debtor herein and the Appellant Bank had assented for the Resolution Plan being submitted by M/s Ramkrisha Forgings Ltd. and the Resolution Plan was approved by the CoC in its commercial wisdom.

ORDER

29. Taking all these facts and circumstances of the case, we are of the considered view that there is no illegality committed by the Ld. Adjudicating Authority while passing the impugned order, therefore, we do not need to interfere in the impugned order. The impugned order dated 04.01.2021 passed by the Ld. Adjudicating Authority (National Company Law Tribunal), New Delhi, Principal Bench, in IA-2069(PB)/2020 in Company Petition (IB)-170(PB)/2018 is hereby affirmed. There is no merit in the Appeal. The Appeal is hereby dismissed. No order as to costs.

30. Registry to upload the Judgment on the website of this Appellate Tribunal and send the copy of this Judgment to the Ld. Adjudicating Authority (National Company Law Tribunal), New Delhi, Principal Bench, forthwith.

**[Justice Anant Bijay Singh]
Member (Judicial)**

**[Ms. Shreesha Merla]
Member (Technical)**

New Delhi

7th January, 2022

R. Nath.