



THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

I.A. 2534/ND/2022

IN

Company Petition No. (IB) – 2661/(ND)/2019

*Under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016.*

IN THE MATTER OF:

HBN DAIRIES AND ALLIED LIMITED

.... FINANCIAL CREDITOR

VERSUS

M/S. VIRAMAN BUILDCON AND DEVELOPERS PVT. LTD.

..... CORPORATE DEBTOR

AND IN THE MATTER OF-

PAWAN GARG

.... APPLICANT/RP

VERSUS

ASSISTANT COMMISSIONER OF INCOME TAX, DELHI

...RESPONDENT NO 1

ICICI BANK

...RESPONDENT NO 2



CORAM:

**SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER
(TECHNICAL)**

For the Applicant: Adv Gautam Kumar

ORDER

PER- RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Order Pronounced on: 18.05.2023

1. This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking directions for removal of the lien created by ACIT, Delhi on the Bank Account of the Corporate Debtor with ICICI Bank.

2. The applicant in the present application has prayed for the following reliefs: -

a) Allow the present application and direct the Income Tax Department (i.e., ACIT/DCIT) to remove the lien on the



Bank Account No. 664305114912 held with ICICI Bank in the name of the Corporate Debtor. and;

- b) To direct the ICICI Bank to co-operate with the Resolution Professional and provide with requisite information and documents and to remove/vacate the lien on the Bank Account No. 664305114912 of the Corporate Debtor.*
- c) Pass any such further orders which this Hon'ble Tribunal may deem fit and proper.*

3. Briefly stated the facts of the case as mentioned in the instant application, which are necessary for adjudication, are as follows: -

- i. That, the RP (now liquidator vide order dated 28.02.2023) came across some old records of the Corporate Debtor and as per records, the Corporate Debtor is having a bank account at the ICICI Bank, Vikas Puri Branch bearing Account Number is 664305114912.
- ii. That the RP after being made aware of the same, wrote an email to the Branch Manager of the concerned bank, wherein it was requested to the Bank to share the details of the aforesaid bank account with other information



including procedure to replace signature of the authorized signatory.

iii. That the Bank Manager responded on 04.02.2022 with a copy of Transaction Enquiry showing balances as under: -

- Closing Balance - Rs. 2,39,610/- Credit
- Effective Available Balance – 2,46,54,057.58 - Debit

iv. That the RP sent several reminders asking for the difference between balances, and was also constrained to send repeated reminders to the concerned bank regarding the same and the bank responded on 25.03.2022 and informed the RP that the account is under lien from income tax department, due to which the closing and available amount has difference, and in order to change the authorized signatory, the RP would have to get the lien removed.

v. That the applicant wrote an email to the DCIT/ACIT on 29.03.2022 and sent a letter requesting the Income Tax Department to remove the lien from the aforesaid Bank Account. It was also informed to the Income Tax Department that all proceedings against the CD were to be



kept under abeyance, and if any dues were pending against the CD, then they may file a claim to the Resolution Professional in a time bound manner as per IBBI Rules

vi. That despite repeated follow ups, the lien has not been removed by the Income Tax Department.

4. We directed the applicant to serve notice of the application to all the respondents. Accordingly, the applicant served copies of the application on July 29, 2022, and again on August 23, 2022, December 16, 2022, and January 9, 2023. The applicant has also filed an affidavit of service. Despite the service of notice, no one has appeared on behalf of the Income Tax Department. Mr. Bhavdeep Kaur, Deputy Branch Manager of ICICI Bank, appeared in person, but no reply has been filed by the respondents.

5. We have gone through the application, documents on record and arguments advanced by counsel for the applicant.

6. On perusal of the application, it is observed that the Respondent No 1 i.e., Income Tax Department has not filed its claim before the Resolution Professional during the CIR Process.



7. It is pertinent to refer to section 14 of the Code which reads as under: -

14. Moratorium. - (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the



grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]

(3) The provisions of sub-section (1) shall not apply to —

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;]

(b) a surety in a contract of guarantee to a corporate debtor.] (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33,



the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

8. Further, provisions under Section 238 of the I &B Code have overriding effect over all other law. For the sake of reference, the same is extracted below:

"Section 238: "Provision of this code to override other Laws- The Provisions of this code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for time being in force or any instrument having effect by virtue of any such law."

In the matter of *Amit Kansal and Ors. vs. R.P. Basmati Rice Ltd. and Ors.* MANU/NC/2117/2022 wherein the Bank Account of the corporate debtor maintained with State Bank of India has been attached by Income Tax Department under Section 226(3) of Income Tax Act, 1961, attachment lien marked by Income Tax Department Central Circle 2(2).

9. Based on the above discussion, we are of the view that claim of the Operational Creditor including IT dues are to be filed before RP/Liquidator and IT as Operational Creditor cannot take recourse of attaching the Bank Account of Corporate Debtor.



10. Accordingly, IA No. 2534/2022 stands allowed, and the Respondent No 1 is directed to remove the lien marked by Income Tax Department and the Income Tax Department, can file its claim before the Liquidator.

Let copy of the order be served to the parties concerned.

Sd/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)