

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 515 of 2025

[Arising out of the Impugned Order dated 04.02.2025 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench in I.A. No. 1833 of 2019 in CP (IB) No. 2295/MB/2018]

In the matter of:

MR. SUNIL GUTTE

PROMOTER AND SUSPENDED DIRECTOR

RESIDENT OF:

R/o E501, Satellite Tower,
Koregaon Park Annexe,
Mundwa, Pune-411001

...Appellant

Versus

1. MR. AVIL MENEZES

LIQUIDATOR

FOR M/S. SUNIL HITECH ENGINEERS LTD.

HAVING OFFICE AT:

106, 1st Floor, Kanakia Atrium 2,
Cross Road A, Behind Courtyard Marriott,
Chakala, Andheri East,
Mumbai, Maharashtra – 400093.

...Respondent No.1

2. DPRS INFRA DEVELOPERS PVT. LTD.

HAVING OFFICE AT:

H. No. 1664, Ground Floor,
Mangolpuri Landmark Near Madrashi Mandi
New Delhi – 110083.

.... Respondent No. 2

3. RAYON INFRASTRUCTURE PVT. LTD.

HAVING OFFICE AT:

10402/3, Gali No. 3, Furniture Block,
Paharganj, New Delhi – 110055.

.... Respondent No. 3

4. NAVNEESH TRADERS PVT. LTD.

HAVING OFFICE AT:

1st Floor, Bidhail, Farrukhabad,
Fatehgarh, Uttar Pradesh – 209601.

.... Respondent No. 4

5. SHREEHARI ASSOCIATES PVT. LTD.

HAVING OFFICE AT:

Plot No. 36, Gut No. 41,
Golwadi Pathan Waluj Link Road
Aurangabad – 431005.

.... Respondent No. 5

6. MR. HARSHAVARDHAN KAUSHIK

CHIEF FINANCIAL OFFICER

HAVING OFFICE AT:

R/o 6th Floor, C-WING,
Met Educational Complex,
GEN. A.K. Vaidya Marg,
Bandra Reclamation,
Bandra (W), Mumbai.

.... Respondent No. 6

Present:

For Appellant : Ms. Honey Satpal, Mr. Akash Agarwalla, Ms. Pooja Singh and Mr. Kanishk Khollar, Advocates.

For Respondent : Mr. J. Rajesh, Mr. Dhruvad Vaghani, Md. Arsalam Ahmad ad Mr. Yashwardhan Aggarwal, Advocates.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 (**IBC** in short) by the Appellant arises out of the Order dated 04.02.2025 (hereinafter referred to as **Impugned Order**) passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-I) in M.A. No. 1833 of 2019 in CP (IB) No. 2295/MB/2018. By the impugned order, the Adjudicating Authority has allowed M.A. No. 1833 of 2019 filed by the Resolution Professional-Respondent No.1 and set aside certain transactions made by the Appellant and Respondent No.6 with Respondent Nos.2 to 5 and issued directions holding the Appellant and Respondent Nos. 2 to 6 to be jointly and severally liable for refunding the sums of money involved in the said transactions to the asset of the Corporate Debtor. The Adjudicating Authority has also directed that IBBI be kept informed for initiation of

appropriate proceeding under Section 74(1) of IBC on the Appellant and Respondent No. 2 to 6 for having breached the moratorium provision. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant- ex promoter of M/s. Sunil Hitech Engineering Ltd.

2. The brief facts in the present case which are necessary to be noticed for deciding the matter are as follows:-

- M/s. Sunil Hitech Engineering Limited was admitted into Corporate Insolvency Resolution Process (**'CIRP'** in short) under Section 7 of IBC on 07.09.2018. The order admitting Section 7 application was pronounced by NCLT on the same date but was delivered and purportedly uploaded on the website on 10.09.2018. By the same orders, the Adjudicating Authority while admitting the Corporate Debtor into the rigours of CIRP, also appointed an Interim Resolution Professional (**'IRP'** in short).
- The IRP sent a notice on 14.09.2018 to the Suspended Management of the Corporate Debtor regarding taking over the management of the Corporate Debtor by him in terms of the order of the Adjudicating Authority dated 07.09.2018. Subsequently, the Resolution Professional (**'RP'** in short) was appointed on 27.11.2018.
- The RP took notice that the Appellant-ex promoter of the Corporate Debtor and Respondent No.6-Chief Financial Officer of the Corporate Debtor had made certain unauthorised payments to Respondent Nos.2 to 5 amounting Rs.11.01 crore from 10.09.2018 onwards.

- The RP sent letter to the Appellant seeking details regarding the unauthorised payments made by the Corporate Debtor between 10.09.2018 to 14.09.2018.
- The Appellant and the Respondent No.6 informed the RP on 09.04.2019 that the transactions entered into by them between 10.09.2018 and 14.09.2018 were made to maintain the Corporate Debtor as a going concern. The payments were routine in nature and done by following the Standard Operating Procedure for payment as followed in the past.
- RP filed an M.A. No. 1833 of 2019 in the Company Petition No 2295 of 2018 against the Appellant and Respondent Nos. 2 to 6 praying for directions to be issued for them to refund the entire amount of Rs.11.01 crore that was released after commencement of CIRP.
- Adjudicating Authority allowed M.A. No. 1833 of 2019. Aggrieved by the impugned order, the present appeal has been preferred by the former promoter of the Corporate Debtor.

3. Making her submissions, Ms. Honey Satpal, Ld. Advocate for Appellant submitted that the RP had identified certain transactions (hereinafter referred to as **‘impugned transactions’**) made by the Appellant and Respondent No.6 with Respondent Nos. 2 to 5 and held them to have been unauthorisedly made from the assets of the Corporate Debtor after commencement of the CIRP of the Corporate Debtor. The RP had divided the entire lot of these unauthorised payments amounting Rs.11.01 crore into two phases of which the first phase included transactions during period of 10.09.2018 to 14.09.2018 while the second phase was for transactions during 27.09.2018 to 10.11.2018. While

admitting that these transactions did happen, it was contended that these transactions were routinely done in the course of ordinary business and not done for purposes of unjust enrichment or personal gain of the Appellant or with any other *malafide* intention.

4. Explaining the background of the impugned transactions, it was pointed out that Respondent Nos. 2 to 5 were long term service providers/vendors of the Corporate Debtor who were having an ongoing and continuing contract with the Corporate Debtor and therefore entitled to receive their dues for the goods and services provided by them. Since the IRP took time to take over the management of the Corporate Debtor which happened on 14.09.2018, had the Appellant and Respondent No.6 not cleared the outstanding dues of these four vendors, the running of the Corporate Debtor as a going concern would have run the risk of facing an abrupt halt. Since these payments were made to further the objective of the IBC of keeping the Corporate Debtor running as a going concern, the Adjudicating Authority could not have treated the transactions as not being in the ordinary course of business.

5. It was emphatically asserted that these payments cannot be treated as unauthorised since these payments/transactions had been approved by the management of Corporate Debtor even before being admitted into CIRP. These payments were further in respect of invoices issued upon the Corporate Debtor by Respondent Nos. 2 to 5 before the commencement of CIRP. Even the cheques which were made over to Respondent Nos. 2 to 5 were dated prior to 10.09.2018. While not denying that the cheques were encashed after CIRP had commenced, it was argued that it is not for the Appellant to explain why these cheques were encashed by Respondent Nos. 2 to 5 after commencement of

CIRP proceedings. In any case it was incumbent upon the IRP to have issued instructions to all the banks not to entertain transactions made by the Corporate Debtor post 10.09.2018 without their prior approval. If the IRP did not take any pre-emptive action to ensure stop payments in respect of the cheques routinely issued before the commencement of CIRP, the Appellant cannot be held responsible for encashment of these cheques post commencement of CIRP. It is also their case that on the joining of the IRP, the Appellant had shared with the IRP the bank statements with regard to all payments made by them in the overall interest of the Corporate Debtor and the stakeholders. Further, as proof of their bonafide, it was contended that the Appellant had also issued directions to the officers of the Company not to make any payments on behalf of the Corporate Debtor without the permission of IRP w.e.f. 14.09.2018.

6. It has also been contended that the RP has not made any allegation that Respondent Nos. 2 to 5 were related parties of the Corporate Debtor. The RP has also not brought anything on record to show that IRP had raised objections to the alleged unauthorised transactions. The very fact that the IRP had not raised objections shows that IRP was convinced that these transactions were necessary and critical for maintaining the Corporate Debtor as a going concern. Under such circumstances the Adjudicating Authority could not have allowed the M.A. 1833 of 2019 filed by the RP seeking reversal of these transactions made with Respondent Nos. 2 to 5. It was also pointed out that the RP had arbitrarily singled out Respondent Nos. 2 to 5 to refund the amounts paid to them at a time when there were several other

vendors/suppliers to whom payments had also been released but from whom refunds had not been sought.

7. Shri J. Rajesh, Ld. Advocate representing the Respondent No.1-RP rebutted the arguments canvassed by the Appellant to contend that the Appellant and Respondent No.6 had made these payments from the account of the Corporate Debtor after commencement of CIRP in contravention of Section 14(1)(b) of IBC which prohibits any payment to be made by the suspended management after commencement of CIRP. It was submitted that these payment transactions were made from the account of the Corporate Debtor in two phases. The first phase was between 10.09.2018 to 14.09.2018 and the second set of transactions occurred between 27.09.2018 to 10.10.2018. These transactions included the unauthorised payments made by the Appellant to Respondent Nos. 2 to 5 amounting to Rs 11.01 Cr. after commencement of CIRP. It was asserted that once the CIRP order is pronounced, the legal consequences flow from the date of pronouncement of such order. The operation of the order thus became effective from the date of pronouncement which took place on 07.09.2018 notwithstanding the fact that the order was uploaded on 10.09.2018. The RP had therefore filed M.A. No. 1833 of 2019 seeking the setting aside of the payments made by the Appellant and Respondent No.6 to Respondent Nos. 2 to 5. It was asserted that the Adjudicating Authority had rightly held the Appellant and Respondent No. 6 were jointly and severally liable alongwith Respondent Nos. 2 to 5 to return the money which had been unauthorisedly transferred from the account of the Corporate Debtor in breach of moratorium.

8. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully.

9. The short question for our consideration in the facts of the present case is whether the payments made by the Appellant after commencement of CIRP constituted a breach of the provisions of moratorium and whether there was any infirmity in the impugned order directing the reversal of the impugned transactions by the Appellant and Respondent No. 2 to 6 to the assets of the Corporate Debtor.

10. Before we proceed to dwell upon the above issues for consideration as outlined by us, it will be useful to first glance through some of the relevant statutory provisions of the IBC.

11. We will begin with finding out how ‘insolvency commencement date’ has been defined in IBC and next see how and when moratorium is declared and what prohibitions follow the declaration of moratorium. The relevant statutory provisions are as extracted below:

Section 5: Definitions.

In this Part, unless the context otherwise requires, —

(12) “insolvency commencement date” means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be;

Section 13: Declaration of moratorium and public announcement.

13. (1) *The Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall, by an order—*

(a) declare a moratorium for the purposes referred to in section 14;

(b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15; and

(c) appoint an interim resolution professional in the manner as laid down in section 16.

(2) The public announcement referred to in clause (b) of sub-section (1) shall be made immediately after the appointment of the interim resolution professional.

Section 14: Moratorium.

14. *(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;

(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.

[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.

[(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.]

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

[(a) such transactions, agreements or other arrangements as may be notified⁴ 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.

12. From a bare reading of the above statutory provisions, it becomes clear that as soon as an application of CIRP is admitted under Section 7, 9 or 10 of the IBC, it marks the commencement of insolvency. Section 13(1)(a) of the IBC stipulates that the Adjudicating Authority on admission of a Section 7, 9 or 10 application is inter alia required to impose a moratorium for the purposes referred to in Section 14 and appoint an IRP. In terms of Section 14 of IBC, moratorium kicks into effect as soon as the Corporate Debtor is admitted into CIRP proceedings. In other words, moratorium becomes enforceable from the date the CIRP application is admitted or as indicated in the said order. The provisions of moratorium *inter-alia* provides for a stand-still period during which Financial or Operational creditors cannot resort to individual debt

enforcement action in respect of debts which had accrued during the period prior to commencement of CIRP proceedings. Once moratorium has been declared upon the admission of Sections 7, 9 or 10 application, it is not open for any Financial or Operational creditor to recover any amount from the account of the Corporate Debtor except by filing claims through the resolution framework. A logical corollary that follows is that the suspended management of the Corporate Debtor is also strictly prohibited from directly or indirectly deploying the funds of the Corporate Debtor unilaterally, without the authorisation of IRP, to clear any dues of any Financial Creditor or Operational Creditor.

13. It may also be constructive to note at this juncture the role of IRP/RP once CIRP of the Corporate Debtor commences. Section 17 of IBC *inter alia* provides that on the commencement of the insolvency process the IRP has to manage the operations and business of the Corporate Debtor. The officers and managers of Corporate Debtor shall report to IRP as the Board of Directors stand suspended. Section 18 provides that IRP shall monitor the assets of the Corporate Debtor and manage its operations as well as take control and custody of the assets of the Corporate Debtor until an RP is appointed by the committee of creditors. Section 20 of IBC provides that it is the duty of the IRP to ensure that the Corporate Debtor continues to be a going concern. Section 25 provides that it shall be the duty of the RP to protect and preserve the value of the assets of the Corporate Debtor and be responsible for the continued business operations of the Corporate Debtor.

14. Coming to the facts of the present case, when we look at the order of the Adjudicating Authority dated 07.09.2018 which was delivered on

10.09.2018 admitting the Corporate Debtor into CIRP, the said order clearly stated the effective date of moratorium to be 10.09.2018. For easy reference, the declaration of moratorium in this order has been extracted as below:

“12. IV. That the order of moratorium shall have effect from 10.09.2018 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under Sub-section(1) of Section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.”

15. Now that we have set out the relevant statutory provisions and the effective date of moratorium as ordered by the Adjudicating Authority in the present case, we may now look at the sequence of events on when these impugned transactions transpired and thereafter analyse whether these impugned transactions were statutorily permissible from the perspective of moratorium.

16. We notice that after commencement of CIRP on 07.09.2018, certain payment transactions were made from the account of the Corporate Debtor in two phases. The first phase was between 10.09.2018 to 14.09.2018 amounting to Rs 9.54 Cr. The details of these transactions have been placed at pages 127 to 138 of the Appeal Paper Book (**“APB”** in short). The second set of transactions which occurred between 27.09.2018 to 10.10.2018 amounted to Rs 6.80 Cr. as has been placed at page 139 of APB. These two sets of transactions aggregated to an amount of Rs 16.35 Cr. However, from out of these transactions, the RP had sought to set aside twelve payments only and these impugned transactions were made by the Appellant to Respondent Nos. 2 to 5 amounting to Rs 11.01 Cr. The rest of the payments amounting

Rs 5.34 cr have been allowed as these were purportedly made towards workers dues, salaries, wages, statutory dues etc.

17. For sake of convenience, the impugned transactions made by the Appellant to Respondent Nos. 2 to 5 for which the RP had sought the directions of the Adjudicating Authority to be set aside is reflected in the chart of payments given below:

S. No.	Party Name	Date of payment	Mode	Amount (INR)
1.	Respondent No. 2 (DPRS Infra Developers Pvt. Ltd.) (total - 1,07,32,154/-)	06.10.2018	Cheque	1,07,32,154/-
2.	Respondent No. 3 (Rayon Infrastructure Pvt. Ltd.) (total - 4,20,67,846/-)	06.10.2018	Cheque	2,22,67,846/-
		08.10.2018	Cheque	1,98,00,000/-
3.	Respondent No. 4 (Navneesh Traders Pvt. Ltd.) (total - 3,81,80,000/-)	10.09.2018	RTGS	41,00,000/-
		11.09.2018	RTGS	43,00,000/-
		12.09.2018	RTGS	1,30,00,000/-
		12.09.2018	RTGS	17,80,000/-
		14.09.2018	RTGS	1,50,00,000/-
4.	Respondent No. 5 (Shreehari Associates Pvt. Ltd.) (total - 1,92,00,000)	10.09.2018	RTGS	7,00,000/-
		12.09.2018	RTGS	95,00,000/-
		14.09.2018	RTGS	75,00,000/-
		14.09.2018	RTGS	15,00,000/-
Total				11,01,80,000/-

18. From the above chart, we notice that 9 out of 12 payments were made by RTGS which happened between 10.09.2018 to 14.09.2018. Keeping in view that the order of the Adjudicating Authority admitting Section 7 application was 07.09.2018 and moratorium was declared with effect from 10.9.2018, it is unambiguously clear that all the 9 RTGS payments were made on dates which were after the commencement of CIRP as well as after declaration of

moratorium. The balance three payments were made by cheque. The date of issue recorded on two cheques is 06.09.2018 which is prior to the commencement of CIRP as well as the date of moratorium. The third cheque was issued on 08.09.2018 which date fell after commencement of CIRP but before declaration of moratorium. Nevertheless, it is extremely significant and pertinent to note that these three cheques were admittedly encashed by the Respondents No.2 to 5 after the CIRP commencement date as well as post the declaration of moratorium. This is further validated by the fact that Respondent No. 5 in their communication addressed to the RP dated 18.04.2019 has admitted that payments were received from the Corporate Debtor after the initiation of CIRP. This may be seen at page 186 of the APB.

19. Now that we have familiarised ourselves with the relevant statutory provisions and the chronology of the impugned transaction, we proceed to find out whether these impugned transactions made by the suspended management of the Corporate Debtor after commencement of CIRP were tenable within the statutory construct of IBC or were statutorily impermissible in view of provisions of moratorium as provided under Section 14 of IBC.

20. At the outset, it may be necessary to find out whether the impugned transactions were authorised by IRP. We notice that the RP had issued an email on 08.12.2019 to the IRP seeking confirmation as to whether these payments made by the Appellant and Respondent No.6 were authorised by IRP or not. In response, the IRP had clarified that all payments made by him had been duly approved by the CoC and all these CoC approved payments were disbursed by him only through the UCO Bank account. It is significant to note that the payments in the impugned transactions were made by

Appellant and Respondent No. 6 not from UCO Bank account but from some HDFC Bank account of the Corporate Debtor. This clearly shows that the IRP had not authorised these payments. Moreover, we also notice that the Appellant had admittedly informed the IRP for the first time regarding these payments made to Respondent Nos. 2 to 5 only on 14.09.2018 which shows that the payments were prior to taking over of the charge of the Corporate Debtor by the IRP and therefore were done bereft of the prior permission or authorisation by the IRP.

21. Now that we have satisfied ourselves that the payments had been made unauthorisedly by the Appellant sans the prior approval of IRP, we also take notice from the material placed on record that the RP on 29.03.2019 wrote to the Appellant intimating that the impugned transactions were made after CIRP commencement and without the authority of IRP. The Appellant had offered their explanation to the RP on 09.04.2019 on this count as placed at pages 151-152 of APB, the relevant portions of which are as reproduced below:

Date: 09/04/2019

*"To,
Mr. Ashish Arjunkumar Rath, i
Resolution Professional for Sunil Hitech Engineers Limited,
Dear Sir,*

*Re: Notice dated March 29, 2019 received in respect of payments made by Sunil Hitech Engineers Limited ("Company") after initiation of corporate insolvency resolution process of the Company.
("Notice")*

Sub: Reply to the said Notice.

B. *The Hon'ble National Company Law Tribunal, Mumbai ("NCLT") vide its order delivered on September 10, 2018 ("Admission Order") commenced the corporate insolvency resolution process ("CIRP") of the Company as per the provisions of Insolvency and Bankruptcy Code, 2016 ("IBC") and appointed Mr. Harshad Shrikant Deshpande as the interim resolution professional ("IRP"). By its subsequent order dated*

November 27, 2018, the Hon'ble NCLT has appointed you (Registration No IBBI/IPA-001/IP-P00568/2017-18/11010) BDO India LLP, The Ruby- Level 9, NW Wing, Senapati Bapat Marg, Dadar - West, Mumbai, Maharashtra 400028 India, as the resolution professional ("Resolution Professional") for the Company.

E. The payments have been made by the Company to run the affairs as a going concern and in furtherance of interest of the Company and the other stakeholders. The intention was to run the Company till the IRP takes charge which it did by way of the Take - Over Notice. Therefore, any payments made before Take - Over Notice were not made in violation of the IBC and the Admission Order.

F. I submit that the Admission Order suspended the powers of the Board and not the actions of the officers of the Company. Therefore, the officers of the Company were completely justified in making the aforesaid payments. Further, the officers took direction from the erstwhile board of directors of the Company until the IRP took charge of the Company on September 14, 2019. The account was opened by the officers of the Company on the authority given by the board of directors of the Company and was being used in the routine operations of the Company.

H. Further, as the Company had duly directed the officers of the Company to not make any payment without the permission of the Company, I am not liable under Section 66, Section 68 and Section 74 of the IBC. I have neither committed any act of fraud or concealment of property nor have I contravened the moratorium.

I. In light of the aforesaid facts, I submit that I have not committed any violation of the IBC and the Admission Order and therefore request you to not initiate any proceeding against me in the NCLT as any such action against me is unfair and is totally unwarranted. Also, I hereby request you to have a meeting with me anytime next week as may be convenient to you, which may be communicated to me, to explore the possibility of amicably resolving the matter.

Sunil Ratnakar Gutte
Promoter, Sunil Hitech Engineers Limited”

(Emphasis supplied)

22. Perusal of the above letter shows that that the Appellant has not denied having made these RTGS and cheque payments to Respondent Nos. 2 to 5. There is no averment contained therein that these payments had either been authorised by the IRP. The ostensible reason attributed for making these

payments was that these payments were made in the ordinary course of business to run the day to day affairs of the Corporate Debtor as a going concern and had been made before IRP could take charge. The other ground cited was that even if the powers of the Board of Directors stood suspended, it did not suspend the actions of the officers of the Corporate Debtor.

23. This brings us to examine the legal tenability of the grounds raised by the Appellant in making these impugned transactions from the account of the Corporate Debtor without the authorisation of the IRP and in the backdrop of the CIRP admission order pronounced on 07.09.2018 which was delivered on 10.09.2018 and the declaration of moratorium shown therein as 10.09.2018.

24. We have already noticed the statutory construct of IBC with regard to declaration of moratorium and appointment of IRP. It is a well-settled principle of interpretation of statutes that the meaning of the language employed by the legislature in a statutory provision has to be given effect to in terms of the plain wordings of the statute. This precludes any scope for altering the meaning of the language contained in the statute. On a plain reading of the language employed in Sections 13(1) and 14 of IBC, it is unequivocally clear that it is statutorily mandated that on the admission of a Corporate Debtor into CIRP by the Adjudicating Authority alongwith orders for appointment of IRP, the Adjudicating Authority shall by an order declare a moratorium. Further when we go deeper into the moratorium provision, we find that in terms of Section 14(1)(b) of IBC, once moratorium has been declared upon admission of Section 7 application, it is not open for any person to recover any amount from the account of the Corporate Debtor. From a bare reading of Section 14(1)(b), the legislative intent seems to be quite clear that during the

period of moratorium qua the Corporate Debtor, there shall be no transfer, encumbrance, alienation or disposal of the assets or any legal right or beneficial interests by the Corporate Debtor during the moratorium. Needless to add, the provisions of Section 14(1)(b) of IBC are very tightly framed with the reason that moratorium is declared to serve the purpose of keeping the assets of the Corporate Debtor together during the insolvency resolution process so as to facilitate the timely, orderly and efficient completion of the resolution process for revival of the Corporate Debtor.

25. Once moratorium is declared, the suspended management of the Corporate Debtor has to willy-nilly and mandatorily abide by this clear and express provision contained in the IBC statute and cannot raise grounds of exception to the applicability of Section 14(1)(b) of IBC. Merely by advocating the criticality of clearing payments in the ordinary course of business to make the Corporate Debtor continue running as a going concern cannot constitute sufficient mitigating circumstances for not giving effect to the statutory provisions of moratorium as contained in Section 14. Once declaration of moratorium after admission of the Section 7 has been made, the said declaration cannot be seen as one which can be suspended or made inoperative or kept in abeyance for any reason including that of equity. The question of intent and motive behind allowing the impugned transactions is irrelevant and immaterial in view of the clear language of the statutory provision of Section 14 prohibiting such a payment after commencement of CIRP and declaration of moratorium. We have no doubts in our minds that the suspended management has to work within the confines of the IBC framework.

26. Any action contrary to the provisions of moratorium would vitiate the resolution process of the Corporate Debtor and thereby render itself illegal and perverse. From our foregoing discussions, it becomes amply clear that there is no dispute that all the RTGS payments were made after commencement of CIRP as well as after the declaration of moratorium. Howsoever, noble, genuine or well-meaning may have been the motive for the Appellant in releasing payments to the Respondent Nos. 2 to 5 after commencement of CIRP and declaration of moratorium, the statutory provision of moratorium as it stands, puts a clear and unambiguous embargo on releasing such payments. We are therefore of the considered view that all the nine RTGS payments were perverse and it was the statutorily incumbent upon the RP to seek reversal of these payments and bring it back to the corpus of the Corporate Debtor. The RP in seeking reappropriation of the said amount has acted in conformity with the IBC framework. We therefore do not find that the Adjudicating Authority committed any error in holding these RTGS payments to have been made in violation of the statutory provisions and consequentially directing the Appellant and Respondent Nos. 2 to 6 to reverse these payments to the kitty of the Corporate Debtor after holding them to be jointly and severally viable.

27. We now proceed to dwell on the tenability of the three cheque payments which were integral to the impugned transactions. We have already taken notice that two cheques were issued on 06.09.2018 which was a day before commencement of CIRP and also before moratorium became effective on 10.09.2018. The third one was dated 08.09.2018 which also pre-dated moratorium which took effect on 10.09.2018. However, all the three cheques

were encashed subsequent to declaration of moratorium. Since the encashment of the cheques were post-moratorium, the Adjudicating Authority had concluded that the cheques were deliberately ante-dated only to conjure the impression that they were handed over before commencement of CIRP. We also find that the Adjudicating Authority arrived at this conclusion since nothing was explained by the Appellant as to why these cheques though issued prior to CIRP commencement date were kept on hold by Respondent Nos. 2 to 5 and encashed after the commencement of CIRP.

28. Assailing the above finding of the Adjudicating authority, the Appellant has relied on the judgment of this Tribunal in ***Pratim Bayal of Rajpratim Agencies Pvt. Ltd. Vs Tata Motors Finance Solutions Ltd.*** in ***CA(AT)(Ins.) No. 1309 of 2013*** to contend that the date on which the cheque is handed over is the relevant date and the payment shall be treated to have been made on that date. It is also the case of the Appellant that the onus to explain why these cheques were encashed after moratorium is not on them but on the recipients. It has not escaped our attention that the Adjudicating Authority in the impugned order has already distinguished the facts of the present case with the ***Pratim Bayal judgment supra*** and held it to be inapplicable. We are inclined to agree with the Adjudicating Authority that this judgment does not apply to the present case since the Appellant has not provided any substantive evidence on record to show that the cheques were handed over on the same date as was recorded on the cheque.

29. We also find force in the contention of the Respondent that since the cheques were encashed after 10.09.2018 by which date the moratorium had become effective, it amounted to breach of moratorium. In support of their

contention, the Respondent has relied on judgment of this Tribunal in **SREI Equipment Finance Ltd. Vs Amit Gupta** in **CA(AT)(Ins.) No. 298 of 2019** wherein it has been held that even if the cheque dates back to the date of handover it cannot be encashed after moratorium kicking in. We now look at the relevant portion of the said judgement which reads as under:

“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.”

30. We find no reasons to disagree that after commencement of CIRP once moratorium kicks in, no person can unilaterally recover any amount from the account of the Corporate Debtor. No action violating moratorium can be countenanced. Even for argument’s sake, if we agree that in the present case, the date depicted on the three cheques co-relates with the date of cheque handing over, nonetheless, in view of the specific statutory provision of moratorium which precludes any such recovery, the cheques cannot be encashed after moratorium starts. Since no such arrangement is envisaged in the IBC and yet the amounts have been encashed, the RP in seeking recovery

of the same is found to have acted well within the boundaries of the IBC. The recourse open to the Respondent Nos 2 to 5 is to file their claim before the RP/Liquidator in respect of such dues.

31. As noted by us already, the RP was in fact duty bound to recover the same and reappropriate the sums involved in the impugned transactions towards the assets of the Corporate Debtor. The Adjudicating Authority has therefore rightly set aside all the impugned transactions and directed Respondent Nos. 2 to 6 as well as Appellant to refund the amounts received by them within 30 days.

32. This brings us to the last limb of defence raised by the Appellant that the RP had not subjected payments made to some other similarly placed Operational Creditor/Vendors for reversal. On this ground, the impugned transactions should also be accorded similar treatment. We are not persuaded to accept any such line of argument of inequity arising out of differential treatment. We cannot allow equality to be claimed in wrong or illegal actions and encourage the claim of parity or equality for enforcing a wrong or illegal order. Even if illegality has been overlooked in some other case by the RP, that in itself cannot provide basis for claim of equal treatment in illegality or arbitrariness.

33. In view of the foregoing facts and circumstances, it is abundantly clearly that an amount of Rs 11.01 Cr. was unauthorisedly transferred from the account of the Corporate Debtor to Respondent Nos. 2 to 5 after commencement of CIRP proceedings of the Corporate Debtor by way of nine RTGS payments and three cheque payments in clear breach of moratorium by the Appellant and Respondent No.6. We therefore do not find any error in the

impugned order holding the Appellant and Respondent Nos. 2 to 6 to be jointly and severally liable to refund the said amount to the account of the Corporate Debtor. There is also no infirmity in the decision of the Adjudicating Authority to have referred the matter to the IBBI. No cogent grounds have been made out by the Appellant to interfere with the impugned order. The Appeal is dismissed. We however allow liberty to the Respondent Nos.2 to 5 to file their claims, if they so wish, in respect of these transactions which may then be considered by the RP/Liquidator in accordance with law. No costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

Place: New Delhi

Date: 30.05.2025

Abdul