

IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH, CHENNAI

**IA 05/2017**

in

CP/510/IB)/CB/2017

(Under Rule 11 of NCLT Rules, 2016 read with Section 14, 31 and 60 of the Insolvency and Bankruptcy Code, 2016)

In the matter of

**Mr. V. Ramakrishnan**

**Vs.**

**M/s. Veelsons Energy Systems Pvt. Ltd.**

**&**

**State Bank of India**

*Order delivered on 18<sup>th</sup> of September, 2017*

CORAM :

CH MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)  
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

*For Guarantor(s) : Sr. Counsel, Mr. P.H. Arvind Pandian*  
*For Financial Creditor(s) : Sr. Counsel Mr. E. Om Prakash*

**ORDER**

Per: CH MOHD SHARIEF TARIQ, Member (J)

1. Under adjudication is an Interlocutory Application No: 5/2017 in CP/510/IB)/CB/2017 that has been filed by Guarantor (Promoter) viz., Mr. V. Ramakrishnan against M/s Veelsons Energy Systems Private Limited and State Bank of India. The Applicant

(hereinafter called the Guarantor) is the Managing Director and Promoter of M/s. Veensons Energy Systems Private Limited who has given personal guarantee against the loan secured by M/s. Veensons Energy Systems Private Limited from State Bank of India. His contentions is that since is under the process of Corporate Insolvency Resolution Process as per the Order passed by this Bench on 04.08.2017 and the moratorium is declared, the first meeting of the Committee of Creditors (CoC) has also been held and Mr. Raghavendaran has been recommended for appointment of Resolution Professional(RP). After public announcement, the State Bank of India has also filed the claim before IRP/RP and involved itself in the Corporate Insolvency Resolution Process. Now, after being part of the Corporate Insolvency Resolution Process, as a Financial Creditor, the State Bank of India issued an auction notice dated 12.07.2017 under the provisions of SARFAESI Act, 2002, in order to sell the property of the personal guarantor of M/s. Veensons Energy Systems Private Limited.

2. The guarantor contends that, in case his personal property is sold to realise the portion of the debt outstanding against M/s. Veelsons Energy Systems Private Limited, the same shall create charge on the assets of the Corporate Debtor which shall amount 'encumbering' the properties of the Corporate Debtor.

3. For the sake of better appreciation, the relevant portion of Sections 14 and 31 of the I&B Code, 2016 is reproduced as follows:-

*"14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—*

*(a) .....*

*(b) transferring, **encumbering**, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

*(c) ....."*

*"31. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. ...."*

As can be seen from the provisions of Section 14 (1) (b), the moratorium prohibits transferring, **encumbering**, alienating or disposing of by the corporate Debtor any of its assets or any legal right or beneficial interest therein and Section 31 (1) provides that if the adjudicating authority is satisfied that the Resolution Plan as approved by CoC under sub-Section (4) of Section 30, meets requirements as referred to in sub-Section (2) of Section 30, it shall, by order approve the Resolution Plan which shall be binding on the Corporate Debtor and its employees, members, creditors, **guarantors** and other stake holders involved in the Resolution Plan. Because, if the property of the personal guarantor is sold by the Financial Creditor, the personal guarantor will have all the rights of that of the creditors against the Corporate Debtor, and in that way, a charge automatically gets created on the property of the Corporate Debtor which is against the purpose and object of the moratorium declared. Thus will violate the provisions of Section 14(1) (b) of the I&B Code, 2016.



4. In this connection, it will be appropriate to make a reference to the provisions of Section 140 of the Indian Contract Act, 1872, which reads as follows:-

*"Rights of surety on payment or performance.—Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor. —Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor."(emphasis supplied)*

5. The provisions of the above section came to be interpreted by the Division Bench of Hon'ble High Court of Madras in **Parvateneni Bhushayya Vs. Potluri Suryanarayana**, AIR 1944 Mad 195 at page 2014, which has held as under:-

*"Section 140, in our opinion, leaves no room for doubt on the point, because it expressly says that the surety upon payment of all that he is liable for is invested—that is, immediately invested—with all the rights which the creditor had against the principal debtor. The condition laid down by the section for this right to arise, is the payment by the surety of all that he is liable for, and not the payment of all that may be due to the creditor who holds the securities. Where the guaranteed debt is a fraction only of the debt, the surety's right comes into existence immediately on payment of that fraction, for that fraction is, so far as he is concerned, the whole."*

In the light of the above, certainly in the event the guarantor fulfils his obligation for payment of outstanding debt of the Corporate Debtor, he has every right on the assets of the Corporate Debtor to the extent he has paid the outstanding debt to the creditors.

6. It is clear that if the Financial Creditor during the Corporate Insolvency Resolution Process and declaration of the moratorium is permitted to proceed against the personal guarantor of the Corporate Debtor for recovery of the outstanding debt to the extent of the personal guarantee given, then, the security interest, if any, of the Financial Creditor shall get transferred to the guarantor which will be in violation of Section 14 (1) (b) of the I&B Code, 2016.

7. In the light of the above, Interlocutory Application of the personal guarantor is allowed. The 2<sup>nd</sup> Respondent, State Bank of India is restrained from

proceeding against the personal guarantor till the period of moratorium is over.



**(S. VIJAYARAGHAVAN)**  
MEMBER (TECHNICAL)

PAM

  
**(CH. MOHD. SHARIEF TARIQ)**  
MEMBER (JUDICIAL)