



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, C-IV**

IA-616/2023

IN

CP(IB) No.923/MB-IV/2020

Under Section 60(5) of the I&B Code, 2016

In the matter of

Gajesh Labchand Jain

(Liquidator)

...Applicant

Versus

Axis Bank Limited and Ors.

...Respondent(s)

In the matter of:

Axis Bank Limited

[CIN: L65110GJ1993PLC020769]

...Financial Creditor

V/s

Talwalkars Healthclub Limited

[CIN: U93090MH2016PLC280127]

...Corporate Debtor/Respondent

Order Dated: 18.05.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Liquidator :

Mr. Yashish Chandra a/w
Mr. Ramakant Rai, Mr.



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Ravin Kapur and Mr. Shivam
Sharan, Adv.

For the Respondent(s) : Mr. Nikhil Rajani i/b V.
Deshpande & Co., adv.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Interlocutory Application no IA-616/2023 is filed on 24/11/2022 by the Liquidator, Sh. Gajesh Labhchand Jain of M/s Talwalkars Healthclubs Limited (**Corporate Debtor**) seeking directions for defreezing of bank accounts maintained with Axis Bank (i.e. Respondent No. 2), which came to be attached by following authorities to recover the dues –
 - a. ECONOMIC OFFENCE WING i.e. Respondent No. 1
 - b. INCOME TAX DEPARTMENT i.e. Respondent No. 3
 - c. GST DEPARTMENT, SECUNDERABAD i.e. Respondent No. 4
 - d. GST DEPARTMENT, BENGALURU i.e. Respondent No. 5
 - e. GST DEPARTMENT, VISHAKHAPATNAM i.e. Respondent No. 6
2. Talwalkars Healthclubs Limited (**THL** or **Corporate Debtor**) is a listed public company incorporated on 23.04.2016 under the Companies Act, 2013, with the Registrar of Companies, Maharashtra, Mumbai. This Adjudicating Authority *vide* order dated 09.03.2021 initiated the corporate insolvency resolution process (**CIRP**) for the Corporate



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Debtor. However, since no resolution plans were received, this Adjudicating Authority *vide* order dated 28.04.2022 initiated liquidation proceedings for the Corporate Debtor. Pursuant to said order, the Applicant was appointed as the liquidator of the Corporate Debtor and has been working diligently in accordance with applicable law.

2.1.The Corporate Debtor maintains following accounts with

Respondent No. 2:

Sr. No.	Account number
1	918020063714539
2	918020051650069
3	918020063715150
4	918020052273643
5	918020063717541
6	918020052347087
7	918020063718388
8	918020052280340
9	918020063724646
10	918020052328811
11	918020063723931
12	918020052272459
13	918020063718764
14	918020052338889
15	918020063719385
16	918020052270822
17	575010200005074
18	575010200005067
19	918020052321807
20	917020021975773
21	917020021977601
22	918020052339125
23	918020052827594
24	918020053146179
25	918020063721537



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26	918020053323745
27	918020063722307
28	918020052344321
29	918020063722750
30	918020052329144
31	918020063723135
32	918020052827415
33	918020063707667
34	918020052350119
35	918020063708275
36	918020052469048
37	918020063723562
38	918020052321946
39	918020063708754
40	918020052827491
41	918020063708550
42	918020052310726
43	918020052822025
44	918020056305036
45	918020054475995
46	918020037117076
47	918020054476040
48	918020037903880
49	918020037736046
50	918020054475869
51	918020054523492
52	918020054006560
53	916020036877793
54	918020040303912
55	918020054476134
56	918020054804762
57	918020037854306
58	918020054475937
59	918020054641626
60	918020054476095
61	918020054262090
62	918020054475762
63	918020089815643
64	918020063721338
65	918020053324094
66	918020063720275



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67	918020052316410
68	918020019577275
69	918020021668705
70	918020063708567
71	918020052340659
72	918020063721951
73	918020052827538
74	918020063708877
75	918020052347003
76	918020063715710
77	918020052316229
78	918020063711404
79	918020052276529
80	918020063713617
81	918020052278428
82	918020063713756
83	918020052274976
84	918020052271087
85	918020052280081
85	918020063714377
86	918020038997222
87	918020063715024
88	918020052338960
89	918020063715341
90	918020052329018
91	918020063715930
92	918020052276862
93	918020063719709
94	918020052275173
95	918020063716962
96	918020052280230
97	918020063717431
98	918020052316290
100	918020063718072
101	918020052339044
102	918020063718557
103	918020052344091
104	918020063718832
105	918020052321496
106	918020063720107
107	918020052293618



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108	918020063721977
109	918020052270961
110	918020063709922
111	918020052347045
112	918020052278729
113	918020063712672
114	918020052346945
115	918020063713743
116	918020052311839
117	918020063710113
118	918020052192955
119	918020063710252
120	918020052321632
121	918020063711019
122	918020052278583
123	918020063711488
124	918020052827374
125	918020063724091
126	918020053324023
127	918020063721045
128	918020052827431
129	918020063712216
130	918020051870302
131	918020063712614
132	918020052328918
133	918020063713297
134	918020052943931
135	918020063714364
136	918020063714364
137	918020052350229
138	918020063715167
139	918020052827444
140	918020063718544
141	918020052821996
142	918020063718719
143	918020052350041
144	918020063709595
145	918020063713963
146	918020063711860
147	918020063711983
148	918020063713963



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149	918020052280081
150	918020052819922
151	918020052822087
152	918020063716548
153	918020052821970
154	918020063707777
155	918020052822041
156	918020063710689
157	918020052047936
158	918020063717099
159	918020052349986
160	918020063708864
161	918020052827457
162	918020063713471
163	918020052340594
164	918020063710537
165	918020052275115
166	918020063717082
167	918020052293838
168	918020063712371
169	918020052827484
170	918020063711200
171	918020052827512
172	918020063709207
173	918020052276684
174	918020063709430
175	918020052293760
176	918020063710045
177	918020063710552
178	918020063710223
179	918020052827477
180	918020063712999

2.2. Presently, the Corporate Debtor is under Liquidation under the Insolvency and Bankruptcy Code, 2016, but the continuation of debit freeze on bank accounts of the Corporate Debtor is adversely affecting realisation value of the Corporate Debtor. In this manner,



attachment and debit freeze of bank accounts serve as a hinderance in the achievement of value maximization and also makes it difficult for the Applicant to fulfil his duties as liquidator of the Corporate Debtor.

3. Pursuant to the orders dated 12.04.2022, Respondent No. 1 directed the Respondent No. 2 to freeze the bank accounts of the Corporate Debtor as listed in the said order. It is alleged by Respondent No.1 that the Corporate Debtor availed various loan facilities from their Bank and transferred loan amount in other accounts, such transfer amount to Rs.237.80 Crores is under investigation and directed Respondent No.2 debit freeze the accounts stated in the said communication.

3.1. The Applicant requested for the revocation of the imposition of the debit freeze *vide* letters dated 16.11.2022 and 07.12.2022 issued to Respondent No. 1. Additionally, the Applicant cooperated and issued a letter to Respondent No. 1 with all the information required by Respondent No. 1 pursuant to the notices dated 11.11.2022 and 15.11.2022 issued under Section 160 and 91 of the Code of Criminal Procedure, 1973, by Respondent No. 1 to the Applicant. However, no action to de-freeze the bank accounts has been taken by the Respondents.



4. The Applicant was also informed by Respondent No. 2 that its bank accounts have been put on hold/debit-freeze/freeze pursuant to orders of various other statutory authorities such as *inter alia* Respondent No. 3, 4, 5 and 6. However, not all such orders were shared with the Applicant. Accordingly, the Applicant had also issued letters dated 21.11.2022 to Respondent No. 3 informing it regarding the initiation of liquidation proceedings and requesting it to direct Respondent No. 2 to revoke the debit freeze/freeze/lien/attachment from bank accounts of Corporate Debtor, stating that the claim of Income Tax Department for a sum of Rs.141,78,69,532/- has been admitted vide Form C dated 22.07.2022 filed by the Department and the same shall be dealt with in accordance with the provisions of the I&B Code .

4.1. Additionally, the Applicant came across letter dated 21.03.2019 issued by Respondent No. 4 to Respondent No. 2. Further, the Applicant also came across letter dated 24.07.2019 issued by Respondent No. 5 to Respondent No. 2. In both of the letters Respondent No. 2 was informed regarding amount due to government by the Corporate Debtor, and directing it to freeze the account bearing number 916020036877793 and other bank accounts associated with similar PAN. The Applicant also came across third party recovery notice letter dated 26.11.2021 issued by Respondent



No. 6 to Respondent No. 2, informing it regarding amount due to government by the Corporate Debtor, and in effect imposed freeze on accounts of the Corporate Debtor.

4.2. On 21.11.2022, the Applicant issued letters to Respondent No. 4, 5, and 6 informing them regarding the initiation of liquidation proceedings for the Corporate Debtor, and requesting it to direct Respondent No. 2 to revoke the freeze imposed on bank accounts of Corporate Debtor.

5. Respondent No.6 has filed reply claiming an outstanding of Rs.60,000/- for belated filing of GST returns and the Bank account shall be defrozen only after recovery of this Demand.

6. The Applicant liquidator has submitted that the Respondent No.6 has already filed its claim *vide* Form C dated 19.07.2022 before the Applicant-Liquidator for a sum of INR 60,000/- (Indian Rupee Sixty Thousand Only), as an operational creditor. The same has already been admitted by the Applicant-Liquidator in the ongoing liquidation proceedings of the Corporate Debtor. Notably, Respondent No. 3 has also submitted a claim amounting to INR 1,41,78,69,532 (Indian Rupee One Hundred Forty-One Crore Seventy-Eight Lakh Sixty-Nine Thousand Five Hundred Thirty-



Two only) to the Applicant-Liquidator, which has been admitted in the ongoing liquidation proceeding of the Corporate Debtor.

6.1. It is further submitted by the Applicant that in accordance with Section 35 of the Code, it is the bounden duty of the Applicant-Liquidator *to take into his custody or control all the assets, property, effects and actionable claims of the Corporate Debtor.* Also, in accordance with Section 82 of APGST Act, 2017, an exception has been created with regards to the Code and it does not in any manner mandates the creation of charge over property of the Corporate Debtor. Rather it creates an exception for the same. Section 82 of APGST Act is reproduced below for ready reference:

*“Notwithstanding anything to the contrary contained in any law for the time being in force, **save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (Act No. 31 of 2016)**, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.”*

6.2. The Applicant has also relied upon the decision in the case of *Anish Niranjan Nanavaty vs HDFC Bank and Others. I.A. 309/MB/2021 in CP (IB)3025(MB)/2019* to contend that freeze of the account of the Corporate Debtor during the moratorium period is prohibited under Section 14 of the Code; and the



decision in the case of *Mr. Hemant Mehta Vs. Commissioner of State Tax. Company Appeal (AT) (Insolvency) No. 328 of 2022* to contend that adjudicating authority is duty bound to exercise the residuary jurisdiction vested in its Section 60(5) of the Code to order de-freezing of the account and transfer the funds lying therein to the liquidation account so to form part of the liquidation estate. It is submitted that in the case of Mr. Hemant Mehta (Supra), the Hon'ble NCLAT had directed to de-freeze the Bank accounts.

7. This Bench heard the counsel and perused the materials available on record.

7.1. This Bench finds that Respondent No.1 is investigating into misappropriation of borrowings by Corporate Debtor from the lenders. Pending such investigation, the investigating authority considered it appropriate to freeze the bank accounts so as to avoid further diversion. This Bench finds that this order was passed on 12.04.2022, while moratorium u/s 14 of the Code in the case of Corporate Debtor came into force on 11.01.2021, hence Respondent No.1 could not have sought debit freeze of the Bank account during the moratorium period. This Bench is of the considered view that the action of the Investigating



Officer was to protect further diversion of funds lying in the account of Corporate Debtor, in the interest of its creditors as well as in public interest. At this juncture, this Bench feels that the provisions of the Code take into account the interest of creditors and if any diversion has taken place from the account of the Corporate Debtor to another person, the same is recoverable from such person under the provisions of avoidance transactions under the Code. Hence, it would be appropriate to order revocation of debit freeze on accounts maintained by the Corporate Debtor with Respondent No. 2 in terms of order passed by Respondent No. 1

7.2. In the case of Mr. Hemant Mehta (Supra), the Hon'ble NCLAT had revoked the order of Commercial Tax Authority freezing the account of the Corporate Debtor who was in liquidation. This Bench feels that facts of that case and the present case vis-à-vis Respondent No.3 to 6 are similar and following the decision of Hon'ble NCLAT, this Bench directs the Axis Bank to revoke the attachment of Bank account pursuant to orders/letters issued by Respondent No.3 to 6 without any further delay.



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7.3. In view of the above, this Application is allowed with direction to the Respondent No.2 to defreeze the accounts of the Corporate Debtor pursuant to order(s) of Respondent No. 1, 3, 4,5 & 6.

Sd/-
Prabhat Kumar
Member (Technical)

18.05.2023

Sd/-
Kishore Vemulapalli
Member (Judicial)