NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 2219 of 2024

(Arising against the impugned order dated 22.08.2024, passed by the Ld. National Company Law Tribunal, Mumbai Bench-I, in I.A. No. 5303 of 2023 filed in C.P. (IB)/895(MB)2022)

IN THE MATTER OF:

Moving Pixels Pvt. Ltd.
Through its Authorized Representative
Registered Office at
17th Floor, 1701-1712 D-Block, Sun Central Place,
Near Vakil Saheb Bridge,
Bopal Ambli Corss Road Ahmedabad – 380058
Gujarat.
...Appellant

Versus

Mr. Jitendra Kothari,
RP of NDS Art World Pvt. Ltd.
Residing at 702, Orchid A Wing Evershine Park
CHS, Off Veera Desai Road,
Andheri (W) Mumbai – 400053
Maharastra.
...Respondent

Present:

For Appellant	:	**Mr. Manorama Kumar, Mr. Kamal Agarwal, Advocates.**
For Respondent	:	**Mr. Kaustubh Prakash, Ms. Hita Sharma, Advocates.**

Cont'd.../

J U D G M E N T
(24th August, 2026)

SHARAD KUMAR SHARMA, MEMBER (J)

The genesis of the controversy, as it presently engages consideration in this company appeal, is as a consequence of the decision taken on I.A. No. 5303 of 2023.

2. The said IA, was filed by the Resolution Professional, before the Ld. NCLT, Mumbai Bench, Court-I. Invoking the provisions contained under Section 60 (5) to be r/w Section 14 (1) (b) of Insolvency & Bankruptcy Code, 2016 (in short 'Code').

3. In the application filed by Resolution Professional on 10.11.2023, had sought for a relief for an issuance of an appropriate direction, in the shape of an order against the appellant herein. The relief prayed for therein was for remittance of the money, which has been alleged to have been wrongfully transferred pertaining to the work that, had taken place prior to the period of CIRP, however, the amount in relation to it was received after the initiation of CIRP, without the knowledge of the Resolution Professional. The relief thus claimed in the I.A. was structured in the following manner:

> *"(a) Pass an order directing the Respondents No 1 to 14 to return/ remit back the money wrongfully received from the Corporate Debtor during the moratorium period which purportedly pertains to the pre-CIRP Period as being violative of Section 14 of the Code and the moratorium imposed by this Hon'ble Tribunal.*

(b) Pass an order directing the Respondents No 1 to 14 to pay interest at the rate of 18% in terms of Section 3 of the Interest Act, 1978 on the amounts transferred received during the moratorium period

(c) Such further/ other appropriate order(s) or direction(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case and to serve end of justice."

4. The foundation of the application thus preferred by the Resolution Professional, before the Ld. Tribunal on 10.11.2023, it was primarily based upon the following facts:

i. That the Corporate Debtor *viz.* ND S Art World Pvt. Ltd. was placed under the CIRP in pursuance to the order that, was passed on 22.08.2023.

ii. With a consequential and simultaneous appointment of the Resolution Professional who took over the affairs of the Corporate Debtor.

iii. In those proceedings, the Committee of Creditors, constituted of a solitary member i.e. Edelweiss Asset Reconstruction Company Limited.

5. It happened so that in the first meeting of the CoC that was held on 25.08.2023, it also stood communicated to the Applicant by filing of an I.A. i.e. being ***I.A. No. 4169 of 2023*** this IA was disposed of by Tribunal on 13.09.2023. In those proceedings, which were held before the Ld. Tribunal,

the Resolution Professional is also said to have filed an I.A. i.e. being ***I.A. No. 3848 of 2023*** in which a declaratory relief, which was sought, was for declaring the Applicant to be entitle, to enable him to take necessary steps as contemplated be performed under the Code. In this I.A. an order was passed by the Ld. Tribunal on 28.08.2023. At this stage, we may not be much concerned so far as the nature of relief sought and the order that, was passed on I.A. No. 3848 of 2023, as that would not have much material bearing over the controversy at hand.

6. But however it could be summarily said that, it was only a precautionary order that, was passed owing to certain criminal acts that, was referred to in the order dated 28.08.2023.

7. The contention of the Respondent/ Applicant, to the application, that was filed while invoking Section 60 (5) to be r/w Section 14(1)(b) of the Code, was that for illegal gains pertaining to the transactions and the consequential monetary benefit, though that ventures into a pre-CIRP period but monetary benefit accruing from were accounted after initiation of CIRP. All these gains were said to have been received by opposite party no. 1 to 14 of the application, which was carried at the behest of opposite party no. 15 and 16 belonging to the Corporate Debtor. Its these transactions that were held prior to initiation of CIRP but benefit accrued post CIRP were alleged by the Applicant/Respondent herein to be after the commencement of the CIRP on 25.07.2023, would be in violation to the imposition of moratorium.

8. The precise backdrop, as it was finding reference in the application that was preferred by the respondent, it was for the purposes of remittance of the amount. It's the case that when upon initiation of Section 7 proceedings under the Code, by an order that, was passed on 25.07.2023, the order of initiation of CIRP was placed in public domain by its uploading on the site of the Ld. NCLT on 27.07.2023. Because of the foresaid fact it could be bonafidely and under law too, be assumed that, it was brought in public knowledge. Hence, as a consequence of the order dated 25.07.2023, a declaration too was made under Section 14 of the Code. Giving a public intimation as regards to the restrictions those were contained under Section 14 of the Code, for those who would be concerned with the order of 25.07.2023.

9. The respondent's case before the Ld. Tribunal, had been that, despite acquiring the knowledge, on 11.09.2023, as regards to the fact, about a sum of Rs. 1,01,04,908/- was lying in the current account of the Corporate Debtor, which was standing in the IDBI bank, Karjat Branch, Raigad, the said amount was shown to have been wrongfully transferred to the accounts of Respondent No. 1 to 14 at the behest of Respondent No. 15 and 16 and tabulated details of transfer of monies, was also set out and detailed in the application that, was preferred by the respondent for the remittance of the amount.

10. Upon acquiring knowledge of such transfer of amount from the said account of the Corporate Debtor, for an amount of Rs.1,01,04,908/- by

virtue of the communication that was made by respondent, a request was made for return of the money received by them during the moratorium period, which pertained to the work executed in the pre-CIRP period. It was alleged by the respondent that, it was an amount, which was received by the appellant in violation of or of the admission of CIRP by an order of 25.07.2023, thus would be falling to be a restricted transfer due to the imposition of moratorium Section 14 of the Code.

11. While issuing notice for calling upon for the remittance of the amount as detailed above, a right was reserved by the applicant to have a recourse, open to be resorted, if the notice of refund of money was not responded by the appellant because under law the Resolution Professional after admission of the Corporate Debtor into the CIRP, exercises an onerous responsibility of preserving and protecting the assets of the Corporate Debtor. It aimed to ensure that the Corporate Debtor is placed or is honestly attempted to be as a continuous and a going concern during the CIRP period.

12. There was an utter failure on part of the appellant to remit the amount within the time stipulated in the notice issued by the respondent, which necessitated the issuance of a legal notice.

13. By way of a precaution, the applicant submits that, he had issued a second notice, which constituted to be a part of the application reiterating the encumbrance for remittance of the amount that, was wrongfully gained by the appellant during the CIRP period, but it was of no avail. Hence, a

notice was issued on 18.09.2023, thereby calling upon the appellant to return the money amounting to Rs. 80 lakhs, which was received by the appellant during the moratorium period, since the same being a transaction having being carried and completed in violation of Section 14 of the Code.

14. There was tendering of yet another reminder of 04.10.2023, reiterating the direction for return of money. This reminder of 04.10.2023 was ultimately responded by the appellant by filing a reply to it on 21.10.2023, herein the appellant took a defense that, it was not obligatory for the appellant to remit the amount, as the same has not been transacted in contravention to the norms settled as per law of moratorium. But however in the reply of the appellant, submitted on 21.10.2023, what is relevant is that the transfer of the amount and the period of its transfer was falling within the period of admission of the CIRP and during the period when the moratorium was being imposed and was in continuance, it stood as a fact admitted.

15. Hence, the respondent came up with the case, that causing any encumbrance or transferring alienating or disposing of the corporate debtor's property or its assets or any legal right or benefit or interest therein to the assets of Corporate Debtor, would be barred by Section 14 (1) (b). Hence, the money that was received from the Corporate Debtor, was required to be remitted back, being in violation of the moratorium imposed by the tribunal.

16. When this application came up for consideration before the Ld. Tribunal, the Ld. Tribunal proceeded to allow the same by the impugned order, while exercising its power under Section 60(5), to be r/w with Section 14 (1)(b) of the I&B Code. Holding thereof, that since the fact having been established that the alleged transaction to be in violation of Section 14 of the Code, which called for to meet the breaches as per the law laid under Section 14 (1) (b) and that, it was directed to be made payable along with the interest payable on it, at the rate of 18% in terms of Section 3 of the Interest Act, 1978.

17. The facts that has been revealed and established are that, the bank accounts of the Corporate Debtor did reflect that, there had been transactions of the said amount at the behest of Respondent No. 15 and 16 after the initiation of CIRP. These transactions, which were carried without the knowledge of the Resolution Professional, showed transfer of the amount during the period of moratorium. The period of transfer shown in the books against it, reflected from bank account and it corresponded with the period when moratorium was in vogue.

18. The Ld. Tribunal after considering the impact of the reply that, was submitted by respondent on 02.01.2025. The factum of transaction having been carried and completed during the moratorium period is not a disputed fact, rather the fact, that stand established by appreciation of evidence on record i.e. the books. The stand taken by Respondent No.12 was that it had organized an event for 'NDA MEET' at Ashoka Hotel on 18.07.2023 on the

instructions of Bharatiya Janata Party (BJP) and the Corporate Debtor. All expenses towards the said meet that, had taken place in Ashoka Hotel were paid directly by Respondent No. 12, on the basis of the prior proforma invoices those were raised towards the same, to the Corporate Debtor. However, prior raising of the proforma invoices are irrelevant for the purposes of fastening of the liability and the present controversy to invoke Section 14 of the Code because of the remittance of the amount in the book of account of Corporate Debtor, after the imposition of the moratorium. What is shown from the bank account is that Rs.80 lakhs, was remitted into the accounts of Respondent No. 12, after deducting the agents commission. Further, that it was credited by the BJP into the account of the Corporate Debtor. Thus, the Ld. Tribunal had rightly concluded that, perusal of the account statement that, was placed on record before it and which had also constituted, as to be the part of the notice dated 18.09.2023, shows that the credit of the amount did take place into the bank account of the Corporate Debtor, it was possibly the amount credited by the BJP into the said bank account. The entries made into the accounts showed the transaction of money and flow of money through those transactions into the accounts of the Corporate Debtor, which would be attributable and related to the aforesaid event/meet, which expressly showed was in violation of Section 14 of the Code. Looking to the period of transaction and its actual completion upon deposit of amount in the account of Corporate Debtor after imposition of moratorium.

19. A very peculiar stand that has been taken by the appellant, though it cannot be taken to be sustainable in the eyes of law is from the perspective that, they were not conscious about the initiation of CIRP process, which stood initiated by an order of 25.07.2023 that, was passed by the Ld. Tribunal. This stand taken by the appellant cannot be accepted under law for the reason that, upon initiation of CIRP process, there was a declaration made by way of an announcement that, was shown to have been made on 28.07.2023 in the local dailies of Mumbai. As this order of admission of CIRP dated 25.07.2023 was available on the website of NCLT, as uploaded on 27.07.2023 and also made public by public announcement as prescribed under Section 13 (2) Section 15 of the Code. There would be a deeming presumption that, there had been a concrete and a positive knowledge of the imposition of moratorium and invocation of Section 14 of the Code, owing to the effect of Section 13 to be read with Section 15 of the Code. Hence, the analogy, which could be rationally inferred is that after declaration of CIRP and invocation of Section 14 of the Code, the Corporate Debtor only acts as a custodian of the estates of the company. The stand taken by the respondent in their defense that, they were working as an accountant and as a staff and they were not aware of the order of the legal proceedings cannot be accepted by us as ignorance cannot be accepted under law, more particularly when the factum of transaction, during that period is a factum admitted. The claim of the respondent, further stands strengthened when an additional fact was brought on record, that

Respondent No.11 i.e. the Maharashtra State Electricity Distribution Co. Ltd. has adjusted the payment made to them on 28.08.2023, against the subsequent invoices raised during the CIRP period and the amount was refunded back.

20. The exception that, has been ventured to be carved out by the appellant in the proceedings before the Ld. Tribunal that, the money that was paid by the Corporate Debtor on 28.07.2023, will amount to a money held in trust by the Corporate Debtor. This is an altogether an alien philosophy, because Section 14 of the Code, itself doesn't carves out any exception of this nature under law as such. And also because of the fact that the BJP in pursuance to the holding of an event is shown to have paid Rs.1 crore to the Corporate Debtor on 27.07.2023 out of which Rs. 80 lakhs belong to Respondent No. 12 and that fact would be apparent from the letter, which was placed on record on 20.05.2024. Acknowledging the success of the event and the invoices too in itself, which reflects that Respondent No.12 has charged the money as per the documents of the invoices attached to it. More particularly when the appellant was taking recourse to an existence of a trust. The burden to prove the same was to be discharged by the appellant himself and there was no established relationship of trust or there was even no establishment of the fact that Rs. 80 lakhs constituted to be the amount that was held in trust by the Corporate Debtor, hence, there was a direction for refund of the amount.

21. Though, not a case, which was ever pleaded or even argued by the appellant before the Ld. NCLT, but for the first time it has been argued by the appellant before us, that the recourse under Section 60(5) to be r/w Section 14 (1)(b) was not available to the respondent, owing to the fact that the recourse available to the respondent would have been under Section 74 of the Code. The implications of Section 74 of the Code was an issue, which could be effectively determined on application of fact and law, which was never argued or established to be argued before the Ld. Tribunal nor it was even a ground agitated in this appeal too in that eventuality, and more particularly when the appellant when is arguing this company appeal as of now. Because of the subsequent amendment made under the Code, since Section 74 has already been deleted from the statue, no recourse or shelter as of now can be taken to it by the appellant. Owing to omission of the provision by Insolvency and Bankruptcy Code. (Amendment) Act, 2026, as made effective w.e.f 06.04.2026.

22. Even if it is presumed, accepting though not admitting the tenacity of arguments of learned Counsel for the appellant that, the recourse available to the respondent would have been under Section 74 of the Code. Infact this argument of the appellant would be twin edged sword; because (1) He would be admitting the entire factual controversy; (2) He would be rather admitting the entire transaction that has taken place during the CIRP and that the liabilities flowing from it. And the only controversy that would be left to be argued to be considered while opening argument by way of invocation in

context of Section 74 of the Code, would be as to what recourse was to be adopted. But owing to the omission of the provision, since Section 74 of the code, its impact was never argued before the Ld. Tribunal nor any finding was recorded by the Ld. Tribunal so no recourse can be taken by the appellant to it by the Ld. Counsel for the appellant in Section 74 of the Code, and the only remedy left for the purposes of the actions to be taken upon violation of provisions contained under Section 14 of the Code would be by recourse of Section 14 (1) (b). Since the conduct and transactions are the fact established, the directions contained in the impugned order are not at all violative of any provisions of law, which would call for any interference.

23. The learned Counsel for the appellant had made a reference to a Judgment as rendered by this bench in Comp. App. (AT) (Ins.) No. 956 of 2021 in the matter of '***Writer Business Services Pvt. Ltd. & Anr. vs. Mr. Ashutosh Agrawala Resolution Professional for Cox & Kings Ltd.***' particularly when the learned Counsel has made reference to paragraph no. 26 & 27, this Judgment is itself was rendered on 04.02.2022, when the provision of Section 74 was in vogue, hence this Judgment will have no applicability under the facts and circumstances of the instant case.

24. Because of the stipulations contained under Section 13 (1) (b) to be r/w Section 15, which makes it mandatory to cause a publication, which is to be read with provisions of Regulation No. 6 as contained under the IBBI Insolvency Corporate Persons Regulation, 2016. The declaration made

thereof would be in public domain and it would be leading to a deeming inference and knowledge to the appellant about the imposition of moratorium. For the aforesaid reasons, we don't find any merits in the company appeal and the company is accordingly dismissed.

25. The directions issued for remittance of the amount on account of the established transaction that, had taken place during the CIRP period. The attraction of Section 14 (1) (b) is not violative of any provisions of law. Hence, the company appeal lacks merits and the same is accordingly dismissed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

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