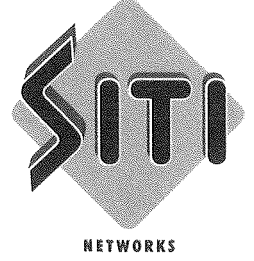


SITI Networks Limited

UG Floor, FC-19 & 20, Sector-16 A, Film City,
Noida, Uttar Pradesh-201301, India

Tel: +91-120-4526700

Website : www.sitinetworks.com



October 3, 2024

To,

The General Manager
Corporate Relationship Department
BSE Limited
Phiroze Jeejeeboy Towers
Dalal Street, Fort,
Mumbai- 400 001
BSE Scrip Code: 532795

The Manager
Listing Department
National Stock Exchange of India Limited
Plaza, 5th Floor, Plot no. C/1, G Block
Bandra Kurla Complex, Bandra (E)
Mumbai- 400 051
NSE Scrip Symbol: SITINET

Kind Attention : Corporate Relationship Department

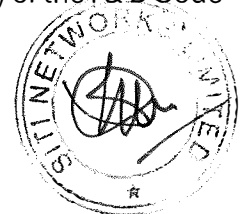
Subject : Disclosure under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015

Dear Sir,

Kindly refer to our earlier disclosures pertaining to admission of the Company under Corporate Insolvency Resolution Process ("CIRP") under the provisions of Insolvency and Bankruptcy Code, 2016 ("I & B Code").

In this regard, we would like to inform you that in Interlocutory Application ("IA") filed by the Resolution Professional ("RP"), Intervention Petition filed by Ms. Kavita Kapahi, Directors (power suspended) and IA filed by Asset Reconstruction Company (India) Limited, the Hon'ble NCLT, Mumbai, *inter alia*, passed the following common order on October 1, 2024:

- (i) Insolvency Commencement Date as defined under section 5(13) of the I & B Code stands fixed at February 22, 2023;



- (ii) Insolvency Commencement Date ("ICD") remains February 22, 2023 and all CIRP related activities have to be reckoned from that date only;
- (iii) Moratorium under section 14 continues to be applicable from February 22, 2023;
- (iv) All the transactions and appropriations undertaken during the stay period i.e. between March 7, 2023 till August 10, 2023 shall be reversed and the amounts shall be remitted back to the account of the Company within 4 weeks from the date of order.

We are enclosing herewith a copy of order dated October 1, 2024 passed by Hon'ble NCLT, Mumbai.

You are, therefore, requested to kindly take the same on record.

Thanking you,

Yours truly,
For **SITI Networks Limited**



Suresh Kumar

Company Secretary and Compliance Officer
Membership No. ACS 14390



IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH COURT III

I.A. 4844/2023

Intervention Petition 57/2023

I.A. 126/2024

In

C.P. No. (IB) 690/MB/C-III/2022

Under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016

I.A. No. 4844/2023

Rohit Ramesh Mehra)
Resolution Professional of Siti)
Networks Limited)
Having office at:)
Tower A 3403, Oberoi Woods, Oberoi)
Garden City, Goregaon (East), Mumbai)
Maharashtra – 400063) *... Applicant*

Intervention Petition No. 57/2023

Kavita Anand Kapahi)
91, Basant APTS, Cuffe Parade,)
Mumbai – 400005) *... Applicant*

Vs.

Rohit Ramesh Mehra)
Resolution Professional of Siti)
Networks Limited)
Having office at:)
Tower A 3403, Oberoi Woods, Oberoi)
Garden City, Goregaon (East), Mumbai)
Maharashtra – 400063) *... Respondent*

I.A. No. 126/2024

Asset Reconstruction Company (India) Limited)
Having office at:)
Floor 29, Senapati Bapat Marg, Dadar)
West, Mumbai, Maharashtra- 400028) *... Applicant*



Vs.

- 1. Rohit Ramesh Mehra**)
Resolution Professional of Siti)
Networks Limited)
Having office at:)
Tower A 3403, Oberoi Woods, Oberoi)
Garden City, Goregaon (East), Mumbai)
Maharashtra – 400063) ... Respondent 1
- 2. Axis Bank Limited**)
Having office at:)
Axis House, 8th Floor, Bombay Dyeing)
Mills Compound, Pandurang Budhkar)
Marg, Worli) ... Respondent 2
- 3. Aditya Birla Finance Limited**)
Having office at:)
Indian Rayon Compound, Junagadh,)
Veraval, Gujarat- 362266) ... Respondent 3
- 4. IDBI Bank Limited**)
Having office at:)
IDBI Tower, WTC Complex, Cuffe Parade)
Mumbai, Maharashtra- 400005) ... Respondent 4
- 5. RBL Bank Limited**)
Having office at:)
Shahupuri, Kolhapur, Kolhapur,)
Maharashtra – 416001) ... Respondent 5
- 6. IndusInd Bank Limited**)
Having office at:)
2401, Gen Thimmayya Road,)
Contonment, Pune- 411001) ... Respondent 6
- 7. Standard Chartered Bank Limited**)
Having office at:)
Crescenzo, 4th Floor, Plot No. C-38/39,)
G Block, Bandra Kurla Complex,)
Bandra (East), Mumbai - 400051) ... Respondent 7
- 8. Mr. Suresh Arora**)
Unit No. 38, 1st Floor A Wing, Madhu)



Industrial Estate, P.B. Marg, Worli)
Mumbai – 400013) ... Respondent 8

9. Mr. Amitabh Kumar)

Unit No. 38, 1st Floor A Wing, Madhu)
Industrial Estate, P.B. Marg, Worli)
Mumbai – 400013) ... Respondent 9

10. Kavita Anand Kapahi)

91, Basant APTS, Cuffe Parade,)
Mumbai – 400005) ... Respondent 10

11. Shilpi Asthana)

B-5/61, Sector-4, Opposite Mother)
Divine School, Rohini North (West), New)
New Delhi - 110085) ... Respondent 11

12. Mr. Suresh Kumar)

Unit No. 38, 1st Floor A Wing, Madhu)
Industrial Estate, P.B. Marg, Worli)
Mumbai – 400013) ... Respondent 12

13. Yogesh Sharma)

Unit No. 38, 1st Floor A Wing, Madhu)
Industrial Estate, P.B. Marg, Worli)
Mumbai – 400013) ... Respondent 13

IN THE MATTER OF

IndusInd Bank Limited ... Financial Creditor

Vs

SITI Networks Limited ... Corporate Debtor

Order pronounced on: 01.10.2024

Coram:

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

Hon'ble Sh. Charanjeet Singh Gulati (Technical)



Appearances:

IA/4844/2023

For the RP : Sr. Adv. Dinyar Modan, Adv. Pooja Mahajan
a/w Shrishti Agnihotri a/w Arveena Sharma
a/w Adv. Saurabh B a/w Adv. Himanshu
Vidhani & Siddharth Rajput i/b Chandiok &
Mahajan

Intervention Petition 57/2023

For the Petitioner : Sr. Adv. Vikram Nankani, Adv. Rohit Gupta
a/w Ashish Pyasi a/w Adv. Anjali Shahi,
Adv. Aditya Krishna, Adv. Jinal Sethia i/b
Aendri Legal

For the RP : Sr. Adv. Dinyar Modan, Adv. Pooja Mahajan
a/w Shrishti Agnihotri a/w Arveena Sharma
a/w Adv. Saurabh B a/w Adv. Himanshu
Vidhani & Siddharth Rajput i/b Chandiok &
Mahajan

IA/126/2023

For the Applicant : Sr. Adv. Gaurav Joshi a/w Adv. Nausher
Kohli a/w Tanisha Choudhari a/w Ms.
Sandhya Iyer a/w Adv. Rishabh Chandra
a/w Mr. Neel Mehta i/b Vaish Associates

For Respondent 1/RP : Sr. Adv. Dinyar Modan, Adv. Pooja Mahajan
a/w Shrishti Agnihotri a/w Arveena Sharma
a/w Adv. Saurabh B a/w Adv. Himanshu
Vidhani & Siddharth Rajput i/b Chandiok &
Mahajan

For Respondent 2 : Sr. Adv. Venkatesh Dhond a/w Adv Rashmin



Khandekar a/w Adv. Manmeet Singh, Adv.
Bhavika Deona, Adv. Karishini Khanna, Adv.
Manav Sharma i/b Sanaf & Partners

For Respondent 3 : Sr. Adv. Shyam Kapadia a/w Minika Jalan,
Pragya Dahiya and Hansha Daboo

For Respondent 4 : Mr. Abhijeet Swaroop, Mr. Akshay Sapre and
Mr. Rajvansh Singh

For Respondent 5 : Mr. Pulkit Sharma, Mr. Ashish Mehta a/w
Mr. Himanshu Singh, Mr. Aarya More i/b
Ethos Legal Alliance

For Respondent 6 : Sr. Adv. Ashish Kamat, Adv. Vishnu Shriram
a/w Adv. Shrishti Kapoor, Adv. Aaria Parekh
i/b Khaitan & Co

Per: Ms. Lakshmi Gurung, Member (Judicial)

ORDER

1. The Interlocutory Application (IA) bearing no. 4844/2023 has been filed by **Mr. Rohit Ramesh Mehra**, the Resolution Professional (RP) of **SITI Networks Limited (Corporate Debtor)** seeking certain clarificatory directions regarding the insolvency commencement date in respect of the Corporate Debtor for the purpose of treatment of unpaid liabilities as well as for conducting CIRP related activities under the I&B Code and applicable Rules and Regulations (herein after referred to as **‘the Clarificatory IA**).



2. The Intervention Petition (IP) No. 57/2023 has been moved by Ms. **Kavita Kapahi**, the Suspended Director of the Corporate Debtor seeking intervention in IA/4844/2023 filed by the RP.
3. The Interlocutory Application (IA) No. 126/2024 has been filed by Asset Reconstruction Company (India) Limited (**ARCIL**), one of the financial creditors and member of the Committee of Creditors (CoC) of the Corporate Debtor against the other financial creditors of the Corporate Debtor and the Suspended directors, Chief Executive Officer and Company Secretary of the Corporate Debtor. This IA/126/2024 has been filed post filing of clarificatory IA by RP raising several issues relating to the insolvency commencement date of the Corporate Debtor and regarding the treatment of the monies withdrawn during the stay period by other financial creditors of the Corporate Debtor. All these applications are filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**I&B Code**) read with Rule 11 of National Company Law Tribunal (NCLT) Rules, 2016.
4. The facts and issues involved in the above captioned interlocutory applications are connected and similar hence, these applications were heard together. Therefore, they are being disposed of by this common order.

Brief Background:

5. The Corporate Insolvency Resolution Process (**CIRP**) was initiated against the Corporate Debtor vide Order dated 22.02.2023 in CP/690/2022 and Mr. Rohit Ramesh Mehra was appointed as the Interim Resolution Professional (**IRP**).
6. The IRP made public announcement on 25.02.2023 in accordance with sections 13 and 15 of the I&B Code, inviting claims from the creditors of the Corporate Debtor to be submitted on or before 08.03.2023.



7. Ms. Shilpi Asthana, one of the suspended directors of the Corporate Debtor, preferred an appeal before the Hon'ble National Company Law Appellate Tribunal ("**Appellate Tribunal**") bearing Company Appeal (AT) (Ins) No. 274/2023 against the admission order dated 22.02.2023 passed by the Adjudicating Authority in which an interim order dated 07.03.2023 was passed by the Appellate Tribunal stating as follows:

"We have heard Counsel for the parties. There are arguable points involved in this appeal.

Issue notice. Counsel for the Respondent accepts notice and prays for time to file Reply. Let reply be filed within two weeks. List again on 29th March, 2023.

In the meantime, operation of the impugned order shall remain stayed."

8. It is submitted by the RP that pursuant to the interim order of the Hon'ble Appellate Tribunal dated 07.03.2023, the management of the Corporate Debtor was handed back to the directors of the Corporate Debtor.
9. The said appeal was finally heard and decided by the Hon'ble Appellate Tribunal on 10.08.2023 dismissing the appeal. The operative part is reproduced below:

"29. As a consequence of the aforesaid discussion, all the points raised by the Appellant, in order to bring the date of default within the ambit of section 10A of the Code fails and as a result thereof, all the contentions of the Appellant are hereby rejected.

30. No other point has been raised.

31. In view of the aforesaid facts and circumstances, the present appeal is found to be without any merit and the same is hereby dismissed, though, without any order as to costs."

10. The said order of Hon'ble Appellate Tribunal was challenged before the Hon'ble Supreme Court in Civil Appeal no. 5340/2023 which was also dismissed vide order dated 01.09.2023.



11. The RP filed an application no. 4277/2023 under sections 12(2) and 60(5) of the I&B Code read with Regulation 40 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 seeking exclusion of period from 07.03.2023 till 15.08.2023 during which the Appellate Tribunal had stayed the CIRP of the Corporate Debtor. The said IA was allowed on 15.09.2023.
12. The RP submits that only after the final order of the Hon'ble Appellate Tribunal dated 10.08.2023, IRP took back the control and management of the Corporate Debtor on 16.08.2023. The Committee of Creditors (CoC) was constituted on 24.08.2023 and the 1st CoC Meeting was conducted on 01.09.2023 wherein the IRP was confirmed as the Resolution Professional. Further, discussions were made regarding the liabilities of the Corporate Debtor during the interim stay period. As there was no clarity on the issue, the RP apprised the CoC about filing application before Adjudicating Authority seeking appropriate clarifications.

IA/4844/2023

13. Submission of Resolution Professional:

I. Liabilities incurred during the Stay Period


- a) The RP submitted that while the verification of the claims of the creditors was in process, the Appellate Tribunal had passed an interim order dated 07.03.2023 (**Stay Order**) staying the operation of the admission order dated 22.02.2023 and the management of the Corporate Debtor went back to the hands of the suspended directors till the final disposal of the appeal by the Appellate Tribunal on 10.08.2023 when the appeal was dismissed.
- b) When the RP resumed the duties on 16.08.2023, it was revealed that during the stay period i.e. between 07.03.2023 till 16.08.2023, various transactions had taken place between the Corporate Debtor and its creditors. Further, the Corporate Debtor was carrying on its

business operations in normal course as a going concern and was incurring and discharging liabilities.

- c) The RP further submitted that on account of the Stay order, the operation of the Admission order dated 22.02.2023 was stayed, therefore, there was no moratorium subsisting with respect to the Corporate Debtor. However, the I&B Code does not deal with how the liabilities incurred during the stay period are to be treated, under the Resolution Plan.
- d) The following liabilities have been incurred during the stay period:
- i. ***Liabilities of Operational Creditors (Unpaid OC Liabilities):***
As the Corporate Debtor was carrying on the normal course of its business during the stay period and various liabilities in the nature of operational dues were being incurred during this period. Since the RP was not in the management of the Corporate Debtor, the unpaid Operational Creditors' liabilities may also include unknown and/or contingent liabilities which may not even be in the nature of CIRP costs.
 - ii. ***Liabilities of Financial Creditors (Unpaid Interest Claim):***
The financial creditors have submitted their updated claims including interest on the financial debt accrued from 22.02.2023 i.e. the date of the Admission order till 10.08.2023 i.e. the date of resumption of CIRP.
 - iii. ***Liabilities of Other Creditors (Unpaid Other Liabilities):***
Liabilities towards other creditors may also have been created which remain unpaid.

II. Insolvency Commencement Date

- a) The insolvency commencement date (**ICD**) of the Corporate Debtor is 22.02.2023, however, there was a stay order dated 07.03.2023 passed by the Hon'ble Appellate Tribunal which was vacated on 10.08.2023 with the dismissal of the appeal. It was submitted that



significant amount of time has elapsed between the ICD i.e. 22.02.2023 and the Appellate Tribunal's final order dated 10.08.2023.

- b) The RP submitted that the CIRP related activities are yet to be undertaken including appointment of registered valuers, submission of Information Memorandum, preparation of provisional balance sheet, etc. The I&B Code and applicable Regulations provide a set of timelines for completion of each of the activities pertaining to the CIRP of the Corporate Debtor. Further, the RP had no control over the management of the Corporate Debtor during the stay period and there has been significant changes in the financial position of the Corporate Debtor.
- c) In view thereof, the RP argued that it would be appropriate if 10.08.2023, being the date of Appellate Tribunal's order upholding the admission of Corporate Debtor into CIRP, be considered as the Insolvency commencement date (ICD) for the purpose of conducting various CIRP-related activities instead of 22.02.2023, being the admission order under section 7 passed by the Adjudicating Authority.
14. The RP has sought following reliefs in IA/4844/2023:
- a) *Allow the present Application;*
- b) *Clarify that/direct that the Unpaid OC liabilities/Unpaid Interest Claim (as defined in the Application)/Unpaid Other Liabilities (as defined in the Application) is to be considered for admission/verification as part of the claims of the respective creditors against the Corporate Debtor (which will then be dealt with under the resolution plan or liquidation, as the case may be, in accordance with the Code);*



- c) *Clarify that/direct that for the purpose of conducting various CIRP related activities under the Code read with the CIRP Regulations, including valuation, conducting transactional audit for avoidance transactions, preparation of Information Memorandum and provisional balance sheet, updation of claims, etc. the relevant date should be 10 August 2023 (being the date of resumption of CIRP of the Corporate Debtor).*
15. The said application 4844/2023 was heard and reserved for orders on 26.10.2023. However, the application was later de-reserved on 27.03.2024 on account of some clarification.

Intervention Petition No. 57/2023

16. This Intervention Petition has been filed by Ms. Kavita Kapahi, suspended director of the Corporate Debtor, seeking intervention in IA/4844/2023 filed by RP. The following reliefs have been sought:
- A. *To allow the Applicant to intervene in the IA No. 4844 of 2023 filed by the Respondent and add the Applicant as a party to the IA No. 4844 of 2023;*
 - B. *To direct the Respondent to serve a copy of IA No. 4844 of 2023 filed by the Respondent before this Tribunal;*
 - C. *To grant such other and further reliefs as may be deemed fit and proper.*
17. **Submission of the Petitioner of Intervention Petition No. 57/2023:**
- a) It is submitted by the petitioner that during the stay period, monies were withdrawn and distributed by the Axis Bank from the account of the Corporate Debtor.
 - b) The Axis Bank was withdrawing the amounts from the bank accounts of the Corporate Debtor, therefore, the petitioner pressed for interim order in Company Appeal (AT) (Ins) No. 274/2023 against Axis Bank. On



12.06.2023, following order was passed by the Hon'ble Appellate Tribunal:

"In view of the peculiar facts of the case and in view of principle of natural justice and balance of convenience till the next date of hearing, the Axis Bank and Aditya Birla Finance Ltd. are directed not to withdraw any amount from the account of Respondent No. 2/ Corporate Debtor."

- c) During the second CoC Meeting, the suspended directors raised issues relating to the dues owed to the Operational Creditors and also the salaries of the employees of the Corporate Debtor and certain TDS payments that are unpaid. Furthermore, Asset Reconstruction Company (India) Limited (ARCIL), one of the financial creditors of the Corporate Debtor, raised an issue that *"in light of the order of the Hon'ble NCLT dated 15.09.2023 granting exclusion of 161 days from the CIRP timelines, the insolvency commencement dated ("ICD") remains 22.02.2023. Hence, the claims need to be as on ICD."* Objecting to the same, other two creditors, namely, IDBI bank and Axis Bank stated that *"the operation of the Admission Order (imposing the moratorium) was stayed. Therefore, there was no moratorium operating during the NCLAT Stay Period. Hence, the stay period does not fall within the purview of CIRP period."*
- d) Thereafter, the RP has assured the CoC that he shall file an application seeking clarification from this Tribunal on the treatment of the withdrawals during the stay period, however, the IA/4844/2023 has been filed for clarification only regarding the unpaid OC liabilities, interest claim and other liabilities and not regarding the withdrawals during the stay period.
- e) The Applicant contends that subsequent to the stay order dated 07.03.2023, the matter was taken up for hearing by the Appellate Tribunal and the interim stay granted on 07.03.2023 was ordered to be continued. However, during hearing on 01.05.2023, no direction as to



the continuation of the stay was passed. Thus, stay on the operations of the admission order was not continued after 01.05.2023.


- f) The Applicant further submits that even during the stay period, the effect of moratorium cannot be neglected and therefore the statement made by the RP in the minutes of the 1st CoC Meeting that “*during the NCLAT Stay Period, there was no moratorium or CIRP operating*” is against the settled principles of law.
- g) Thus, there has been a false representation by the RP before the CoC Members in the CoC meetings. The RP has further concealed the fact that the interim stay got vacated on 01.05.2023. Thus, the present intervention petition is filed by the Applicant to bring on record the correct facts.

Reply of the Resolution Professional to Intervention Petition:

18. The RP, in his reply, challenged the maintainability of the intervention petition on the ground that it has been filed after IA/4844/2023 was reserved for orders on 26.10.2023. Reliance is placed on **Loramitra Rath vs JM Financial Asset Reconstruction Company Ltd [Company Appeal (AT) (Ins) No. 1359 & 1360 of 2023]** wherein the Appellate Tribunal held that no application could be moved after the final arguments were heard and the case was closed for judgment. It is submitted that in the present case, since this Tribunal has already reserved the clarification application on 26.10.2023, the Intervention Petition No. 57/2023 is not maintainable.
19. The RP made following submissions opposing the intervention petition:
- i) The intervener by way of intervention petition is trying to introduce a new case by raising allegations which are not relevant for the clarification application no. 4844/2023 since that was filed with respect to the treatment of liabilities and interest accrued during the Stay period.



- ii) The information regarding the stay of the admission order was widely disseminated to the public, including the stock exchanges and other authorities, by the directors of the Corporate Debtor. The directors continued to represent to the public that the stay order is in operation even after 01.05.2023. In the Annual Report of the corporate debtor dated 30.05.2023, it was stated that the stay order was operational as on 30.05.2023. Further, on 22.06.2023, one independent director of the Corporate Debtor submitted his resignation to the board of directors. On 08.08.2023, there was again a communication to stock exchanges regarding the consideration of the unaudited financial statements of the Corporate Debtor. Only on 10.08.2023 when the appeal before the Appellate Tribunal was decided that the CIRP of the Corporate Debtor resumed and the RP took back the control of the management.
- iii) Various applications were filed by the suspended directors before the Appellate Tribunal and Hon'ble Supreme Court on behalf of the Corporate Debtor even after 01.05.2023. IA/2138 was filed on 15.05.2023 in the Appeal pending before the Appellate Tribunal complaining about the actions of lenders in not keeping the Corporate Debtor as a going concern. IA/2340 was filed on 18.05.2023 seeking impleadment of certain lenders in IA/2340. On 25.05.2023, a Contempt Case (AT) no. 16/2023 was filed in the Appeal contending contempt of stay order by the lenders in appropriating certain amounts from Corporate Debtor's account and not releasing payments to some operational creditors.
- iv) The Admission Order contains various orders including (i) initiation of CIRP of the Corporate Debtor, (ii) appointment of Respondent as the IRP, (iii) vesting of the management of the Corporate Debtor in the Respondent (as the IRP), and (iv) order of moratorium with respect to the Corporate Debtor. Vide the Stay Order, the Hon'ble Appellate Tribunal stayed the operation of the entire Admission Order and did



not merely stay the CIRP of the Corporate Debtor. Therefore, once the Admission Order was stayed, the appointment of the IRP also stood stayed and the board of directors of the Corporate Debtor (including the Applicant) were overseeing the operations of the Corporate Debtor.


- v) As regards the allegations against the RP's conduct in the insolvency process of the Corporate Debtor, it is submitted that RP has responded each and every query/concern of the stakeholders of the Corporate Debtor and is running the CIRP of the Corporate Debtor in a fair and transparent manner.

20. This Tribunal, on 27.03.2024, had de-reserved IA No.4844/2023 for clarification. At the time of hearing of this intervention petition, the final arguments had not concluded and the order was not yet reserved in IA 4844/2023. Intervener was allowed to make submissions as there were statements by RP that during the stay period, it was the suspended directors who were running the corporate debtor as going concern and not the RP. Further, the proposed intervener has averred that amounts were being withdrawn by the Axis Bank during the stay period. Therefore, to understand the facts comprehensively, we allow the Petitioner herein to intervene in IA/4844/2023 for the transactions during the stay period. Accordingly, Intervention Petition No. 57/2023 is **allowed**, and the submissions made therein are taken on record.

IA/126/2024

21. This IA has been filed by Asset Reconstruction Company (India) Limited (**ARCIL**), a Financial Creditor of the Corporate Debtor, seeking the following reliefs:
- a) *Declare that as codified under Section 5(12) of the Insolvency and Bankruptcy Code, 2016, the date of commencement of Corporate Insolvency Resolution Process of the Corporate Debtor is February*

22, 2023 and moratorium was in existence/subsistence from February 22, 2023 till August 10, 2023;

- 
- b) Declare that the act of withdrawal of monies by Respondent No. 2 namely Axis Bank Limited and transferring the aforesaid monies to the benefit of Respondent Nos. 3 to 6 amounts to violation of moratorium in terms of Section 14(1)(b) of the Insolvency and Bankruptcy Code, 2016;
- c) Direct the Resolution Professional to maintain the account of the Corporate Debtor in a bank other than Respondent Nos. 2, 4, 5 or 6 so that all future transactions are routed through some other bank and there is no repeated occurrence of illegal withdrawal of monies at the behest of Respondent Nos. 2 to 6;
- d) Direct the Resolution Professional to examine the records and books of accounts of the Corporate Debtor in a time bound manner and report to this Tribunal as to the exact amount (whether Rs. 143.15 Crores or a higher amount as the case may be) having been unlawfully withdrawn by Respondent No. 2 namely Axis Bank Limited and distributed with Respondent No. 3 to 6 as well as to any other third-party entity/entities (if any/if at all);
- e) Direct the Resolution Professional to examine if such unlawful withdrawal of monies and inaction on part of the Resolution Professional will necessitate re-working on the admitted amounts qua various financial creditors and if yes, then direct the Resolution Professional to re-work upon the amount of admitted claims qua various financial creditors, their revised voting right percentage so that distributions can be made to various financial creditors from the resolution plan or liquidation proceeds, as the case may be, in the right proportion/ quantum / manner;
- f) Direct Respondent Nos. 2 to 6 as well as other third-party entity/entities (if any/ if at all) to refund/remit back the monies



to the CIRP Bank account of the Corporate Debtor to the extent/in the proportion as received by each of the aforesaid Respondent;

- g) Pass an order directing the Respondents No. 2 to 6 to pay interest at an appropriate rate/percentage as deemed appropriate by this Tribunal on the respective principal amounts withdrawn/received by them in contravention of moratorium;*
- h) Pass an interim order that the percent voting share qua various financial creditors shall get crystallized subject to outcome of the present Application for the purpose of distributions to be made to various Financial Creditors pursuant to resolution plan(s) submitted by Resolution Applicant(s) in the Corporate Insolvency Resolution Process of the Corporate Debtor;*
- i) Pass an interim order that till the disposal of this application, this Tribunal will not pronounce its order reserved in the I.A. No. 4844 of 2023 and/or pronounce its order reserved in the IA 4844 of 2023 only after considering the facts and circumstances of the present application.*

Submissions of the Applicant/ARCIL

- 22. ARCIL is a financial creditor of the Corporate Debtor and is a member of the Committee of Creditors (CoC) having 32% of voting share.
- 23. It is submitted by ARCIL that there was an escrow account whereby Axis Bank (**Respondent 2/R-2**) was acting as Escrow Bank and certain amounts were lying in the credit of the Corporate Debtor. However, during the stay period, all the monies were illegally withdrawn and distributed/appropriated by Axis Bank from the account of the Corporate Debtor and transferred to various other financial creditors i.e. Aditya Birla Finance Limited (**Aditya Birla/Respondent 3/R-3**), IDBI Bank Limited (**IDBI/Respondent 4/ R-4**), RBL Bank Limited (**RBL/Respondent 5/R-**



5), and IndusInd Bank Limited (**IndusInd/Respondent/R-6**). The details of the same are stated below:

Sr. No.	Date of Transaction	Details of Amount Withdrawn from the Account of the Corporate Debtor		
		Withdrawn By	Transferred to Benefit of	Amount Withdrawn (Rs. in crores)
1	31.03.2023	Axis Bank	Axis Bank	20.00
2	15.05.2023		Axis Bank	23.00
3	01.06.2023		IDBI Bank	6.36 crores
4	01.06.2023		IDBI Bank	16.91 crores
5	01.06.2023		IndusInd Bank	4.64 crores
6	01.06.2023		IndusInd Bank	12.45 crores
7	01.06.2023		RBL Bank	12.45 crores
8	01.06.2023		Axis Bank	27.63 crores
9	02.06.2023		RBL Bank	4.69 crores
10	05.06.2023		Aditya Birla Finance Ltd.	15 crores
Total				143.15

24. It was further submitted that during the stay period, several Joint Lenders' Forum meetings (**JLM**) had taken place on 25.04.2023, 04.05.2023 and 10.05.2023 and perusal of the minutes of the said meetings would clearly reveal that the ARCIL as well as Respondents 3 to 6 and Standard Chartered Bank (**SCB/Respondent 7/R-7**) objected to Axis Bank's unilateral and unlawful decision of withdrawing monies from the account of the Corporate Debtor. However, Respondents 2 to 6 who had initially raised objections had subsequently stopped to do so when Axis Bank had distributed the withdrawn monies into their accounts.

25. On 10.08.2023, when the Hon'ble Appellate Tribunal dismissed the appeal the RP took over the control of the management of the Corporate Debtor and requested the creditors to update their submitted claims, if there is any amendment/ update and submit the revised claims as on 10.08.2023. Thereafter, the RP prepared list of creditors with updated claims and determined the voting percentage of the COC as follows:



Sr. No.	Financial Creditors	Amount Claimed (Rs. In Crores)	Amount Admitted (Rs. In Crores)	Under Verification (Rs. In Crores)	Voting Right
1	ARCIL	364.77	339.93	24.85	32%
2	Axis Bank	240.85	223.72	17.13	21%
3	Aditya Birla	177.94	166.91	11.03	16%
4	IDBI Bank	169.66	151.28	18.38	14%
5	Standard Chartered Bank	91.79	87.8	4.71	8%
6	RBL Bank	54.33	51.96	2.37	5%
7	IndusInd Bank	45.32	42.43	2.89	4%
8	Zee Entertainment Enterprises (Related Party)	148	88	60	0%
	Grand Total	1292.66	1151.30	141.36	100%

Insolvency Commencement Date cannot be changed

26. ARCIL submitted that the ICD remains 22.02.2023 and relied on the judgment by NCLT, Allahabad Bench in the case of **Jaypee Infratech Limited [IA No. 217/2018 in CP(IB) No. 77/ALD/2017]** wherein it was held that insolvency commencement date cannot be changed.
27. Further, insolvency commencement date as defined under section 5(12) of the Code, is a fixed date and a change of the same is not permissible under the Code. Even the RP while filing the exclusion application had only sought exclusion of the time period and not shifting of the insolvency commencement date. The clarification application 4844/2023 filed by RP seeking shifting of the ICD is a *mala fide* attempt to cover up and justify the unlawful withdrawal of monies during the stay period.
28. It is a trite law as decided by the Hon'ble Supreme Court that there is a difference between quashing of an order and stay on operation of an order. Reliance is placed on **Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Assn. CSI Cinod Secretariat, Madras [1992 INSC 138]** wherein it has been held that stay of operation of an order only means that the order which has been stayed would not be operative from the date



of the passing of the stay order and it does not mean that the said order has been wiped out from existence.

29. The Hon'ble Appellate Tribunal in **Mukesh Kumar Jain vs Navin Kumar Upadhyay & Anr [Company Appeal (AT) (Ins) No. 930-931/ 2023]** has observed that the stay of CIRP does not mean that suspended directors should be put back in the management of the Corporate Debtor. Similarly, in **Ashok Kumar Tyagi vs. UCO Bank & Ors [Company Appeal (AT) (Ins) No. 1323/2022]**, the Appellate Tribunal held that *"in event on the stay of the admission of Section 7 Application, the Corporate Debtor is allowed to function and position as was existing prior to 28.10.2022 is restored, there shall be no difference in staying an Order and quashing of an Order."*

Moratorium subsists even during stay period

30. The Applicant submits that the intent behind inserting the provision of moratorium under the Code is to provide the Corporate Debtor a calm/breathing period in which the Corporate Debtor seeks to reorganize its business and Section 14(1)(b) of the Code seeks to ensure that the assets of the Corporate Debtor, gets preserved and protected during the CIRP Period and does not result in any loss of value of the assets of the Corporate Debtor by virtue of any transfer, encumbrance, alienation or disposal by the Corporate Debtor of any of its assets or legal right or beneficial interest therein, as such kind of actions will defeat the very object of the Code i.e. maximization of the value of assets of the Corporate Debtor.
31. There are numerous instances wherein the CIRP admission order passed by the Adjudicating Authority is challenged before the Appellate Authority and subsequently, a stay is imposed on the operation of the impugned order. If the interpretation that imposition of stay implies no subsistence of moratorium is permitted, then not only will creditors illegally misappropriate funds during such intervening period but even the promoters of the corporate debtor can withdraw funds and assets of the



corporate debtor on the ground that moratorium is not in force. This will defeat the very purpose and intent behind the principle of moratorium as well as the I&B Code and will derail the entire insolvency process.

32. The NCLT, New Delhi (Principal Bench) in **Isgee Heavy Engineering Ltd vs. Bhushan Energy Ltd.** held that “...it is clarified that the moratorium under section 14 of the Code, 2016 continues to be in operation till it is revoked. Apparently, there is no order of revocation of moratorium.”

Differential treatment amongst creditors

33. Without prejudice the above submissions, the Applicant further submits that there cannot be exceptional treatment to any creditor of the Corporate Debtor during the CIRP. Under the I&B Code, once CIRP is initiated and moratorium is imposed, the provisions of the Code shall have an overriding effect, by virtue of section 238 of the Code, over all other laws for the time being in force, including any contract/agreements and other instruments executed between the parties, to the extent they are inconsistent with the provisions of the Code.
34. In the present case, appropriation of money pertaining to pre-CIRP period by Respondent 2 to 6 and that too in preference of other creditors prejudicially affects the admitted claims qua various financial creditors, their voting rights and the distribution which will be made to various financial creditors from the resolution plan or liquidation proceeds, as the case may be. The Respondents 2 to 6 have already submitted their claim in the prescribed form and the RP has failed to clarify as to what adjustment has been done by him in the admission of claims qua Respondents 2 to 6 in view of the monies withdrawn during the course of CIRP. Nonetheless, the Applicant contends that such withdrawal of monies and such adjustment in admitting claims, if at all done by the RP, is bad in law.



35. The Insolvency and Bankruptcy Board of India (IBBI) had passed adverse orders against the Insolvency Professionals who have either contravened or failed to report the contravention of section 14 of the I&B Code. Further, IBBI vide its Facilitation Letter dated 13.11.2020 also prohibited appropriation of monies towards dues owed to creditors during CIRP.

Submissions of the Respondents

36. There are total 13 Respondents in IA/126/2024. Respondent 1 is the Resolution Professional, Respondents 2 to 7 are the financial creditors of the Corporate Debtor, Respondent 8 to 13 are the suspended directors of the Corporate Debtor. The RP/Respondent 1 and the Respondents 2 to 6 have filed their replies. No replies have been filed by Respondents 7 to 13.

Submissions of RP/Respondent 1

37. The averments and contentions raised in the present application were never taken by ARCIL/Applicant any time before, including during the stay period when the issues relating to stay period and clarification application were discussed and deliberated amongst the members of the CoC including ARCIL.
38. The Applicant being one of the financial creditors of the Corporate Debtor was well aware of the stay order and the subsequent taking over of the Corporate Debtor by the suspended directors and all the events that had transpired thereafter. However, the Applicant had never, before the filing of this IA/126/2024, approached either this Tribunal or the Appellate Tribunal or the Hon'ble Supreme Court contending that the RP, in violation of the I&B Code, had unlawfully handed over the control and management of the Corporate Debtor to the suspended directors/promoters and that such handover had caused any prejudice to the Applicant.



39. As stated by the Applicant itself, there were various Joint Lenders' Forum Meetings (JLM) conducted amongst the creditors with the directors of the Corporate Debtor wherein discussions were made regarding certain transactions/manner of transactions and also on calling of a restructuring plan from the directors/promoters discussed in the JLMs. Though in the meetings, the Applicant suggested maintaining a status quo however nowhere it has pressed that the management of the Corporate Debtor should be reinstated back in the hands of the RP.
40. Further, it can be seen from the disclosures made in the Annual Reports that during the stay period, the directors of the Corporate Debtor were representing the Corporate Debtor before various judicial forums such as TDSAT, Delhi High Court, Arbitration, etc. Furthermore, on perusal of the 26th JLM, it can be seen that the director of the Corporate Debtor had in fact agreed seeking vacation of the Stay order and reinstatement of the IRP. However, the Appellate Tribunal orally directed the Counsel to file appropriate application to this effect. Notably, no such application has been filed. Thus, it is clear that the Appellate Tribunal was aware of the fact that the suspended management had the control of the Corporate Debtor but no order modifying the stay order or reinstating the IRP was passed by the Appellate Tribunal. This itself makes it evident that by virtue of the stay on admission order, the appointment of RP was also stayed.
41. Prior to the stay order dated 07.03.2023, the RP has received claims (as on 22.02.2023) from some creditors of the Corporate Debtor. It was during the verification process of the claims that the Appellate Tribunal passed the stay order thereby halting the CIRP process of the Corporate Debtor.
42. It is submitted that vide the stay order, the Appellate Tribunal had stayed the entire Admission Order and not merely the CIRP of the Corporate Debtor. Section 13 of the I&B Code states that the Adjudicating Authority, after admission of application under section 7, 9, or 10 shall be order:



- A. Declare a moratorium for the purposes referred to in Section 14;
- B. Cause public announcement to be issued under section 15;
- C. Appoint an interim resolution professional in the manner laid down in section 16.

43. The RP referred to the report of Bankruptcy Law Reform Committee, 2015 (“BLRC Report”) which notes that *“This calm period is implemented in two orders passed by the Adjudicator. One is an order passing a moratorium on all recovery actions or filing of new claims against the enterprise. The other is by putting in place an insolvency professional who has the powers to take over the management and operations of the enterprise.”* It further notes that *“An insolvency professional who is registered by the Bankruptcy and Insolvency Board (Section 4.4) is explicitly appointed by the Adjudicator during the bankruptcy and insolvency resolution process”*.
44. Thus, the Admission Order dated 22.02.2023 contained various orders i.e. (i) initiation of CIRP of the Corporate Debtor, (ii) appointment of Respondent 1 as the IRP of the Corporate Debtor, (iii) vesting of the management of the Corporate Debtor in the IRP, (iv) order of moratorium with respect to the Corporate Debtor. Thus, with the stay of the entire Admission Order, the appointment of IRP and the moratorium on the affairs of the Corporate Debtor was also stayed, and the suspended management took over the control of the Corporate Debtor.
45. As per the Black Law Dictionary, *“to stay an order or decree means to hold it in abeyance, or refrain from enforcing it.”* It is submitted that when the very order appointing the Respondent No. 1 as the IRP was stayed (i.e. in abeyance), Respondent 1 could not have continued to act on the said order or taken any steps as an IRP of the Corporate Debtor in the absence of a further order or direction by this Tribunal or the Appellate Tribunal.
46. Reliance is placed on **BPL Limited vs. R. Sudhakar [(2004) 7 SCC 2019]** wherein the Hon’ble Supreme Court had explained the legal effect of a stay order in a situation where a stay is given on an underlying order that gave



jurisdiction to the Industrial Tribunal. It is submitted by the RP that where the underlying order itself is stayed then during such stay period, neither could an application be filed before the Tribunal nor any step could be taken by the Tribunal. Thus, applying the same principle here, the RP submits that since he derives his powers to act as an IRP from the admission order dated 22.02.2023 which itself was stayed by the Appellate Tribunal, the RP could not continue to act as an IRP of the Corporate Debtor.

47. The RP has also cited the case of **Ashok Kumar Tyagi vs. UCO Bank & Anr [2022 SCC OnLine 4588]** wherein the Appellate Tribunal had observed that “... *in view of the stay of the order dated 28.10.2022, the IRP cannot carry on any functions since the IRP was appointed by the same order and by the stay of the Order, no further actions can be taken by the IRP.*” Further, in **Mr. Punit Garg vs. Ericsson India Pvt. Ltd. [Company Appeal (AT) (Ins) No. 255-256/2018]**, the Appellate Tribunal directed the RP to allow the management of the corporate debtor to function during the stay period.
48. Another instance is the case of **Jaypee Infratech Limited I.A. 87575 of 2017 in SLP (Civil) No. 24001-24402 of 2017**. The insolvency commencement date was 09.08.2017 when the IRP took the control and management of Jaypee. Later on, the IRP handed back the control of Jaypee to the management on stay order being passed by Hon’ble Supreme Court on 04.09.2017. Thereafter, one of the creditors approached the Hon’ble Apex Court for modification of the stay order, and accordingly, the stay order was specifically modified, and directions were given to the IRP to take over the management of Jaypee Infra. Further, the Hon’ble Supreme Court noted that “*all suits and proceedings instituted against JIL shall in terms of Section 14 (1) (a) remain stayed as we have directed the IRP to remain in management*”.



49. Even in para 5.3.1 of the BLRC Report, it is mentioned that *“the motivation behind the moratorium is that it is value maximising for the entity to continue operations even as viability is being assessed during the IRP. There should be no additional stress on the business after the public announcement of the IRP. The order for the moratorium during the IRP imposes a stay not just on debt recovery actions, but also any claims or expected claims from old lawsuits, or on new lawsuits, for any manner of recovery from the entity. The moratorium will be active for the period over which the IRP is active.”*
50. Thus, evidently there was no moratorium during the stay period and the RP had not acted contrary to law in handing over the management and control of the Corporate Debtor back to the suspended directors. It is further submitted that no party has sought any clarification or modification of the Stay Order before the Appellate Tribunal concerning the moratorium or the re-instatement of the RP in the management of the Corporate Debtor.
51. As regards the clarification application no. 4844/2023, it is submitted that the after taking over the management and control of the Corporate Debtor post the dismissal of the appeal on 10.08.2023, the RP came to know that the suspended management had carried on the business in its normal course and was incurring and discharging its liabilities. Since these liabilities were incurred during the stay period, there was a need for clarity and directions regarding its treatment. Moreover, the Code does not deal with the aforesaid liabilities. Thus, after discussions with the CoC members, the said clarification application has been filed. No objection whatsoever was raised by the Applicant at the time of filing the application.
52. With respect to the insolvency commencement date, it is submitted that the Code read with the applicable regulations require determination of the financial position of the Corporate Debtor for the purposes of Information



Memorandum (including balance sheets) to be 'as on the insolvency commencement date'. Further, the cut-date for valuation and evaluation of avoidance transactions is the 'insolvency commencement date'. In the present case, a significant amount of time has elapsed between the insolvency commencement date i.e. 22.02.2023 and the resumption of CIRP of the Corporate Debtor (10.08.2023) and during this intervening period, various transactions and events involving the Corporate Debtor and its creditors have taken place. In view of the same, the RP, in his clarification application no. 4844/2023 had prayed to consider 10.08.2023 as the cut-off/relevant date for CIRP-related activities and at no point of time, the RP had sought shifting or change of the Insolvency commencement date, which undisputedly is 22.02.2023.

53. Moreover, the Applicant has relied on **Jaypee Infratech** (supra) judgment to contend that the cut-off date for deciding claims remains the insolvency commencement date and cannot be changed. However, it is submitted that the facts in **Jaypee Infratech** (supra) are distinguishable for the reason that the management and control of Jaypee was with the IRP and by the Hon'ble Supreme Court's order dated 09.08.2019, the moratorium was in operation whereas in the present case, the operation of the Corporate Debtor was taken over by the suspended directors and various transactions have taken place during the stay period. While the financial creditors had appropriated certain amounts from the account of the Corporate Debtor, notably, multiple payments were made by the management during the stay period to various operational creditors. If the stay period has to be considered as moratorium period, then all such payments will also need to be reversed.
54. Regulation 13 of the CIRP Regulations requires verification of the claim to be as on the ICD. However, the said regulation does not envisage a situation where after the ICD, the Admission Order (including the appointment of the IRP and moratorium) is itself stayed in toto on account of which the directors/management and not the IRP is running the day-



to-day affairs of the CD. It is submitted that in view of Section 5(13) of the Code that defines CIRP costs, liabilities incurred by the directors/management during the Stay Period ought not to constitute CIRP Costs. However, it is also important to deal with such liabilities and therefore, it is submitted that 10.08.2023 be considered as the cut-off date for claims verification so that such liabilities and claims can be submitted to the IRP/RP by the creditors for verification and admission.

Submissions of Respondents 2 to 6:

55. Some of the submissions made by the RP were also restated by the Respondents, however, since they are already reproduced in the foregoing paragraphs, we are not inclined to repeat them unless needed. Other submissions by the Respondents 2 to 6 have been clubbed together and reproduced below:

No moratorium in effect during stay period

56. The Hon'ble Supreme Court in **V P Sheth vs. State of MP & Ors. (2004 13 SC 767)** held that "*As has been held in Chamundi Mopeds Case, the effect of stay is that order is not operative.*" Applying the same principle to the present case, it will be clear that on passing of the stay order, the NCLT order became inoperative and since moratorium was granted vide the said order which got stayed, there was no moratorium in subsistence when the money was appropriated.

57. Reliance is also placed on **Mars Remedies Private Limited vs. BDH Industries Limited [Civil Appeal No. 5170/2022]**, **Chitra Sharma & Ors. Vs. Union of India & Ors [Civil Appeal No. 744/2017]**, **Ashok Kumar Tyagi** (supra) and **Punit Goenka** (supra) to emphasize on the submission that when the order of admission was stayed, there was also a stay on the moratorium declared in terms of section 14 of the Code.



58. It is submitted that in the Joint Lenders Forum Meetings (JLMs), the Applicant suggested that the payments to operational creditors of the Corporate Debtor, towards their both prior to and after the Admission Order, be made by the Corporate Debtor. Meaning thereby that even as per the Applicant, the Admission Order had no effect on the payment of dues owed to operational creditors (i.e., the dues post the Admission Order need not be paid as CIRP cost). Similarly, payments in fact have been made to certain operational creditors.
59. Furthermore, the erstwhile management made multiple filings before the stock exchange on behalf of the Corporate Debtor, had conducted Board meetings wherein certain critical actions were approved and filings were also made before the Telecom Disputes Settlement and Appellate Tribunal seeking directions against the lenders of the Corporate Debtor to release payments to Star India Limited. These facts portray that during the stay period, the Corporate Debtor was not under any sort of moratorium whether under I&B Code or any other law.

Issue of moratorium raised as an afterthought

60. Between 07.03.2023 to 10.08.2023, multiple Joint Lenders Meeting(s) (JLM) were held between the financial creditors of the Corporate Debtor and the representatives of the Corporate Debtor to *inter alia* discuss the resolution of the Corporate Debtor's account, wherein the Corporate Debtor was represented by its Board of Directors (BoD). In fact, ARCIL had even made a request for a resolution plan during one of the JLMs but had never objected to the Axis Bank's act of appropriating monies towards its dues on the alleged ground of breach of moratorium. The only objection taken by the Applicant throughout was that the appropriation of monies was not done with the approval of all lenders. This is also clear from the minutes of the JLMs.
61. It is further submitted that even the suspended management or any other party did not allege that the moratorium was in subsistence. In fact, Civil



Appeal before Hon'ble Supreme Court, the ex-director had also admitted that the moratorium was not in subsistence.

62. Senior Advocate Mr. Ashish Kamat, appearing for IndusInd Bank/R-6, submitted that during the JLM held on 25.04.2023, it was brought to the attention of the lenders of the Corporate Debtor that Axis Bank had utilized a sum of Rs. 20 crores towards its dues, which was objected by all the lenders including the Applicant, however, the said objection was limited to the unilateral action of Axis Bank appropriating the funds from the Corporate Debtor's Account without seeking approval of other lenders. At no point, the issue regarding moratorium was raised.
63. Similarly, it was never the Applicant's case that the moratorium was in subsistence at any point of time after the Stay Order was passed, as the Applicant in the JLM on 23.06.2023, had itself requested that it be permitted to appropriate funds towards its dues. Furthermore, the issue regarding appropriation of monies has in any event attained finality as the Civil Appeal filed before Hon'ble Supreme Court, despite containing arguments in this regard, has been dismissed by the Hon'ble Supreme Court.

Applicant is estopped to file the present application

64. Since the issue of moratorium was never raised any time prior to the filing of the present application despite having knowledge of all the events that had transpired during the stay period, the Applicant cannot be now permitted to take a complete reverse stand.
65. It is a trite law that parties cannot be permitted to approbate and reprobate at the same time and take contrary stands. Reliance has been placed on **Suzuki Parasrampuriah Suitings Private Limited vs Official Liquidator of Mahendra Petrochemicals Limited [(2018) 10 SCC 707]**, **Joint Action Committee of Air Line Pilots' Assn. of India vs. DGCAS**, **Premlata Alias Sunita vs. Naseeb Bee and Ors [(2022) 6 SCC 585]**.



Respondents have exercised their contractual rights

66. The funds lying in the account of the Corporate Debtor are charged in favour of the lenders as a security interest and the appropriation of the amounts towards outstanding NPA (Non-Performing Asset) dues of the lenders is essentially a means of enforcement of security interest. Therefore, the Axis Bank/R-2, in exercise of its contractual rights to enforce the security over bank balance has appropriated the funds lying in the account of the Corporate Debtor maintained with the Axis Bank.

Applicability of Principle of Res Judicata

67. Ld. Counsel appearing for IDBI Bank submits that the issue raised by ARCIL in IA/126/2024 regarding the appropriation of funds by Respondents 2 to 6 had been earlier raised by Ms. Shilpi Asthana, ex-director of Corporate Debtor as well as the Applicant herein, in the proceedings before the Appellate Tribunal, had already prayed for the exact same relief or directions against the Respondents 2 to 6 herein to refund the funds appropriated from the account of the Corporate Debtor before the Appellate Tribunal. However, despite hearing the matter at length, the Hon'ble Appellate Tribunal went ahead to only decide the Company Appeal and closed all pending applications. Since, the issues herein are identical, the same is res judicata and is covered under Explanation V and VI of Section 11 of Code of Civil Procedure, 1908 (CPC).
68. The Respondents have relied on **Experion Developers Private Limited v Himanshu Dewan and Others 2023 SCC OnLine SC 1029** wherein the following observations were made:

“31. No doubt, in Pawan Gupta’s case (supra), this Court had not exercised the power or jurisdiction conferred by Article 136 of the Constitution of India, but had exercised its appellate power, which would, in terms of the ratio in Kunhayammed (supra), become the final order which is executable. Thus, the dismissal of the appeal by this Court in the case of Pawan Gupta (supra), had put a finality and an end to the litigation in the said case. To this extent,



therefore, the application of the general principle of res judicata would bar the party from raising the plea once again. The order passed by this Court, on the application of the principle of judicial discipline, bars and prevents any tribunal or parties from canvassing or taking a view which would have the effect of re-examination of the issues and points determined in the case of Pawan Gupta (supra) inter-se the parties to the decision. However, dismissal of the appeal would not operate as res judicata in the case of the respondents against the appellant as they were not parties to the said case, and the proceedings initiated by Pawan Gupta were fact specific and not in a representative capacity.

69. It is submitted that in the present case, the Appellate Tribunal's Order dated 10.08.2023 stands merged with the Hon'ble Supreme Court's Order dated 01.09.2023 keeping in account the Doctrine of Merger as propounded in **Kunhayammed & Others v. State of Kerala & Anothers, (2000 (6) SCC 359)** the relevant paragraph of which is reproduced below:

"44. (i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law."

70. Thus, relying upon the above judgments, the Respondents contend that the dismissal of the appeals by the Appellate Tribunal and the Hon'ble Supreme Court had put a finality and an end to the litigation on the Subject Issue which cannot be raised again in view of the principles of res judicata.

71. The Applicant took a conscious decision of accepting the Order dated 10.08.2023 by not challenging the same before the Hon'ble Supreme



Court and as such has rested its rights permanently to challenge the appropriation of funds by Respondents 2 to 6. Therefore, the Applicant after accepting the Order dated 10.08.2023, is estopped from challenging the action of Respondents 2 to 6. Moreover, the said issue was once again in question before the Hon'ble Supreme Court in the Civil Appeal but the Hon'ble Supreme Court, after hearing the parties and considering the issues raised by the parties, decided not to grant the reliefs prayed for. Thus, the said issue has attained finality.

ANALYSIS & FINDINGS

72. Heard Ld. Counsel for the parties and the Resolution Professional and perused the record.

73. We have given our thoughtful consideration on the submissions made by the parties in all the three captioned applications . After careful analysis of the submissions of the parties, the following points of determination emerge in the present case:

- I. *Whether the Insolvency Commencement Date (ICD) i.e. 22.02.2023 can be changed to a later date owing to the stay of the CIRP Admission Order and Whether the cut-off date for the purpose of CIRP-related activities be taken as 10.08.2023 instead of 22.02.2023?*
- II. *Whether moratorium was in subsistence during the stay period i.e. between 07.03.2023 till 10.08.2023?*
- III. *Whether the RP was correct in handing over the management and control of the Corporate Debtor back to the suspended directors?*
- IV. *Whether the withdrawal and appropriation of monies by the Respondents 2 to 6 during the stay period is tenable in law?*



74. **Issue I: On ‘Insolvency Commencement Date’**

74.1 We note that the RP, in IA 4844/2023, had prayed for considering 10.08.2023 (i.e. the date of dismissal of appeal by Appellate Tribunal and the resumption of CIRP) for the purpose of carrying out all the CIRP-related activities. However, Senior Advocate Mr. Gaurav Joshi, representing ARCIL, the Applicant in IA/126/2024, has vehemently objected to the same and argued that the insolvency commencement date which is statutorily defined under section 5(12) of the I&B Code cannot be changed.

74.2 Section 5(12) of the I&B Code defines ‘insolvency commencement date’ as *“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.”* The said definition clearly shows that insolvency commencement date is the date of admission of a petition filed under sections 7, 9 or 10. Moreover, we agree with ARCIL’s submission that there exists no provision in the Code which contemplates shifting of the insolvency commencement date.

74.3 We see that all the parties herein are *ad idem* on the fact that stay of CIRP of the Corporate Debtor does not change the ‘insolvency commencement date’ which is fixed i.e. the date of admission of the Corporate Debtor into CIRP which is 22.02.2023 in the present case. Thus, in view the statutory definition, we are satisfied that the insolvency commencement date cannot be changed and since there is consensus amongst the parties on the same, we do not deem it necessary to delve into this issue any further.

74.4 Under the provisions of the I&B Code, various activities are referred to the Insolvency Commencement Date (**ICD**). There is no provision to change/shift the ICD. Therefore, we are unable to agree that merely for the purpose of CIRP activities, CIRP date can be changed/



shifted to a future date in view of the stay order of the Hon'ble Appellate Court. This does not gel with the scheme and intent of the legislation. We agree with the submission made on behalf of ARCIL that stay order does not wipe out the main order. Stay order is in force till the final appeal is pending. All actions in the interregnum would be subject to the final outcome of the appeal. Once the final order is passed dismissing the appeal, all legal consequences will follow including the insolvency commencement date which cannot be changed. Therefore, the submission of the RP for cut-off date for the purpose of CIRP-related activities be taken as 10.08.2023 is rejected. Accordingly, issue I is decided.

75. As regards the other issues listed in para 73 above, we are of the view that before delving into the same, it is pertinent to decide on the preliminary question i.e. whether the said issues are covered by the principle of *Res Judicata*?

76. ***On Applicability of Doctrine of Res Judicata***

76.1 Ld. Counsel, representing Axis Bank/R-2, relied on an order passed by Hon'ble NCLAT in IA No. 2558/2023 filed by the suspended directors seeking directions from Hon'ble NCLAT for reversal of the money appropriated by the Banks. The Hon'ble NCLAT had disposed of the said application without passing any order. The suspended directors, therefore, preferred an appeal before the Hon'ble Supreme Court which appeal also stood dismissed. Thus, according to the Respondents, since the issues raised herein is identical to those raised in IA/2558 and other connected applications filed before the Appellate Tribunal, the same has attained finality. In view of the applicability of the principle of *Res Judicata*, no directions can now be passed to bring back the money.



76.2 It is useful to reproduce section 11 of CPC:

“Section 11 – Res Judicata

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.-- The expression former suit shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II.-- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.--The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.-- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.-- Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.-- Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this



section, be deemed to claim under the persons so litigating .

Explanation VII.-- The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.-- An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.”

76.3 It is the case of the Respondents that since no relief was granted by the Appellate Tribunal and the Hon'ble Supreme Court in respect of the appropriation of amounts by R-2 to R-6 despite hearing the arguments in this behalf, the matter had attained finality and is covered under Explanation V and VI of Section 11 of Code of Civil Procedure, 1908 (CPC). To substantiate this contention, the Respondent 4 relied on **Experion Developers Private Limited v Himanshu Dewan and Others 2023 SCC OnLine SC 1029** and **Kunhayammed & Others v. State of Kerala & Anothers, (2000 (6) SCC 359)**.

76.4 Senior Counsel Mr. Gaurav Joshi, appearing for ARCIL/Applicant, relied on **Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Anr [(2022) 2 SCC 401]** wherein it has been held that “*Res judicata cannot apply solely because the issue has previously come up before the court. The doctrine will apply where the issue has been “heard and finally decided” on merits through a conscious adjudication by the court.*”



76.5 Mr. Joshi further cited the case of **Union of India vs. Pramod Gupta (D) by L.Rs. and Ors [MANU/SC/0549/2005]** wherein the Hon'ble Supreme Court has held as follows:

“The principle of res judicata would apply only when the lis was inter-parties and had attained finality in respect of the issues involved. The said principle will, however, have no application inter alia in a case where the judgment and/or order had been passed by a court having no jurisdiction therefore and/or in a case involving pure question of law. It will also have no application in a case where the judgment is not a speaking one.”

76.6 We note that several applications were moved before the Appellate Tribunal amidst the pendency of the Company Appeal No. 274/2023. To summarize, IA/2138/2023 was filed on 15.05.2023 by Ms. Shilpi Asthana who is one of the suspended directors of the Corporate Debtor, seeking directions regarding the appropriation of monies by the Respondents 2 to 6. However, on 18.05.2023, Ms. Asthana filed a Contempt Case No. 16/2023. When IA/2138 was taken up for hearing on 18.05.2023, it was submitted on behalf of Ms. Asthana that in view of the contempt application filed, she is not pressing IA/2138. Accordingly, the Appellate Tribunal dismissed IA/2138 as not pressed.

76.7 On 31.05.2023, though the Contempt Case was heard at length, it was submitted on behalf of Ms. Asthana that she would file an appropriate application seeking vacation of stay on the Admission Order and consequently, the Contempt Case No. 16/2023 was dismissed as withdrawn. We observe that the JLM held on 23.06.2023 also took a note of the same.

76.8 Thereafter, another IA No. 2558/2023 was filed by Ms. Asthana seeking similar reliefs as sought in the Contempt Case and it is



stated that submissions on appropriation of funds were made and prayer seeking reversal of the transaction was also sought. However, despite hearing the matter at length, the Appellate Tribunal did not pass any order in the pending applications and decided only the Company Appeal No. 274/2023 on merits and dismissed the appeal vide order dated 10.08.2023 and closed all the pending applications. Hence, it cannot be said that the issues raised in IA/2558 and other applications were 'decided on merits' and therefore, the same has not attained finality to attract the doctrine of *res judicata*.

76.9 Moreover, when the impugned order of dismissal was challenged before the Hon'ble Supreme Court, it is submitted that Respondent 11, who is one of the suspended directors of the Corporate Debtor, had also challenged the Appellate Tribunal's decision to not grant/decide on the interim reliefs in respect of appropriation of monies by R-2 to R-6. Again, the Hon'ble Supreme Court decided to not pass any order in respect of the appropriation of monies by R-2 to R-6 but only decided the appeal on merits and all other applications and submissions were closed with the dismissal of the Civil Appeal 5340/2023 on 01.09.2023.

76.10 A bare perusal of the events transpired during the pendency of the Appeal shows that even though the Appellate Tribunal and the Hon'ble Supreme Court had heard the parties on the issue of appropriation of funds from the account of the Corporate Debtor which is also evident from an interim order dated 12.06.2023 wherein the Appellate Tribunal prevented R-2 from withdrawing monies any further, however, we are also conscious that these applications were closed with the dismissal of the Appeals. Moreover, it is also undisputed that the orders of Appellate Tribunal and Hon'ble Supreme Court dismissing the Appeals have not dealt with any of the issues raised in the present applications.



76.11 We refer to the judgment of Hon'ble Supreme Court in **Prem Kishore & Ors. Vs. Brahm Prakash & Ors [Civil Appeal No. 1948 of 2013]** decided on 29.03.2023, relevant paragraphs are extracted below:

“34. The general principle of res judicata under Section 11 of the CPC contain rules of conclusiveness of judgment, but for res judicata to apply, the matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue in the former suit. Further, the suit should have been decided on merits and the decision should have attained finality. Where the former suit is dismissed by the trial court for want of jurisdiction, or for default of the plaintiff's appearance, or on the ground of non-joinder or mis-joinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letter of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation, or for failure to pay additional court fee on a plaint which was undervalued, or for want of cause of action, or on the ground that it is premature and the dismissal is confirmed in appeal (if any), the decision, not being on the merits, would not be res judicata in a subsequent suit.

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55. The moot question is whether the eviction petition was dismissed for default which dismissal would certainly bar a fresh suit if instituted on the same cause of action. The words, which we have quoted above, certainly do not mean dismissal either on merits or on default. It was argued before us that the order should only be taken to mean what an order under Order 17 can possibly be and nothing else. We are not impressed by such submission. The order did not purport to be one of dismissal for default or on



merits and it cannot be taken to mean other than what it purported to be. It is in ordinary phraseology; not legal phraseology and it cannot be divested of its ordinary meaning. Its ordinary meaning is that the proceeding was closed and the suit would not count as a pending one. The later description would be redundant if the order was one of final disposal of the suit. The order did not purport to be a final disposal of the suit. It merely stopped the proceedings. It did nothing more. This is not final decision of the suit within the meaning of Order 9 Rule 8 and Order 17 Rule 3 of the CPC.”

76.12 It is clear from the above that the Hon’ble Supreme Court has held that merely closing a proceeding in a case cannot be construed as a final decision on merits to attract the principle of res judicata under section 11 of CPC. Following the above judgment, we hold that the issues raised in the present applications are not covered by the principle of *Res Judicata* under section 11 of CPC. Having said this, we are inclined to decide the remaining issues.

77. Issue II: On subsistence of moratorium during the Stay Period

77.1 In the present case, the admission order under section 7 of I&B Code was passed on 22.02.2023 against which the suspended directors preferred an appeal before the Appellate Tribunal. On 07.03.2023, the Appellate Tribunal stayed the admission order in following terms:

“In the meantime, operation of the impugned order shall remain stayed.”

77.2 Ld. Counsel appearing for Respondents contended that, as per the scheme of the I&B Code, 2016, when a section 7 petition is admitted by the Adjudicating Authority, various orders have to be passed under different sections of the Code. Thus, along with CIRP initiation order passed under section 7, orders appointing the



Resolution Professional and declaration of moratorium are also passed. Thus, according to Ld. Counsel, three orders are passed on the date of admission of a Company Petition under section 7 of the I&B Code, 2016.

77.3 For ease of reference, the relevant sections of I&B Code are reproduced:

“7. Initiation of corporate insolvency resolution process by financial creditor.

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(5) Where the Adjudicating Authority is satisfied that – (a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or (b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).”

“13. Declaration of moratorium and public announcement. –

(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.”

“14. Moratorium. –

(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 judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off 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.




“16. Appointment and tenure of interim resolution professional. - (1) The Adjudicating Authority shall appoint an interim resolution professional on the insolvency commencement date.”

77.4 According to the Ld. Senior Counsel, when the application under section 7 of the Code was stayed by the Appellate Tribunal, the order appointing the Resolution Professional and declaration of moratorium was also stayed which means that there was no moratorium from 07.03.2023 onwards. It is the case of the Respondents that there is no automatic moratorium since it is not related to a statutory provision but is an outcome of the order. Thus, when the order of admission was stayed, moratorium is also stayed.

77.5 Per contra, Senior Advocate Mr. Gaurav Joshi appearing for ARCIL/Applicant, though while agreeing that separate orders are passed under the Code with respect to admission of CIRP, appointment of RP and declaration of moratorium, contended that it is only the operation of CIRP that has been stayed whereas the order appointing RP as well as the order declaring moratorium subsists even during the stay. It is the case of the ARCIL that the RP ought not to have handed over the management and control of the Corporate Debtor back to the suspended directors.

77.6 The Respondents have argued that the Applicant had taken the plea of moratorium as merely an afterthought since the understanding of all the parties of the stay order was that no moratorium is applicable from 07.03.2023, and therefore, the RP handed over the management to the suspended board and the Respondents 2 to 6 had appropriated the monies under the strength of their contractual entitlement. It is argued by the Respondents that several Joint Lenders' Forum Meetings were conducted during the stay period which was also attended by the Applicant/ARCIL and the Applicant



was in full consonance with the appropriation of monies. The only issue was that the appropriation was done in a manner prejudicial to the Applicant and had there been distribution in favour of the Applicant, the Applicant would not have moved the application no. 126/2024. The Respondents have relied on certain cases pertaining to principle of estoppel and the doctrine of approbation and reprobation. However, we are of the considered view that, as Adjudicating Authority, having cognizance of the issue of withdrawal of money during the stay period, it is imperative for us to decide on the issue irrespective of the applicability of rule of estoppel in the present case.

77.7 The parties have relied on a catena of judgments and have strenuously argued on the legal effect of a stay order. We have given our anxious consideration on the case laws relied upon by the parties. It is foremost to deal with the case of **Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Assn. CSI Cinod Secretariat, Madras [1992 INSC 138]** wherein the Hon'ble Supreme Court had discussed on the legal effect of staying an order passed under the Sick Industrial Companies (Special Provisions) Act, 1985 and the moratorium imposed under section 22 thereof. The relevant paragraphs are extracted below:

“Sub-s. (1) of Section 22 which alone has relevance to these questions provides as under:

“22. Suspension of legal proceedings, contracts etc.

(1) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law or the memorandum and articles of association of the



industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding-up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.”

A perusal of the aforesaid provision shows that it is applicable, in respect of an industrial company, where (i) an inquiry under Section 16 is pending; or (ii) a scheme referred to in Section 17 is under preparation or E consideration; or (iii) a sanctioned scheme is under implementation; or (iv) where an appeal under Section 25 relating to the industrial company is pending. In that event no proceedings for winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for appointment of receiver in respect thereof shall lie or be proceeded with further. This injunction is, however, subject to the exception that the proceedings can be instituted or proceeded further with the consent of the Board or the Appellate Authority. In other words, there is no absolute bar to the institution of proceedings referred to in s. 22(1) and for the operation of the bar imposed by the said section it is necessary that one of the matters referred to therein should be pending so that directions may be obtained either from the Board or the Appellate Authority for institution of or continuation of a proceeding of the type specified in s. 22(1).

In the instant case, the proceedings before the Board under ss. 15 and 16 of the Act had been terminated by order of the Board dated April 26, 1990 whereby the Board, upon



consideration of the facts and material before it, found that the appellant-company had become economically and commercially non-viable due to its huge accumulated losses and liabilities and should be wound up. The appeal filed by the appellant-company under s. 25 of the Act against said order of the Board was dismissed by the Appellate Authority by order dated January 7, 1991. As a result of these orders, no proceedings under the Act was pending either before the Board or before the Appellate Authority on February 21, 1991 when the Delhi High Court passed the interim order staying the operation of the Appellate Authority dated January 7, 1991. The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate



Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order G dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the Appellate Authority. In that view of the matter, it cannot be said that any proceedings under the Act were pending before the Board or the Appellate Authority on the date of the passing of the order dated August 14, 1991 by the learned Single Judge of the Karnataka High Court for winding up of the company or on November 6, 1991 when the Division Bench passed the order dismissing O.S.A. No. 16 of 1991 filed by the appellant-company against the order of the learned Single Judge dated August 14, 1991. B Section 22(1) of the Act could not, therefore, be invoked and there was no impediment in the High Court dealing with the winding up petition filed by the respondents.”

(Emphasis Provided)

77.8 The law on the effect of stay order is well-settled as can be perceived from the above judgment. **Shree Chamundi Mopeds** (supra) clearly distinguishes between the outcome of quashing of an order and stay of an order. This precedent comes in aid to us in determining the questions raised in the present Applications. In the above-mentioned case, it was held by Hon’ble Supreme Court that stay of the dismissal order could not be construed as revival of the appeal and it was made clear that the order of dismissal was very much in



existence even during the stay period. The above observations clearly show that stay of an order does not amount to setting aside of the order and therefore, the same continues to exist in the eyes of law. In this context, the Hon'ble Supreme Court made a precise interpretation of section 22 of SICA and held that moratorium under section 22 is applicable only when any case is pending before the BIFR. In the above-mentioned case, since the dismissal order was merely stayed and no circumstances set out in section 22 was in force, the Hon'ble Supreme Court held that there was no moratorium. This patently shows that there is no sojourn of moratorium during the stay of an order.

77.9 Going by the observations in **Chamundi Mopeds** (supra), it can be interpreted that in the present case, stay of the admission order dated 22.02.2023 does not amount to quashing of the same and since the admission order is not wiped out, the moratorium under section 14 of I&B Code which is declared on the insolvency commencement date i.e. the date of admission of application under section 7 of the Code, was in subsistence.

77.10 In this context, it is imperative to look at the following observations of the Appellate Tribunal in **Mukesh Jain Kumar vs. Navin Kumar Upadhyay & Anr [Company Appeal (AT) (Ins) No. 930-931/2023]**, decided on 19.12.2023:

"12. ... The judgment of this Tribunal in 'Ashok Kumar Tyagi' (supra) on which reliance has been placed by the Adjudicating Authority does not lay down any proposition that when order of initiating CIRP has been stayed, the result would be to handover the Corporate Debtor to the ex-management by Resolution Professional. In 'Ashok Kumar Tyagi' (supra), this Tribunal noticed the difference between stay of an order and quashing of an order.



13. *The judgment of ‘Ashok Kumar Tyagi’ (supra) of this Tribunal does not support the order of the Adjudicating Authority that in view of the stay of CIRP, Resolution Professional has to handover charge of the Corporate Debtor. Any such result of stay of the CIRP shall be disastrous since if the management against whom the CIRP has been initiated is handed over the charge, it is prone to misuse the assets and the assets shall be diminished, which may adversely affect the creditors of the Corporate Debtor. In view of the stay of the CIRP, it is true that the Resolution Professional cannot take any further steps in the CIRP of the Corporate Debtor and has to stay his hand from proceeding any further in the CIRP and await the order of the Appellate Court. The direction to the Resolution Professional in the impugned order to handover the Corporate Debtor to the ex-management is wholly unjustified and has to be set aside.”*

77.11 The observations in **Mukesh Kumar Jain** (supra) settles the position of a stay order under the I&B Code. Further, as regards the reinstatement of the position of the Corporate Debtor prior to the date of admission of section 7 petition, the Appellate Tribunal in **Ashok Kumar Tyagi vs. UCO Bank & Anr [Company Appeal (AT) (Ins) No. 1323/2022** has specifically held as follows:

“18. The difference between stay of an Order and quashing of any Order are well settled as noticed above. In event on the stay of the admission of Section 7 Application, the Corporate Debtor is allowed to function and position as was existing prior to 28.10.2022 is restored, there shall be no difference in staying an Order and quashing of an Order. What the Appellants are asking/praying is restoration of the position as was prior to admission of Section 7 Application. We can not accept



such request made by the Appellant. The Admission Order of Section 7 Application has only been stayed and not quashed thus the Corporate Debtor can not be permitted to function as it was functioning prior to 28.10.2022. 19. However, in view of the stay of the Order dated 28.10.2022, the IRP can not carry on any functions since the IRP was appointed by the same order and by stay of the Order, no further action can be taken by the IRP in pursuance of the Order dated 28.10.2022. The Order dated 28.10.2022 has become inoperative in view of the Interim Order of this Tribunal dated 07.11.2022. Hence the Appellant is right in his submission that IRP can not discharge any function after the Impugned Order dated 07.11.2022.

20. ... In the facts of the present case, we are of the view that difficulties in running the corporate debtor as a going concern, can be mitigated by issuing following directions:

I. The Chief Executive Officer (CEO)/Officers of the Corporate Debtor authorized to operate the Bank Accounts are permitted to make payment of wages of workers, workmen and employees as was being paid earlier to passing of the order dated 28.10.2022. The payment of Electricity Dues and other necessary expenses may also be carried out by the officials as mentioned above subject to submitting all details of expenditure on weekly basis to the IRP as well as to the Suspended Managing Director of the Corporate Debtor.”

77.12 It is crystal clear from the observations in **Ashok Kumar Tyagi** (supra) that the Corporate Debtor cannot be reinstated back to the position as it was prior to the admission of the section 7 petition. Similarly, for any further actions too, liberty was given to approach



the Appellate Tribunal and the order also specifically mentions that settlement, if any, shall require the leave of the Appellate Tribunal. This amply clarifies the legal effect of stay order in so far as the cases under I&B Code are concerned.

77.13 Sr. Advocate Mr. Shyam Kapadia, counsel appearing for R-3, relied on **Vrundavan Residency Pvt Ltd V/s Mars Remedies Pvt Ltd [CP(IB) No. 300/2020]** and submitted that while a CIRP admission order was stayed by Hon'ble Supreme Court, another Company Petition was entertained and admitted which would indicate that moratorium is not in force when an admission order is stayed. In this regard, it is seen that in the CP(IB) No. 300/2020 was proceeded further with due sanction of the Hon'ble Supreme Court and came to be admitted by the Adjudicating Authority when another Company Petition against the same Corporate Debtor was stayed and pending before the Hon'ble Supreme court. It is pertinent to note the observations of Hon'ble Supreme Court while permitting the continuation of proceedings in CP/300/2020:

“The main contention of the corporate debtor who is the appellant in the above main appeal is that there cannot be two CIRPs simultaneously going on against the same debtor. The said contention is legally well-founded. But today, both CIRPs are on hold. This is despite the fact that the order passed in favour of the proposed intervenor in his own application under Section 7 IBC, by the NCLAT has attained finality and there is no impediment for the CIRP initiated by the proposed intervenor to proceed further.

It is understandable that if the CIRP initiated by the respondent in the above civil appeal is on track. If it is not on track, at least the other CIRP should be allowed to proceed. The Corporate Debtor cannot be allowed to have benefit of the best of both the worlds.



Therefore the intervention application is disposed of clarifying that the intervenor may again move an application before the NCLT for restoration and the NCLT shall pass fresh orders keeping in mind the above observations.”

77.14 On perusal of the above observations of Hon’ble Supreme Court, though it is seen that directions were given to go ahead with the insolvency proceedings while another Company Petition of the same Corporate Debtor was stayed and pending for adjudication, we are of considered opinion that the Hon’ble Supreme Court’s decision was keeping in view the peculiar facts and circumstances of that case.

77.15 Further, the Hon’ble Supreme Court had directed for restoration of a Company Petition when another company petition was stayed and pending before it only for the reason that the creditors cannot be baffled interminably due to the stay of a CIRP order which clearly indicates that the intention was to protect the creditors who are the ultimate risk-bearers when a company goes into insolvency/liquidation. Conversely, in the present case, there has been withdrawal and appropriation of monies by few creditors which would prejudicially affect the rights of other creditors and also negatively impact the value of the assets of the Corporate Debtor thereby thwarting the very purpose of the Code i.e. maximization of value of the assets of Corporate Debtor.

77.16 Another case relied upon by the Respondents is **Mr. Punit Garg vs. Ericsson India Pvt. Ltd. [Company Appeal (AT) (Ins) No. 255-256/2018]**. The relevant extracts are reproduced below:

“Taking into consideration the stand taken by the parties and the fact that if the ‘Corporate Insolvency Resolution Process’ is allowed to continue, all the ‘Financial Creditors’



as also the 'Operational Creditors' may suffer more loss and the Appellants have made out a prima facie case, as agreed and suggested by learned Senior Counsel for the Appellants and learned Senior Counsel for the 'Joint Lenders Forum' and the learned Senior Counsel for the 'Operational Creditor'- 'Ericsson India Pvt. Ltd.', we pass the following orders:

- i. Until further orders, the impugned orders dated 15th May, 2018 and 18th May, 2018, passed by the Adjudicating Authority, Mumbai Bench in C.P. (IB) 1385, 1386 & 1387 (MB)/2017, shall remain stayed. The 'Resolution Professional' will allow the managements of the 'Corporate Debtors' to function. He may attend the office of the 'Corporate Debtors' till further order is passed by this Appellate Tribunal. Thereby, the 'Corporate Insolvency Resolution Process' initiated against the 'Corporate Debtors' namely— 'Reliance Infratel Ltd.'; 'Reliance Telecom Ltd.' And 'Reliance Communications Ltd.' Shall remain stayed, until further orders.*
- ii. The 'Financial Creditors'/'Joint Lenders Forum' with whom the assets of the 'Corporate Debtors' have been mortgaged as also the 'Corporate Debtors' are given liberty to sell the Debtors' and to deposit the total amount in the 'Joint Lenders Forum' subject to the decision of these appeals. It was made clear that if the appeals are rejected, the 'Financial Creditors'/'Joint Lenders Forum' and other Banks with whom the amount is deposited, will have to return the total amount in the respective accounts of the 'Corporate Debtors'.*
- iii. The Chairman, Managing Directors, Directors and other members of the 'Corporate Debtors' namely— 'Reliance Infratel Ltd.'; 'Reliance Telecom Ltd.' and 'Reliance*



Communications Ltd.’ are directed to pay a sum of Rs. 550 Crores (Rupees Five Hundred Fifty Crores Only) (jointly) in favour of ‘Ericsson India Pvt. Ltd.’ within 120 days i.e. by 30th September, 2018. In case of non-payment of the amount and part of the same, the concerned appeal(s) may be dismissed and this Appellate Tribunal may direct to complete the ‘Corporate Insolvency Resolution Process’ and may pass appropriate order. The payment of Rs. 550 Crores (Rupees Five Hundred Fifty Crores Only) in favour of the ‘Operational Creditor’ shall be subject to the decision of these appeals. If the appeals are dismissed, the ‘Operational Creditor’ will pay back the amount to the ‘Corporate Debtors’.”

77.17 In **Punit Garg** (supra), the Appellate Tribunal had stayed the CIRP and also allowed the settlement between the Corporate Debtor and creditors with a clear direction that the deposit of amounts in favour of the creditors shall be subject to the outcome of the appeals and in case the appeal is dismissed, the parties were directed to remit back the amount to the Corporate Debtor. On a perusal of the said order, we find that the observations therein do not support the case of the Respondents, rather it strengthens the case of the Applicant.

77.18 The Bankruptcy Law Reforms Committee (BLRC) in its report (November 2015) recommended for a calm period during which time negotiation can take place to assess the viability of the debt. In this regard, it further stated that *“this calm period is implemented in two orders passed by the Adjudicator. One is an order passing a moratorium on all recovery actions or filing of new claims against the enterprise. The other is by putting in place an insolvency professional who has the powers to take over the management and operations of the enterprise.*



77.19 It is also germane to note the following observations in the BLRC Report (November 2015):

“3.4.2 Principles driving the design

IV. *The Code will ensure a collective process.*

9. The law must ensure that all key stakeholders will participate to collectively assess viability.

The law must ensure that all creditors who have the capability and the willingness to restructure their liabilities must be part of the negotiation process. The liabilities of all creditors who are not part of the negotiation process must also be met in any negotiated solution.

V. *The Code will respect the rights of all creditors equally.*

10. The law must be impartial to the type of creditor in counting their weight in the vote on the final solution in resolving insolvency.

3.5 ... Value destruction in corporate distress *when a firm has secured credit, and fails on its obligations, the present framework (SARFAESI) emphasises secured creditors taking control of the assets which were pledged to them. This tends to disrupt the working of the company. The present frameworks do not allow for the possibility of protecting the firm as a going concern while protecting the cash flows of secured creditors.*

5. Process for legal entities

5.3.1 1. Moratorium on debt recovery action

The motivation behind the moratorium is that it is value maximising for the entity to continue operations even as viability is being assessed during the CIRP. There should be no additional stress on the business after the public announcement



of the IRP. The order for the moratorium during the IRP imposes a stay not just on debt recovery actions, but also any claims or expected claims from old lawsuits, or on new lawsuits, for any manner of recovery from the entity.

77.20 The above elucidation of BLRC articulates that imposition of moratorium and appointment of IRP are entangled for effective and efficient resolution of the Corporate Debtor. Moreover, it can also be understood that the Code envisages a more creditor-driven resolution of a company with overall benefit to every stakeholder of the Corporate Debtor. When the law is settled that an interim stay cannot be equivalent to quashing of the CIRP order, it becomes certainly clear that any action taken in the meantime in deviation of the salient features of the Code would defeat the very purpose behind its enactment.

77.21 Further, on analysing the above-cited judgments in their true spirit, more particularly **Mukesh Jain Kumar** (supra), **Ashok Tyagi** (supra) and **Punit Garg** (supra), it is clear that the understanding of the Appellate Tribunal was never that an order granting stay on the CIRP of a company would also mean staying the appointment of the RP and the moratorium imposed thereunder as the same would be averse to the intent and spirit of I&B Code.

77.22 Thus, based on the above discussions, we are satisfied that Hon'ble Appellate Tribunal, even in the absence of any specific directions/observations while granting the interim stay on 07.03.2023, did not intend to suspend the moratorium imposed under section 14 or the appointment of RP but merely impelled to stay the operation of the CIRP order dated 23.02.2023. This means that the RP was only prevented from taking further steps in respect of the CIRP process of the Corporate Debtor which does not imply that the Corporate Debtor has to be handed over back to the

management, and the management of the Corporate Debtor and few of its creditors could have acted against the objectives of the Code.

78. Issue III: On RP's conduct of handing over the management of Corporate Debtor back to the suspended directors

78.1 The RP has relied on **BPL Limited vs. R. Sudhakar [(2004) 7 SCC 2019]** and contended that RP's appointment is an outcome of the admission order and when the order itself is stayed, the RP could not carry out his functions under the I&B Code. However, we note that the Appellate Tribunal had already distinguished the **BPL Limited** (supra) judgment in the following terms:

"17. The ratio of the Judgment of this Tribunal in "B.P.L Ltd & Ors" (supra) is the same as was laid down in the Judgment of Hon'ble Supreme Court in "Shree Chamundi Mopeds Ltd." (supra) which has been followed by the Hon'ble Supreme Court. The above judgment in no manner helps the Appellant in the present case since present is a case where order of Admission of CIRP under section 7 has been stayed by this Tribunal. Proceeding under section 7 were initiated before the Adjudicating Authority in which final order was passed. Factual Matrix of the present case is clearly different from those which was considered in "B.P.L Ltd & Ors" (supra)."

78.2 Further, in **Ashok Kumar Tyagi** (supra), the Appellate Tribunal had directed the CEO to make the requisite payments towards the necessary dues only based on the facts of that case. Moreover, it is relevant to note here that a direction was also given to submit all the details regarding the payments so made to the IRP which means that the appointment of IRP is not fully wiped out due to the interim stay.




78.3 In **Punit Garg** (supra), as referred by the RP, the Appellate Tribunal had directed the RP to allow the management of the Corporate Debtor to run. However, such a direction was given by the Appellate Tribunal considering the facts and circumstances of that case. Moreover, a further direction that the RP shall also attend the office of the Corporate Debtor makes it patently clear that stay of a CIRP admission order does not automatically allow a management to take over the control of the Corporate Debtor and similarly, it also does not take away the powers and duties of the RP in the management of the Corporate Debtor.

78.4 Also, in **Mukesh Kumar Jain** (supra), the Appellate Tribunal had observed as follows:

“15. ... it is for the Resolution Professional to take decision in its wisdom as to how the Corporate Debtor should be allowed to continue as a going concern without taking any steps in the CIRP, in view of the interim order passed by the Hon’ble Supreme Court dated 25.02.2022.”

78.5 The I&B Code, as compared to the previous insolvency laws in India, has a distinct feature i.e. the Code mandates a transfer of control of the Corporate Debtor in the hands of the creditors from the management once an insolvency process is initiated. This creditor-controlled approach is mainly implemented to take the control of the Corporate Debtor out of the clutches of the erstwhile management. By handing over the Corporate Debtor back to the management at a time when the CIRP of the Corporate Debtor is merely stayed, the I&B Code will lose its sheen.

78.6 Thus, in view of the same and also the clear precedence set out in **Ashok Kumar Tyagi** (supra) which was passed prior to the stay granted in the present matter, the RP ought not to have handed over



the management and control of the Corporate Debtor back to the suspended directors without appropriate instructions/directions from this Tribunal.

79. Issue IV: On withdrawal and appropriation of monies by Respondents 2 to 6

79.1 All the transactions during the period from 07.03.2023 to 10.08.2023 are subject to the final outcome of the appeal. All parties including the Financial Creditors which withdrew the monies from the account of the corporate debtor were put to notice that insolvency commencement date is 23.02.2023. Mere stay of the order does not amount to wiping off the admission order completely as held by Hon'ble Supreme Court in **Shree Chamundi Mopeds** (supra).

79.2 Being fully aware of the pending proceedings before the Appellate Tribunal, the Financial Creditors took a calculated risk of appropriating the funds of corporate debtor knowing that their actions would be subject to the final outcome of the appeal.

79.3 The object of the IBC is to protect the assets of the corporate debtor from all creditors as well as its own management once CIRP is initiated. It is well-settled principle that during insolvency resolution/liquidation of a company, no creditor shall be paid in priority otherwise than as prescribed under the I&B Code.

79.4 In view of the various judgments of Hon'ble Supreme Court and Appellate Tribunal discussed above, the scheme and intent of IBC and the effect of Stay order is clearly laid down and we have no hesitation in holding all transactions undertaken during the period 07.03.2023 to 10.08.2023 were subject to the final outcome of the

appeal. As the appeal stood dismissed, the moratorium stands applicable from the date of ICD i.e. 23.02.2023.

79.5 Since we had held that moratorium is applicable from 23.02.2023, all transaction during the period from 23.02.2023 to 10.08.2023 are subject to the moratorium under section 14 of IBC. The expenses incurred in the ordinary course of business to protect the Corporate Debtor and to keep it as a going concern would be safeguarded. All other transactions and appropriations would consequently be returned to the corporate debtor for the benefit of all the creditors in accordance with the provisions and intent of the IBC.

79.6 In view of our decision that moratorium is applicable from the ICD i.e. 23.02.2023, all consequential actions will follow including on withdrawal and appropriation of monies by the Respondents, and there is no need to deal with other contentions of the Respondents in this regard.

80. We note that ARCIL, in its IA/126/2024, in prayer 'c', sought for direction to maintain the Corporate Debtor's account in a bank other than Respondents 2 to 6, and in prayer 'g', ARCIL prayed for direction to Respondents 2 to 6 for payment of interest on the amount appropriated by them during the stay period.

81. In respect of prayer 'c', we are of considered view that since the appeal challenging the CIRP admission order dated 23.02.2023 has been dismissed on 10.08.2023, the control of the management and affairs of the Corporate Debtor is back in the hands of the RP who will be in-charge of the account of the Corporate Debtor too and therefore, such a direction is unwarranted.

82. As regards prayer 'g', it is seen that since there was no direct transaction from the Corporate Debtor to the financial creditors as also to the extent



of amount appropriated, the Corporate Debtor's liability of interest would be reduced. Accordingly, a direction to pay interest on the appropriated amount would not be justified and hence not granted.

Conclusion

83. The findings recorded above are summarized as follows:

- a) Insolvency Commencement Date as defined under section 5(13) of the Code stands fixed at 22.02.2023.
- b) Since the ICD date cannot be changed, we are unable to agree that even after the dismissal of the appeal, the ICD should be reckoned as 10.08.2023 for CIRP activities. Hence, the application no. 4844/2023 is rejected. We hold the ICD remains 23.02.2023 and all CIRP related activities have to be reckoned from that date only.
- c) Moratorium under section 14 continues to be applicable from 22.02.2023.
- d) All the transactions and appropriations undertaken during the stay period i.e. between 07.03.2023 till 10.08.2023 shall be reversed and the amounts shall be remitted back to the account of the Corporate Debtor within 4 weeks from today.
- e) The expenses incurred in the ordinary course of business to protect the Corporate Debtor and to keep it as a going concern would be safeguarded.

84. With these observations, we pass the following order on the prayers sought in the three captioned applications:

IA/4844/2023

- i. Prayer 'c' seeking 10.08.2023 as the cut-off date for CIRP-related activities is rejected.



- ii. As regards prayer 'b' seeking clarification on liabilities incurred during the stay period, we note that the relief sought herein is incidental to prayer 'c' which has been rejected. Accordingly, prayer 'b' has become inconsequential. Thus, IA/4844/2023 is **dismissed**.

Intervention Petition 57/2023

- iii. Intervention Petition No. 57/2023 is **allowed**.

IA/126/2024

- iv. Prayers 'a', 'b', 'd', 'e' and 'f' being interconnected to each other are allowed;
- v. Prayer 'c' seeking direction to the RP to maintain the account of the Corporate Debtor in a bank other than Respondents 2 to 6 is rejected;
- vi. Prayer 'g' seeking direction to Respondents 2 to 6 to pay interest on the amounts withdrawn is rejected;
- vii. Thus, IA/126/2024 is **partly allowed**.

85. Accordingly, all IAs are **disposed of** in above terms.

Sd/-

Charanjeet Singh Gulati
Member (Technical)

Uma, LRA

Sd/-

Lakshmi Gurung
Member (Judicial)