

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

**Hearing Through: VC and Physical (Hybrid) Mode**

**CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)**

**CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 13.02.2024 AT 10:30 AM**

<b>TRANSFER PETITION NO.</b>	
<b>COMPANY PETITION/APPLICATION NO.</b>	<b>IA (IBC)/420/2023 in CP(IB) No.42/7/HDB/2020</b>
<b>NAME OF THE COMPANY</b>	<b>Icon Commodities Pvt Ltd &amp; another</b>
<b>NAME OF THE PETITIONER(S)</b>	<b>BRS Enterprises &amp; Trading Ltd</b>
<b>NAME OF THE RESPONDENT(S)</b>	<b>Icon Commodities Pvt Ltd &amp; another</b>
<b>UNDER SECTION</b>	<b>7 of IBC</b>

**ORDER**

**IA (IBC)/420/2023**

Orders pronounced, recorded vide separate sheets. In the result, this Petition is allowed.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – II**

**I.A. (IB) No. 420 OF 2023  
IN  
CP (IB) No. 42/7/HDB/2020**

*[Application Under Section 35 (n) and 60 (5) of the  
Insolvency and Bankruptcy Code, 2016 Read with Rule 11  
of The National Company Law Tribunal Rules, 2016]*

**Between:**

**Ms. Mummaneni Vazra Laxmi**

Liquidator of  
Icon Commodities Private Limited

**...Applicant/Liquidator**

**Versus**

The Branch Manager,  
Bank of Baroda,  
Abids Branch,  
Door No. 4-1-366, Rbvr Reddy Hostel Complex,  
Main Road, Abids, Hyderabad – 500 001  
(Hanuman Tekdi, Near Jaya International Hotel)

**...Respondent**

**In the matter of:**

M/s BRS Enterprises & Trading Limited

**...Petitioner/Financial Creditor**

**Versus**

M/s. Icon Commodities Private Limited

**...Corporate Debtor**

Date of Order: 13.02.2024

**Coram:**

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

**Counsel/Parties present:**

For the Applicant : Ms. Mummaneni Vazra Laxmi, Liquidator  
For the Respondent : Ld. Counsel Mr. Srinivas Chitturu

Heard on: 02.02.2024

**Per: Sanjay Puri, Member (Technical)**

**ORDER**

1. This is an application filed by the Liquidator of M/s. Icon Commodities Private Limited, the Corporate Debtor (**CD**) seeking a direction to the Respondent Bank to unfreeze the account of the CD held in its Abids Branch in Hyderabad with account No. 05110200000353.
2. The CD in this case was admitted into CIRP on 25.03.2021, and later on 03.12.2022 it was approved for liquidation by this Authority.
3. During the liquidation process, the balance available in the account of CD in Abids Branch of the Respondent Bank was sought to be transferred to the Liquidation account by the Liquidator. The Respondent Bank however, informed that there was lien existing on the account and that they have referred the matter to their legal department to seek advice from them for further course of action.

4. The Applicant/Liquidator has cited cases of ***M/s. Asis Global Ltd in IA 2061/2021 in C.P (IB)-4442(MB)/2018*** decided by ***Hon'ble NCLT, Mumbai Bench and M/s. Ram Ratan Modi (RP of Duncans Industries Ltd) Vs. ICICI Bank in IA No. 1477/KB/2020 in CP (IB) No. 184/KB/2018 decided by Hon'ble NCLT Kolkata Bench and M/s. SMV Commodities and Trading Private Limited in CP (IB) No. 207/HDB/2020 decided by Hon'ble NCLT, Hyderabad Bench*** to claim that the attachment of bank account of a Corporate Debtor during CIRP/Liquidation is violation of Section 14 of IBC.
5. The Respondent Bank however submitted that the aforesaid account No. 05110200000353 was being maintained by the CD for availing bill collection facility from the Respondent Bank. It is claimed that the CD had availed bill collection facility and Rs 36,79,341 was due to the bank towards charges for the said facility.
6. It is further submitted that this amount of Rs 36,79,341 due from the CD was marked as lien on the aforesaid current account, consequent on which the credit amounts received into that account were held to recover the lien amount.
7. It is submitted that it is only after the Liquidator approached the Respondent bank that they became aware of the proceedings under IBC<sup>1</sup> initiated against the CD. It was then noticed that a credit amount Rs 36,77,353 was being held by

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<sup>1</sup> Insolvency & Bankruptcy Code 2016

the system towards the lien of the bank for realization of its dues of Rs 36,79,341.

8. The Respondent has thus claimed a set off the aforesaid amounts under Regulation 29 of IBBI (Liquidation Process) Regulations. It is stated that after the set off, a further amount of Rs 1987 was due from the CD, for which the Respondent has filed Form D before the Liquidator on 24.05.2023.
9. After hearing both sides and after going through the records. it is clear that while the Respondent Bank is entitled to set-off the sums credited to the account of CD against the amounts due to the bank as per the Regulation 29 of the Liquidation Regulations<sup>2</sup>, it can only be the sums which were credited prior to the commencement of CIRP.
10. Regulation 29 applies to the situations, where there are mutual dealings between the CD and another party. Explaining the term 'mutual dealings' in the case of **Bharti Airtel**<sup>3</sup> Hon'ble Supreme Court held that:

*“Mutual dealings are not so much concerned with the nature of the claims, but with the relationship and apposite identity of the parties giving rise to*

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<sup>2</sup> Regulation 29 of IBBI (Liquidation Process) Regulations, 2016

*Mutual credits and set-off:- where there are mutual dealings between the Corporate Debtor and another party, the sums due from one party shall be set off against the sums due from the other to arrive at the net amount payable to the Corporate Debtor or to the other party.*

<sup>3</sup> Bharti Airtel Ltd. v. Vijaykumar V. Iyer: (2024) SCC OnLine SC 4 [Paras 22 & 23]

*the respective claims, such that it would offend one's sense of fairness or justice to allow one to be enforced without regard to the other.”*

*“The relationship and the nature of identity of the corporate debtor undergo a change on the commencement of the corporate insolvency resolution process. Set-off of the dues payable by the corporate debtor for a period prior to the commencement of the corporate insolvency resolution process cannot be made and is not permitted in law from the dues payable to the corporate debtor post the commencement of the corporate insolvency resolution process.”*

11. As explained by Hon'ble Supreme Court, the mutual dealings between the CD and the Bank ended the day CIRP commenced, as the '*nature of identity*' of the CD underwent a change. Therefore, for the purposes of Regulation 29, set-off cannot be done from the amounts payable to the CD post commencement of CIRP.
12. However, as further explained in the same ***Bharti Airtel***<sup>4</sup> judgement,

*“Given the aforesaid legal position, we do not think that the provisions of statutory set-off in terms of Order VIII Rule 6 of CPC or insolvency set-off as permitted by Regulation 29 of the Liquidation Regulations can be applied to the Corporate Insolvency Resolution Process. The aforesaid rule would be, however, subject to two*

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<sup>4</sup> Supra – Para 30

*exceptions or situations. The first, if at all it can be called an exception, is **where a party is entitled to contractual set-off, on the date which is effective before or on the date the Corporate Insolvency Resolution Process is put into motion or commences.** The reason is simple. The Corporate Insolvency Resolution Process does not preclude application of contractual set-off. During the moratorium period with initiation of the Corporate Insolvency Resolution Process, recovery, legal proceedings etc. cannot be initiated, enforced or remain in abeyance. Besides the moratorium effect, the terms of the contract remain binding and are not altered or modified.”*

Therefore, if prior to CIRP, any contract between the CD and the Bank stipulated set-off of amounts credited to the CD’s account against the lien amounts, the sums so credited could have been adjusted.

13. The lien statement filed by the Respondent Bank on pages 11 & 12 of their counter reply shows that the lien amounts became due and payable during the years 2011 to 2014 i.e., much before the CIRP commenced on 23.05.2021. However, no details have been given for the amounts credited to the CD’s account by the Respondent Bank.
14. The Respondent bank is therefore directed to unfreeze the CD’s account, without setting off the lien amounts against the amounts credited in that account (No. 05110200000353)

after the CIRP commenced on 25.03.2021, and transfer the balance transferred to the Liquidation Account specified by the Liquidator. Any amount credited in that account before CIRP date of 25.03.2021, however could be adjusted against the lien amounts, if so agreed upon between the parties through an explicit or implied contract.

With the above directions, the I.A. (IB) No.420 of 2023 in CP (IB) No. 42/7/HDB/2020 is allowed and disposed off.

**Sd/-**  
**(SANJAY PURI)**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**(RAJEEV BHARDWAJ)**  
**MEMBER (JUDICIAL)**

*Vamsi*