

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**I.A. 2546 OF 2022**

Under Section 60(5) of Insolvency &  
Bankruptcy Code, 2016

**Punjab National Bank**

...Applicant

Vs.

Mr. Santanu T. Ray & others

...Respondents

In the matter of

C.P.(IB) No. 2096/MB/2019

Corporation Bank

**Financial Creditor**

Vs.

Firestar Diamond International Pvt.  
Limited

**Corporate Debtor**

*Order delivered on: 02.01.2024*

*Coram:*

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

**Justice Shri V.G. Bisht**  
Hon'ble Member (Judicial)

*Appearances*

- For the Applicant : None
- For the Respondent No.1 : Mr. Rohit Gupta, Advocate a/w Mr.  
Mohammed Varawala, Advocate i/b Ms.  
Rubina Khan Fortis India
- For the Respondent No.2 : Mr. Saurabh Mandlik, Advocate i/b Ms.  
Vaishali Bhilare, Advocate
- For the Respondent No.4 : Ms. Ashwini Gawde, Advocate a/w Mr.  
Avinash Khanokar, Advocate i/b Reshmi B,

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. This Application IA 2546/2022 is being filed by the Punjab National Bank (hereinafter referred to as "Applicant") under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 for the issuance of directions to the Liquidator of the Corporate Debtor to release the amounts due to the Respondent Banks in favour of the Applicant. The applicant has prayed for :
  - a. recognition of the right of Applicant to receive the liquidation proceed in priority over the Respondents No. 2, 3 & 4 on the basis of the Undertakings dated 28.03.2018 executed by the Respondents No. 2, 3 & 4 in favour of Applicant;
  - b. direction to the Liquidator to distribute the liquidation proceeds to Punjab National Bank in priority over the Respondents No. 2, 3 & 4;

- c. Pending the final hearing and disposal of the present Application, direction to the Liquidator to not distribute the amounts due to the Respondents No. 2, 3 & 4;
  - d. Alternatively, to prayer (c), pending the final hearing and disposal of the present Application, permission to Liquidator to continue with the process and to distribute the proceeds thereof among the stakeholders, however on the condition that such distributions shall remain subject to final adjudication of the said claim of the bank.
2. The Liquidator Sh. Santanu T. Ray is the Respondents No. 1; Indian Bank (Erstwhile Allahabad Bank) is Respondent No. 2; Axis Bank is Respondent No. 3; and Bank of India is Respondent No. 4.
  3. That the Corporate Debtor is a Nirav Modi group entity. Pursuant to FIRs filed by the Applicant in the matter of fraudulently issued Letters of Undertaking ('LOU')/Letters of Credit ('LC'), the said respondent Banks approached the Applicant Bank for release of their respective dues against the said fraudulently issued LOUs/LCs. The Respondent Banks executed in favour of the Applicant Bank separate Undertaking all dated 28th March, 2018. By way of these Undertakings, the Respondents No. 2, 3 & 4 have inter alia agreed that once they receive the settlement amount from the Applicant, all their rights (to the extent of amounts received) shall stand subrogated to the Applicant and their claims shall stand fully and finally settled. The Respondents No. 2, 3 & 4 accordingly also agreed that in such case, they shall have no right to recover any amounts from the borrower company, i.e. the Corporate Debtor.

3.1. Pursuant to the execution of the Undertakings, the Applicant has paid the following amounts to the Respondents No. 2, 3 & 4-

- a. Respondent No. 2 (erstwhile Allahabad Bank) USD 33,62,13,201.82;
- b. Respondent No. 3- USD 47,35,89,744.49; and
- c. Respondent No. 4 - USD 23,07,95,789.34

3.2. The Applicant is stated to have, by its letter dated 29 January 2022, inter alia intimated the fact of execution of Undertakings by Respondents No. 2, 3 & 4 to the Liquidator and pointed out that it has a lien over the Respondents No. 2, 3 & 4 share in the amounts proposed to be distributed. The Applicant accordingly called upon the Liquidator not to release the Respondents' No. 2, 3 & 4 share in the amounts proposed to be disbursed by him. The Liquidator by his email dated 9th February 2022 inter alia forwarded the sheet for disbursement of proceeds. The Applicant vide its letters dated 10.02.2022, inter-alia recorded its objection to the distribution of the recovery amount. The Liquidator vide email dated 10.02.2022 replied to the said letter and expressed his limitations to withhold the disbursement of proceeds. The Applicant once again vide letter dated 07.03.2022 reiterated its request to withhold disbursement of proceeds. In its reply dated 08.03.2022, the Liquidator, inter-alia, reiterated his limitations to withhold the disbursement of the proceeds.

3.3. The Liquidator, despite there being executed the Undertakings dated 28th March, 2018 by the Respondent Banks in favour of the Applicant and having already received the monies thereunder, is not withholding the disbursement of the proceeds to the Respondent Banks. Hence this Application.

4. The Respondent No. 2 has filed Reply stating that the transactions in relation to the claim of Rs. 98.55 crores filed in the Liquidation proceedings of the Corporate Debtor were made by it in regular course of business and those have no connection whatsoever with the transactions made by the Applicant in relation to the fraud LOU's.

4.1. It is further stated with respect to the undertaking executed by the Respondent No. 2, that the Applicant shall have the right of subrogation in case any amount is recovered from the borrower company or persons allegedly involved in the fraudulent transactions. The proceeds of Liquidation are for the amount due on account of credit facilities granted to the Corporate Debtor and for which the Corporate Debtor had executed a Corporate Guarantee. The said claim of the Respondent No. 2 with the Liquidator is towards the said guarantees and it does not include any claim with regard to the alleged fraudulent LOU's.

4.2. It is further stated that the Applicant is wrongly interpreting the contents in the letter dated 28.3.2018. On clear reading of the said letter it can be understood that this Respondent had undertook any payments made to this Respondent pursuant to the fraudulently issued LOU's and LC's as found by the court of competent jurisdiction or any past or then existing

officials/employees of this Respondent, would be returned within 30 days, with further condition. The alleged fraudulent transactions are still pending investigation and have not attained finality.

5. The Respondent No. 2 has filed Reply stating that it had advanced certain credit facilities from its Bharat Diamond Bourse Branch, Mumbai, Maharashtra, India to the Corporate Debtor pursuant to the various sanction letters dated 05.1.2015, 27.9.2016 and 29.1.2018. It had filed a claim of Rs. 17,04,02,806.73/- (Seventeen Crores Four lakh Two Thousand Eight Hundred Six Rupees and Seventy Three Paise only) in form D on 20.4.2020 and the said claim was admitted in entirety.

5.1. Besides this, the Respondent No. 4 has given certain facilities to the Corporate debtor from its foreign branch at Belgium. The basis for the said advancement was that certain officials of the Applicant Bank had fraudulently issued Letter of Understanding/Letter of Credit ("Lous/LCs") to various Banks including Respondent No. 4's Antwerp Branch in Belgium. These LOUs/LCs were issued from the offices of the Applicant Bank for the Corporate Debtor for availing credit facilities.

5.2. The said Undertaking is signed by the International Division of Respondent No. 4 headquartered in India for its Antwerp branch in Belgium. And admittedly, as stated out under the Para 5 of the Application, the amount of USD 23,07,95,789.34 is paid by the Applicant Bank to the Respondent No. 4 pursuant to the said undertaking.

5.3. However, the claim of Respondent No. 4 towards the Corporate Debtor is satisfied only to the extent of amount paid

by the Applicant Bank as stated hereinabove and the claim relates to the Finance provided by the Indian Branch of the Respondent No. 4 is still outstanding. Further, it is to be noted that the claim filed by the Respondent No. 4 with the Respondent No. 1 is merely towards the Credit facilities extended by the Indian Branch of the Respondent No. 4 to the Corporate Debtor and the said claim not at all include the amount due to the Antwerp branch in Belgium of the Respondent No. 4.

6. Heard the learned Counsel and perused the material available on record.

6.1. The dispute in this application pertains to the interpretation of Undertaking dated 28.3.2018 executed by Respondent No. 2, 3, and 4 in favour of the Applicant in relation to amounts paid by the Applicant to them under the fraudulent LOUs/LCs issued by the Applicant Bank in favor of Corporate Debtor. We further find that the Respondents have filed claim for the other debts due from the Corporate Debtor in the liquidation proceedings and such claims do not pertain to their claim in relation to such fraudulent LOUs/LCs, which was indemnified by the Applicant Bank under the undertaking dated 28.3.2018.

6.2. We note all the undertakings issued by the Respondent No. 2, 3 and 4 are similar, accordingly we take undertaking executed by Respondent No. 2 for the purpose of present analysis. The relevant extracts from the said undertaking for the sake of understanding are reproduced hereinbelow –

*“Subject to receiving the captioned payments in full we agree and undertake that any payments made to us pursuant to the allegedly fraudulently issued LOUs and/or LCs that are found*

*by any court of competent jurisdiction or any investigative agency under Indian Laws to have been issued pursuant to knowledge of the alleged fraud or collusion in the alleged fraud by any existing or past officials/employees of our bank, shall be returned with interest @ 3 months LIBOR + 50 basis points to PNB within 30 (thirty) days of the aforesaid finding/order or expiry of the period for appeal from the same, whichever is later. We also confirm, agree, undertake and acknowledge that with effect from the date of settling the amount with us in relation to allegedly fraudulently issued LoUs and LCs (the "Settlement Date"), all rights we have as against the persons involved in the alleged fraudulent issuance of LoUs and LCs with stand subrogated to PNB to the extent of the amounts received by us, and we shall have no right to recover any monies directly from the borrower companies or the persons involved in the alleged fraudulent issuance of LoUs and LCs to the extent of the amount received by us under the LoUs and the LCs. PNB may at its discretion pursue a civil claim against such persons, and any monies recovered by PNB shall be sole property of PNB, and we shall have no right whatsoever towards such amounts recovered by PNB."*

6.3. From the plain reading of aforesaid undertaking, it is clear that the said undertakings resulted into subrogation of claims of the Respondent's Banks in favor of Applicant only in relation to recoveries made from fraudulent LoUs/LCs issued by the Applicant and the said undertaking does not vest any right in favor of applicant to seek any other payment due to these Respondent under the said Undertaking.

- 6.4. It is clear from the replies of the Respondents that the amounts due to them under the Liquidation Proceedings arises from their claim in relation to credit facilities other than credit facilities extended under such fraudulent LoUs/LCs. Accordingly, the amounts determined as payable in terms of Section 53 of the Code are payable to such Respondents. The Applicant can not make a claim over these amounts due to the Respondents under the right of subrogation in terms of said undertaking as such amounts are neither arising from *allegedly fraudulently issued LOUs and/or LCs that are found by any court of competent jurisdiction or any investigative agency under Indian Laws to have been issued pursuant to knowledge of the alleged fraud or collusion in the alleged fraud by any existing or past officials/employees of our bank*, nor are in relation to recoveries made from fraudulent LoUs/LCs.
- 6.5. Accordingly, we have no hesitation to hold that the Applicant's right to receive the liquidation proceed in priority over the Respondents No. 2, 3 & 4 on the basis of the Undertakings dated 28.03.2018 can't be accorded recognition in so far the amounts payable in relation to claims arising from credit facilities other than credit facilities in relation to Fraudulent LoUs/LCs is concerned.
7. In view of the foregoing, IA 2546 of 2022 is disposed of as dismissed.

**Sd/-**

**Prabhat Kumar**  
Member (Technical)

**Sd/-**

**Justice V.G. Bisht**  
Member (Judicial)