



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

Number 228

(June 16, 2025)

Mr. Sunil Gutte Vs. Mr. Avil Menezes, DPRS Infra Developers Pvt. Ltd., Rayon Infrastructure Pvt. Ltd, Navneesh Traders Pvt. Ltd., Shreehari Associates Pvt. Ltd. & Mr. Harshavardhan Kaushik
Company Appeal (AT) (Insolvency) No. 515 of 2025
Date of NCLAT Judgement: May 30, 2025

Facts of the Case: -

The present appeal was filed u/s 61 of the Insolvency and Bankruptcy Code, 2016 by Mr. Sunil Gutte, Promoter and Suspended Director of M/s Sunil Hitech Engineers Ltd./C/D (hereinafter referred as 'Appellant'), challenging the order dated 04.02.25 passed by the Adjudicating Authority. The AA had allowed M.A. No. 1833 of 2019 filed by the Resolution Professional (hereinafter referred as 'Respondent No. 1') and set aside certain transactions made by the Appellant and Respondent No. 6 (CFO of the CD) with Respondents Nos. 2 to 5, declaring them in violation of the moratorium u/s 14 of the IBC. These transactions, amounting to ₹11.01 crore, were made post-commencement of CIRP which had been admitted on 07.09.18, and the moratorium declared effective from 10.09.18.

The Respondent no. 1 discovered that unauthorized payments had been made to Respondents Nos. 2 to 5 in two phases first between 10.09.18 and 14.09.18 (nine RTGS transactions), and second between 06.10.18 and 08.10.18 (three cheque encashments). These payments were made from the CD's HDFC Bank account, not from the designated account under the IRP's control. The Appellant argued that the payments were necessary to run the company as a going concern and that the cheques were dated prior to the moratorium.

The Respondent no. 1 contended that all such payments were in clear breach of the moratorium provisions, made without IRP's approval, and therefore sought reversal of the transactions. The AA held that the Appellant and Respondents Nos. 2 to 6 were jointly and severally liable to refund the amounts, and the matter was also directed to IBBI for consideration under Section 74(1) of IBC. Aggrieved by this, the Appellant approached the Appellate Tribunal.

The main issues raised before the Appellate Tribunal is whether the payments made by the Appellant after commencement of CIRP constituted a breach of the provisions of moratorium and whether there was any infirmity in the impugned order directing the reversal of the impugned transactions by the Appellant and Respondent No. 2 to 6 to the assets of the CD.



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)



NCLAT's Observations:

The Appellate Tribunal noted that as per Section 5(12) of the IBC, the insolvency commencement date is the date of admission of a CIRP application. Section 14(1)(b) mandates a moratorium on transferring or disposing of any assets of the CD post-admission. It observed that 9 out of the 12 impugned transactions occurred via RTGS between 10.09.18 and 14.09.18, i.e., after the effective date of moratorium. Although the remaining three cheque transactions were dated before the moratorium, they were encashed only afterward. The Appellate Tribunal held that the IRP had not authorized these payments and that the suspended management acted in violation of the moratorium provision.

It further emphasized that the objective of Section 14 is to maintain the status quo of the CD's assets during CIRP, and even a well-intentioned payment by the suspended management cannot override statutory prohibitions. The Tribunal rejected the Appellant's argument that these payments were in the ordinary course of business and essential for maintaining the going concern status of the CD. It cited that any such post-CIRP payments must be made under IRP supervision and authorization.

With regard to the three cheque transactions, the Tribunal relied on its earlier ruling in *SREI Equipment Finance Ltd. v. Amit Gupta (2019)*, holding that even if the cheque is dated before moratorium, its encashment after moratorium breaches the law. The Appellant's reliance on the *Pratim Bayal* case (2013) was rejected, as the facts were distinguishable and no credible evidence was provided regarding the actual handover date of the cheques. The Tribunal also rejected the argument of discriminatory treatment, stating that parity cannot be claimed in illegal acts and any oversight by the Respondent no. 1 in other cases does not justify non-compliance in the instant case.

Order/Judgement: The Appellate Tribunal dismissed the appeal and upheld the AA's order, holding that an amount of ₹11.01 crore had been illegally transferred from the CD's account to Respondent Nos. 2 to 5 in violation of the moratorium. The Appellant and Respondent Nos. 2 to 6 were held jointly and severally liable to refund the said amount within 30 days. The matter was rightly referred to IBBI for action under Section 74(1) of IBC. However, liberty was granted to Respondent Nos. 2 to 5 to file their claims before the RP/Liquidator.

Case Review: The Appeal is dismissed with no order as to costs.