

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V**

I.A. No. 1883 of 2023

In

C.P. No. 1245 of 2021

Under Section 60(5) read with
Section 14 and Section 74 of
Insolvency & Bankruptcy Code,
2016

I. A. No. 1883 of 2023

Mr. Ram Ratan Kanoongo

....Applicant/
Interim
Resolution
Professional

vs.

Mr. Navnit Jugal Kishore Choudhary
& Ors.

.....Respondents

In the matter of

State Bank of India

.... *Financial Creditor*

vs.

Arshiya Northern FTWZ Limited

.... *Corporate Debtor*

Order Pronounced on: 18.12.2023

Coram:

Hon'ble Reeta Kohli, Member (Judicial)
Hon'ble Sanjiv Dutt, Member (Technical)

Appearance in Physical Mode:

For the Applicant/Interim Resolution Professional: PCA Ayush Rajani
For the Respondent: Mr. Nausher Kohli, advocate

ORDER

Per: Reeta Kohli Member (Judicial)

Brief Facts and Submissions by the Applicant

1. Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor by the Hon'ble National Company Law Tribunal, Mumbai Bench vide an order dated 14.11.2022.
2. The Applicant, who is the Interim Resolution Professional of the Corporate Debtor, has filed this Application against seven respondents in total out of which first five are Suspended Directors of the Corporate Debtor, sixth is the Corporate Guarantor and Holding Company of the Corporate Debtor, namely, Arshiya Limited and seventh is NCR Rail Infrastructure Limited which is a subsidiary of the aforementioned Holding Company of the Corporate Debtor.
3. The Applicant submits that after the initiation of the CIRP, the Suspended Directors of the Corporate Debtor in complete violation of Section 14(b) of the Insolvency and Bankruptcy Code, 2016

(hereinafter referred to as “the Code”), have proceeded to make a payment of Rs. 1,16,25,000/- towards loan repayment to the Group Companies, i.e. Respondent Nos. 6 and 7. The Applicant, therefore, prays for the following reliefs:-

- *Passing of necessary penal orders against Respondents No. 1 to 5 in terms of Section 74 of the Code for knowingly and wilfully committing contravention in violation of moratorium imposed by this Hon’ble Adjudicating Authority vide its order dated 14.11.2022;*
- *Direction to Respondent No. 6 to repay the amount of Rs. 92,00,000/- being the benefit derived in violation of Section 14 (moratorium) by Respondents No. 1 to 5;*
- *Direction to Respondent No. 7 to repay the amount of Rs. 24,25,000/- being the benefit derived in violation of Section 14 (moratorium) by Respondents No. 1 to 5 and*
- *Issue such orders as may be necessary in the matter.*

4. The Applicant further submits that various emails were sent to Respondent No. 1 from time to time to verify the authenticity of the transactions so mentioned in the prayer clause. On 31.03.2023, reply was received from Respondent No. 1, stating that in view of order dated 07.12.2022 passed by the Hon’ble NCLAT, the aforementioned order dated 14.11.2022 of Hon’ble NCLT was put to stay and hence moratorium was not in existence from 07.12.2022 till the same was vacated on 15.02.2023 by the Hon’ble NCLAT.

5. It is the case of the Applicant that the Corporate Debtor has wrongly interpreted the date of commencement of CIRP to be 15.02.2023 when the Hon’ble NCLAT vacated the stay on the order of Hon’ble NCLT dated 14.11.2022. Hence, the Respondents contend that they were in control of the Corporate Debtor and the operation of the Axis Bank A/c No. 9180xxxxxxx9211 from which

the Disputed Amount was transferred was done lawfully and in good faith.

6. It is pertinent to note that the Corporate Debtor in the present Application is Arshiya Northern FTWZ Limited whereas the Appellant in the order of the Hon'ble NCLAT dated 07.12.2022 is Arshiya Limited. As mentioned earlier, Arshiya Limited is the Holding Company of Arshiya Northern FTWZ Limited. Therefore, the Corporate Debtor in the present Application cannot take advantage of an order to which it was not a party.

Submission by the Respondent

1. It is the admitted case of the Respondents that they are well aware of the initiation of CIRP of the Corporate Debtor vide order of the Hon'ble NCLT dated 14.11.2022. In view of the moratorium the Respondents submit that total amount of Rs. 15,50,000/- has been repaid to the Corporate Debtor as transactions pertaining to the said amount took place from 28.11.2022 to 06.12.2022, i.e., during the subsistence of the moratorium period.
2. The Respondents further submit that transactions involving further amount of Rs. 1,00,75,000/- were undertaken from 07.12.2022 to 15.02.2023 when the order of Hon'ble NCLAT staying the order of Hon'ble NCLT dated 14.11.2022 was passed and putting the Suspended Directors back in control of the Corporate Debtor was in force. The Respondents claim that it was only vide order of the Hon'ble NCLAT dated 15.02.2023 that the stay on the Admission order stood vacated thereby reinforcing the moratorium period in relation to the Corporate Debtor.
3. In view of the above submissions, the Respondents deny any breach or violation of the Code with respect to transactions that took place during the stay period, i.e. from 07.12.2022 to 15.02.2023. The Respondents further submitted that any breach if committed prior to the stay period, i.e. from 28.11.2022 to 06.12.2022 has already been

cured on account of repayment of the full amount to the Corporate Debtor.

4. It is, therefore, prayed by the Respondents to dismiss this Application with exemplary costs as it has been filed with a malicious intention of misleading this Hon'ble Tribunal.

Findings

1. We find that the entire case of the Respondents rests on an erroneous and self-serving interim order of the Hon'ble NCLAT dated 07.12.2022. On perusal of the copy of the said order, it is very clear that the said order was passed in an appeal preferred by Arshiya Ltd. which is the Holding Company of the concerned Corporate Debtor as stated above. Thus the Corporate Debtor cannot be allowed to raise arguments seeking advantage of the stay order of the Hon'ble NCLAT dated 07.12.2022.
2. This Bench relies on the judgment of the Hon'ble NCLAT in **Ashok Kumar Tyagi v. Uco Bank [2022 (11)TMI 984]** in which it has been held that stay on CIRP process is not the same as the quashing of the CIRP order and hence the former situation does not make the Corporate Debtor in charge of the business in the manner as it was before the applicability of the order initiating CIRP which is passed by the Hon'ble NCLT. After the stay of the CIRP order, Resolution Professional cannot discharge any function. Stay of admission order/CIRP does not mean that the Corporate Debtor should be put back in the management of day to day affairs of the company and allowed to function as such. Interim Order staying CIRP clearly means that no further process shall be taken in CIRP and the Resolution Professional shall not take any further action. The Corporate Debtor can no longer be permitted to function as it was functioning prior to the date of admission order. Therefore, pursuant to the aforementioned judgment, the loan repayment and other bank transactions undertaken by the Suspended Directors are untenable in law.

3. In light of the above finding, the Respondents 6 and 7 are directed to pay back the amounts credited to their accounts.
4. Respondent No. 6 is directed to repay an amount of Rs. 92,00,000/- and Respondent No. 7 is directed to repay an amount of Rs. 24,25,000/- to the Corporate Debtor as the payments were made in violation of Section 14 of the Code for effective completion of the Corporate Insolvency Resolution Process within a period of 30 days from the date of this order.
5. It is pertinent to note that penal orders under section 74 of the Code can only be passed by a Special Court constituted under the Companies Act, 2013 as per Section 236 of the Code. For the same, copy of the present order be forwarded to IBBI so as to initiate appropriate action in terms of law against the Respondents.
6. **With the abovesaid, IA No. 1883 of 2023 in C.P. No. 1245 of 2021 is allowed.**

SD/-
SANJIV DUTT
MEMBER (TECHNICAL)

SD/-
REETA KOHLI
MEMBER (JUDICIAL)