

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

COURT – IV

31.

**IA 190(MB)2024
IN C.P. (IB)/40(MB)2022**

CORAM:

MS. ANU JAGMOHAN SINGH
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **29.04.2024**

NAME OF THE PARTIES:

Phoenix Arc Private Limited
Vs
Colour Roof (India) Limited

SECTION: 7, 60(5) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

1. Mr. Pulkitesh Dutt Tiwari, Ld. Counsel for the RP present. Mr. Avinash Khanolkar, Ld. Counsel for the Respondent present.
2. **IA-190(MB)2024:** This is an Application is being preferred by the Applicant seeking following reliefs:
 - a. Direct the Respondent to refund the amount of Rs.16,06,614, i.e. the amount set-off fraudulently by the Respondents, to the IRP along with interest at the rate of 18% p.a. from 13th December 2023 till the date of actual payment;
 - b. Direct the Respondent to comply with directions passed under Prayer clause (a) above within a specified timeline, and failing such compliance by the Respondent initiate appropriate contempt of court action against the Respondent;
3. Counsel for the applicant submits that the Corporate Debtor entered into a commercial transaction with the Respondent No.1 company for

procurement of the necessary raw materials. The Respondents conspired together and employed dishonest means to induce the IRP/Company into paying them a sum of Rs.16,06,614/- on the pretext of supplying GP coils which is an essential raw material required by the Corporate Debtor for manufacturing the coated products for sale to its clients.

4. Counsel for the Applicant further submits that the Respondents were well aware of the ongoing CIRP of the Company and appointment of the IRP as an officer of the court appointed to oversee and run the business of the company. The Respondent Nos.2 had assured the IRP that, as required under the provisions of IBC, the payment made towards the raw materials shall not be set-off against the outstanding dues from the past and promised timely delivery of the raw material.
5. Basing on the assurances of Respondent Nos. 2 and R-3, on 13th December, 2023 the company made the following NEFT transactions:
 - a. Rs.15,94,776/- (towards supply of raw materials) from its bank account in Kotak Bank bearing Number:6547871066 to the bank account of Respondent No.1 in HDFC Bank bearing Number-57500000462074 under UTR reference Number KKBKR52023121300807064;
 - b. Rs.11,838 (towards freight charges) from its bank account in Kotak Bank bearing Number: 6547871066 to the bank account of Krishna Sheet Processors Private Limited in the HDFC bank bearing account number-57500000462074 under UTR reference Number KKBKH23347808629.
6. Counsel for the applicant further submits that upon receipt of the aforementioned amounts, the Respondents illegally and unilaterally set-off the aforementioned amounts against the outstanding dues that were due from the Corporate Debtor i.e. the very same amounts for which the

Respondent No.1 had already filed its claim form with the IRP. Furthermore, the Respondents also refused to provide the raw materials towards which the payment was made.

7. In view of the above facts calling upon the Respondent to forthwith refund the amount of Rs.16,06,614/-. On the same day the IRP also addressed an email to the Respondent for refund the said amount.
8. Today, Counsel for the Respondent present and on instructions undertakes to refund the amount of Rs.16,06,614/- along with 18% interest with effect from 30.12.2022 till the date of actual re-payment to the Corporate Debtor.
9. Heard the both the Counsel. Taking note of the undertaking given by the Respondent to refund the money with interest, this bench directs the Respondent to refund the amount of Rs. Rs.16,06,614/- along with interest as stated in para.8 above to the Resolution Professional of the Corporate Debtor within one week from today.
10. With the above directions, **IA-190(MB)2024 is partly allowed and disposed of.**

Sd/-
ANU JAGMOHAN SINGH
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)