

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 85 of 2025

[Arising out of order dated 19.12.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Mumbai Bench, Court – II) in I.A. No.
2841/2023 in C.P. (IB) No. 1088/MB/2020]

IN THE MATTER OF:

Indian Bank **...Appellant**

Versus

Anshul Gupta,
Liquidator Topsgroup Services & Solutions Ltd. **...Respondent**

Present:

For Appellant :

For Respondent : **Mr. Milan Singh Negi, Mr. Nikhil Kumar Jha and
Ms. Aakriti Gupta, Advocates.**

WITH

Company Appeal (AT) (Insolvency) No. 96 of 2025

[Arising out of order dated 19.12.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Mumbai Bench, Court – II) in I.A. No.
2074/2023 in C.P. (IB) No. 1088/MB/2020]

IN THE MATTER OF:

Indian Bank **...Appellant**

Versus

Anshul Gupta,
Liquidator Topsgroup Services & Solutions Ltd. **...Respondent**

Present:

For Appellant : **Mr. Ashish Kumar Singh, Mr. Sidhant Malik and
Ms. Muskan Malhotra, Advocates.**

For Respondent : **Mr. Milan Singh Negi, Mr. Nikhil Kumar Jha and
Ms. Aakriti Gupta, Advocates.**

J U D G M E N T

ASHOK BHUSHAN, J.

These two appeals have been filed by the Indian Bank challenging two different orders dated 19.12.2024 passed by the adjudicating authority (National Company Law Tribunal, Mumbai Bench, Court – II) in I.A. No.2481/2023 filed by the Indian Bank and I.A. No.2074/2023 filed by the liquidator. By order dated 19.12.2024, application I.A. No. 2481/2023 filed by appellant has been dismissed and I.A. No. 2074/2023 has been allowed. Aggrieved by the aforesaid two orders, these two appeals have been filed.

2. Brief facts of the case necessary to be noticed for deciding the appeals are:

- i. Corporate Insolvency Resolution Process (CIRP) of the corporate debtor, Topsgroup Services and Solutions Limited commenced on 19.02.2021, on an application filed by the Punjab National Bank (International) Limited.
- ii. Indian Bank, the appellant filed its claim in 'Form-C' for an amount of ₹38,85,25,615/- on 09.03.2021.
- iii. During CIRP of the corporate debtor, appellant received an amount of ₹4,65,58,425.87/- on 08.06.2021 in current account maintained by the appellant Bank as Income Tax Refund. Appellant detained the amount in the said account.

- iv. Request was made by Resolution Professional (RP) by several emails and letters from 07.10.2021 onwards till 12.12.2021, requesting the appellant to transfer the said amount to the CIRP account of the corporate debtor.
- v. The RP filed an I.A. No.2967/2021 on 16.12.2021, seeking a direction to the Indian Bank to transfer the amount of ₹4,65,58,425/- from account maintained in the Indian Bank to CIRP bank account being maintained in the Yes Bank.
- vi. In the said application, notices were issued on the Indian Bank on 05.09.2022 on the I.A.2967/2021. On 21.09.2022, adjudicating authority directed liquidation of the corporate debtor in terms of Section 33. Appellant also filed its claim before the liquidator for an amount of ₹46.78 crore. I.A. No.2967/2021 was heard on 20.12.2022.
- vii. Adjudicating Authority vide order dated 20.12.2022 directed the appellant to transfer the amount to the liquidation bank account of the corporate debtor. Appellant having not complied the said order on 15.05.2023, liquidator filed I.A. No.2074/2023 for initiating proceeding against the appellant for contempt for deliberately not complying the order dated 20.12.2021.
- viii. On 19.05.2023, appellant filed I.A. No. 2481/2023 before the adjudicating authority seeking setting aside order dated 20.12.2021. On 19.12.2022, adjudicating authority dismissed the I.A.

No.2481/2023 filed by the appellant and directed the appellant to remit the amount to the liquidation bank account of the corporate debtor.

- ix. I.A. filed by liquidator being I.A. No. 2074/2023 was allowed with direction to the Indian Bank to remit the amount ₹4,64,58,424/- and to comply the order dated 19.12.2024 failing which liquidator was given liberty to file contempt application against the Indian Bank.

3. Learned counsel for the appellant in support of the appeals submits that appellant bank has sanctioned the financial facility to the corporate debtor and under the hypothecation deed receivables including the receivables from government were included. It is submitted that Income Tax Refund of ₹4,65,58,425/- was received on 08.06.2021 in the corporate debtor's account maintained by the appellant bank. Appellant has filed its claim before the RP as well as before the liquidator after liquidation commenced on 21.09.2022. Order dated 20.12.2022 was ex-parte, since due to transfer of the account in different branch there was miscommunication between the bank. It is submitted that adjudicating authority committed an error in holding that Income Tax Refund is not receivable. Corporate debtor having already put into liquidation and bank vide its Form dated 03.08.2022, communicated the decision not to relinquish its security interest, appellant was not obliged to transfer the amount. It is submitted that adjudicating authority has held that money receivables as per the Accounting Standards amount received as Income Tax Refund is not receivable, whereas, adjudicating authority has not even referred to Indian Accounting Standard

No. 7, which defines tax refund as part of cash flow from operating activities. It is submitted that appellant is fully ready to pay the applicable cost as per Regulation 21 of the Insolvency and Bankruptcy Board of India (IBBI) (Liquidation Process) Regulations, 2016 (for short the 'Liquidation Regulations, 2016'). It is submitted that appellant never refused to transfer the amount rather has communicated that account be transferred to any other member of the Committee of Creditors (CoC) and not to private bank.

4. Learned counsel for the liquidator opposing the submission of the counsel for the appellant submits that CIRP against the corporate debtor having been commenced on 19.02.2021 moratorium was imposed and all amount received by corporate debtor during moratorium including the Income Tax Refund was part of the kitty of the corporate debtor and the amount of ₹4,65,58,425/- was received by the corporate debtor in its account maintained in the Indian Bank as Income Tax Refund. The said amount ought to have been remitted by the appellant in the corporate debtor's account, despite multiple requests made by the RP, the amount was not transferred into the CIRP account of the corporate debtor, hence I.A. No.2967/2021 was filed by the RP on 16.12.2021. In the application, notices were issued which were duly served on the bank but they chose not to appear and file the reply. It is submitted that adjudicating authority has rightly directed the amount to be transferred to the liquidation amount liquidation having been commenced on 21.09.2022. It is submitted that Indian Bank deliberately flouted the order 20.12.2022. It is submitted that action of the

Indian Bank in not transferring the amount to the corporate debtor, indicates its attitude of not refunding the amount which belonged to the corporate debtor. Appellant bank has no right to appropriate the amount of ₹4,65,58,425/-. In the claim which was submitted before liquidator amount of ₹4,65,58,425/- was neither adjusted nor a disclosure of realisation of such amount was made. The Indian Bank has communicated on 31.12.2021 that there is no objection from bank to transfer of the funds to any bank with in the CoC member bank but it cannot be transferred to private sector Bank (Yes Bank). The RP had prayed for transferring the account in the CIRP account all money belonging to the corporate debtor were to be in the CIRP account and subsequent to the liquidation in the liquidation account. It is submitted that liquidator is not averse to the rights of the any stakeholders, including the appellant however, any distribution out of the liquidation estate has to be in accordance with the law. The Income Tax Refund which was received by the corporate debtor during CIRP has to be transferred in the account of corporate debtor. It is submitted that no case has been made out to interfere in the impugned orders.

5. We have considered the submissions of the counsel for the parties and perused the records.

6. The CIRP commenced against the corporate debtor vide order dated 19.02.2021. Adjudicating authority while admitting Section 7 application directed to impose the moratorium. Paragraph 13 of the order dated 19.02.2021 passed in C.P. (IB) No.1088/MB/2020 is as follows:

“13. In view of the above, the Bench has come to the conclusion that in the present Petition, the 'debt' qualifies as a Financial Debt as per Section 5(8) of the Code and there is a 'default' as per Section 3(12) of the Code. Also, this Petition is well within limitation as per Sections 18 and 19 of the Limitation Act, 1963. In the light of above facts and circumstances, the existence of debt and default is reasonably established by the Petitioner as a major constituent for admission of a Petition under Section 7 of the Code. Therefore, the Petition under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-(I), namely:

(I) (a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of 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 (SARFAESI Act);

(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.

(II) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(IV) That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.

(V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.

(VI) That this Bench hereby appoints, Mr. Rajendra Karanmal Bhuta, having office at 1207, Yogi Paradise, Yogi Nagar, Borivali (W), Mumbai 400092, having Registration No. IBBI/IPA-001/IP/P-00141/2017-2018/10305 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.”

7. The amount of Income Tax Refund was admittedly received in the account of the corporate debtor maintained in the Indian Bank on 06.06.2021 i.e., during currency of moratorium under Section 14. After the Anshul Gupta, the respondent was appointed as RP on 07.08.2021, it came to know about the Income Tax Refund received in the account of corporate debtor. Email was sent by the RP to the bank immediately for transferring funds to the CIRP account in the account maintained by the Yes Bank. Request for the appellant to transfer the above amount was refused by the bank. Detailed letter dated 09.12.2021 was written by the RP for transfer of the amount pointing out of the moratorium and Section 17 of the IBC and when the amount was not transferred, the I.A. No. 2967/2021 was filed by the RP, where following prayers were made:

“a) That the Hon'ble Tribunal be pleased to allow this Application;

b) That the Hon'ble Tribunal be pleased to direct the Respondent bank to act on the instructions of the Applicant and transfer an amount of Rs. 4,65,58,425.87/- (Rupees Four Crore Sixty Five Lakhs Fifty Eight Thousand Four Hundred Twenty Five and Eighty Seven paise only) from the Account No. 50026264054 maintained in Indian. Bank, Worli Branch, to the CIRP bank account having Account No 052463300002950 maintained in YES Bank;

c) To pass such further orders as the Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the present case;

d) For costs.”

8. In the application notices were issued but Bank did not appear and the order passed by the adjudicating authority on 20.12.2022. Order dated 20.12.2022 in I.A.2967/2021 is to the following effect:

“I.A. 2967 of 2021

The above captioned Interlocutory application is filed by the Applicant i.e. Mr. Anshul Gupta, RP against Indian Bank, Respondent, seeking the Respondent bank to transfer an amount of Rs. 4,65,58,425.87/- from the Account No. 50026264054 maintained in Indian Bank, Worli Branch to the CIRP bank account. The learned counsel for the Applicant/RP submits that an amount of Rs. 4,65,58,425.87/- has to be transferred in to the “Liquidation account” maintained in YES Bank instead of CIRP account. This amount was received on account of the Tax Refunds of the Corporate Debtor. After hearing the submissions of the learned counsel for the Applicant, this Bench directs the Respondent Bank to transfer an amount of Rs. 4,65,58,425.87 from the Account No. 50026264054 maintained in Indian Bank, Worli Branch in the following bank account maintained in YES Bank;

Liquidation Account Details :

Bank : Yes Bank

A/c No : 922020055441055

Name : Topsgroup Services and Solutions Limited in Liquidation

Branch : Vile Parle (East)

Accordingly, the above application is allowed and disposed of.”

9. The bank thereafter filed an application for recall of the order being I.A.2481/2023. It is relevant to notice that in the application which was filed by the bank, bank even has not claimed that it has not been served with the application filed by the RP. Rather Banks case was that notices were served on the base branch which went unnoticed. It is useful to notice paragraph 16 of the application where following was pleaded in the application:

“16. The Applicant submits that Court notices and private notices were served upon the base branch, which inadvertently went unnoticed for a long period of time by the concerned branch. Further, due to miscommunication between the base branch and the Stressed Asset Management branch, the Applicant did not receive notice of the said application in time and the Applicant was unable to attend to the said matter.”

10. It has further been noticed that the bank received the amount of ₹4 crore on 08.06.2021 in the current account of corporate debtor and RP sent several emails to transfer the amount which facts have been pleaded in the paragraphs 11 and 12 of the application:

“11. The Applicant states that on 08.06.2021, the Applicant received an amount of Rs. 4,65,58,425.87/-, from the Income Tax department, in current account bearing no. 50026264054 which pertained to the Corporate Debtor. The Applicant states that said amount was transferred by the Income Tax Department towards Income Tax refunds of the Corporate Debtor.

12. The Applicant states that the Respondent vide various emails, letters, visits dated 7.10.2021, 8.10.2021, 18.10.2021, 28.10.2021, 9.11.2021, 15.11.2021, 25.11.2021, 4.12.2021, 8.12.2021, 9.12.2021, 12.12.2021 requested the Applicant to transfer the said amount of Rs. 4,65,58,425.87/- to the CIRP account of the Corporate Debtor. The Applicants crave leave to refer to and rely upon the said letters.”

11. The adjudicating authority while rejecting the application filed by the appellant to recall the order dated 20.12.2022 has not held that the order dated 20.12.2022 was passed ex-parte to the appellant. Rather adjudicating authority noticed the facts and came to the conclusion that the amount received as a tax refund cannot be treated to its receivables. The adjudicating authority, however, rejected the plea of the bank that it is not liable to remit the amount in kitty of the corporate debtor in the liquidation.

12. Learned counsel for the appellant has submitted that as per the hypothecation deed, the amount received as Income Tax Refund is also covered by receivable. Even accepting the submissions of the appellant that the account received by the corporate debtor was a receivable of the corporate debtor, the RP has every right to take possession of all assets of the corporate debtor. Amount was received by Indian bank in the current account maintained by the corporate debtor on 08.06.2021 i.e., during currency of the CIRP process. There can be no denial that amount received of the Income Tax Refund belonged to the corporate debtor which was received in the corporate debtor's account from the Income Tax Department as Income Tax Refund. Amount having been received in the CIRP process amount was to taken control by the RP and Indian Bank could not have denied transfer of the said amount in the corporate debtor's account as was requested by the RP by several emails. Appellant Bank having not complied with the request of the RP to transfer amount in the corporate debtor's account which was maintained by the Yes Bank. Appellant left with no remedy filed the I.A.2987/2021. The submission of the learned counsel for the appellant is that it had security interest as per the hypothecation deed and it has not relinquished its security hence, the amount was not required to be transferred. We do not agree with the submission of the appellant, amount having been received during the CIRP process amount in the corporate debtor's account, amount belonged to the corporate debtor, even though as receivable from the Income Tax Refund and the appellant bank could not have

denied the transferring of the amount in the corporate debtor's account maintained by the RP. The liquidation with respect to corporate debtor commenced subsequently only on 21.09.2022. The issue before the adjudicating authority while deciding the I.A. No. 2967/2021, did not pertain to issue of realisation of security interest by the appellant. The Indian Bank could not have refused to transfer the amount in the corporate debtor account and it was not open for the appellant to put condition for transfer into any account of its choice when the CIRP account was maintained in the Yes Bank and all amounts belonging to the corporate debtor were parked in the said account, Indian Bank was obliged to transfer the amount in the bank as indicated by the RP. We do not approve the action of the appellant in not transferring the account in the corporate debtor's account and it is to be noticed that even after passing of the order on 21.12.2021, bank continued persisted in not transferring the account leading to filing of the contempt application against the bank which has been also allowed by the order impugned. Adjudicating authority, however, has not taken any action regarding contempt but has issued direction to transfer the amount. The manner in which the appellant is to realise its security out of its claim which has been filed before the liquidator were not the question which were required to be considered in I.A.2967/2021 which was allowed on 20.12.2021. Appellant has prayed for recall of the said order by filing the I.A. No.2481/2023. There was no ground in I.A. No. 2481/2023 to recall the order dated 20.12.2021, hence the adjudicating authority did not commit any error

in rejecting I.A. No. 2481/2023 filed by the appellant. Appellant has to comply with the order dated 20.12.2021 and 19.12.2024. We only observe that the question of realisation of its security and claim which the appellant is entitled to receive are the question which need to be considered and examined by the liquidator in accordance with the law.

13. We, thus do not find error in any of the impugned orders dated 19.12.2024, rejecting the I.A. filed by the appellant and allowing the I.A. filed by the liquidator.

There is no merit in either of the appeals. Both the appeals are dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

NEW DELHI

08th July, 2025

himanshu