

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 No. 666/JPR/2023
In CP No. (IB)- 14/9/JPR/2020

IN THE MATTER OF:

M/S RG COLONIZERS PVT. LTD.

...OPERATIONAL CREDITOR

VERSUS

M/S MACRO INFRA CONTRACTORS PVT. LTD. & ANR.

...CORPORATE DEBTOR

MEMO OF PARTIES

IA No. 666/JPR/2023:

BABU LAL SHARMA
Resolution Professional,

M/s Macro Infra Contractors Pvt. Ltd.
306, 3rd Floor, Durga Business Centre
(DBC) Opp. Hotel Gangaur, M.I. Road,
JP-302001

...Applicant

VERSUS

MALVIYA URBAN CO-OP BANK LTD.

Manokanm A-48, Sudershanpura
Enclave, Golimar Garden, Sahkar
Marg, Jaipur-302001
Sahkarmarg.branch@malviyabank.com

...Respondent

FOR APPLICANT : Prabhansh Sharma, Adv.
FOR RESPONDENT : Akshita Koolwal, Adv.

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Order Pronounced On: 29.02.2024

ORDER

Per: Shri Rajeev Mehrotra, Technical Member

1. The present Application bearing *IA No. 666/JPR/2023* has been filed by *Mr. Babu Lal Sharma*, Resolution Professional ('Applicant'/ 'Resolution Professional') of *M/s Macro Infra Contractors Pvt. Ltd.* ('Corporate Debtor') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') seeking the following set of reliefs:

- *Allow the present application under section 60(5) of the Code.*
- *To include the name of the Resolution Professional as signatory in the account replacing the existing signatories or provide the necessary directions to change the signatories in the bank accounts for further transactions.*
- *For issuance of the internet banking User Id and password along with granting debit access of the Bank Accounts A/C No. 40800021100000068 & 40800020301000722 of the Corporate Debtor in order to pay for regular business transactions during the conduct of CIRP from the bank account of the Corporate Debtor so as to ensure the going concern state of the Corporate Debtor as envisaged under the provisions of the Code.*
- *Issue necessary directions for Remove the existing attachment order and allow free access to the RP on the balance lying in the bank account of the Corporate Debtor maintained with Malviya Urban Co-Op Bank Ltd. as on CIRP commencement date i.e., 04.07.2023.*
- *Such instruction and to take all such action and other such orders/ directions as the Hon'ble bench may deem fit and proper in the facts and circumstances of the case.*

2. This Adjudicating Authority *vide* order dated 04.07.2023 had admitted the Application filed by *RG Colonizers Private Limited* ('Operational Creditor') under Section 9 of Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor and appointed *Mr. Babu Lal*

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Sharma, as Interim Resolution Professional ('IRP'). Later on, *Mr. Babu Lal Sharma* was appointed as the Resolution Professional as approved by the CoC *vide* meeting dated 02.08.2023.

3. The present application has been filed on the following set of facts:

3.1. It is submitted that the Applicant, *via* emails, intimated the initiation of CIRP against Corporate Debtor and appointment of Resolution Professional to the Respondent. Furthermore, the Applicant requested the Respondent to co-operate and to perform following set of actions in relation to the bank accounts of the Corporate Debtor, bearing A/c Nos. 40800021100000068 & 40800020301000722, maintained with the latter:

- A. Inclusion of name of the RP as the signatory in the accounts, replacing the existing signatories, or providing the RP with the necessary directions to change the signatories in the bank accounts;
- B. Providing the bank statements from the inspection date until the date of the email;
- C. Providing the details of the open cheques and the cheque books of the accounts maintained by the Corporate Debtor;
- D. Freezing the accounts of the Corporate Debtor for any debit transactions and any debit transactions be undertaken only under the instructions of the RP;

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E. Providing the internet banking User ID and password along with debit access of the bank accounts of the Corporate Debtor to ensure the going concern state of the Corporate Debtor.

- 3.2. Thereafter, the Applicant, *via* email dated 26.10.2023, informed the Respondent that the operation of any attachment order/seizure/debit freeze on the account of the Corporate Debtor after the initiation of CIRP is prohibited under Section 14 of the Code. Therefore, the Applicant requested for removal of the lien. This email was sent pursuant to the physical meeting held between the RP and the authorized representative of the Respondent on 26.10.2023. During the said physical meeting, the authorized representative of the Respondent informed the RP regarding the attachment order/seizure/debit freeze on the bank account of the Corporate Debtor by the Income Tax Department.
- 3.3. The Applicant, despite sending multiple follow-ups, had not received any positive outcome and thus filed the present application for non-cooperation by the Respondent.
4. The Applicant filed an Affidavit, *vide* Diary No. 311/2024 dated 02.02.2024, stating additional facts that the Income Tax Department has also submitted its claim before the RP in the ongoing CIRP against the Corporate Debtor. The Applicant informed the same to the Respondent and urged again to remove the lien/ attachment from the bank accounts of the Corporate Debtor.



A copy of the claim submitted by the Income Tax Department is annexed as Annexure 6. Furthermore, the Applicant has called for the expression of interest where a Demand Draft was duly received *vide* dated 10.01.2024 by *Nakshatra Asset Ventures Ltd. (NAVL)*. The same was sent to the Respondent for depositing into the bank account of the Corporate Debtor along with a request for the removal of the lien, but it was refused for want of an order from this Adjudicating Authority.

5. The Respondent filed its Reply, *vide* Diary No. 349/2024 dated 06.02.2024, stating as below:

5.1. The Respondent submitted that the name of the Applicant is already included as a signing authority for the bank account of the Corporate Debtor maintained with the Respondent. This is evident from the email dated 27.10.2023.

5.2. Further, the Respondent stated that they do not have access to any internet banking facility for the accounts of the Corporate Debtor and thus cannot provide the Applicant with the requested User ID and password.

5.3. The Respondent received a letter from the Income Tax Department dated 21.01.2022, wherein the Income Tax Department asked the Respondent Bank to create an attachment on the bank account of the Corporate Debtor. Subsequently, the Respondent Bank, after receiving letters from the Applicant, sent a letter to the Income Tax Department

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dated 31.10.2023 proposing to remove the attachment on the bank account of the Corporate Debtor. The Income Tax Department reverted with an email dated 02.11.2023, asking the Respondent Bank to share a copy of the order passed by this Adjudicating Authority and the bank account statements of the Corporate Debtor from the date of attachment to 02.11.2023. The Respondent duly shared the information and attachments requested by the Income Tax Department. However, no reply has been received from the Income Tax Department regarding the removal of the attachment on the bank account of the Corporate Debtor. Therefore, the Respondent Bank did not remove the attachment.

5.4. It is further submitted that all the information sought has been communicated to the Applicant several times, and it would be wrong to say that the Respondent failed to co-operate with the Applicant. Thus, it is contended that allegations levied by the Applicant are baseless, and therefore, denied.

6. We have heard the learned counsel for the parties and perused the Application, Reply along with documents attached therewith.
7. It is seen that the CIRP of the Corporate Debtor was ordered on 04.07.2023 and subsequently, the present Application was filed on 21.11.2023. It is relevant to refer to Section 17(1)(d) of the Code that obligates the financial institutions maintaining accounts of the Corporate Debtor to act on the instructions of the interim resolution professional in relation to such

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accounts and furnish all information relating to the Corporate Debtor available with them to the interim resolution professional. Further, Section 19 of the Code obligates personnel of the Corporate Debtor to extend cooperation to IRP/RP as the case may be.

8. Furthermore, Section 238 of the Code makes it clear that the provision of the Code will override other laws. Moreover, upon enactment of the Code, several statutes were amended to that effect including Income Tax Act, 1962, which was amended *vide* third schedule of the Code. Section 238 of the Code is reproduced below:

“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.”

9. As far as the issue of removal of lien from the bank accounts is concerned, it is pertinent to refer to the order passed by the Hon’ble NCLT, Principal Bench New Delhi in *Om Prakash Agarwal Vs. Tax Recovery Officer & Anr.* 2020 SCC OnLine NCLT 1423 wherein in like circumstance it was held that:

“the monies of the CD lying in the bank account shall be construed to be an asset of the CD even if an attachment order is passed against the same. It noted that section 178 of the Income-tax Act, 1961 has been amended to allow the Code to have overriding effect and accordingly directed the Bank to defreeze the account.”

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10. It is to be remembered that the time is the essence of the Code and the CIRP has to be completed in a time bound manner, and as such, if the attachment of bank accounts of the Corporate Debtor is not removed, the same will hamper the CIRP process. Further, once claims are filed by the authorities with the RP, it is only sensible for them to withdraw their directives.
11. In view of the foregoing and after consideration of the prayers of the Applicant, this Application stands allowed with the following directions:
- 11.1. The Respondents shall include the name of the Resolution Professional as signatory in the account replacing the existing signatories as requested by the RP if not earlier provided.
- 11.2. The Respondent shall provide internet banking user ID and password along with debit access of the Bank Accounts A/C Nos. 40800021100000068 & 40800020301000722 maintained with the *Malviya Urban Co-Operative Bank Limited* of the Corporate Debtor in order to pay for regular business transactions during the conduct of CIRP from the bank account of the Corporate Debtor so as to ensure the going concern state of the Corporate Debtor, if the same is not provided.
- 11.3. The Respondent shall remove the existing attachment order and allow free access to the RP on the balance lying in the bank account of the Corporate Debtor maintained with the Respondent.



- 11.4. The Respondent shall extend necessary co-operation and provide all information as sought by the Applicant and make available all the documents as prayed for within a period of 15 days from the date of this order.
12. The RP shall be at liberty to move appropriate application in case of any breach of the direction mentioned above. Furthermore, the non-compliance with the aforesaid direction would attract strict penalties. Upon non-compliance of the directions enumerated above, adverse orders may be passed against the Respondent.
13. The Registry is directed to serve a copy of this Order to the Respondent. The Resolution Professional shall also be duty bound to inform the Respondent. Accordingly, IA No. 666/JPR/2023 stands allowed and disposed of.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,
TECHNICAL MEMBER**