

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1975 of 2024

IN THE MATTER OF:

Axis Bank Ltd.

....Appellant

Vs.

Asset Reconstruction Company (India) Ltd. & Ors.

...Respondents

For Appellant: Mr. Abhinav Vashisht, Mr. Arun Kathpalia, Sr. Advocates
with Mr. Manmeet Singh, Ms. Bhavika Deora, Advocates.

For Respondents: Mr. Dhruv Mehta, Mr. Sunil Fernandes, Sr. Advocates with Mr. Kaustubh Prakash, Ms. Hita Sharma, Ms. Prachi Bhatia, Ms. Tanya Singh, Mr. Keith Varghese, Ms. Rajshree Chaudhary, Ms. Diksha Dadu, Advocates for R-1.
Mr. Kunal Tandon, Ms. Richa Sandilya, Ms. Natasha Singh, Advocates for Star India Pvt. Ltd.
Mr. Anand Varma, Ms. Apoorva Pandey, Ms. Aayushi Khurana, Advocates for R-7.
Mr. Amarjeet Singh Chandhiok, Sr. Advocate with Ms. Pooja Mahajan, Ms. Mahima Singh, Mr. Karamvir Khosla, Mr. Srivatsava Reddy Beerapalli, Advocates for RP.
Mr. Krishnendu Datta, Sr. Advocate with Mr. Bishwajit Dubey, Mr. Kaustubh Rai, Mr. Aman Varma, Ms. Niharika Sharma, Ms. Riya Wasade, Mr. Karan Khetani, Advocates for R-10.

Company Appeal (AT) (Insolvency) No. 1977 of 2024

IN THE MATTER OF:

Aditya Birla Finance Ltd.

....Appellant

Vs.

Asset Reconstruction Company (India) Ltd. & Ors.

...Respondents

For Appellant: Mr. Abhijeet Sinha, Sr. Advocate with Mr. Aseem Chaturvedi, Mr. Ravitej Chillumuri, Ms. Mihika Jalan, Ms.

**Pragya Dahiya, Ms. Hanshika Daboo, Mr. Siddhant Kumar,
Mr. Arsh Alok, Advocates.**

**For Respondents: Mr. Kunal Tandon, Ms. Richa Sandilya, Ms. Natasha Singh, Advocates for Star India Pvt. Ltd.
Mr. Kaustubh Prakash, Ms. Hita Sharma, Ms. Prachi Bhatia, Ms. Tanya Singh, Advocates for ARCIL.
Ms. Anshula Grover, Mr. Aman Varma, Ms. Riya Wasade, Advocates for R-10.
Mr. Amarjeet Singh Chandhiok, Sr. Advocate with Ms. Pooja Mahajan, Ms. Mahima Singh, Mr. Karam vir Khosla, Mr. Srivatsava Reddy Beerapalli, Advocates for RP.**

Company Appeal (AT) (Insolvency) No. 1978 & 1979 of 2024

IN THE MATTER OF:

Rohit Ramesh Mehra Resolution Professional of Siti Networks Ltd.Appellant
Vs.
Asset Reconstruction Company (India) Ltd. & Ors. ...Respondents

For Appellant: Mr. Amarjeet Singh Chandhiok, Sr. Advocate with Ms. Pooja Mahajan, Ms. Mahima Singh, Mr. Karam vir Khosla, Mr. Srivatsava Reddy Beerapalli, Advocates.

**For Respondents: Mr. Kunal Tandon, Ms. Richa Sandilya, Ms. Natasha Singh, Advocates for Star India Pvt. Ltd.
Mr. Kaustubh Prakash, Ms. Hita Sharma, Ms. Prachi Bhatia, Ms. Tanya Singh, Advocates for ARCIL.
Ms. Anshula Grover, Mr. Aman Varma, Ms. Riya Wasade, Advocates for R-8.**

Company Appeal (AT) (Insolvency) No. 2003 of 2024

IN THE MATTER OF:

IDBI Bank Ltd.Appellant
Vs.

Asset Reconstruction Company (India) Ltd. & Ors.

...Respondents

For Appellant: Mr. N. Venkataraman, ASG with Mr. Manmeet Singh, Ms. Bhavika Deora, Advocates.

For Respondents: Mr. Amarjeet Singh Chandhiok, Sr. Advocate with Ms. Pooja Mahajan, Ms. Mahima Singh, Mr. Karam vir Khosla, Mr. Srivatsava Reddy Beerapalli, Advocates for RP.
Mr. Kunal Tandon, Ms. Richa Sandilya, Ms. Natasha Singh, Advocates for Star India Pvt. Ltd.
Ms. Anshula Grover, Advocate for R-10.

Company Appeal (AT) (Insolvency) No. 2005 of 2024

IN THE MATTER OF:

IndusInd Bank Ltd.

....Appellant

Vs.

Asset Reconstruction Company India Ltd. & Ors.

...Respondents

For Appellant: Mr. Diwakar Maheshwari, Ms. Pratiksha Mishra, Mr. Vishnu Shriram, Mr. Shreyas Edupuganti, Mr. Karan Bhootra, Ms. Srithi Kapoor, Advocates.

For Respondents: Mr. Amarjeet Singh Chandhiok, Sr. Advocate with Ms. Pooja Mahajan, Ms. Mahima Singh, Mr. Karam vir Khosla, Mr. Srivatsava Reddy Beerapalli, Advocates for RP.
Mr. Kunal Tandon, Ms. Richa Sandilya, Ms. Natasha Singh, Advocates for Star India Pvt. Ltd.
Ms. Anshula Grover, Advocate for R-10.

Company Appeal (AT) (Insolvency) No. 2006 of 2024

IN THE MATTER OF:

RBL Bank Ltd.

....Appellant

Vs.

Asset Reconstruction Company (India) Ltd. & Ors.

...Respondents

For Appellant: Mr. Diwakar Maheshwari, Ms. Pratiksha Mishra,
Mr. Shreyas Edupuganti, Mr. Karan Bhootra, Mr.
Shantanu Parashar, Advocates.

For Respondents: Mr. Kunal Tandon, Ms. Richa Sandilya, Ms. Natasha
Singh, Advocates for Star India Pvt. Ltd.
Ms. Anshula Grover, Advocate for R-10.

ORDER
(29th October, 2024)

Ashok Bhushan, J.

All these Appeals have been filed against the same order of the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Court III dated 01.10.2024 in IA No.4844 of 2023, IA No.126 of 2024 and IA No.57 of 2023. All the above Appeals have been filed by the Financial Creditors of the Corporate Debtor except Company Appeal (AT) (Insolvency) No.1978-1979 which has been filed by the Resolution Professional of the Corporate Debtor- Siti Networks Limited. We shall notice the facts and parties from Company Appeal (AT) (Insolvency) No.1975 of 2024.

2. Brief facts giving rise to these Appeals are:-

2.1. On an application filed under Section 7 of the IBC, CIRP against the Corporate Debtor has commenced by order dated 22.02.2023 passed by the Adjudicating Authority. The Respondent No.11- Ms. Shilpi Asthana, one of the members of the suspended Board of Directors filed a Company Appeal (AT) (Insolvency) No. 274 of 2023 challenging the order dated 22.02.2023. In the Company Appeal, an interim order to the effect “in the meantime,

operation of the impugned order shall remain stayed” was passed by this Tribunal on 07.03.2023. After the interim order, the management of the Corporate Debtor was taken over by the board of management. The board of management informed the financial creditor on 10.03.2023 that they had taken over the control and management of the corporate debtor. Respondent No.6- IndusInd Bank filed Civil Appeal No.1871 of 2023 before the Hon’ble Supreme Court challenging the interim order dated 07.03.2023. The Hon’ble Supreme Court, however, dismissed Civil Appeal No.1871 of 2023 on 24.03.2023. Appellant on 31.03.2023 appropriated funds from the accounts of the Corporate Debtor towards its dues and entitlements. In the Joint Lender’s Meeting held on 26.04.2023, Corporate Debtor requested the lenders to permit release of payments to its operational creditors including payment in respect of debts due before the admission order. In the JLM, all lenders also took an objection to Appellant’s act of appropriating funds. In another JLM held on 04.05.2023, lenders requested the Appellant not to appropriate funds from the corporate debtor’s account on the ground that all lenders had a *pari passu* charge over the cash flows of the corporate debtor. Respondent No.11 filed an application IA No.2138 of 2023 before this Tribunal seeking certain clarifications and direction that preferential payment by a lender to itself during pendency of the Company Appeal shall be reversed. The said application was subsequently dismissed as not pressed.

2.2. IA No.2340 of 2023 was filed for seeking impleadment of the Appellant and the Respondent No.3 in the Company Appeal. Impleadment Application

was subsequently amended for impleading all lenders i.e. Appellant, Respondent No.1 and Respondent Nos.4 to 7 as parties to the Company Appeal. On 31.05.2023, Contempt Case was dismissed as withdrawn. Appellant further appropriated funds from the corporate debtor's account towards its dues and entitlements on 01.06.2023. Further, on request of Respondent Nos.3 to 6 who also had similar contractual rights as the Appellant, the Appellant released funds in favour of the Respondent Nos.3 to 6. Suspended Director filed an Additional Affidavit in the IA praying that the Appellant and the Respondent Nos. 3 to 6, who had appropriated funds from the account of the Corporate Debtor, be directed to reverse such transactions. On 12.06.2023 Appellate Tribunal passed an order directing the Appellant and the Respondent No.3 not to withdraw any monies from the account of the corporate debtor. Respondent No.11 challenged the order dated 12.06.2023 before the Hon'ble Supreme Court by filing Civil Appeal No.4110 of 2023 which was dismissed by the Hon'ble Supreme Court on 07.07.2023 noticing that the IA was coming up for hearing before the Appellate Tribunal. Other IAs were filed by the suspended director before the Adjudicating Authority. On 10.08.2023, this Tribunal dismissed the Company Appeal (AT) (Ins.) No.274 of 2023. The IRP took over the management and control of the corporate debtor on 16.08.2023. The suspended director challenged the dismissal order dated 10.08.2023 before the Hon'ble Supreme Court which was dismissed on 01.09.2024. Respondent No.11 also filed an IA in 2nd Civil Appeal seeking reversal of transaction. Respondent No.2 filed a Clarification

Application No.4844 of 2023 seeking a clarification whether the cut-off date for all CIRP related activities, including claims admission date, should be reckoned as 10.08.2023. The suspended management also filed an Intervention Petition No.57 of 2023 seeking intervention in the Clarification IA. Respondent No.1- ARCIL filed an IA 126 of 2024 seeking various directions. Appellant- Axis Bank Limited filed response to the ARCIL's application. Adjudicating Authority by order dated 01.10.2024 allowed the Intervention Petition No.57 of 2023. In IA No. 4844 of 2023, Adjudicating Authority held that the cut-off date of CIRP as 10.08.2023 is rejected. IA No.126 of 2024 filed by the ARCIL was allowed and various prayers a, b, d, e and f were also allowed.

2.3. The Adjudicating Authority recorded its conclusion in paragraph 83 which are as follows:-

“Conclusion

83. The findings recorded above are summarized as follows:

a) Insolvency Commencement Date as defined under section 5(13) of the Code stands fixed at 22.02.2023.

b) Since the ICD date cannot be changed, we are unable to agree that even after the dismissal of the appeal, the ICD should be reckoned as 10.08.2023 for CIRP activities. Hence, the application no. 4844/2023 is rejected. We hold the ICD remains 23.02.2023 and

all CIRP related activities have to be reckoned from that date only.

c) Moratorium under section 14 continues to be applicable from 22.02.2023.

d) All the transactions and appropriations undertaken during the stay period i.e. between 07.03.2023 till 10.08.2023 shall be reversed and the amounts shall be remitted back to the account of the Corporate Debtor within 4 weeks from today.

e) The expenses incurred in the ordinary course of business to protect the Corporate Debtor and to keep it as a going concern would be safeguarded.”

2.4. Paragraph 84 of the impugned order contains directions and orders in the above three applications which are as follows:-

“84. With these observations, we pass the following order on the prayers sought in the three captioned applications:

IA/4844/2023

i. Prayer 'c' seeking 10.08.2023 as the cut-off date for CIRP-related activities is rejected.

ii. As regards prayer 'b' seeking clarification on liabilities incurred during the stay period, we note that the relief sought herein is incidental to prayer 'c' which has been rejected. Accordingly, prayer 'b' has become inconsequential. Thus, IA/4844/2023 is dismissed.

Intervention Petition 57/2023

iii. Intervention Petition No. 57/2023 is allowed.

IA/126/2024

iv. Prayers 'a', 'b', 'd', 'e' and 'f' being interconnected to each other are allowed;

v. Prayer 'c' seeking direction to the RP to maintain the account of the Corporate Debtor in a bank other than Respondents 2 to 6 is rejected;

vi. Prayer 'g' seeking direction to Respondents 2 to 6 to pay interest on the amounts withdrawn is rejected;

*vii, Thus, IA/ 126/2024 is **partly allowed.**"*

2.5. Aggrieved by the aforesaid order, the above appeals have been filed by the lenders except Company Appeal (AT) (Insolvency) No.1978-1979 which was filed by the Resolution Professional. In the appeals which have been filed by the lenders they have prayed for setting aside the order passed by the Adjudicating Authority in IA No.126 of 2024. The Resolution Professional in Company Appeal (AT) (Insolvency) No.1978-1979 has prayed for setting aside the observations and findings of the NCLT in paragraph 78 of the order dated 01.10.2024 passed in IA No.4844 of 2023.

3. We have heard Counsel for the Appellant, Counsel for the Respondent No.1 as well as Counsel for the Suspended Director on the appeals as well as applications filed for the interim relief in support of the above appeals.

4. Counsel for the Appellants challenging the order directing for reversal of the directions which took place after 22.02.2023 till 01.06.2023, it is contended that the suspended management of the corporate debtor has

obtained an interim order on 07.03.2023 staying the operation of the order of the NCLT, hence, Moratorium was no longer continuing. The suspended management represented that they are functioning as board of management. They have written to Stock Exchange and other authorities regarding their functioning. They have also convened the meetings of the board of management. The corporate debtor having convened meetings, the order of the NCLT dated 22.02.2023 is not operating. Axis Bank in exercise of its contractual rights has appropriated the amount from the account of the corporate debtor towards its liability. It is submitted that the order of reversal of all transaction is unjustified. It is submitted that the Adjudicating Authority on the other hand has permitted the amount paid to the operational creditor not to be reversed. It is contended that even ARCIL in the JLM has only prayed that appropriation of the amount should be done with the consent of all the lenders since all lenders have *pari passu* charge. No lenders including ARCIL opposed to the appropriation of the amount. It is submitted that the suspended director who contended that the CIRP is no longer continuing and have conducted the affairs of the corporate debtor as CIRP is no longer continuing there is no error in Axis Bank and other lenders appropriating the amount from the accounts of the corporate debtor. Counsel for the Appellant further contends that the IAs filed by the suspended management before the Appellate Tribunal as well as before the Hon'ble Supreme Court for reversing the transaction were rejected, hence, the said issue cannot be re-agitated before the Adjudicating Authority.

5. Counsel for the Resolution Professional submits that the Resolution Professional handed over the management due to the stay of the order of the NCLT. After the stay of the order by which IRP was appointed, IRP could not have functioned. It is contended that several complaints have been filed against the IRP before the IBBI and observations made by the Adjudicating Authority in paragraph 78 are prejudicial to the rights and interests of the Resolution Professional. IBBI has commenced proceedings against the RP and unless interim protection is not granted RP shall suffer irreparable loss.

6. Learned Senior Counsel for the Respondent No.1- ARCIL submits that after admission of application under Section 7 on 22.02.2023, Moratorium was enforced and even if the order is stayed on 07.03.2023, Moratorium shall not come to an end. The CIRP commencement was not set aside and Axis Bank and other lenders has no jurisdiction to appropriate amount from the accounts of the corporate debtor. Lenders who are well aware of the provisions of the IBC and various consequences cannot be heard in saying that on stay being obtained by suspended director they are free to appropriate the amount from the account of the corporate debtor. Interpretation which is sought by Axis Bank and other lenders shall make scheme of the IBC meaningless and unworkable. It is submitted that the Respondent No.1 has always objected to the appropriation made by the Axis Bank in the JLM. IA No.126 of 2024 filed by the Respondent No.1 was on substantial ground and has rightly been allowed by the Adjudicating Authority. Axis Bank and other lenders who have

illegally appropriated amounts from the account of the corporate debtor are liable to reverse the same in the account of the corporate debtor as directed by the Adjudicating Authority.

7. Shri Krishnendu Datta, Learned Senior Counsel appearing for the Suspended Management submits that the suspended management has objected to the appropriation of amount by the Axis Bank and other lenders. Applications filed before the Appellate Tribunal or before the Hon'ble Supreme Court were never decided on merits. Hon'ble Supreme Court did not interfere on the ground that applications are pending before the Appellate Tribunal. Appellate Tribunal having dismissed the Appeal of the Suspended Director and closed all the IAs, there being no determination by the Appellate Tribunal or by the Hon'ble Supreme Court on the merits of the application filed by the suspended director, the Adjudicating Authority was not precluded to consider and decide the application on merits. Counsel for the suspended director supports the submissions of the Respondent No.1 and prays that amount appropriated by the lenders be reversed.

8. Learned Counsel for the parties in support of their respective submissions has relied on various judgments of this Tribunal as well as order passed by the Hon'ble Supreme Court in different matters.

9. We have considered the submissions of the Counsel for the parties and perused the record.

10. Substantial issue has raised in these Appeals which need consideration by this Tribunal. We find sufficient grounds to issue notice in these Appeals. All the Learned Counsel for the parties has jointly prayed that the appeal be fixed on an early date and disposed of finally.

11. Issue notice. Notice on behalf of Respondent No.1- ARCIL as well as the Suspended Director having been accepted, no notice need to be issued. Axis Bank and other lenders who are Appellants have already filed appeal and are Respondents to the different Appeals, no notice need be issued to ARCIL and suspended director. Reply to the Appeals be filed within two weeks. Rejoinder, if any, be filed within one week thereafter.

12. Counsel for the Appellant has also prayed that the interim protection be granted to the Appellant since under the directions of the Adjudicating Authority, Axis Bank and other lenders are required to reverse the amount by 29.10.2023. It is contended that the amounts which have been taken from the account of the corporate debtor was on the premise that moratorium is not continuing and the said amount are with the Axis Bank and other lenders for more than one year. Amount being lying with the Appellants who are the Banks, no apprehension can be raised by the Respondents that the Appellant shall not be able to reverse the amount if any such final decision is taken in the appeal.

13. Counsel for the Respondents opposing the interim prayer contends that the amount having been appropriated, is clear violation of moratorium which

commenced on 22.02.2023. Appellants who are lenders cannot be allowed to retain the said amount and direction to reverse the amount is in accordance with law.

14. We having already issued notices in the Appeals and fixed a date for hearing, are of the view that the ends of justice be served in directing the Axis Bank and other lenders, who are Appellants before us, to keep the amount which is to be reversed under the impugned order in a separate interest bearing account so that in the event amount is finally decided to be reversed the interests of the corporate debtor are protected. Appellant being themselves banks and financial institutions there can be no apprehension that the banks shall not reverse the amount in the account of the corporate debtor in event any final decision is taken in the appeal to that effect. The above interim management shall protect the interest of all the parties.

15. List these Appeals on 03.12.2024 at 2.00 P.M. for hearing and disposal.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

New Delhi
Anjali