

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT- 3, MUMBAI BENCH**

IA 2422/2020 in  
C.P.(IB)- 2640/(MB)/ 2019

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

In the matter of

Mr. Ashutosh Agarwala,  
..... Applicant/  
Resolution Professional

Vs

1. Joint Commissioner of State  
Tax, Kolkata-700015;
2. Joint Commissioner of State  
Tax, Investigation-A, Mumbai;
3. Deputy Commissioner of State  
Tax, Mazgaon,  
Mumbai-400010;
4. Axis Bank,  
Nariman Point Branch,  
Mumbai-400021;
5. Deutsche Bank, Bandra (East),  
Mumbai-400051;
6. IDFC First Bank, Bandra (East),  
Mumbai-400051;
7. IndusInd Bank, Goregaon  
Branch, Mumbai;
8. Kotak Mahindra Bank,  
Nariman Point Branch,  
Mumbai-400051;
9. State Bank of India,  
Commercial Branch,  
Fort, Mumbai-400001.

.... Respondents

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In the matter of:

Rattan India Finance Private  
Limited

.... Financial Creditor

Vs.

Cox & Kings Limited

.... Corporate Debtor.

Order pronounced on : 01.12.2021

Coram:

Hon'ble Shri H V Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Petitioner : Mr. Pulkitesh Dutt Tiwari, Advocate for  
Resolution Professional.

For the Respondent: (None)

*Per: Chandra Bhan Singh, Member (Technical)*

**ORDER**

1. The IA 2422 of 2020 in CP(IB)-2640/2019 has been filed by the Resolution Professional of the Corporate Debtor against the Respondents, who from Sr.No.1 to 3, are the relevant State Tax Authorities of West Bengal and Maharashtra whereas from Sr. No.4 to 9 are Respondent Banks/ financial Institution with whom the Corporate Debtor maintained its bank accounts. The relief being sought by the Resolution Professional are briefly the following:-

(a) The attachment on all the bank accounts with the Respondent No.4 to 9 of the Corporate Debtor to be

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released from attachment/ deemed to have been vacated through efflux of time.

(b) Restrain the Respondent Nos. 1 to 3 who are the Tax Authorities from issuing any further notices or orders for seizing/ attaching any of the assets of the Corporate Debtor Company without the leave of the Tribunal.

(c) The Respondent Nos. 4 to 9 who are the Financial Institutions to be directed to provide the Resolution Professional access to all the bank accounts maintained by them of the Corporate Debtor Company.

2. The Corporate Insolvency Resolution Process of the Corporate Debtor Company, M/s Cox and Kings Ltd, commenced vide Order of the Bench dated 22.10.2019.

3. The Joint commissioner of State Tax, Government of West Bengal intimated the Respondent No.4, Axis Bank, Nariman Point, Mumbai that proceedings have been launched against the Company u/s 62 of West Bengal Goods and Services Act. The State Tax Department of West Bengal proceeded to provisionally attach Axis Bank account of the Corporate Debtor u/s 83 of the WBGST/ CGST Act on 09.09.2019, thereby not permitting any debit from the said bank account without permission of the State Tax department of West Bengal. Similarly, Respondent No.2, i.e., the Maharashtra Goods and Services Tax department also intimated that, proceedings have been launched against the Corporate Debtor u/s 67 of the Maharashtra GST Act. Further, the Maharashtra

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State Tax department vide its letter dated 25.10.2019 provisionally attached the concerned bank account of the Corporate Debtor with Respondent Nos.4 to 9 u/s 83 of the Maharashtra GST Act. Both the notices, i.e., of West Bengal GST and Maharashtra GST, are Section 83 notices of State GST Acts.

4. The relevant provision of Section 83(1) and (2) of West Bengal GST Act/ Maharashtra GST/ CGST Act 2017 reads as under:-

*“Section 83.*

*(1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.*

*(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).”*

5. Similarly, the relevant provision u/s 79(1) and (c) of the WBGST/MGST/CGST Act, 2017 reads as under:-

*“Section 79.*

*(1) Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed*

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*to recover the amount by one or more of the following modes,  
namely:--*

*(a) The proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer;*

*(b) -----*

*(c) (i) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the Government either forthwith upon the money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;*

**FINDINGS:-**

6. Section 14 of the IBC, *inter alia*, bars any institution of Suits, continuation of pending Suits or proceedings against Corporate Debtor including execution of any judgment, decree or Order in any Court of law, Tribunal or Arbitration panel or any other authority. Further Section 238 of the IBC has overriding effect on all other laws which includes State GST Act and Central GST Act which are in contravention to the IBC, 2016.

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7. The Bench notes that as far as Section 83 of the GST Legislation is concerned, it is a settled position of law that attachment of assets of Corporate Debtor during CIRP drastically affects the stakeholders of the Corporate Debtor and therefore NCLT/ NCLAT time and again have issued directions to release the assets so attached u/s 83 of the GST Legislation following Sections 14 and 238 of the IBC. With respect to attachment of assets of a Company undergoing CIRP following Section 79 of the GST Act 2017 constitute violation of the 'moratorium' imposed under Section 14 of the IBC which explicitly prohibits any action to recover or enforce any security interest created by the Corporate Debtor. Therefore, no notice issued u/s 79 of the State GST/ CGST Act can be acted upon by any Central/ State Authority against the Corporate Debtor undergoing CIRP. The Bench has clarity that any payment to the State Tax Authority would be in terms of the IBC, as per the Resolution Plan that is approved or as per the waterfall prescribed u/s 53 of the IBC. The Bench also notes that as per Section 83(2) of the State GST/ CGST Act any provisional attachment u/s 83(1) will have no effect after expiry of one year. Therefore, the West Bengal GST Notice and Maharashtra GST Notice would have been operational only till 08.09.2020 and 24.10.2020 respectively and thereafter ceased to have effect. Therefore, this Bench directs the following relief as prayed for by the Resolution Professional of the Corporate Debtor:-

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1. Respondent No.3, (Deputy Commissioner of State Tax, Mumbai) to release the attachment on Axis Bank Account maintained by the Corporate Debtor Company which has been ordered by Respondent No.3 vide Section 79 Notice dated 09.09.2019.
  2. The Bench orders that attachment on all bank accounts of the Corporate Debtor with Respondent Nos.4 to 9 vide section 83 notice dated 09.09.2019 of West Bengal GST and vide Order dated 25.10.2019 of MGST stands vacated through efflux of time.
  3. The Bench also directs Respondent No.1 to 3 not to issue any further notice/ order/ direction for seizing or attaching any of the assets/ properties of the Corporate Debtor Company without explicit permission of the NCLT.
  4. Respondent Nos.4 to 9 i.e., banks/ financial institutions with whom the Corporate Debtor Company has account, to permit the Resolution Professional operate these bank accounts.
8. IA 2422/2020 in CP(IB)-2640/2019 is “**Allowed**” on the above terms and is disposed of accordingly.

Sd/-  
Chandra Bhan Singh  
Member (Technical)

Sd/-  
H V Subba Rao  
Member (Judicial)