

**N THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**
*(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)*

**IA No.580 of 2022 in
CP (IB) No.52/BB/2017**
U/s 33 of I&BC, 2016
R/w Rule 11 of NCLT Rules, 2016

In the matter of:

Suresh Kannan

Liquidator

For Camson Bio Technologies Limited
E-10A, Kailash Colony, Greater Kailash,
New-Delhi- 110048

... Applicant

Versus

1. Assistant Commissioner of State Tax Unit-4

5th Floor, D-Block,
M.S. Building, Lal Daarwaja
Ahmedabad-380001
Associate Décor Limited

... Respondent No.1

2. HDFC Bank Limited

Through Branch Manager
Mr. Anand Mishra
B/0002 to 0004 Ground Floor
Sakar VII- Nehru Bridge Corner
Ashram Road, Ahmedabad
Gujarat-380009

... Respondent No.2

3. HDFC Bank Limited

Through Branch Manager

Mr. ChidanandaSanna
548/D, Maruthi Mansion
CMH Road, Indira Nagar
Bengaluru, Karnataka- 560038

... Respondent No. 3

Order delivered on: 7th December, 2023

Coram: 1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Present/Counsels Present:

For the Applicant : Shri Raghuram Cadambi
For R-1 : Shri Soham M Joshi

ORDER

Per: BENCH

1. This application has been filed by the Liquidator of M/s Camson Bio Technologies Ltd. (Corporate Debtor) under Section 35 and 60(5) of the Insolvency and Bankruptcy Code, read with Regulation 41 of the IBBI (Liquidation Process) Regulations, 2016 seeking the following reliefs:

(a) Direct the Respondent No. 1, to reverse/return an amount of Rs. 16,93,342.10 which was remitted to them on 28.01.2022 without the permission or authorization of the liquidator by the Respondent No. 2 from the 'M/s Camson Biotechnologies L In liquidation' bank account of the Corporate Debtor bearing No. 5020005478940;

(b) Direct Respondent No.1 to pay a compensation of Rs. 5,00,000 for hampering the smooth conduct of liquidation process of the

Corporate Debtor and to pay all amounts of litigation expenses incurred by liquidator for this case such as Advocate Fee and other expenses.

(c) Direct Respondent No. 1 to bear the cost of litigation for perusing the instant application.

(d) To pass any other order/s as this Hon'ble Tribunal may deem and proper in the interest of justice.

2. On the perusal of the instant application, the brief facts are produced herein under:

(a) The applicant after the approval by the NCLT pertaining to his appointment as the liquidator of the Corporate Debtor made a public announcement as per Regulation 12 of the Liquidation Regulations on 15.12.2020 to invite the claims from stakeholders setting the last date for claims as 2.01.2021. The applicant as per Regulation 41 has also opened a bank account in the name of corporate debtor namely, 'M/s Camson Biotechnologies Ltd. Inliquidation' with the Respondent No.3 Bank i.e. HDFC Bank Bengaluru on 31.12.2020 with the account no. bearing 50200054782940. The details of the Corporate Debtor's bank account in-liquidation are as follows:

Bank Name: HDFC Bank

Account Branch: Bengaluru, Indira Nagar, CMH Road

Account No.: 50200054782940

(b) The applicant is aggrieved due to the fact that the Respondent No. 2 and 3 on 28.01.2022 have wrongfully and without any authority and permission of the applicant/liquidator have transferred the entire balance to the tune of Rs. 16, 93, 342 from the Corporate Debtor's liquidation account in favour of the Respondent No.1 i.e. Assistant Commissioner of State Tax Unit, Ahmedabad (hereinafter "GVAT Authorities").

- (c) The applicant contends that the entire balance was contribution made in furtherance of the liquidation process by the Financial Institutions as per Regulation 2A of the Liquidation Regulations and that the no amount is left in the Corporate Debtor's bank account.
- (d) The applicant has even filed a complaint against Respondent No.2 and 3 through CMS portal with the Banking Ombudsman regarding the unauthorised debit without the permission of the authorised liquidator which is registered bearing complaint number N202122002018537. The liquidator has subsequently received the receipt of the complaint lodged stating that the matter has been resolved but no reversal or remission of the amount has been effectuated back into the liquidation account.
- (e) Thereafter, the applicant has sent multiple emails to Respondent No.3 seeking clarification of the transfer, specifically in absence of issuance of cheque of any DD request confirmed by the liquidator himself and sought for immediate reversal of debit. The liquidator contends that neither has any active action been take by the Respondent No.3 and nor any affirmative response been given.
- (f) An email dated. 15.03.2022 was received by the liquidator from Respondent No.3 with respect to the complaint number N202122002018537 whereby the Respondent No. 3 confirmed that the transfer was made in compliance with and in furtherance of the statutory directions received from the VAT authorities. It also stated that the liquidation bank account of the Corporate Debtor was attached to the PAN Card of the company due to which inadvertently the notice received by the VAT authorities was complied with, resulting in the debiting the amount from in-liquidation account of the Corporate Debtor i.e., 'M/s Camson Biotechnologies L

Inliquidation'. The Respondent bank has stated that the request has been made to the VAT authorities to reverse the said amount(s).

- (g) The applicant submits that no claim has been received from Respondent No.1 i.e. GVAT Authorities and despite repeated requests the entire balance amount of the corporate debtor has been remitted to GVAT Authorities without the permission of the applicant/liquidator and the same is not reversed by the Respondent Banks due to the outright denial by Respondent No.1. GVAT Authorities to reverse the funds so remitted by Respondent No.2.
- (h) Therefore, vide email dated 23.03.2022, the Reserve Bank of India, Centralised Receipt and Processing Centre ("RBI CRPC") has intimated the liquidator regarding closure of the complaint bearing no. N202122002018537 and rejection of the said complaint as per Clause 16(2)(a) of the Reserve Bank –Integrated Ombudsman Scheme, 2021 for having no deficiency in service. The said email substantiated the decision of the RBI CRPC by the following attachments which are significant for the purpose of the extant order provided below:

- 1) An attachment order issued by GVAT Authorities to the Respondent No.2 bank dated 18.01.2022 bearing no. 6127/28 wherein the State Tax Officer has attached the bank account of the Corporate Debtor as per Section 44 of the Gujarat Value Added Tax, 2003 for the prescribed limit of Rs. 1, 60, 83, 359 as the outstanding VAT and CST amount along with Interest(s) for the years 2013-2018.
- 2) Letter by Respondent No.3 bank in favour of Respondent No.1 dated 20.01.2022 in response to the attachment order 6127/28 whereby the Respondent Bank has marked the

status of the corporate debtors' account as "No Debit/Hold" with the available balance of Rs. 16, 93, 342 which will continue until the payment is made in effect of the attachment order or till the receipt of the revocation order whichever is earlier.

3) A letter by Respondent No.1 dated 21.01.2022 in favour of Respondent No.2 seeking DD in the name of SBI A/C VAT for the available balance.

4) A letter issued by Respondent No.2 Bank in favour of Respondent No.1 dated 14.02.2022 admitting the fault of debiting the 'In-liquidation account of the Corporate Debtor' requesting reversal of amount to the corporate debtor.

(i) It is submitted that the Respondent No.1 had not submitted the proof of claim in Form C as per Regulation 17 of the Liquidation Regulations until 25.02.2022, much after the deadline to submit the claims as per the Public Announcement which was for a total outstanding amount of Rs. 1, 62, 97, 700 as on 25.02.2022 on unpaid taxes including interests and penalties from the year 2013-2018.

(j) The applicant submits that he is aggrieved by the inaction and inability of the Respondent Banks which has unauthorisedly transferred the entire bank amount to the Respondent No.1 without seeking the permission/approval of the legally appointed liquidator, leaving the current available balance in the 'M/s Camson Biotechnologies L Inliquidation' at Rs.0.00. The applicant is further aggrieved by the blatant denial of the Respondent No.1 GVAT Authorities to reverse the said amount which is hampering the smooth conduct of the Liquidation Process of the Corporate Debtor.

(k) Thus, the applicant has initiated the instant application to protect and preserve the assets of the Corporate Debtor for the wrongful

remittal of the said amount in favour of Respondent No.1 by Respondent No. 2&3 in the capacity of the Liquidator as per Section 35 and 60(5) of the Insolvency and Bankruptcy Code, read with Regulation 41 of the IBBI (Liquidation Process) Regulations, 2016

3. The Respondent No.1 vide affidavit in reply under Diary No.2171 dated 19.04.2023 has *inter alia* contended as under:

- (a) Respondent No.1 states that the claim filed on 28.02.2022 has been crystallized as per Gujarat Value Added Tax Act as well as under The Central Sales Tax Act and even though the alleged inaction has taken place by the Respondent No.2 and 3, the cost of proceeding and the compensation of Rs. 5, 00,000 has been wrongly sought by Respondent No.1 as the communication sent to Respondent no. 2 was in accordance with the recovery of debts under the provisions of Gujarat Value Added Tax Act and Central Sales Tax Act.
- (b) The Respondent No.1 contended that it was never intimated by the Respondent No.2 and 3 that the bank account from which the demand draft is issued is a account under liquidation and only in the prayers clause, Respondent No.1 is asked to remit the amount and rest of the pleadings is averred to Respondent No.2 and 3.
- (c) After the receipt of the attachment order dated 18.01.2022 vide which Respondent No.1 sought payment from Respondent no. 2 bank on 20.01.2022, the Respondent no.1 sought for demand draft from the respondent no.2 bank for the recovery of dues. The same was issued by Respondent No.2 on 28.01.2022.
- (d) Respondent No.1 submits that as per order dated 03.12.2020, no specific order under Section 33 for the purpose of moratorium is passed by this bench and thus, the action of Respondent No.1 is legally tenable and justifiable by relevant provisions of law.

- (e) Respondent No.1 pleads that it was unaware of the said account being a liquidation account and only vide information received by Respondent No.2 bank on 14.02.2022, that the Respondent No.1 was made aware of the applicant's bank account status after which Respondent no.1 duly filed the claim dated 28.02.2022.
- (f) Thus, the Respondent No.1 pleads that there is no ill intention on its party to hinder the smooth functioning of liquidation process and in furtherance of its prayers, the Respondent No.1 cites the case of *State Tax Officer Versus Rainbow Papers Limited reported in CA. No. 1661 of 2020* which has held that the state is a secured creditor under the GVAT Act.

4. We have considered the submissions of the respective parties and have perused the material available on record. It is contended by the Applicant that in accordance with Section 35 of the IBC r/w Regulation 41 of the IBBI (Liquidation Process) Regulations, 2016, he had opened a specific Bank Account on 31.12.2020 in the name of the Corporate Debtor under liquidation, namely, 'M/s. Camson Biotechnologies Ltd.- In Liquidation' with the Respondent No.3 i.e. HDFC Bank Ltd., Indira Nagar Branch, Bengaluru. This was subsequent to the liquidation order passed by this Adjudicating Authority and the Public announcement dated 15.12.2020. The relevant Sub-sections of the Regulation 41 of the IBBI (Liquidation Process) Regulations, 2016 is reproduced below for ready reference:

"Regulation 41- All money to be paid in to bank account

41(1) *The liquidator shall open a bank account in the name of the corporate debtor followed by the words 'in liquidation', in a*

scheduled bank, for the receipt of all moneys due to the corporate debtor.

(2) *The liquidator shall deposit in the bank account opened under sub-regulation (1) all moneys, including cheques and demand drafts received by him as the liquidator of the corporate debtor, and the realisations of each day shall be deposited into the bank account without any deduction not later than the next working day."*

- 5.** Thus, the applicant/liquidator as per the above regulations is not only empowered to open and maintain a bank account for running the liquidation process, but is also allowed to exercise the powers under Section 35 of the IBC, 2016 to deal with all the transactions arising in and out of the corporate debtor's liquidation account for the benefit of the corporate debtor.
- 6.** Further, pursuant to the Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016, contribution was made by the Financial Creditors being the Financial Institutions towards the liquidation costs, which was deposited in the above mentioned Bank Account. It is contended by the Liquidator that the entire balance of Rs.16,93,342/- in this designated Bank Account with Respondent No.3 was as a result of such contribution by the Financial Institutions.
- 7.** It is further averred that consequent to the attachment order from Gujarat VAT Authorities i.e., Respondent No.1 and subsequent direction to the Respondent No.2 which was HDFC Bank Ltd. Branch located in Ahmedabad, Respondent No.3 remitted the amount to the Gujarat VAT Authorities by way of Demand Draft on 28.01.2022. It is contended by the Liquidator that in spite of repeated correspondences with the

Respondent No.1 as well as Respondent No.2 and Respondent No.3 Banks, the said amount has not been refunded to the liquidation account of the Corporate Debtor. Further, Respondent No.1 had not even preferred any claim before the Liquidator in Form-C as per Regulation 17 of the IBBI (Liquidation Process) Regulation, 2016 within the prescribed time limit i.e. 02.01.2021, and it has been belatedly submitted only on 25.02.2022. The Respondent No.2 Bank has also admitted the default that they have remitted this amount inadvertently and have subsequently requested the Gujarat VAT Authorities for reversal of the same to the liquidation account of Corporate Debtor. Thus, the Respondent No. 2&3 Banks have acted in contravention with the provisions of the IBC, 2016 by wrongfully and without any authority/permission of the liquidator unilaterally accepting the demand draft of the Respondent No.1 and remitting the money from the In-liquidation bank account. It is to be noted that both the Respondent Banks have not filed any affidavit of reply or objection in the instant application.

- 8.** Though the contention of the Respondent No.1 i.e., Gujarat VAT Authorities that it is a Secured Creditor in accordance with the judgment of the Hon'ble Apex Court in the case of *State Tax Officer vs. Rainbow Papers Ltd in C.A. No.1661 of 2022*(supra) during liquidation process is correct; however following Section 35 of the IBC and Regulation 41 and 17 of the IBBI (Liquidation Process) Regulations, 2016, the Tax dues cannot be recovered by attachment of the account of the Corporate Debtor, which is specifically opened for liquidation. This account was also marked as 'M/s. Camson Biotechnologies Ltd. - In Liquidation as per Regulation 41(1) of the IBBI (Liquidation Process) Regulation, 2016. The contention that the Respondent No.1 was unaware of the said account being a liquidation account is not tenable, since following the order of the

liquidation issued by this Adjudicating Authority, a public announcement was duly made by the Liquidator as per Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 on 15.12.2020. Following this Public announcement, the designated Bank Account in the name of the Corporate Debtor with suffix 'In Liquidation' was opened with Respondent No.3 Bank on 31.12.2020. The other contention of the Respondent No.1 is that it was never intimated by the Respondent No.2 and Respondent No.3 Banks that this was an account 'In Liquidation'. However, in effect this has resulted in the remission of the entire amount available in the Specified Bank Account 'In Liquidation' to the GVAT Authorities, which is legally not correct.

9. Thus, on the careful perusal of the instant application and the pleadings on record, this tribunal holds that the Respondent Banks have erred in debiting the amount from the applicant's liquidation bank account despite knowing the status of the bank account which was marked as "No Debit/Hold". Even after such a disclosure as to the status of the applicant's bank account as In-liquidation bank account, the Respondent Banks did not consider it fit to intimate the applicant/liquidator regarding the letter issued by Respondent No.1 in pursuance of the transfer of the amount of Rs. 16, 93, 342 in favour of the Respondent No.1 and unilaterally transferred the amount. Even assuming that the Respondent Banks have made legitimate attempts by seeking requests of reversal of the amount from Respondent No.1, it remains a fact that despite knowing the status of the bank account of the corporate debtor, the Respondent Banks never sought the permission of the liquidator before sanctioning the payment request of the Respondent No.1 and should have not transferred the money kept in the account specifically opened for the 'CD-

Inliquidation' under Regulation 41 of the IBBI (Liquidation Process) Regulations, 2016.

10. Having considered the above explanations furnished by R-1, we are of the considered opinion that the R-1 had attached the Bank Account belonging to the Corporate Debtor as per the normal procedure related to the demands of the Tax Departments. However, it was the responsibility of R-2 & R-3 Banks that the amount available in the designated Bank Account of the Corporate Debtor-in liquidation should not be debited. Therefore, we hold that the Respondent No.1 is liable to refund the amount of Rs.16,93,342/- in favour of the designated liquidation account of the CD with the suffix "Inliquidation". Therefore, we direct the Respondent No.1 to refund the impugned amount of Rs. 16,93,342/- within a period of 30 days from the date of receipt of this order. Additionally, the Tribunal holds the Respondent Banks responsible for the delay in liquidation process of the corporate debtor and directs that the Respondent Bank shall make the payment of cost to the liquidation account at the rate of 10% per annum from the date of remission to the Respondent No.1's Account to the date when it is actually received back in the 'Inliquidation Account' of the CD.

11. Accordingly, IA No. 580 of 2022 is hereby disposed of.

-S/d-

**MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)**

-S/d-

**T. KRISHNAVALLI
MEMBER (JUDICIAL)**