S.No.2

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
21-05-2026 AT 12:45 P.M.

CP (IB) 497/7/HDB/2018
AND
IA (IBC) 2354/2024 in CP (IB) 497/7/HDB/2018
u/s. 7 of IBC, 2016

IN THE MATTER OF:
International Asset Reconstruction Company Pvt Ltd **…Financial Creditor**

AND

Atlanti Spinning and Weaving Mills Ltd **…Corporate Debtor**

C O R A M:-
SH. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
SH. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)

O R D E R

IA (IBC) 2354/2024

Orders pronounced, recorded vide separate sheets.

In the result, this application is allowed and disposed of.

Sd/- **Sd/-**
MEMBER (T) **MEMBER (J)**

Manohar

IN THE NATIONAL COMPANY LAW TRIBUNAL,

HYDERABAD BENCH -I, HYDERABAD

IA (IBC) 2354 of 2024

IN

CP(IB)NO. 497/7/HDB/2018

(Under Section 66 of IBC,2016)

IN THE MATTER OF M/s. ATLANTIC SPINNING AND WEAVING MILLS LIMITED

BETWEEN:

ATLANTIC SPINNING AND WEAVING MILLS LIMITED

Represented by its Liquidator, Ms. Sujata Chattopadhyay

CH 1/15, Kendriya Vihar, Sector 11, Kharghar,

Navi Mumbai- 410 210.

...Applicant

Versus

1. **M/s GARG INDUSTRIES**

   Office: B-18 Sector 8, Noida,

   Uttar Pradesh -201301

2. **LAKSHMI FIBRELOK PVT. LTD.**

   Regd Off: 605, Chenoy Trade Center,

   Secunderabad, Telangana – 500003.

3. **SANSAR INVESTMENT AND FINANCE COMPANY PVT. LTD**.

Regd. Off: 1-11-252/19/1, Motilal Nagar,

Begumpet, Hyderabad, Telangana – 500003.

4. MEENAKSHI JAIN

R/o #1 Quarters, KR Mills Colony,

Mysore, Karnataka – 570003.

5. RHYTHM JAIN

R/o H.NO-FA-45, Shivaji Enclave,

Rajouri Gardens- Delhi 110027

6. SACHIN SAIGAL

R/o H.NO-FA-45, Shivaji Enclave

Rajouri Gardens- Delhi 110027

7. THE SPECIAL LAND ACQUISITION OFFICER & COMPETANT AUTHORITY, NATIONAL HIGHWAYS AUTHORITY OF INDIA,

Bengaluru - Mysuru Division, NH-275,

Ramadevarapada (Basavanapur),

Ramanagara District, Karnataka – 562128.

...Respondents

Date of order: 21.05.2026

Coram:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

Parties/Counsels:

For the Applicant	:	Mr. V.V. Siva Kumar, Advocate
For Respondent No. 1 to 6	:	Mr. Ankur Goel, Advocate along with Mr. S. Ravi, senior Advocate
For Respondent No.7	:	***Set Exparte***

ORDER

1. The present application was filed by M/s. Atlantic Spinning and Weaving Mills Limited represented by its Liquidator[1] under section 66 of the Insolvency and Bankruptcy Code[2], 2016 against the Respondents, *inter alia*, seeking for the following reliefs:

   i. To pass appropriate orders and directions against the Respondents declaring the aforementioned transactions as null and void;

   ii. To restore status quo ante in respect to the assets of the Corporate Debtor;

   iii. To direct the Respondent No. 1 to contribute Rs. 2,06,99,309/- plus interest at 18% from 15-10-2018 (date of deposit of Compensation) till the date of actual payment, towards the assets of the Corporate Debtor;

   iv. To direct the Respondent No. 2 to contribute Rs. 25,00,000/- plus interest 18% from 15-10-2018 (date of deposit of Compensation) till the date of actual payment, towards the assets of the Corporate Debtor,

[1] Applicant/Liquidator
[2] Code, 2016

v. To direct the Respondent No. 3 to contribute Rs. 5,78,50,750/ plus interest 18% from 15-10-2018 (date of deposit of Compensation) till the date of actual payment, towards the assets of the Corporate Debtor,

vi. To direct the Respondent No. 4 to contribute Rs. 8,00,000/-plus interest 18% from 15-10-2018 (date of deposit of Compensation) till the date of actual payment, towards the assets of the Corporate Debtor,

vii. *To declare the action of Respondent No. 7 in depositing the land acquisition compensation of Rs. 2,09,90,448/- to Respondent No. 5 on 25-11-2020 as null and void and consequently to direct the Respondent Nos. 5 and 7 to contribute Rs. 2,09,90,448/- plus interest at 18% from 25-11-2020 (date of deposit of Compensation) till the date of actual payment, towards the assets of the Corporate Debtor*;

viii. To declare the Respondent No. 6's unauthorized actions as illegal, null and void and consequently to direct the Respondent No. 6 to contribute Rs. 7,42,010/- plus interest 18% from 15-10-2018 (date of deposit of Compensation) till the date of actual payment, towards the assets of the Corporate Debtor;

ix. To direct the Respondent No. 7 to contribute Rs. 79,03,598/- towards the assets of the Company, as remaining balance from the claimed disbursal of Rs. 9,05,02,660/ plus interest 18% from 15-10-2020 (date of deposit of Compensation) till the date of actual payment;

x. To further direct the Respondent No. 7 to pay the remaining compensation towards land acquisition only to the account of the Corporate Debtor,

xi. To punish the Respondent Nos. 1 to 6 for the transactions defrauding creditors under Section 69 of IBC, 2016;

xii. To punish the Respondents for contravention of moratorium under Section 74 of IBC 2016,

xiii. To award costs and to impose penalty on the Respondents.

Brief facts of the case:

2. The M/s. Atlantic Spinning and Weaving Mills Limited[3] was admitted into the Corporate Insolvency Resolution Process (CIRP) by this Tribunal vide order dated 09.10.2018, and this Tribunal vide order dated 09.01.2020, passed an order for liquidation and appointed the present Applicant as the Liquidator of the Corporate Debtor.

3. The Applicant/Liquidator had earlier filed an application, I.A. No. 512 of 2021, before this Tribunal on 01.09.2021, under Section 66 of the Code, 2016, seeking for the identical reliefs to those sought in the present application, and in fact that the present application is an exact *verbatim* reproduction of the said I.A. No. 512 of 2021. Subsequently, the Applicant also filed another application, I.A. No. 452 of 2022, under Section 66 of the Code, against the Respondents (arrayed as Respondent Nos. 5, 6 and 7 in the present application), seeking reliefs in addition to those sought in the IA 512 of 2021, as detailed hereunder:

(a) To pass appropriate order(s) and direction (s) against the respondents declaring the aforementioned transactions as null and void;

(b)To restore status quo ante in respect of the assets of the Corporate Debtor.

[3] Corporate debtor

(c)To direct all the Respondents to contribute Rs.1,20,59,402/- plus interest @ 18% from 12-01-2021 (date of deposit of Compensation) till the date of actual payment towards the assets of the Corporate Debtor;

(d)To declare the action of Respondent No.3 in making the payments to the Respondent No.1 as illegal contravening the provisions of the Insolvency and Bankruptcy Code, 2016.

(e) To direct the Respondent No.3 not to make any further payments towards contributions to any third party, in respect of the land belonging to the Corporate Debtor;

(f) To direct the Respondent No.3 to make any further payments towards land acquisition of the Corporate Debtor only to the liquidation account of the Corporate Debtor, as stated in its email dated 09-12-2020;

(g)To punish the Respondents for the transactions defrauding creditors under Section 69 of IBC, 2016;

(h)To award costs and to impose penalty on the Respondents.

4. This Tribunal, pending the decision in IA 512 of 2021, vide order dated 21.03.2024 passed in IA 452 of 2022, held that the land acquired for the National Highway project, measuring 1111 sq.m in Sy.No.599, 1010 sq.m in Sy.No.600, 301 sq.m in Sy.No.601/1 and 353 sq.m in Sy.No.602, aggregating to 2775 sq.m, forms part of the Liquidation Estate and directed the 5th respondent in the present application to return the sum of Rs. 2,09,90,448/- and Rs. 1,20,59,402/- to the Corporate Debtor within thirty days, and further directed 7th respondent to remit any remaining or future compensation only into the bank account of the Corporate Debtor represented by the Liquidator.

5. In terms of the order passed in I.A. No. 452 of 2022, this Tribunal disposed of I.A. No. 512 of 2021, granting liberty to the Liquidator to file a fresh application in respect of the remaining reliefs, if any. Aggrieved thereby, the Liquidator preferred an appeal before the Hon'ble NCLAT, expressing an apprehension that initiation of a fresh process may result in delay. Taking note of the said apprehension, the Hon'ble NCLAT observed that, if the Liquidator approaches this Tribunal in accordance with the impugned order, this Tribunal shall make all efforts to decide the application on its own merits within a period of one month thereafter. Thus, the present application lies before us for adjudication.

Case of the Applicant:

6. The Applicant submitted that the Corporate Debtor had two directors, namely Ms. Sitara Jain and Mr. Kunwar Bahadur Singh, who expired in the years 2013 and 2015 respectively. The 4th Respondent is the daughter-in-law of the deceased director, Ms. Sitara Jain. The 1st Respondent, M/s. Garg Industries, is a sole proprietary concern owned by Mr. B. Mohan Garg, who is the brother of the 4th respondent. The 2nd and 3rd respondents are companies promoted and controlled by the same family, in which the 4th Respondent continues to be a director. Further, the 5th respondent is the daughter of the 4th respondent, and the 6th respondent is the son-in-law of the 4th respondent and husband of the 5th respondent. The 7th respondent is the Nation Highway Authority of India.

7. The Applicant submitted that, for the purpose of liquidation, the Liquidator is obligated to form the liquidation estate of the assets of the Corporate Debtor. In the course of such formation, it was observed that the Corporate Debtor is the sole, absolute owner and possessor of land admeasuring 17.03 acres/guntas, comprising

i. 11.19 acres/guntas in Sy. Nos. 36, 37 (part), 39, 40 (part), 43, 44, 590, 599 and 600 (part) purchased under Document Nos. 3033, 3034, 3035, 3036 and 3039 of 2000–2001,

ii. 5.24 acres/guntas in Sy. Nos. 601, 602 and 603 purchased under Document No. 3041 of 2000–2001, all registered with the SRO, Mysore-North.

It was further found that a portion of the said property was acquired by the 7th Respondent for the purpose of National Highway No. 275.

8. That the Applicant addressed an email dated 08.12.2020 to the 7th Respondent seeking information regarding the land acquisition and the compensation paid in respect of the acquired portion of the subject property of the Corporate Debtor. In response, the 7th Respondent, vide email dated 09.12.2020, stated that lands in Sy. Nos. 599, 600, 601, 602 and 603 were notified and acquired for widening of NH-275 and informed that

i. A total of 3472 sq.mtrs had been acquired and structural compensation of Rs. 9,05,02,660/- was paid to the Corporate Debtor on 12.10.2018,

ii. a further structural compensation of Rs. 2,09,90,448/- pertaining to Sy. Nos. 599 and 600 was paid to Respondent No. 5 on 25.11.2020, and

iii. land compensation for 2775 sq.mtrs was yet to be paid to the Corporate Debtor.

9. On verification of the bank records, the Applicant observed that although the 7th Respondent claimed to have disbursed Rs. 9,05,02,660/- to the Corporate Debtor, only a sum of Rs. 8,25,99,062/- stood credited on 15.12.2018, leaving a shortfall of Rs. 79,03,598/-. It was further noticed that an additional compensation of Rs. 2,09,90,448/- was credited directly to the personal account of

5th Respondent, who is a related party of the erstwhile promoters, instead of being remitted to the Corporate Debtor. Concerned with such irregular disbursement, the Applicant addressed a letter dated 09.12.2020 to the 7th Respondent seeking the records on the basis of which payment was made to 5th Respondent and requesting that all future compensation be credited only to the Corporate Debtor's account.

10. The Applicant further submitted that perusal of the bank statements revealed that Respondent Nos. 1, 2, 3, 4 and 6 had withdrawn and utilised the compensation amounts during CIRP without authority. The SBI branch confirmed that 6th Respondent had been operating the bank account by projecting himself as an authorised signatory, notwithstanding the fact that there were no living directors of the Corporate Debtor at the relevant time.

11. It is submitted that Respondent Nos. 1 to 6 are all related parties and have acted in connivance to fraudulently siphon off funds of the Corporate Debtor for the sole purpose of defrauding creditors.

The Applicant has tabulated the alleged illegal utilisation as follows:

M/s Garg Industries (R-1) **–** Rs. 2,06,99,309/-

Lakshmi Fibrelok Pvt. Ltd. (R-2) **–** Rs. 25,00,000/-

Sansar Investment & Finance Co.Pvt.Ltd.(R-3) Rs.5,78,50,750**/-**

Ms. Meenakshi Jain (R-4) **–** Rs. 8,00,000**/-**

Ms. Rhythm Jain (R-5) **–** Rs. 2,09,90,448**/-**

Mr. Sachin Saigal (R-6) **–** Rs. 7,42,010**/-**

SLAO / NHAI (R-7) – Rs. 79,03,598/-

Total alleged diversion: Rs. 11,14,86,115**/-**.

12. It is further submitted that 1st Respondent, while submitting a Resolution Plan earlier, had falsely stated that there was no relationship with the Corporate Debtor, whereas documentary records, including Memorandum of Association and income tax returns for AY 2015-16, allegedly disclose controlling interest of Respondent No.4 in the Corporate Debtor.

13. The Applicant asserts that all the impugned transactions occurred during the CIRP / liquidation period, that there were no banking transactions in the Corporate Debtor's account from 2012 to 2018, and that immediately upon receipt of compensation, the Respondents acted in concert to siphon off funds

14. The Applicant submits that the above transactions were carried out during CIRP, in connivance, with intent to defraud creditors, and therefore the Respondents are liable under Section 66 of the Code, apart from penal provisions under Sections 69 and 74.

Case of the 5th Respondent:

15. The 5th respondenthas filed a detailed reply opposing the present Interlocutory Application filed under Section 66 of the Code, 2016, and has denied all allegations of fraud, illegal transfer or wrongful utilization of funds, save and except those specifically admitted.

16. It is submitted that the present application arises pursuant to liberty granted in I.A. No. 512 of 2021, however, the said proceedings, along with I.A. No. 452 of 2022, already stand adjudicated by order dated 21.03.2024, which is presently under challenge before the Hon'ble NCLAT in Company Appeal (AT)(CH)(Ins) Nos. 166 of 2024 and 177 of 2024, wherein operation of the said order has been stayed. It is also brought on record that the Applicant's own appeal against the said order was dismissed as not maintainable on 23.09.2024.

17. The Respondent submits that the subject matter of the application is land admeasuring 17 Acres and 3 Guntas situated at Kesare Village, Mysore, forming part of Survey Nos. 36, 37, 39, 40, 43, 44, 590, 599 to 603 ("Subject Property").

18. It is submitted that the Subject Property, though originally acquired by the Corporate Debtor in public auction in 1995, always remained unencumbered, and was never subject to any charge in favour of banks or financial institutions. The said Subject Property was also never included in:

- Company Petition (IB) No. 497/HDB/2018,
- the Information Memorandum prepared by the Resolution Professional, or
- I.A. No. 284 of 2019 filed for liquidation,

and therefore, was never part of the liquidation estate.

19. The Respondent submits that due to severe financial distress, the Corporate Debtor sought financial assistance from M/s Sansar Investment & Finance Company Private Limited, which was duly recorded in the books of accounts of the Corporate Debtor and acknowledged by letter dated 18.11.2017.

20. It is stated that to raise capital, the Corporate Debtor agreed to sell the Subject Property to the Answering Respondent under a Lease-cum-Sale Agreement dated 19.06.2008 for a total consideration of Rs. 8,53,75,000/-, out of which Rs. 8,42,00,000/- was paid upfront by the Answering Respondent on behalf of Sansar through banking channels. A Tri-Party Development Agreement dated 19.06.2008 was also executed.

21. Upon default by the Corporate Debtor, a Mahazar dated 25.03.2009 was drawn, confirming absolute sale and handing over possession of

the Subject Property to the Answering Respondent. In terms thereof, the Respondent acquired exclusive and non-disputable rights to collect amounts from grass cutting, demolition, hoardings and compensation from Government authorities, including NHAI and SLAO, which was also confirmed by a Board Resolution dated 25.03.2009.

22. It is further submitted that due to a pending property tax dispute of over Rs. 1.31 crores, the sale deed could not be registered. Consequently, in a Board Meeting dated 26.05.2009, the Corporate Debtor authorised the Respondent and her nominees to:

- operate the bank account of the Corporate Debtor,
- call board meetings,
- sign documents with Government authorities, and
- receive and utilise compensation in respect of the Subject Property.

23. With regard to acquisition, it is submitted that a portion of the Subject Property was acquired by the Special Land Acquisition Officer (SLAO) prior to commencement of CIRP. The Collector/SLAO, under the National Highways Act, 1956, recognised the Respondent as the owner and affected person, took possession from her and paid compensation to her.

24. It is specifically stated that:

- Rs. 79,03,598/- represents TDS deducted and deposited by SLAO,
- Rs. 2,09,90,448/- relates to the second tranche of compensation, which is already the subject matter of appeal

pending before the Hon'ble NCLAT with an interim order in favour of the Respondent.

25. The Respondent submits that the first tranche of compensation was mistakenly credited to the Corporate Debtor's account, which was under the exclusive control of the Respondent, and the amount was utilised primarily for construction of compound wall, staff buildings and protection of the property. Subsequent tranches were paid directly to the Respondent, with TDS deposited in her PAN.

26. Detailed particulars of utilisation of funds paid through entities such as Garg Industries, Lakshmi Fibrelok, Sansar Investment & Finance Co. Pvt. Ltd., Ms. Meenakshi Jain and Mr. Sachin Saigal have been placed on record, showing that the amounts were spent for development of the Subject Property at the instructions of the Respondent. It is reiterated that no amount has been illegally utilised or siphoned.

27. It is further submitted that when the Applicant approached the SLAO claiming ownership of the Subject Property, no documentary evidence was produced, and the claim was rejected. The SLAO expressly informed the Applicant that the Respondent was the rightful claimant and compensation was correctly paid to her. Despite being called upon, the Applicant failed to challenge the said action under the National Highways Act.

28. The Respondent also highlighted that during pendency of proceedings before this Tribunal, the Applicant approached the Prime Minister's Office by complaint dated 22.04.2023 against SLAO/NHAI, despite the issue being sub-judice, demonstrating lack of faith in the adjudicatory process.

29. It is also asserted that the Liquidator is not competent to initiate proceedings under Section 66 of the Code, as such power vests only with the Resolution Professional.

30. It is denied that the Respondent acted in connivance with any person, impersonated the Corporate Debtor, defrauded creditors, or caused any loss to stakeholders. It is reiterated that the Respondent is the lawful owner and in possession of the Subject Property, and therefore any compensation received by her cannot be treated as fraud or wrongful gain.

31. The Respondent submits that the present application is a misuse of process, an afterthought, and an attempt to unlawfully usurp the Subject Property and compensation amounts, and is therefore liable to be dismissed.

Case of the Respondent No.1:

32. We observed that the 1st Respondent filed a counter dated 23.01.2026 stating that the 1st Respondent adopts the counter/reply already filed by the 5th Respondent in the present application.

33. Additionally, the 1st Respondent submitted that an amount of Rs. 2,06,99,309/- was received from the compensation amount through the 5th Respondent, out of which a sum of Rs. 2 Crores was transferred back to the bank account of the 5th Respondent on her instructions, leaving a balance of Rs. 6,99,750/-.

34. It is further submitted that an amount of Rs. 8,95,000/- was incurred towards certain expenses at the instructions of the 5th Respondent and, therefore, no part of the compensation amount is retained by the 1st Respondent and, on the contrary, the excess amount allegedly spent is recoverable from the 5th Respondent.

Case of the Respondent No.2

35. It is submitted that the 2nd Respondent is adopting the counter already filed by the 5th Respondent in the present application. Additionally, the 2nd Respondent submitted that an amount of Rs.

25,00,000/- was received from the compensation amount through the 5th Respondent, out of which a sum of Rs. 24,36,369/- was utilised towards clearing of debris, levelling, new soil filling and transportation charges through banking channels and that only a balance amount of Rs. 63,631/- remains with the 2nd Respondent.

Case of the Respondent No.3

36. It is submitted that the 3rd Respondent is adopting the counter filed by the 5th Respondent and additionally submitted that an amount of Rs. 5,78,50,750/- was received from out of the compensation amount through the 5th Respondent, out of which a sum of Rs. 5,60,00,000/- was transferred to the bank account of the 5th Respondent on her instructions, leaving a balance amount of Rs. 18,50,750/-.

37. It is further submitted that, out of the said balance amount, a sum of Rs. 10,00,000/- was paid as advance to a contractor towards construction of compound wall at the schedule property and the remaining amount of Rs. 8,50,750/- was utilised towards fabrication of iron pillars and gate works.

Case of the respondent No.4:

38. It is submitted that the 4th Respondent is adopting the counter filed by the 5th Respondent and additionally submitted that an amount of Rs. 8,00,000/- was received from out of the compensation amount received by the 5th Respondent from NHAI and that the entire amount was utilised towards development of the subject property at the instructions of the 5th Respondent.

39. It is further submitted that the 4th Respondent had additionally spent an amount of Rs. 1,64,029/- from her own funds and, therefore, no amount out of the compensation is presently retained by the 4th Respondent.

Case of the Respondent No.6:

40. It is submitted that the 6th Respondent is adopting the counter filed by the 5th Respondent and additionally submitted that an amount of Rs. 7,42,010/- was received in his bank account from out of the compensation amount received from NHAI by the 5th Respondent and that the entire amount was spent by him at the instructions of the 5th Respondent, Ms. Rhythm Jain. It is further submitted that no part of the said compensation amount is presently retained by the 6th Respondent.

FINDINGS AND DECISION:

41. We have heard Mr. V. V. Siva Kumar, learned counsel for the Applicant, and Mr. S. Ravi, learned Senior Counsel along with Mr. Ankur Goel, learned counsel for the Respondents and perused the material placed on record.

42. At the outset, learned counsel for the Applicant submitted that this Tribunal, vide order dated 09.10.2018, admitted the Corporate Debtor into CIRP and, since no Resolution Plan was approved within the prescribed CIRP period, liquidation proceedings were initiated against the Corporate Debtor vide order dated 09.01.2020.

43. It is the case of the Applicant that the property situated in Sy. Nos. 599, 600, 601/1 and 602 belongs to the Corporate Debtor and that, upon acquisition of the said property by the 7th Respondent/NHAI, the compensation amount was credited into the bank account of the Corporate Debtor, that during the subsistence of moratorium under Section 14 of the Code, the Respondents No.1 to 6 illegally and without authorization withdrew the said amounts lying in the bank account of the Corporate Debtor.

44. Per contra, learned counsel for the Respondents submitted that the 5th Respondent was the lawful person entitled to receive the

compensation amount in respect of the subject property and that the same was informed to the 7th Respondent/NHAI, based on the said claim, the 7th Respondent directly credited the subsequent compensation amount of Rs. 2,09,90,448/- into the personal account of the 5th Respondent.

45. Before adverting to the merits of the present application, it is pertinent to note that, arising out of the same transactions relating to acquisition of the subject property and disbursal of compensation amounts, the Applicant/Liquidator had earlier filed I.A. No. 512 of 2021 and I.A. No. 452 of 2022 before this Tribunal seeking similar reliefs.

46. This Tribunal, vide order dated 21.03.2024 in I.A. No. 452 of 2022, adjudicated the issues relating to the second tranche compensation amount and directed return of certain amounts to the Corporate Debtor. Simultaneously, I.A. No. 512 of 2021 was disposed of observing that the reliefs sought therein substantially overlapped with the reliefs already adjudicated in I.A. No. 452 of 2022, while granting liberty to the Applicant/Liquidator to seek the remaining reliefs, if any. The relevant portion of the order is extracted below:

> ***"IA (IBC) 512/2021***
>
> *This is an application filed by Liquidator for multiple reliefs and some of the reliefs are common in this IA and IA No. 452/2022, which is already disposed of and accordingly some of the reliefs of this IA are adjudicated in IA No. 452/2022.In view of this IA is also disposed of with a liberty to the Liquidator to file a fresh application for the remaining reliefs, if any.*
>
> *Accordingly, this application is disposed of."*

47. Aggrieved by the disposal of I.A. No. 512 of 2021, the Applicant/Liquidator approached the Hon'ble NCLAT. The Hon'ble Appellate Tribunal, vide order dated 23.09.2024, while dismissing the application, observed that this Tribunal shall make all

endeavours to decide the aforesaid application on its own merits within a period of one month thereafter. The relevant portion of the order is extracted below:

> *"19. The Appellant ultimately, at the stage of conclusion of arguments, has expressed an apprehension that, while the discretion was exercised by the learned Adjudicating Authority in its order by leaving it open for the Appellant to file an appropriate application before the learned Adjudicating Authority for the* ***remaining reliefs****, it does not prejudice his rights. He submits that initiating a new process often consumes a lot of time and it may result in delaying the decisions which he is seeking for. In order to suitably address the said apprehensions expressed by the learned Counsel for the Appellant, though without any material on record, but still in order to balance the equities, if the Appellant approaches before the learned NCLT within a period of 2 weeks from the date of receipt of Certified Copy of this Judgment, by filing an appropriate application in compliance with the Impugned Order under challenge in relation to IA(IBC)/512/2021, the learned NCLT is requested to make all efforts to decide the aforesaid application on its own merits within one month thereafter.*
>
> *Subject to the above, the Company Appeal (AT) (CH) (INS) No. 293 /2024 stand dismissed. The urgent listing Application IA No. 769/2024, would too stand disposed of. The connected all pending Interlocutory Applications, if any, would stand closed."*

48. Accordingly, the Applicant filed the present application. However, during the course of hearing of the present application, it came to the knowledge of this Tribunal that the Hon'ble NCLAT, vide order dated 07.06.2024, in Company Appeal (AT) (CH) (Ins) No. 177/2024, being an appeal arising out of the order dated 21.03.2024 passed in I.A. No. 452/2022, directed that the operation of the impugned order shall remain in abeyance.

49. In light of the above, we are consciously refraining from rendering any finding with regard to the ownership of the subject property, the issue, which is the subject matter already decided by this Tribunal in IA(IBC) 452 of 2022 vide order dated 21.03.2024, which is kept in abeyance pending appeal of 5th respondent, Ms. Rhythm Jain.

50. The only point that arises for our consideration is whether the amounts admittedly credited into the bank account of the Corporate Debtor during the subsistence of moratorium could have been

withdrawn and utilised by Respondent Nos. 1 to 6 without authorization of the Resolution Professional/Liquidator?

51. Coming to the merits of the case, on perusal of the record, we observed that the 7th Respondent/NHAI, vide public announcement notice dated 14.10.2016, acquired a portion of the subject property situated in Sy. Nos. 599, 600, 601/1 and 602 for the purpose of widening and extension of National Highway No. 275

52. Consequent to the acquisition of the subject property, the 7th Respondent disbursed compensation amounts, out of which an amount of Rs. 8,25,99,062/- was credited into the bank account of the Corporate Debtor on 15.10.2018, while Rs. 79,03,598/- was deducted towards TDS. It is further not in dispute that a subsequent tranche amounting to Rs. 2,09,90,448/- was directly credited into the personal account of the 5th Respondent on 25.11.2020.

53. It is also clear from the bank statement of account[4] of the Corporate debtor produced by the Applicant that the compensation amount of Rs. 8,25,99,062/- was credited into the bank account of the Corporate Debtor on 15.10.2018. A substantial amount out of which was subsequently withdrawn by the Respondent Nos. 1 to 6 in the manner alleged by the Applicant.

54. We also observed from the bank statement of the corporate debtor that the 1st Respondent withdrew amounts of Rs. 4,78,50,809/- on 16.10.2018 and Rs. 3,06,99,250/- on 17.10.2018. Though subsequent credits of Rs. 4,78,50,750/- and Rs. 1,00,00,000/- were made into the account of the Corporate Debtor on 01.08.2019 and 28.08.2019 respectively, the material available on record prima facie discloses that, after accounting for the said credits, an amount of Rs. 2,06,99,309/- remained withdrawn and utilised by the 1st

[4] Page no. 206 – 210 of the Application

Respondent during the subsistence of CIRP proceedings. The same is representing in the tabular format:

S.No	Date of Trnsaction	Debit from CD (Rs.)	Credit to CD (Rs.)	Total balance (Rs.)
1.	16.10.2018	4,78,50,809/-		
2.	17.10.2018	3,06,99,250/-		
3.	01.08.2019		4,78,50,750/-	
4.	28.08.2019		1,00,00,000/-	
		7,85,50,059/-	5,78,50,750/-	2,06,99,309/-

55. It is further evident from the bank statement of the Corporate Debtor that the 2nd Respondent withdrew an amount of Rs. 25,00,000/- on 16.11.2018 through cheque transaction. Likewise, the 3rd Respondent withdrew amounts of Rs. 4,78,50,750/- on 03.08.2019 and Rs. 1,00,00,000/- on 30.08.2019, aggregating to Rs. 5,78,50,750/-. Further, the 4th Respondent withdrew an amount of Rs. 8,00,000/- on 17.12.2019 from the bank account of the Corporate Debtor during the subsistence of CIRP/liquidation proceedings. The same is in tabular format:

S.No.	Respondent No.	Date	Debit from CD (Rs.)	Credit to CD (Rs.)
1.	2nd respondent	16.11.2018	25,00,000/-	
	Total	25,00,000/-		

2.	3rd Respondent	03.08.2019	4,78,50,750/-	
		30.08.2019	1,00,00,000/-	
	Total	5,78,50,750/-		
3.	4th respondent	17.12.2019	8,00,000/-	
	Total	8,00,000/-		

56. We further observed from the bank statement of the corporate debtor reflects various debit transactions aggregating to Rs. 7,42,010/-, The same is represented in tabular format:

S.No.	Date	Name in the transactions	Debit from CD (Rs.)
1.	13.11.2018	S manjunath	3,50,000/-
2.	15.11.2018	KBL Office account	1,00,000/-
3.	16.11.2018	HDF Chaithanya Praf	22,010/-
4.	26.11.2018	KBL Office account	1,50,000/-
5.	12.12.2018	Venkata Krishna	50,000/-
6.	13.12.2018	Venkata Krishna	50,000/-
7.	21.12.2018	PNB Prasad	20,000/-
	Total		7,42,010/-

57. While the said transactions were not directly reflected in the name of the 6th Respondent, in the counter affidavit filed by 6th Respondent, it has been specifically admitted that an amount of Rs. 7,42,010/- was received into his bank account out of the compensation amount received from NHAI by the 5th Respondent.

58. It is settled law that under Section 53 of the Bharatiya Sakshya Adhiniyam, 2023, facts admitted need not be proved. Though such admission may not by itself be conclusive proof, the 6th Respondent is estopped from disputing the said transactions. Therefore, we deem the said transactions to be transactions carried out by the 6th Respondent.

59. We further observed that no material has been placed on record to show that the withdrawals from the account of the Corporate Debtor were made with the authorization of the Resolution Professional or with the leave of this Tribunal.

60. Moreover, the respondents admitted the factum of withdrawals from the account of the Corporate Debtor during the subsistence of CIRP proceedings, contending that they were entitled to the compensation amount in respect of the subject property and that the said amounts were utilised towards development, protection and maintenance of the subject property.

61. It is settled law that once moratorium under Section 14 of the Code comes into force, the suspended directors or any other persons are not entitled to transfer, alienate or otherwise deal with the assets of the Corporate Debtor without authorization of the Resolution Professional or leave of the Adjudicating Authority, as the object of the moratorium is to preserve and protect the assets of the Corporate Debtor from depletion during insolvency proceedings

62. The Hon'ble Supreme Court in ***P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd., (2021) 6 SCC 258***, has unequivocally held that

moratorium is intended to preserve the Corporate Debtor as a going concern and protect its assets from dissipation. Any act which has the effect of depletion of the assets during moratorium, without authority of law, is impermissible.

63. The Hon'ble NCLAT in ***Manoj K. Daga v. ISGEC Heavy Engineering Ltd. and Ors, (2020) ibclaw.in 266 NCLAT***, has held that any withdrawal from the corporate debtor's bank account during CIRP without approval of the Resolution Professional is illegal. The relevant portion is extracted below:

> "*22. Taking conspectus of the whole developments in this CIRP proceeding and this Appeal, we are of the view that the Directors acted wholly illegally once moratorium had been applied, in going ahead and withdrawing monies from the accounts at the back of IRP by even issuing cheques "Self". Such acts cannot be justified in any manner.....*
>
> *.....*"

64. In light of the aforesaid decisions and the facts of the present case, the withdrawals of the compensation amounts from the account of the Corporate Debtor by Respondent Nos. 1 to 6, admittedly without any authorization from the Resolution Professional or without any leave of this Tribunal, are contrary to the provisions and scheme of the Code and illegal.

65. Therefore, we are of the considered view the 1st Respondent, the 2nd Respondent, the 3rd Respondent, the 4th Respondent and the 6th Respondent, having withdrawn and utilised amounts of Rs. 2,76,33,589/-, Rs. 25,00,000/-, Rs. 5,78,50,750/-, Rs. 8,00,000/- and Rs. 7,42,010/- respectively from the account of the Corporate Debtor during the subsistence of CIRP/liquidation proceedings without authorization, are liable to remit the said amounts back into the liquidation account of the Corporate Debtor.

66. With regard to the 5th Respondent, since the transaction of Rs.2,09,90,448/- pertaining to the 5th Respondent have already been

adjudicated upon by this Tribunal in I.A. No. 452 of 2022 along with the transaction of Rs.1,20,59,402/- for which separate relief was sought, and the same is presently the subject matter of challenge before the Hon'ble NCLAT. Therefore, we refrain from recording any further finding in respect of the said transactions at this stage.

67. Insofar as the 7th Respondent is concerned, the deductions towards TDS are statutory in nature and stand remitted towards tax liability. Therefore, no further adjudication is called for in respect thereof in the present proceedings.

Accordingly, the present Application is allowed and disposed of.

Sd/- Sd/-

Sanjay Puri
Member (Technical)

Rajeev Bhardwaj
Member (Judicial)