

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-III**

IA-2162/2020  
In  
IB-1694(ND)/2018

**IN THE MATTER OF IB-1694(ND)/2018:**

**M/s. FLEXITUFF VENTURES INTERNATIONAL LIMITED**

**..... Operational Creditor**

**VERSUS**

**M/s. TREND FLOORING PRIVATE LIMITED**

**.....Corporate Debtor**

**AND IN THE MATTER OF IA-2162/2020:**

**Mr. Chanchal Dua**

Resolution Professional of the Corporate Debtor

**..... Applicant**

**VERSUS**

**Mr. Arvind Narayan & Ors.**

1. Mr. Arvind Narayan Singh  
Suspended Board of Director of the Corporate Debtor
2. Mr. Amit Narayan Singh  
Suspended Board of Director of the Corporate Debtor
3. ICICI Bank

**..... Respondents**

**Order Delivered On: 22.12.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)  
SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

- For the Applicant : Mr. Amit Sanduja along with Ms. Sakshi Singh,  
Mr. Tushar Batra, Advs.
- For the Liquidator : Mr. Abhishek Anand Adv. and Mr. Mohak  
Sharma, Advs.
- For the ICICI Bank : Mr. Gautam Singhal and Mr. Rajat Chaudhary,  
Advs.

**ORDER**

**PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)**

1. The present Application has been filed by Mr. Chanchal Dua, Resolution Professional of the Corporate Debtor on 20.05.2020 under Section 19(2) read with Sections 14, 43 and Section 74(2) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the

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NCLT Rules, 2016 before this Adjudicating Authority, for seeking the following reliefs:

- a. Allow the present application;*
- b. Direct the Respondent No. 3 to co-operate and provide information specifically but not limited to the information as sought by the Applicant vide emails dated 05.02.2020 and email dated 25.02.2020;*
- c. Consequentially, direct Respondent No.3 to reverse the amount received towards its satisfaction of Loan Account during the moratorium period along with accrued interest in the account of the Corporate Debtor;*
- d. Direct the Directors and promoters of the Corporate Debtor to make such contributions to the assets of the Corporate Debtor as it may deem fit and direct initiation of action under Section 74(1) of the Code against the concerned officers of the Corporate Debtor for deliberate and willful violation of Section 14 of the Code;*
- e. Pass an appropriate order to repudiate any third party right if created by the Respondent No.1 & 2 on the vehicle, if any and an order to transfer all the benefits taken on account of such transfer by the Respondent No.1 & 2, to be credited to the account of the corporate debtor;*
- f. Pass such other further order/order(s) as may be deemed fit and proper in the facts and circumstances of the case.”*

## **2. Brief Background of the Case**

- i. An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Operational Creditor i.e. M/s. Flexituff Ventures International Limited, against the Corporate Debtor i.e. M/s. Trend Flooring Private Limited and the said application was admitted by this Adjudicating Authority vide order dated 09.10.2019 and a moratorium was declared including the appointment of Mr. Rajeev Saxena as an Interim Resolution Professional.

Subsequently, the present Respondent namely Mr. Chanchal Dua was confirmed as Resolution Professional.

- ii. During the 4<sup>th</sup> CoC meeting dated 02.04.2020, the CoC recommended for liquidation of the Corporate Debtor, in view of the fact that there is no prospect of resolutions of the Corporate Debtor since the operations of the Corporate Debtor were discontinued from January, 2019. Pursuant to the decision of the CoC, the Applicant filed the application seeking liquidation of the Corporate Debtor before this Adjudicating Authority. This Adjudicating Authority was pleased to allow the liquidation application vide order dated 09.09.2020 including the appointing of the Applicant as the Liquidator. Thereafter, the applicant made a public announcement and received various claims.

**3. Submissions of the Applicant:**

- i. The Applicant on being appointed as the RP/Liquidator requested the Respondents to stop the execution of contracts without the prior permission of the Applicant and further not to deal with the investments, securities including shares in subsidiary company(ies) or any of the assets and also to route transactions in the accounts of the Respondents with the financial institutions with the prior authorization of the Applicant. The Applicant further informed the Respondents about the duties of the Resolution Professional in terms of Section 25 of the Code and to take control and custody of any asset over which the Corporate Debtor has ownership rights as recorded in the balance sheet of the Corporate Debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets.
- ii. Vide email dated 05.02.2020, the Applicant sought information regarding the vehicles which are registered in the name of the Corporate Debtor from Respondent No. 3 as the same are hypothecated by Respondent No. 3. Further, an email dated

06.02.2020 was again sent to Respondent No. 3 regarding reminder. In response, the Respondent No. 3 provided the status of the vehicles to the Applicant vide email dated 18.02.2020. The details are as follows:

LOAN NO.	REG. NO.	STATUS
LADEL00035380982	DL3CCL6912	SALE OF ASSET / CLOSED
NOT FOUND	DL03BM2023	NOT FOUND
NOT FOUND	DL14CC2358	NOT FOUND
LADEL00010577819	DL3CAY1680	CLOSED - REGULAR
LADEL00035353966	DL14CD1009	CLOSED - REGULAR
NOT FOUND	DL03BE3487	NOT FOUND

- iii. Admittedly, the vehicle bearing No. DL14CD1009 is in the name of the Corporate Debtor which is evident from the Registration Certificate. Further, the said vehicle was hypothecated to the Respondent No. 3.
- iv. The Respondent No.3 provided the Statement of Accounts as maintained for the Loan Account i.e. LADEL00035353966 to the Applicant. From a perusal of the bank statements, it came into the knowledge of the Applicant that a settlement has been done with Respondent No. 3 in the month of January 2020 for the vehicle Toyota Innova Crysta having registration number as DL14CD1009 with the Directors of the Corporate Debtor and thereby the account stands settled. The Applicant vide email dated 25.02.2020 informed the Respondent No. 3 that settlement during the CIRP period is a violation of Section 14 of the Code and sought details from the Respondent No. 3. However, the Respondent No. 3 failed to provide the information sought.
- v. The Applicant in order to preserve and protect the value of the assets and to manage the affairs of the corporate debtor as a going

concern has been seeking information from the director but the same is not forthcoming. In terms of Section 19 of the Code, the officers of the Corporate Debtor and any other person who has information regarding the Corporate Debtor are required to provide the information to the IRP/RP. The failure on the part of the Director/officers of Corporate Debtor by not providing information to the Applicant during the CIRP period is not only a complete violation of the provisions of the Code but the same is also jeopardizing the Corporate Insolvency Resolution Process and is clearly creating hurdles to manage the operations of the Corporate Debtor.

- vi. It is submitted that the settlement of dues of a creditor of the company is not prohibited under law, but it becomes questionable, if it has been done at the time when the Corporate Debtor company was under Corporate Insolvency Resolution Process and thereby entering into a preferential transaction with one creditor, whereas the said assets could have been utilised for resolution of the Corporate Debtor.
- vii. Admittedly, during the moratorium period, no transfer of property by the promoters and directors of the Corporate Debtor on account of an antecedent debt owed by the corporate debtor for the benefit of Respondent No.3 could have been done as the same has effect of putting Respondent No.3 in a beneficial position than it would have been in the event of distribution of assets being made in accordance with Section 53 of the Code and therefore, it would be evident that the said transaction is a preferential transaction within the meaning of sub-section (2) of section 43 of the Code.
- viii. It is submitted that the directors of the Corporate Debtor have settled the account of Respondent No.3, which is for the benefit of one creditor of the Corporate Debtor i.e. Respondent No.3 and have put the other creditors of the Corporate Debtor in a disadvantageous position and ICICI Bank Limited in a beneficial position than it would have been in the event of distribution of

assets of Corporate Debtor being made in accordance with Section 53, although ICICI Bank Limited has not filed any claim with the Resolution Professional till date.

4. **Submissions of the Respondent:**

- i. The Respondent No. 3 has filed a reply affidavit denying the allegations made by the Applicant and stated that the Corporate Debtor i.e. M/s. Trend Flooring Private Limited availed a loan of Rs. 18,50,000/- along with Mr. Arvind Narayan Singh (Co-applicant) on 22.02.2017 for the purchase of vehicle Make “Innova/Zx AT” vide loan account No. LADEL00035353966”. The above-said loan facility was granted against the hypothecation of vehicle Make “Innova/Zx AT”. The Loan was repayable in 60 Monthly installments starting from 10.3.2017. The said loan account was settled by Mr. Amit Narayan Singh who is the brother of the Co-Applicant i.e. Mr. Arvind Narayan Singh and an additional director of Corporate Debtor. It was informed by Mr. Amit Narayan Singh i.e. brother of Mr. Arvind Narayan Singh that Mr. Arvind Narayan Singh was not well and unable to meet people, hence he would be settling the loan account on behalf of his brother. Hence Mr. Amit Narayan Singh settled the loan account on behalf of Mr. Arvind Narayan Singh for the total amount of Rs. 8,92,980/- The said settlement amount of Rs. 8,92,980/- was paid through NEFT/RTGS No. ICRL20027000043 on 27.01.2020 from an account bearing No. 50200009263001 maintained with HDFC Bank in the name of “BORN TO RIGHT”, IFSC Code – HDFC0000247 vide transaction ID - HDFCR52020012766322736. Consequently, the said loan account was closed in the month of January 2020 and NOC for the vehicle was issued by the Respondent No. 3. It is further submitted that the Respondent No. 3 has not received any amount from the Corporate Debtor after initiation of the CIRP.

- ii. It is submitted that the Respondent No. 3 has not violated any of the provisions of the Insolvency and Bankruptcy Code, 2016 as no amount has been received from the Corporate Debtor i.e. M/s Trend Flooring Private Limited after initiation of CIRP. The Respondent No. 3 is not claiming any charge over the aforesaid vehicles. The present application is devoid of merits and deserves to be dismissed.

#### 5. **Analysis and Findings**

- i. We have heard the submissions of Ld. Counsel appearing for the Applicant as well as Ld. Counsel appearing for the Respondent. We have also perused the records.
- ii. Admittedly, the CIRP was initiated by this Adjudicating Authority vide order dated 09.10.2019. Mr. Amit Narayan Singh (Respondent No. 2) settled the loan account on behalf of Mr. Arvind Narayan Singh (Respondent No. 1) for the total amount of Rs. 8,92,980/- through NEFT/RTGS No. ICRL20027000043 on 27.01.2020 which is during the CIRP period. It is the case of the RP/Liquidator that the directors of the Corporate Debtor have settled the account of Respondent No.3 during the moratorium period imposed is a violation of Section 14 of the Code.
- iii. The Ld. Counsel appearing for the Applicant referred to the decision of **Indian Overseas Bank v. Mr. Dinkar T. Venkatsubramanian Resolution Professional for Amtek Auto Ltd.**, Company Appeal (AT) (Insolvency) No. 267 of 2017, wherein the Hon'ble Appellate Tribunal vide order dated 15.11.2017 held:

*“Having heard learned counsel for the Appellant, we do not accept the submissions made on behalf of the Appellant in view of the fact 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.'

- iv. We find force in the contentions raised by the Applicant and we are therefore of the considered view that the judgment passed by Hon'ble NCLAT in **Indian Overseas Bank (supra)** will apply to the present case. It is a settled law that after admission of an insolvency application under the Code and once a moratorium has been declared, it is not open to any person to recover any amount from the account of the Corporate Debtor.
  - v. We, therefore, direct the Respondent No. 3 to reverse the amount of Rs. 8,92,980/- (towards the satisfaction of Loan Account) into the account of the Corporate Debtor as the same is a preferential transaction as the suspended board of Directors of the Corporate Debtor have settled the account of Respondent No. 3 during the CIRP period. We further direct the Applicant to consider the claim (if any) of the Respondent No. 3 in accordance with Section 53 of the Code on merit after due verification of requisite documents.
  - vi. With respect to Prayer b, we further direct the Respondent No. 3 to cooperate and provide information as sought by the Applicant in order to identify the hidden assets and to maximise the value of the assets of the Corporate Debtor in the event of distribution of assets being made as per Section 53 of the Code.
  - vii. The Prayer d and Prayer e become infructuous and the proceedings could not continue pertaining to the initiation of the liquidation of the Corporate Debtor.
  - viii. We also advise the Liquidator as well as the Respondents to make their best endeavors to get the ultimate essence in the implementation of the Code and in the interest of justice to expedite the process of Liquidation under the Code.
6. In view of the above facts and circumstances and the foregoing discussion. It is accordingly ordered as follows:

- i.** The Application bearing **IA-2162/2020** filed by the Applicant is **disposed of.**
- ii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.  
No order as to costs.

Sd/-

**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**