



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-101

(IB)-755(PB)/2018
IA-4083/2020

IN THE MATTER OF:

S.C.S.L. Buildwell Pvt Ltd

Vs.

Palo Infrastructure & Developers Pvt. Ltd.

....Applicant

.....Respondent

SECTION

U/s 7 of (IBC) CIRP

Order delivered on 28.07.2023

CORAM:

**SHRI MAHENDRA KHANDELWAL,
HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open Court vide separate sheets. IA- 4083/2020
in (IB)- 755(PB)/2018 is **disposed off**.

Sd/-
(RAHUL BHATNAGAR)
MEMBER (T)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (J)



**THE NATIONAL COMPANY LAW TRIBUNAL
COURT V, NEW DELHI**

I.A No. 4083/2020

IN

Company Petition No. (IB) – 755/(PB)/2018

*Under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016 read with Rule 11 of NCLT Rules, 2016.*

IN THE MATTER OF:

S.C.S.L BUILDWELL PRIVATE LIMITED

.... FINANCIAL CREDITOR

VERSUS

PAL INFRASTRUCTURE AND DEVELOPERS PRIVATE LIMITED

.... CORPORATE DEBTOR

AND IN THE MATTER OF-

GANGA RAM AGARWAL

RESOLUTION PROFESSIONAL

.... APPLICANT

VERSUS

STATE BANK OF INDIA & ORS.

.... RESPONDENT (S)

Order Pronounced on: 28.07.2023



MEMO OF PARTIES

1. Ganga Ram Agarwal

Resolution Professional
Partner, AAA Insolvency Professional LLP
E-10A, Kailash Colony, G.K-1
New Delhi – 110048

Applicant

Vs.

1. State Bank of India

Pankha Road
Janakpuri, Delhi- 110058

Respondent No. 1

2. Kotak Mahindra Bank

Level 6, JMD Regent Square,
Mehrauli- Gurgaon Road,
DLF Phase-2, Sector- 25
Gurugram Haryana – 122002

Respondent No. 2

3. Economic Offences Wing

Office of Joint Commissioner of Police
Mandir Marg Complex
Mandir Marg, Near Gole Market,
Delhi- 110001

Respondent No. 3

4. Income Tax Officer

TDS Circle, Ward- 3(2), 2nd Floor
HSIIDC Building, Near Shankar Chowk
N. H. 8, Udyog Vihar,
Phase- V, Gurgaon

Respondent No. 4

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)



APPEARANCES:

For the Applicant :

For the RP : Mr. Ganga Ram Agarwal, RP with Mr. Abhishek Anand, Mr. Aditya Gauri, Mr. Amar Vivek, Ms. Damini Srestha, Advs.

ORDER

PER: SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

1. This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 on behalf of the Resolution Professional of Pal Infrastructure and Developers Private Limited seeking appropriate direction for de-freezing of the bank accounts and the Fixed deposits lying with the banks.
2. The applicant in the present application has prayed for the following reliefs: -
 - a) Allow the present application
 - b) Pass and order for de-freezing the below mentioned bank accounts and fixed deposits-

S.NO.	NAME OF BANK	ACCOUNT NO.	BRANCH ADDRESS
1.	STATE BANK	61214476494	Pankha Road Janakpuri, New



	OF INDIA IFSC code - SBIN0004208		Delhi- 110058
2	STATE BANK OF INDIA [IFSC code - SBIN0004208]	61223940390	Pankha Road Janakpuri, New Delhi- 110058
3	STATE BANK OF INDIA [IFSC code - SBIN0004208]	61254908224	Pankha Road Janakpuri, New Delhi- 110058
4	STATE BANK OF INDIA [IFSC code - SBIN0004208]	61223940209	Pankha Road Janakpuri, New Delhi- 110058
5	STATE BANK OF INDIA [IFSC code - SBIN0004208]	61227572692	Pankha Road Janakpuri, New Delhi- 110058



6	KOTAK MAHINDRA BANK	02612010000944	JMD Regent Arcade, Gurgaon
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c) Pass any order (s) which this Hon'ble Tribunal may deem fit and proper in the ends of justice.

3. Briefly stated the facts of the case as mentioned in the instant application, which are just and necessary for adjudication, are as follows: -

- i. That, the present Application is being filed by Mr. Ganga Ram Agarwal, Resolution Professional ("Applicant/RP") of M/s Pal Infrastructure and Developers Private Limited ("Corporate Debtor") seeking direction of this Hon'ble Tribunal under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with National Company Law Tribunal Rules, 2016 for de-freezing of the above mentioned bank accounts and the fixed deposits lying with the said banks.
- ii. That the Corporate Debtor is a company duly incorporated under the Companies Act, 1956, having its registered office at B-45, Shakti Apartments, Sector 9, Rohini, New Delhi and corporate office at Pal Tower, IIIrd Floor, M G Road, Sikenderpur, Gurgaon-122002. The Corporate Debtor is in the business of township development in India.
- iii. That an application under section 7 of the Insolvency and Bankruptcy Code, 2016 ("Code") was filed by the Financial creditor namely, S.C.S.L Buildwell Private Limited. The said application was allowed and the CIRP of the Corporate Debtor was initiated vide order dated 05.09.2019 of this Hon'ble Tribunal. Vide the same order Mr. Dilip Kumar Niranjan was appointed as Interim Resolution Professional ("IRP"). Copy of the order dated 05.09.2019 is on record.
- iv. That the applicant was appointed as Resolution Professional by an order of this Tribunal dated 26.06.2020 to conduct the CIRP of the Corporate Debtor. Copy of order of this Tribunal dated 26.06,2020 appointing RP is on record. That section 17 & 18 read with section 23 & 25 of the Code casts a duty upon the applicant/RP



to conduct the entire CIRP and manage the operations of the Corporate Debtor during the CIRP. That Section 20(1) of the Code mandates and requires the IRP/RP to make every endeavour to protect and preserve the value of property of the Corporate Debtor and manage its operation as a going concern.

- v. That in order to enable the IRP/RP to manage the operations of the Corporate Debtor as a going concern, the code inter alia mandates and confers under section 17(1)(d), that the Financial Institutions maintaining the accounts of the Corporate Debtor shall act on the instructions of the IRP/RP to such accounts. Section 17(1)(d) of the Code is reproduced for ready reference-
- “.....(d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.....”
- vi. That it is pertinent to mention that the Corporate Debtor is maintaining several bank accounts and several fixed deposit with banks namely, State Bank. of India Pankha Road, Janakpuri branch, New Delhi and Kotak Mahindra Bank JMD Regent Arcade, Gurgaon.
- vii. That Respondent no. 1 & Respondent no. 2 are the banks wherein the Corporate Debtor has been maintaining its bank accounts. Respondent no. 3 and Respondent no. 4 are the Economic Offence Wing (EOW) and Income Tax Officer respectively, on whose order the accounts of the Corporate Debtor was frozen by the Respondent no. 1 and Respondent no. 2 herein. That pursuant to his appointment the Applicant learnt that a complaint has been lodged with EOW PS Mandir Marg, New Delhi (Respondent No. 3). The EoW has filed an FIR 179/11 on 19.09.2011 based on the said complaint under the sections 420/ 120B/ 406/ 409 IPC. That the applicant further learnt that the above mentioned Respondent Banks on the instruction of Investigating Officer of EoW and Income Tax Officer have put a debit freeze on the above mentioned bank accounts of the Corporate Debtor.



- viii. That pursuant to his appointment the Applicant vide letter dated 23.07.2020 intimated the Respondent no. 2 Bank and vide letter dated 06.08.2020 intimated the Respondent no. 1, about the initiation of CIRP and declaration of moratorium u/s 14 of the Code. Further in the said letter the Applicant requested the banks to make the RP as the authorised signatory in the bank account of the Corporate Debtor as per section. 17 of the Code. The Respondent no. 1 vide email dated 06.08.2020 informed the applicant that they are searching the documents based on which debit freeze is imposed on the accounts of the Corporate Debtor.
- ix. That the Applicant in order to get more information regarding the said freezing of accounts on the instruction of the EoW and Income Tax, sent letters/ emails dated 11.09.2020 to the above banks and requested to de-freeze the accounts of the Corporate Debtor. The Respondent no. 2, Kotak Mahindra Bank vide its email dated 15.09.2020 replied to the email dated 11.09.2020 sent by the Applicant, whereas Respondent no. 2 advised the Applicant to obtain an order from Respondent no. 3 & Respondent no 4 revoking the order of debit freeze on the accounts of the Corporate Debtor. It is pertinent to mention that the Respondent no. 1 has not replied to the email dated 11.09.2020 till date. Copy of emails dated 11.09.2020 sent to banks and email dated 15.09.2020 sent by respondent no. 2 to applicant is on record.
- x. That the Applicant has sent a letter dated 11.09.2020 to EoW intimating them about the initiation of CIRP and declaring of Moratorium. In the letter the Applicant also requested the EoW to de-freeze the accounts of the Corporate Debtor for the conduct of CIRP. However, till date no response has been received from EoW in this regard. Copy of the letter dated 11.09.2020 is annexed and marked as Annexure A-7. That it is pertinent to mention that there is substantial amount lying in above mentioned bank accounts and in Fixed Deposits, which have been frozen and the same can be utilized for the smooth conduct of CIRP. That it is further pertinent to mention that this Hon'ble Tribunal has declared moratorium vide order dated 05.09.2019 and during moratorium certain activities are prohibited.



- xi. That it is pertinent to mention that as per section 18 of the Code, it is the duty of the Resolution Professional to take control and custody of any asset over which the Corporate Debtor has ownership even if those assets may or may not be in possession of the Corporate Debtor.
- xii. Therefore, in order to protect the assets of the Corporate Debtor and fulfil duties under the Code, the Applicant was constrained to file the present application before this Tribunal for de-freezing of the abovementioned two accounts of the Corporate Debtor. That the Tribunal has jurisdiction to adjudicate upon the said matter and de-freeze the accounts for operation of the application for the conduct of CIRP. The present application is bona fide and in the interest of justice.
4. We have gone through documents on record filed by the Applicant and arguments advanced by counsel for the Applicant. Despite repeated notice, no one appeared on behalf of the Respondents No. 1 to 4 nor filed their reply. Taking into account this fact Respondent Nos. 1 to 4 were set as *ex parte* vide order dated 08.05.2023.
5. In the present case, it is observed that there are some outstanding dues of the Income Tax Department, and a complaint has been lodged with the Economic Office Wing, for which EoW and Income Tax Department had ordered to freeze the accounts of the Corporate Debtor. Further, it is pertinent to mention that as per section 18 of the Code, it is the duty of the Resolution Professional to take control and custody of any asset over which the Corporate Debtor has ownership even if those assets may or may not be in possession of the Corporate Debtor.
6. It is pertinent to refer to section 14 of the Code which reads as under: -
- 14. Moratorium. - (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -*
- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*



(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

7. Further, provisions under Section 238 of the I & B Code have overriding effect over all other law. For the sake of reference, the same is extracted below:

"Section 238: "Provision 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 time being in force or any instrument having effect by virtue of any such law."

8. Further, in the matter of Rajender Kumar Saxena V. Earth Gratia Buildcon Private Limited, the Hon'ble Tribunal, Principle Bench, New Delhi has held -

"..Having heard the learned counsel for the RP, we are of the considered view that the bank account which have been frozen on the directions issued by EoW, Delhi Police on behalf of various FIRs referred above are required to be defrozed so as to enable the RP to conduct the CIR Process by utilizing the funds deposited therein. Accordingly, we direct the Yes Bank, _Indian Bank, Axis Bank, and Corporation Bank to defreeze the accounts of the Corporate Debtor and also direct the EoW, Delhi police not to insist on the freezing of accounts as the CIR Process is required to be conducted in accordance with provisions of Code. Moreover, moratorium under section 14 is operation and section 238 excludes, the jurisdiction of all other statutory bodies. Reliance is placed on the judgment of the Hon'ble Supreme Court rendered in the case of Principal commissioner of Income Tax Vs. Monnet Ispat and Energy Ltd. (Special Leave to Appeal (C) No. 6483/2018 decided on 10.08.2018)".



9. Accordingly, in light of the above observations, the above Banks i.e. SBI, Pankha Road, New Delhi and Kotak Mahindra Bank, JMD, Regent Arcade, Gurgaon are directed to de-freeze the accounts of the Corporate Debtor, the details of which are mentioned in the application, as the CIR Process is required to be conducted in accordance with the provisions of the Code. Accordingly, IA 4083 of 2020 stands accordingly disposed off.

Let a copy of the order be served to the parties.

Sd/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)