IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI

IA/229/2020 in IBA/92/2019 filed under *Section 60 (5)* of the Insolvency and Bankruptcy Code, 2016

In the matter of *M/s. Sai Regency Power Corporation Private Limited.*

G. Ramachandran, RP
(Reg. No. IBBI/IPA-002/IP-N00167/2017-2018/10437)
Resolution Professional of
M/s. Sai Regency Power Corporation Pvt. Ltd.

... Applicant/Resolution Professional

Vs.

Punjab National Bank
Reg. Office:
Plot No.4, Sector-10,
Dwarka, New Delhi-110075

Indian Overseas Bank
Central Office:
763, Anna Salai,
Chennai-600002

...Respondents

CORAM:

R. SUCHARITHA, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For Applicant : *Shri. M. D Srinivasan, Advocate*
Shri. Vinod Kumar, Advocate
For J. Sagar Associates

For Respondent : *Ms. Ananta Gomathy Murugesan, Advocate*

ORDER

Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Order Pronounced on: 01.07.2020

The present application is being preferred by the Applicant/RP of Sai Regency Power Corporation Private Limited (Corporate Debtor) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**Code**) read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking the following relief:

i) *that the Hon'ble Tribunal may be pleased to direct the Respondents, either jointly or severally, to refund an amount of Rs.1,30,00,000/- into the account of the Corporate Debtor maintained by Respondent No.1; and*

ii) *to pass such other order(s) as this Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case*

2. The Applicant submitted that India Opportunities III Pte Ltd (Financial Creditor) along with IDBI Trusteeship Services Limited (Debenture Trustee) filed IBA/92/2019 under Section 7 of the Code read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 (**Rules**) seeking initiation of the CIRP against the Corporate Debtor.

3. This Tribunal by an order dated 27.03.2019 initiated CIRP against the Corporate Debtor and the applicant was appointed as the IRP and subsequently, in the 1st meeting of CoC held on 25.04.2019, the present Applicant was appointed as the Resolution Professional of the Corporate Debtor. The 330 day CIRP period expired on 20.02.2020.

4. Pursuant to Announcement of the initiation of the CIRP of the Corporate Debtor, the 1st Respondent (Punjab National Bank) filed its Proof of Claim on 09.04.2019 in its capacity as a financial creditor claiming an amount of Rs.102,65,16,068/- (Rupees One Hundred and Two Crores Sixty Five Lakhs Sixteen Thousand Sixty Eighty only) and that 2nd Respondent (Indian Overseas Bank) filed its Proof of Claim on 05.04.2019 claiming an amount of Rs.134,95,51,164/- (Rupees One Hundred and Thirty Four Crores Ninety Five Lakhs Fifty One Thousand One Hundred Sixty Four only). Currently, 1st Respondent has 15% and 2nd Respondent has 20% voting share on the CoC. The Applicant (RP) has stated that the Respondent-Banks had, without any instructions from the applicant, debited an amount of Rs.1,30,00,000/- from the Trust & Retention Account (TRA) of the Corporate Debtor which had

been appropriated by the Respondents (Rs.65,00,000/-) each. The applicant made requests to the Respondent-Banks to reverse the amount in the account of the Corporate Debtor.

5. The Applicant contended that as per section 17 of the Code, it is clear that once the CIRP commences, the management of the Corporate Debtor vests entirely with the RP. The Financial institutions maintaining accounts of the Corporate Debtor are required to act on the instructions of the RP in relation to such accounts as per the provisions of Section 17(1)(d) of the Code. The Applicant further contended that the action of the Respondent in appropriating the amount is in gross violation of Section 14 of the Code.

6. The Applicant relied on the position of law as enunciated in the matter of ***Indian Overseas Bank vs. Mr. Dinkar T Venkatsubramaniam (RP for Amtek Auto Limited), National Company Law Appellate Tribunal, New Delhi*** wherein it was held that

> *"once the moratorium has been declared it is not open to any person including the Financial Creditors and the appellant bank to recover any*

amount from the account of the Corporate Debtor, nor it can appropriate any amount towards its own dues"

7. In the light of the above, the Applicant seeks an order directing the Respondent-Banks to refund total amount of Rs.1,30,00,000/- appropriated after commencement of the CIRP.

8. The 2nd Respondent (Indian Overseas Bank), in their reply, argued that the RP had conveniently omitted to mention that the 1st Respondent (Punjab National Bank) and 2nd Respondent are 'secured creditors' and the other Respondents are financial creditors/operational creditors. It is further argued that the Corporate Debtor was granted extensive facilities by both the respondents herein under a consortium agreement and further reduced in writing that the Corporate Debtor would pay the sums covered by way of sale of power to the common pool account of the Respondents herein which would thereafter be appropriated by the creditors towards their dues.

9. It is further contended that the Corporate Debtor along with 1st and 2nd Respondents had entered into an Escrow Agreement on 15.07.2017 under which the loan accounts were agreed to be operated by

the 1st respondent and the said Escrow Account was created exclusively for the purpose of receiving and handling all payments and receivables from the Corporate Debtor. The Escrow Agreement makes it clear that after application of the sums for the purpose of business, the balance would go to the "Debt Service Resources Account". As such it is a transaction in the ordinary course of business and does not fall under the connotation of preferential transaction which would entail the Resolution Professional to request back the sums so paid. Section 43(3) of the IBC 2016 exempts transfers made in the ordinary course of business and the said transaction of payment of Rs.1,30,00,000/- falls under the said head. Further, it is submitted that though the RP was appointed on 27.03.2020 had made the public announcement only on 30.03.2020 and that the respondents herein had appropriated the same on 29.03.2020 in line with the Escrow Agreement.

10. The Respondents stated that the impugned transaction does not fall within the ambit of any of the transactions as enumerated by Section 14 of the IBC, 2016. These Respondents have always contributed as and when required in the resolution process and that the amounts

appropriated belong to the billing cycle three months before the admission of the CIRP and that the CIRP itself having expired by virtue of the lapse of 330 days, the instant petition is not maintainable as it is only liquidation that has to follow and the time for resolution of the account has lapsed. Hence, the Respondents sought dismissal of the application filed by the RP.

11. Upon hearing the submission made by both the parties and perusing the material and documents placed before this Tribunal, it is seen that based on the insolvency petition, a moratorium was declared on 27.03.2019. It is also seen that the Respondents had appropriated an amount of Rs.1,30,00,000/- (Rupees One Crore Thirty Lakhs only) on 29.03.2019 which is after the initiation of Corporate Insolvency Resolution Process (CIRP). In terms of Section 14(4) of the Code, the order of moratorium shall have effect from the date of such order and not from the date of public announcement as stated by the Respondents. The credit balance in the Bank Account of the Corporate Debtor is an asset of the Corporate Debtor and hence appropriation of any such

amount after the commencement of CIRP is against the provisions of Section 14 of the Insolvency and Bankruptcy Code, 2016.

12. Further, Section 17(1)(d) of the Code mandates that the financial institutions maintaining accounts of the Corporate Debtor shall act on the instructions of Interim Resolution Professional (IRP) in relation to such accounts and furnish all information relating to the Corporate Debtor available with them to the IRP. In this case, there was no specific authorization by the IRP regarding appropriation of amounts from the bank account of the Corporate Debtor.

13. In view of this, this Tribunal is of the opinion that the action of the Respondents in appropriating a sum of Rs.1,30,00,000/- is in violation of the provisions of Section 14 and Section 17(1)(d) of the Insolvency and Bankruptcy Code, 2016.

ORDER

14. The Respondents (1st Respondent - Punjab National Bank and 2nd Respondent - Indian Overseas Bank) are hereby directed to credit an amount of Rs.65,00,000/- (Rupees Sixty Five Lakhs) each into the account

of the Corporate Debtor from which the amounts were appropriated by them within three weeks from the date of receipt of this Order.

15. Accordingly, the Application in **IA/229/2020** is hereby **allowed** with the above said terms.

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[S. VIJAYARAGHAVAN]	**[R. SUCHARITHA]**
Member (Technical)	**Member (Judicial)**
	MEMBER (JUDICIAL)

TJS/KNP