

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 324 OF 2021

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016 r/w Rule 34 of
NCLT Rules, 2016

Mr. Vijendra Kumar Jain

...Applicant/
Resolution Professional

Vs.

Income Tax Officer TDS-3

...Respondent

In the matter of

C.P.(IB) No. 3448/MB/2018

Tractebel Engineering Private Limited

Operational Creditor

Vs.

Transparent Energy Systems Private
Limited

Corporate Debtor

Order delivered on: 17.10.2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)
Appearances

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

For the Applicant : Appearance not marked in attendance sheet
For the Respondent : Appearance not marked in attendance sheet

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application IA 324 of 2021 is filed by Sh. Vijendra Kumar Jain, the Resolution Professional appointed vide order dated 21 February 2020 to conduct Corporate Insolvency Resolution Process in the matter of M/s Transparent Energy Systems Private Limited (“Corporate Debtor”). The Applicant seeks following prayers –
 - a. Direction to withdraw its notice dated 2nd January, 2019 issued U/s 226(3) of Income Tax Act, to HDFC Bank, Bhandarkar Road, Pune to defreeze the current A/C no. 50200005078579 with the HDFC Bank, Bhandarkar Road, Pune Branch immediately imposing debit freeze;
 - b. Direction to allow the Applicant to operate the said account.
2. It is the case of the Applicant that the HDFC Bank, Bhandarkar Road Branch in Pune, being banker of the Corporate Debtor received notice under section 226(5) of Income Tax Act, 1961 dated 2nd January 2019. The bank account of the Corporate Debtor is freezed and is not able to use the funds in the said account even after the moratorium is in effect.

3. The Corporate Insolvency Resolution Process (the CIRP) in the case of Corporate Debtor commenced vide order dated 8th March, 2019 passed by this Tribunal in Company Petition No. CP(IB)/3448/MB/2018, pursuant to this, Mr. Ashish Vyas [IBBBI/IPA-001/IP/P-01520/2018-19/12267] was appointed as the Interim Resolution Professional (the IRP). Further, the Erstwhile Resolution Professional Mr. Nimit Kalsi was replaced vide order dated 21 February 2020, and the Applicant was appointed as the Resolution Professional (RP) of the corporate debtor (CD).
4. That the respondent is Income Tax Office TDS- 3 Pune having its office at Room no 119, 1 Floor, Ayakar Sadan, Bodhi Tower, 548/2B, Salisbury Park, Lane no 1. Behind Bank of Maharashtra, Pune 411003 working under Finance Ministry of Government of India. The respondent has issued notice U/S 226 (3) of the Income Tax Act, to the HDFC Bank, Bhandarkar Road Pune Branch for freezing of current bank account no. 50200005078579 of Transparent Energy System Pvt Ltd ie. Corporate Debtor.
5. The applicant states and submits that the corporate debtor has its current bank account no. 50200005078579 with HDFC Bank at its branch-Bhandarkar Road, Pune. The respondent had issued notice no PNOTO/TDS-03/ Recovery/2018-19 dated 2nd January, 2019 for freeing the above-mentioned account with the bank. According to the notice, a sum of Rs. 7,26,424/- with interest is stated to be due from the corporate debtor. It was further directed to restrict the corporate debtor from operating the said account by initiating "No Debit" until further instructions. However, no restriction on

credit/deposit were imposed. A copy of the said notice dated 2nd January, 2019 is placed in the Application.

6. The applicant sent a reply to the notice dated 2nd January, 2019 to the respondent through email dated 22nd July, 2020. In the said reply the Applicant explained that the consequent upon commencement of moratorium in the case of Corporate Debtor from 08.03.2019, the notice attaching the assets of the Corporate Debtor requires to be withdrawn, as no adverse action against the Company can be initiated till conclusion of the CIRP or liquidation, as the case may be. The Applicant further requested the Respondent to defreeze the account and withdraw the instructions issued to the Bank and allow the Applicant to operate the said account to carry out the affairs of the corporate debtor as a going concern.
7. The Applicant further submits that, thereafter on 30th September, 2020 and 29th October, 2020 he sent emails along with copy of "Form B" requiring the Respondent to submit the claim. Despite this, there was no response from the side of the respondent.
8. The applicant states that, for the first time on 1st January, 2021 the respondent put forth that due to change in incumbency since October, 2020 there was delay in responding to the letters of the applicant. Respondent further sought sometime to adhere the applicant's communications. Further informed that they are going to submit their claim in "Form C" along with relevant documents in due course. The applicant further states and submits that he replied the above mentioned email on the very same day i.e. 1st January. 2021 and also informed the respondent that, there was delay on their side in making the Claim and that the Applicant had

already submitted the Resolution Plan to the Hon'ble Bench for its approval. The respondent however did not mention about the request of the Applicant to defreeze the account.

9. We heard the Counsel and perused the material on available on record.

9.1. Upon the commencement of Corporate Insolvency Resolution Process, the security interest of each creditor are not enforceable individually, but are taking into consideration while determining the security classification amongst the class of creditors only. In the present case, the attachment over the Bank account can not survive after commencement of moratorium w.e.f. 08.03.2019, as the claim of the Respondent is to be dealt in accordance with the claims filed before the Resolution Professional, and is ordered to be vacated with immediate effect.

9.2. It is undisputed that the Resolution Professional was aware of the debt due to the Respondent on the commencement of the CIRP itself. Accordingly, as held by Hon'ble NCLAT in case of *Puneet Kaur vs. K V Developers Private Limited*. {Company Appeal (AT) (Insolvency) No. 390 of 2022} held that "extinguishment of claim of the Appellant(s) shall happen only after approval of the Plan by the Adjudicating Authority. The argument of the Respondents that since CoC has approved the Resolution Plan, the claim of the Appellant(s) have been extinguished, cannot be accepted as there is no extinguishment of claim of the Appellant(s) on approval of Plan by the CoC". The Hon'ble NCLAT concluded that "Information Memorandum ought to have included the claim of those Homebuyers, who have not even filed their claims to correct liabilities

of the Corporate Debtor for its appropriate resolution”, and finally held that “However, we are of the view that the claim of those Homebuyers, who could not file their claims, but whose claims were reflected in the record of the Corporate Debtor, ought to have been included in the Information Memorandum and Resolution Applicant, ought to have been taken note of the said liabilities and should have appropriately dealt with them in the Resolution Plan. Non-consideration of such claims, which are reflected from the record, leads to inequitable and unfair resolution as is seen in the present case”.

9.3. In view of the ratio laid down in the case of Puneet Kaur (Supra), we hold that the claim of the Respondent as per the notice u/s 226(3) of the Income Tax Act, 1961 ought to have been included in the list of creditors, and the Resolution Professional is directed to act accordingly.

9.4. With the aforesaid directions, we allow the present application directing the Respondent to vacate the attachment and allow the Applicant to operate the Bank Account of the Corporate Debtor; and also directing the Applicant to include the debt of the Respondent as per Notice u/s 226(3) in the list of Creditors, if no separate claim has been filed by them.

10. Accordingly, IA 324 of 2021 is allowed.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)