

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 1

ITEM No 104

IA/318(AHM)2021 in CP(IB) 261 of 2018

Order under Section 14 r.w 18(1)(f) & 238 IBC,2016

IN THE MATTER OF:

Abhishek Nagori RP For Sunlight Extrusion Pvt Ltd
V/s
Income Tax Department & Anr

.....Applicant

.....Respondent

Order delivered on ..03/11/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Ajai Das Mehrotra, Hon'ble Member(T)

PRESENTS:

For the Applicant :
For the IRP/RP :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.



(AJAI DAS MEHROTRA)
MEMBER (TECHNICAL)



(MADAN B GOSAVI)
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
At AHMEDABAD
COURT - 1

IA318 of 2021

IN

CP(IB) No. 261/7/NCLT/ 2018

[An application under section 14 of the Insolvency and Bankruptcy Code, 2016 (in short "IB Code") read with section 18 (f) of IB Code]

In the matter of:

Abhishek Nagori

Resolution Professional of
Sunlight Extrusion Private Limited

...Applicant

Versus

Income Tax Department and Another

...Respondent

Memo of Parties

1. Abhishek Nagori

RP of M/s Sunlight Extrusion Pvt. Ltd.
Reg. No. IBBI/IPA-001/IP-P00020/2016-17/10044
330/348, Third Floor, Tower-A, Atlantis K-10,
Opp. Vadodara Central, Sarabhai Main Road,
Vadodara-390023, Gujarat
Email-cirp.sepl@ddip.in;jlnusb@gmail.com

.....Applicant

Versus

1. Income Tax Department

Through Principal Commissioner/
Deputy Commissioner
Having address at:
Aayakar Bhawan, Baroda,
Income Tax Officer, Race Course Circle,
Baroda, Gujarat - 390007

Respondent No.1

2. RBL Bank Limited

Having address at:





Nr. Natubhai Circle
Vadodara, Gujarat
India

Respondent No.2

Order Pronounced on 03.11.2021

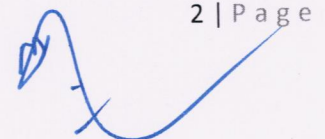
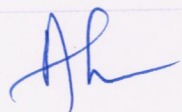
**Coram: Hon'ble Mr. Madan Bhalchandra Gosavi, MEMBER (J)
Hon'ble Mr. Ajai Das Mehrotra, MEMBER (T)**

Appearance:

Mr. Vishal Dave. Adv. a.w Nipun Singhvi Adv. for RP.

ORDER
(Per Bench)


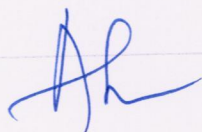
1. The instant application is filed by Resolution Professional of Corporate Debtor i.e., M/s Sunlight Extrusion Pvt. Ltd. under Section 14 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **"IB Code"**) read with Section 18(f) and Section 238 of the Code, seeking direction to the Respondent No. 1 to refund a sum of Rs. 12 lakh which was recovered from the corporate debtor in violation of moratorium passed by this Adjudicating Authority.
2. The applicant submitted that the Corporate Debtor was admitted into CIRP vide Order dated 25-02-2020 passed by this Authority at the instance of Central Bank in CP(IB) No. 261/7/NCLT/AHM/2018, and Mr. Abhishek Nagori was appointed as an IRP. The IRP has published Form-A in Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 (hereinafter referred to as **"CIRP Regulation"**) on 19-03-2020, and the last date of submission of claim by the creditors was 31-03-2020. However, due to the



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Lockdown, the claim was submitted by the creditors till 09-06-2020.

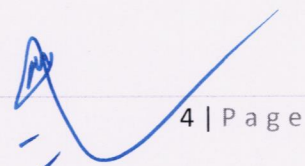
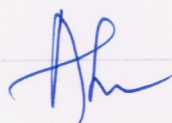
3. In pursuance to the publication of Form-A, the claims were submitted to the RP, by one Financial Creditor, two Operational Creditors, and Statutory Authority (s). It is submitted by the applicant that on 17-04-2020, the information has been sent to respondent no. 1 about the initiation of CIRP against the Corporate Debtor and the reminder was also sent by IRP on 20.05.2020 for the same.
4. The Applicant has further submitted that after perusing the Books and Accounts of the Corporate Debtor, it was found that Rs. 12 lakh was recovered by Income Tax Department i.e., Respondent No. 1 on 16-03-2020, from the bank account of the corporate debtor which was maintained with Respondent No. 2. Thereafter, IRP sent an e-mail to Respondent No. 1 on 13-06-2020 to remit the amount recovered as said amount was recovered in violation of provisions of section 14 of the IB Code, but no reply was given by the Respondent no. 1.
5. The name of IRP was confirmed by COC in the first meeting held on 16-06-2020 with 100% voting. Respondent No. 2 also submitted its claim to the tune of Rs. 3,51,26,547/- on 19-06-2020. Apart from the submission of this claim, Respondent No. 1 sent various assessment and penalty orders against the Corporate Debtor to the Resolution Professional. EOI was published by the Resolution Profesional in pursuance of the resolution passed in the COC meeting dated 21.07.2021, and the last date of submission of the claim was 10.08.2020.



6. It is further submitted by the Applicant that on 28-07-2020, Respondent No. 1 sent an e-mail to the Resolution Professional and requested not to take legal action and also stated that legal opinion is being sought by the Department in respect to the refund of recovered amount during the moratorium and issue shall be resolved very soon. The Resolution Applicant has also stated that till date, neither the reply has been received from the Income Tax Department nor the amount was remitted to the account of Corporate Debtor, even after sending number of reminders and requests to Respondent No. 1.
7. It is noted that even after giving sufficient opportunity to respondent no. 1, no reply was made to this present application.
8. We have heard the counsel of the applicant and have gone through the record. It appears that the moratorium was triggered against the corporate debtor vide order dated 25.02.2020 as per section 14 of the IB Code, and Respondent No. 1 had recovered the amount of Rs. 12,00,000/- from the Corporate Debtor on 16.03.2020, which was paid to respondent no. 1 by respondent no. 2 from the account of the corporate debtor, which was in violation of Section 14 of the IB Code. For benevolent reference, section 14 of IB code is reproduced below:

(1) *Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:--*

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;



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(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

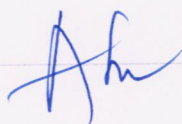
(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

³[Explanation.--For the purposes of this sub-Section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

³[(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]

²[(3) The provisions of sub-section (1) shall not apply to--



⁴[(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;]

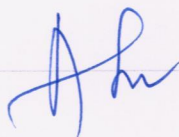
(b) a surety in a contract of guarantee to a corporate debtor.]

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.]

Moreover, if any amount remains due from corporate debtor, it shall fall under the head of operational debt after the initiation of CIRP as per section 5 (21) of IB code and the respondent has a right to submit his claim before the resolution professional. It is an admitted fact that said claim has already been submitted by respondent no. 1 for a sum of Rs. 3,51,26,547/- excluding the amount recovered from the corporate debtor after imposition of moratorium i.e. 12,00,000./-. However, exclusion of recovered amount in the claim, by respondent no. 1 can not absolve the violation of moratorium. Moreover, the IB code has an overriding effect, as envisaged under section 238 of IB Code, which is reproduced below:

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.



In PCIT Versus Monnet Ispat and Energy Limited, the Hon'ble Supreme Court has held that the IB Code will override anything inconsistent contained in any other enactment, including Income Tax Act.

In view of section 14 of IB code, read with section 238, we are of the considered view that the amount recovered by the Income Tax Department under the Income Tax Act, 1961 is not justified even if the respondent no. 1 was not aware about the initiation of CIRP proceedings and imposition of Moratorium at the time of recovery. Hence, this present application is allowed and we hereby direct:

- I. Respondent No.1 to refund the amount of Rs. 12,00,000/- recovered from the corporate debtor after imposition of the moratorium;
- II. The Resolution Professional is directed to include the amount of Rs. 12,00,000/- in the claim submitted by respondent No.1.

9. Accordingly, IA No. 318 of 2021 is allowed and stands disposed of.

**AJAI DAS MEHROTRA
MEMBERS(T)**

**MADAN B. GOSAVI
MEMBER(J)**