

the Financial Creditor, by way of a prayer to declare moratorium before admission of the petition.

4.9 It is contended in para 13 of the Reply that decision of the Hon'ble NCLAT in the matter of **NUI PULP AND PAPER INDUSTRIES PVT LTD Vs. ROXCEL TRADING GMBH**, Company Appeal (AT) (Insolvency) No.664 of 2019 (supra) as relied on by the applicant is not applicable to the present case. It is contended by the respondent that it was only open for the Tribunal, at its discretion, to pass interim order to ensure that one or the other party may not abuse process of the Tribunal. However, in the present case there is no evidence of such abuse.


4.10 It is averred in para 14 of the Reply that the present litigation is casting shadow on investor confidence. Any order of restraint would further adversely affect the Corporate Debtor-company.

#### **FINDINGS**

5. We have heard both the sides. This application is filed on behalf of the applicant/ Financial Creditor praying, inter alia, for necessary direction to the respondent/ Corporate Debtor to deposit proceeds of issuance of equity shares on preferential basis into the account of held with the applicant/ Financial Creditor and further not to utilize the funds realized for the purpose other than repayment of dues to the Financial Creditor. The issue to be considered in this application is that even though there is no objection for issuance of equity shares on preferential basis, how to deal with the proceeds thereof, even before admission of the application filed under section 7 of the I&B Code by the Financial Creditor.

6. The learned counsel appearing for the applicant would contend that the applicant filed the main petition under section 7 of the I&B Code against the respondent/ Corporate Debtor for initiating CIRP for the default committed by the Corporate Debtor. The learned counsel contended that the respondent/ Corporate Debtor committed default of an amount Rs.41,16,70,688.53. The learned counsel contended that the Corporate Debtor proposed to issue 3,14,00,000 equity shares of face

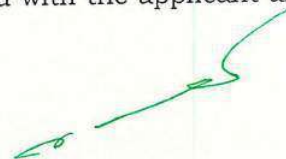
value of Rs.2/- each at Rs.10/- per share, at a premium of Rs.8/- on a preferential basis to Muskaan Ltd. and others for raising an amount of Rs.31,40,00,000/-. The learned counsel contended that the Corporate Debtor may divert funds realized from issuance of equity shares on preferential basis for the purpose other than repayment of dues to the creditors. The learned counsel contended that the Corporate Debtor may open account in another bank for the purpose of crediting the amount realized from issuance of equity shares on preferential basis instead of depositing the same in the account of the Corporate Debtor maintained with the applicant/ bank. The learned counsel for the applicant relied on the Circular issued by the RBI dated 15.05.2004 which was also reiterated in its letter dated 02.07.2015, marked as Annexures II and III to the application. If the Corporate Debtor attempts to open a new account in any bank other than the lending bank, it must obtain NOC from the lending bank for opening any bank account. Till date the Corporate Debtor has neither made any application for NOC nor even intimated the applicant about issuance of equity shares on preferential basis. The learned counsel contended that the Corporate Debtor has already given an undertaking that it will conduct its entire banking business through the applicant. The learned counsel relied on Rule 11 of the NCLT Rules and contended that the Tribunal has power to give directions as prayed for. The learned counsel has also relied on decision of the Hon'ble Appellate Tribunal in the matter of **NUI PULP AND PAPER INDUSTRIES PVT LTD Vs. ROXCEL TRADING GMBH**, Company Appeal (AT) (Insolvency) No.664 of 2019 (supra). The learned counsel contended that the Tribunal can give appropriate direction to the Corporate Debtor prior to admission. The learned counsel contended that the applicant is apprehending that the Corporate Debtor may utilize the amount realized from issuance of equity shares for the purpose other than repayment of loans due to the Financial Creditors. Therefore, the learned counsel prayed the Tribunal to issue direction to the Corporate Debtor not to divert funds realized from issuance of equity shares for any purpose other than repayment of loans borrowed from the Financial Creditor and also to deposit the amount realized into the account of the Corporate Debtor maintained with the applicant/ bank.



7. On the other hand the learned counsel for the Corporate Debtor vehemently contended that the present application is not maintainable and that the decision of the Hon'ble Appellate Tribunal relied on by the applicant has no application to the facts of the present. Case. The Corporate Debtor is not selling its assets. The decision relied on by the applicant is with reference to the proposal to sell the assets of the Corporate Debtor, whereas in the present case there is no allegation that the Corporate Debtor proposed to sell its assets. Therefore, the decision cited has no application.

8. The learned counsel for the Corporate Debtor would contend that Rule 13(1) of the Companies (Share Capital and Debentures) Rules, 2014, provides for keeping the money received in a separate account of a Scheduled Bank and shall not be utilized for any purpose other than (a) for adjustment against allotment of securities; or (b) for the repayment of monies where the company is unable to allot securities. The learned counsel contended that there is provision for the Corporate Debtor to open separate Bank account for depositing moneys realized out of allotment of shares on preferential basis. The learned counsel contended that the Circular relied on by the applicant has no application to issuance of shares on preferential basis and the money realized therein. The learned counsel would contend that the petition is not yet admitted. Therefore, the applicant cannot seek such a relief in the form of direction. The learned counsel would contend that the applicant has no locus standi prior to admission to challenge issuance of shares on preferential basis and to contend that the money realized therein shall not be credited to a separate account.

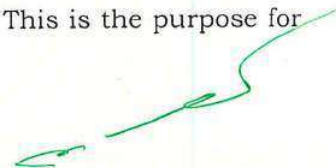
9. The petition is not yet admitted. The applicant is a Financial Creditor. The applicant filed the main petition under section 7 of the I&B Code against the Corporate Debtor on the ground that the Corporate Debtor committed default of debt. Pending hearing of the main petition, the applicant moved the present application seeking direction to the Corporate Debtor to deposit the money realized from issuance of shares on preferential basis into the account maintained with the applicant and



also not to use the money for any purpose other than repayment of loans due to the creditors.

10. Before admission of the petition filed under section 7 of the I&B Code, the Adjudicating Authority cannot impose restrictions on the business activities of the Corporate Debtor. However, when the Financial Creditor who filed the application expressing apprehensions that the Corporate Debtor may siphon off the funds mobilized through preferential issue of equity shares instead of utilizing the same for the activities for which the funds were mobilized. It is the case of the applicant that the Corporate Debtor is making an attempt to alienate its assets in which case the Tribunal can pass appropriate interim order under Rule 11 of the NCLT Rules basing on the judgment of the Hon'ble Appellate Tribunal. The main contention of the applicant is that the Corporate Debtor is issuing equity shares on preferential basis and realizing money which is to be credited into the account of the Corporate Debtor maintained with the applicant/ Bank and not in any other account. He also cited that earlier the Corporate Debtor always used to operate through Financial Creditor Bank for dividend payments, etc. by opening separate account. But the present act of the Corporate Debtor is raising concerns because of its timing. Therefore, the Financial Creditor has filed this application seeking a direction from the Tribunal to pass interim order restraining the Corporate Debtor from utilizing the proceeds of issuance of equity shares for any purpose other than to repay the amounts due to the Financial Creditor and to restrain the Corporate Debtor from alienating any of its assets. On the other hand the Corporate Debtor quoted the relevant rules which provide for opening of a separate Bank account for the moneys received from issuance of equity shares on preferential basis and how the money is to be spent. Therefore, the objection raised by the applicant that the money realized be credited into the account of the Corporate Debtor maintained with the applicant/ Bank, cannot be sustained.

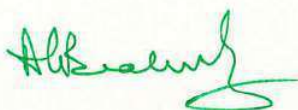
11. The next contention of the learned counsel for the applicant is that the Corporate Debtor is going for issuance of equity shares on preferential basis for receiving money for repayment of loans. This is the purpose for



which the Corporate Debtor is issuing equity shares. Therefore, the Adjudicating Authority to ensure that the money is to be applied for payment to the Financial Creditors and not for any other purpose. Therefore, direction can be given in terms of the purpose for which equity shares on preferential basis are being issued by the Corporate Debtor. This apprehension of the Financial Creditor appears to have some basis when we look into the acts of the Corporate Debtor and its timing, viz. opening of a separate account with a different bank violating the terms and conditions of the agreement entered into with the Financial Creditor at the time of obtaining loans from them. We are of the view that this warrants intervention of the Tribunal before a decision is taken on the main application.

12. It is also brought to our notice that the applicant has already approached the Debt Recovery Tribunal-II, Hyderabad against the Corporate Debtor and also made a similar application praying reliefs which are now prayed in the present application. The learned counsel for the Corporate Debtor contended that the applicant suppressed the fact of approaching the Debt Recovery Tribunal and filing a similar application before the Debt Recovery Tribunal, which is pending for hearing. There is no dispute that the applicant has already moved the Debt Recovery Tribunal-II, Hyderabad by filing an application for similar relief. When such an application is pending before the Debt Recovery Tribunal-II, Hyderabad the applicant moved the present application seeking similar relief. The proceedings before the Debt Recovery Tribunal and the Adjudicating Authority are different and are filed under two different enactments. As far as the present application is concerned from the above discussion and taking the judgment of the Hon'ble NCLAT in the matter of **NUI PULP AND PAPER INDUSTRIES PVT LTD Vs. ROXCEL TRADING GMBH**, Company Appeal (AT) (Insolvency) No.664 of 2019, we consider that this application is in the nature of protecting the interests of the company when CIRP application is pending before this Tribunal for adjudication.

13. We, therefore, pass the following order.



- (i) The Corporate Debtor is hereby restrained from utilizing the proceeds of the issuance of equity shares till the date of passing an order on the admission of the petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016.
- (ii) The Corporate Debtor is further restrained from alienating any of its assets till the date of passing an order on the admission of the petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016.

14. Accordingly, IA No.181 of 2020 is disposed of.

  
**VEERA BRAHMA RAO AREKAPUDI**  
**MEMBER (TECHNICAL)**

  
**RATAKONDA MURALI**  
**MEMBER (JUDICIAL)**

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