

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT V**

I.A. 442 OF 2024

IN

C.P. No. 1382/MB/2020

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

**Mr. Naren Sheth,
Resolution Professional
Of Shreem Corporation Limited
...Applicant**

IN THE MATTER OF

State Bank of India

...Financial Creditor

vs.

**Shreem Corporation Limited
...Respondent**

Order Dated: 05.04.2024

Coram:

Hon'ble Ms. Reeta Kohli, Member (Judicial)
Hon'ble Ms. Madhu Sinha, Member (Technical)

Appearance:

For the Applicant: Sr. Adv. Gaurav Joshi (PH)

For the SBI: Adv. Pulkit Sharma (PH)

For the Axis Bank : Shadab Jan (PH)

Brief Facts of the Case

1. The above Interlocutory Application bearing I.A. No. 442 of 2024 is filed by **Mr. Naren Sheth, RP of Shreem Corporation Limited** (hereinafter referred to as the “Applicant”) seeking direction against **Shreem Corporation Limited** (hereinafter referred to as the “Respondent”) under Section 60 (5) of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) praying for following reliefs:
 - (i) *That this Hon'ble Tribunal may be pleased to allow/permit the Applicant to immediately distribute the excess amount of Rs. 100.61 Crores lying in the current account of the Corporate Debtor to State Bank of India, the sole CoC Member;*
 - (ii) *That this Hon'ble Tribunal may be pleased to pass such further and other reliefs as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*
2. It is submitted that State Bank of India (**Financial Creditor**) filed a Company Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 against Shreem Corporation Limited (**Corporate Debtor**). Pursuant to the above, this Hon'ble Tribunal vide Admission Order dated 22.09.2021, admitted the said Company Petition and accordingly Mr. Naren Sheth (**Applicant**) was appointed as the Interim Resolution Professional (**IRP**) of the Corporate Debtor.
3. Thereafter, the Applicant constituted the Committee of Creditors (**COC**) of the Corporate Debtor and State Bank India, Financial Creditor, was admitted as sole COC Member with 100% voting share. The admitted claim of Sate Bank of India is Rs.1193,41,74,873.00/-.

4. It is submitted that in 2011, M/s. The Ruby Mills (**Ruby Mills**) approached Shreem Corporation Limited (**Corporate Debtor**) with a proposal to sell an area of 1,08,308 sq. ft. and informed the Corporate Debtor that the said area yielded rent of Rs.2.25 Crores. Further, Ruby Mills persuaded the Corporate Debtor to seek a Lease rental discounting loan from SBI and further stated that they had already availed commercial loan of Rs. 110 Crores from Allahabad Bank vide Mortgage Deed. An MoU was executed between the parties and a LoI was issued. SBI, induced by the representation of the Corporate Debtor sanctioned and disbursed a loan amount of Rs.155 Crores and on 08.02.2012 handed over the entire sum of Rs.155 Crores vide four pay orders.
5. Thereafter, Ruby Mills, despite receiving aforesaid consideration, failed and neglected to fulfil any of their obligations under LoI as they neither executed a Definitive Agreement conveying the title of the aforesaid premises to the Corporate Debtor nor assigned the Leave and License Agreements including monthly rentals and security deposit received from Ernst & Young Service Pvt Ltd in favour of the Corporate Debtor. Ruby Mills had refunded part sale consideration of Rs.54,00,00,000/- on 26.03.2012 and 31.05.2012, however, the amount of Rs 101 Crores was pending unpaid.
6. Pursuant to above, the Applicant filed Company Petition (IB) No. 236/MB/ 2022 against Ruby Mills under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) for an amount of Rs.101 Crores. The said CP 236 of 2022 was heard on 06.11.2023, wherein this Hon'ble Tribunal (Bench-III) directed Ruby Mills to deposit the entire amount of Rs. 101 Crores in the credit of the Corporate Debtor.

7. Thereafter Ruby Mills filed IA No. 1002 of 2022 seeking direction against SBI to accept the amount of Rs.78.5 Crores as full and final settlement as the balance of Rs.22.5 Crores was lying with SBI under “no lien” account of Ruby Mills. Accordingly, this Hon’ble Tribunal vide Order dated 15.12.2023 directed the SBI to transfer the said amount of Rs.22.5 Crores to the account of the Corporate Debtor.
8. Further, SBI complied with the Order dated 15.12.2023 and transferred the amount of Rs.22.5 Crores. Accordingly, the CP 236 of 2022 was disposed of by this Hon’ble Tribunal (Bench- III) vide Order dated 22.12.2023
9. It is further submitted that the Applicant in the present case in the Eighth CoC Meeting held on 22.12.2023, apprised the CoC member that he has received four resolution plans from the PRAs on or before 19.12.2023 out of 11 qualified PRAs. Thereafter, all four resolution plans were opened in the said COC meeting in the presence of the CoC Members and the respective PRAs. Further, in the said Meeting, the CoC ratified the CIRP cost of Rs.70,92,051/- incurred by the Applicant with 100% majority and decided to contribute to the expenses. The Applicant apprised the CoC that till 22.12.2023, the Applicant had received a total contribution of Rs. 25,27,044/- out of the Rs.70,92,051/- and the amount of Rs.45,65,007/- was pending.
10. It is further submitted that the claims of the Secured Financial Creditors as of 28.02.2024 are reproduced hereinbelow for convenience:

Sr No	SFC Name	Claim admitted in Rs.	Expected CoC %
1.	State Bank of India	17,41,95,74,873	95.63%
2.	Punjab National Bank	79,55,18,011*	4.37%
	Total	18,21,50,92,884	100%

**Provisionally admitted*

11. PNB submitted their claim with the Applicant only on 02.02.2024. Their claim arises out of a guarantee agreement dated 22.03.2010 executed by the Corporate Debtor in favour of M/s. Vindhya Vasini Ispat (a group company of the Corporate Debtor), for the entire loan amount. And for the same, the property in the name of Guarantor, M/s Rajput Retail Limited (now renamed as Shreem Corporation Limited i.e., the Corporate Debtor herein) is mortgaged with PNB at a Realizable value of Rs. 3707.62 Lacs as per the valuation report dated 08.02.2010. The details of the property owned by Rajput Retail Limited/Shreem Corporation Limited/Corporate Debtor are –

"Land measuring 100 Sq Mtrs bearing Sy no. 4, Hissa No. A/E, Land measuring 2200 Sq Mtrs bearing Sy no. 30/1B and Land measuring 900 Sq Mtrs bearing Sy no. 4/3B, situated lying & being at Village Sutarpada, Taluka Talsari, District Thane, in the registration Sub-District Dahanu, Registration Dist Thane together with the buildings and other structures thereon".

12. The claim of PNB is provisionally admitted by the Applicant, and the Applicant has sought a legal opinion from a law firm before conclusively deciding on admission/rejection of the PNB's claim.

13. It is submitted by the Ld. Counsel for the Applicant /RP that Rs.101 Crores has been received by the Corporate Debtor from Ruby Mills and an amount of Rs. 7 Crores received as EMD by the PRAs, lies excess money in the account of the Corporate Debtor and the Applicant at this stage does not require this huge amount of cash in the account of the Corporate Debtor. As on date, the Applicant has incurred CIRP cost of Rs.70,92,051/- out of which Rs.42,20,351 has already been paid by State Bank of India, consequently, only the amount of 28,71,700/- is pending to be received. Further, the Applicant expects the estimated cost of the remaining period of CIRP to be at Rs.10,00,000. Therefore, a significant amount of Rs. 100.61 Crores (i.e., Rs. 1,01,00,00,000 – Rs. 28,71,700 – Rs. 10,00,000) is lying in the Bank Account of the Corporate Debtor is an excess fund.
14. It is submitted that in case any one of the aforesaid Resolution Plan is approved, the said plan will have to be in compliance in view of the specific clause in Request For Resolution Plan Submission (**RFRP**) issued by the Applicant. Accordingly, the State Bank of India shall be the sole beneficiary of the excess amount of Rs. 100.61 Crores in any situation.
15. It is further submitted that the State Bank of India is the CoC member with 95.63% majority and has an admitted claim amount of Rs.11,93,41,74,873.00/-. Further, in case any one of the aforesaid Resolution Plan is approved, the said plan will have to be in compliance with the Request For Resolution Plan Submission (**RFRP**) issued by the Applicant. The clause 8 of the RFRP deals with the treatment of such cash at hand as:-

“.... Any recovery on accounts of CIRP initiated and IA filed against Ruby Mills Ltd and any cash available in CD account till successful implementation of resolution plan will go to Secured Financial Creditor only.”

Accordingly, the State Bank of India shall be the sole beneficiary of the excess amount of Rs. 100.61 Crores in any situation.

16. Furthermore, it is submitted that there is no provision in the Code which deals with the distribution of money before the Resolution Plan has been approved during the CIRP period. In the eventuality if the amount is not released to the SBI i.e. Secured financial creditor in that case all the PRAs in their respective Resolution Plans will have to increase their plan value with an additional Rs.100 crores so as to meet the worth of the CD which practically is of no advantage to anyone in the present situation.

Accordingly, the Applicant has filed the present Application under section 60(5) of the Code read with Rule 11 of the National Company Law Tribunal Rules, 2016 for seeking directions of this Hon'ble Tribunal to immediately distribute the excess amount of Rs. 100.61 Crores to the account of the State Bank of India.

17. On the other hand the Ld. Counsel for the SBI during the course of arguments submitted that Return of the amount of Rs. 101,00,00,000/- to the State Bank of India will be advantageous to CD as it will reduce the financial burden and liability not only in terms of principal but also interest and other charges. Further, the Ld. Counsel for the SBI submitted that in case the amount is refunded back to them that in any case will not impact the interest of any of

the claimants or of CD in any manner. Regarding their own claim it was further submitted that there is already an enabling provision under Regulation 12A of the IBBI CIRP Regulations 2016 which provide for updating of claims. The regulation provides that **a creditor shall update its claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date.** The above regulations support the fact that the Code has never ruled out any recovery being accruing to a claimant rather made provisions for such possibility by providing for updating of claim. The Respondent/SBI is ready and willing not only to update its claim if the amount of Rs. 100 Crores is released to them but are further ready and willing to give an undertaking to the effect that if at any stage during the entire CIRP any amount required to be put back they shall do the same. Thus the said amount at this stage be refunded back to the Secured financial creditor i.e. SBI

18. The Ld. Counsel for PNB objected to the release of entire amount of Rs. 100 cr to SBI stating that SBI is not the sole COC member but holding 95.63% share. Therefore, the share PNB i.e. 4.37% must be kept intact and should not cause prejudice to the claims of the PNB.
19. The Ld. counsel for the SBI further submitted that **Axis Bank has no locus standee and claim over the amount in question** since Axis Bank has neither any interest or claim over the amount in question nor has any charge or entitled to any benefit of the assets that was to be acquired out the said Loan from the State Bank of India. Axis Bank has a secured claim in the category of other Creditors against the Security deposit provided by it to the Corporate Debtor under a leave and licence agreement. Such status of Axis Bank as “other creditor”

has now attained finality in the light of its challenge to the initiation of the CIRP having been rejected by the Hon'ble Supreme Court.

20. It is submitted that, the claim of Axis Bank is sufficiently protected by its own independent securities from the Corporate Debtor, accordingly the Axis Bank's rights are in no manner prejudiced if the amount of Rs. 101,00,00,000/- is refunded back to State Bank of India as this amount completely belongs to the Bank which is in fact proceed of the loan amount returned by the Ruby Mills Limited on account of failed transaction, therefore no other person except State Bank of India has the claim over this amount.

Submission of Axis Bank as an intervener

21. It is submitted that Axis Bank Ltd. ("**Axis Bank**") is a secured creditor of the Corporate Debtor and is a major stakeholder in the Corporate Insolvency Resolution Process ("**CIRP**") of the Corporate Debtor.
22. It is further submitted that the sole reason as set out in the Application for seeking prayer "*to allow/permit the Applicant to immediately distribute the excess amount of Rs.100.61 Crores lying in the current account of the Corporate Debtor to State Bank of India, the sole CoC Member*", is that the said amount of Rs.100,61,00,000/- is purportedly lying in excess with the Corporate Debtor and that the same may be distributed to State Bank of India being its sole member of the CoC.
23. It is submitted that Axis Bank, being a significant stakeholder in the Corporate Insolvency Resolution Process ("**CIRP**") of Corporate Debtor,

has not been impleaded as a party to the present application. Therefore, on 28th February 2024, made its submissions before this Hon'ble Tribunal to oppose the reliefs sought in the present application.

24. Axis Bank submitted that cash amount is the “asset” of Corporate Debtor. It is settled law that during the CIRP of a Corporate Debtor, no “asset” can be transferred by the Corporate Debtor on account of the interdict imposed by Section 14 of the Code.
25. The word “property” is a defined term under Section 3(27) of the Code which includes not only immovable property but also *money*. Since the term “asset” used in Section 14 of the Code has not been defined in the Code, the Hon'ble Supreme Court of India in the case of **Victory Iron Works Limited vs Jitendra Lohia (2023) 7 SCC 227 (Paras 27 & 38)** has held that the word “asset” and “property” are to be used synonymously for the purposes of the Code.
26. Therefore, the said sum of Rs.100,61,00,000/- lying with the Corporate Debtor is the “asset” of the corporate debtor. Accordingly, a conjoint reading of Section 14 (1)(b) & Section 14(1)(c) with Section 3(27) of the Code would *per force* mean that any transfer of money i.e., “asset” of the Corporate Debtor would be prohibited during CIRP. Section 14(1)(b) & Section 14(1)(c) and Section 3(27) of the Code is reproduced herein below for reference:

“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: -

(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”

“3. Definitions. -

(27) “property” includes money, goods, actionable claims, land and every description of property situated in India or outside India and every description of interest including present or future or vested or contingent interest arising out of, or incidental to, property;”

27. It is submitted that the object of moratorium under Section 14 of the Code is to preserve and protect all assets of the Corporate Debtor till the stage of final resolution or liquidation. Therefore, during the CIRP, (i) the corporate debtor or (ii) any other person including the resolution professional :-

- a) is prohibited from transferring any asset of the Corporate Debtor;
- or*
- b) is prohibited from taking any step which will be akin to recovery of debt due from the Corporate Debtor;

28. The Resolution Professional has sought to take shelter under Section 60(5) of the Code and Ld. Counsel for the Axis Bank contended that the residuary powers of this Hon’ble Tribunal cannot be invoked

by the Resolution Professional to defeat the explicit mandate of Section 14 of the Code.

29. The money belonging to the Corporate Debtor is its “asset”, the same would be a value addition to the larger asset pool of assets. Therefore, any diminution or depletion of such asset would not only reduce the valuation of the Corporate Debtor but it would also mean that all other stakeholders of the Corporate Debtor would receive lesser amounts either under the plan or in the eventual distribution of assets of the Corporate Debtor.
30. Axis Bank further relied on the Judgement of the Hon’ble Supreme Court in the case of ***Vistra ITCL vs Dinkar Venkatasubramaniam (2023) 7 SCC 324 (Paras 41 to 41.2)*** has held that a secured creditor like Axis Bank enjoying security interest must be treated like a Financial Creditor and given similar privileges while approving a plan or deciding distribution of assets.

Findings

31. We have heard the Ld. Counsels of respective parties and have perused the entire records with their able assistance.
32. The present Application reveals that in 2011, M/s. The Ruby Mills (***Ruby Mills***) approached Shreem Corporation Limited (***Corporate Debtor***) with a proposal to sell an area of 1,08,308 sq. ft. which yield a rent of Rs.2.25 Crores. Further, Ruby Mills persuaded the Corporate Debtor to seek a Lease rental discounting loan from SBI. Thereafter, SBI sanctioned and disbursed a loan amount of Rs.155 Crores to the

Ruby Mills. However, The Ruby Mills failed to fulfil their obligations. Consequently, Ruby Mills refunded part sale consideration of amounting to Rs.54,00,00,000/- on 26.03.2012 and 31.05.2012, however, the amount of Rs 101 Crores remained unpaid with Ruby Mills.

33. Pursuant to above, the Applicant/RP filed Company Petition (IB) No. 236/MB/ 2022 against Ruby Mills, wherein this Hon'ble Tribunal directed Ruby Mills to deposit the entire amount of Rs. 101 Crores in the credit of the Corporate Debtor. Thereafter, Ruby Mills filed IA No. 1002 of 2022 seeking direction against SBI to accept the amount of Rs.78.5 Crores as full and final settlement as the balance of Rs.22.5 Crores was lying with SBI under "no lien" account of Ruby Mills and accordingly, this Hon'ble Tribunal vide Order dated 15.12.2023 directed the SBI to transfer the said amount of Rs.22.5 Crores to the account of the Corporate Debtor. SBI complied with the Order dated 15.12.2023 and transferred the amount of Rs.22.5 crores. Thus it is this account in which the amount of Rs. 101 cores is lying qua which the prayer for distribution has been made by the Applicant. On the face of it is evident that this amount cannot be said to be an asset of CD.
34. Therefore, in view of the above facts and circumstances, this bench is of the considered opinion that the amount transferred to SBI was on account of the failure of Ruby Mills to fulfil their obligations under LoI.
35. The submission of both SBI and the RP/Applicant is that the amount in 'excess monies' lying with the Corporate Debtor must be returned back to the SBI.

36. The contention raised by intervener, Axis Bank is that as per Section 14(1)(b) and (d), there can be no alienation of assets or transfer of property of the Corporate Debtor during the pendency of the CIRP. In response to the contention of the Axis Bank, the Applicant/RP submitted that the moratorium/ restrictions issued under Section 14 of the I & B Code apply only to safeguard the assets of the CD and to ensure that no depletion in any manner is done qua the assets of the CD. Section 14 however does not restrict the Resolution Professional or the CoC and more particularly the Adjudicating Authority from dealing with/ disposing of assets. More particularly if those assets do not belong or not ownership of the CD. In the present case 'no lien' account of SBI in which an amount of Rs. 155 Cr. Originally transferred and which still has more than 100 crores is not an asset belonging to CD but advanced by SBI for a particular purpose and objective. The surplus of Rs.100.25 Crores has its origin in loans given by SBI for the purchase of the properties of The Ruby Mills, which did not fructify and accordingly the monies were refunded by The Ruby Mills to the Corporate Debtor. Thus the arguments advance by the Axis Bank is not a plausible argument in the facts and circumstances of the present case. The distribution of the excess monies of the Corporate Debtor to SBI (the original lender) would not cause any prejudice to the rights of stakeholders as this amount is lying in the no lien account which was given by the SBI for a particular cause. The said amount is not required/part of the resolution Process and the estimated CIRP cost are being adjusted from the total cash at hand and consequently only 100.25 Crores out of a total 108 Crores cash at hand are to be distributed. In view of the undertaking given by the SBI it does not cause any prejudice. Further, any distribution

is **allayed by the undertakings given by the current CoC member i.e., SBI**, to bring back the monies if and when a need arises.

37. Because of this submission by the Ld. Counsel the counsel drew the attention of the Court to clause 8 of the RFRP which deals with the treatment of such cash at hand as:-

“.... Any recovery on accounts of CIRP initiated and IA filed against Ruby Mills Ltd and any cash available in CD account till successful implementation of resolution plan will go to Secured Financial Creditor only.”

From the beginning it was made clear that the cash lying in the account of the CD was to go to secured financial creditor only.

38. As per the provisions of section 18 (f) of the Code, an Interim Resolution Professional is required to *“take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets”*.

However, by way of Explanation to the Section it is clarified that:

Explanation. – *For the purposes of this section, the term “assets” shall not include the following, namely: - (a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment; (b) assets of any Indian or foreign subsidiary of the corporate debtor; and (c) such other assets as may be notified by the Central*

Government in consultation with any financial sector regulator.

39. In view of the above, it is observed that the provisions of the Code lay emphasis on the *asset over which the corporate debtor has ownership rights*. In the facts and circumstances of the present case, the said amount of Rs. 101,00,00,000/- lying with the Rubby Mills Limited and subsequently in the account of the Corporate Debtor, at all times belonged to the Bank/SBI and therefore, the Corporate Debtor has no ownership right over the said amount. Hence asset does not belong to the CD. Otherwise also right in the beginning the RFRP it was made clear that this amount lying in the account will go to Secured Financial Creditor only.
40. Axis Bank further objected to the reliefs being sought in the present Application, citing prejudice to their rights on the basis of the fact that their claim, which is currently admitted in part as “other creditor”, ought to be classified as “secured financial creditor”. In response to the above contention the Applicant/RP submitted that Axis Bank had filed their Proof of Claim dated 03.11.2021 in Form-C for an amount of Rs.181,30,24,039/-. The claim of Axis Bank arose from a Security Deposit disbursed by Axis Bank to the Corporate Debtor in lieu of various Leave and License Agreements pertaining to several floors of the Building named “Solaris”, located at Andheri, Mumbai, owned by the Corporate Debtor. The said Security Deposit is secured by a Mortgage created over the said leased property owned by the Corporate Debtor, executed vide Mortgage Deed dated 06.11.2008 in favour of Axis Bank.

41. Accordingly, the Applicant/RP informed Axis Bank that their claim could not be treated as financial debt and required Axis Bank to file their claim in the appropriate format. Thereafter, Axis Bank filed their revised Proof of Claim in Form-F i.e., proof of claim by creditors (other than financial or operational creditors), on 18.02.2022, which was partially admitted to the extent of Rs.1,69,99,00,032/-, and the remaining amount is still under verification for want of supporting documents. It is further submitted that till date, Axis Bank has not challenged the classification of their claim under the head of “other creditors”. Therefore, Axis Bank has no *locus standi* to interfere in the present application, since they are not a financial creditor, and therefore are not a part of the CoC.

42. Accordingly, I.A. 442 OF 2024 is **allowed** and **disposed of**.

SD/-

Madhu Sinha

Member (Technical)

/Abhay/

SD/-

Reeta Kohli

Member (Judicial)