

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT - II)**

**Item No. 206**  
**(IB)-2240(ND)2019**

**IA-1175-2022 IA-388/2022 IA/2397/2021 IA-4155/2020 I.A-5012/2021**

**IN THE MATTER OF:**

**M/s. Hi Tech Resource Management Limited ... Applicant/Petitioner**

**Versus**

**M/s. Overnite Express Limited ... Respondent**

**Under Section: 7 of IBC (CIRP)**

**Order delivered on 13.04.2022**

**CORAM:**

**SHRI ABNI RANJAN KUMAR SINHA,  
HON'BLE MEMBER (J)**

**SHRI L.N. GUPTA,  
HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant** : Adv Sreenita Goshdastidar and Adv Babhru Bahan  
Berain IA. 5012/2021

**For the Respondent** : Mr. Yash Vardhan Deora, Advocate. in IA 2397 of  
2021 - For Respondent No. 1

**ORDER**

**IA-388/2022:** Ld. Counsel appearing for the Resolution Professional has prayed to withdraw the application, which is for appointment of Authorised Representative (AR). Withdrawal at this stage is not permitted. List the application along with the application for Resolution Plan for consideration.

List the IA on 25.05.2022.

**IA-2397/2021:** As per the last order, all the Respondents except the R-1 were directed to ensure uploading of their reply on the DMS as a last chance. The replies of all the Respondents, except R-1, are still not on the DMS. Hence, their right to file the reply of those respondents is closed.

By filing this IA, the Applicant has prayed for the following main reliefs:

*“b. Pass an Order declaring the amount of Rs. 25,00,000/- transferred to Respondent No.1 on 03.03.2021 by Respondent No. 2 & 3 is in*



*contravention of moratorium declared under Section 14 of the Insolvency & Bankruptcy Code, 2016; and*

*c. Consequentially, direct Respondent No.1 to refund the amount of Rs. 25,00,000/- along with interest from 03.03.2020 till payment received from the account of Corporate Debtor post insolvency commencement date;”*

Heard the Ld. Counsels appearing for the Applicant as well as the Respondent No. 1. So far as the remaining Respondents are concerned, they are proceeded ex-parte. Ld. Counsel for the Applicant submits that an amount of Rs. 25,00,000/- has been paid to the Respondent No. 1 by the Respondent No. 2 & 3 immediately after initiation of the CIRP in contravention of the moratorium imposed under Section 14 of the IBC Code, 2016. He further submits that the Company Appeal preferred by the Suspended Board of Directors in the Hon’ble NCLAT has already been dismissed as withdrawn and the order of the Hon’ble NCLAT is placed at page No. 42 of the application. He further submits that since the transaction was made in contravention of the provision of Section 14 of the IBC, 2016, therefore, the Respondent No. 1 may be directed to refund the amount of Rs. 25,00,000/- to the accounts of the Corporate Debtor.

On the other hand, Ld. Counsel for the Respondent No. 1 submits that in terms of the settlement arrived between the parties, an amount of Rs.25,00,000/- was paid to the Respondent No. 1 on 03.03.2020, after the CIRP was initiated on 02.03.2020. He further submits that the Suspended Board of Directors had preferred an appeal and while permitting the Suspended Board of Directors to withdraw the appeal, the Hon’ble NCLAT has not directed the Respondent No. 1 to refund the amount. He further submits that since the amount was paid in terms of the settlement, it does not come under the purview of the preferential transaction. So the prayer of the Applicant be rejected.

Considering the submissions made on behalf of the parties, before passing any order, we refer to the relevant portion of Section 14 of the IBC, 2016, which is reproduced below:

**“Section 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.....”*

On perusal, we notice that in terms of Section 14 (1)(b), during the period of moratorium any transfer, encumbering, alienating or disposing off the property of the Corporate Debtor is restrained. Admittedly, this transaction has been made after the initiation of the CIRP on 02.03.2020. Therefore, in terms of provision referred to supra, such transaction is made in contravention of Section 14(1)(b) of the IBC Code, 2016. Hence, we have no option but to direct the Respondent No. 1 to refund the amount to the Accounts of the Corporate Debtor. Accordingly, the Respondent No. 1 is directed to refund the said amount to the Accounts of the Corporate Debtor within one month from today. **Accordingly, the application is allowed.**

**IA-4155/2020:** The application is filed U/s 19(2) of IBC regarding non-cooperation of the Suspended Board of Directors in providing information and documents. Ld. Counsel appearing for the RP submits that he has not received all the documents and information as sought. In view of the non-cooperation of the Suspended Board of Directors in providing information and documents, the RP is directed to file prosecution against the concerned under Section 70 and other relevant provisions of law as available under part II Chapter VII of IBC, in accordance with the provision of law.

**With this the present IA stands disposed of.**

**IA-5012/2021:** The application is filed for seeking a direction to the Resolution Professional considering his claims filed on 17.09.2021 & 26.09.2021. The



Applicant also referred to the Email received by him from the RP, which is placed at page No. 151 of the application. Ld. Counsel for the Applicant submits that the claim was rejected on the ground of delay which is confirmed by the Ld. Counsel for the RP. Ld. Counsel for the RP submits that the name of the claimant appears in the list of creditors and books of accounts of the Corporate Debtor. Since the name of the claimant, as admitted by RP, appears in the list of the creditors, therefore, the **matter** is remanded back to the RP for reconsideration of the claim, on merits; as per the provisions of law.

**With this the present IA is disposed of.**

**IA-1175/2022:** This application is filed along with Resolution Plan of the Corporate Debtor under Section 30(6) read with Section 31(1) of the IBC Code, 2016. Ld. Counsel appearing for the Resolution Professional submits that Resolution Plan is submitted by one of the Suspended Board of Directors under Section 240A, the Corporate Debtor being MSME. However, he has not enclosed the certificate of the Corporate Debtor being MSME on the date of submission of the Resolution Plan. The RP is directed to place the certificate of the Corporate Debtor being MSME on record. The RP is further directed to submit the chronology and brief synopsis of the Resolution Plan along with the Form-H within 7 days. List on 25.05.2022.



**(L. N. GUPTA)**  
**MEMBER (T)**



**(ABNI RANJAN KUMAR SINHA)**  
**MEMBER (J)**