

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA (IBC) No. 475/JPR/2023
In CP No. (IB)- 77/7/JPR/2022

IN THE MATTER OF:

M/S FASHION SUITINGS PRIVATE LIMITED

...Petitioner/ Financial Creditor

Versus

M/S NIRMAL CARS PRIVATE LIMITED

...Respondent/ Corporate Debtor

IA (IBC) No. 475/JPR/2023

MEMO OF PARTIES

MR. SOURABH MALPANI,
RP For Nirmal Cars Pvt. Ltd.
R/o Guru Kripa Plot No. 93, Neelkanth
Colony, Queens Road, Jaipur- 302021
(Rajasthan)

...Applicant

Versus

**1. PUNJAB NATIONAL BANK, RAJA
PARK BRANCH**

Through its Bank Manager
Gurunanakpura, Tilak Nagar, Raja Park,
Jaipur- 302004 (Rajasthan)

...Respondent No. 1

**2. PRINCIPAL COMMISSIONER,
Central Excise & CGST Commissionerate,
Jaipur**





The office of Principal Commissioner,
Central Excise & CGST Commissionerate,
Jaipur, New Central Revenue Building,
Statue Circle, C- Scheme, Jaipur- 302005
(Rajasthan)

...Respondent No. 2

3. **ASSISTANT COMMISSIONER,**
Central Goods & Services Tax, Division- E
The office of Assistant Commissioner,
Central Goods & Services Tax, Division- E,
Central Excise Building, Vidhyadhar Nagar,
Sector-10, Jaipur- 302023 (Rajasthan)

...Respondent No. 3

4. **THE CENTRAL BOARD OF INDIRECT
TAXES & CUSTOMS**
Through its Chairman
Ministry of Finance, Department of
Revenue, North Block, New Delhi- 110001

...Respondent No. 4

5. **THE UNION OF INDIA, MINISTRY OF
FINANCE**
Through its Secretary
Ministry of Finance, Department of
Revenue, Room No. 46, North Block, New
Delhi- 110001

...Respondent No. 5

FOR APPLICANT(S) : Prateek Kedawat, Adv.
FOR RESPONDENT(S) : Vikas Jain, Adv
Kapil Sharma, Adv

Order Pronounced On: 03.05.2024

ORDER

Per: Shri Rajeev Mehrotra, Technical Member

1. The present Application has been filed by the Resolution Professional, *Mr. Sourabh Malpani* ('Resolution Professional' / 'Applicant' / 'Liquidator'),

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under Section 60(5) read with Sections 18, 20, and 25 of the Insolvency & Bankruptcy Code, 2016 ('IBC'/ 'Code') against the Respondents for removal of lien marked on the bank accounts of *M/s Nirmal Cars Pvt. Ltd.* ('Corporate Debtor') maintained with *Punjab National Bank, Raja Park Branch, Jaipur* ('Respondent No. 1').

2. In the main matter, an Application under Section 7 of the Code was filed by *M/s Fashion Suitings Pvt. Ltd.* seeking initiation of the Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor. This Adjudicating Authority *vide* Order dated 15.06.2023 initiated the CIRP of the Corporate Debtor and appointed the Applicant as the Interim Resolution Professional ('IRP'), who was later confirmed as the RP by the Committee of Creditors ('CoC'). Subsequently, an order for Liquidation was passed by this Adjudicating Authority on 29.02.2024 and the Applicant was appointed as the Liquidator of the Corporate Debtor.
3. The present application has been filed on the following set of facts:

- 3.1. It has been submitted that the Corporate Debtor is maintaining various Bank accounts in its name, the details of which are as follows:

S. No.	Bank with Branch Name	Account No.
1.	<i>HDFC Bank Ltd. C- Scheme, Jaipur</i>	<i>00542320014400</i>
2.	<i>ICICI Bank Ltd. C- Scheme, Jaipur</i>	<i>001205030936</i>
3.	<i>Punjab National Bank Raja Park,</i>	<i>2226008701040794</i>
4.	<i>Jaipur</i>	<i>2226002100255971</i>
5.	<i>IDBI Bank Ltd. Tonk Road, Jaipur</i>	<i>0298102000017514</i>
6.	<i>Indian Bank Shastri Nagar, Bhilwara</i>	<i>6421690333</i>

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3.2. *Principal Commissioner, Central Excise & GST Commissionerate, Jaipur* ('Respondent No. 2') vide the Order dated 30.12.2022 directed the bankers of the Corporate Debtor including Respondent No. 1 to freeze the bank accounts of the Corporate Debtor. After initiation of the CIRP, the Applicant sent a letter dated 18.07.2023 to Respondent No. 1 for removal of lien marked on the bank accounts of the Corporate Debtor maintained with it i.e., A/c No. 2226008701040794 & 2226002100255971. In reply to the aforesaid letter, the Branch Manager of Respondent No. 1 stated that the said bank accounts were frozen by the *GST Department* and the lien can only be removed after specific orders of this Adjudicating Authority or the *GST Department*.

3.3. The Applicant has moved the instant Application seeking directions against the Respondents for removal of the lien marked on the bank accounts of the Corporate Debtor. In support of its Application, the Applicant has relied upon the following case laws: -

3.3.1. *Ram Ratan Modi (Resolution Professional of Duncan Industries Limited) v/s State Bank of India in CP (IB) No. 184/KB/2018*

3.3.2. *Ramachandra D Choudhary IRP for Neesa Leisure Ltd. Vs. The Commissioner of Income Tax in CP (IB) No. 127/NCLT/AHM 2017*

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4. The Respondent No. 1 filed its Reply *vide* Diary No. 121/2024 dated 16.01.2024 and made the following submissions: -
- 4.1. The Answering Respondent received a letter from the Ld. *Assistant Commissioner, Department of CGST, Jaipur* ('Respondent No. 3') whereby it was directed that the credit balance lying in the account of the Corporate Debtor has to be utilized against the outstanding liabilities of the Corporate Debtor under Central Goods and Service Tax Act, 2017 ('CGST Act'). Further, the bank has only been complying with the aforesaid directions and it does not have any information regarding accounts maintained by the Corporate Debtor with other financial institutions.
- 4.2. The Applicant approached Respondent No. 1 *vide* its letter dated 18.07.2023 seeking immediate release of lien from the bank accounts of the Corporate Debtor maintained with it. The Answering Respondent replied to the said letter *vide* mail dated 08.08.2023 and stated that lien has been maintained on the accounts of the Corporate Debtor in compliance of the directions issued by the CGST Department.
5. Respondent No. 3 filed its Reply *vide* Diary No. 643/2024 dated 13.03.2024 contending the following:
- 5.1. It was submitted that the Applicant has averred wrong facts before this Adjudicating Authority as the attachment of the bank accounts of the Corporate Debtor, if any, has not been executed at the behest of

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Respondent No. 2. The correct facts are that a Show Cause Cum Demand Notice bearing *F. No. DGGI/JZU/Inv/Gr.-C/ GST/103/2019-20/4464* was issued to the Corporate Debtor on 28.02.2022 by *Directorate General of GST Intelligence Jaipur Zonal Unit* in terms of Section 74(1) of the CGST Act, 2017. Moreover, letters dated 07.08.2020 and 21.10.2021 were issued under Rule 159(1) of CGST Rules, 2017, to provisionally attach the bank accounts of the Corporate Debtor. Thereafter, lien was marked on the bank accounts of the Corporate Debtor by the *Directorate General of GST Intelligence Jaipur Zonal Unit*. Thus, Respondent No. 3 has no part to play whatsoever in the lien marked on the bank accounts of the Corporate Debtor.

5.2. The answering Respondent contended that Section 82 read with Section 142(8)(a) of the CGST Act, 2017 provides that any amount payable by a taxable person or any other person on account of tax, interest or penalty, which he is liable to pay the Government shall be a first charge on the property of such person. Thus, Respondent No. 3 has first charge on the properties of the Corporate Debtor.

6. We have perused the Application and Replies, along with the documents annexed therewith.

7. Before dealing with the issue at hand, it is pertinent to mention that *the Central Board of Indirect Taxes and Customs* ('Respondent No. 4'), the

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Union of India ('Respondent No. 5'), and Respondent No. 2 remained non-present, and this Adjudicating Authority *vide* its Order dated 21.02.2024 decided to proceed *ex parte* against the said Respondents.

8. In the instant case, Respondent No. 2 *vide* the Order dated 30.12.2022 froze the bank accounts of the Corporate Debtor including the bank accounts maintained with Respondent No. 1 against the GST demand, as contained in the order. The instant Application has been filed by the Applicant for the removal of lien from the bank account of the Corporate Debtor maintained with Respondent No. 1.
9. To adjudicate the present matter, it will be apposite to refer to Section 25(2)(a), Section 35(1)(b), and Section 238 of the Code which are reproduced hereunder: -

“Section 25 Duties of resolution professional

- (1) *It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.*
- (2) *For the purpose of sub-section (1), the resolution professional shall undertake the following actions, namely-*
- a. *Take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;*

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Section 35. Powers and duties of liquidator

- (1) *Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties namely: -*
- a. *to verify claims of all the creditors;*

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b. to take into his custody or control all the assets, property, effects, and actionable claims of the corporate debtor;

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*Section 238. Provisions of this Code to override other laws
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.”*

10. A perusal of the aforementioned sections reveals that the Resolution Professional and the Liquidator, as the case may be, are duty-bound to take into their custody the assets of the Corporate Debtor. Thus, the Applicant is duty-bound under the Code to take into his custody the bank accounts of the Corporate Debtor. Further, we cannot lose sight of the fact that the CIRP and the Liquidation proceedings are time-bound processes, and all the Creditor are entitled to get their dues only in accordance with the scheme envisaged under the code.

11. It is pertinent to refer to the Judgment of the Hon’ble Apex Court in the case of *Principal Commissioner of Income Tax v/s Monnet Ispat and Energy Ltd., (2018) ibclaw.in 30 SC* wherein it was observed that:

“Given Section 238 of the Insolvency and Bankruptcy Code, 2016, it is obvious that the Code will override anything inconsistent contained in any other enactment, including the Income-Tax Act.”

12. The Hon’ble NCLAT, in the matter of *Pinakin Shah-Liquidator of M/s. Brew Berry Hospitalities Pvt. Ltd. V/s The Assistant Commissioner of State Tax &*

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Kotak Mahindra Bank Ltd., Company Appeal (AT) (Insolvency) No. 32 of 2021 has observed that:

“8. The Learned Counsel has referred to this Order of Hon’ble Supreme Court as well as the Judgment referred by the Hon’ble Supreme Court in the Order and submits that the freezing of Account by the Respondent No. 1 is not maintainable and the Liquidator cannot be made to run to the parties and Authorities under the Sales Tax Act to get the Account defrozeed. Learned Counsel submits, and, rightly says that Liquidation Proceedings are time-bound to maximize the value and all the Creditors are entitled to get their dues only in terms of Section 53 of I & B Code, 2016 and different Creditors cannot be allowed to resort to different proceedings and enactments only because they are Authorities under earlier enactments considering the Provision of Section 238 of I & B Code, 2016.

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11. For the above reasons, we allow the Appeal. The Impugned Order is quashed and set aside. The Interlocutory Application No. 769 of 2020 filed by the Appellant in CP (IB) No. 107/NCLT/AHM/2019 before Adjudicating Authority shall be treated as allowed with following directions:

i. The Respondent No. 2 is directed to defreeze the Account No. 08432090000149 held in the name of Corporate Debtor- M/s. Brew Berry Hospitalities Pvt. Ltd., at Kotak Mahindra Bank Ltd. the Respondent No. 2.”

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13. In view of the facts and Judgments stated above, we are of the opinion that the lien placed on the bank accounts of the Corporate Debtor *vide* Order dated 30.12.2022 passed by Respondent No. 2 is not sustainable post initiation of the CIRP and the Liquidation proceedings. Thus, we hereby remove the lien placed on the bank accounts of the Corporate Debtor bearing Accounts No. 2226008701040794 and 2226002100255971 maintained with Respondent No. 1 i.e., *Punjab National Bank, Raja Park Branch, Jaipur*. The Liquidator is directed to file a compliance report of this order in two weeks.

In view of the aforesaid directions, the instant I.A. bearing no. *IA (IBC) No. 475/JPR/2023* stands disposed of.

**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

**RAJEEV MEHROTRA,
TECHNICAL MEMBER**