

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 293 of 2024

[Arising out of Order dated 22.12.2023 passed by the Adjudicating Authority
(National Company Law Tribunal, New Delhi, Court – III), in IA 2162/2020
in IB-1694(ND)/2018]

IN THE MATTER OF:

ICICI Bank Ltd.

...Appellant

Versus

Chanchal Dua & Ors.

...Respondents

Present:

**For Appellant : Mr. Gautam Singhal & Mr. Rajat Chaudhary,
Advocates.**

**For Respondents : Mr. Amit Sanduja, Ms. Sakshi Singh, Mr. Tushar
Batra, Advocates for R-4.**

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal has been filed challenging the order dated 22.12.2023 passed by the NCLT (National Company Law Tribunal, New Delhi, Court – III) in IA No. 2162/2020, which was filed by Resolution Professional (RP) under Section 19(2) read with Sections 14, 43 & 74(2) of the Insolvency and Bankruptcy Code, 2016 (for short the ‘Code’ or the ‘IBC’) read with Rule 11 of the NCLT Rules, 2016. By the impugned order, adjudicating authority has allowed the application directing the appellant who was Respondent No. 3 in the application to reverse the amount of Rs. 8,92,980/- into the account of

the corporate debtor. Appellant aggrieved by the said order has come up in this appeal.

2. Brief facts of the case necessary to be noticed for deciding the appeal are:

- i. Corporate Insolvency Resolution Process (CIRP) against the corporate debtor M/s. Trend Flooring Pvt. Ltd. commenced vide order dated 09.10.2019 in which Interim Resolution Professional (IRP) was appointed who was confirmed as the RP.
- ii. A loan facility was obtained by the corporate debtor along with Mr. Arvind Narayan Singh co-applicant for purchase of vehicle Innova/Zx AT vide loan account No. LADEL00035353966. After initiating of CIRP, payment of Rs.8,92,980/- was made in the loan account maintained by ICICI Bank from account bearing No. 50200009263001 with HDFC Bank in the name of "BORN TO RIGHT", IFSC Code - HDFC0000247 vide transaction ID - HDFCR52020012766322736.
- iii. The said account was closed in the month of January 2020 and NoC in respect to vehicle was issued by the ICICI Bank. Email was sent by the RP to the appellant Bank on 05.02.2020 enquiring about the whereabouts of certain vehicles registered in the name of corporate debtor.
- iv. The Bank provided necessary details to the RP. The RP filed an I.A. 2162/2020 before the adjudicating authority praying for various reliefs. The appellant ICICI Bank filed its reply to the IA.

- v. On 09.09.2020 adjudicating authority directed for liquidation and appointer RP as liquidator.
- vi. Liquidator on 13.06.2023 assigned Not Readily Realizable Assets (NRRA) of the corporate debtor to Respondent No. 4 vide Assignment Agreement dated 07.07.2022.
- vii. Adjudicating authority in view of the assignment directed that Sheetesh Khanna – Respondent No. 4 be substituted in I.A. No. 2162/2020. Adjudicating authority heard the parties on I.A. No. 2162/2020 and by the impugned order disposed of the I.A. Direction issued to the appellant is in paragraph 5(v) which is to the following effect:

“5. Analysis and Findings

v. We, therefore, direct the Respondent No. 3 to reverse the amount of Rs. 8,92,980/- (towards the satisfaction of Loan Account) into the account of the Corporate Debtor as the same is a preferential transaction as the suspended board of Directors of the Corporate Debtor have settled the account of Respondent No. 3 during the CIRP period. We further direct the Applicant to consider the claim (if any) of the Respondent No. 3 in accordance with Section 53 of the Code on merit after due verification of requisite documents.”

- viii. The appellant aggrieved by the said order has come up in this appeal.

3. We have heard learned counsel for the appellant as well as learned counsel appearing for Respondent No. 4.

4. Learned counsel for the appellant submits that appellant in his reply to the application has already given details of the account from which the amount of Rs.8,92,980/- was received. It is submitted that the amount was paid by brother of Mr. Arvind Narayan Singh who was co-applicant, from account details which were given in paragraph 4 of the reply. The amount

having not been received from the corporate debtor, there was no applicability of Section 14 of the IBC and moratorium was not applicable with regard to any payment by co-applicant. After receiving the amount, the charge which was on the vehicle was released. The adjudicating authority without adverting to the reply given by appellant has directed for reversal of the said amount which order is unsustainable.

5. Learned counsel for Respondent No. 4 refuting the submissions of the counsel for the appellant submits that by release of the charge by Bank by receiving amount from the director of the corporate debtor has felicitated the vehicle to be taken by the director and to abscond. The bank ought not to have release the charge by receiving the amount of Rs.8,92,980/-. It is submitted that after enforcement of moratorium the bank could not have received any amount in the loan account of corporate debtor. Learned counsel for respondent supported the order of the adjudicating authority directing for reversal of amount by ICICI Bank.

6. We have considered the submissions of counsel for the parties and perused the records.

7. The application I.A. 2162/2020 was filed by the RP praying for following reliefs:

“a. Allow the present application;

b. Direct the Respondent No. 3 to co-operate and provide information specifically but not limited to the information as sought by the Applicant vide emails dated 05.02.2020 and email dated 25.02.2020.

- c. Consequentially, direct Respondent No.3 to reverse the amount received towards its satisfaction of Loan Account during the moratorium period along with accrued interest in the account of the Corporate Debtor;*
- d. Direct the directors and promoters of the Corporate Debtor to make such contributions to the assets of the Corporate Debtor as it may deem fit and direct initiation of action under Section 74(1) of the Code against the concerned officers of the Corporate Debtor for deliberate and willful violation of Section 14 of the Code;*
- e. Pass an appropriate order to repudiate any third party right if created by the Respondent No.1 & 2 on the vehicle, if any and an order to transfer all the benefits taken on account of such transfer by the Respondent No.1 & 2, to be credited to the account of the corporate debtor;*
- f. Pass such other further order/order(s) as may be deemed fit and proper in the facts and circumstances of the case.”*

8. Prayer C related to the reversal of the amount received in the loan account. ICICI Bank was impleaded as Respondent No. 3 in the application. Bank filed a detailed reply to the I.A. 2162/2020 where details of loan of Rs.23 lakhs taken by corporate debtor with co-applicant Arvind Narayan Singh has been given. In paragraph 3, 4 & 5 of the reply following has been stated:

“3. That the Corporate Debtor i.e M/s Trend Flooring Private Limited had availed a loan of Rs 23,00,000/- along with Mr Arvind Narayan Singh (Co-applicant) on 03.06.2007 for the purchase of vehicle Make "Mercedes Benz/C 220 Cdi bearing No. DL3CAY1684 vide loan account No. LADEL00010577819". The said loan facility was granted against the hypothecation of vehicle Make "Mercedes Benz/C 220 Cdi. The Loan was repayable in 60 Monthly installments started from 10.7.2007. The said loan account was closed in the month of June 2013 and NOC with respect to vehicle was issued by the respondent no. 3 i.e. much prior to the CIRP commencement date.

4. That the Corporate Debtor i.e M/s Trend Flooring Private Limited also availed a loan of Rs 18,50,000/- along with Mr Arvind Narayan Singh (Co-applicant) on 22.02.2017 for the purchase of vehicle Make "Innova/Zx AT" bearing No. DL14CD1009 vide loan account No. LADEL00035353966". The above said loan facility was granted against the hypothecation of vehicle Make "Innova/Zx AT". The Loan was repayable in 60 Monthly installments started from 10.3.2017. The said loan account was settled by Mr Amit Narayan Singh who is the brother of Co-applicant namely Mr Arvind Narayan Singh and an additional director of the Corporate Debtor. It was informed by Mr Amit Narayan Singh (brother of Mr Arvind Narayan Singh) that Mr Arvind Narayan Singh was not well and unable to meet people, hence, he would be settling the loan account on behalf of his brother. Hence, Mr Amit Narayan Singh settled the loan account on behalf of Mr Arvind Narayan Singh for total amount of Rs. 8,92,980/- The said settlement amount of Rs. 8,92,980/- was paid through NEFT/RTGS ICRL20027000043 on 27.01.2020 from account bearing No. 50200009263001 with HDFC Bank in the name of "BORN TO RIGHT", IFSC Code HDFC0000247 vide transaction ID -HDFCR52020012766322736. Consequently the said loan account was closed in the month of January 2020 and NOC with respect to vehicle was issued by the respondent no. 3. The respondent bank has not received any amount from the Corporate Debtor after initiation of CIRP.

5. That the Corporate Debtor i.e M/s Trend Flooring Private Limited had also availed a loan of Rs 55,81,000/- along with Mr Arvind Narayan Singh (Co-applicant) on 27.02.2017 for the purchase of vehicle Make "Jaguar/Xf/ 2.01 Luxury Petrol" vide loan account No. LADEL00035380982". The above said loan facility was granted against the hypothecation of vehicle Make "Jaguar/Xf/ 2.01 Luxury Petrol" bearing No. DL3CCL6912. The Loan was repayable in 60 Monthly installments started from 1.4.2017. The said loan account was closed in the month of May/June 2019 and NOC with respect to vehicle was issued by the respondent no. 3 i.e. much prior to the CIRP commencement date."

9. The banks categorical case was that the amount of Rs.8,92,980/- was not paid from account of the corporate debtor or paid by corporate debtor.

The said amount was paid on behalf of the co-applicant from different account, details of which has been referred to in paragraph 4. Section 14 of the IBC provides as follows:

“14. Moratorium. –

(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) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

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

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit,

registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to —

(a) such transactions, agreements or other arrangements as may be notified⁴ by the Central Government in consultation with any financial sector regulator or any other authority;]

(b) a surety in a contract of guarantee to a corporate debtor.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

10. It is well settled that after enforcement of moratorium financial creditors cannot enforce any security or realise any amount from the corporate debtor.

The amount of Rs.8,92,980/- which was paid to the ICICI Bank in loan

account was not paid from the account of the corporate debtor or by the corporate debtor. Amount was paid on behalf of the co-applicant from different account details of which are mentioned in paragraph 4 of the reply of bank.

11. During submission learned counsel for the respondent also does not dispute that the amount was paid from different account and not the account of the corporate debtor. The submission of the respondent is that after taking the amount, the bank has released the charge which was there in the vehicle DL14CD1009.

12. The financial creditor did not withdraw any amount from the account of the corporate debtor or from the corporate debtor, we fail to see any violation of Section 14 of the IBC. Adjudicating authority in paragraph 5(v) has referred to the payment of Rs.8,92,980/- as a preferential transaction.

13. Section 43 of the IBC defines the preferential transaction. Section 43(1) is as follows:

“43. Preferential transactions and relevant time.

(1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.”

14. The pre-condition for applicability of Section 43 is that corporate debtor has at relevant time given preference in such transaction in a transaction to any person. Present is not a case where transaction has been made of

depositing of the amount by the corporate debtor rather the amount has been deposited by co-applicant from a different account. We, thus do not find case under Section 43 to which suggestion is being made by the adjudicating authority.

15. Learned counsel for the respondent has relied on one judgment of Hon'ble Supreme Court and two judgments of this Tribunal which need to be noticed. Reliance has been placed on the judgment of the Hon'ble Supreme Court in Civil Appeal No. 8800 – 8801/2019 in the matter of **'Mr. Anand Rao Korada, RP' Vs. 'M/s. Varsha Fabrics (P) Ltd. & Ors.'**, where Hon'ble Supreme Court after referring to provisions of Sections 14, 238 & 231 of the IBC, laid down following in paragraph 9:

"9. In view of the provisions of the IBC, the High Court ought not to have proceeded with the auction of the property of the Corporate Debtor + Respondent No. 4 herein, once the proceedings under the IBC had commenced, and an Order declaring moratorium was passed by the NCLT. The High Court passed the impugned Interim Orders dated 14.08.2019 and 05.09.2019 after the CIRP had commenced in this case.

The moratorium having been declared by the NCLT on 04.06.2019, the High Court was not justified in passing the Orders dated 14.08.2019 and 05.09.2019 for carrying out auction of the assets of the Respondent No. 4±Company i.e. the Corporate Debtor before the NCLT. The subject matter of the auction proceedings before the High Court is a vast chunk of land admeasuring about 330 acres, including Railway lines and buildings.

If the assets of the Respondent No. 4 ± Company are alienated during the pendency of the proceedings under the IBC, it will seriously jeopardise the interest of all the stakeholders.

As a consequence, we set aside the impugned Interim Orders dated 14.08.2019 and 05.09.2019 passed by the Odisha High Court, as parallel proceedings with respect to the main issue cannot take place in the High Court. The sale or liquidation of the assets of Respondent No. 4 will now be governed by the provisions of the IBC.”

16. There can be two opinion about the proposition laid down by the Hon’ble Supreme Court that after proceeding under the IBC has commenced, insolvency proceeding against the corporate debtor has commenced. No assets of the corporate debtor could have been directed to be auctioned. The above judgment is on its own facts and has no application in the present case.

17. Next judgment relied is judgment of this Tribunal in the matter of **‘Indian Overseas Bank’ Vs. ‘Dinkar T. Venkatasubramanian’**, reported in [2017 SCC OnLine NCLAT 584]. Learned counsel for the appellant relies on paragraph 5. This Tribunal has held that after Section 7 application is admitted financial creditor cannot recover any amount from the account of the corporate debtor nor it can appropriate any amount towards its own dues. There can be no dispute to the above proposition. Present is not a case where any amount has been appropriated by financial creditor from the corporate debtor.

18. Next judgment relied is in the matter of **‘Suresh Chand Garg’ Vs. ‘Aditya Birla Finance Ltd.’** reported in [2018 SCC OnLine NCLAT 332]. The reliance has been placed in paragraph 4 which is as follows:

“4. From the record, we find that the personal and individual assets of a Director is not the subject matter of the ‘corporate insolvency resolution process’ and the moratorium only extends to the assets of the ‘Corporate

Debtor'. This has also been held by the Adjudicating Authority."

19. In the above case this Tribunal has laid down that individual assets of a director are not the subject matter of the CIRP and the moratorium only extends to the assets of the corporate debtor. The ratio of the above judgment clearly negates the submission of the counsel for the respondent. Present is not a case where the director who was co-applicant of the loan has paid the amount to the ICICI Bank from a different account unrelated to the corporate debtor.

20. We, thus are of the view that direction of the reversal issued by the adjudicating authority is neither supported by Section 14 of the IBC nor by Section 43 of the IBC.

21. Learned counsel for the bank has submitted that by a release of the charge, value of the assets are increased and in no manner financial creditor has cause any loss to the assets of the corporate debtor.

22. Learned counsel for the respondent submits that the directors are absconding and the vehicle for which loan was taken could not be taken possession by the RP and the liquidator and steps are being taken to pursue the director and the vehicle.

23. We are of the view that there is no prohibition from taking steps to take possession of the assets of the corporate debtor by authorised persons.

24. In view of foregoing discussions, the direction of the adjudicating authority directing the appellant to reverse the aforesaid amount of

Rs.8,92,980/- cannot be sustained. The appeal is allowed setting aside the direction directing the appellant to reverse the amount.

Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

16th July, 2025

himanshu