

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT -II**

IA No. 2316/2021

In

C.P. (IB) No. 2925/MB/2018

Under Section 60(5) of Insolvency and
Bankruptcy Code, 2016

Enestee Engineering Limited

(Through Atul Rajwadkar, Liquidator)

Having address at- 47, Hindusthan Colony,
Wardha Road, Nagpur

.... Applicant

Versus

- 1. IDBI Bank**
- 2. Employee's Provident Fund Organisation
Regional Office, Nagpur**
- 3. Office of the Deputy Commissioner of
Income Tax, Circle-I, Nagpur**
- 4. Office of Recovery Officer, Employees
State Insurance Corporation**
- 5. Office of the Assistant Commissioner of
Income Tax**
- 6. Office of the Assistant Commissioner
State Tax**
- 7. Punjab National Bank (Earlier Known as
Oriental Bank of Commerce)**

.... Respondents

In the matter of
JSK Corporation Pvt. Ltd.
...Operational Creditor
Versus
Enestee Engineering Ltd.
...Corporate Debtor

Order Delivered on :- 16/02/2024

Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Applicant : Adv. Sandeep Bajaj, Adv. Aakanksha
Nehra, Adv. Adya Singh

ORDER

Per: - Kuldip Kumar Kareer, Member (Judicial)

1. The present Application is filed by the Applicant, namely, the Enestee Engineering Limited (hereinafter referred to as the "Corporate Debtor"] through its liquidator under Section 60(5) read with Section 35(1)(b) (d) & (n) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the

the "Code"] read with Rule 11 of the NCLT Rules, 2016 seeking the following directions from this Tribunal:

1. Declaration in respect of the legal proceedings commenced and continued in respect of the Corporate Debtor by the Respondents No. 2 to 6 in violation of the Section 14 and 33(5) of the Code;
 2. Removing the Lien marked on the bank account bearing No.51012010001146 (hereinafter referred to as "Said Account") maintained with Respondent No.1 having a balance of Rs. 3,26,060.26/-on the instructions of Respondent Nos. 2 to 6; and
 3. Seeking closure of the Said Bank Account and Bank Accounts mentioned in Appendix "B" maintained with Respondents No. 1 & 7.
 4. Seeking appropriate direction with respect to an amount Rs. 2,17,096/- which was wrongly transferred to the bank account bearing No. 51012010001146 of the Corporate Debtor held with Respondent No. 1.
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2. The Corporate Debtor is in the business of Engineering. Procurement, Construction and Commissioning of Coal Washeries, Iron ore Benefication and Cyclonation projects.
 3. This Tribunal vide order dated 17.09.2019 admitted a Company Petition under Section 9 of the Code and the Corporate Insolvency Resolution Process was initiated against the Corporate Debtor. Mr. Atul Rajwadkar (hereinafter referred to as the "**Applicant**" or "**Liquidator**") was appointed as the Interim Resolution Professional for the Corporate Debtor.

4. During the CIRP, no resolution plan was received by the Applicant. In this regard, the Committee of Creditors, in its 10th Meeting held on 11.08.2020, decided to liquidate the Corporate Debtor. Consequently, this Tribunal vide order dated 16.09.2020 allowed the liquidation application and the Applicant was appointed as the liquidator of the Corporate Debtor.
5. The Applicant has moved a request on 26.09.2020 for closing the Bank Accounts of the Corporate Debtor. The Respondent no. 1 vide email dated 17.12.2020 has informed that the Applicant that bank accounts cannot be closed since the various authorities have marked lien on the said bank accounts as Corporate Debtor owned certain dues towards the Respondent. After several reminders, the Respondent has provided the information and notices with respect to the lien on bank accounts.

Sr. No.	Date	Amount	Respondent No.
1.	22.10.2018	60,00,000/-	2
2.	22.10.2018	8,31,897/-	3
3.	22.10.2018	37,53,660/-	3
4.	08.07.2019	2,17,096/-	-
5.	14.01.2020	8,62,486/-	4
6.	24.02.2020	1,11,71,511/-	5
7.	13.02.2020	6,95,444/-	6

6. The Applicant has submitted that the lien has been marked on current account No. 51012010001146, during the CIRP in pursuance of the notice issued by the Respondents No. 2 to 6 and continues till date. The Applicant has only learned about the reasons for marking of the lien by the Respondent No.1, when the Applicant, in pursuance of the procedure applicable to the period of liquidation, made an application for closing of the Bank Accounts

of the Corporate Debtor. It has been submitted that the said acts of the Respondents No 1 to 7 are in violation of Section 14 of the Code which prohibits any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property during currency of moratorium.

7. The Applicant has submitted that the Respondents No. 1 and 7 till date have not been able to close the other bank accounts, despite repeated requests of the Applicant citing the reason that the system is not allowing the closure as there are some pending dues which the Corporate Debtor owes to the said bank. It has further submitted that no claims have been received from either of the Respondents No. 1 or 7 banks regarding such unpaid charges till date.
8. The Applicant has submitted that vide email dated 22.02.2021, the Respondent No.1 has informed the Applicant that lien has been marked on the account bearing No. 51012010001146 to the extent of an amount of Rs. 2,17,096/- as purportedly the said amount was wrongly transferred vide NEFT transaction dated 09.04.2019 by Kanhaiya Colours into the account of the Corporate Debtor, prior to the commencement of the CIRP. The Liquidator has been following up with the Respondent No. 1 bank and even till date, no one has filed a claim for the same.
9. The Applicant has submitted that no claims have been received from the Respondent Nos. 2 to 8 (except Respondent No. 4) either during currency of the CIRP or liquidation.

10. It has further submitted that the Corporate Debtor is at the advance stage of the process of liquidation. The assets of the Corporate Debtor forming a part of the Liquidation Estate have been sold through public auction conducted, the sales having been concluded on 18.08.2021. Presently, the Liquidator is in process of distributing of monies received as per the provision of the Code. The inaction on the part of the Respondents is creating unnecessary complication in the conclusion of liquidation process of the Corporate Debtor. Hence the application.
11. With the above averments, the Applicant has prayed to allow the instant Applicant.

Analysis and decision:-

12. We have heard the Ld. Counsel appeared for the Applicant/Liquidator whereas none is present on behalf of the Respondents.
13. Having heard the Counsel for the Applicant and after going through the record, it has been observed that the accounts as detailed below exists in the name of the Corporate Debtor with certain amounts lying therein:-

Sr. No.	BANK	ACCOUNT NUMBER	BALANCE AS ON 01.10.2021
1.	IDBI Bank, Sitabuldi Nagpur (Respondent No. 1)	51012010001146	Rs. 3,26,060.26
2.		0707102000004657	NIL
3.		358102000001540	NIL
4.		0744102000004879	NIL

5.		0296102000003704	NIL
6.	Punjab National Bank, Durg Branch Chhattisgarh (Respondent No. 7)	07961131001805	Rs. 71.00

14. It has been pointed out by the Counsel for the Applicant/Liquidator that the liquidation process of the Corporate Debtor is at its final stage as the assets have already been sold. It has also been pointed out that in respect of the aforesaid accounts maintained with Respondent No. 1 and 7, the same could not be closed as some lien has been created by the Respondent No. 2 to 6. It is well settled that after the Corporate Debtor goes into CIRP or liquidation, the remedy available with all the creditors, whether financial or operational, is to file claims with the RP or the Liquidator as the case may be. Therefore, the lien created by the Respondent No. 2 to 6 cannot be sustained and on the basis of the instructions issued by the Respondent No. 2 to 6, Respondent No. 1 and 7 cannot be stopped from closing the account when the Corporate Debtor is in liquidation.
15. It has further pointed out by the Counsel for the Applicant/Liquidator that out of the amount of Rs. 3,26,060.26 lying with Respondent No. 1 in Account No. 51012010001146, a sum of Rs. 2,17,096/- is stated to have been wrongly transferred in the said account through NEFT on behalf of the Kanhaiya Colours. Counsel for the Applicant/Liquidator has further pointed out that the said amount be allowed to be retained by the Respondent No. 1 for releasing the same to Kanhaiya Colours as and when it is claimed by the said entity and directions may be issued to the Respondent No. 1 and 7 to close the accounts in question and remit the remaining money to the Liquidator.

16. In the light of the foregoing discussion, we direct the Respondents No. 1 and 7 to close the accounts in question and remit the amounts lying in the account, if any, to the Applicant/Liquidator except the amount of Rs. 2,17,096/- lying in Account No. 51012010001146 maintained with Respondent No. 1. Respondent No. 2 to 6 shall be at liberty to lodge their claim, if any with the liquidator, if already not filed by them. **IA No. 2316/2021 is allowed and disposed of** accordingly to the extent indicated above.

Sd/-

**ANIL RAJ CHELLAN
(MEMBER TECHNICAL)**

Sushil

Sd/-

**KULDIP KUMAR KAREER
(MEMBER JUDICIAL)**