

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

**IA No. 131/2021in
C.P. No. 223/ALD/2018**

In the matter of Section 60(5) of the Insolvency and Bankruptcy Code, 2016

In the matter of: -

Supriyo Kumar Chaudhuri
Liquidator of JVL Agro Industries Ltd.

.....Applicant

Versus

1. Assistant Commissioner of the Income Tax
Circle-3, Varanasi, Uttar Pradesh

.....Respondent No. 1

2. Chief Manager, Punjab National Bank
MIA Alwar, Rajasthan-301030

.....Respondent No. 2

In the matter of:

Standard Chartered Bank

..... Financial Creditor

Versus

JVL Agro Industries Ltd.

..... Corporate Debtor

**Order Reserved On: 07.12.2021
Order Pronounced On:13.12.2021**

Coram :Sh. Rajasekhar,V.K, Member (Judicial)

Sh. Virendra Kumar Gupta, Member (Technical)

Appearances (via Video Conference) :

For Applicant : Sh. Yash Tondon, Adv.

ORDER

Per: Virendra Kumar Gupta, Member (Technical)

1. The present application has been filed under section 60(5) of the IBC, 2016 by the applicant/liquidator for directions to the respondents to defreeze the current account of the corporate debtor bearing No. 0977002100010632 maintained with Respondent No. 2 and to release the amount lying in the bank account and further to declare the notice issued by Respondent No. 2 under Sec 226(3) of Income Tax Act, 1961 as null and void..
2. As per the averments made in the application, in the present matter the CIRP was initiated on 25.07.2018 and Mr. Abhishek Gupta, was appointed as the IRP who was later replaced by Mr. Supriyo Kumar Chaudhuri as the RP of the Corporate Debtor.

—Sd—

As no resolution plan was approved by the CoC, this adjudicating authority vide order dated 19.08.2020 allowed the liquidation of the Corporate Debtor and the RP was further appointed as the liquidator.

3. It is further stated that the Corporate Debtor is maintaining *a current account bearing Account No. 0977002100010632* with respondent no. 2 i.e. Punjab National Bank and an amount of Rs. 41,50,749,138/- is lying in the said account. Further, respondent no. 1 issued a notice dated 14th March, 2019 under Section 226(3) of Income Tax Act, 1961 to respondent no. 2 for payment of amount not exceeding Rs. 1,97,32,200/- being the amount due from the corporate debtor but the notice clearly mentioned that demand was to be honoured from any bank account maintained by the Corporate Debtor *except current and cash credit account*. On receipt of this notice, respondent no. 2 put on hold the entire amount lying on the aforesaid current account. Thereafter, the applicant sent a letter dated 18.10.2019 to respondent no. 2 that the bank was wrongfully holding the balance amount of the Corporate debtor lying in its current account as the amount is the part of Corporate Debtor's liquidation estate and further stated that the Income Tax Authority cannot initiate recovery proceeding during the period when moratorium U/S 14 of IBC, 2016 was declared and the Respondent No. 1 / Income Tax Department was required to file its claim with the applicant.
4. Heard the learned counsel for the liquidator. It is observed that in this proceeding CIRP was initiated on 25.07.2018 by the order of this Adjudicating Authority and the liquidation order was passed on 19.08.2020 as no Resolution Plan had been received and period of 270 days had expired. In the meantime, the proceedings by the Income Tax Department U/s 226 of The Income Tax Act, 1961 regarding freezing of the account were initiated by its notice dated 14.03.2019 subsequent to the admission of Corporate Debtor in CIRP. In pursuance thereof, the aforesaid account of the Corporate Debtor was frozen by Respondent No. 2 which was intimated to the applicant vide letter dated 29.01.2020.
5. It is noted that though the notice U/s 226 of The Income Tax Act, 1961 was issued during the operation of moratorium U/s 14 of the Code, 2016, however, IRP/ RP did not challenge such notice and subsequent action of Respondent No. 2. On passing of order of liquidation, such moratorium has to come to an end from the date of initiation of liquidation proceedings. Thus, as on date, the validity of such notice cannot be challenged during the liquidation proceedings because as per the provisions of Section 33(5), any proceeding initiated prior to passing of liquidation order can be continued during the liquidation process but no new proceedings can be instituted against the Corporate Debtor. Be that as it may, we further note that in the said notice

—Sd—

the Income Tax Department has not directed Respondent No. 2 to freeze current and cash credit account standing in the name of the Corporate Debtor. It is not in dispute that the account so freezed, is the current account standing in the name of the Corporate Debtor. Hence, in our considered view, the Bank is not required to freeze the same and that should remain operative. Hence, without expressing any opinion on the legal aspects relating to the validity of the notice issued on 14.03.2019 when moratorium U/s 14 IBC was in operation, we hold that the Bank should defreeze the **current account bearing Account No. 0977002100010632**, which has wrongly been freezed and release the amount to the Liquidator.

6. In the result, application filed by the Liquidator stands allowed and disposed off in terms indicated above.

—Sd—

Virendra Kumar Gupta
Member (Technical)

—Sd—

Rajasekhar V.K.
Member (Judicial)