

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

**IA No.929/2022**

**In**

**C.P. (IB) No. 979/MB/2020**

Under Section 60(5) of the Insolvency and  
Bankruptcy Code, 2016 Read with Rule 11 of  
the NCLT Rules, 2016

**Mr. Ajay Joshi, the Resolution Professional  
for Indian Steel Corporation Limited**

**.... Applicant**

**Versus**

**Union Bank of India**

**.... Respondent**

**In the matter of**

**India Resurgence ARC Private Limited**

**.... Applicant/Financial Creditor**

**V/s**

**Indian Steel Corporation Limited**

**..... Corporate Debtor**

**Order Delivered on :- 3.04.2024**

***Coram:***

**Mr. Anil Raj Chellan  
Member (Technical)**

**Mr. Kuldip Kumar Kareer  
Member (Judicial)**

***Appearances:***

For the RP/Applicant : Adv. Deep Roy a/w Adv. Dhaval Savla and  
Adv. Prajjwal Tiwari  
For the Respondent : Adv. Alizain Patel

**ORDER**

***Per: - Anil Raj Chellan, Member (Technical)***

1. The instant Application has been filed by the Resolution Professional ('RP') appointed in the case of Indian Steel Corporation Limited ('the Corporate Debtor') seeking direction to the Respondent, Union Bank of India who is one of the Financial Creditors to refund an amount of Rs. 2,38,32,505/- (Rupees Two Crore Thirty-Eight Lakhs Thirty-Two Thousand Five Hundred and Five only) appropriated and adjusted by it against outstanding liabilities after initiation of Corporate Insolvency Resolution Process ('CIRP') and declaration of moratorium under Section 14 of the Insolvency and Bankruptcy Code ('the Code').
2. The facts leading to the filing of the Application as stated by the Applicant are as under:
  - 2.1 The Corporate Debtor was admitted into CIRP pursuant to the order of this Tribunal dated 06.10.2021 whereby the Applicant herein had initially been appointed as the Interim Resolution Professional and was subsequently confirmed as the RP of the Corporate Debtor.
  - 2.2 The Respondent, by virtue of a loan agreement dated 22.06.2013 granted certain credit facilities to the Corporate

Debtor along with a consortium of lenders. Upon commencement of CIRP, the Respondent filed its claim in response to the public announcement dated 08.10.2021 made by the Applicant. The claim filed by the Respondent was verified and admitted by the Applicant.

- 2.3 While reviewing the documents provided by the Respondent and on perusal of the Bank statements of the Corporate Debtor, it was noted by the Applicant that during the moratorium declared under Section 14 of the Code, the Respondent has adjusted and appropriated a sum of Rs. 2,38,32,505/- from the current account of the Corporate Debtor against the liabilities under the Letters of Credit opened by the Respondent on behalf of the Corporate Debtor. It is stated that the Respondent refused to reverse the said transaction in spite of requests and emails on the pretext that the intimation of CIRP was received by the Respondent only on 08.10.2021 whereas all the payments/ transactions were made on 07.10.2021. On account of the Respondent's reluctance to reverse the transaction made after the declaration of moratorium and revise its claim, though an opportunity was given to do so, the Applicant filed the present application.
3. The reply filed by the Respondent and the submissions made on its behalf are as under:
  - 3.1 The Respondent stated that it granted a letter of credit facility in or about June, 2013 to the Corporate Debtor pursuant to which Letters of Credit were issued in favour of

various customers of the Corporate Debtor. It is stated that the Respondent received payment bills from the customers of the Corporate Debtor and an amount of Rs. 2,38,32,505/- was released by the Respondent on 07.10.2021 along with additional bank charges of Rs. 26,110/-

- 3.2 It is stated that the Respondent received intimation regarding the initiation of CIRP only on 08.10.2021 through an email dated 08.10.2021 from IRP before which the transaction of Rs. 2,38,32,505/- was made. The public announcement regarding the initiation of CIRP was also made subsequently. The Respondent submitted that the effect of moratorium declared under Section 14 of the Code is applicable from the date of the publication/public announcement and hence the Respondent cannot be directed to bring back/reverse the transaction.
4. We have heard the Counsel for the parties and perused the documents on record.
5. There is no quarrel between the parties regarding the initiation of CIRP and declaration of moratorium on 06.10.2021 and adjustment of Rs.2,38,32,505/- from the current account of the Corporate Debtor by Respondent on 07.10.2021 i.e. after the Insolvency commencement date. When the Applicant sought reversal of the transaction done after the Insolvency commencement date, the Respondent contended that the transaction, having been done before the public announcement on 08.10.2021 cannot be reversed. It was further contended by the Respondent that the order of this Tribunal initiating CIRP

against the Corporate Debtor takes effect only from the date of public announcement and not from the date of the order. However, it is to be noticed that the order of this Tribunal dated 06.10.2021 stated in para 43(g) that the order of moratorium shall have effect from the date of this order. A plain reading of Section 14 of the Code makes it abundantly clear that the said provision is designed to give immediate effect to the moratorium and be applicable from the date of order. In view of the above, there is no merit in the contention that the moratorium takes effect from the date of publication of Form-A or intimation as contended by the Respondent. The moratorium begins operating from the date of the order declaring moratorium under Section 14 of the Code.

6. It is further contended by the Respondent that the money deducted from the current account of the Corporate Debtor is in the nature of margin money and therefore an asset held in trust by the Respondent. It is also asserted that the money deducted, not being an asset of the Corporate Debtor would not come within the restriction imposed by Section 14 of the Code. Relying on the order passed by the ***Hon'ble NCLAT in the Supriyo Kumar Chaudhari (Company Appeal (AT) (Insolvency) No.657/2020*** the Counsel for Respondent has argued that margin money can in no manner be said to be a security interest; and appropriation of money by the Respondent is justified. With respect to the above contention, it is pertinent to notice that margin money for the Letter of Credit means a contribution made by the borrower to honour the liability under the Letter of Credit which remains with the Bank so long as the Letter of Credit is alive. It is, however, noticed that the Respondent appropriated/deducted the amount

from the current account of the Corporate Debtor and not from a segregated fund kept for honouring the Letter of Credit. The fact that a security interest on the current account was created in favour of the Respondent establishes that the funds in the current account of the Corporate Debtor remained as Corporate Debtor's assets and no trust was formed in favour of the Respondent. Therefore, in the given circumstances, we find it arduous to accept the argument that the money lying in the current account forms part of the margin money. Thus, the aforementioned decision relied by the Respondent is not applicable in this case.

7. Another aspect which draws our attention is that the payment bills covered under the Letters of Credit specifically provide that the amounts are to be paid on the due dates specified in the bills. In other words, the Letters of Credit are to be honoured by the Respondent on the due dates specified in the underlying bills. However, the Respondent appears to have honoured the liability, obviously in breach of the terms before the due date(s) by deducting the cash credit or current account maintained by the Corporate Debtor with the Respondent. No explanation has been forthcoming for such a hurried action in breach of the terms.
8. In view of the foregoing reasons, we hold that the amount lying in the current account of the Corporate Debtor, even if it was subject to a charge, continues to be an asset of the Corporate Debtor, and adjustment or deduction of amounts from the current account of the Corporate Debtor during the moratorium period is not justifiable. Accordingly, **IA.No.929/2022 is allowed** and Respondent is directed to reverse the transaction and return

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Rs.2,38,32,505/- to the Corporate Debtor for distribution in accordance with Section 53 of the Code.

**Sd/-**

**ANIL RAJ CHELLAN  
(MEMBER TECHNICAL)**

**Sd/-**

**KULDIP KUMAR KAREER  
(MEMBER JUDICIAL)**