

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-III**

IA-1642/2021

In

IB-1329(ND)/2019

**IN THE MATTER OF IB-1329(ND)/2019:**

**M/s. ADBRIDGE COMMUNICATIONS INDIA PRIVATE LIMITED**

**..... Operational Creditor**

**VERSUS**

**M/s. AUTOMOBILES STERLING (INDIA) PRIVATE LIMITED**

**.....Corporate Debtor**

**IN THE MATTER OF IA-1642/2021:**

**Mr. PANKAJ KUMAR SINGHAL**

Liquidator of M/s. Automobiles Sterling (India) Private Limited

**..... Applicant**

**VERSUS**

**M/s. INDUSIND BANK LIMITED & Anr.**

1. M/s. IndusInd Bank Limited

2. Employees Provident Fund Organisation

**..... Respondents**

**Order Delivered On: 10.11.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Appellant : Mr. Davender Kumar, Adv.

For the Respondent : Mr. Shivanath Mahanta, Adv.

For the Liquidator : Mr. Harshit Kumar Rawat, Adv.

**ORDER**


**PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)**

1. The present Application has been filed by Mr. Pankaj Kumar Singhal, the Liquidator of M/s. Automobiles Sterling (India) Private Limited on

**IA-1642/2021 In IB-1329(ND)/2019**

**Date of Order: 10.11.2023**






02.04.2021 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 before this Adjudicating Authority, for seeking revocation of Lien which has been levied on the Bank Account of the Corporate Debtor on the basis of the order of EPFO.

2. **Brief Background of the Case**


An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Operational Creditor i.e., M/s. Adbridge Communications India Private Limited against the Corporate Debtor i.e., M/s. Automobiles Sterling (India) Private Limited and the said application was admitted by this Adjudicating Authority vide order dated 07.08.2019 and a moratorium was declared including approving the appointment of Mr. Pankaj Kumar Singhal as an Interim Resolution Professional.

3. It is the case of the Applicant that in the CoC meeting dated 30.12.2019, the CoC decided to liquidate the Corporate Debtor and further authorized the Resolution Professional to file the application for Liquidation under Section 33(2) read with Section 34 of the Code. Accordingly, the Resolution Professional filed an Application for the commencement of the Liquidation process of the Corporate Debtor before this Adjudicating Authority.
4. The Applicant visited the branch office of Respondent No. 1 on 05.12.2020, to know the status of the bank account. The Deputy Manager of the Respondent No. 1 bank namely Mr. Santosh Kumar Mahto briefed the Applicant that the authorized signatory still has not been changed. It came as an utter shock to the Applicant when it was orally informed to the Applicant that there is a lien in the bank account maintained at Respondent No. 1 bank, which was levied due to the order of EPFO dated 26.11.2019 even after receiving the earlier intimation of Commencement of CIRP.
5. The Applicant executed all the documents including KYC documents along with photographs as per the instructions of the Deputy Manager of the Respondent No. 1 bank namely Mr. Santosh Kumar Mahto and requested to proceed with the instructions on an urgent



basis. Even after submitting the entire set of documents including KYC documents along with photographs, it was again asked by the Respondent No. 1 to execute the same documents again.

6. The Applicant received an E-mail dated 11.12.2020 from the officials of Respondent No. 1 bank stating that there is a lien on the bank account and the same has been levied upon the instructions of the office of the Respondent No. 2 i.e., Regional Provident Fund Commissioner-1 through a letter dated 26.11.2019 received on 29.11.2019 having ref. no. DS/NHP/1309535/DAMAGES/8FORDER/17450 for an amount of Rs. 4,25,983/-.
7. After being appointed as Liquidator in the present matter vide Order dated 11.01.2021, the Applicant sent an E-mail dated 29/01/2021 to Respondent No. 2 to Submit the Claim as per Liquidation Regulation and again requested to revoke the said Lien. Thereafter Applicant sent another E-mail dated 24/02/2021 to Respondent No. 2 in compliance with Regulation 41 of Liquidation Regulations thereby requesting to close the bank account maintained by the Corporate Debtor bearing No. 200003475045 and transfer the balance amount lying in the said account into the new account opened by the Applicant in terms of the provisions of the Insolvency and Bankruptcy Code.
8. In terms of Regulation 17 the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("Liquidation Regulations"), Respondent No. 2 had already submitted its Claim dated 17.02.2021 amounting to Rs. 4,96,988/- comprising penalty amount of Rs. 4,25,983/- along with Interest. The Applicant herein has requested Respondent No. 2 to provide some information/clarification, which is yet to be replied to by Respondent No. 2.
9. The Respondent has filed a reply affidavit and submitted that it is the statutory duty of an employer to deposit the dues (employer share and employee share) within 15 days of the next month. If the employer fails to do so, it attracts damages and interest from the 16th of next month. In the instant case, the damages and interest



levied were for the period 02/2015 to 12/2017 and CIRP was initiated in the year 2019 much later than the dues accrued.

10. The dues determined under Sections 14B and 7Q of the Act are statutory dues payable by the IRP in the capacity of the employer. It is further stated that the dues do not belong to the EPFO, the dues determined belong to the PF beneficiaries (workman). And the dues were in fact determined in the year 2018 itself and in August 2019 formally order was passed. As such the amount claimed by the department was standing due from 2018 when the show cause notice was issued along with a calculation sheet of interest and damages. Hence it was the statutory duty of the IRP to deposit the dues after being appointed by this Adjudicating Authority.
11. It is stated by the Respondent that the IBC, 2016 deliberately and expressly does keep the PF and Pension Fund arrears away from the clutches of the liquidation process. These dues are well protected u/s 36 of the Code. The Resolution Professional can take control and custody of the 'Liquidation assets' only after liquidating the entire dues payable by the Corporate Debtor under the provision of EPF & MP Act 1952.
12. It is the case of the Respondent that as per Section 36(4)(a)(iii) of Insolvency and Bankruptcy Code, all sums due to any workman or employee from the Provident Fund, the Pension Fund and the Gratuity Fund, shall not be treated as part of the liquidation estate and shall not be included in liquidation estate assets and shall not be used for recovery of liquidation by section 53 of the code which provides for waterfall mechanism.
13. As per Section 155(2)(c) of the IBC, the provident fund dues are excluded from the liquidation estate so as to enable workmen to realize their savings, as well as a matching contribution, comes from the employer giving priority even above the costs charges of the liquidator.
14. We have heard the Ld. Counsel for both parties and also perused the documents available on record.



15. We find that the Order dated 26.11.2019 passed by Respondent No. 2 against the Corporate Debtor invoking the lien was passed much after the date of initiation of CIRP of the Corporate Debtor i.e. 07.08.2019. Respondent No. 2 has adjudicated/imposed the penalty as well as Interest on penalty (and not on principal liability) after initiation of CIRP of the Corporate Debtor which in itself is an illegal act and gross negligence in respect of the Insolvency and Bankruptcy Code on part of the Respondent No. 2.
16. We are of the considered view that the Action of the Respondent is illegal and liable to be set aside on the ground of overriding effect of Section 238 of the Code which states that ***“The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”*** Thus, the provisions of the Code shall prevail over any other provision or law, contrary or inconsistent with any of its provisions. The Hon’ble Supreme Court also had occasion to consider the importance of section 238 of the Code in the case of **Innoventive Industries Ltd. Vs. ICICI Bank and Anr.** Civil Appeal Nos. 8337-8338 of 2017 dated 31.08.2017 and in **Pr. Commissioner of Income Tax Vs. Monnet Ispat and Energy Ltd.**, Special Leave to Appeal (Civil) Nos. 6483/2018 dated 13.08.2018, wherein it was held that in view of section 238 of the Code, the provisions in the Code will override anything inconsistent contained in any other enactment. Hence, it can be concluded that the Code is a complete code in itself and the provisions of this code override all other laws. Hence, EPF & MP Act, 1952 cannot override the provision of IBC.
17. We direct the Employees Provident Fund Organisation (Respondent No. 2) to revoke the lien and release the amount of Rs. 4,25,983/- (Rupees Four Lakh Twenty Five Thousand Nine Hundred Eighty Three Only) lying in the account maintained with Respondent No. 1 bank bearing Account No. 200003475045 and transfer all the balance amount lying in the bank account into the new account

opened by the Applicant in terms of the provisions of the Insolvency and Bankruptcy Code, details of which are as follows:-

**Name of Account Holder:** Auto Mobiles Sterling India Private Limited in Liquidation

**Account No:** 0201102000025902

**IFSC Code:** IBKL0000201

18. We direct the Liquidator to consider the claim submitted w.r.t. to Respondent No. 2 dated 17.02.2021 amounting to Rs. 4,96,988/- comprising a penalty amount of Rs. 4,25,983/- along with Interest on merit after due verification of requisite documents.
19. We also advise the Liquidator as well as Respondent No. 2 to make their best endeavors to get the ultimate essence in the implementation of the Code and in the interest of justice to expedite the process of Liquidation under the Code.
20. In view of the above, the IA-1642/2021 stands **disposed of**.

Sd/-

**(ATUL CHATURVEDI)  
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**