

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. 502/JPR/2023
In CP No. (IB)- 233/9/JPR/2019

IN THE MATTER OF:

UNIWORD TELECOM LTD.

...OPERATIONAL CREDITOR

VERSUS

M/S TAURUS EXPORTS PVT. LTD.

...CORPORATE DEBTOR

MEMO OF PARTIES

IA No. 502/JPR/2023:

Anoop Bhatia
Liquidator of
M/s Taurus Exports Pvt. Ltd.
Having office at C-44, Model
Town, Malviya Nagar, Jaipur-
302017
Liquidation.tepl@gmail.com

...Applicant

VERSUS

Office of the Income Tax
Officer,
Ward-25(1), Room No. 188,
Central Revenue Building, I.P
Estate, New Delhi-110002
Delhi.ito25.1@incometax.gov.in

...Respondent No. 1

The Branch Manager
ICICI Bank Limited

IA No. 502/JPR/2023

In

CP No. (IB)- 233/9/JPR/2019

Sdr

Sdr

82, Janpath Branch, New Delhi-
110001

...Respondent No. 2

**AVP and Branch Operations
Head**

**Axis Bank Ltd, New Delhi Main
Branch**

Address- 148, Ground Floor,
Statesman House, Barakhamba
Road, New Delhi- 110001.

NewDelhi.Operationshead@axisbank.com

...Respondent No. 3

Branch Manager

Union Bank of India

Shalimar Bagh Branch,
BQ, Commercial Complex,
Shalimar Bagh, New Delhi-
110088

ubin0546798@unionbankofindia.bank

...Respondent No. 4

FOR APPLICANT	:	Nitesh Shrivastava, Adv.
FOR RESPONDENT NO. 1	:	N. S. Bhati, Adv.
FOR RESPONDENT NO. 2	:	Hitesh Kumar, Adv.
FOR RESPONDENT NO. 3	:	Hritik Goyal, Adv.

Order Pronounced On: 29.02.2024

ORDER

Per: Shri Rajeev Mehrotra, Technical Member

1. This present Application bearing *IA No. 502/JPR/2023* has been filed by *Mr. Anoop Bhatia, Liquidator* ('Applicant'/ 'Liquidator') of *M/s Taurus Exports Pvt. Ltd.* ('Corporate Debtor') under Section 60(5) of the Insolvency

IA No. 502/JPR/2023

Sdr

CP No. (IB)- 233/9/JPR/2019

Sdr

and Bankruptcy Code, 2016 ('IBC'/ 'Code') r/w Rule 11 of NCLT Rules, 2016 seeking the following set of reliefs:

- *To allow the Application and vacate the Order dated 13.02.2019 passed by Income Tax Department, Ward-25(1), Room No. 188 bearing order no. F.NO.ITO/WARD-25(1)/Attachment/2018-19/801 holding the same to be inconsistent with the provisions of the Code;*
- *To direct the Respondent No. 1 to remove lien from the Bank Accounts of Corporate Debtor and the Fixed Deposits as more particularly stated hereinabove under Para No. 9 of the Application maintained by ICICI Bank Ltd, Union Bank of India and Axis Bank Ltd.*
- *To direct Respondent No. 2, Respondent No. 3, and Respondent No. 4 to proceed to closure of bank account of the Corporate Debtor expeditiously as possible.*
- *Any other further directions/ orders as this Tribunal may deem fit under the said facts and circumstances.*

2. This Adjudicating Authority *vide* order dated 05.03.2020 had admitted the application filed by *Uniword Telecom Limited* ('Operational Creditor') under Section 9 of Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor and had appointed *Mr. Anoop Bhatia* as Interim Resolution Professional ('IRP'). Later on, *Mr. Anoop Bhatia* was appointed as the Resolution Professional ('RP') by the Committee of Creditors ('COC'). Subsequently, an order for Liquidation was passed by this Authority on 18.02.2021 and *Mr. Anoop Bhatia* was appointed as the Liquidator.

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

3.1. The Liquidator submitted that the Corporate Debtor was having the following set of assets:

- a. *Investments in Shares in Panache Holdings Pvt. Ltd.*
- b. *Cash Balance of Rs. 51,737.12/- in account and Rs. 414.54/- as cash;*
- c. *Fixed Deposit of Rs. 1,37,007/- in ICICI Bank A/c No. 663005113045.*

3.2. The Liquidator in order to liquidate the assets of the Corporate Debtor, sold the Investments in shares in *Panache Holdings Pvt. Ltd.* and duly submitted assets sales report. Further, the Liquidator is in process of filing the dissolution application; however, the following activities are pending to be performed before the final report prior to dissolution under Regulation 45 of the IBBI (Liquidation Process) Regulations, 2016 being the same beyond control of the Liquidator:

- a. Removal of the lien on Bank Accounts of Corporate Debtor maintained with ICICI Bank bearing A/c No. 663005113045. The lien has been created by Income Tax Officer ('ITO') *vide* Order dated 13.02.2019 for Rs. 97,67,513/- (Ninety-Seven Lakhs Sixty-Seven Thousand Five Hundred and Thirteen Only).
- b. Transfer of the Fixed Deposit of Rs. 1,37,007/- (Rupees One Lakh Thirty-Seven Thousand and Seven Only) in account of Corporate

Debtor for purpose of distribution maintained with ICICI Bank bearing A/c No. 663005113045.

- c. Closure of Current Bank Account of the Corporate Debtor maintained with Axis Bank bearing A/c No. 007010200054083.
- d. Closure of Bank Account of the Corporate Debtor maintained with Union Bank of India bearing A/c No. 467901010036589. This account was also marked lien pursuant to order dated 13.02.2019 passed by ITO.

3.3. The Applicant took following steps to proceed with the closure of the bank accounts of the Corporate Debtor:

- a. The Applicant had approached ICICI Bank, i.e., Respondent No. 2, to obtain bank account statements for the closure of the Corporate Debtor's account and for transferring the Fixed Deposit (FD) amount to the Liquidation Bank Account. Respondent No. 2 has provided the bank account statements. However, due to the lien created via Notice dated 13.02.2019 by the ITO, i.e., Respondent No. 1, ICICI Bank denied closing of the Corporate Debtor's account and refused to release the amount of the FD into the Liquidation Bank Account. In its reply, Respondent No. 2 mentioned that the bank account had been marked with a lien of Rs. 97,67,513/- (Rupees Ninety-Seven Lakhs Sixty-Seven Thousand Five Hundred and Thirteen Only).

However, the Notice dated 13.02.2019 shows a sum of Rs. 99,14,460/- (Rupees Ninety-Nine Lakhs Fourteen Thousand Four Hundred and Sixty Only) due to the ITO, whereas the lien was shown to be Rs. 97,67,513/- (Rupees Ninety-Seven Lakhs Sixty-Seven Thousand Five Hundred and Thirteen Only). The Applicant seeks clarification from Respondent No. 1 and 2 regarding this matter through this Application.

- b. The Applicant had approached Axis Bank, i.e., Respondent No. 3, for the closure of the Corporate Debtor's Current Bank Account. However, no concrete or written documentation regarding the closure of the bank account has been received.
- c. The Applicant had approached Union Bank of India, i.e., Respondent No. 4, to obtain bank account statements and to initiate the closure of the Corporate Debtor's account. Respondent No. 4 provided the bank account statement up to the year 2018 and stated that a lien exists on the account amounting to Rs. 99,14,460/- (Rupees Ninety-Nine Lakhs Fourteen Thousand Four Hundred and Sixty Only), pursuant to an attachment order by Respondent No. 1, along with SMS banking charges/ledger folio charges of Rs. 692.86/- (Rupees Six Hundred Ninety-Two and Eighty-Six Paise). Furthermore, Respondent No. 4 informed that there have been no

transactions in the Corporate Debtor's bank account after 26.03.2018. However, no further information has been received regarding the closure of the account. Therefore, this application is filed to request the closure of the Corporate Debtor's bank account maintained by Respondent No. 4, in order to complete the dissolution process.

3.4. The Applicant submitted that the preamble of the Code itself states that the object of the Code is for alteration of payment of Government dues.

It is reproduced for the ready reference below:

*“An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including **alteration in the order of priority of payment of Government dues** and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.”*

3.5. It is an admitted fact that the dues of Respondent No. 1 are government dues under the Income Tax Act, 1961. These dues shall be distributed in the order of priority as stipulated in Section 53 of the Code.

However, such continuation of the lien by the Respondent No. 1 is an abuse of power of law. Additionally, as per Section 238 of the Code, the Code shall have overriding effect over all other laws. Thus, the lien made does not hold good pursuant to the initiation of the CIRP and the liquidation of the Corporate Debtor.

3.6. The Applicant further in support mentioned following decisions of various co-ordinate benches of Tribunal:

- a. Decision of Hon'ble NCLT Kolkata Bench in the matter of *Ram Ratan Modi (Resolution Professional of Duncans Industries Limited) vs. ICICI Bank (Darjeeling Branch), IA No. 1477/KB/2020.*
- b. Decision of Hon'ble NCLT Guwahati Bench in the matter of *Kitply Industries Ltd. through Mr. Bijay Murmuria, Resolution Professional vs. Asst. Commissioner of Income Tax (TDS), I.A. No. 54/2018.*
- c. Decision of Hon'ble NCLT Ahmedabad Bench in the matter of *Shri Ramchandra Dallaram Choudhary, IRP of Nessa Leisure Ltd. vs. Commissioner of Income Tax, Central Circle-2(2), Ahmedabad, I.A. No. 562/2019.*
- d. Decision of Hon'ble NCLT Mumbai Bench, Court No. III dated 28.10.2021 in the matter of *Asis Global Ltd.*

e. The Hon'ble NCLAT in the matter of *Canbank Fectors Ltd. vs.*

Dharmendra Kumar, held that,

“even though lien on corporate debtor’s property was created prior to commencement of CIRP proceedings recovery sought to be made after commencement of CIRP would be barred by moratorium.”

3.7. Furthermore, the Income Tax Department has not filed any claim before the RP/ the Liquidator, and thus not entitled to any payment under the provisions of the Code. Therefore, the lien marked by Respondent No. 1 is liable to be revoked, and the amount held in the Fixed Deposit shall be transferred to the liquidation account of the Corporate Debtor.

4. The Respondent No. 2, filed its Reply, *vide* Dairy No. 2912/2023 dated 08.12.2023, stating as below:

4.1. Respondent No. 2 received a notice dated 13.02.2019 from the Income Tax Department, wherein the Department made a demand of Rs. 99,14,460/- (Rupees Ninety-Nine Lakhs Fourteen Thousand Four Hundred and Sixty Only) against the Corporate Debtor. Upon receipt of the Notice, it was observed that an amount of Rs. 1,46,947/- (Rupees One Lakh Forty-Six Thousand Nine Hundred and Forty-Seven Only) was available in the bank account of the Corporate Debtor maintained

by Respondent No. 2. Subsequently, the available amount was remitted to the Income Tax Department via demand draft dated 25.02.2019, and a lien was placed on the remaining amount of Rs. 97,67,513/- (Rupees Ninety-Seven Lakhs Sixty-Seven Thousand Five Hundred and Thirteen Only) in the bank account of the Corporate Debtor.

4.2. Furthermore, regarding the Fixed Deposit, Respondent No. 2 submitted that a Fixed Deposit of Rs. 1,40,000/- (Rupees One Lakh and Forty Thousand Only) was maintained in the name of the Corporate Debtor. However, it was frozen, and a lien was marked on the same on 29.09.2006.

5. It is important to mention herein that the notices pursuant to the present IA were sent to all the Respondents for their representation. Further, various opportunities were given to the Respondents to submit their replies, *vide* orders dated 11.09.2023, 09.10.2023, 16.11.2023, and 08.12.2023. Since no reply was received from Respondent No. 1, therefore, this Adjudicating Authority, *vide* order dated 31.01.2024, forfeited its right to file the reply. Respondent No. 2 has filed its reply dated 08.12.2023. No reply has been received from Respondent No. 3 and Respondent No. 4.

6. We have heard the learned counsel for the parties and perused the Application and reply along with documents attached therewith.

7. It has come to notice of this Adjudicating Authority the name of the Corporate Debtor i.e., M/s Taurus Exports Private Limited has been struck from the Register of Companies maintained by the RoC.
8. The case, simpliciter, is that the accounts of the Corporate Debtor along with the FD were marked frozen, admittedly by the Respondents' banks namely, Respondent No. 2, Respondent No. 3, and Respondent No. 4 pursuant to the notice of Income Tax Department dated 13.02.2019 bearing reference no. F.NO.ITO/WARD-25(1)/Attachment/2018-19/801. Subsequently, this Adjudicating Authority passed the Liquidation order *vide* its order dated 18.02.2021, appointing *Mr. Anoop Bhatia* as Liquidator. The Applicant is duty-bound to proceed with the liquidation, and thus, filed the present Application.
9. 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.”

10. Further, Respondent No. 1 neither filed any reply nor submitted any claim before the Resolution Professional. Thus, due to non-submission of any claim before the RP, Respondent No. 1 is not entitled for any payment under the provision of the Code.
11. We, therefore, in the light of prayers made, issue the following directions with an immediate effect:
- a. The Notice of the Income Tax Department dated 13.02.2019 bearing reference no. F.NO.ITO/WARD-25(1)/Attachment/2018-19/801 shall stand vacated as it is inconsistent with the provision of the Act.
 - b. Respondent No. 2 is directed to remove lien from the Bank Accounts of the Corporate Debtor and from the Fixed Deposits maintained by them bearing account no. 663005113045.
 - c. Due to the non-submission of any reply from Respondent No. 3 and 4, it is not clear whether the accounts maintained, bearing A/c Nos. 007010200054083 and 467901010036589 respectively, are marked lien by them pursuant to the order of the Income Tax Department. However, if they are indeed marked as such, they shall be removed.
 - d. Respondent no. 2, Respondent no. 3, and Respondent no. 4, shall proceed to close the bank account of the Corporate Debtor.

The aforementioned directions shall be subject to the Applicant getting the name of the Corporate Debtor restored in the records maintained by RoC.

12. 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.
13. The Liquidator shall be at liberty to move appropriate application in case of any breach of the direction mentioned above. Furthermore, the non-compliance with the aforesaid directions would attract strict penalties. Upon non-compliance of the directions enumerated above, adverse orders may be passed against the Respondents.
14. The Registry is directed to serve a copy of this Order to the Respondents. The Liquidator shall also be duty bound to inform the Respondents. Accordingly, IA No. 502/JPR/2023 stands disposed of.


DEEP CHANDRA JOSHI,
JUDICIAL MEMBER


RAJEEV MEHROTRA,
TECHNICAL MEMBER