



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

## IBC Case Law Capsule

Number 226

(June 02, 2025)

**Sandeep Mahajan Vs. Mr. Nayan Thakrashi Shah, Mr. Nayan Ashok Bheda, & Mr. Sachin Manohar Deshmukh, I.A. No. 5026/2023 in C.P. NO. 800(IB)/MB/2022**  
Date of NCLT Judgement: May 02, 2025

### Facts of the Case: -

In the Corporate Insolvency Resolution Process (CIRP) of Neptune Ventures and Developers Pvt. Ltd. (Corporate Debtor), the IRP (hereinafter referred as 'Appellant') filed an IA under Section 14(1) read with Section 68(i)(b) of the Insolvency and Bankruptcy Code (IBC), 2016, seeking directions against Mr. Nayan Thakrashi Shah, Mr. Nayan Ashok Bheda, and Mr. Sachin Manohar suspended directors of the CD (hereinafter referred as 'Respondents'). The Appellant sought refund of ₹5,91,41,405/-, which was transferred from three bank accounts of the corporate debtor—HDFC Bank and two Axis Bank accounts—after the CIRP commenced on 17.07.2023, alleging violation of the moratorium under Section 14.

The IRP submitted that the management failed to cooperate in providing vital information such as assets, financial records, and property keys, and that unauthorized transactions were carried out post-moratorium. Emails dated 18.09.2023 and 24.09.2023 were sent requesting reversal of these amounts, but the Respondents (suspended directors) did not comply. The Respondents, in a common affidavit, claimed that the instruments (cheques, manager's cheques, demand drafts, fund transfers) were issued before the insolvency commencement date and thus did not violate the moratorium. They stated the payments were for legitimate dues of homebuyers and operational creditors to avoid litigation and denied any fraudulent intent or wrongful gain. They also cited lack of access to company records as the reason for not submitting the original instruments. In his rejoinder, the IRP refuted these claims, asserting that the instruments were processed and debited only after 17.07.2023, thereby breaching the moratorium. He further noted that the Respondents failed to provide proof of contractual obligations or that the transactions occurred in the ordinary course of business. He also alleged deliberate misrepresentation and falsification of records, invoking Section 68(i)(b) of the Code.

The main issue raised before AA is:

- (i) Whether there is breach of moratorium by the respondents and the monies so debited in the bank accounts of the CD after declaration of moratorium, without the authority of the IRP are required to be restored back to the CD.



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## NCLT's Observations:

The Tribunal perused the bank account statements, pleadings, and documents. It noted that as per Section 17 of the IBC, once the IRP is appointed, the management of the CD vests with him and the suspended board must cooperate and disclose all relevant information. In this case, the Respondents failed to respond to IRP's emails and withheld critical financial details.

The Tribunal held that the defense of the respondents that payments were made to homebuyers and operational creditors is immaterial, since any transaction after declaration of moratorium without the IRP's approval violates Section 14. The records revealed that most transactions particularly from the HDFC Bank account were effected on or after 18.07.2023, either via Manager's Cheques (MCs), Fund Transfers (FT-DR), or electronic RTGS, none of which were proven to be initiated before the CIRP. The account balance as on 14.07.2023 was only ₹14,43,886.71/-, and massive inflows and outflows occurred post-moratorium. Cheques were issued and cancelled to prioritize select parties, indicating use of discretion in violation of the Code.

Notably, the Tribunal emphasized that the Respondents' submissions lacked evidentiary support. They failed to show that payments were made under ECS mandate, auto-debit instructions, or valid pre-CIRP obligations. The claim that SAP software holding records had crashed was found unconvincing. Payments made via RTGS and electronic transfer on 18.07.2023 and later clearly established post-CIRP disbursal. The only transaction that was considered a CIRP cost was ₹64,541 paid to Vodafone Idea Ltd. for telephone/internet usage. All other payments, totaling ₹6,02,73,500/-, were declared unauthorized and violative of Section 14 of the IBC.

**Order/Judgement:** The Tribunal concluded that there was a clear breach of the moratorium under Section 14 of the IBC, and that the transactions were executed without authority. Accordingly, it directed the suspended directors to jointly and severally repay ₹6,02,73,500/- along with interest at 9% per annum, calculated from the date of unauthorized transfers till the actual date of repayment. The payment was ordered to be completed within two months from the date of the order.

**Case Review:** The Interlocutory Application was allowed.