

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.1113 of 2019

&

I.A. No.3878 of 2019, I.A. No.516 of 2020 & I.A. No.1075 of 2020

[Arising out of Order dated 27.09.2019 passed by National Company Law Tribunal, Cuttack Bench, Cuttack in TP No.105/CTB/2019 in CP (IB) No.646/MB/2019]

IN THE MATTER OF:

Before NCLT

Before NCLAT

Manoj K. Daga
S/o Sh. Kedar Nath
Daga,
24, Lakholi Road,
Rajnandgaon
Chhattisgarh – 491441

....

Appellant

Versus

- | | | |
|--|------------------------------------|-----------------|
| 1. ISGEC Heavy Engineering Limited Through its Authorised representative, A-4, Sector – 24, Noida – 201301 | Operational Creditor/
Applicant | Respondent No.1 |
| 2. Mr. Shikhar Jain
Resolution Professional
Shree Vishnu Power & Energy Pvt. Ltd.
A D B & Company,
Chartered Accountants,
Ist Floor,
Mahvir Gaushala,
Maudahapara,
Raipur (C.G.) | IRP | Respondent No.2 |
| 3. Mr. Deepak Kumar Daga,
House No.442 KH,
Ward No.35, | | Respondent No.3 |

Lakholi Road,
Rajnandgaon
Chattisgarh – 491441

Also at:
Daga Compound
Lakholi Road,
Rajnandgaon
Chattisgarh – 491441

For Appellant: **Shri Sanjay Hegde, Sr. Advocate with Shri Aditya Manubarwala, Ms. Prachi Johri, Shri Pranjal Kishore and Shri Varun Varma, Advocates**
Shri Manoj K. Daga, Appellant

For Respondents: **Shri Shashank Bhansali, Advocate (R-1)**
Shri Sandeep Bajaj, Ms. Aakanksha Nehra and Shri Dhananjaya Sud, Advocates (R-2)
Shri Ashwini Kumar Singh, Advocate (R-3/SBI)

ORDER

12.03.2020 Heard learned Senior Advocate – Shri Sanjay Hegde for the Appellant. Respondent No.1 – Operational Creditor filed Application under Section 9 of Insolvency and Bankruptcy Code, 2016 (IBC – in short) before the Adjudicating Authority (National Company Law Tribunal, Cuttack Bench, Cuttack) having number TP No.105/CTB/2019 in CP (IB) No.646/MB/2019 against M/s. Shree Vishnu Power & Energy Pvt. Ltd. – Corporate Debtor which Application came to be admitted by Impugned Order dated 27th September, 2019 and moratorium under Section 14 of IBC was declared by the Adjudicating Authority, and Corporate Insolvency Resolution Process (CIRP) was initiated.

2. Against the Order of admission of Application under Section 9, present Appeal came to be filed by the Appellant - Manoj K. Daga as Director of the

Company. When the Appeal came up before this Tribunal on 23rd October, 2019, Notice was issued to the Respondent No.1 – Operational Creditor and the Respondent No.2 – Resolution Professional of the Corporate Debtor. At that time, this Tribunal had passed the following interim Order:-

“In the meantime, the ‘Interim Resolution Professional’ will not constitute the ‘Committee of Creditors’, if not yet constituted. However, the ‘Interim Resolution Professional’ will ensure that the company remains a going concern and will take assistance of the (suspended) Board of Directors and the officers/ Directors/employees. The person who is authorised to sign the bank cheques may issue cheques but only after approval of the ‘Interim Resolution Professional’. The Bank Account of the ‘Corporate Debtor’ be allowed to be operated for day-to-day functioning of the company such as for payment of Current Bills of the suppliers, salaries and wages of the Employees’/workmen, Electricity Bills etc.”

3. When the matter came up on 18th November, 2019, Shri Ashwini Kumar Singh, Advocate appearing on behalf of State Bank of India – Financial Creditor, submitted that the Committee of Creditors was constituted prior to 23rd October, 2019. The Counsel for Resolution Professional also took the same plea adding, however, that no meeting had been called for.

4. Subsequently, the matter came up before this Tribunal on 5th December, 2019 when the Counsel for IRP (Interim Resolution Professional) referred to I.A. No.3878/2019 which he had filed. The Application claimed that after Order of Adjudicating Authority admitting Application under Section 9 of IBC on 27.09.2019, he had sent letter dated 18.09.2019 (Annexure – IV) to Directors with copy of Impugned Order regarding commencement of CIRP. Counsel pointed out that on enquiry conducted by

the IRP, he came to know on 21st November, 2019 that Directors of Corporate Debtor had made huge withdrawals including cash withdrawals started within two days of taking Interim Orders dated 23.10.2019 from this Tribunal which were in violation of the same. The Counsel for IRP complained of Violation of Sections 14, 17 and 19 of IBC. The IRP gave list of these transactions in the I.A. No.3878 of 2019. The Chart of withdrawals/transfer between 25.10.2019 to 15.11.2019 was given as under:-

“

NAME OF THE RECIPIENT	DATE	AMOUNT TRANSFERRED (in Rs.)
Deepak Kumar Daga	25.10.2019	85,00,000/-
Pooja Trading Company	25.10.2019	2,00,00,000/-
Chattisgarh State Power	25.10.2019	4,44,400/-
Cheque Book Issue Charges	30.10.2019	295/-
Self	04.11.2019	1,30,000/-
Mukesh Khandelwal	11.11.2019	25,000/-
Self	11.11.2019	2,38,000/-
Self	11.11.2019	5,00,000/-
Self	11.11.2019	5,00,000/-
Self	11.11.2019	5,00,000/-
Rajesh Kumar Singla	13.11.2019	10,000/-
Cheque Book Issue Charges	14.11.2019	590/-
Shree Ram Traders	14.11.2019	25,000/-
Deepak Kumar Daga	15.11.2019	1,46,00,000/-
Total Amount		4,54,73,285/-

”

IRP pointed out deposits in Account between 24.10.2019 to 14.11.2019 as under:-

“

NAME OF THE DONOR	Date	AMOUNT TRANSFERRED (in Rs.)
CSPDCL	24.10.2019	2,89,97,063/-
CSPDCL	01.11.2019	80,646/-
CSPDCL	08.11.2019	17,63,706/-
Giriraj Solvent Extraction Pvt. Ltd.	13.11.2019	35,000/-
CSPDCL	14.11.2019	1,46,00,101/-
Total Amount		4,54,76,516/-

”

5. The IRP attached bank statements in support. The IRP pointed out that on 17.11.2019, the balance left in the bank account was of mere Rs.6315.27 paise. Learned Counsel for IRP states that this relates to the account in Vijaya Bank. IRP referred to various letters issued for meeting with Directors after the Application was admitted by Adjudicating Authority on 27.09.2019 and their non-cooperation; not providing of details and then IRP learning about Bank Account in Vijaya Bank. The IRP referred to the steps IRP took in the given circumstances and stated that the bank account of the Corporate Debtor was being used without prior approval of the IRP in breach of directions passed by this Tribunal.

6. The IRP prayed that the interim Orders should be modified.
7. Our Order dated 5th December, 2019 reads as under:-

“05.12.2019 1. Counsel for Appellant wants to file Rejoinder. Rejoinder may be filed within a week.

2. The learned Counsel for the IRP refers to I.A. 3878/2019 Application filed by the IRP vide Diary No.16314. It is stated that after the admission of the Section 9 Application proceedings, the Directors of the Corporate Debtor have in violation of the Orders dated 23rd October, 2019 passed by this Tribunal in Appeal, made huge withdrawals including cash withdrawals without prior approval of the IRP. It is stated that the Order of this Tribunal had specified that the IRP will keep the Company a going concern with the assistance of the Board of Directors, officers and employees and had recorded that the person who is authorized to sign the bank cheques may issue cheques but only after approval of the Interim Resolution Professional. Learned Counsel for IRP states that without taking any approval of the IRP, the amounts as stated in the Application to the extent of Rs.4,54,73,285/- have been withdrawn from the account maintained with Vijaya Bank.

3. It is stated on instructions by the learned Counsel for the Appellant that the cheques were issued by the authorized signatory –Deepak K. Daga - another Director of the Company, The IRP will add Deepak K. Daga in addition to Appellant as a Respondent in this Application. Issue Notice to Appellant and Deepak K. Daga also, in I.A. 3878/2019.

4. The Appellant and Deepak Daga may file Reply. If the Directors are unable to show prior approvals, it would be taken as a serious act.

5. If the Directors of the Corporate Debtor are unable to show prior approval with regard to any of the impugned withdrawals, the Directors should in the alternative say as to why we should not invoke

provisions of Section 74 of IBC, apart from why contempt proceedings should not be initiated.

6. We modify the Order dated 23rd October, 2019 and direct that instead of sentence:-

“The person who is authorized to sign the bank cheques may issue cheques but only after approval of the Interim Resolution Professional.”

which is deleted, we substituted the same by a direction that:-

“The person who is authorized to sign the bank cheques may prepare and sign cheques but only after approval of the Interim Resolution Professional and the cheques can be operated/issued only through the hands of the Resolution Professional.”

7. On the next date, the Appeal as well as the IA No.3878/2019 filed by the IRP will be taken up together for hearing.

8. The Reply may be filed by the Appellant as well as Shri Deepak K. Daga by 16th December, 2019. The Appeal as well as the Application to be heard on 17th December, 2019.”

8. The matter was then posted to 17th December, 2019. On that date, the learned Counsel for the Appellant referred to Replies (Diary Nos.17047 and 17048) filed by Manoj K. Daga and Deepak Daga to I.A. No.3878 of 2019. The Replies tried to justify that management was vehemently contesting the initiation of CIRP and that there was uncertainty in employees; that

withdrawals made were only for running of the Company. Counsel for Appellant stated and we observed as under:-

“6. Learned Counsel for the Appellant and Mr. Deepak Daga (Respondents in I.A.), fairly states that as per the order dated 23.10.2019, the authorised person could sign the Bank Cheques but only after the approval of the IRP, but approval was not taken while making the withdrawals. Learned Counsel is trying to refer to the Affidavits filed to state that the withdrawals were justified withdrawals for making payments to the suppliers, workmen and electricity bills to keep Corporate Debtor as going concern. It is accepted fairly by learned Counsel that as per orders passed by this Tribunal and keeping in view the provisions of Insolvency and Bankruptcy Code, 2016 management of Corporate Debtor after admission of Section 9 application is with the IRP/RP. The order dated 23.10.2019 required IRP of the Company to keep the Company as a going concern and the Board of Directors, Officers and employees were only expected to assist the IRP but in the present transaction the Directors have taken actions without involving the IRP. We are not happy with the Affidavits filed by Manoj Daga and Deepak Daga.

7. Considering the submissions made and serious objections that the learned Counsel for the IRP is raising and considering the fact that the order dated 23.10.2019 was passed by Three Judge Bench headed by Hon'ble Chairperson, considering the gravity and seriousness of the matter, we direct the Registry to place the matter before the Hon'ble Chairperson to constitute appropriate Bench. The matter may be re-listed before the Bench as the Hon'ble Chairperson may direct. Tentatively, we post the matter to 6th January, 2020.

8. The above two Respondent Directors shall remain present personally on next date. They need to deposit the money withdrawn/transferred without approval of the IRP in the Account from which it is withdrawn and state why further action be not taken against them.”

9. On 06.01.2020, Bench of Hon'ble Chairperson posted the matter to 03.02.2020 and it was again listed before us. On adjourned date of 3rd February, 2020, when the matter came up before this Tribunal, the IRP referred to I.A. No. 516 of 2020 giving particulars in continuation of the earlier I.A. No.3878 of 2019 showing how the Directors were not co-operating and how he learnt from one of the customers of Corporate Debtor about Account at Vijaya Bank. It was pointed out that it was found that after Adjudicating Authority passed Orders of Admission on 27.09.2019 and till this Tribunal passed Interim Orders also the Directors of Suspended Board had made withdrawals and transfers. Further withdrawals were made even between 25.11.2019 to 19.12.2019. The Charts are:-

“APPENDIX “A”

Withdrawals made by the (Suspended) Board of Directors from 27.09.2019 (Order of Admission) till 23.10.2019 (Interim Order passed by this Hon'ble Tribunal)

SL. NO.	NAME OF THE RECIPIENT	DATE	AMOUNT TRANSFERRED (in Rs.)
1.	Deepak Kumar Daga	16.10.2019	1,65,000/-
2.	PAC Power	16.10.2019	2,00,00,000/-
3.	Deepak Kumar Daga	17.10.2019	3,05,000/-
Total Amount			2,04,70,000/-

”

“APPENDIX “C”

Withdrawals made by the (Suspended) Board of Directors from 25.11.2019 (Date of Filing of I.A. 3878 of 2019) till 17.12.2019 (Date of Modification of the Interim Order dated 23.10.2019)

SL. NO.	NAME OF THE RECIPIENT	DATE	AMOUNT TRANSFERRED (in Rs.)
1.	Cholamandalam- Investme	25.11.2019	70,000/-
2.	Charges for NEFT Customer Payment: SO1146735196	25.11.2019	1.40/-
3.	Chhattisgarh State Power	25.11.2019	4,00,930/-
4.	Charges for RTGS Customer Payment: VIJBH19329020733	25.11.2019	7.22/-
5.	Loksha Chourasia	25.11.2019	2,17,886/-
6.	Charges for RTGS Customer Payment: VIJBH19329020101	25.11.2019	7.22/-
7.	Deepak Kumar Daga	26.11.2019	5,80,000/-
8.	SMS Charges	19.12.2019	29.50/-
Total Amount			12,68,861.34/-

”

10. Counsel for IRP stated that the total amount withdrawn or transferred was Rs.6,72,12,146/-. He also pointed out that after the Order of this Tribunal, the Directors had returned back amount of Rs.40/- Lakhs and again of Rs.50 Lakhs, only. Our Order dated 03.02.2020 reads as under:-

“03.02.2020 Heard Learned Counsel Ms. Prachi Johri in I.A. No.469 of 2020. This application is filed for modification of order dated 17th December, 2019, wherein para 8, this Hon’ble Tribunal had observed that

the Directors shall remain present personally on next date, and that thus need to deposit the money withdrawn/transferred without approval of the IRP in the account from which it is withdrawn and state why further action be not taken against them. Counsel states that when the order was dictated, it was in the format of suggestion but in the signed order it has come as a direction. We have perused the order which we passed and signed. We do not think that any modification is necessary. The I.A. stands disposed of.

2. The IRP states that with I.A. No.516 of 2020, the IRP has given particulars in continuation of I.A. No.3878 of 2019 showing as to further amounts which were withdrawn without authorization from the IRP. He has pointed out Appendix A to C of the I.A. No.576 of 2020 and states the total amount withdrawn or transferred is Rs. 6,72,12,146. It is stated that after the last order of this Hon'ble Tribunal, the Directors have returned back in the accounts Rs.40 lacs and then Rs.50 lacs, only.

3. Learned Counsel for the Directors Sh. Manoj Kumar Daga and Deepak Daga submits the whole money will be returned as pointed out by the Learned Counsel for the IRP and that these two respondents to the I.A. No.3878 of 2019 are ready to give undertaking in this regard that within four weeks time money will be returned.

4. The Directors Manoj Kumar Daga and Ms. Deepak Daga are present today in Court. They may file the undertaking with affidavit as stated that the money would be returned within four weeks. The same may be filed by tomorrow.

5. List the I.As and the Appeal in 'Orders category' on **05th February, 2020.**"

11. The matter then came up before us on 5th February, 2020 and we passed the following Order:-

"05.02.2020 The Respondents in I.A. No.516 of 2020 have in response to the Order dated 3rd February,

2020, filed Affidavits. The Affidavit filed by Shri Deepak Daga is at Diary No.18601. It is along with Undertaking. The other Respondent – Manoj Daga has tendered Affidavit at Bar along with Undertaking dated 5th February, 2020. Shri Manoj Daga is present and states that Deepak Daga had attended this Court in the morning but as he was not feeling well, he has left. The learned Counsel – Ms. Prachi Johri and Shri Abhijeet Sinha are present for both these Respondents (in I.A.) and state that these Respondents have understood the Affidavits which are tendered and after understanding the Undertakings they have signed the same. The Affidavits and Undertakings of both these Respondents are accepted and taken on record. These Respondents shall comply with the Undertaking given. The learned Counsel for IRP accepts that Rs.5,50,12,146/- needs to be returned.

The learned Counsel for the Appellant states that the Appellant is taking steps to settle the dispute with the Original Operational Creditor as well as sole Financial Creditor – State Bank of India and will make efforts to settle with other Operational Creditors also. The Counsel makes request to continue the Interim Order not to constitute COC (Committee of Creditors) for short period to give time to the Appellant to settle with all the debtors.

For reasons stated, one opportunity is given.

List the Appeal in ‘Orders category’ on **26th February, 2020** before which date the Appellant must ensure settlement as stated by the learned Counsel. In default, we will proceed to vacate the direction with regard to constitution of COC.”

12. The undertakings given were thus accepted. Counsel for IRP did not remind us on this date contents of the proceedings noted in earlier Order of ours dated 18.11.2019 that Our Order regarding COC was qualified Order, ineffective as COC had already been constituted before Interim Order dated 23.10.2019 was passed.

14. Similar undertaking along with Affidavit is given by Deepak Daga vide Diary No.18601 which is as under:-

**IN THE HON'BLE NATIONAL COMPANY LAW
APPELLATE TRIBUNAL, AT NEW DELHI
COMPANY APPEAL (INSOLVENCY) AT NO. 1113 OF
2019**

IN THE MATTER OF :

MANOJ K. DAGA ... APPELLANT

VERSUS

ISGEC HEAVY ENGINEERING PVT LTD & ANR.
...RESPONDENTS


UNDERTAKING

I, Deepak Daga, s/o Shri Kedar Nath Daga r/o Lakkholi Road, Rajnand Gaon, Chattisgarh 491441 do solemnly undertake that if the Hon'ble Appellate Tribunal grants me time of 4 weeks from 05.02.2020 i.e., time upto 04.03.2020, I shall deposit a sum of Rs.5,50,12,146/- (Rupees Five Crore Fifty Lakh Twelve Thousand One Hundred and Forty Six only) into the account number 763600591000005 in the name of Shre Vishnu Power and Energy Pvt. Ltd. maintained with Vijaya Bank, Rajnandgaon branch, Chattisgarh within 4 weeks. I have already deposited a sum of Rs. 1,22,00,000/- in the aforesaid account as follows:

Date	Amount
25.11.2019	Rs. 7,00,000/-
20.01.2020	Rs. 40,00,000/-
23.01.2020	Rs. 50,00,000/-
28.01.2020	Rs. 25,00,000/-
TOTAL	Rs. 1,22,00,000/-

Deepak Daga
Mr. Deepak Daga
04.02.2020

ATTESTED
NS
NOTARY PUBLIC DELHI
14/2/2020



15. The proceeding dated 26th February, 2020 shows the further developments as under:-

“26.02.2020 Learned Counsel for the Appellant states that the Appellant has settled with the original Operational Creditor and is also making efforts to settle with the only Financial Creditor- State Bank of India and making efforts to settle with the other Operational Creditors who have responded to the IRP. Appellant may continue with the efforts stated being made with the Financial Creditor and Operational Creditors.

It is stated that the Appellant and the Directors are taking steps to ensure that they comply with the undertaking given on 04.02.2020 accepted on 05.02.2020 for which the time would be over on 4/5.03.2020.

Learned Counsel for the IRP states that the order dated 23.10.2019 had directed the IRP “not to constitute ‘Committee of Creditors’ (in short ‘**CoC**’), if not yet constituted”. It is stated that before this order was passed, CoC was already constituted on 16.10.2019 and this was brought to the notice of this Tribunal on 18.11.2019. At that time, it was stated that meeting of the CoC as such had not been called for. Learned Counsel for the IRP states that the IRP may be permitted to hold meeting of the CoC.

Record does not show that we have directed the IRP not to hold meeting. The direction was not to constitute CoC, if not yet constituted. If it was already constituted, natural course under IBC will follow. In view of the matter, IRP may hold the meeting of CoC.

List the Appeal in ‘Orders’ category on **12th March, 2020.**”

16. Today, the learned Senior Counsel for the Appellant states that the Appellant had moved the Hon’ble Supreme Court in **“Manoj K Daga Versus ISGEC Heavy Engineering Limited & Ors.”** Civil Appeal No. 2001 of 2020

and by Orders dated 6th March, 2020, Hon'ble Supreme Court has directed as under:-

“We are not inclined to interfere with the order passed by the Tribunal as the case is listed before the NCLAT on 12.03.2020. The NCLAT may decide the matter, if possible on 12.03.2020, or as expeditiously as possible. The CoC may hold the meeting, but the order not to be given effect to till 12.03.2020.

The NCLAT may consider whether it is appropriate to extend the aforesaid order or not, of not giving effect to CoC decisions.

The appeal is disposed of accordingly.”

17. Now the learned Senior Counsel for the Appellant states that the Appellant has filed I.A. No.1075 of 2020 and sought further time to return the money. The learned Senior Counsel is stating that the Appellant and Deepak Daga have been making various efforts to collect money so as to return back the same. It is stated that the Appellant has entered into an Agreement with the original Operational Creditor to settle his claim. However, it is stated that agreement is subject to closure of CIRP (Corporate Insolvency Resolution Process). The learned Counsel for the State Bank of India – the sole Financial Creditor which constitutes the COC (Committee of Creditors), submits that there is no settlement or possibility of settlement. It is stated that State Bank had to recover Rs.45 Crores in September, 2019.

18. The learned Counsel for IRP submits that these Directors had withdrawn most of the amount of the Corporate Debtor after the CIRP had been initiated which is clearly not permissible when the moratorium had been

applied. The learned Counsel for IRP states that COC meeting has been held on 6th March, 2020 but if the IRP is unable to give effect, the CIRP itself would get stranded or stayed and given the fact that the amounts withdrawn were withdrawn in an illegal manner after moratorium had been imposed, no further time needs to be given. Learned Counsel states that the IRP is under the responsibility under the provisions of IBC to keep the Corporate Debtor a going concern and if almost the whole money which was in the bank account, has been withdrawn, the IRP has been rendered helpless in the situation.

19. The learned Senior Counsel for the Appellant states that although the money was withdrawn, it was for the purpose of keeping the business a going concern.

20. The learned Counsel for IRP in Reply states that the IRP has verified each and every entry of the amounts which were withdrawn and according to the IRP, except for an amount of Rs.8,95,412.22 paise which could be considered as CIRP costs, the rest of the amount withdrawn and spent cannot be treated as CIRP costs or expenses and which would be serious violation of provisions of IBC as to how past debts are to be treated and CIRP conducted. The learned Counsel for IRP has handed over to us a statement at Bar which is taken on record and marked 'X' for identification. It is stated that this Chart was given to the Appellant on the last date itself. It is stated that even IRP could have utilized only Rs.8,95,412.22 as shown in Table 3 as CIRP costs. Rest of the amount withdrawn/transferred is illegal and against provisions of IBC, and whole process has been illegally interfered with.

21. The learned Counsel for the Appellant states that the Appellant has good case on merits in the Appeal.

22. Taking conspectus of the whole developments in this CIRP proceeding and this Appeal, we are of the view that the Directors acted wholly illegally once moratorium had been applied, in going ahead and withdrawing monies from the accounts at the back of IRP by even issuing cheques "Self". Such acts cannot be justified in any manner. The Appellant and Deepak Daga kept telling this Tribunal that they would return the money and in spite of undertaking given and time fixed, the money has not been returned and the CIRP process is seriously hampered. Consuming whole month stated in the Undertaking and without returning any money, we find no substance in the hollow statements in I.A. No.1075 of 2020 – Application seeking time to comply with Undertakings. The I.A. wrongly states that undertakings given were without prejudice. They were voluntarily given. There are no bona fides in seeking time. Looking to the statements made to this Tribunal by the Appellant and Deepak Daga through learned Counsel for the Appellant and the Affidavits and undertakings given, which have not been honoured, we are of the view that, prima facie, case is made out for proceeding against both the Directors in contempt. We are of the opinion that the Appellant and Deepak Daga since beginning were aware of nature of the acts they were committing in the illegal withdrawals. They disobeyed Orders of Adjudicating Authority and this Tribunal wilfully and there is wilful non-compliance of undertakings given. I.A. No.1075 of 2020 to seek time to comply undertaking is not honest

and appears to have been filed to create grounds of defence to further abuse process to kill time. The I.A. is rejected. The acts of the two Directors have obstructed the proceedings of CIRP, the proceedings before Adjudicating Authority and this Tribunal. The acts prima facie disclose serious Contempt, violating mandate of law of IBC applied by Orders of Adjudicating Authority and this Tribunal and breach of undertaking given on oath, actionable as NCLT established under the Companies Act, 2013 acts as Adjudicating Authority and this Tribunal is empowered under Section 425 of Companies Act, 2013 read with enabling provisions to take action.

23. At the same time, considering record which shows that Appellant violated Orders of Adjudicating Authority and this Tribunal and looking to the apparent default on record where undertakings were given and not honoured, we find that the Appeal deserves to be dismissed in default. We dismiss the Appeal in default while permitting the IRP to move the Adjudicating Authority or any other authorities including Police authorities to pursue the matter with regard to money illegally withdrawn from the accounts of the Corporate Debtor so as to trace the money and get it back in the Company accounts. Prima facie, it appears to us that the illegal withdrawals can, inter alia, be treated as criminal misappropriation and criminal breach of trust.

24. The Appellant – Manoj K. Daga is present. The other Respondent – Deepak Daga is stated to be not present, as not well.

25. Copy of this Judgement and record of Appeal will be treated as Contempt Case to be registered as “State vs. Manoj K. Daga and Deepak Daga”

as these Directors who will face the contempt case. The Registry will give it a Contempt Case number and the same be listed on **7th April, 2020**. Counsel for the Appellant states that on that date, Manoj K. Daga and Deepak Daga would both attend this Tribunal.

26. The CIRP proceedings will continue in terms of provisions of IBC. The IRP would be at liberty to examine the accounts and evidence and may place before the Adjudicating Authority all particulars and facts including evidence showing violation of Sections 14, 17 and 19 of IBC, after Impugned Order dated 27.09.2019 was passed and during pendency of the Appeal, for Adjudicating Authority to consider and take actions under Sections 70 and 74 of IBC, or other provisions as may be.

The Appeal and I.A.s are disposed accordingly. No costs.

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

(Justice A.B. Singh)
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

/rs/md