

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 3921 OF 2022

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016 r/w Rule 11 of
NCLT Rules, 2016

Ms. Vaishali Patrikar,
Resolution Professional

...Applicant

Vs.

Darshan Developers & Others

...Respondents

In the matter of

C.P.(IB) No. 1632/MB/2019

Vistra ITCL (India) Limited

Financial Creditor

Vs.

Satra Properties India Limited

Corporate Debtor

Order delivered on: 02.01.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances

For the Applicant : Applicant present however not marked the attendance sheet

For Respondent No.1 & 2 : Mr. Pranav Ahmed a/w Ms. Darshna Naval, Advocate

For Respondent No.3 : Ms. Gayatri Mohite, Advocate

For Respondent No.4 to 7 : Mr. B.K. Gala, Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application IA 3921/2022 is filed by Ms. Vaishali Patrikar, the Resolution Professional (“Applicant”) of M/s Satra Properties (India) Limited (“Corporate Debtor”) in the Corporate Insolvency Resolution Process (“CIRP”) seeking reliefs against the Respondents to transfer back and compensate an amount of Rs. 91,00,000/- taken from the Corporate Debtor after the commencement of moratorium under section 14 of Insolvency & Bankruptcy Code, 2016 (“Code”). M/s Darshan Developers is Respondent No.1; Sh. Pravin Viram Satra, the partner of Respondent No. 1 is Respondent No.2; and Sh. Praful Satra, Sh. Vishal R. Karia, Sh. Kamlesh B. Limbachiya, Ms. Rubina K. Kalyani and Sh. Sahara A. Murad, the Suspended Board of Directors of Corporate Debtor, are Respondent No. 3 to 7 respectively. The Applicant has sought following reliefs :

- a. Direction to Respondent No. 1 & 2 to jointly transfer back the amount of Rs. 91,00,000/- (Rupees Ninety One Lakh Only) in the bank account of the Corporate Debtor;
 - b. Direction to Respondent Nos. 3 to 7 to compensate the Corporate Debtor for an amount of Rs. 91,00,000/- (Rupees Ninety One Lakhs Only) as transferred to the Respondent No. 1 after initiation of CIRP;
 - c. Direct the Respondents to reimburse the cost incurred by the Applicant of Rs. 25,000/-.
2. On 3rd August 2020, CIRP commenced vide Order dated 3rd August, 2020 passed by this Tribunal on an Application filed under section 7 of Code by Vistra (ITCL) India Limited, who is the debenture trustee on behalf of debenture holders being Mr. Mayank Shah, Mr. Shreyas Shah and others. Accordingly, moratorium in terms of Section 14 of the Code commenced on 3.8.2020.
- 2.1. Upon appointment of the Applicant as the Resolution Professional of the CD and after examination and perusal of the books of account of the CD, the Applicant observed that:
- i. An amount of Rs. 41,00,000/- (*Rupees Forty One Lakhs only*) was debited from the account of the CD held in Indusind Bank in favour of Respondent No.1 vide cheque bearing no. 791035 and
 - ii. An amount of Rs. Rs. 50,00,000/- (*Rupees Fifty Lakhs only*) was debited from the account of the CD held in RBL Bank in favour of Respondent No.1 in vide cheque bearing no. 37 on 6th August 2020.

2.2. Respondent No. 3 claims that the cheques were issued on 31st July 2020. The Company Petition matter under Section 7 was heard at length over various sessions and reserved for orders and the alleged date of issuance of the cheques is 3 days prior to the admission order. Further, a perusal of the bank account shows that when the cheques were issued there was not sufficient amounts with the Corporate Debtor to even get these encashed.

2.3. By an email dated 30th November 2022, the Applicant called upon Respondent Nos. 1 and 2 to return the monies to the Corporate Debtor. However, Respondent Nos. 1 and 2 did not even reply. Similarly, by an email dated 8th December 2022¹, the Applicant called upon Respondent Nos. 3 to 7 to clarify whether Respondent Nos. 1 and 2 are related to the Corporate Debtor or its promoters. However, Respondent Nos. 3 to 7 failed to provide any reply.

2.4. Respondent Nos. 1 and 2 have not filed any reply to the present Application. Even if they have filed, the same is not served to the Applicant. Respondent No. 3 has in its reply affidavit dated 5th May 2023 contended that the Corporate Debtor and one Shreeniwas Developers had entered into an MOU dated 17th December 2019 under which it was agreed to pay Rs. 91,00,000/- to Respondent No. 1 and post dated cheques were issued to Respondent No. 1.

2.5. The Applicant has contended that Respondent No.2 being the partner of Respondent No.1 and Respondent No.3 being the

suspended director of Corporate Debtor to be related persons based on the same family name. Further Respondent No.2 is also a partner in one M/s Shreeniwas Developers which is also allegedly a related party of the Corporate Debtor.

2.6. It is contended that the purported MOU does not provide for payment of any amount to Respondent No. 1. Without prejudice and even assuming whilst denying that any money was payable to Respondent No. 1, section 14 of the Code is an absolute bar to appropriation of any funds during CIRP.

2.7. Section 14(1) of the Code reads as under:

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;

*(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;*

*(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.” (emphasis supplied)*

2.8. In doing so, the Respondents have acted in a manner contrary to the Code and attempted to dissipate the assets of the Corporate Debtor to the detriment of the Corporate Debtor and its stakeholders.

2.9. Reliance has been placed on the judgement of the Hon’ble NCLAT in the matter of *SREI Equipment Finance Ltd. v. Amit Gupta Company Appeal (AT) (Ins.) No. 298 of 2019*, where a similar contention was taken that the monies of the Corporate Debtor were appropriated under post-dated cheques. The Hon’ble NCLAT rejected such argument and held as under:

“1. During the pendency of the Corporate Insolvency Resolution Process against ‘Provogue (India) Ltd.’ (Corporate Debtor) two post dated cheques were encashed by Appellant – ‘SREI Equipment Finance Ltd.’ withdrawing sum of Rs.11,56,396/- and another sum of Rs.11,01,590/-. In this background, the Resolution Professional moved an application before the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench for direction against the Appellant to refund the aforesaid two amounts withdrawn

*during the period of moratorium. **The Adjudicating Authority by impugned order dated 8th March, 2019, on hearing the parties, accepted the prayer and held that the payment received by the Appellant from the Corporate Debtor on the basis of post dated cheques encashed during the Corporate Insolvency Resolution Process is hit by Section 14 of the I&B Code.***

....

4. We have heard learned counsel for the Appellant and perused the order.

...

6. Clause (b) of Section 14(1) prohibits transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein. As per Clause (c) of Section 14(1) any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under SARFAESI Act, 2002 is also prohibited. Clause (d) of sub-section (1) of Section 14 prohibits the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

7. **From the simple reading of the provisions it is evident that after initiation of Corporate Insolvency Resolution Process once moratorium starts no person can recover any amount from the account of the Corporate Debtor. It is true that the cheque dates back to the date of handover but it cannot be encashed after the moratorium**

starts, in view of the specific provisions, to recover the amount from the Corporate Debtor as referred above.

(emphasis supplied)

3. Respondent No. 3 has filed the reply as well as written submission stating that the cheques through which the said amounts were transferred, were issued in prior point of time as and by way of post-dated cheques in terms of the MOU dated 17th December 2019, i.e. much prior to commencement of CIRP of the Corporate Debtor.
 - 3.1. Brobhat S.R.A. Co-operative Housing Society Limited (“**the Society**”) appointed one M/s Shreenivas Developers with the intentions of re-developing the Society/SRA project. Both the parties entered into a development agreement dated 7th June 2005 (“**Development Agreement**”) for development of a larger property.
 - 3.2. On 11th August 2005, M/s Shreenivas Developers and the Corporate Debtor entered into a Joint Venture Agreement (“**JV Agreement**”) upon certain terms and conditions recorded therein. In addition to the above the parties also entered into a supplemental agreement dated 3rd April 2010 wherein the obligations of the parties were duly recorded.
 - 3.3. In terms of the JV Agreement there were certain obligation related to construction which were to be complied by M/s Shreenivas Developers, however M/s Shreenivas Developers was unable to complete their obligations and as a result of which the occupation certificate for the sale building till date could not be obtained.
 - 3.4. There were several complaints being filed across forums, wherein jointly the Corporate Debtor was called along with the said

Shreenivas Developer to look into the matters and concerns of the said slum dwellers and flat purchasers.

- 3.5. In view of the aforesaid M/s Shreenivas Developers requested the Corporate Debtor to provide finance of Rs. 20,00,00,000/- (*Rupees Twenty Crores only*), considering which a Memorandum of Understanding dated 17th December 2019 (“**MOU**”) was executed under which the Corporate Debtor agreed to provide Rs. 20,00,00,000/- (*Rupees Twenty Crores only*) to M/s Shreenivas Developers, which shall be returned back without any interest to the CD upon completion of the entire layout, to enable Shreenivas Developers to make and clear the payments to its contractors, material suppliers and towards their other obligations for construction of the larger property.
- 3.6. In terms of the MOU, M/s Shreenivas Developers requested the Corporate Debtor to pay an amount of Rs. 91,00,000/- (*Rupees Ninety One Lakhs only*) directly to the Respondent No.1. Considering which Corporate Debtor issued two cheques amounting to Rs. 41,00,000/- (*Rupees Forty One Lakhs only*) and Rs. 50,00,000/- (*Rupees Fifty Lakhs only*) both dated 31st July 2020, which was pre admission of the CD into CIRP.
- 3.7. It is further stated that with respect to the issuance of the cheque of Rs.50,00,000/- (*Rupees Fifty Lakhs Only*) to the Respondent No.1 from the account of the Corporate Debtor held in RBL Bank, the issue was discussed at the 3rd meeting of the Committee of Creditors of the Corporate Debtor held on 31st December 2020. During the meeting Respondent No.3 had in detailed explained the transaction and had also provided a copy of the MOU to the erstwhile Resolution Professional and the erstwhile Resolution

Professional was satisfied with the explanation of Respondent No.3 and no action was taken thereafter.

- 3.8. It is contended that these facts evidence that the present application is an afterthought by the Applicant who is controlled by the Mr. Mayank Shah representing the MJS Group, being the successful resolution applicant and the major CoC voter and who with malicious intent is trying to extort monies from the Respondent No.3.
- 3.9. It is further submitted that the Interim Application is an abuse of process of law, further the Applicant has assumed that Respondent No.2 is related to Respondent No.3 only basis having same family names. Such conduct of the Applicant shall not be condoned as the Respondent 2 is in no manner related to the Respondent No.3 or the CD save and except being a joint-venture partner.
- 3.10. The Respondent No. 3 has relied upon *K. Saraswathy v. P.S.S. Soma Sundaram Chettiar (1989) 4 SCC 527 to contend that* Payment made by cheque realised subsequently, on the cheque being honoured and encashed relates back to the date of receipt of the cheque and, in law the date of payment of the cheque is the date of delivery of the cheque; and decision of National Company Law Tribunal, Kolkata in *Pratim Bayal v. Tata Motors Finance Solutions Limited IA(IB) No. 1145/KB/2022*. Further, the Respondent No. 3 has stated that the National Company Law Tribunal, Mumbai *in its order dated 22nd August 2023 passed in IA 664 of 2020 Associated Road Carriers v. Indusar Global Ltd*, has placed reliance upon both the above judgments of Hon'ble Supreme Court of India and Hon'ble National Company Law Tribunal, Kolkata.

4. Heard the learned Counsel and perused the material available on record.
 - 4.1. We find that the both the cheques are dated 31.7.2020 and were cleared on 6.8.2020 out of proceeds credited in the bank account of the Corporate Debtor on 4.8.2020.
 - 4.2. This Bench had distinguished the decision in *Pratim Bayal v. Tata Motors Finance Solutions Limited IA(IB) No. 1145/KB/2022* in its decision delivered in *Associated Road Carriers v. Indusar Global Ltd IA 664 of 2020* and held that the cheques encashed after commencement of CIRP and dated post CIRP commencement date could not have been encashed in view of moratorium coming into force in view of Section 14 of the Code.
 - 4.3. In the present case, it is undisputed position that the cheques were issued on 31.7.2020, however the Corporate Debtor's relevant Bank account at the relevant date had no funds available to honour the cheques on that day. It follows therefrom that these cheques, though dated 31.07.2020, were intended to be encashed as and when the funds are available in the relevant Bank Account of the Corporate. In other words, these cheques were issued in anticipation of funds being made available in the Corporate Debtor's account in future. This clearly demonstrates the intent of the issuer of the cheques that these cheques were to be presented for payment in future. It is undisputed fact that these cheques were presented for payment on 6.8.2020 out of funds credited in Corporate Debtor's account on 4.8.2020 and CIRP commenced on 3.8.2020. In other words, these cheques could not have intended to be paid prior to 4.8.2020.
 - 4.4. Having said so, we find that the Section 14 of the Code provides that the Adjudicating Authority shall by order declare moratorium

for prohibiting, amongst others, transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein. Upon commencement of CIRP, the Bank Accounts of the Corporate Debtor are to be managed and operated by the appointed Insolvency Professional. Further, we find that if the argument of the Ld. Counsel for the Respondent that Section 14 of the Code does not apply to cheques dated prior to commencement of CIRP but intended to be cleared after funds are available therein, we feel that this will defeat the basic object of scheme of the Code which mandates resolution of claims of creditors out of assets of the Corporate Debtor available as on Insolvency Commencement date. Hence, we are of considered view that these cheques were encashed in violation of provisions of Section 14 of the Code.

- 4.5. We are also conscious of the fact that no money was due and payable to the Respondent No. 1 by the Corporate Debtor and payment was to be made as an accommodation to Respondent No. 1 on returnable basis.
- 4.6. In view of the foregoing discussion, we have no hesitation to direct the Respondent No. 1 and 2 to jointly and severally refund the amount of Rs. 91,00,000/- to the Corporate Debtor within 7 days. Since, the Applicant has not made any prayer in terms of Section 66 of the Code, under which Respondent No. 3 to 7, as the case may be, could be proceeded in our considered view, we are not inclined to pass any order against Respondent No. 3 to 7. However, the Applicant shall be at liberty to file appropriate application seeking their contribution as well to the assets of the Corporate Debtor in terms of Section 66 of the Code.
- 4.7. We do not find any merit in prayer for reimbursement of costs.

5. In view of the foregoing, IA 3921/2022 is allowed and disposed of accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)