

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI**  
**BENCH**

**COURT III**

**I.A. 1259/2022**

**In**

**C.P. No. (IB) 4345/MB/2019**

Under section 43, 45, 50 r/w and section 66 of the Insolvency and Bankruptcy Code, 2016 ("the Code")

Filed by

**Amit C. Poddar**

The Resolution Professional of  
M/s. Prince SWR Systems Pvt. Ltd  
A101/102, 1<sup>st</sup> Floor, Sunshine Plaza  
Naigaum Cross Road, Dadar (East)  
Mumbai- 400014  
Nagpur- 440013

*...Applicant/Resolution Professional*

**Vs.**

**M/s. Prince SWR Systems Pvt Ltd**

Having Registered office at:  
A101/102, 1<sup>st</sup> Floor, Sunshine Plaza,  
Naigaum Cross Road,  
Dadar (East), Mumbai- 400014

*...Respondent No.1*

**Piyush Gangji Chheda**

Having Registered office at:  
601-602, K. N. Building, 360  
Bhandarker Road, Above Pramanik Store  
Matunga (CR Ly)- 40019

*...Respondent No.2*

**Rupal Piyush Chheda**

Having Registered office at:  
601-602, K. N. Building, 360  
Bhandarker Road, Above Pramanik Store  
Matunga (CR Ly)- 40019

*...Respondent No.3*

**Harshvardhan Piyush Chheda**

Having Registered office at:  
601-602, K. N. Building, 360  
Bhandarker Road, Above Pramanik Store  
Matunga (CR Ly)- 40019

*...Respondent No.4*

**IN THE MATTER OF**

M/s. Midas Impex Pvt. Ltd.

*...Petitioner/Operational Creditor*

**Vs**

M/s. Prince SWR Systems Pvt. Ltd.

*...Respondent/Corporate Debtor*

Order Reserved on: **30.08.2023**

Order delivered on: **15.09.2023**

**Coram:**

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

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

**Appearance:**

For the Applicant/RP: Mr. Vikram Nankani a/w. Mr. Rahul  
Pillai i/b. Pragnya Legal

For the Respondent: Ld. Counsel for the Respondent is  
present but did not sign the attendance  
sheet.

**Per: Shri Charanjeet Singh Gulati, Member (T)**

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**ORDER**

1. The above I.A. is filed by the Resolution Professional under section 43, 45, 50 r/w and section 66 of the Insolvency and Bankruptcy Code, 2016 (“the Code”), praying for the following reliefs;
  - a) *This Hon’ble Tribunal be pleased to allow the present IA in terms of section 43, 45, 50 r/w and section 66 of Insolvency and Bankruptcy Code, 2016.*
  - b) *This Hon’ble Tribunal be pleased to take on record the preferential transactions carried out by the Corporate Debtor pursuant to section 43, 45, 50 r/w and 66 of IBC and Regulation 35A of IBBI (CIRP) 2016.*
  - c) *This Hon’ble Tribunal be pleased to consider and if thought fit to declare the Directors being Respondent No.2,3,4 ineligible as per section 29(A)(g) of the IBC 2016.*
  - d) *This Hon’ble Tribunal be pleased to pass an Order directing the Respondent and/or Corporate Debtor to deposit the amount to the extent of Rs. 25,95,437/- (the calculation of the same enclosed) being*

*preferential transactions by contributing to meet the claim of Financial Creditors, Operational Creditors, Government Dues and other insolvency expenses.*

- e) This Hon'ble Tribunal be pleased to pass any other Order in the interest of equity, justice and good conscience.*
- f) This Hon'ble Tribunal be pleased to pass such other and further order as this Hon'ble Tribunal may deem it fit.*

**2. Applicant submissions in briefs are extracted hereinunder;**

- i. The Applicant states that, the Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor had been admitted by this Bench vide Order dated 16<sup>th</sup> April, 2021 in C.P. (IB)- 4345 (MB)/2019 filed under section 9 of Insolvency and Bankruptcy Code 2016("IBC"). Pursuant to such admission vide the order dated 16<sup>th</sup> April, 2021, moratorium was imposed and Interim Resolution Professional viz. Mr. Hirachand Bafna ("erstwhile IRP") was appointed in relation to the above proceedings.
- ii. The Applicant further states that the order for appointment of IRP came to the knowledge of the erstwhile IRP only on 30<sup>th</sup> April, 2021. Thereafter, on 3<sup>rd</sup> May,2021, the erstwhile IRP issued Public Notice in terms of Regulation 6 of the CIRP Regulations in the national edition of Free Press Journal (English Edition) and Navshakti (Marathi Edition), inviting submission of claims from the creditors of the Corporate

Debtor. Pursuant to such Public Announcement made on behalf of the Corporate Debtor, various claims have been received and the Committee of Creditors ("COC") has also been formed.

- iii. The Applicant further states that till date 16 meetings of the CoC have been conducted as per the provisions of Section 24 of Insolvency and Bankruptcy Code, 2016 and various steps have been taken by the erstwhile IRP as well as the Applicant as per the provisions of the IBC.
- iv. The Applicant also states that, in the 2<sup>nd</sup> COC meeting held on 29<sup>th</sup> June, 2021, resolution was passed for appointment of the Applicant as the Resolution Professional, which was subsequently confirmed by its order dated 18<sup>th</sup> October, 2021.
- v. The Applicant also states that pursuant to the appointment of the Applicant as the Resolution Professional vide order dated 18<sup>th</sup> October, 2021, the erstwhile IRP updated the status of the CIRP of the Corporate Debtor and handed over some documents of the Corporate Debtor to the Applicant in the 6<sup>th</sup> COC meeting held on 22<sup>nd</sup> November, 2021.
- vi. The Applicant further states that, the Applicant has thereafter come across Interlocutory Application filed by the erstwhile IRP under Section 43, 45, 50 r/w Section 66 of the IBC on 20 October, 2021 on the following grounds:

- I. NOC given by the Respondent no. 4 for Transfer of trademark of the Corporate Debtor to the Respondent Nos. 2 and 3 for a paltry sum of Rs 50,000/-;
  - II. Debit transactions of amounts totalling to Rs 25,95,437/- from the account of the Corporate Debtor maintained in Dena Bank (now Bank of Baroda, Silvasa Branch) after the admission of CIRP order dated 16<sup>th</sup> March,2022.
- vii. The Applicant also states that the abovementioned Interlocutory Application filed on behalf of the erstwhile IRP bearing Diary No. 2709138045112021 is under scrutiny and is not numbered/registered finally till date. The Advocates of the Applicant also has corresponded with the erstwhile IRP for removal of objections, however the same is still pending final number/ registration. The Applicant craves leave to refer to and rely upon the correspondences exchanged between the Advocates of the Applicant and the erstwhile IRP when relevant.
- viii. The Applicant also states that one of the members of the COC being Standard Chartered Bank has also filed Interlocutory Application No. 2729 of 2021 for the same transaction mentioned hereinabove for transfer of trademark of the Corporate Debtor. The Applicant states that the said Interlocutory Application 2729 of 2021 is pending before this Tribunal. The Applicant further states that at the time of hearing of the Interlocutory Application no. 2729 of 2021 held on 16<sup>th</sup> March, 2022, the Advocates

for the Applicant informed this Hon'ble Tribunal regarding the Interlocutory Application filed by the erstwhile IRP and made a statement that the Applicant supports the abovementioned Interlocutory Application no. 2729 of 2021 filed by Standard Chartered Bank.

- ix. The Applicant also states that in view of the pending registration of the Interlocutory Application bearing Diary no. 2709138045112021, the Applicant has filed the present Interlocutory Application by way of abundant caution and to not delay the proceedings further. The Applicant further states that in view of the order dated 16<sup>th</sup> March, 2022 in IA 2729 of 2021, the Applicant is not seeking reliefs similar to the same transaction to avoid multiplicity of proceedings.
- x. The Applicant also states that pursuant to various correspondences exchanged between the erstwhile IRP and the Respondents, the Finance team of the Corporate Debtor has sent only list of bank accounts without full details through email dated 28<sup>th</sup> June, 2021.
- xi. The Applicant also states that during the visit of erstwhile IRP in the Dadra Nagar Haveli plant of the Corporate Debtor and while inspecting the documents in the plant, the erstwhile IRP came across debit transactions done by the Corporate Debtor after the order of admission of CIRP dated 16<sup>th</sup> April, 2021. The erstwhile IRP thereafter verified this fact by examining the Bank statement of the Account of the Corporate Debtor maintained in DENA BANK (now Bank of

Baroda, Silvasa Branch). The Details of the Account and Debit transactions are as follows:

03.05.2021	Imps/p2a/11231691918/xxxxx	12,000.00
03.05.2021	RTGS-barb202105031123926048-PRIN	3,19,793.00
03.05.2021	RTGS-barb202105031123926072- PRIN	2,63,644.00
04.05.2021	RTGS-barb202105031124964514-PRIN	10,00,000.00
07.05.2021	RTGS- BARB2021050711278188928-PIYU	10,00,000.00
	<b>Total</b>	<b>25,95,437.00</b>

xii. The Applicant also states that this action of the Respondents comes under the purview of the Section 43, 45 and 66 of IBC and the Respondents are accountable for the violation of the Code and also intentionally and fraudulently performed the preferential transaction thereby defrauding the Creditors.

xiii. Hence, the Applicant is now constrained to file this Application seeking directions against the Respondents for smooth functioning of the CIRP and also to protect the interest of the creditors.

**3. The Reply on behalf of Respondent Nos. 2 to 4 are briefly extracted hereinunder:**

i. The affidavit of Reply is filed by Mr. Piyush Gangji Cheeda, Mrs. Rupal Piyush Chheda and Mr. Harshvardhan Piyush

Chheda and submit that the above named Applicant by invoking provisions u/s. 43, 45, 50 r/w. section 66 of Insolvency & Bankruptcy Code, 2016 have filed an Interlocutory Application dated 3<sup>rd</sup> March, 2022 before this Hon'ble Tribunal inter-alia for seeking directions against the Respondents, more particularly mentioned therein.

- ii. At the outset, these Respondents hence tendered their sincere and unconditional apology before this Tribunal and further prayed that no any adverse order may be passed against these Respondents since, the act committed by either of these Respondents do not come under the contraventions of the provisions u/s. 43, 45, 50 r/w. section 66 of Insolvency & Bankruptcy Code, 2016.
- iii. The Respondents submit to deny each and every contents and averment made in the above captioned Interlocutory Application filed by the Applicant against these Respondents, being false, frivolous and bad in law and hence, on these counts alone the present Application should be dismissed.
- iv. The Respondent Nos. 2 & 3 had made the Joint Application by way of Form TM -P inter-alia for transferring of the Trade mark of "PRINCE MUMBAI INDIA" (Originally owned by the Corporate Debtor) in favour of the Respondent Nos. 2 & 3 on or about 21/12/2020, when no preventive Order was passed against the Corporate Debtor and further No Insolvency Resolution Professional was appointed thereon.

- v. The Deed of Assignment w.r.t. adopting the Trade mark name of "PRINCE MUMBAI INDIA" by and between the Corporate Debtor and Respondent Nos. 2 & 3, was also executed on 19/12/2020 i.e. much prior to an appointment of IRP.
- vi. Further the Respondent No.4 has given his No Objection (on the bond paper of Rs. 100/-) on behalf of the Corporate Debtor for transferring the Trade mark of "PRINCE MUMBAI INDIA" in favour of the Respondent Nos. 2 & 3 on or about 08/06/2021 subsequent to the admission of the Company Petition and during the pendency and final adjudication of the CIRP proceedings, believing that the Trademark name of "PRINCE MUMBAI INDIA" has already been transferred in the joint name of respondent Nos. 2 & 3 long back i.e. somewhere in the month of December, 2020 itself and the No Objection was required just to complete the legal formalities to that effect.
- vii. That despite transferring the name of the registered Trademark "PRINCE MUMBAI INDIA" in favour of Respondent Nos, 2 & 3, none of these Respondents have ever taken or made any attempt to take any monetary benefit out of the said Trademark till date.
- viii. Further these Respondents submit that w.r.t. to the Debit transactions of amounts totalling to Rs. 25,95,437/- from the account of the Corporate Debtor, it can be seen on

records that the said amount is utilised by the ex-directors (Respondents Nos. 2 to 4) of the company for making the legitimate payment of the Salary / Wages of the employees of the Corporate Debtor. As per the law also even after an appointment of the IRP, it is the primary responsibility of the IRP to make sure that the Corporate Debtor shall be a going concern and all essential expenses are required to be made, which is required to be made on following basis without any interruption of whatsoever nature since, making the payment to the Workers / employees of the Corporate Debtor is an essential expenses however, those amount have been paid by the ex-directors of the Corporate Debtor under bonafide impression that the company shall be a going concern unit.

- ix. These Respondents submit that these Respondents are totally in the hands of this Hon'ble Tribunal and by tendering their sincere and unconditional apology before this Tribunal, state that whatever the act have been committed by them jointly and / or severally was totally because of the ignorance of law and so also totally unintentional and hence, these Respondents are approaching this Tribunal and praying for its leniency against them and these Respondents may be discharged, in the interest of Justice by disallowing the above Interlocutory Application.
- x. Further the Respondents state that these Respondents are ready and willing to do the compliance and so also to

complete all the legal formalities in order to restore the Trademark "PRINCE MUMBAI INDIA" in the name of Corporate Debtor.

### **FINDINGS/OBSERVATIONS**

4. The facts of the case, averments in the Application and Affidavit-in-Reply have been carefully perused and considered. At the outset after considering all the facts and circumstances, it is observed that though this Interlocutory Application had been filed multiple sections viz. 43, 45 50 r/w section 66 of the IBC, the issues and facts clearly falls under Section 66 of the code. Accordingly, the instant Application is dealt herewith. The oral arguments of the Ld. Counsel for the Applicant has also been carefully considered. It is the fact of the case that the CIRP of the Corporate Debtor had been admitted by this Bench vide order dated 16.04.2021 in C.P. (IB)-4345(MB)/2019 filed under Section 9 of the IBC. It is also the fact that pursuant to CIRP admission order dated 16.04.2021 moratorium was imposed within the meaning of Section 14 of the IBC, which states that hereinunder-

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;*

- 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.*

<sup>1</sup>*[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.*

<sup>1</sup>*[(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;]*

<sup>2</sup>*[(3) The provisions of sub-section (1) shall not apply to--*

<sup>3</sup>*[(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.”*

5. It is also the fact that the Corporate Debtor was carrying on business under Trade Mark of "PRINCE MUMBAI INDIA" since 16.04.1987. The Trade Mark has been registered with Trade Mark Registry and it was renewed vide a renewal certificate for a period of 10 years from 28.05.2019. It is also seen that the Corporate Debtor had entered into a Deed of Assignment dated 19.12.2020, whereby the Corporate Debtor had agreed to sale the Trade Mark to Respondent Nos. 2 & 3 i.e. the Directors of the Corporate Debtor, for a sum of Rs. 50,000/-. Further in spite of the moratorium order passed by this Tribunal on 16.04.2021 the Respondent No. 4 issued No Objection Letter dated 08.06.2021 on behalf of the Corporate Debtor representing to the Trade Mark registry that the Corporate Debtor had no objection to transfer the Trade Mark to the Respondent Nos. 2 & 3. On the basis of Deed of Assignment and No Objection Letter as hereinabove mentioned, the Trade Mark Registry transferred the Trade Mark in the name of the Respondent Nos. 2 & 3.
  
6. From the fact as aforesaid and the chronology of the events, it is clear that after the admission order passed on 16.04.2021 in the Company Petition (IB)-4345(MB)/2019, CIRP was initiated against the Corporate Debtor and consequently the moratorium under Section 14 of IBC was also imposed. Subsequent to the order dated 16.04.2021, the Committee of Creditors was constituted on 14.05.2021 and the first meeting of the COC was held on 29.05.2021. It is well after that the Respondent No.3

executed a Consent/No Objection Letter on behalf of the Corporate Debtor for transferring of the Trade Mark on 08.06.2021, which is in clear violation of the moratorium under Section 14 of the IBC.

7. Transferring of the any assets which then belong to the Corporate Debtor to any other person could only be considered to be a nullity and bad in law. The action particularly of Respondent No.3 as also of Respondent Nos. 2 & 3 being in contravention to the provisions of Section 14, therefore, cannot have any legal sanctity. The Respondent in their Affidavit-in-Reply have clearly admitted to have committed such violation and have tendered unconditionally apology and have further undertaken to do the compliance and so also to complete all legal formalities in order to restore the Trade Mark in the name of the Corporate Debtor.
8. Under these facts and circumstances, the assignment of the Trade Mark done in favour of Respondent Nos. 2 & 3 by issue of Consent/NOC on behalf of the Corporate Debtor by Respondent No.4 is hereby **annulled** and from the date on which the Trade Mark was transferred in the name of the Respondent Nos. 2 & 3 in the Registered registry of Trade Mark, it would deemed to be belonging to the Corporate Debtor as if there had been **no assignment of the Trade Mark ever taken place.**
9. The Ld. Counsel appearing for the Applicant also pointed out certain debit transactions which have taken place in the accounts of the Corporate Debtor maintained by Dena Bank (now Bank of Baroda, Silvassa Branch) from 03.05.2021 to 07.05.2021 totalling

to Rs. 25,95,437/-. The Applicant has stated that such action of the Respondents comes under the purview of the Section 43, 45 and 66 of the IBC and the Respondents are accountable for the violation of the Code and have intentionally and fraudulently performed the preferential transaction which has the effect of the frauding the creditors.

10. In response thereof the Respondents in their Affidavit-in-Reply have submitted that the said amount was utilised by the Respondent Nos. 2 to 4 of the Company for making the legitimate payment of the salary, wages of the employees of the Corporate Debtor. It has also been submitted that it is primary responsibility of the IRP to make sure that the Corporate Debtor shall be going concern and all essential expenses are required to be made including legitimate payments to workers/employees of the Corporate Debtor.
11. In this regard, it is stated that the CIRP was initiated against the Corporate Debtor vide order dated 16.04.2021 by this Bench and moratorium within the meaning of Section 14 of the IBC was also imposed. Mr. Hirachand Nemichand Bafna was then appointed as the IRP who after coming to the knowledge about he being as appointed as IRP and of order dated 16.04.2021 of this Bench on 30.04.2021, issued Public Notice in terms of Regulation 6 of the CIRP Regulations in the national edition of Free Press Journal in English and Navshakti in Marathi on 03.05.2021.
12. From the dates of the debits in the Bank account, it is seen that it is from 03.05.2021, on which date Public Notice in terms

of Regulation 6 of CIRP Regulation was published in the news paper and the Respondents undertook the transactions of money and transferred amount totalling of Rs. 25,95,437/- from 03.05.2021 to 07.05.2021. It is therefore clear that these transactions have taken place and the Respondent have withdrawn money from the Bank account only from the date of the public notice issued in the news paper in terms of Regulations. The submissions of the Respondents that such money was utilised for the legitimate payment of salary, wages of the employees of the Corporate Debtor is considered to be a lame excuse as neither the Respondents were required to do nor there is any documents placed on record to prove or authenticate such submission of the Respondent Nos. 2 to 4.

13. Under these facts and circumstances, the action of the Respondents in transferring the total amount of Rs. 25,95,437/- from the Dena Bank account from 03.05.2021 to 07.05.2021, is considered to be within the purview of Section 66 of the IBC.
14. Accordingly, the Respondent Nos. 2 to 4 are directed to refund of the amount of Rs. 25,95,437/- as claimed by the Resolution Professional in his application, within 4 weeks from the date of uploading of the order, to the account of the Corporate Debtor maintained and managed by the Resolution Professional. Furthermore, the Respondent Nos. 2, 3 and 4 have been found to be undertaking fraudulent transactions within the meaning of Section 66 of the Code, the Respondent Nos. 2, 3 and 4 are declared ineligible in terms of Section 29(A)(g) of the IBC.

15. With the above observations and directions, the instant Interlocutory Application is **allowed** and stands **disposed of**.

**Sd/-**  
**Charanjeet Singh Gulati**  
**MEMBER (TECHNICAL)**

*---Rajeev---*

**Sd/-**  
**Lakshmi Gurung**  
**MEMBER (JUDICIAL)**