

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 110 of 2023 &
I.A. No. 444 of 2023, 5259 of 2024

IN THE MATTER OF:

WAPCOS Ltd.

...Appellants

Versus

**D. Thakkar Constructions Pvt. Ltd.
Through Ram Ratan Kanoongo**

...Respondents

Present:

**For Appellant : Mr. Subash Bhat, Ms. Parvati Sharma, Mr. Arsh
Kaul and Ms. Protibha Singh, Advocates.**

**For Respondents : Mr. Abhijeet Sinha Sr. Advocate with Mr. Ayush
Rajani and Mr. Saikat Sarkar, Advocates for RP.**

O R D E R
(Hybrid Mode)

20.12.2024: Heard counsel for the parties.

This appeal has been filed against the order dated 20.01.2022 passed by the National Company Law Tribunal, Special Bench Mumbai in IA No. 2122 of 2022. The application was filed by Resolution Professional seeking direction from the Tribunal to the appellant to refund the money equivalent to the bank guarantee against mobilisation advance which has been invoked and encashed during the CIRP. Adjudicating Authority by the impugned order relying on Section 14(1)(c) of the IBC has allowed the application and directed the appellant to refund the amount of Rs.11,95,41,056/-. Counsel for the appellant challenging the order submits that in view of the amendment made in Section 14 of the IBC there was no restraint on invocation on the performance bank guarantee during currency of the CIRP. It is submitted that the bank guarantee was not hit by moratorium which is law settled by this

Tribunal in its judgment Bharat Aluminium Company Ltd. Vs. Jaypee Engineers CA(AT) (Ins) No. 759 of 2020 decided on 26.02.2021.

2. Ld. Counsel for the respondent does not dispute the legal position. He however submits that the arbitration proceeding which have been initiated may be decided uninfluenced by orders passed in this appeal.

3. We have considered the submissions of the parties and perused the records. In view of the law laid down by this Tribunal in Bharat Aluminium the order impugned cannot be sustained. We set aside the order dated 20.01.2022 and allow the appeal accordingly.

4. We make it clear that the present order is confined to directions issued by Adjudicating Authority and shall not influence any other proceeding in accordance with law.

With these observations appeal is disposed of.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

harleen/NN