NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)

PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 14.10.2022 AT 10.30 AM

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
TCP(IB) No.32/7/AMR/2019	IA(IBC)/66/2021	7 of IBC	Axis Bank Ltd Vs Sevenhills Healthcare Pvt Ltd

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

IA(IBC)/66/2021 is allowed, vide separate orders.

Sd/-

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI

IA No.66 of 2022
IN
TCP (IB) No.32/7/AMR/2019

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016

In the matter of
SEVENHILLS HEALTHCARE PRIVATE LIMITED

BETWEEN:

Mr.Abhilash Lal,
Resolution Professional of Sevenhills Healthcare Private Limited
C 192, Belvedere Towers, DLF Phase II,
Gurgaon – 122 002

…. Applicant

AND

1. Office of Collector, Mumbai,
   Suburban District,
   Administrative Building, 10th Floor,
   Government Colony, Bandra (East),
   Mumbai -400 051.

2. Office of Tehsildar, Andheri,
   First Floor, Dadabhai Naoroji Road,
   Andheri (West), Mumbai -400 058

.... Respondents

Date of Orders pronounced on: 14.10.2022

***Coram*:**

Justice Telaprolu Rajani, Member Judicial.

Sd/-

Parties/Counsels present:

For the Applicant : Mr.S.Ravi, Senior Counsel

ORDER

1. This application is filed by the Applicant/Resolution Professional under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016, seeking a direction to the Respondents to release the attachment of funds lying in Account Number 910020037717887 of Sevenhills Healthcare Private Limited maintained with Axis Bank Limited. The respondents remained exparte.

2. The facts of the case briefly are as follows:

The Account No. 910020037717887 of Sevenhills Healthcare Private Limited i.e., Corporate Debtor (CD) maintained with Axis Bank Limited is attached, which came to the knowledge of the Applicant during the operations of the CD. The Applicant has not been able to locate any letter or notice of attachment in the records of the CD. By e-mail dated 01.06.2021, the Applicant requested the Axis Bank to provide details of attachment. In response, the Axis Bank informed the Applicant that the Bank Account has been frozen since 31.12.2013 to the tune of Rs.48,47,224/-. A perusal of the bank statement shows that the attached amount has not been utilized by the Applicant since the initiation of Corporate Insolvency Resolution

Sd/-

Process (CIRP) of the CD.

Upon receiving the above intimation from Axis Bank, the Applicant conducted a search of the records of the CD and found that on 05.01.2006, the applicant executed a lease deed with the Municipal Corporation of Greater Mumbai (MCGM) in respect of land in Marol Village, which was subsequently registered. Thereafter, the land was held for agricultural purposes. The Applicant, in April, 2009, applied for grant of non-agricultural permission in respect of the land for construction of the hospital, doctor and staff quarters and a diagnostic centre. Plans were approved by the MCGM. Thereafter, a controversy arose between the CD and Respondent No.1 as regards the permission. Later it was intimated to the CD by Respondent No.1 that N.A. permission was granted to the CD. Accordingly CD was called upon to pay the requisite conversion tax, which payment was made by the CD.

By a separate Order dated 16.07.2012, Respondent No.1 directed the regularization of non-agricultural use by the CD, subject to certain conditions i.e., the payment of (i) conversion tax by the CD; (ii) NA assessment and fine amounting to INR 98,04,256/- in respect of the hospital. The orders were challenged by an appeal and *status quo* was ordered to be maintained. Despite his best efforts, the Applicant has been unable to locate a copy of the said order.

Upon the order directing *status quo* to be maintained being

Sd/-

passed, the erstwhile Advocates for the CD addressed a letter to the Respondents informing the Respondents of the continuation of the *status quo* Order and requesting the Respondents to not take any coercive action against the CD.

In view of Axis Bank's email dated 02.06.2021 and from the limited record available with the Applicant, it appears that the Axis Bank account was frozen during the *status quo* order being in operation, due to the CD's default in payment of non-agricultural tax under the provisions of the MLRC.

Appeals came to be decided in 2015 and were partly allowed directing that the three orders be revised to the extent of the penalty amount only. Accordingly the matters were to be remanded to the Respondent No.1 for re-enquiry to reconsider the penalty with the other parts of the three orders remaining unchanged.

Thereafter, one day after the order directing commencement of CIRP against the CD, an order came to be passed by Respondent No.1 refusing to interfere with the amount payable by the CD towards NA assessment and penalty.

Despite the CIRP order being in operation, a demand was made by Respondent No.2 upon the CD for an amount of INR84,02,549/-. It is pertinent to point out that only the amount pertaining to the

Sd/-

penalty is in controversy, the remaining requisite payments have been duly made by the CD from time to time. The attachment has continued by the Respondents even after the intimation of the CIRP of the CD, as a result of which the Applicant has not been able to utilize the attached amount till date.

Hence this Application seeking to release the attachment of the above-mentioned amount.

3. Heard the Counsel for the Applicant. The counsel for the applicant relies on a judgment of NCLT, Kolkata in IA.No.1477/KB/2020 in CP(IB) No.184/KB/2018, wherein it was held that 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 the effect, Income Tax Act,1962, being one of them, was amended vide third schedule of the Code. 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. The other judgement relied upon is rendered by the NCLT, Mumbai Bench, in IA.2403/2021, IA.2061/2021 & IA.1841/2020 in CP(IB)-4442(MB)/2018, wherein a judgment of the NCLT, Kolkata Bench in Ram Ratan Modi (RP of Duncans Industries Ltd.) vs. ICICI

Sd/-

Bank (Darjeeling Branch) is referred to, wherein it was observed as follows:

> "“*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. 63xxxxxxxx68 and the statutory authorities are restrained from levying any further attachment or lien on the account of the corporate debtor company, with immediate effect*”."

4. Other judgment is rendered by the NCLT, New Delhi in (IB)-547(PB)/2018, which is also to the same effect. Hence, in view of the above position of law, the Application is allowed and there shall be

Sd/-

a direction to the Axis Bank to release the attachment of the amount to INR 48,47,224/- lying in Account No.910020037717887 of the CD.

In the result, IA (IBC) No.66/2022 in TCP (IB) No.32/7/AMR/2019 is allowed and is accordingly disposed of.

Sd/-

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Swamy Naidu