

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 343 OF 2024

Under Section 60(5) of the Insolvency & Bankruptcy
Code, 2016.

CA Ajay Agrawal
(Resolution Professional)

...Applicant

V/s

J Singh Associates and others

... Respondents

In the matter of

C.P.(IB) No. 2815/MB/2019

Garg Enterprises (Operational Creditor)

V/s.

PAN India Infra Projects Pvt. Ltd.

(Corporate Debtor)

Order delivered on: 22/04/2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the Applicant : Not Marked in the Attendance
sheet

For the ILFS : Not Marked in the Attendance
sheet

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ORDER

1. This is an application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and seeking following reliefs –
 - a. To allow the present application and direct the Respondents to refund the amount of Rs.25,00,000/- (Rupees Twenty-Five Lakhs only) to the account of the Corporate Debtor;
 - b. Pass any other order/s as the Hon'ble Adjudicating Authority may deem fit in the facts and circumstances of the case.
2. The present applicant being filed on behalf of the CA Ajay Agrawal who was appointed as the Resolution Professional for the PAN Indian Infra projects Pvt. Ltd. (Corporate Debtor) vide order dated 16.07.2020. that the present application is filed under section 60(5) of the Insolvency and Bankruptcy Code (Code), 2016 read with Rule 11 of the NCLT Rules.
3. The Corporate Debtor is a company registered under the Companies Act, 1956 and was engaged in the business of Construction. An application under section 9 was filed by one Garg Enterprises (Operational Creditor) before this Hon'ble Tribunal and the same came to be registered as Company Petition No. 2815 of 2019. The Adjudicating Authority after hearing the parties passed final order dated 16.07.2020 thereby admitting the company petition and initiating Corporate Insolvency Resolution Process against the Corporate Debtor. That while initiating CIRP the Tribunal was pleased to appoint the present applicant CA Ajay Agrawal as the Interim Resolution Professional.
4. That while performing his duties the applicant noticed that after passing of the order of CIRP on 16.07.2020 and the public announcement on 25.07.2020, an amount of Rs. 25,00,000/- (Rupees Twenty-Five lakhs only) was transferred from the account of the corporate debtor to the account of the Respondents via cheque vide cheque no. 421253. It is pertinent to mention that the same was done after passing of the CIRP order and hence during the period of moratorium,

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5. It is submitted that after noticing so the applicant through his counsel issued a notice to the respondents informing them that as the amount of Rs. 25,00,000/- was debited from the Account of the corporate debtor after initiation of CIRP, therefore the same was illegal and in violation of Section 14 of the Insolvency and Bankruptcy Code, 2016. That the notice to the respondents on 29.09.2021 and the same was received by the respondents on 05.10.2021.
6. Vide letter dated 16.10.2021 address to the Applicant, the Respondent applied that the said date. With reference to the captioned subject, we have received the cheque of Rs. 25,00,000/- towards the professional services rendered as Statutory auditor from the said Corporate Debtor. This cheque was received on 4th May, 2020 towards the Statutory audit fees for the previous years. The cheque was deposited in the bank much before the initiation of the CIRP process on 25.07.2020. The receipt of cheque was a clear instance of the due discharge of the liabilities by the corporate debtor through the release of payment under the Negotiable Instruments Act, 18841. Your assertion in the matter that the same cheque was issued as post-dated and issued after the initiation of the moratorium and to refund the amount of statutory fees of Rs.25,00,000/- is incorrect.
7. The Respondent has also relied upon explanation to Section 14 of the Code and contended that we were appointed as the Statutory auditors of the Corporate Debtor from the tenth annual general meeting to the fourteenth annual general meeting to be held in the year 20201 under the provisions of the Companies Act, 2013 and we continue to held the same position of statutory auditors even on the date of initiation of the CIRP by public announcement on 25.07.2020 and are covered well within the explanation provided above.
8. Heard the Counsel and peruse the material on record.
9. We note that CIRP commenced on 16.07.2020 thus triggering the moratorium under Section 14 of the Code prohibiting any recovery against the claims of any class of creditors. Admittedly, the cheque stated have been issued to the Respondent on 04th May, 2020 was debited to the account of Corporate Debtor on 29.07.2020. It follows

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they're from that the cheque would have been presented by the Respondent not more than 2 days before the date of debit to the account of the Corporate Debtor. The Respondent has not brought on record any material to substantiate the cheque was actually received on 04th May 2020, and has also failed to offer any explanation as to why the cheque was deposited after expiry of 2 ½ month i.e. when the cheque was about to become stale. These facts to be demonstrate that plea of cheque of having been handed over on 04th of May 2020 is not sustainable. Accordingly, we have no hesitation to hold that the cheque was ante dated to defeat the moratorium having come into force from 16th July, 2020, We do not find any substance in the plea of the Respondent that his case is covered by explanation to Section 14(1) on the ground that the Respondent continue to hold the office of statutory auditors even after commencement of moratorium. We note that explanation saves the Corporate Debtor from continuousness of certain services / supply / approvals / licenses provided the current dues for the period of mortarium are continue to be paid. In the explanation the words current dues refers to the dues arising during the period after commencement of CIRP and cannot be said to include dues prior CIRP commencement date. Accordingly, we direct the Respondent to refund the amount of Rs. 25,00,000/- to the Corporate Debtor within 30 days. In the case the amount is not paid fully within 30 days the unpaid amount shall carry at the rate of 12% per annum compounded annually till the date of its actual payment.

Accordingly, IA 343/2024 is **allowed** and **disposed of**.

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PRABHAT KUMAR
MEMBER (TECHNICAL)

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JUSTICE V.G. BISHT
MEMBER (JUDICIAL)