



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: SHRI DEEP CHANDRA JOSHI,  
HON'BLE JUDICIAL MEMBER**

**SHRI ATUL CHATURVEDI,  
HON'BLE TECHNICAL MEMBER**

**IA(IBC)No.617/JPR/2022**  
**In CP No. 26/7/JPR/2020**

**IN THE MATTER OF:**

**P.S. METAL WORKS**

**...Financial Creditor**

**VERSUS**

**M/S JEPH BEV PRIVATE LIMITED**

**...Corporate Debtor**

**MEMO OF PARTIES**

**IA(IBC) No. 617/JPR/2022:**

**ANOOP BHATIA**

*Resolution Professional for M/s Jeph Bev Pvt. Ltd.*

C-44, Model Town, Malviya

Nagar, Jaipur, Rajasthan-302017

**...Applicant**

**VERSUS**

**MR. VIKAS JEPH**

*Suspended Director for M/s Jeph Bev Pvt. Ltd.*

M-80, Tonk Road, Mahesh

Colony, Gandhi Nagar, Jaipur-

302015 (Rajasthan)

**...Respondent No. 1**

**MRS. PINKY JEPH**

*Suspended Director for M/s Jeph Bev Pvt. Ltd.*

M-80, Tonk Road, Mahesh

Colony, Gandhi Nagar, Jaipur-

302015 (Rajasthan)

**...Respondent No. 2**



**FOR PETITIONER (S)** : Mr. Nitesh Shrivastava, Adv.  
Anoop Bhatia, RP in person

**FOR RESPONDENT (S)** : Nikhil Yadav, Adv.

**Order Pronounced On: 19.09.2023**

**ORDER**

**Per: Shri Atul Chaturvedi, Technical Member**

1. The present Application bearing *IA (IBC) No. 617/JPR/2022* has been filed by *Mr. Anoop Bhatia* being the Resolution Professional of the Corporate Debtor, i.e., *M/s Jeph Bev Private Limited* under Section 60(5) read with Section 68, 70 and 74 of the Insolvency and Bankruptcy Code, 2016 ('IBC'/'Code') read with Rule 11 of National Company Law Tribunal Rules, 2016 seeking the following set of directions against the Respondents:
  - a. *Issue necessary directions to Respondent Suspended Directors of the CD that the amount diverted/withdrawn/transfer of Rs.22,01,373/- (Rupees Twenty-Two Lakhs One Thousand Three Hundred Seventy Three) to be reversed and deposited in the bank account of the CD and to be contributed by the Erstwhile Directors of CD;*
  - b. *Direct the Respondent Suspended directors of the CD to provide details of transaction performed during 16<sup>th</sup> September, 2016 to 22<sup>nd</sup> September, 2022 and details of beneficiaries in who's accounts the said amount was diverted;*
  - c. *Hold that the Respondents have contravene the moratorium u/s 14 of the Code and have willingly caused loss to the Corporate Debtor;*
  - d. *Issue necessary orders for initiating proceedings u/s 68, 70, 74 of the Code.*
2. It is seen that earlier an Application was filed by *M/s P.S. Metal Works* ('Financial Creditor') under Section 7 of the Code for initiation of CIRP of



the Corporate Debtor. The same was admitted vide Order dated 16.09.2022 and the Applicant was appointed as the Interim Resolution Professional, later confirmed as the Resolution Professional by the Committee of Creditors ('CoC') in the first meeting held on 20.10.2022.

3. The present application has been filed on the following grounds:-

3.1 The Applicant submits that soon after the appointment of the Applicant as the IRP, the intimation of the initiation of CIRP was made to all the concerned parties and subsequently, letters were served at the registered office of the Corporate Debtor, Suspended Directors as well as the statutory orders by emails on 23.09.2022. Moreover, the Applicant personally visited the registered office of the Corporate Debtor on 22.09.2022 and submitted the information regarding the initiation of the CIRP to the CFO/management.

3.2 It is submitted that the initiation of CIRP suspends the powers of the Board of Directors of the Corporate Debtor under Section 17 of the Code. Along with the same, Section 17 of the Code prohibits the act of transferring, incumbering, alienating or disposing of the Corporate Debtor of any assets and legal rights or beneficial interest therein. Despite of the above said provisions, an amount of Rs. 22,01,373/- (Rupees Twenty-Two Lakhs One Thousand Three Hundred and Seventy-Three Only) has been transferred from the bank account of the Corporate Debtor, maintained with the HDFC Bank Branch,



Ajmer Road, to various accounts between the period 16.09.2022 to 22.09.2022, without any prior approval of the IRP/RP. The date the transaction and the amount withdrawn is tabulated as below:

<b>Date of Transaction</b>	<b>Amount Withdrawn</b>
16.09.2022	Rs. 4,248/-
17.09.2022	Rs. 29,042/-
17.09.2022	Rs. 29,636/-
17.09.2022	Rs. 31,018/-
17.09.2022	Rs. 29,326/-
17.09.2022	Rs. 29,602/-
17.09.2022	Rs. 31,422/-
19.09.2022	Rs. 980/-
19.09.2022	Rs. 3,000/-
20.09.2022	Rs. 59/-
21.09.2022	Rs.79,657/-
21.09.2022	Rs. 1,34,638/-
22.09.2022	Rs. 46,775/-
22.09.2022	Rs.9,000/-
22.09.2022	Rs.10,920/-
22.09.2022	Rs. 2,050/-
22.09.2022	Rs. 17,30,000/-
<b>TOTAL</b>	<b>Rs. 22,01,373/-</b>

3.3 The IRP informed about these withdrawals to the Members of the CoC in the first meeting held on 20.10.2022. During the meeting, the Applicant inquired about the withdrawals from the Suspended Directors of the CD, but no satisfactory answer was received. The Respondents vide mail dated 31.10.2022, justified the acts of withdrawal on ground that the information regarding the initiation of CIRP was communicated by the Applicant on 22.09.2022 during the



personal visit and since then, no transaction is made by the Respondents.

- 3.4 The applicant vide mail dated 05.11.2022 informed the Suspended Directors that the act of withdrawing the money from the bank account of the Corporate Debtor post commencement of CIRP, is in contravention of Section 14 of the Code. Hence, the unawareness about commencement of CIRP is not appropriate justification in the present matter. The Suspended Directors vide mail dated 06.11.2022 admitted to the withdrawal of the said amount.
- 3.5 The Applicant has placed reliance on the judgment of the Hon'ble NCLAT in *Manoj K. Daga v/s Isgec Heavy Engineering Pvt. Ltd. on 12.03.2020, Company Appeal (AT) (Ins) No. 1113 of 2019* to state that the defence of the Suspended Directors that they received knowledge of the order of 20.09.2022 is not found legit as the order was pronounced in the Open Court on 16.09.2022. Hence, the Respondent has violated the provision of Section 14 of the Code and therefore, are liable to be prosecuted under Section 74 of the Code.
4. The Respondents filed reply to the said application vide Diary No. 654/2023 dated 14.03.2023, wherein they have submitted the following:-
- 4.1 The Respondents have submitted that the order was pronounced by this Authority on 16.09.2022, but the same was not attended either by the Corporate Debtor, any official of the Corporate Debtor or by the



legal counsel engaged by the Corporate Debtor. The admission order observed that the order shall be communicated at the earliest within one week. The directions entails uploading the order on the website of NCLT and speed posting the order by the Registry to the concerned parties. The speed post of the Order was never received by the Corporate Debtor at their address. The Respondents came to know regarding the initiation of the CIRP, when the Applicant visited the office of the Corporate Debtor on 22.09.2022. It was on this visit that an undertaking via letter dated 22.09.2022 was signed by the CFO of the Corporate Debtor since the answering Respondents were not available.

- 4.2 It has been submitted that one *Maharaj Vinayak Society*, a non-profit organization entrusted the Corporate Debtor to make payments of its statutory liabilities towards PF and ESI. The Respondent No. 1 is a trustee with *Maharaj Vinayak Society* and based on this understanding, the said payment was executed by the Corporate Debtor. The money received in the bank account of the Corporate Debtor was realized to make payment for *Maharaj Vinayak Society's* Statutory Obligations. Even on 17.09.2022, a sum of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) was received in the bank account of the Corporate Debtor from *Maharaj Vinayak Society* and the balance money amounting to Rs. 17,30,000/- (Rupees Seventeen Lakhs Thirty



Thousand Only) lying in the bank account of the Corporate Debtor, was returned on 22.09.2022 at 2:00 pm back to *Maharaj Vinayak Society*. Hence, no money was transacted for the personal gain of the answering respondents and no occasion of diversion of funds arose.

- 4.3 It has been clarified by the Respondents that the Applicant had informed the office of the Corporate Debtor on 22.09.2022 at 4:00 pm in the evening regarding the initiation of CIRP and in response, a letter was signed by the CFO stating that no sale, purchase or bank transactions will be undertaken without approval of the IRP. Even though, the said letter was dated 22.08.2022, the transaction of Rs. 17,30,000/- (Rupees Seventeen Lakhs Thirty Thousand Only) was already initiated. Moreover, there was no occasion for the answering respondent to get knowledge of the CIRP prior to 22.09.2022 as the public announcement of CIRP was published on 23.09.2022.
5. We have heard the Ld. Counsels for the parties and perused the averments made in the Interlocutory Application and Reply along with the documents enclosed with the application.
6. Before we go into the facts of the case, it is important to refer to certain provisions of the Code, i.e., Section 14 and Section 17. Section 14 of the Code declares moratorium for prohibiting institution of suits; transferring, encumbering, alienating or disposing of the assets of the Corporate Debtor or any legal right or beneficiary interest; or recover any property by an



owner or lessor which is occupied by or in possession of the Corporate Debtor; among other things. Section 17 states that from the date of appointment of the Interim Resolution Professional, the powers of the Board of Directors or the partners of the Corporate Debtor shall stand suspended and be exercised by the Interim Resolution professional. In the present case, the Applicant has alleged that an amount of Rs. 22,01,373/- (Rupees Twenty Lakh One Thousand Three Hundred Seventy-Three Only) has been transferred from the bank account of the Corporate Debtor to various accounts from 16.09.2022 to 22.09.2022. The Respondents have replied to the same stating that they did not have knowledge regarding the initiation of CIRP of the Corporate Debtor and the pronouncement of the order on 16.09.2022 was not attended by either the counsel or any authorized representative from the Corporate Debtor.

7. It is visible from the bank statement of the Corporate Debtor that the aforesaid amount was transferred to various bank accounts from the account of the Corporate Debtor which includes the transaction of Rs. 17,30,000/- (Rupees Seventeen Lacs Thirty Thousand Only) made to *Maharaj Vinayak Society* on 22.09.2022. The Respondents have submitted that there was an undertaking wherein *Maharaj Vinayak Society* would transfer the amount to the Corporate Debtor's account and the Corporate Debtor would undertake to pay the statutory dues including the PF and ESI.



A tabular chart of receipts from the statutory department has been filed by the Respondents at Page No. 16 of the Reply.

8. First and foremost, it is important to note that while ignorance of fact can be excused, ignorance of law is not permissible. The Corporate Debtor or any Representative/Counsel on behalf of the Corporate Debtor, not appearing or attending in person or through video conference, the pronouncement of the order cannot be an excuse to claim the ignorance of the initiation of the CIRP of the Corporate Debtor on 16.09.2022. Also, when we look at the tabular chart annexed with the reply, it is seen that the amount received from *Maharaj Vinayak Society* is Rs. 44,00,000/- (Rupees Forty-Four Lacs Only), whereas the payment on behalf of *Maharaj Vinayak Society* or to *Maharaj Vinayak Society* is more than Rs. 50,00,000/- (Rupees Fifty Lac). Therefore, the argument of the Respondents that the left-over payment which was received from *Maharaj Vinayak Society* was repaid does not hold ground.
9. Under the provisions of the Code and read with the Order dated 16.09.2022, initiating the CIRP of the Corporate Debtor, the Respondents become the Suspended Directors of the Corporate Debtor and thereby were not entitled to transfer any of the assets of the Corporate Debtor, except for those which are transferred in the usual course of business. The contentions raised by the Respondents show no proof that the said transactions were undertaken during the usual course of business. Once the Order for initiating CIRP of



the Corporate Debtor is passed, the moratorium under Section 14 is imposed and the Suspended Directors of the Corporate Debtor shall not transfer/alienate/dispose off the assets of the Corporate Debtor without the due permission from the IRP. The Respondents had no authority for undertaking such transactions on behalf of the Corporate Debtor after the imposition of Moratorium.

10. Hence, we are hereby allowing the application with the directions to the Respondents to reinstate the Corporate Debtor, in the same position as was at the time of initiation of the CIRP, which includes the assets and the bank balance as on 16.09.2022, within a period of 10 days from the date of this Order. It is needless to say that the Applicant shall be at liberty to move an appropriate application, if the said direction is not complied with.
11. The Registry is directed to serve a copy of this order to the parties in the matter through email as well as speed post.
12. In view of the foregoing, this application stands allowed to the extent of the aforesaid directions and disposed off accordingly.

**-Sd-**

**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**

**-Sd-**

**ATUL CHATURVEDI,  
TECHNICAL MEMBER**