

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER**

IA No. 85/JPR/2022
In CP No. (IB)- 158/9/JPR/2020

In the matter of:

**M/S BALAJI LIFESTYLE
TECHNOLOGIES PVT. LTD.**

...OPERATIONAL CREDITOR

VERSUS

**M/S EXCEL TECHNOVATION
PVT. LTD.**

...CORPORATE DEBTOR

And in the matter of IA No. 85/JPR/2022

M/S Excel Technovation Pvt. Ltd.

Through its Resolution Professional
Shri Prashant Agrawal
Having its office at F-106, Sumer
Complex, Gautam Marg, B/h Bagadia
Bhawan, Jaipur

...Applicant

VERSUS

**Office of Assistant
Commissioner of Income Tax
Department**

Circle 6, New Central Revenue
Building, Bhagwan Das Road, C-
Scheme, Jaipur-302005, Raj.

...Non-Applciant/ Respondent

Sd/-

Sd/-

FOR APPLICANT(S) : Prashant Agrawal, Liquidator
Jatin Chawla, Adv.
FOR RESPONDENT(S) : Anuroop Singhi, Adv.

Order Pronounced On: 03.05.2024

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The present Application bearing *IA No. 85/JPR/2022* has been filed by *Mr. Prashant Agrawal* ('Applicant'/ 'Resolution Professional'/ 'Liquidator'), then Resolution Professional of *M/s Excel Technovation Pvt. Ltd.* ('Corporate Debtor') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') seeking the following reliefs:

- *Direct the Respondent to remove lien/debit freeze from the Bank Accounts of Corporate Debtor as more particularly stated hereinabove under Para No. 3 of Application maintained by ICICI Bank Ltd.*
- *Direct the Respondent to remove lien/ debit freeze from any other Bank Accounts of Corporate Debtor, if marked lien by Respondent.*
- *Quash the notice dated 10.02.2020 bearing DIN and Letter No. ITBA/COM/F/17/2019-20/1024932183(1) issued by Respondent under Section 226(3) of Income Tax Act, 1961 and other similar notice issued by Respondent under Section 226(3) of Income Tax Act, 1961 with regard to Corporate Debtor, if any.*
- *Pass any other order which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case may be granted.*

2. This Adjudicating Authority, *vide* order dated 30.09.2021, admitted the Application filed by *M/s Balaji Lifestyle Technologies Pvt. Ltd.* ('Operational Creditor') under Section 9 of the Code for the initiation of Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor and *Mr. Prashant Agrawal* was appointed as Interim Resolution

Professional ('IRP'). Later on, the appointment of the IRP as the Resolution Professional ('RP') was approved by the CoC. Subsequently, an order for Liquidation was passed by this Adjudicating Authority on 31.10.2023, and the RP was appointed as the Liquidator.

3. The present application has been filed on the following set of facts:

3.1. It is submitted that during the CIRP process, the bank account details of the Corporate Debtor maintained by *ICICI Bank Ltd.* came to the knowledge of the Applicant. The Respondent, *vide* notice dated 10.02.2020, bearing *DIN and Letter No. ITBA/COM/F/17/2019-20/1024932183(1)*, marked a lien on the following bank accounts of the Corporate Debtor as per Section 226(3) of the Income Tax Act, 1961:

Bank Name	Bank Account Number
ICICI Bank Ltd.	001205000398
ICICI Bank Ltd.	001205033479
ICICI Bank Ltd.	001205033988
ICICI Bank Ltd.	001251000039

3.2. *ICICI Bank* informed the Applicant about the status of the Corporate Debtor's bank accounts, stating that they had been marked with a lien/debit freeze. After receiving this information from *ICICI Bank*, the Applicant sent an email dated 26.01.2022 to the Respondent requesting the removal of the lien/debit freeze. Furthermore, it is submitted that the Respondent did not consider their request and did not remove the lien/debit freeze.

Sd-

Sd-

3.3. According to section 17(1)(d) of the Code, after the commencement of CIRP, financial institutions maintaining accounts of the corporate debtor must act on the instructions of the interim resolution professional regarding such accounts. Furthermore, it is contended that proceedings before the Respondent, which resulted in freezing the bank account in the name of the Corporate Debtor, constitute proceedings before another authority as contemplated under Section 14 of the Code. Therefore, the continuation of the same during the period of moratorium is illegal in view of the prohibitions under Section 14(1)(a), and as such, it becomes untenable in law. Thus, the lien marked by the Respondent in the bank accounts of the Corporate Debtor needs to be vacated.

3.4. Further, the Applicant supported the contentions with following judgements of the various benches, for the sake of brevity, some of them form part of this order:

3.4.1. *Ram Ratan Modi (Resolution Professional of Duncans Industries Limited) vs. ICICI Bank (IA No. 1477/KB/2020 vide order dated 19.05.2021).*

3.4.2. *Kitply Industries Ltd. through the Mr. Bijay Murmuria, Resolution Professional vs. Assistant Commissioner of Income Tax (TDS) 2018 SCC OnLine NCLT 4164.*

3.4.3. *Shri Ramchandra Dallaram Choudhary, Interim Resolution Professional of Nessa Leisure Ltd. vs. Commissioner of Income Tax, Central Circle-2(2), Ahmedabad. IA No. 562 of 2019 vide order dated 18.06.2020.*

Sdr

Sdr

4. The Respondent filed its Reply, *vide* Diary No. 82/2023 dated 08.01.2024, stating as below:

4.1. The Respondent submitted that the Department of Income Tax has various demands pending against the Assessee Company, i.e., the Corporate Debtor, under various provisions of the Income Tax Act, 1961. The following details depict the demands pending:

S.No.	Demand Outstanding	Section	A.Y.
1	20,93,590/-	271AAC(1)	2017-18
2	40,000/-	272A(1)(d)	2017-18
3	2,95,15,423/-	143(3)	2017-18
4	59,960/-	143(3)	2017-18

4.2. The Respondent further annexed the following copies of various notices and orders in support:

4.2.1. Copy of notice dated 10.02.2020, issued under Section 226(3) of the Income Tax Act, 1961, to the Branch Manager of *ICICI Bank Ltd.* for marking a lien on the bank accounts of the Company, marked as Annexure R/1.

4.2.2. Copy of assessment order dated 12.12.2019, passed under Section 143(3) of the Income Tax Act, 1961, for the Assessment Year 2017-18, marked as Annexure R/2.

4.2.3. Copy of the order dated 13.03.2020, pertaining to the rejection of the application for stay of demand amounting to Rs. 2,97,55,383, marked as Annexure R/3.

Sd/-

Sd/-

4.2.4. Copy of notice dated 12.12.2019, of Demand under Section 156 of the Income Tax Act, 1961, marked as Annexure R/4.

4.2.5. Copy of the Demand analysis of PAN, marked as Annexure R/5.

5. We have heard the Ld. Counsels for the parties and perused the averments made in the Application, Reply, along with the documents enclosed therein.
6. The case, simpliciter, is that the accounts of the Corporate Debtor were marked frozen, admittedly by the Respondent Bank namely *ICICI Bank Ltd.* pursuant to the notice of Income Tax Department dated 10.02.2020 bearing *DIN & Letter No. ITBA/COM/F/17/2019-20/1024932183(1)*. Subsequently, this Adjudicating Authority passed the Liquidation order *vide* order dated 31.10.2023, appointing *Mr. Prashant Agarwal* as Liquidator. The Applicant is duty-bound to proceed with the liquidation, and thus, filed the present Application.
7. The Code imposes various duties and powers on the Liquidator, with respect to the management of the affairs of the corporate debtor. It is clear from the duties outlined in the Code that the Liquidator are authorized to take custody and control of the assets of the corporate debtor and proceed further according to the provisions of the Code. Furthermore, it is important to highlight that the assets also include the bank accounts of the corporate debtor. For the sake of brevity, relevant provisions of the Code are mentioned below:

17. Management of affairs of corporate debtor by interim resolution professional.

Sd/-

Sd/-

(1) From the date of appointment of the interim resolution professional,—

(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.

25. Duties of resolution professional.

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely:—

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;

35. Powers and duties of liquidator.

(1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely:—

(b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;

8. Additionally, Section 238 of the Code makes it clear that the provision of the Code will override other laws. Moreover, upon enactment of the Code, several statutes were amended to that effect, Income Tax Act, 1962, being one of them, was also amended *vide* third schedule of the Code. Section 238 of the Code is reproduced below:

“The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

9. As far as the issue of removal of lien from the bank accounts is concerned, it is pertinent to refer to the order passed by the Hon’ble NCLT, Principal

Sdr

Sdr

Bench New Delhi in *Om Prakash Agarwal Vs. Tax Recovery Officer & Anr.*

2020 SCC OnLine NCLT 1423 wherein in like circumstance it was held that:

“the monies of the CD lying in the bank account shall be construed to be an asset of the CD even if an attachment order is passed against the same. It noted that section 178 of the Income-tax Act, 1961 has been amended to allow the Code to have overriding effect and accordingly directed the Bank to defreeze the account.”

10. We, therefore, in the light of prayers made, issue the following directions with an immediate effect:

10.1. Respondent to remove lien/debit freeze from the Bank Accounts of Corporate Debtor maintained with the *ICICI Bank Ltd.* and/or any other Bank Accounts of the Corporate Debtor, if marked lien by the Respondent.

10.2. The Notice of the Income Tax Department dated 10.02.2020 bearing *DIN & Letter No. ITBA/COM/F/17/2019-20/1024932183(1)* and any other similar notice issued by Respondent under Section 226(3) of Income Tax Act, 1961 shall stand vacated as it is inconsistent with the provision of the Code.

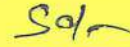
11. In addition, the statutory authorities are restrained from levying any further attachment or lien on the account of the Corporate Debtor company. Further, the bankers of the Corporate Debtor company are hereby restrained from giving effect to any attachment order issued by any authority without leave of this Adjudicating Authority, for the duration of the liquidation of the Corporate Debtor company.

Sd/-


Sd/-

12. The Registry is directed to serve a copy of this Order to the Respondent.

Accordingly, *IA No. 85/JPR/2022* stands disposed of.



DEEP CHANDRA JOSHI
JUDICIAL MEMBER



RAJEEV MEHROTRA
TECHNICAL MEMBER