

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**COURT-V**

**Item No.-207**  
IB-1974/ND/2019  
IA/2154/2022

**IN THE MATTER OF:**

Rajat Mitra

**....Applicant**

**Vs.**

Perfact Color Prints Ltd.

**.....Respondent**

**SECTION**

U/s 9 IBC Liq.

**Order delivered on 30.10.2023**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL,  
HON'BLE MEMBER (JUDICIAL)**

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

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

Order pronounced in open court vide separate sheets. IA/2154/2022 in IB-1974/ND/2019 is **allowed**.

**Sd/-**  
**(RAHUL BHATNAGAR)**  
**MEMBER (T)**

**Sd/-**  
**(MAHENDRA KHANDELWAL)**  
**MEMBER (J)**

**THE NATIONAL COMPANY LAW TRIBUNAL  
COURT V, NEW DELHI**

**I.A No. 2154/2022**

**IN**

**Company Petition No. (IB) – 1974/(ND)/2019**

*Under Section 60(5) of the Insolvency and Bankruptcy  
Code, 2016 read with Rule 11 of NCLT Rules, 2016.*

**IN THE MATTER OF:**

RAJAT MITRA

.... OPERATIONAL CREDITOR

**VERSUS**

PERFACT COLOR DIGITAL PRINTS PRIVATE LIMITED

.... CORPORATE DEBTOR

**AND IN THE MATTER OF-**

MR. HARISH TANEJA  
THE LIQUIDATOR  
PERFACT COLOR DIGITAL PRINTS

.... APPLICANT

**VERSUS**

EMPLOYEE PROVIDENT FUND ORGAISATION  
REGIONAL OFFICE, GURUGRAM, HARYANA

.... RESPONDENT NO. 1

INDUSIND BANK  
BRANCH OFFICE, GURUGRAM, HARYANA

.... RESPONDENT NO. 2

**MEMO OF PARTIES**

**Mr. Harish Taneja**

Liquidator

Address: 236 L, Model Town, Sonipat

Haryana, Pin Code- 131001

Applicant

Vs.

**Employee Provident Fund Organization**

Plot No. 43, Sector 44,

Gurugram Haryana- 12202

Respondent No. 1

**IndusInd Bank**

Udyog Vihar, Phase- V Branch,

Enkay Tower, Gurugram

Pin Code- 122016

Respondent No. 2

**CORAM:**

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**

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

**APPEARANCES:**

**For the Liquidator:** Mr. Harish Taneja, Liquidator with Ms. Riya Bansal, Ms. Neha Anand, Advs.

**For the Respondent:** Mr. B.B. Pradhan, Adv. in IA/2154/2022 Mr. Lalit Kr. Maheshwari for R-2 in IA/2154/2022

## **ORDER**

### **PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)**

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 on behalf of the Liquidator of Perfact Color Digital Prints Private Limited seeking appropriate directions for de-freezing the bank account of the Corporate Debtor maintained with IndusInd Bank marked lien favouring Employee Provident Fund Organization.
2. The applicant in the present application has prayed for the following reliefs: -
  - a) *To allow the present application;*
  - b) *To pass an order directing to the Respondent No. 2 to De-freeze the bank account bearing No. 201002091939 of the Corporate Debtor and direct the Indusind Bank to transfer that amount in favour of Corporate Debtor's Liquidation Account.*
  - c) *To pass any other or further order (s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*
3. Briefly stated the facts of the case as mentioned in the instant application, which are just and necessary for adjudication, are as follows: -
  - i. That, this Adjudicating Authority vide its order dated 09<sup>th</sup> December, 2019 admitted the application of the Operational Creditor Mr. Rajat Mitra against Corporate Debtor Perfact Color Digital Prints Private Limited and appointed Mr. Shashi Bhushan Prasad (Insolvency Resolution Professional) as the Interim Resolution Professional of the Corporate Debtor. Thereafter, in the first meeting of the Committee of Creditors, it was resolved to appoint Mr. Harish Taneja as Resolution Professional for the Corporate Debtor.
  - ii. That Mr. Harish Taneja having Registration No. IBBI/IPA-002/IPN00088/2017-18/10229 was appointed as Resolution Professional by this Adjudicating Authority, vide order dated 15<sup>th</sup> July, 2020. In the absence of compliant Resolution Plan submitted by the Resolution Applicant, the Corporate Debtor was

headed for liquidation, in accordance with the provision of section 33(1) of IBC, 2016 & Rules made thereunder.

- iii. Thereafter, this Adjudicating Authority vide its order dated 25.02.2022 passed an order for liquidation of the Corporate Debtor as referred under sub-section (2) of Section 33 of the Insolvency and Bankruptcy Code, 2016 and appointed Mr. Harish Taneja having Registration No. IBBI/IPA-002/IP-N00088/2017-18/10229 as Liquidator of the Corporate Debtor.
- iv. That as per the records collated by the Applicant herein, it came to our notice that the Corporate Debtor maintains a current account bearing Number 201002091939 and IFSC Code INDB0000540 with the Respondent No. 2 i.e. the IndusInd Bank, which is a 'financial Institution' in terms of section 3(14) and Section 17(1)(d) of the IBC, 2016. Further the Applicant discovered that such current account maintained with Respondent No. 2 had been frozen on account of the claim amount of EPFO.
- v. That in order to enable the Resolution Professional to manage the operations of the corporate debtor as a going concern, the IB Code 2016 inter alia mandates under Section 17(1)(d) the financial institutions maintaining the accounts of the corporate debtor to act on the instructions of the IRP/ RP to such accounts. The said provision has been reproduced hereunder for the sake of reference:

*17(1)(d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.*
- vi. That Section 20(1) of the IBC 2016 mandates and requires the Interim Resolution Professional/ Resolution Professional to make every endeavor to protect and preserve the value of the property of the Corporate Debtor and manage its operations as a going concern.
- vii. That accordingly, in compliance of his duties, the applicant approached the Respondent No. 01 and informed vide its letter dated 31.08.2020 and Email dated 02.09.2020 the fact of initiation of Corporate Insolvency Resolution Process

against the Corporate Debtor namely Perfact Color Digital Prints Private Limited. It was further requested to defreeze the account of the Corporate Debtor.

- viii. That the Applicant approached Respondent No. 2 via Email dated 02.09.2020 requesting to defreeze the account of the corporate debtor bearing Account No. 201002091939 for the smooth conduct of the Corporate Insolvency Resolution Process of the Corporate Debtor. A copy of the email dated 02.09.2020 exchanged between Respondent and the Applicant is placed on record.
- ix. That EPFO has vide letter no. HR/RO/GGN/Recovery/Liqui./28558/6042 dated 07.03.2022 sent the Applicant the reminder for the claims filed by EPFO and to that, the Applicant have replied vide letter dated 30.03.2022. The Copy of EPFO notice dated 07.03.2022 and Reply to EPFO dated 30.03.2022 are placed on record.
- x. That the same Liquidator was Resolution Professional in the CIR Process of the Corporate Debtor and the Respondent No. 1 had filed claim in the CIRP for amount which was verified and admitted. The Company however subsequently could not get Resolution Plan and the Liquidation Orders was passed on 25<sup>th</sup> February, 2022. It is further submitted that the status of the claim of Respondent No. 1 is that of a Creditor under the Provisions of IBC, 2016 and accordingly, the claim filed by EPFO was duly admitted by the Resolution Professional. One creditor cannot march over the other claimants without standing in queue under Section 53 of IBC, 2016 and the Provisions of IBC, 2016 being complete Code and subsequent enactment of the Central Government. It is also stated that Section 238 of IBC 2016 states that the provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.
- xi. That the freezing of Account by Respondent No 1 is not maintainable as it is rightly saying that Liquidation Proceedings are time-bound to maximize the value and all the Creditors are entitled to get their dues only in terms of Section 53 of IBC, 2016 and different Creditors cannot be allowed to resort to different proceedings and

enactments only because they are Authorities under earlier enactments considering the Provision of Section 238 of IBC, 2016.

xii. That the Hon'ble NCLT Mumbai Bench Court- III in the matter of Asis Global Ltd V. Dy. Commissioner of State Tax I.A. 2403/2021 60(5) ordered as follows: -

- 1) The Bench notes that the Applicant has appraised the officials of the Respondent No. 1 and 2. The Bench has no doubt in its mind that the attachment is violative of Section 14 of the Code and thus needs to be lifted.
- 2) The Bench further notes that the respondent No. 1 i.e. Dy. Commissioner of State Tax has already submitted its claim before the liquidator vide its FORM-B date 12.04.2021. The said claim has been accepted by liquidator. The claim of the Respondent (Dy. Commissioner of State Tax) will be dealt in the manner as provided under Section 53 of the IBC and therefore, Respondent No. 1 i.e. Dy. Commissioner of State Tax cannot continue to enforce its lien over the bank accounts of the Corporate Debtor.
- 3) In this regard the Bench notes that Hon'ble NCLT, Principal Bench New Delhi in Om Prakash Agarwal Vs. Tax Recovery Officer 4 & Anr. in like circumstance held that "the monies of the CD lying in the bank account shall be construed to be an asset of the CD even if attachment order is passed against the same. IBC 2016 to have overriding effect and accordingly directed the Bank to defreeze the account.

xiii. Further that the Hon'ble NCLAT, New Delhi in the matter of Pinakin Shah-Liquidator of M/s/ Brew Berry Hospitalities Pvt. Ltd. Vs The Assistant Commissioner of State Tax & Kotak Mahindra Bank Ltd. Company Appeal (AT) (Insolvency) No. 32 of 2021 order dated 25.02.2021 summarized as under.

- 1) Appeal arises out of Order dated 4<sup>th</sup> December, 2020 passed by NCLT Ahmedabad Bench Court-2 (Ins.) No. 32/2021 in I.A. No. 769/2020 in CP (IB) No. 107/NCLT/AHM/2019.
- 2) The Appellant-Liquidator had moved the Adjudicating Authority with a prayer to pass directions upon Respondent No. 2 i.e. Bank to defreeze the Account No. 08432090000149 held in the name of the Corporate Debtor.

- 3) NCLT after hearing the Appellant passed the orders, relevant part of which is as under.

*In response to the notice of office of Assistant Commissioner of State Tax. It is the prime duty of the liquidator to apprise the competent authority of the State Tax Office. As the State Tax Authority is having ample power to take cognizance of the matter by passing an appropriate order.*

*Liquidator may approach before the competent authority, i.e. office of the State Tax, and get redress and/or apprise the present status of the corporate debtor company with the relevant provisions as provided in the IBC 2016.*

*In view of that, the instant application is not maintainable and the liquidator is at liberty to approach before the competent authority to redress his grievances.*

*Accordingly, the instant application is dismissed, as not maintainable.*

- 4) Hon'ble NCLAT after hearing the matter the and acceptance of submission of Appellant find that the NCLT has failed to exercise jurisdiction vested in it to give relief to the Appellant in the context of the position of law under Section 238 of IBC.
- 5) NCLAT allow the Appeal and the Impugned Order is quashed and set aside. The Respondent No. 2 i.e. Bank is directed to defreeze the Account No. 08432090000149 held in the name of Corporate Debtor- M/s Brew Berry Hospitalities Pvt. Ltd.

- xiv. That in consideration of the provisions of IBC, 2016, the Applicant requests this Adjudicating Authority to pass an order for defreezing the Bank Account having Account Number 201002091939 and IFSC Code INDB0000540 of the Corporate Debtor with the Respondent Bank in order to protect the interest of Stakeholders.

4. Briefly stated that the reply on behalf of Respondent No. 1 are as follows:

- i. That the establishment M/s Perfect Color Digital Prints Private Limited 92, Udyog Vihar, Phase-VI, Gugaon, Haryana, is covered under the provisions of Employees Provident Fund & MP Act 1952, and having its code no. GNN/28558 to deposit

the contribution. The establishment/ company has defaulted to deposit the PF contribution since 2011 therefore several inquiries has been initiated time to time for recovery the PF contribution and accordingly orders has been passed. Due to non-compliance of orders, the EPF Authority in exercise of power conferred under Section 8F (3) of EPF Act attached bank account of the establishment/corporate debtor held in different banks. On 07.02.2019 the EPFO authority issued letter to the bank, insurer/ post office etc. to pay provident fund dues / damages of the default by the Establishment and also supplied a copy to the Bank Manager Axis Bank Ltd., Bestech Tower, Gurgaon, bearing A/c no. 918020094579015.

- ii. That on 22.02.2019 the PF recovery officer, Gurgaon issued letter to the Branch Manager IndusInd bank limited, Ground & first Floor, Sco-3, Sector- 10A, Gurgaon, Haryana for attachment of bank account bearing number 159555553000 and 201002091939 in respect of account of company as well as account of managing director Sh. Ashwini Arya for recovery the PF dues under section 8F of the EPF & MP Act 1952.
- iii. That on 06.03.2019, the EPFO issued letter to the IndusInd Bank Limited against the name of another director Sh. Manish Arya bearing account no. 159654519672 and also establishment account no. 250002021094 for recovery the PF dues and also standing instructions to the said bank to forward demand draft in favour of RPFC Gurgaon being the amount payable by the company/corporate debtor.
- iv. That on 27.03.2019 the EPFO wrote a letter to IndusInd Bank Limited, Ground and First Floor, Sector- 10A, Khansa Road, Gurgaon to investigate suspicious fraud in Account No. 201002091931 which pertains to M/s Perfect Color Digital Prints Private Limited, because by using forged letter they tried to open Bank Account in M/s Axis Bank Limited.
- v. That on 04.04.2019 & 06.05.2019 the EPFO had issued show cause notice under section 8F (3x) EPF & MP Act 1952 to M/s Perfect Color Digital Prints Private Limited maintaining bank account in IndusInd Bank Limited wherein the EPFO directed to pay the PF dues from the Account of company as well as Director Sh. Ashwini Arya. That on 18.06.2019 the PF authority issue summon to the Branch

Manager of IndusInd Bank Limited to appear in person for recovery of PF dues and non-compliance of attachment order passed by the PF authority.

- vi. That on 09.12.2019 the Adjudicating Authority has appointed IRP for initiation of Corporate Insolvency Resolution process (CIRP) against Corporate Debtor and after it came to the knowledge of PF department, the PF Department has been submitted their claim Form along with document before the IRP for the statutory dues of Rs. 1,40,60,827/-. That on 12.03.2020 the PF department issued letter to the IRP to provide the PF amount in top priority as per provision Section 11(2) of EPF & MP Act 1952.
- vii. That on 25.09.2020 the EPF department issued letter to Sh. Harish Taneja Resolution Professional (RP) in respect of removable of lien of bank account no. 201002091939 in respect of the M/s Perfact Color Digital Prints Private Limited wherein the respondent informed that the lien on the above-mentioned bank account number was imposed much before the initiation of Corporate Insolvency Resolution Process. The lien was imposed vide attachment notice no. GN/GGN/28558/recovery cell/ compl./c-8/3667 dated 07.02.2019 under the provisions of EPF & MP Act 1952 for recovery of statutory PF dues but the Corporate Insolvency Resolution Process was initiated on 09.12.2019, hence the request for removal lien from bank account number cannot be acceptable. In this connection, the respondent referred judgment of Hon'ble NCLAT Company Appeal (AT) (Insolvency) No. 1521/2019 dated 08.06.2020 wherein the NCLAT, New Delhi has opined that the attachment of properties made by the statutory authority under there laws, before the commencement of moratorium, is legally valid.
- viii. It is well settled law as per EPF & MP Act that EPF dues are statutory and of the subscribers of Provident Fund. Hence, ignoring the EPF dues is totally injustice to subscribers of the Fund and huge loss to the department as EPFO provides social security benefits to the Industrial workers i.e. Retirement or old age benefits, Provident fund, Superannuation Pension, invalidation pension, Family pension and Deposit Linked Insurance. It also provides wider terminal benefits to the industrial workers for example, payment of terminal benefits in various

contingencies such as retrenchment, closure, retirement on reaching the age of superannuation, voluntary retirement and retirement due to incapacity to work. Hence, claim of Appellant must be dealt in the interest of subscribers and department considering the section 11 (2) and section 17B of the EPF & MP Act and Section 36(4)(a)(iii) of Insolvency and Bankruptcy code, 2016.

ix. In view of the aforesaid fact and circumstances, it is therefore most respectfully prayed that this Adjudicating Authority may be pleased to direct the Applicant to considered the EPF dues and provide the same as per provision under Section 11(2) of the EPF & MP Act, 1952. In view of the aforesaid fact and circumstances, the Applicant requests this Adjudicating Authority to pass any other orders directing the respondent to pay the EPF dues amount, which Adjudicating Authority may deem fit and appropriate in the interest of justice.

5. We have gone through documents on record filed and arguments advanced by counsel for the Applicant and Respondent.
6. In the present case, this Adjudicating Authority vide its order dated 09<sup>th</sup> December, 2019 admitted the application of the Operational Creditor Mr. Rajat Mitra against Corporate Debtor Perfact Color Digital Prints Private Limited, and thereafter, Mr. Harish Taneja was appointed as the Resolution Professional of the Corporate Debtor. Further, in the absence of compliant Resolution Plan submitted by the Resolution Applicant, the Corporate Debtor was headed for liquidation, in accordance with the provision of section 33(1) of IBC, 2016.
7. Thereafter, this Adjudicating Authority vide its order dated 25.02.2022 passed an order for liquidation of the Corporate Debtor as referred under sub-section (2) of Section 33 of the Insolvency and Bankruptcy Code, 2016 and appointed Mr. Harish Taneja having Registration No. IBBI/IPA-002/IP-N00088/2017-18/10229 as Liquidator of the Corporate Debtor. The Corporate Debtor maintains a current account bearing Number 201002091939 and IFSC Code INDB0000540 with the Respondent No. 2 i.e. the IndusInd Bank, which is a 'financial Institution' in terms of section 3(14) and Section 17(1)(d) of the IBC, 2016. Further the Applicant discovered

that such current account maintained with Respondent No. 2 had been frozen on account of the claim amount of EPFO. Therefore, the Applicant prays before this Adjudicating Authority to pass an order directing to the Respondent No. 2 to De-freeze the bank account bearing No. 201002091939 of the Corporate Debtor and direct the IndusInd Bank to transfer that amount in favour of Corporate Debtor's Liquidation Account.

8. It is noteworthy that EPFO has vide letter dated 07.03.2022 sent the Applicant the reminder for the claims filed by EPFO and to that, the Applicant have replied vide letter dated 30.03.2022. In the same, it is clearly stated by the Applicant that the demand raised by the Respondent No. 1 amounting to Rs. 1,40,60,827/- (Rupees One Crore Forty Lakh Sixty Thousand Eight Hundred Twenty-Seven Only) is not liable for repayment on priority basis. It is stated in the said letter by the Applicant that the claim of the EPFO will be dealt as per Section 53 of the IB Code, 2016. The Applicant also requested the Respondent to file their claim in the prescribed format at the earliest.

9. 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."*

10. We further observe that, the freezing of Account by Respondent No 1 is not maintainable as Liquidation Proceedings are time-bound to maximize the value and all the Creditors are entitled to get their dues only in terms of Section 53 of IBC, 2016 and different Creditors cannot be allowed to resort to different proceedings and enactments, only because they are Authorities under earlier enactments considering the Provision of Section 238 of IBC, 2016.

11. Further that the Hon'ble NCLAT, New Delhi in the matter of **Pinakin Shah- Liquidator of M/s/ Brew Berry Hospitalities Pvt. Ltd. Vs The Assistant**

**Commissioner of State Tax & Kotak Mahindra Bank Ltd. Company Appeal (AT) (Insolvency) No. 32 of 2021** deals with the same issue and has held as follows:

*8. The Learned Counsel has referred to this Order of Hon'ble Supreme Court as well as the Judgment referred by the Hon'ble Supreme Court in the Order and submits that the freezing of Account by the Respondent No. 1 is not maintainable and the Liquidator cannot be made to run to the parties and Authorities under the Sales Tax Act to get the Account defreezed. Learned Counsel submits, and, rightly says that Liquidation Proceedings are time-bound to maximize the value and all the Creditors are entitled to get their dues only in terms of Section 53 of I & B Code, 2016 and different Creditors cannot be allowed to resort to different proceedings and enactments only because they are Authorities under earlier enactments considering the Provision of Section 238 of I & B Code, 2016.*

*9. We accept the submissions made by the Learned Counsel for the Appellant.*

*10. We find that the Adjudicating Authority has failed to exercise jurisdiction vested in it to give relief to the Appellant in the context of the position of law under Section 238 of IBC.*

*11. For the above reasons, we allow the Appeal. The Impugned Order is quashed and set aside. The Interlocutory Application No. 769 of 2020 filed by the Appellant in CP (IB) No. 107/NCLT/AHM/2019 before Adjudicating Authority shall be treated as allowed with following directions:*

*i. The Respondent No. 2 is directed to defreeze the Account No. 08432090000149 held in the name of Corporate Debtor-M/s. Brew Berry Hospitalities Pvt. Ltd., at Kotak Mahindra Bank Ltd.- the Respondent No. 2.*

12. Accordingly, in light of the above observations, the Respondent No. 1 i.e. EPFO is hereby directed to de-freeze the bank account of the Corporate Debtor bearing Account No. 201002091939 and IFSC Code INDB0000540 maintained with IndusInd Bank. In view of the aforesaid, the Respondent No. 2 i.e. IndusInd Bank is hereby directed to transfer that amount in favour of Corporate Debtor's Liquidation Account.

The Applicant is also directed to take into consideration the claims filed by the Employment Provident Fund Organization. However, the distribution shall be done in accordance with the provisions of the IB Code, 2016 and judicial pronouncements in this regard. Accordingly, IA 2154 of 2022 in CP (IB) /1974/(ND)/2019 stands disposed off.

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

**Sd/-**  
**(RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**(MAHENDRA KHANDELWAL)**  
**MEMBER (JUDICIAL)**