

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT-II**

**IA No.3933 of 2023  
IN  
CP (IB)/2985/MB/C-II/2018**

Under Section 60(5) of the Insolvency and Bankruptcy  
Code, 2016 r/w Rule 11 of the NCLT Rules, 2016

**Rajender Kumar Girdhar,  
Resolution Professional  
Of RSAL Steel Private Limited**

**...Applicant**

V/s

**Office of the Assistant Commissioner of Income Tax,  
Income Tax Department,  
Central Circle 7(1)**

**...Respondent**

*In the matter of*  
**Bank of Baroda  
(Erstwhile Dena Bank)**

**... Financial Creditor**

Versus

**RSAL Steel Private Limited**

**... Corporate Debtor**

**Order Delivered on : 09.01.2024**

*Coram:*

**Anil Raj Chellan  
Member (Technical)**

**Kuldip Kumar Kareer  
Member (Judicial)**

*Appearances:*

For the RP :Sr. Counsel Mustafa Doctor a/w

Adv. Amir Arsiwala & Adv. Abdullah Qureshi

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**ORDER**

*Per: Anil Raj Chellan, Member (Technical)*

1. The present Interlocutory Application has been filed by the Resolution Professional (RP) of RSAL Steel Private Limited (in short 'the Corporate Debtor') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter 'the Code') read with Rule 11 of the National Company Law Tribunal Rules seeking directions against the Respondent, the office of the Assistant Commissioner of Income Tax to release the wrongly adjusted income tax refunds for assessment year 2021-2022 and assessment year 2022-23 aggregating Rs. 61,06,790/- against the demand made under Section 271(1)(c) for the assessment year 2013-14 during the moratorium period in breach of the provisions of the Code.

*The brief facts leading to the filing of the present Application*

2. Corporate Insolvency Resolution Process (CIRP) as per order of this Tribunal dated 03.09.2019 pursuant to the said order, Mr. Rajender Kumar Girdhar was appointed as Interim Resolution Professional and a moratorium under Section 14 of the Code was declared in respect of the Corporate Debtor. During the CIRP, the Applicant filed income tax return for AY 2021-22 on 12.03.2022 claiming an income tax refund of Rs. 17,61,070/-.

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3. The Respondent vide its notice of Demand dated 29.03.2022 issued under Section 156 of the Income Tax Act made a demand of Rs. 11673230/- for AY 2013-2014. Though the Respondent was informed of the declaration of moratorium under Section 14 of the Code. The Respondent proceeded with issue of notice dated 06.09.2022 under Section 271(1) of the Income Tax Act. On further follow-up, the Respondent vide its communication dated 28.09.2022 assured that no demand would be reinforced until the end of the moratorium period.
4. The Applicant also filed ITR for AY 2022-2023 whereby claimed income tax refund of Rs. 57,66,240/-.
5. In spite of the assurance given by the Respondent vide communication dated 29.09.2022, the Respondent adjusted an amount of Rs. 61,06,790/- out of the income tax refund payable to the Corporate Debtor for the AY 2022-23 vide chalan Nos. 47291 and 48251, both dated 01.06.2023 and Chalan No. 39777 dated 21.04.2023.
6. Upon knowing about the adjustment, the Applicant raised a grievance on 21.06.2023 on Respondents portal which is yet to be resolved. Hence the present petition.
7. The Respondent has been served notice of the present application. Since there was no representation on behalf of the Respondent, this Tribunal vide its order dated 11.10.2023 set the Respondent ex-parte.

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*Analysis and decision*

8. We have heard the counsel appearing for the Applicant and perused the Petition and the annexures.
9. The learned counsel for the Applicant submitted that the Respondent adjusted/set off an amount of Rs. 61,06,790/- during CIRP in violation of the moratorium declared vide order dated 03.09.2019 of this Tribunal. The adjustment of the said amount is a mode of recovery by the Respondent in violation of the moratorium and the Respondent is liable to return or pay the adjusted amount to the Corporate Debtor.
10. It is further submitted that a Resolution Plan has already been approved by the CoC with the requisite majority on 30.04.2021 and the Application for approval of the Resolution Plan is pending adjudication before this Tribunal.
11. In the above background, the limited point coming up for consideration is whether set-off can be exercised by the Respondent during the moratorium and if the Respondent is liable to refund /pay the amount of Rs. 61,06,790/- to the Corporate Debtor.
12. The moratorium under Section 14 of the Code, stays the commencement and continuation of all legal proceedings against the Corporate Debtor and also prevents any action to foreclose, recover or enforce any security interest created by the Corporate Debtor. This moratorium remains in place until the Tribunal confirms the

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Resolution Plan approved by the CoC or until the Tribunal passes a liquidation order requiring the assets of the Corporate Debtor to be gathered and distributed among its creditors. It is a matter of record that moratorium under Section 14 of the Code was declared on 03.09.2019 upon admission of the Corporate Debtor into CIRP.

13. The moratorium under the Code is a protective feature to ensure that all the creditors work collectively to decide the future of the Corporate Debtor. Simultaneously, the Resolution Professional is empowered under Section 18 of the Code to take control and custody of any asset over which the Corporate Debtor has ownership rights. Thus, it is clear that the scheme of the Code is to explore resolution of the Corporate Debtor by collectively addressing all the creditors through the Resolution Plan.
  
14. The treatment of different class of creditors in the Resolution Plan and also in the liquidation process are dealt in detail in the Code. However, the Code has not permitted set-off during CIRP as it can operate as a preference. In the present case, the Respondent instead of making a claim before the Resolution Professional preferred to exercise a set-off by adjusting the tax refunds payable to the Corporate Debtor during the period of moratorium. This not only acted as a preferential payment to the Respondent, but also reduced the total funds available to the other creditors awaiting distribution as per the provisions of the Code.

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15. The Hon'ble NCLAT held in a catena of judgements that the creditors cannot exercise set-off during the moratorium. In the case of Interim Resolution Professional v. ICICI Bank (2018 SSC Online NCLT 21931), ICICI Bank was ordered to deposit the money it had debited during moratorium back into the Corporate Debtors account. In another case, State Bank of India v. Debashish Nanda (Company Appeal (AT) (Insolvency) No. 49/2018, order dated 21.03.2018), the Hon'ble NCLAT prevented the Bank from debiting amounts during moratorium from the Corporate Debtor's account.
16. In view of the discussions above, it can be seen that adjustment of refund amount during moratorium is against the spirit of the Code and also results in preferential payment to the Respondent. It is also observed that such set-offs are not permitted during moratorium as held by the Hon'ble NCLAT in various decisions.
17. Having regard to the above, **we allow IA No. 3933/2023** and direct the Respondent to release the wrongly adjusted income tax refunds for assessment year 2021-22 and 2022-23 aggregating Rs. 61,06,790/- to the Corporate Debtor which will be appropriately dealt by the Committee of Creditors (CoC) in whatever way it thinks fit in its commercial wisdom.

**Sd/-**

**ANIL RAJ CHELLAN  
MEMBER (TECHNICAL)**

**Sd/-**

**KULDIP KUMAR KAREER  
MEMBER (JUDICIAL)**