

NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 20

IA 2558/2023 in C.P. (IB)/1061(MB)2017

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON **04.04.2024**

NAME OF THE PARTIES: **UNION BANK OF INDIA V/s GURUASHISH**
CONSTRUCTION PVT. LTD

Section 60(5) & 7 of the Insolvency and Bankruptcy Code, 2016

ORDER

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- 1) Ms. Beverly F., Ld. Counsel for the Applicant, Mr. Darryl Pereira, Ld. Counsel for the Liquidator, Ms. Avani Bhanushali, Ld. Counsel for the Respondent No. 2 and Mr. Rajendra Bhuta, Liquidator of the Corporate Debtor are present.
- 2) The Present Interlocutory Application has been filed by the Applicant, Liquidator of the Corporate Debtor, seeking directions against Respondents to de-freeze the Bank Accounts maintained with Axis Bank of the Corporate Debtor.
- 3) It is submitted that during the period of Moratorium i.e. on 15.10.2019, the Respondent No. 1 issued letter to the Manager of Axis Bank informing him

that the Banking Unit of Economic Offences Wing, Mumbai is investigating an offence vide E.O.W. C.R. No. 86 of 2019 registered on the complaint of officials of Punjab and Maharashtra Co-operative Bank limited PMC Bank against its official, Directors of the Housing Development and Infrastructure Limited and its group companies and others for committing alleged fraud of Rs. 4355/- Crore.

- 4) Further, funds in large amount have been siphoned off by diverting into various banks accounts of HDIL and its group companies and large funds have also been parked in various kinds of stocks and forms of investment and therefore, scrutiny of all such accounts/Demat accounts/Investments is in process during the course of investigation. It is also submitted that Guruashish Construction Pvt. Ltd. one of the group companies of HDIL holds Account with Axis Bank, and in order to secure misappropriated funds, Respondent No. 1 requested Axis Bank to comply with following:
- a. Debit freeze the Account No. 911020066137248 of Guruashish Construction Pvt. Ltd.
 - b. Debit freeze Demat accounts associated with the Account No. 911020066137248 of Guruashish Construction Pvt. Ltd.
 - c. Put a Lien mark on all the Terms Deposits associated with the Account No. 911020066137248 of Guruashish Construction Pvt. Ltd.

- d. Put a Lien mark on all the investments in all the forms associated with the Account No. 911020066137248 of Guruashish Construction Pvt. Ltd.
- e. Please inform details of all the borrowings of Guruashish Construction Pvt. Ltd. and securities provided against thereof.
- f. To identify lockers associated with the current Account No. 911020066137248 of Guruashish Construction Pvt. Ltd. and put a line on the same and also not to allow any further operation in the same.

5) It is submitted that similar letter was also issued on the same day in relation to Current Account No. 9090200454798743. Thereafter, Axis Bank informed the Applicant that E.O.W. has frozen the bank account of the Corporate Debtor in Liquidation Bank Account Nos. 0909020045478743 and 0911020066137248. On 28.07.2021, the Applicant addressed letter to Axis Bank informing that this Bench vide order dt. 24.07.2017 declared Moratorium of the Corporate Debtor and during the moratorium no one has the right to issue any order, institution of any suit, or continuation of any suit or proceedings against the Corporate Debtor and the order freezing the Bank Account of the Corporate Debtor is bad in law, null and void. Freezing of the bank account after the insolvency is covered under the Moratorium.

- 6) Thereafter, Axis Bank by its Letter dt. 10.05.2023, requested the Respondent No. 1 to give their approval for lifting freeze marked by them so that the Bank Could transfer the funds to the Company's Liquidation Account.
- 7) Applicant however submits that they have made several attempts and met the officers of Respondent No. 1 and requested to de-freeze the accounts due to the position in law; however, Respondent No. 1 refuses to take any action without an express de-freezing order from this Bench.
- 8) Hence, this Application.
- 9) In this Case, the CIRP commenced on 15.10.2019, thus, triggering moratorium in terms of Section 14 of the Code, which provides *inter alia* that there shall be prohibition of transferring, encumbering, alienating or disposing of any of the Corporate Debtor's assets as well as on institution of suits or continuation of pending suits or proceedings against the Corporate Debtor. We note that the Respondent No. 1, issued Notice dt. 12.07.2021, to the Respondent No. 2 Axis Bank, directing Respondent No. 2 to place debit freeze on bank accounts of the Corporate Debtor. It is not in dispute that the CIRP in the case of the Corporate Debtor had already commenced and no proceedings in relation to the assets of the Corporate Debtor could have been taken up by any person including the investigating agencies. It is noteworthy that the Resolution/Liquidation process aimed to settle the dues of the Creditors of the Corporate Debtor and Respondent No. 1 has initiated this

proceedings on the behest of one of the Financial Creditor to whom HDIL Group owed the debt.

10) Further, the Resolution Professional/Liquidator is duty bound to take the control and custody of the assets of the Corporate Debtor for the settlement of debt of the Creditors of such Corporate Debtor. We are also conscious of the fact that, the Respondent No. 1 has taken this action to protect the interest of the Creditors, which in any case is going to be settled by the Resolution Professional/Liquidator in terms of the Resolution/Liquidation process of the Corporate Debtor.

11) The order passed by the Respondent No. 1 is vacated and Respondent No. 1 is directed to intimate Respondent Bank to lift the debit freeze. In alternate, the Applicant shall be at liberty to produce the copy of this Order before the Respondents for the necessary action on their part including lifting of the debit freeze by the Respondent Banks.

12) With the aforesaid observations and directions, the Interlocutory Application bearing IA No. 2558 of 2023, is disposed of as allowed. No costs.

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

Sd/-

**JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)**