

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 99 of 2019

IN THE MATTER OF:

Ranjit Kapoor & Ors. Appellants

Vs

Hemant Sharma and Ors. Respondents

Present:

**For Appellants: Mr. Sukumar Pattjoshi, Senior Advocate with
Mr. Magank Bughani and Ms. Arushi,
Advocates.**

For Respondent: Mr. Milan Singh Negai, Advocate for RP.

**Mr. Umesh Singhal and C.S. Neha Lakhwara,
Advocates for Respondent No.4**

With

Company Appeal (AT) (Insolvency) No. 119 of 2019

IN THE MATTER OF:

Yajur International Pvt. Ltd. Appellant

Vs

Hemant Sharma, Resolution Profession
of White Metals Ltd. Respondent

Present:

**For Appellant: Mr. Umesh Singhal and C.S. Neha Lakhwara,
Advocates.**

For Respondent: Mr. Milan Singh Negai, Advocate for RP.

ORDER

01.05.2019 One of the Appeal is preferred by Promoter of White Metals Ltd. (Corporate Debtor) and another by Yajur International Pvt. Ltd. Both are against common order dated 14th January, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, whereby and whereunder transfer of a sum of Rs.1,50,75,000/- by the Promoter in favour of Yajur International Pvt. Ltd. (Operational Creditor) was held to be in violation of Section 14 of the Insolvency and Bankruptcy Code, 2016 (I&B Code).

2. Learned Counsel appearing on behalf of Promoter - Ranjit Kapoor and Ors. submitted that application under Section 43, 44, 49, 50, 51 and 74 by the Resolution Professional with regard to the transfer in question was not maintainable as the matter did not relate to a transfer made in favour of the related party or preferential transfer made. We appreciate such submission that the application under Section 43, 44, 49, 50 and 51 filed by the Resolution Professional was uncalled for, but we find that the Adjudicating Authority held that transfer in question was made in violation of Section 14 of the I&B Code and thereby the application was maintainable in terms of Section 74 of the I&B Code.

3. It is not in dispute that the application under Section 7 was filed by Asset and Reconstruction Company (India) Ltd. (Financial Creditor) was against the White Metals Ltd. (Corporate Debtor) and was admitted on 13th June, 2018 and an order of moratorium was passed on the same date. It is also not in dispute that the payment made to M/s Yajur International Pvt. Ltd. does not relate to supplies made during the period of Corporate Insolvency Resolution Process, but is with regard to the supplies made prior to the date of admission, i.e., 13th June, 2018.

4. Learned Counsel for the Yajur International Pvt. Ltd. submitted that there are other suppliers, who supplied materials prior to the date of moratorium and the Resolution Professional has also paid to them. However, this is disputed by the Counsel for the Resolution Applicant. Learned Counsel for Yajur International Pvt. Ltd. submitted that the Operational Creditor is still supplying materials during the Corporate Insolvency Resolution Process and is being paid by the Resolution Professional. However, this is denied by the Counsel for the Resolution Professional.

5. In the present case, the question relating to supply of materials during the Corporate Insolvency Resolution Process is not required to be determined as the transfer of Rs.1,50,70,000/- were made by Promoter in favour of M/s Yajur International Pvt. Ltd. with respect to the supplies, which were made prior to 13th June, 2018, i.e., date of order of moratorium. Admittedly, the

aforesaid amount was transferred after the order of moratorium was passed on 13th June, 2018 and just before the joining of Resolution Professional, who joined on 22nd June, 2018 at 11:54 AM.

6. We find that the Promoter hurriedly released the payment in favour of M/s. Yajur International Pvt. Ltd. the moment the order of moratorium passed and before the joining of the Resolution Professional. In the aforesaid circumstances, the impugned order having passed by the Adjudicating Authority, no interference is called for.

7. We find no merit in these Appeals. They are accordingly dismissed. However, in the facts and circumstances, there shall be no order as to cost.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)