

**NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH**  
**COURT III**

110. I.A. 2879/2022 in  
C.P.(IB)-2019(MB)/2019

CORAM: MS. LAKSHMI GURUNG, MEMBER (J)  
SH. CHARANJEET SINGH GULATI, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL  
COMPANY LAW TRIBUNAL ON **12.06.2024**

NAME OF THE PARTIES: Corporation Bank  
VS  
Firestar International Limited.

**Appearance**

**For Applicant in IA 2879/2022:** Adv. Anant Upadhyay, Adv. Payal  
Upadhyay i/b. ANP Chambers are present through VC

**For Respondent No. 1/Liquidator:** Adv. Rohit Gupta a/w Adv. Abha  
Patel i/b Fortis India Law

**For Respondent No. 4 in IA 2879/2022:** Adv. Avinash Khanolkar a/w  
Adv. Ashwini Gawde i/b Reshmi B

SECTION 7 OF THE IBC, 2016

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**ORDER**

**Hearing Through: Virtually and Physical (Hybrid) Mode**

**IA 2879/2022**

1. This application has been filed by the Punjab National Bank seeking following prayers:
  - a. *This Hon'ble Tribunal be pleased to recognize the right of the Applicant to receive the liquidation proceeds in priority over the Respondents No. 2,3 & 4 on the basis of the Undertakings dated 28.03.2018 executed by the Respondents No. 2,3 & 4 in favour of Applicant;*

- b. *This Hon'ble Tribunal be pleased to direct the Liquidator to distribute the liquidation proceeds to the Punjab National Bank in priority over the Respondents No. 2, 3 & 4;*
  - c. *Pending the final hearing and disposal of the present application, this Hon'ble Tribunal be pleased to direct the Liquidator to not distribute the amounts due to the Respondents No. 2,3 & 4;*
  - d. *Alternatively, to prayer (c), pending the final hearing and disposal of the present Application the liquidator may be permitted to continue with the process and to distribute the proceeds thereof among the stakeholders, however on the condition that such distribution shall remain subject to final adjudication of the said claim of the bank;*
  - e. *Ad-interim reliefs in terms of prayer clause (c) and/or (d);*
  - f. *For costs;*
  - g. *For such other and further reliefs as the nature and circumstances of the case may require and thought fit this Hon'ble Tribunal.*
2. Learned counsel for the liquidator has placed before us the order passed by Court -I NCLT Mumbai Bench dated 02.01.2024 wherein the similar issue was raised and the said application filed by the Punjab National Bank was rejected. Learned counsel for the applicant before us submits that they have not filed any appeal against this order and the same has attained finality and has conceded that the issues involved in the present application are also similar. We refer to the order dated 02.01.2024 passed by the Court – I at NCLT Mumbai Bench.

*“6.3 From the plain reading of aforesaid undertaking, it is clear that the said undertakings resulted into subrogation of claims of the Respondent's Banks in favour of Applicant only in relation to recoveries made from fraudulent LoUs/LCs issued by the Applicant and the said undertaking does not vest any right in favour of applicant to see any other payment due to these Respondent under the said undertaking.*

*6.4 It is clear from the replies of the Respondents that the amounts due to them under the Liquidation Proceedings arises from their claim*

*in relation to credit facilities other than credit facilities extended under such fraudulent LoUs/LCs. Accordingly, the amounts determined as payable in terms of Section 53 of the Code are payable to such Respondents. The Applicant cannot make a claim over these amounts due to the Respondents under the right of subrogation in terms of said undertaking as such amounts are neither arising from allegedly fraudulently issued LOUs and/or LCs that are found by any court of competent jurisdiction or any investigative agency under Indian Laws to have been issued pursuant to knowledge of the alleged fraud or collusion in the alleged fraud by any existing or past officials/employees of our bank, nor are in relation to recoveries made from fraudulent LoUs/LCs.*

*6.5 Accordingly, we have no hesitation to hold that Applicant's right to receive the liquidation proceed in priority over the Respondents No. 2,3 & 4 on the basis of the Undertakings dated 28.03.2018 can't be accorded recognition in so far the amounts payable in relation to claims arising from credit facilities other than credit facilities in relation to Fraudulent LoUs/LCs is concerned."*

3. As the issue involved in the present application is squarely covered by the order dated 02.01.2024 of Court – I, following the said order the prayers are rejected. Accordingly, IA is **dismissed**.

Sd/-  
CHARANJEET SINGH GULATI  
Member (Technical)

//MANISH TIWARI//

Sd/-  
LAKSHMI GURUNG  
Member (Judicial)