

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**IA No. 1477/KB/2020
In
CP (IB) No. 184/KB/2018**

An application under sections 17(1)(d), 17(2)(d) and 23(2) read with section 60(5)
of the Insolvency and Bankruptcy Code, 2016

In the matter of

Sangita Fiscal Services Private Limited and Others

...Financial Creditors

Versus

Duncans Industries Limited

...Corporate Debtor

And

In the matter of

Ram Ratan Modi (Resolution Professional
of Duncans Industries Limited)

...Applicant

Versus

ICICI Bank (Darjeeling Branch)
49, Laden Road Darjeeling
West Bangal-734101

...Respondents

Date of hearing: 12.04.2021

Date of pronouncement of Order: 19.05.2021

Coram:

Mr. Rajasekhar V.K. : Member (Judicial)
Mr. Harish Chander Suri : Member (Technical)

Appearances (through video conference):

For the Applicant : Mr. Dipankar Das, Advocate
Ms. Sanjana Nandi, Advocate
Mr. R.R. Modi, RP in person

For Respondent/ICICI Bank : Mr. S. Chakraborty, Advocate
Mr. S. Bhattacharjee, Advocate

ORDER

Per: Harish Chander Suri, Member (Technical)

1. This court convened *via* video conference today
2. The present application has been filed by Ram Ratan Modi (Resolution Professional of Duncans Industries Limited, the Corporate Debtor, under sections 17(1)(d), 17(2)(d) and 23(2) read with section 60(5) of the Insolvency and Bankruptcy Code, 2016 (the Code) praying to:-

“a. Direct the Respondent to release the lien/attachment over the current account maintained with them being account no. 635405000368 in order to enable the Applicant herein to take control of the said accounts and carry out necessary transactions.”

3. Submissions made by Mr. Dipankar Das, Advocate, appearing on behalf of the Applicant/Resolution Professional Mr. Ram Ratan Modi:-
 - a. On an application filed by Sangita Fiscal Private Limited, Navnita Tradefin Private Limited, Sudhir Credit Private Limited and Ruchi Trades & Holdings Private Limited, the financial creditors, against in Duncans Industries Limited, the Corporate Debtor in underlying company petition bearing CP (IB) No. 184/KB/2018 under section 7 of the Code, this Adjudication Authority had admitted the corporate debtor into Corporate Insolvency Resolution Process (CIRP) on 05.03.2020.
 - b. Mr. Ram Ratan Modi, the then Interim Resolution Professional of the corporate debtor, made public announcement in Financial Express (English) and *Duranta Barta* (Bengali) of Kolkata editions of newspapers on 11.03.2020 intimating that the CIRP against the said corporate debtor had been initiated. Copies of public announcement is placed on record as Annexure A-1 at pages 14 and 15 of the application.
 - c. Mr. Modi intimated the Respondent - ICICI bank, regarding initiation of the CRIP against the Corporate Debtor through emails. The Respondent was further advised not to allow any debut transaction in

the account of the corporate debtor. A copy of the said email is placed on record as Annexure A-3 at pages 35 and 36 of the application.

- d. On 28.10.2020, Mr. Modi wrote another email to the Respondent seeking their cooperation by removing the lien/attachment from the current account no. 635405000368 of the corporate debtor and operationalising it. He also asked for a list and detail of the statutory authority or financial institution in respect of which lein has been marked. He sent several reminders to the Respondent thereafter, however, no satisfactory response had been received by the Applicant. A copy of the emails dated 28.10.2020 and its follow-ups is placed on record as Annexure A-4 at page 37 of the application.
 - e. The corporate debtor is in need of working capital to conduct the CIRP. It is also the Applicant's duty to take control and custody of the assets belonging to the Corporate Debtor for speedy completion of the CIRP. Although, the Applicant has made several attempts of raising funds, he has not received any satisfactory response from the Respondent.
 - f. Moreover, after the order of moratorium, the creditor cannot deal with the assets of the corporate debtor, therefore, the order of lien and attachment over corporate debtor's account is unlawful.
4. Submissions made by Mr. Subhankar Chakraborty, Advocate, appearing on behalf of the Respondent/ICICI bank:-
- a. The regional head of ICICI bank, Kolkata zone had received a notice dated 17.07.2019 from Deputy Commissioner of Income Tax (TDS), Circle 1, Kolkata directing the Respondent to mark freeze all the bank accounts of the corporate debtor company under section 226(3) of the Income Tac Act, 1961. A separate notice under section 226(3) was also enclosed with the said notice whereby the authority had requested the Respondent to make a payment of Rs.1,21,39,847/- (Rupees one crore twenty-one lakh thirty-nine thousand eight hundred and forty-seven only) to the authority on account of default committed by the corporate debtor company. Copies of the said notices are placed on record as Annexure R-1 at pages 10 and 11 of the reply affidavit.

- b. Thereafter, the Respondent received a letter from the Recovery Officer, Employees' Provident Fund Organisation (EPFO) dated 31.07.2019 stating that the Rungli Rungliot Tea Estate, a unit of the corporate debtor company, was in default of provident fund. Revenue Recovery Certificates No. 8/2018-19 dated 10.04.2018 and 8/2019-2020 dated 09.04.2019 are pending against the said establishment for an aggregate amount of Rs.36,66,947/- (Rupees thirty-six lakh sixty-six thousand nine hundred forty-seven only).
- c. The Respondent received another letter from EPFO dated 27.08.2019 directing the Respondent to mark freeze against any account linked with PAN – AAACD9302P and pay the amounts available in the account number 635405000368 to the EPFO. Copies of the notices dated 31.07.2019 and 27.08.2019 are placed on record collectively as Annexure R-2 at pages 12 to 16 of the reply affidavit.
- d. The Respondent found that there were two accounts linked with the PAN – AAACD9302P bearing numbers 635405000368 and 635405000356. Both the accounts were marked debit freeze by the Respondent.
- e. On 17.03.2021 and 28.01.2020 the Respondent received an email from the Applicant requesting the Respondent to remove lien from the account bearing no. 635405000368, operationalise the said account, provide a list and details of the of the statutory authority or financial institution in respect of which lein has been marked, not allow debit from the account without prior authorisation of the Applicant, allow credit to the account, and provide complete details of all the accounts maintained in the name of the corporate debtor company and furnish a copy of bank account/loan account/statement/escrow account/fixed deposit/over-draft account/details of securities interest/details of lien if any created in respect of the Company.
- f. The Respondent was not able to defreeze the said account as it had directions to freeze the account from the aforementioned two authorities. The Respondent had, therefore, intimated the Applicant vide email dated 17.03.2020 that the account was on debit freeze under the garnishee order.

5. We have heard the learned counsel appearing on both the sides and have gone through the records.
6. The case, simpliciter, is that two accounts of the corporate debtor were marked frozen, admittedly, by the Respondent bank pursuant to the notices (1) dated 17.07.2019 from Deputy Commissioner of Income Tax (TDS) and (2) dated 31.07.2019 and 27.08.2019 from the EPFO. Thereafter, on 05.03.2020 the corporate debtor company was admitted into CIRP. The Applicant is in need of working capital to conduct the CIRP thus, the present application.
7. 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.
8. Further, during the arguments, the learned counsel appearing for the Applicant had submitted that the authorities, on whose direction the account was frozen, have filed their respective claims before the Applicant and the same has been admitted by him.
9. Therefore, in such a scenario, where moratorium has been imposed on the assets of the corporate debtor under the Code and no action can be taken against its assets under any other statute by virtue of section 238 of the Code, and the claims of the authorities having already been admitted by the Applicant, not de-freezing the account of corporate debtor would not only be antithetical to the Code but also averse to the principle of equity.
10. What pains us is to see such applications being filed so often even after the point of law stands settled in this regard. One of the objects of the Code is to conduct the CIRP in a time bound manner, therefore, to save the time, upon coming to knowledge of the order of admission of the corporate debtor into CIRP, the statutory authorities should withdraw their direction of attachment from the assets of the corporate debtor.

11. Specially in cases such as this, where the authorities have filed their claims with the Resolution Professional. After filing their claim with the resolution professional, it is only prudent that the authorities withdraw their directions.
12. We, therefore, direct the release of attachment and defreezing of account of the corporate debtor company bearing no. 635405000368 and the statutory authorities are restrained from levying any further attachment or lien on the account of the corporate debtor company, with immediate effect.
13. Although prayer only with regard to account no. 635405000368 has been made in the present application, the direction in the immediately preceding para should be applicable for account no. 635405000356 too.
14. 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 CIRP of the corporate debtor company.
15. With these directions, **IA No. 1477/KB/2020** is disposed of.
16. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
17. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)
19.05.2021

SR (LRA)