

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

**IA (IB) No.1048/KB/2021
in
CP (IB) No.1161/KB/2018**

In the matter of

Bishandas Iron Works

...Operational Creditor

Versus

Swati Mining Private Limited [U14200WB2007PTC114999]

...Corporate Debtor

IA (IB) No.1048/KB/2021

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

In the matter of

Santanu Brahma, Liquidator of Swati Mining Private Limited

...Applicant

Versus

1. **The State Bank of India**, Bentick Street Branch, 20 R.N. Mukherjee Road, Rasoi Court Building, 1st Floor, Kolkata – 700001, West Bengal.
2. **The Department of Income Tax**, Government of India through its Deputy Commissioner having its office at Circle 5(1) Kolkata, Ayakar Bhawan, P-7, Chowringhee Square, Kolkata – 700069, West Bengal

...Respondents

**Date of hearing: 01 April, 2022
Order pronounced on: 18 April, 2022**

Coram:

Shri Rajasekhar V.K.

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Appearances (via video conferencing):

For the Applicant

: Mr. Prodyut Banerjee, Advocate

ORDER

Rajasekhar V.K., Member (Judicial)

1. This court convened *via* video conferencing.
2. This is an Interlocutory Application filed under section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) by Mr. Santanu Brahma, Liquidator of Swati Mining Private Limited (*'Applicant'*), against the State Bank of India (*'SBI'*) and the Income Tax Authority, Government of India (*'Income Tax Authority'*), *inter alia*, seeking the following reliefs:-
 - a. For direction on the Income Tax to vacate its attachment order on Current Account No. 64049859211 of Swati Mining Private Limited (*'Corporate Debtor'*) maintained with the SBI.
 - b. Also to direct the SBI to close the said Account of the Corporate Debtor and transfer the amount to 'Swati Mining Private Limited In Liquidation', Current Account No.000605033953, ICICI Bank, Kolkata, R.N. Mukherjee Road.
3. ***The Ld. Counsel appearing on behalf of the Applicant submits as follows:***
 - 3.1 This Adjudicating Authority *vide* order dated 26 September, 2019, appointed the Applicant as the Resolution Professional. Subsequently, on appointment a notice dated 04 November, 2019 was sent by the Applicant to SBI stating to close the Current Account No. 64049859211 (*'Account'*) of the Corporate Debtor and to transfer the balance to the then newly opened Bank Account for the purpose of Corporate Insolvency Resolution Plan (*'CIRP'*).¹
 - 3.2 The Applicant kept on pursuing the SBI on a regular basis for closure of account but no response was received by the Applicant until July, 2021, where SBI verbally informed the Applicant about the attachment of the Account by the Income Tax. Hence, the Account could not be closed. It is pertinent to

¹Annexure – A of the I.A.

mention that the Income Tax Authority was aware of the CIRP against the Corporate Debtor.²

- 3.3 After receiving the information verbally from the SBI, the Applicant sent a letter dated 06 July, 2021 to concern the Income Tax Authority, requesting to discharge the attachment order in respect to the Account of the Corporate Debtor.³ Several reminder e-mails and notices were also sent on 07 September, 2021 by the Applicant.⁴
- 3.4 Further, on receiving no Resolution Plan this Adjudicating Authority *vide* its order dated 22 January, 2021, passed an order for liquidator of the Corporate Debtor and the Applicant was appointed as the Liquidator. On the order of liquidation the nomenclature of the CIRP Account was changed from ‘*Swati Mining Private Limited – in CIRP*’ to ‘*Swati Mining Private Limited – In Liquidation*’.
- 3.5 The Account falls under the ambit of Liquidation Estate of the Corporate Debtor as per section 36 of the Insolvency and Bankruptcy Code, 2016.

Analysis and Findings

4. We have perused the documents on record. However, there is no reply on record filed by the Respondents.
5. Upon perusal of the mail dated 07 January, 2020 at page 20 of the Application it is apparent that the Assessment Order⁵ by the Income Tax Authority is of 01 December, 2019 and the Corporate Debtor was admitted into CIRP on 08 July, 2019. Hence, the debt pertains to pre CIRP period.
6. Further, the intention of the legislature behind providing the moratorium under section 14 of the Code is to provide the Corporate Debtor a breathing spell in which he is to seek to reorganize his business⁶ and the conduct by the by the

² Annexure – D of the I.A.

³ Annexure – B of the I.A.

⁴ Annexure – C & E of the I.A.

⁵ ITBA/AST/S/144/2019-20/10226729638(1)

⁶ Innovative Industries Limited v ICICI Bank Limited, 2018 (1) SCC 407

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Bishandas Iron Works v. Swati Mining Private Limited

Income Tax Authority would frustrate the objective behind moratorium. Thus, in light of the above, we hereby order as follows:

- i. Income Tax to vacate its attachment order on Current Account No. 64049859211 of Swati Mining Private Limited (*'Corporate Debtor'*) maintained with the SBI within three working days from the date of this order, and;
 - ii. SBI to close the said Account of the Corporate Debtor and transfer the amount to the account '*Swati Mining Private Limited In Liquidation*', Current Account No.000605033953, ICICI Bank, Kolkata, R.N. Mukherjee Road, within three working days after the Assessment Order is being vacated.
7. Accordingly, the *IA (IB) No.1048/KB/2021 in CP (IB) No.1161/KB/2018* is disposed of.
8. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**BALRAJ
JOSHI**

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BALRAJ JOSHI
Date: 2022.04.18
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Balraj Joshi
Member (Technical)

**Rajasekha
r V K**

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Rajasekhar V K
Date: 2022.04.18
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Rajasekhar V.K.
Member (Judicial)

The Order is pronounced on 18 April, 2022

Safura A., LRA