

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD



ITEM No.302

IA/580(AHM)2021 in CP(IB) 321 of 2020

Under Section 14, 60(5) & 74 IBC

IN THE MATTER OF:

Bank of Baroda on Behalf of Lenders Financial Creditors ofApplicant
Sintex Prefab & Infra Ltd

V/sRespondent
IDBI Bank Ltd

Order delivered on: 12/06/2026

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

ORDER
(Hybrid Mode)


The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD**

**IA No. 580 of 2021
in
CP (IB) No. 321 of 2020**

*(An application filed under Section 14, 60(5) and 74 of the
Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the
NCLT Rules, 2016.)*

In the matter of:

BANK OF BARODA

on behalf of the Lenders/Financial Creditors
of Sintex Prefab & Infra Limited
1st Floor, Kamdhenu Complex,
Panjrapol Char Rasta,
Ambawadi, Ahmedabad – 380015

...Applicant

VERSUS

IDBI BANK LIMITED

Through its Deputy General Manager
IDBI Complex Off.
Near Lal Bungalow,
C.G. Road, Ahmedabad- 380006

...Respondent

Order pronounced on: 12.06.2026

C O R A M :

**SHRI SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SHRI SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)**

A P P E A R A N C E :

For the Applicant : Mr. Monaal Davawala, Adv
For the Respondent/IDBI Bank : Mr. Ravi Pahwa, Advocate



ORDER
(Per: Bench)

1. The present application was originally filed by the Resolution Professional of Sintex Prefab and Infra Limited under Section 14, 60(5) and 74 of the Insolvency and Bankruptcy Code, 2016 (hereinafter as, “the **Code**”) read with Rule 11 of the NCLT Rules, 2016 in the Captioned Company Petition CP(IB) No. 321 of 2020, seeking following reliefs:

- A. *Allow the present application;*
- B. *Direct the Respondent Bank to transfer the Fixed Term Deposits of the Corporate Debtor totalling to Rs.4,46,58,317.44/- along with accrued interest to the CIRP bank account of the Corporate Debtor; and/or*
- C. *Initiate action against the Respondent Bank and its officers for violation of moratorium in accordance with Section 74 of the Code; and/or*
- D. *Such other relief or relief(s) as may deem fit in the interest of justice.*

2. It is pertinent to note that the present Application was originally instituted by the Resolution Professional of the Corporate Debtor during the CIRP. Subsequently, upon approval of the Resolution Plan of the Corporate Debtor and in pursuance of the decision taken by the consortium of



lenders, Bank of Baroda, being the lead Financial Creditor of the Corporate Debtor, stepped into the proceedings and continued to pursue the present Application on behalf of the lenders/Financial Creditors of the Corporate Debtor. Accordingly, references to the “Applicant” hereinafter shall include Bank of Baroda which has continued the proceedings thereafter.

3. Facts of the Case:

- 3.1. It is submitted that Bank of Baroda had filed an application under Section 7 of the Code seeking initiation of Corporate Insolvency Resolution Process (hereinafter as, “the **CIRP**”) against Sintex Prefab and Infra Limited and vide order dated 24.02.2021 in CP (IB) No. 321/7/NCLT/AHM/2020, this Tribunal has admitted the said petition and the applicant was appointed as the Interim Resolution Professional of the Corporate Debtor. A copy of the order dated 24.02.2021 passed by this Tribunal is annexed as Annexure – A to the application.
- 3.2. It is submitted that in compliance with Sections 13, 15 and other relevant provisions of the Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the applicant made a public announcement dated



03.03.2021 regarding initiation of the CIRP Process and invited claims from various class of creditors of the Corporate Debtor. The applicant constituted the Committee of Creditors (hereinafter as, “the **CoC**”) as per the provisions of the Code on the basis of the claims received from creditors. A copy of the public announcement dated 03.03.2021 is annexed as Annexure- B to the application.

- 3.3. It is submitted that on taking charge of the Corporate Debtor and pursuant to the interaction with the authorized representative of the suspended management of the Corporate Debtor, the applicant came to know about Fixed Term Deposits of the Corporate Debtor lying with the Respondent. The team of the applicant immediately visited the Respondent Bank and held a meeting with its Deputy General Manager. The Respondent was requested to provide the details with regard to the Fixed Term Deposits and the procedure for transfer of the same into the CIRP account of the Corporate Debtor. It was informed that details will be provided after inquiring about the same and the team of the applicant was accordingly asked to issue an email communication with regard to the same.
- 3.4. The applicant placed the aforesaid facts before the CoC in its 6th meeting held on 9.7.2021. The suspended management further informed that the Fixed Term



Deposits are free from any lien or encumbrance and hence can be utilised by the Corporate Debtor for CIRP proceedings. Copy of the summary of accounts of the Corporate Debtor for the period 01.05.2021 to 30.06.2021 is annexed as Annexure- C and the Copy of the relevant extract of 6th CoC meeting is annexed as Annexure-D to the application.

- 3.5. The applicant submits that on the same day, it sought details with regards to the procedure for withdrawal of Fixed Term Deposits of the Corporate Debtor lying with the Respondent and also to transfer the same into the CIRP account of the Corporate Debtor. On not receiving any response, the applicant issued a reminder email dated 13.07.2021. Copy of the letter dated 09.07.2021 and the reminder email dated 13.7.2021 issued by the applicant to the Respondent is annexed as Annexure- E [Colly.] to the application.
- 3.6. That, the applicant personally met Mr. Bhavin Kamothi, Mr. Tarun Kumar and Mr. Nanda, who are working in the Respondent Bank, with a request to release the Fixed Term Deposits lying with the respondent bank in the name of the Corporate Debtor.
- 3.7. The applicant in the 7th CoC meeting held on 22.07.2021 apprised the CoC that he has issued various letters and reminder emails to the Respondent to provide details of the Fixed Term Deposits and



transfer of the same to the CIRP account but to no avail. Copy of the relevant extract of the minutes of the 7th CoC meeting held on 22.07.2021 is annexed as Annexure- F to the application.

- 3.8. The applicant further issued reminder emails dated 20.07.2021 and 26.07.2021 to the Respondent and also held various telephonic conversations with its representatives. The applicant issued final reminder letter and email dated 30.07.2021 addressed to Deputy General Manager of the Respondent Bank. Copy of the reminder emails dated 20.07.2021 and 26.07.2021 and the final reminder letter and email dated 30.07.2021 is annexed as Annexure- G [Colly.] to the application.
- 3.9. The applicant submits that the Respondent vide email dated 02.08.2021 replied to the email dated 30.07.2021 and informed the applicant that its request has been examined and the matter will be taken up with the concerned higher authority and necessary update will be given to the applicant in due course. The applicant responded stating that if there was no response in the next 3 days, appropriate legal proceedings would be initiated. Copy of the email dated 02.08.2021 issued by Respondent to the applicant and the applicant's response thereto is annexed as Annexure-H [Colly.] to the application.



- 3.10. It is submitted that on receipt and verification of the summary of accounts of Corporate Debtor for the period spanning 01.07.2021 to 31.07.2021, it was discovered that the Fixed Term Deposits did not find any mention and no information with respect to it was available. Again, it can safely be inferred that the Respondent Bank has adjusted the same on being made aware of it by the applicant. Copy of the Summary of Accounts of the Corporate Debtor for the period 01.07.2021 to 31.07.2021 is annexed as Annexure- I to the application.
- 3.11. The various acts on part of the respondent bank and concerned officers – not replying or assisting the RP for carrying out CIRP effectively and unilaterally adjusting the amount of the Fixed Term Deposits on being made aware of the same smacks of malice and clearly shows its *malafide* intent to ensure maximum harassment to the applicant for carrying out the CIRP of the Corporate Debtor. In fact, this is not the first case where the Respondent Bank has acted in such a high-handed manner and against the express instructions of the applicant during the course of the present CIRP. The same is in direct contravention to the provisions of Section 17 of the Code, which reads as under:

“17. Management of affairs of corporate debtor by interim resolution professional -



From the date of appointment of the interim resolution professional,-

- (a) The management of the affairs of the corporate debtor shall vest in the interim resolution professional;*
- (b) ...*
- (c) ...*
- (d) The financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.”*

3.12. The repeated actions of the Respondent Bank culminating with the unilateral adjustment of the Fixed Term Deposits are in violation of moratorium as prescribed under Section 14 of the Code.

“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 of continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, 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."*


3.13. It is stated that instead of resolving the issues and assisting the applicant, the Respondent Bank has time and again taken steps after the declaration of moratorium which is not in favour of the Corporate Debtor for reasons best known to it. The respondent bank and its officers are thus liable for punishment as prescribed under Section 74 of the Code.

"74. Punishment for contravention of moratorium or the resolution plan. -

(1) Where the corporate debtor or any of its officer violates the provisions of section 14, any such officer who knowingly or wilfully committed or authorised or permitted such contravention shall be punishable with imprisonment for a term which shall not be less than three years, but may extend to five years or with fine which shall not be less than one lakh rupees, but may extend to three lakh rupees, or with both.

(2) Where any creditor violates the provisions of section 14, any person who knowingly and wilfully authorised or permitted such contravention by a creditor shall be punishable with imprisonment for a term which shall not be less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

(3) Where the corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding under section 31, knowingly and wilfully contravenes any of the terms of such resolution plan or abets such contravention, such corporate debtor, officer, creditor or person shall be punishable with imprisonment of not less than one year, but may extend to five years, or



with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both."

3.14. The applicant submits that the Hon'ble NCLAT in *Indian Overseas Bank vs. Resolution Professional for Amtek Auto Ltd.* in Company Appeal (AT) (Insolvency) No.267 of 2017 has held that:

"2. As per Section 17 (1) (d) of the 'I&B Code', the financial institutions maintaining the accounts of the 'Corporate Debtor' have to act on the instructions of the Interim Resolution Professional' in relation to such accounts and furnish all information relating to the 'Corporate Debtor' available with them to the Interim Resolution Professional'. The Appellant-Indian Overseas Bank', Hosur Branch is one of the 'Financial Creditor' of the 'Corporate Debtor' and constitutes 4.08% of the total value of the financial debt. The 'Corporate Debtor' is maintaining an account with the Appellant-'Indian Overseas Bank' in its Hosur Branch to the extent of Rs. 6,65,13,958/-. In view of initiation of 'Corporate Insolvency Resolution Process' and in terms of Section 17, the 'Interim Resolution Professional' by letter dated 1st September, 2017 requested the Appellant - Indian Overseas Bank' to transfer the amount of Rs. 6,65,13,958/- through RTGS to the bank account of the 'Corporate Debtor' maintained with the Corporation Bank and cheque No. 870093 dated 1st September, 2017 was also enclosed with the said letter.

3. It appears that in spite of reminder to the Appellant-'Indian Overseas Bank' amount having not been transferred, notice was given to the Appellant- Indian Overseas Bank'. The Appellant opposed the application and stated that the amount available in the current account of the 'Corporate Debtor' at Hosur Branch is neither a security interest nor an asset of the 'Corporate Debtor' and therefore, it is not liable to release the amount to the 'Corporate Debtor' and the amount available in the said current amount is to be appropriated towards the dues payable to the Appellant-Indian Overseas Bank'. The stand taken by the Appellant having rejected by the Adjudicating Authority and the Appellant having been



directed to transfer the amount of Rs. 6,65,13,958/- to the bank account of the 'Corporate Debtor' maintained with the Corporation Bank, present appeal has been preferred against the impugned order.

4. Learned counsel for the Appellant has taken similar plea as was taken before the Adjudicating Authority that the amount of 'Corporate Debtor' lying in the Hosur Branch of Appellant- 'Indian Overseas Bank' was neither a security interest nor an asset of the 'Corporate Debtor' and the 'Corporate Debtor' having borrowed the amount from the Appellant-Indian Overseas Bank', the amount required to be appropriated to the dues.

5. Having heard learned counsel for the Appellant, we do not accept the submissions made on behalf of the Appellant in view of the fact that after admission of an application under Section 7 of the 'I&B Code', once moratorium has been declared it is not open to any person including 'Financial Creditors' and the appellant bank to recover any amount from the account of the 'Corporate Debtor, nor it can appropriate any amount towards its own dues."

3.15. The Hon'ble NCLAT has reaffirmed the same view in *Oriented Bank of Commerce vs. Devendra Singh in Company Appeal (AT) (Insolvency) No.239 of 2018* and held that:

"We are further of the view that the Corporate Insolvency Resolution Process in this case was triggered on 14.11.2017 and the amount from the FDRs has been appropriated after the aforesaid date on 30.11.2017 and intimation was sent on 17.12.2017. In any case this was barred by Section 14 of the Code and the directions issued by us in the order dated 14.11.2017. In the case of *AXIS bank Limited (supra)*, the Principal Bench has taken the view that in accordance with the provisions of Regulation 13 of the Insolvency and Bankruptcy Board of India (Corporate Resolution Process for Corporate Persons) Regulations, 2016 the Interim Resolution Professional/ Resolution Professional has to verify every claim as on the



insolvency commencement date. Therefore, as per the books of account, on 14.11.2017 the amount in Fixed Deposits stood in the name of the Corporate Debtor. Any withdrawal from the account/FDR by appropriation by OBC has to be regarded as violative of Regulation 19 also. In the absence of such a bar, it will not be possible for the Resolution Professional to verify the claim and the object of moratorium as contemplated under Section 14(1) (c) would stand defeated."

3.16. The applicant thus finally submits that this Hon'ble Tribunal may direct the Respondent to transfer to amount of Fixed Term Deposits to the account of the Corporate Debtor and order strict action against the Respondent so that it acts as a deterrent failing which it will keep on taking actions as per its own volition with impunity and without the slightest regard for law and any fear or recourse.

4. In response to the above averments, the Respondent IDBI Bank has filed their **reply** on 10.11.2021 vide Inward Diary No. D-1715 making following submissions:-


4.1. It is stated that the applicant has filed the present application inter alia praying this Hon'ble Adjudicating Authority to direct the Respondent Bank to remit an amount of Rs. 4,46,58,317.44 to the CIRP Account of Sintex Prefab and Infra Limited (for short 'the Corporate Debtor').

4.2. It is stated that this Adjudicating Authority vide order dated 07.09.2021, allowed the captioned IA filed by the



applicant and directed the Respondent Bank to remit an amount of Rs.4,46,58,317.44 to the CIRP Account of the Corporate Debtor. A copy of order dated 07.09.2021 made by this Adjudicating Authority in IA No.580 of 2021 is annexed at Annexure R1 to this reply.

- 4.3. It is stated that being aggrieved by the said order dated 07.09.2021, the Respondent Bank preferred Company Appeal (AT) (Ins.) No. 850 of 2021 before the Hon'ble NCLAT. The Hon'ble NCLAT vide order dated 25.10.2021 was pleased to allow the appeal and set aside the order dated 07.09.2021 made by this Adjudicating Authority and remanded back to this Adjudicating Authority for hearing afresh. A copy of order dated 25.10.2021 made by Hon'ble NCLAT in Company Appeal (AT) (Ins) No.850 of 2021 at Annexure-R2.
- 4.4. It is submitted that it is the case of the applicant in the IA that the Respondent Bank has appropriated an amount of Rs.4,46,58,317.44 from the Fixed Deposit Account of the Corporate Debtor maintained with the Respondent Bank. It is stated that this statement is completely false and made with a view to mislead this Adjudicating Authority. The said amount is still lying in the Fixed Deposit Account of the Corporate Debtor maintained with the Respondent Bank. A copy of balance confirmation given by Respondent Bank as on 08.11.2021 is annexed at Annexure R3 to this reply



which demonstrates that the money is still lying in the Fixed Deposit Account of Corporate Debtor.

- 4.5. It is submitted that the entire application is based on conjectures and surmises. The applicant has not substantiated any of the allegations made in the IA with any supportive documents. The Respondent Bank was the Lender to a company known as Sintex Industries Limited (SIL). SIL is a group company of the Corporate Debtor. The Lead Bank of the consortium banks of Sintex Industries Limited got a Forensic Audit of SIL done through Forensic Auditor viz. G.D. Apte & Co, Chartered Accountants for the period between 01.04.2014 and 31.03.2019.
- 4.6. It is stated that the Forensic Auditor after detailed scrutiny of relevant documents, gave Forensic Audit Report clearly suggests that there was diversion of funds to the tune of Rs.717 Crores approx. from Sintex Industries Limited to the Corporate Debtor. The relevant excerpts of the said report are reproduced hereinbelow:-

“2.1.2 Irregularities in the nature of fraud

Based on the forensic audit of Sintex Industries Ltd. (SIL) conducted by us for the period 01.04.2014 to 31.03.2019, we have come across following irregularities, which have been treated as “fraud”:

- i. Payment of advances to Sintex Prefab & Infra Ltd., beyond the terms of the EPC contracts, resulting in siphoning of funds of Sintex Industries Ltd. To the tune of Rs.717.04 Crore to Sintex Prefab & Infra Ltd. (SPIL) – EPC Contractor for Yarn Spinning Project, as on 31.03.2019,*

2.3 Irregularities in the nature of Fraud

Based on the forensic audit of Sintex Industries Ltd. conducted by us for the period 1.04.2014 to 31.03.2019, we have come across following irregularities, which have been treated in the nature of fraud. Our audit observations on these areas were communicated to SIL vide our letter dated 15.06.2020 and we have received replies from SIL vide their letter dt. 7.07.2020. Our audit observations, SIL's replies and our comments thereon have been incorporated in chapter 19 of the report.

Sr. No.	Title/ Particulars	Irregularities	Reference to the Act/ RBI Regulations
1.	<p>Payment of advances to Sintex Prefab & Infra Ltd., beyond the terms of the EPC contracts</p> <p>SIL granted advances to SPIL, in excess than advances payable as per contract terms. Due to non-supply of machineries by SPIL, excess advances paid to SPIL resulted into accumulation of debit balance by way of advance to the extent of Rs. 717.04 crore as on 31.03.2019.</p>	<p>SIL went on making payments to SPIL, especially after April 2018, much in excess than the amounts payable as per the bills submitted by SPIL. This has resulted in accumulation of debit balance in the a/cs of SPIL (which is in the nature of advances paid) to the tune of Rs. 717.04 crore as on 31.03.2019. on Advances received from SIL were not used by</p>	<p>Siphoning of Funds as referred to in paragraph 2.1.3 (c) of RBI's Master Circular of "Wilful Defaulters" dated 01.07.2015 as borrowed funds were transferred to group company by certain modalities.</p>




		<p><i>SPIL for procurement of equipments or for other costs of the spinning project. These funds would have been diverted by SPIL for some other purposes & not used for the purpose for which advances were paid by SIL i.e. for execution of spinning project.</i></p> <p><i>This has resulted in siphoning of funds of SIL to the tune of Rs. 717.04 crore to SPIL, as on 31.03.2019. The debit balance in the a/c of SPIL further increased by Rs. 57.75 crore during April -November 2019 and stood at Rs. 774.79 crore as on 30.11.2019.</i></p> <p><i>The payment of advances beyond the terms of the EPC contract shall have to be treated as</i></p>	
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	<p>siphoning of funds as the funds borrowed from banks have been used for the purposes unrelated to the operations of the borrower, detriment to the of the financial health of the Company and also of the lender banks.</p> <p>SPIL's financial health was affected & it faced severe cash crunch. Promoters of Sintex group were well aware of the financial position of SPIL right from the first quarter of FY 2018-19. In spite of this payment of substantial funds to SPIL were made, especially during FY 2018-19, which was not in the"</p>	
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- 4.7. It is stated that Forensic Audit Report clearly establishes that Sintex Industries Limited fraudulently diverted an amount of Rs.717 Crores approx. to the Corporate Debtor by keeping all members of consortium in dark. Relevant excerpts of the Forensic Audit Report given by G.D. Apte & Co., Chartered Accountants are annexed at Annexure R4 to this reply.
- 4.8. It is stated that thus, the amount lying in the Fixed Deposit Account of Corporate Debtor maintained with the Respondent Bank is the amount which Sintex Industries Limited fraudulently diverted to the account of Corporate Debtor. The amount of Rs. 4,46,58,317.44 does not constitute an asset of the Corporate Debtor as contemplated u/s. 14 of the IB Code. The said amount belongs to the Respondent Bank as Sintex Industries Limited fraudulently diverted this amount to the Corporate Debtor.
- 4.9. It is submitted that Section 14(1)(b) of IB Code stipulates prohibition of transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein once the order of admission is passed by this Adjudicating Authority. This would not include the assets which do not belong to the Corporate Debtor. It would certainly not include any amount fraudulently diverted to the Corporate Debtor. The amount lying in Fixed Deposit does not belong to the Corporate Debtor,



the prohibition stipulated in Sec. 14(1)(b) of IB Code would not apply.

5. The case was fixed for hearing many times and finally Respondent, IDBI Bank, filed a Written Submissions on 29.01.2026 vide Inward Diary No. D 739, the same is taken on record.
6. The applicant thereafter filed a written submissions on 02.02.2026 vide Inward No. D-924, the same is taken on record.
7. We have heard the Learned Counsel appearing for the parties and perused the material available on record including the pleadings, written submissions and documents annexed thereto.

Observation and Findings of this Tribunal: -

8. Before proceeding further, it is necessary to note that although the Resolution Plan of the Corporate Debtor has since been approved, the present Application pertains to an asset of the Corporate Debtor and an alleged violation which arose during CIRP. Accordingly, this Adjudicating Authority



continues to retain jurisdiction under Section 60(5) of the Code to adjudicate the present Application.

9. The present Application has been filed seeking directions against the Respondent Bank to transfer Fixed Term Deposits standing in the name of the Corporate Debtor aggregating to Rs. 4,46,58,317.44/- together with accrued interest to the CIRP account of the Corporate Debtor and for initiation of appropriate action under Section 74 of the Code.

10. The case of the Applicant is that upon commencement of CIRP of the Corporate Debtor on 24.02.2021, the Applicant came to know that Fixed Term Deposits were maintained by the Corporate Debtor with the Respondent Bank. It is submitted that despite repeated communications dated 09.07.2021, 13.07.2021, 20.07.2021, 26.07.2021 and 30.07.2021, personal meetings with the officials of the Respondent Bank and deliberations before the CoC, the Respondent Bank failed to transfer the Fixed Term Deposits to the CIRP account of the Corporate Debtor. It is further



alleged that the conduct of the Respondent Bank is contrary to Sections 14 and 17 of the Code.

- 11.** Per contra, the Respondent Bank has contended that the amount of Rs. 4,46,58,317.44/- has not been appropriated and continues to remain in the Fixed Deposit Account of the Corporate Debtor. It is further contended that the said amount does not constitute an asset of the Corporate Debtor inasmuch as the Forensic Audit Report of M/s. G.D. Apte & Co. recorded diversion of approximately Rs. 717.04 Crores from Sintex Industries Limited to the Corporate Debtor and, therefore, the amount lying in the Fixed Deposit Account represents part of such diverted funds and money does not belong to the Corporate Debtor.
- 12.** In light of the rival contentions, the issue which arises for consideration is that whether the Fixed Deposit amount of Rs.4,46,58,317.44 standing in the name of the Corporate Debtor forms part of the assets of the Corporate Debtor and whether the Respondent Bank was obligated under Sections 17 and 18 of the Code to act upon the instructions of the IRP/RP.




- 13.** It is not in dispute that the Fixed Deposit amount of Rs. 4,46,58,317.44/- stood in the name of the Corporate Debtor. In fact, the Respondent Bank itself has placed on record a balance confirmation dated 08.11.2021 to contend that the amount continues to remain in the Fixed Deposit Account of the Corporate Debtor. Therefore, the existence of the Fixed Deposit and its standing in the name of the Corporate Debtor is admitted.
- 14.** The principal defence of the Respondent Bank is that the amount does not belong to the Corporate Debtor as the same represents funds allegedly diverted from Sintex Industries Limited, as reflected in the Forensic Audit Report. We are unable to accept the said contention. A forensic audit report, by itself, does not divest the Corporate Debtor of title over monies standing in its account nor does it confer any adjudicated right upon the Respondent Bank to disregard the mandate of the Code. The fixed deposit is in the name of the Corporate Debtor and the money is its asset. The source of such a money is not the issue before us and we are not required to give a finding on the same. No



material has been placed on record demonstrating any adjudication, decree, recovery certificate or competent order declaring that the Fixed Deposit amount does not belong to the Corporate Debtor. Mere observations contained in a forensic audit report do not, by themselves, extinguish ownership rights recorded in favour of the Corporate Debtor.

- 15.** Any claim arising out of the forensic audit findings is required to be pursued before the competent forum in accordance with law. Until such adjudication takes place, the Respondent Bank cannot unilaterally withhold assets standing in the name of the Corporate Debtor on the basis of allegations contained in a forensic audit report.

- 16.** Once CIRP commenced on 24.02.2021, the management of the affairs of the Corporate Debtor vested in the Interim Resolution Professional in terms of Section 17 of the Code. Section 17(1)(d) specifically mandates that financial institutions maintaining accounts of the Corporate Debtor shall act on the instructions of the Interim Resolution Professional in relation to such accounts and furnish all



information relating to the Corporate Debtor available with them.

17. The record demonstrates that the IRP as well as the RP repeatedly called upon the Respondent Bank to furnish details and transfer the Fixed Deposit amount to the CIRP account. However, despite such requests, the Respondent Bank failed to act upon the instructions issued by the Resolution Professional.
18. The record does not establish that the Respondent Bank appropriated the Fixed Deposit amount after commencement of CIRP. However, irrespective of whether appropriation took place, once CIRP commenced, the Respondent Bank was required under Section 17(1)(d) of the Code to act upon the instructions of the IRP/RP and facilitate transfer of the amount forming part of the assets of the Corporate Debtor. Such failure is inconsistent with the statutory obligations cast upon financial institutions under Section 17(1)(d) of the Code.
19. The Hon'ble NCLAT in ***Indian Overseas Bank v. Mr. Dinkar T. Venkatsubramaniam, (2017) ibclaw.in 50***



NCLAT and ***Oriental Bank of Commerce v. Devendra Singh, (2019) ibclaw.in 595 NCLAT*** has categorically held that after commencement of CIRP and declaration of moratorium, a bank cannot retain or appropriate monies standing to the credit of the Corporate Debtor and is obligated to act in accordance with the directions issued by the Resolution Professional.

- 20.** Sections 17 and 18 of the Code read together contemplate that assets over which the Corporate Debtor has ownership rights as recorded in the balance sheet of the corporate debtor shall remain under the control and custody of the IRP/RP during CIRP. There is no material on record establishing ownership rights of any third party over the said amount.
- 21.** The objective of Sections 17 and 18 is to ensure that all assets over which the Corporate Debtor has ownership rights remain under the control and custody of the IRP/RP so that CIRP may proceed in an orderly manner. Any refusal by a financial institution to act upon lawful instructions of the IRP/RP would frustrate the scheme of the Code.



- 22.** The Respondent Bank, being a financial institution maintaining the account of the Corporate Debtor, could not assume the role of adjudicating competing claims to ownership of the amount lying in the Fixed Deposit and was required to act in accordance with the mandate of Section 17(1)(d) of the Code.
- 23.** In view of the aforesaid, this Adjudicating Authority is of the considered opinion that the amount of Rs. 4,46,58,317.44/- lying in the Fixed Deposit Account maintained with the Respondent Bank forms part of the assets of the Corporate Debtor for the purposes of CIRP and the Respondent Bank was under a statutory obligation under Sections 17 and 18 of the Code to act upon the instructions of the Resolution Professional.
- 24.** Accordingly, IA No. 580 of 2021 is allowed in the following terms:
- (i) The Respondent Bank is directed to transfer the Fixed Term Deposits standing in the name of the Corporate Debtor aggregating to Rs. 4,46,58,317.44/- together with all interest accrued thereon till the date of actual



transfer, within a period of fifteen days from the date of receipt of this order.

- (ii) The amount so transferred shall be remitted to the account designated by Bank of Baroda in accordance with the approved Resolution Plan and the decisions taken by the consortium of lenders, and distributed amongst the Lenders in accordance with their respective shares in the admitted claim amounts, in terms of the Resolution Plan and the decisions taken by the consortium of lenders.
- (iii) Insofar as the prayer seeking initiation of action under Section 74 of the Code is concerned, no specific material establishing wilful and deliberate contravention warranting separate proceedings under Section 74 of the Code has been placed on record. Proceedings under Section 74 being penal in nature require strict proof of knowing and wilful contravention. Accordingly, the said prayer is rejected.
- (iv) No order as to costs.

25. Henceforth, **IA No. 580 of 2021** in CP(IB) 321 of 2020 stands **allowed** and **disposed of** in the above terms.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

HG

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)