

(2024) 03 NCLT CK 0041
In the National Company Law Tribunal
Case No : I.A. 5400 Of 2023

Rajiv Bajaj

APPELLANT

Vs

Axis Bank Limited

RESPONDENT

Date of Decision : 12-03-2024

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 9, 13, 15, 60(5)
Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 — Regulation 6

Citation : (2024) 03 NCLT CK 0041

Hon'ble Judges : V.G. Bisht, Member (J); Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Prashansa Agarwal

Final Decision : Disposed Of

Judgement

V.G. Bisht, Member (Judicial)

1. This Application IA 5400 of 2023 is filed by Mr. Rajiv Bajaj, IRP u/s 60 (5) of the Insolvency and Bankruptcy Code, 2016 on 19.10.2023 in the CIRP process of Transtreasure Security Service India Limited (Corporate Debtor) seeking following reliefs:

a. That this Tribunal be pleased to direct the Respondents to de-freeze the bank account of the Corporate Debtor bearing Account No.915020015160231.

b. That this Tribunal be pleased to pass such other and further directions and reliefs as this Tribunal may deem fit and proper to meet the ends

2. The captioned Petition seeking initiation of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor filed M/s Gauravshali Security Services Pvt. Ltd. under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('the Code') was admitted by this Tribunal vide its order dated 07.08.2023 and the Applicant herein was appointed as the Interim Resolution Professional (IRP). 2.1. The Applicant thereafter on 24.08.2023 made a public announcement into

newspapers one English mainly "Free Press Journal" and one Marathi namely "Nava Kaal" calling for the claims as per Sections 13 and 15 of the Code read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 ('CIRP Regulations') whereunder the last date for submission of claims was 4th September 2023.

2.2. The Applicant duly collated the claims received from the creditors which include only the operational creditors. It is pertinent to note that the Applicant has neither received claim of any financial creditor nor otherwise found any financial debt of the Corporate Debtor from the records available with the Applicant. The list of creditors is also filed with this Tribunal in compliance with Regulation 13(2)(d) by way of a separate Application vide IA No.4535/2023 and taken on record.

2.3. It is submitted that since there exists no financial debt of the Corporate Debtor, the committee of creditors (CoC) is constituted of only the operational creditors of the Corporate Debtor as per Regulation 16 of the CIRP Regulations.

2.4. The Applicant visited to Bank branch of Respondent No.1 i.e. Axis Bank on 28.08.2023 and delivered the copy of Order of Tribunal initiating CIRP and requested to make him signatory to the bank account. Respondent No. 1 informed about the lien of Employees State Insurance Corporation (ESIC) being Respondent No.2 on the said Bank Account.

2.5. The Respondent No.1 thereafter addressed an e-mail dated 26th September 2023 to the Applicant clearly setting out that in the event of a freeze/lien of any statutory authority on the said Bank Account, the Applicant would need to approach the concerned Statutory Authority.

2.6. The Respondent No.1 also shared with the Applicant on 3rd October 2023 a letter dated 27th September 2022 which was received by Respondent No.1 from Respondent No.2 on 10th February 2023 vide which the said Bank account of the corporate debtor was put to debit Freeze by respondent no. 2 in view of the corporate debtor defaulting in paying the arrears aggregating to Rs. 38,18,218/- (Rupees Thirty Eight lakhs Eighteen Thousand Two Hundred and Eighteen only).

2.7. The Applicant thereafter vide e-mail and letter dated 3rd October 2023 intimated the Respondent No.2 of initiation of CIRP of the Corporate Debtor and imposition of moratorium thereunder, requesting Respondent No.2 to de-freeze the said Bank Account and file a claim with the Applicant.

2.8. The Applicant thereafter sent a letter through speed post dated 4th October to Respondent No.2 of initiation of CIRP of the Corporate Debtor and imposition of moratorium thereunder, requesting Respondent No.2 to de-freeze the said Bank Account and file a claim with the Applicant. The applicant did not receive any response from Respondent No.2

2.9. It was held in Company Appeal (AT)(Insolvency) No. 328 of 2022 by Hon'ble NCLAT in the matter of Sh. Hemant Mehta, Resolution professional Vs Assistant

Commissioner of State Tax and Anrs to immediately withdraw the notices issued by them defreezing the Bank Accounts of the Corporate Debtor. Relevant portion of the order is re-produced below-

In view of the above discussions, facts and circumstances, we hold that the Adjudicating Authority erred in not exercising the residuary jurisdiction vested in it under Section 60(5) of the IBC and having failed to provide necessary relief to the Appellant, the impugned order is set aside. The 1.A. No. 192 of 2021 in CP(IB)-990/MB/2019 before the Adjudicating Authority shall be treated as allowed with the following directions: -

(i) Respondents No. 1 and 2 are herewith directed to immediately withdraw the notices issued by them defreezing the Bank Accounts of the Corporate Debtor. Pan India Utilities Distribution Co. Ltd., maintained in IDBI Bank, Khar West Branch, Mumbai and Axis Bank Ltd., Worli Branch, Mumbai.

(ii) Respondents No. 3 and 4 are herewith directed to defreeze the Bank Accounts held in the name of the Corporate Debtor.

2.10. The Applicant is thus constrained to file the present Application before this Tribunal seeking those directions be issued to the Respondents to de-freeze the said Bank account of the Corporate Debtor.

3. Heard Counsel and perused the material on record.

3.1. It is trite law that upon commencement of Corporate Insolvency Resolution Process, no recovery action can be proceeded against the assets of the Corporate Debtor and the appointed Insolvency professional is duty bound to take possession and control of all the assets belonging to the Corporate Debtor for resolution of debt due to all creditors, whether secured or otherwise.

3.2. Accordingly, we have no hesitation to direct the Respondent No. 2 to inform Respondent No. 1 to allow the operation of the Bank Account put to debit freeze with immediate effect. It is further directed to Respondent No. 1 that in case no communication is received from Respondent No. 2 within 30 days from communication of this Order to vacate the debit freeze, Respondent No. 1 shall do so in terms of direction of this Tribunal without any further recourse to Respondent No.2.

4. In view of above, IA 5400 of 2023 is allowed and disposed of accordingly.