

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

IA(IB) No. 1145/KB/2022

In

In C.P.(IB) No. 97 /KB/20202

An Application under section 60(5) of the Insolvency and Bankruptcy Code, 2016

In the Matter of :

Jyoti Maheswari

.....Operational Creditor

And

Rajprotim Agencies Private Limited

.....Corporate Debtor

And

In the Matter of:

Pratim Bayal

... Petitioner

Versus

Tata Motors Finance Solutions Limited

...Respondent

Date of Hearing: 18/07/2023

Date of pronouncing the order:28/072023

Coram:

Shri Rohit Kapoor : **Member (Judicial)**

Shri Balraj Joshi : **Member (Technical)**

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Counsel on Record

For the RP : Mr. Rishv Banerjee, Adv.
Mr. Rajarshi Banerjee, Adv.
Mr. Siddhanth Makkar, Adv

For Respondent in IA 1145/2022 : Mr. Shaunak Mitra, Adv.
Mr Snehasish Sen, Adv.

ORDER

Per: Balraj Joshi, Member (Technical)

IA(IB) No. 1145/KB/2022 is an application filed by the Resolution Professional (***‘Applicant’***) against Tata Motors Finance Solution Limited (***‘Respondent’***) with the following prayers:

a. *Direction upon the Respondent to forthwith refund the cheque amount of Rs. 62,85,652/- to the Corporate Debtor forthwith along with 18% interest per annum to be calculated from the date of illegal encashment (i.e., 18th February, 2022) until realization of the entire amount by the Corporate Debtor;*

1. Submission by the Ld. Counsel appearing on behalf of the Applicant;

- i. The Corporate Debtor (i.e., Rajprotim Agencies Private Limited) holds a current account with HDFC Bank bearing no. 12192840000023. The Applicant has recently learnt that a refund from the Income Tax Department of about Rs. 80 lakhs had been credited to this account of the Corporate Debtor on 17 February, 2022.
- ii. It has also come to the Applicant’s knowledge that the erstwhile management of the Corporate Debtor had issued a cheque of Rs. 62,85,652/- dated 8th January, 2022 in favour of the Respondent. The said cheque was presented for encashment by the Respondent on 17th February, 2022 and the same was encashed on 18th February, 2022, much after commencement of CIRP i.e. after 12th January, 2022.

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- iii. Not only is such encashment of cheque a preferential transaction, but the same has been in complete violation of Section 14 of Insolvency and Bankruptcy Code (*'Code'*), by virtue whereof the moratorium period had already commenced on 12 January, 2022.
- iv. The Petitioner *vide* his email dated 18 August, 2022, addressed to the Respondent inter alia called upon the Respondent to refund the said sum of Rs. 62,85,652/- which was illegally encashed. However, the Respondent refused to refund the amount and has instead attempted to justify the illegal encashment.

2. *Submission by the Ld. Counsel appearing on behalf of the Respondent;*

- i. The Corporate Debtor had entered into several loan agreements with the Respondent and Tata Motors Finance Limited (*'TMFL'*), another group company. Under which the Respondent had provided financial assistance to the Corporate Debtor, the details whereof are tabulated in a chart in Annexure – A.
- ii. As per the said loan agreements, the Corporate Debtor was under an obligation to repay the loan amount to the Respondent herein. However, due to certain issues, the Corporate Debtor defaulted in repayment of the loan amount and in order to clear the outstanding dues towards the loan accounts, the Corporate Debtor approached the Respondent.
- iii. While discussing and negotiating the manner in which the outstanding liability of the Corporate Debtor would be settled, the Corporate Debtor as part of the settlement process had issued a cheque dated 08.01.2022 for an amount of Rs. 62,85,6521- towards repayment of its loan liability provided by the Respondent as well as its group company
- iv. The cheque 08.01.2022 was issued in favour of Tata Motors Finance Limited by the Corporate Debtor on 08.01.2022 itself and the same was presented for encashment on 17.02.2022 and was encashed on 18.02.2022 and was appropriated against the outstanding dues towards loans provided by both the Respondent herein and TMFL.

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- v. In the interregnum, the Corporate Debtor was admitted for Corporate Insolvency Resolution Process, by way of an order dated 12.01.2022 passed by this Adjudicating Authority in CP (IB) No. 97/KB/2020.
- vi. In the facts of this case, the cheque for payment of the outstanding loan amount was handed over to TMFL on 08 January, 2022 and moratorium was declared on 12 January, 2022. Therefore, prior to the imposition of moratorium, the respondent had already received cheque being a negotiable instrument and it becomes a negotiable instrument in favour of the respondent which the respondent is entitled to negotiate within three months from the date of issuance.
- vii. It is also relevant to consider the proposition of law which governs the date of payment of a cheque i.e. if the date of payment by cheque is the date on which the cheque is delivered then the payment has already happened and therefore, there is no bar to encashment via cheque and vice-versa.
- viii. In this regard, the judgment of the Hon'ble Supreme Court of India in the matter of *CIT, Bombay vs Ogale Glass Works Ltd* reported in AIR 1954 SC 429 is relevant wherein the Supreme Court while dealing with a cheque which was not subsequently dishonoured held that the cheque would be considered to be paid on the date of its delivery.
- ix. The payment of Rs. 62,85,652/- by the Corporate Debtor also cannot be termed as a preferential transaction under the provisions of Section 43 of the Code as labelled by the petitioner without any basis whatsoever. The Corporate Debtor had entered into a settlement and delivered the cheque towards part discharge of the settlement amount to the respondent and TMFL in the ordinary course of business and financial affairs of the corporate debtor.
- x. The erstwhile Resolution Professional of the Corporate Debtor had also sought for refund of the cheque amount so encashed and in response to the same, a clarification was duly issued by the Respondent by way of an email dated 11.03.2022. Thereafter, there was no further communication.

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Analysis & Findings

3. It has been submitted that the CIRP in the matter was ordered by this Adjudicating Authority on 12/01/2022 and moratorium was declared.
4. Despite moratorium, the Respondent viz. Tata Motors Finance Ltd. encashed two cheques that were issued by the Corporate Debtor on 18th February, 2022 which is well within moratorium period.
5. It is also submitted that these cheques were issued on 8th January, 2022, however the same has been presented for encashment to the Bank on 17th February, 2022 and encashed on 18th February i.e. much after commencement of CIRP. Therefore, it is submitted that transaction may be considered as a preferential transaction as the subject encashment is in complete violation of Section 14 of IBC seeking refund thereof along with the interest in the CIRP account.
6. Ld.Counsel appearing for the respondent has relied on in the case of **K. Saraswathy v. P.S.S. Soma Sundaram Chettiar**¹ wherein in para 5 , it has been held by the Hon'ble Apex Court that

'In CIT v. Ogale Glass Works Ltd., Ogale Wadi' it was laid down but this Court that payment by cheque realised subsequently on the cheque being honoured and en-cashed relates back to the date of the receipt of the cheque, and in law the date of payment is the date of delivery of the cheque, Payment by cheque is an ordinary incident of present day life, whether commercial or private, and unless it is specifically mentioned that payment must be in cash there is no reason why payment by cheque should not be taken to be due payment if the cheque is subsequently encashed in the ordinary course.'

7. As can be seen from the above judgment, the payments of the cheque released subsequently relates back to the receipt of the cheque which in the instant case appears 8th January, 2022 and since the moratorium was declared on

¹ (1989) 4 SCC 527

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12/01/2022, this transaction in view of the ratio of the Ogale glass works(supra) does not violate the moratorium.

8. Therefore, in our considered opinion, this transaction cannot be termed as preferential or violative of the moratorium and accordingly IA 1145/KB/2022 is rejected. However, since the facts relating to the nature of the payment is not under consideration, hereinabove, the petitioner shall at liberty to seek any other remedy available under any other law.
9. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order Signed on this, the 28th July, 2023.

PJ