

IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH - BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(through web based video-conferencing platform)

I.A 131 of 2023
In
CP (IB) No.243/BB/2018
Under Sections 60 (5) of IBC, 2016
R/w. Rule 11 of the NCLT Rules, 2016

IN THE MATTER OF I.A 131 OF 2023

Pankaj Srivatsava	...	Applicant/Liquidator
Versus		
Punjab National Bank	...	Respondent No.1
B Fouress Private Limited	...	Respondent No.2

Order delivered on: 14th December, 2023

Coram: 1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For Applicant	:	Ms. Amrita Jain
For Respondent No.1	:	Shri M.R Shashidhar
For Respondent No.2	:	Ms. Chaya

ORDER

Per: Bench

1. This Application has been filed on 06.12.2022 by **Pankaj Srivatsava**, Liquidator (Applicant), U/s. 60(5) of the IBC, 2016 R/w. Rule 11 of the NCLT Rules, 2016 against **Punjab National Bank & Anr.**, (Respondent), seeking to direct Respondent No.1 to refund amount equivalent to the value of fixed deposit appropriated by respondent no.1 to settle its dues of approximately INR 1,20,00,000/- from the fixed deposit account (Account No.4437003171104) of the Corporate debtor to Respondent No.2 without the prior approval of the Applicant and in violation of the provisions of IBC.

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the applicant are as follows:

1. This Adjudicating Authority has admitted C.P.(IB)No.243/BB/2018 vide Order dated 27.09.2019, by initiating CIRP in respect of the Corporate Debtor. Shri Pankaj Srivatsava, the applicant, was appointed as the RP vide order dated 22.11.2019. Subsequently, on 04.11.2022, this Tribunal initiated liquidation in respect of Corporate Debtor, and the applicant was appointed as the Liquidator.

2. It is submitted that the applicant, in his capacity of erstwhile Resolution Professional of the Corporate Debtor, had been informed that a payment of INR. 1,20,00,000/- was released by Respondent No. 1 from the fixed deposit account (Account No.4437003171104) of the Corporate debtor towards full and final settlement of the court case O.S. No. 25772 of 2013 before the Hon'ble City Civil Court Mayo Hall, CCH No.74, Bengaluru and RFA No. 1 of 2020 before the Hon'ble High Court of Karnataka to Respondent No. 2.

3. The applicant had issued a legal notice dated 28.04.2022 to respondent no.1 seeking clarifications on the basis of which payment was made to respondent no. 1 and seeking refund of such amount to the corporate debtor. It is pertinent to point out that all the assets of the company were in the custody of the applicant was undergoing CIRP and moratorium was imposed. The act of respondent no.1 in appropriating the assets of the CD without the prior approval of the applicant, puts respondent no. 2 in a beneficial position with respect to other creditors of the CD.

4. The applicant placed its reliance on the order in the matter of Jet Aircraft Maintenance Engineers Welfare Association vs Ashish Chhawchharia by Hon'ble NCLAT, order dated 14.02.2022. It is contended that if any amount has been defrayed by Respondent no.1 to No.2 for a claim arising out of any liability occurring from earlier transaction, then respondent no.1 should have legally submitted its claim to the applicant along with substantiated documents for the purpose of resolution as per the provisions of the IBC. Interestingly, no such claim or communication has been made to the applicant till date.

5. Respondent No.1 provided a response to the Legal Notice dated 28.04.2022 on 17.10.2022 after several follow-ups from the applicant. Respondent no.1 in its response, provided documents in support of payment made to respondent no.2 but failed to provide the bank account statement for the period 29.09.2017 to 30.03.2022.

6. It is submitted that the action of respondent no.1 in unilaterally appropriating the fixed deposit of the corporate debtor standing in its credit as on the CIRP commencement date to settle the liability of respondent no.1 is in contravention of IBC. Further it is submitted that respondent no.1's failure to provide the relevant information and documents to submit its claim to the applicant during the process of CIRP is detrimental to the interests of all stakeholders of the CD.

3. The learned Counsel for the Respondent No.1, has filed its statement of objections Vide diary no. 4310 dated 21.08.2023, stating as follows:

(i). The CD has engaged the Respondent No.2 and approached respondent no. 1 for financial assistance. Respondent no. 1 leading the consortium of banks lent a sum of INR.77,75,00,000.00 to the CD. The CD for securing repayment of said loan amount created necessary charge in favour of bank. Respondent no.2 in its capacity as the contractor of the CD and in terms of the contract with the CD, had taken an insurance policy covering all the risks and damages to the equipment supplied by it to CD, with New India Assurance Company Limited. Respondent No.2 also paid the insurance premium with respect to the insurance policy. The equipment which was supplied by the Respondent No.2 was damaged due to heavy floods during the implementation of the project. As the equipment was damaged due to rain, respondent no.2 made a claim from the Insurance Company in view of the insurance policy for the damaged goods.

(ii). Further, stated that due to default in repayment of the loan in terms of the loan security agreements, loan account of M/s. Sagar Power was classified as a NPA on 30.06.2010 as per the guidelines of the Reserve Bank of India. As per the terms of the insurance policy, an initial ad-hoc payment was released by the insurance company and shared between the contractor and Respondent no.1. The insurance company settled the entire claim amount totalling to INR. 3,12,53,419.00 on 05.07.2010 with M/s. Sagar Power (Neerukatte) and issued a cheque drawn on Central Bank of India in favour of

Punjab National Bank, Banjara Hills, Hyderabad A/c. of B Fouress Limited who deposited the cheque with respondent no.1 on 09.08.2010.

(iii). Respondent no. 2 after receiving the cheque issued by the insurance company forwarded the cheque to respondent no.1 to encash and to transfer a sum of INR. 66,82,551.00 by RTGS to respondent no.2's bank account but respondent no.1 transferred the amount into FD by taking stand that claim settled by the insurance company was for project assets financed by the bank and the amount could not be paid to respondent no.2.

(iv). Consequently, respondent no.2 filed a money recovery suit before Addl. City Civil and Sessions Judge, Bengaluru for amount of INR.99,61,578.00 with interest of 18% against respondent no.1. Accordingly, Trial Court by its order dated 30.07.2019 decreed the suit in favour of respondent no.2 directing respondent no. 1 to pay an amount of INR. 66,85,551.00 along with an interest of 12%. Being aggrieved respondent no.1 filed appeal before the Hon'ble High Court of Karnataka, which, by its judgment dated 25.02.2020, upheld the decree passed by the Trial Court. In compliance with the judgment of Hon'ble High Court of Karnataka respondent no.1 has refunded INR. 66,85,551.00 along with an interest of 12% to respondent no.2.

(v). The liquidator is claiming a lien/ right over the money that was refunded to respondent no.2. It is pertinent to note here that, the corporate debtor was never entitled or had any right over the amount was deposited with respondent no.1. The same was refunded to Respondent No.2 which it was entitled under the contract between the CD and respondent no.2, in accordance with its direction of the High Court.

4. The learned Counsel for the Respondent No.2, has filed statement of objections Vide diary no. 4392 dated 25.08.2023 by contending that the New India Insurance Company issued a cheque dated 04.08.2010 to respondent no.2 as a compensation for equipment damage. As per directions given to respondent no.1, the funds from the said encashed cheque had to be transferred from respondent no.1 to respondent no.2. Failing which respondent no.2 initiated suit proceedings and by the Judgment of Hon'ble High Court of Karnataka respondent no.1 paid to respondent no.2. Further, contended that respondent no.2 is not liable to be part of the current proceeding. The debt that was due to respondent no.2 was lawfully decreed by the Hon'ble Courts.
5. The learned Counsel for the applicant filed rejoinder vide diary no:4704 dated 08.09.2023 and written submissions vide diary no. 5039 dated

03.10.2023 stating that CIRP was initiated on 27.09.2019. During CIRP of CD an amount of INR 83,87,276 was misappropriated and paid from FD account of the CD by respondent no.1 to respondent no.2 towards full and final settlement of the case before the City Civil Court and Hon'ble High Court of Karnataka, without the prior approval of the applicant, on 26.05.2020. During this time the assets of the CD were in custody of the applicant in his capacity of erstwhile RP and respondent no.1 failed to provide any intimation or communication to the applicant before appropriating the money standing in the FD of in the name of the CD. Further, in pursuant to the public announcement, the respondent no.2 had filed a claim dated 24.10.2019 with the applicant, during the CIRP and after verification of the documents the applicant admitted the claim; whereas the respondent no.2 did not file its claim during the liquidation process of CD, as its dues were already settled by Respondent No.1 by appropriating the assets belonging to the CD, to the tune of INR 83,87,276/-, thereby putting respondent no.2 in a beneficial position with respect to other creditors of the CD. Moreover, the claim of respondent no.2 was included in the liquidation process as well in order to be fair to the respondent no.2, in accordance with Reg.12(2)(c) of IBBI(LP) Regulations, 2016. The applicant relied on the orders of Hon'ble NCLAT in (i). *Jet Aircraft Maintenance Engineers Welfare Association Vs. Ashish Chhawchharia RP of Jet Airways (India) Ltd. & Ors (Company Appeal (AT) (Insolvency) No. 628 of 2020)* and (ii). *Indian Overseas Bank Vs. Mr. Dinkar T. Venkatsubramaniam Resolution Professional for Amtek Auto Ltd. (Company Appeal (AT) (Insolvency) No. 267 of 2017)*.

6. It is noticed that in the Rejoinder dated 08.09.2023, the applicants have modified the amount stated in the earlier pleadings and have requested for a refund of Rs.83,87,276/- only by Respondent No.1.
7. Heard learned Counsel for the Applicant and for the Respondents. We have carefully perused the pleadings on record by the respective parties.
8. It is seen that the respondent no.1 has stated to have transferred the amount to respondent no.2 in compliance to the Hon'ble High Court of Karnataka order dated 25.02.2020 i.e., after the initiation of CIRP on 27.09.2019. The amount transferred is from the fixed deposit account of the

CD which is in the custody of the RP. Further, the respondent no.1 in its objection has stated that the amount which is paid by them as directed by the Hon'ble HC was Rs.1,20,00,000, which includes interest of Rs.36,12,724/-, which was paid by the Respondent no.1 from their own account. It is noted that the respondent no.2 has not filed its claim during the liquidation period while the same claim was admitted by the RP during CIRP. Moreover, in the email dated 31.03.2022, sent from the bank it was stated that "*we wish to inform that closure proceeds of FD issued as DD in favour of M/s. B.Fouress Private Limited on 27.05.2020 as per High Court Order.*" Also, in the letter dated 17.10.2022, from the bank to the applicant it was explained as follows: documents in support of the payment made to M/s. B. Fouress Pvt Ltd- we are enclosing a copy of transaction maintenance record generated from Finacle showing Rs.83,87,276/- was paid after encashing FDR no. 443700DP00006213 on 26.05.2020; and rest of the amount of Rs. 36,12,724 was through Branch Office account no. 4437003171104 giving particulars as 'Sagar Power payments' as per High Court order. Hence total amount of Rs.1,20,00,000/- was paid to M/s. Boving Fouress Private Limited ("B. Fouress") through DD No. 2446000 dated 27.05.2020.

9. A perusal of the objection filed by the Respondent No.1 Bank shows that it has relied mainly on the judgment passed by the Hon'ble High Court of Karnataka dated 25.02.2020 in which the decision of the Trial Court passed in favour of the Respondent No.2 herein (Operational Creditor) was upheld. The Hon'ble High Court of Karnataka directed the Respondent No.1 Bank to refund a sum of Rs.66,82,551/- along with interest to Respondent No.2, since it was arising out of the insurance claim receivable by Respondent No.2 for the equipment supplied by it. It was stated that as a compliance to this judgment of the Hon'ble High Court of Karnataka, the Respondent No.1 Bank reimbursed the amount of Rs.66,82,551/- along with interest to Respondent No.2 on 26.05.2020.
10. However, on perusal of the order, it is seen that the Hon'ble High Court has directed Respondent No.1 Bank to refund this amount arising out of the total settled Insurance claim of Rs.3,12,53,419/- received due to floods at the Project Site. The cheque was issued by the Insurance Company in the

name of *Punjab National Bank, Banjara Hills, Hyderabad A/c - Boving Fouress Ltd.*, which is the Respondent No.2 herein. After receipt of this cheque, the Respondent No.2 has requested the Bank to transfer the amount of Rs.66,82,551/- to the Respondent No.2, and credit the balance amount to the account of the Corporate Debtor (M/s. Sagar Power (Neerukatte) Pvt. Ltd.). However, Respondent No.1 Bank kept the entire money with itself on the basis that the Bank along with a consortium of Banks has lent a sum of Rs.77.75 crores to the Corporate Debtor for setting up of this Hydro Power Project. The Bank also stated before the Hon'ble High Court of Karnataka that they have kept aside the sum of Rs.66,82,551/- separately in a Fixed Deposit, since it was claimed by the Respondent No.2 (OC), on the basis that it had a charge on the entire insurance amount.

11. The Hon'ble High Court upheld the decision of the Lower Court and directed that the impugned amount of Rs.66,82,551/- should be paid to Respondent No.2/ Contractor along with interest holding that the insurance claim was for the equipments owned by Respondent No. 2. The Respondent No.1 Bank stated before the Hon'ble High Court of Karnataka that as per the loan agreement, out of the insurance claim of Rs.3,12,53,419/-, it had appropriated a sum of Rs.2,45,70,868/- to the consortium account of M/s. Sagar Power (Neerukatte) Pvt. Ltd. (CD), and kept the balance amount of Rs.66,82,551/- claimed by the Contractor (Respondent No.2) separately as a Fixed Deposit. It is noticed from the judgment at para-6 that there was an apportionment of Rs.2,45,70,868/- to the above mentioned consortium account out of the Insurance claim and the balance amount of Rs.66,82,551/- was kept as the claim of the Contractor.
12. In this case, the Liquidator has stated that the Respondent No.1 Bank has appropriated an amount of Rs.1,20,00,000/- from the Fixed Deposit account standing in the name of the Corporate Debtor. This amount has been subsequently modified during the course of the proceedings to an amount of Rs.83,87,276/- only. From the facts mentioned in the Hon'ble High Court judgment, it is clear that the amount of Rs.66,82,551/- which was claimed by the Contractor was separately kept in the form of Fixed

Deposit by the Bank. It is further explained by the Bank that the interest amount was paid from the Bank's own account. When this Contractor's entitlement of Rs.66,82,551/- was already earmarked and kept separately by Respondent No.1 in a Fixed Deposit, there was no question of encashing any Fixed Deposit which was standing in the name of the Corporate Debtor/ M/s. Sagar Power (Neerukatte) Pvt. Ltd. for making this payment to Contractor (Respondent No.2 herein). The Respondent No.1 has recovered this amount from the assets of the Corporate Debtor, which was already under CIRP in accordance with the order dated 27.09.2019 of this Adjudicatory Authority. The Bank should have paid the amount to the Respondent No.2 by appropriating this specific Fixed Deposit; instead of encashing the Fixed Deposit of the Corporate Debtor. Since the Corporate Debtor was already under Moratorium due to the CIRP proceedings having been initiated against it, the Bank was prohibited to do so.

13. In this connection, is pertinent to refer to *order of NCLAT in the matter of **Indian Overseas Bank Vs. Mr. Dinkar T. Venkatsubramaniam Resolution Professional for Amtek Auto Ltd., (Company Appeal (AT) (Insolvency) No. 267 of 2017), [2017] ibclaw.in 50 NCLAT**, order dated 15.11.2017 it was held that "after admission of an application under Section 7 of the 'I&B Code', once moratorium has been declared it is not open to any person including '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."*

Further, in the matter of **Jet Aircraft Maintenance Engineers Welfare Association vs Ashish Chhawchharia, (Company Appeal (AT) (Insolvency) No. 628 of 2020), (2022) ibclaw.in 149 NCLAT**, order dated 14.02.2022 it was observed that "The object of the Code is clearly that there should be no depletion of Corporate Debtor's assets during the CIRP. The assets of the Corporate Debtor have to be preserved, protected and guarded for a successful insolvency resolution, which is the object of engrafting Section 14 in the statute."

14. Having considered the abovementioned reasons including the Hon'ble NCLAT decision referred to above and the closure of complaint from the RBI

dated 03.12.2022, we are of the considered opinion that this amount of INR. 83,87,276 was transferred from the Corporate debtor's fixed deposit account by respondent no.1 to respondent no.2, on **27.05.2020** which is during the CIRP period. Thus the impugned transfer is in violation of provisions of IBC, 2016 and imposition of moratorium under section 14 of IBC. Hence, the amount of INR. 83,87,276 is to be refunded by the respondent No.1 Bank to the Liquidation Account of the CD.

15. Accordingly, **I.A. No.131 of 2023 in C.P.(IB)No.243/BB/2018** is hereby **disposed of** with the above directions.

-Sd/-

**MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)**

-Sd/-

**T. KRISHNAVALLI
MEMBER (JUDICIAL)**