

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT – III**



I.A. No. 5026/2023

IN

C.P. NO. 800(IB)/MB/2022

Under Section 14(1) read with 68(i)(b) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016

Sandeep Mahajan

Interim Resolution Professional

Having its office at:

409, Ansal Bhawan,
K.G. Marg, New Delhi – 110 001.

.... Applicant

Versus

1. Mr. Nayan Thakrashi Shah

Suspended Director

Residing at:

1305, Kalinga Mulund Jogeshwari Link
Road, Mulund (W),
Mumbai – 400 080.

2. Mr. Nayan Ashok Bheda

Suspended Director

Residing at:

1401/1402, Raj Darshan CHS Ltd.,
Behind Jain Temple, Sarvodaya Nagar,
Mulund(W), Mumbai – 400 080.

3. Mr. Sachin Manohar Deshmukh

Suspended Director

Residing at:

Man Sneh Purushottam Kheraj Road,
Mulund (W), Mumbai – 400 080.

.... Respondents

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In the matter between:

Edelweiss Asset Reconstruction Company
Limited

.... Financial Creditor

Versus

Neptune Ventures and Developers Private
Limited

.... Corporate Debtor

Order Pronounced on: 02.05.2025

Coram:

Hon'ble Smt. Lakshmi Gurung, Member (Judicial)

Hon'ble Shri Charanjeet Singh Gulati, Member (Technical)

Appearances:

For Resolution Professional: Adv. Abhishek Anand a/w Adv. Karan Kohli

For Respondent: Adv. Pranjit Bhattacharya

PER: Ms. LAKSHMI GURUNG (MEMBER, JUDICIAL)

ORDER

1. **I.A. NO. 5026 OF 2023**

This application has been filed by the Interim Resolution Professional for the Neptune Ventures and Developers Private Limited against the Suspended Directors under Section 14(1) read with Section 68(i)(b) of the Insolvency and Bankruptcy Code, 2016 (**'the Code'**), seeking the following prayers against the suspended directors of the corporate debtor:

a) allow the present Application;

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b) *Issue appropriate directions against the Respondents for refund of the amount of Rs. 5,23,43,364/-. Rs. 66,18,500/- and Rs. 1,79,541/- transferred after the commencement of Corporate Insolvency Resolution Process from Bank Account Nos. 00150350000185 (HDFC Bank), 108010200013040 (Axis Bank) & 911020068030646 (Axis Bank) respectively as detailed in Paragraph No. 13 of the Application being in violation of the moratorium as declared by this Hon'ble Adjudicating Authority in terms of Section 14 of the I&B Code,2016 vide Order dated 17.07.2023 to the account of the Corporate Debtor;*

c) *Pass such other or further order/order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.*

2. **Brief Facts of the case:**

2.1 Upon an application filed by Edelweiss Asset Reconstruction Company Limited under Section 7 of the Code, Neptune Ventures and Developers Private Limited (**'the Corporate Debtor'**) was admitted into Corporate Insolvency Resolution Process (**'CIRP'**) on 17.07.2023 (the **'insolvency commencement date'**) and the Applicant was appointed as the Interim Resolution Professional (**'IRP'**). While admitting the corporate debtor into CIRP vide order dated 17.07.2023 (**'admission order'**), the Adjudicating Authority declared moratorium in terms of section 14 of the Code.

2.2 A public announcement regarding the commencement of the CIRP was published on 19.07.2023 in English and Marathi newspapers.

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The announcement specified 31.07.2023, as the last date for submitting claims. The details of publication are provided as under:

a) Business Standard (English Language) Newspaper:
Published in Mumbai and Pune Edition

b) Navrashtra (Marathi Language) Newspaper
Published in Mumbai, Nagpur, Pune and Nashik Edition.

2.3 The Applicant convened the first Committee of Creditors (**‘CoC’**) meeting on 16.08.2023, and apprised the members that the respondents were uncooperative in providing necessary details about the corporate debtor. These details included information about the Corporate Debtor’s assets, bank accounts, keys to properties forming part of the unsold inventory, and a copy of the sale register. The Applicant required this information to take custody and control of the assets of corporate debtor.

2.4 Consequently, the Applicant filed an application, I.A. No. 4339 of 2023, under Section 19(2) of the Code against the Respondents. This application sought directions to the Respondents to cooperate and provide access to all documents and information requested by the Applicant via emails dated 18.07.2023, 08.08.2023, and 09.08.2023 for proceeding with the CIRP of the corporate debtor. The said application is pending adjudication before this Tribunal.

2.5 The It is submitted that on perusal of bank accounts of the corporate debtor, it was found that following amounts from the three bank accounts of the corporate debtor were transferred without the knowledge and approval of the Applicant during moratorium:

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Sr. No.	Bank Account of Corporate Debtor	Amount (in Rs)
1.	00150350000185 (HDFC Bank)	5,23,43,364
2.	1080102000013040 (Axis Bank)	66,18,500
3.	911020068030646 (Axis Bank)	1,79,541
Total		5,91,41,405

2.6 The Applicant sent email dated 18.09.2023 to the respondents pointing out that amounts have been transferred from the HDFC Bank account No. 00150350000185 after the commencement of moratorium which amounts to violation of section 14 of the Code and requested the respondents to reverse the total amount of Rs. 5,23,43,364/- to the bank account of the CD. Two other similar emails both dated 24.09.2023 were also sent to the respondents requesting reversal of amounts of Rs. 66,18,500/- to the Axis Bank Account No. 1080102000013040 and Rs. 1,79,541/- to the Axis Bank Account No. 911020068030646 respectively. All above three emails are annexed to the present application as *Annexures 'A-3 (Colly)', 'A-4 (Colly)', and 'A-5 (Colly)'* respectively.

Reply by Suspended Directors (Respondent Nos. 1,2 and 3)

3. Affidavit-in-reply dated 05.03.2024 has been filed by Respondent No. 1, which is adopted by Respondent Nos. 2 and 3. The Respondents have submitted as follows:

3.1 The instruments (cheques, demand drafts, pay orders, post-dated cheques) were initiated and issued before the insolvency commencement date. There is no provision in the IBC, including

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Sections 14 and 68 of the Code, prohibiting the encashment of instruments issued before the Insolvency Commencement Date.

3.2 The amounts transacted through these instruments represent debts owed by the Corporate Debtor to third parties primarily comprising of homebuyers seeking refunds for cancelled units and operational creditors. The Corporate Debtor was contractually required to refund money to homebuyers and other third parties; failure to do so would have resulted in potential litigation.

3.3 The Applicant has not provided any evidence showing that the Respondents were wrongfully enriched or siphoned off any amounts. On the contrary the payments were made towards legitimate dues of the homebuyers seeking refunds and to operational creditors. The details of such transactions with date of instrument are as follows:

A) Bank Account No. 00150350000185 (HDFC Bank):

S.N.	Date of Instrument	Name of the Homebuyer/Third Party	Amount (in Rupees)
1.	14.07.2023	Mangalam Stones	19,00,000
2.	14.07.2023	Jash Parag Mehta	12,50,000
3.	14.07.2023	Kailash Kirtikumar Joshi	19,00,000
4.	14.07.2023	Apollo Enterprises	26,50,000
5.	14.07.2023	Global Money Maker Machine	19,00,000
6.	14.07.2023	Palak Parag Mehta	12,50,000
7.	14.07.2023	Fortune Realty	20,00,000
8.	14.07.2023	Heeralal Enterprises	19,00,000

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9.	14.07.2023	Paras K. Mehta	12,50,000
10.	14.07.2023	Unique Buildtech	19,00,000
11.	14.07.2023	Tanish Paras Mehta U/G P K Mehta	42,50,000
12.	14.07.2023	Jash Parag Mehta	36,25,000
13.	14.07.2023	Palak Parag Mehta	26,25,000
14.	14.07.2023	Soham Paras Mehta	6,25,000
15.	14.07.2023	Anjali Impex	21,00,000
16.	14.07.2023	Parag Kirit Mehta HUF	10,00,000
17.	14.07.2023	Parag Mehta	12,50,000
18.	14.07.2023	Ushma Parag Mehta	10,00,000
19.	14.07.2023	Rohini Paras Mehta	10,00,000
20.	14.07.2023	Tanish Paras Mehta U/G P K Mehta	6,25,000
21.	14.07.2023	Soham Paras Mehta	42,50,000
22.	14.07.2023	Paras Kirit Mehta HUF	10,00,000
23.	14.07.2023	Macrotech Developer	14,40,000
24.	14.07.2023	Asha Cahuharaya	22,00,000
25.	14.07.2023	Divisha Internation	23,00,000
26.	14.07.2023	Tirupati Internatio	25,50,000
27.	14.07.2023	Vivek Choudhary	19,00,000
28.	14.07.2023	Makwana Pravinbhai	19,00,000
Total			5,35,40,000

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B) Bank Account No. 1080 102000 13040 (Axis Bank):

S. No.	Date of Instrument	Name of the Homebuyer/Third Party	Amount (in Rupees)
1.	17.03.2023	Fortune Realty	20,00,000
2.	14.07.2023	Vedant Realtors LLP	6,40,000
3.	17.07.2023	Fortune Realty	20,00,000
4.	17.07.2023	Fortune Realty	19,78,500
Total			66,18,500

C) Bank Account No. 911020068030646 (Axis Bank):

S. No.	Date of Instrument	Name of the Homebuyer/Third Party	Amt (in Rupees)
1.	17.07.2023	Mania Mohol	15,000
2.	18.07.2023	Vodafone India Ltd	64,541
3.	26.05.2023	Manifest Elevators	1,00,000
Total			1,79,541

3.4 Lacking access to the records, the Respondents state their inability to furnish copies of the relevant instruments, which are in the IRP's possession. It is submitted that the instruments were issued before the Admission Order and their presentation and encashment are at the discretion of third party.

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Rejoinder by the Applicant, extracted in brief:

4. The Applicant, in its Rejoinder dated 19.09.2024 has denied the accuracy of the transaction details submitted by the Respondents, as the transactions in question occurred after insolvency commencement date. The contention of the Respondents is rebutted by the Applicant, which is summarised as under:
 - 4.1 The bank statements of the corporate debtor provide clear evidence of transactions during period of moratorium. The contention of the Respondent regarding debts owed to third parties is irrelevant as there is breach of the directions for moratorium.
 - 4.2 The Respondents have failed to provide any evidence of a contractual obligation to refund the monies.
 - 4.3 The Respondents have falsified the account statements, misrepresenting transactions as pre-CIRP, thereby demonstrating an intent to deceive the Adjudicating Authority, a violation of Section 68(i)(b) of the Code. The Respondents reliance on the proviso to Section 68(i) is misplaced, as it pertains to a defence against punishment, not liability. They have failed to substantiate the genuineness of the transactions.

Analysis and Findings

5. Heard Ld. Counsel for the parties on both the sides and perused the record.
6. The Applicant has identified various amounts debited in the three bank accounts of the corporate debtor after the admission of the application

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under section 7 of the Code against the corporate debtor and declaration of moratorium by the Adjudicating Authority vide order dated 17.07.2023.

7. As per the provisions of Section 17 of the Code, from the date of appointment of the IRP, the management of the affairs of corporate debtor vests with the IRP, the powers of the board of directors of the corporate debtor stand suspended and its officers and managers are required to report and provide the IRP with access to all necessary documents and records. Section 17 is reproduced for ease of reference:

“17. Management of affairs of corporate debtor by interim resolution professional. —

(1) From the date of appointment of the interim resolution professional, —

- a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;*
- b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;*
- c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;*
- d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.*

(2) The interim resolution professional vested with the management of the corporate debtor, shall—

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- a) *act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any.;*
- b) *take such actions, in the manner and subject to such restrictions, as may be specified by the Board;*
- c) *have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;*
- d) *have the authority to access the books of account, records and other relevant documents of corporate debtor available with Government authorities, statutory auditors, accountants and such other persons as may be specified; and*
- e) *be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.”*

8. We observe that the Respondents did not reply to the emails of the IRP. The Respondents did not cooperate in providing the financial details and the bank details of the corporate debtor. We are also dealing with the non-cooperation by the Respondents as demonstrated in the orders passed by this Tribunal in IA 4339/2023 is discussed in the later part of this order.

9. The Respondents submitted that:

- a. though the amounts were debited after the admission date but the instruments/cheques were issued prior to admission order and therefore there is no violation of section 14 of the code.
- b. Secondly, the payments were made to homebuyers whose units were cancelled, and to the operational creditors towards their legitimate dues, apprehending litigation.

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c. Thirdly, no amount is transferred to the Respondents. Therefore, there is no intent of fraud involved in the above transactions.

10. Therefore, the issue for determination before us is whether there is breach of moratorium by the Respondents and the monies so debited in the bank accounts of the corporate debtor after declaration of moratorium, without the authority of the IRP are required to be restored back to the corporate debtor.
11. The contention of Respondents, regarding no intent of fraud involved in the transactions under question as no amount is transferred to the Respondents is immaterial to decide whether there is breach of moratorium or not.
12. Moreover, the submission that the payments were made to homebuyers or operational creditors cannot be accepted. Once moratorium is declared and IRP is appointed, it is not open to the suspended directors to facilitate the payments to the homebuyers or operational creditors. The suspended board is obligated to disclose all information including the details of cheques, if any, issued by them prior to admission order which have not been encashed till the passing of the admission order. Instead of providing all requisite information, the Respondents did not even cooperate with the IRP in replying its emails and providing the accurate and complete information to the IRP. We are also aware that the Respondents have stated in their reply to IA 4339/2023 that SAP software in which the details were maintained got corrupted and therefore they are not able to access SAP and cannot provide the requisite details to the Applicant. Nonetheless, the submission that all cheques were issued to home buyers and operational creditors towards their legitimate dues is also immaterial to decide whether there was breach of moratorium or not.

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13. To arrive at a conclusion about breach of moratorium, we need to see when were the cheques actually paid.
14. Accordingly, we view that a careful examination of bank account statements of corporate debtor at 'Annexure – A3 Colly' of the petition, will be crucial in determining the validity and legality of these transactions. The plea for restoration necessitates a thorough examination of whether these transfers violated the moratorium and whether they can be reversed to uphold the integrity of the CIRP. Therefore, we have ourselves carefully examined the bank statements with date of debit and cheque numbers and the relevant information provided in the reply, which is provided as under for analysis purpose:

a) Bank Account No. 00150350000185 (HDFC Bank):

Account Balance as on 14.07.2023 was Rs. 14,43,886.71/-

Date of MC Issued / Value Date as per Bank Statement	Name of Homebuyer/ Third Party	Mode of Payment	Chq/Ref. No.	Amount (in Rupees)
18.07.23	Mangalam Stones	MC*	1900	19,00,000
18.07.23	Jash Parag Mehta	MC	1899	12,50,000

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18.07.23	Kailash Kirtikumar Joshi	MC	1898	19,00,000
18.07.23	Apollo Enterprises	MC	1897	26,50,000
18.07.23	Global Money Maker Machine	MC	1896	19,00,000
18.07.23	Palak Parag Mehta	MC	1895	12,50,000
18.07.23	Fortune Realty	MC	1911	20,00,000
18.07.23	Heeralal Enterprises	MC	1903	19,00,000
18.07.23	Paras K. Mehta	MC	1902	12,50,000
18.07.23	Unique Buildtech	MC	1901	19,00,000
19.07.23	Tanish Paras Mehta U/G P K Mehta	FT-DR**	4332	42,50,000

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19.07.23	Jash Parag Mehta	FT-DR	4335	36,25,000
19.07.23	Palak Parag Mehta	FT-DR	4334	26,25,000
19.07.23	Soham Paras Mehta	FT-DR	1920	6,25,000
19.07.23	Anjali Impex	FT-DR	4331	21,00,000
19.07.23	Parag Kirit Mehta HUF	FT-DR	1925	10,00,000
19.07.23	Parag Mehta	FT-DR	1923	12,50,000
19.07.23	Ushma Parag Mehta	FT-DR	4337	10,00,000
19.07.23	Rohini Paras Mehta	FT-DR	4336	10,00,000
19.07.23	Tanish Paras Mehta U/G P K Mehta	FT-DR	4326	6,25,000
19.07.23	Soham Paras Mehta	FT-DR	4330	42,50,000

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19.07.23	Paras Kirit Mehta HUF	FT-DR	1920	10,00,000
20.07.23	Macrotech Developer	CHEQUE PAID- MICR	4338	14,40,000
21.07.23	Asha Cahuharaya	CHEQUE PAID- MICR	4327	22,00,000
21.07.23	Divisha Internation	CHEQUE PAID- MICR	4329	23,00,000
21.07.23	Tirupati Internatio	CHEQUE PAID- MICR	1921	25,50,000
24.07.23	Vivek Choudhary	CHEQUE PAID- MICR	1922	19,00,000
24.07.23	Makwana Pravinbhai	CHEQUE PAID- MICR	4333	19,00,000
Total				5,35,40,000

*MC – Manager’s Cheque

**FT-DR – Fund Transfer – Debt

b) Bank Account No. 108010200013040 (Axis Bank):

Account Balance as on 17.07.2023 was Rs. 4,826.72/-.

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Trans Date/ Value Date	Name of Homebuyer/ Third Party	Mode of Payment	Amount (in Rupees)
18.07.2023	Fortune Realty	RTGS	20,00,000
18.07.2023	Fortune Realty	RTGS	19,78,500
18.07.2023	Fortune Realty	RTGS	20,00,000
24.07.2023	Vedant Realtors LLP	TRF.	6,40,000
	Total		66,18,500/-

c) Bank Account No. 911020068030646 (Axis Bank):

Balance as on 17.07.2023 was Rs. 1,93,145.54

Trans Date/ Value Date	Name of Homebuyer/ Third Party	Cheque Number	Amount (in Rupees)
18.07.2023	Maruti Balaram Mohol	240828	15,000
18.07.2023	Vodafone India Ltd	240829	64,541

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20.07.2023	Manifest Elevators	240801	1,00,000
<u>Total</u>			1,79,541

15. It is noticed from the bank account of HDFC that the opening bank balance as on 14.07.2023 is **Rs. 14,43,886.71**. If we go by the version of the Respondent that the cheques totalling to Rs. 5,35,40,000/- were issued on 14.07.2023 then the respondents were aware that either the cheques would be dishonoured or were in anticipation of some credit amount in the bank account of the corporate debtor. Therefore, it cannot be said that the payment of Rs. 5,35,40,000/- was handed over to the third parties on 14.07.2023, i.e., prior to initiation of CIRP. We note that after payment of above Rs. 5,35,40,000/-, the closing balance was reduced to mere Rs. 2,771.61 as on 24.07.2023. In other words, an amount of Rs. 5,20,98,884.90, was received in the bank account of the corporate debtor during the period from 14.07.2023 to 24.07.2023. A deeper analysis of the statement showed that the amount was credited to the bank account on account of cancellation of earlier MCs issued to different entities/persons. It is apparent that the respondents have used their discretion to cancel some of the earlier issued MCs and to issue fresh MCs on 18.07.2023 in preference to other homebuyers/operational creditors, as claimed by the Respondents.
16. Another startling feature is that most of the payments with value date as 18.07.2023 are paid by MC mode which means Managers Cheque meaning thereby that the instrument was made on the instruction of the Respondents on 18.07.2023, i.e., after imposition of moratorium. Another mode of payment is FT-DR i.e. Fund Transfer by Electronic Mode and payments in this regard are also made after commencement of the CIRP.

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17. In view of the above disturbing features, it is clear that the Respondents have misrepresented about date of instrument. From the bank statement, it is clear that the said instruments, i.e., MC or FT-DR were debited on 18.07.2023 which is a date after commencement of CIRP. For the payments made through cheques on 20.07.2023, 21.07.2023 and 24.07.2023, the Respondents have not placed on record, any document/ evidence to show that the handing over of the instrument was prior to commencement of CIRP under contractual obligation or in ordinary course of business or through ECS mandate/ Auto-Debit. Hence, their submissions are rejected.
18. An analysis of Axis Bank: 108010200013040, shows that all the three payments made to Fortune Realty on 18.07.2023 are through RTGS mode and payment to Vedant Realtors LLP on 24.07.2023 was through electronic transfer. Clearly, the above transaction is after the commencement of CIRP.
19. An analysis of the payment debited in Axis Bank - 911020068030646, we note that Rs. 64,541 is paid to Vodafone Idea Limited – apparently towards telephone/mobile/internet charges which appears to be incurred in the ordinary course of business and can be treated as CIRP cost.
20. Upon considering the entire factual matrix, analysis of the bank statements annexed as *Annexure –‘A3 Colly’* to the Petition and the reply of the Respondents, we have no hesitation to conclude that the amounts debited in the bank account of the corporate debtor post CIRP was made without the knowledge and permission of Resolution Professional and in violation of Section 14 of the Code. In view of the discussions in the preceding paragraphs, the submissions made by the

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Suspended Directors lack credibility, evidence, are unsustainable and hence, rejected.

21. Hence, we hereby allow the application with the following directions:-

- i. The Respondents, jointly and severally are liable and directed to pay **Rs. 6,02,73,500/- (Rupees Six Crores Two Lakhs Seventy-Three Thousand and Five Hundred Only/-)** to the applicant within two months from today with interest at the rate of 9% from the date when amounts were transferred from the account of corporate debtor till the date of actual payment. The payment of interest must also be completed within the stipulated two-month period from today.
- ii. The Registry is directed to serve a copy of this order to the parties in the matter through email as well as speed post.
- iii. With the above observations and directions, the instant Interlocutory Application No. 5026 of 2023 in C.P. No. 800 of 2022 is **allowed** in above terms.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Akshita, L.R.A

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)