NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.201
IA/42(MP) 2021
in
TP 162 of 2019 [CP(IB) 18 of 2017]

Order under Section 60(5) & 35 IBC

IN THE MATTER OF:

Prawincharan Prafulcharan Dwary Liquidator of Bhatia Global Trading Ltd	**........Applicant**
V/s	**........Respondent**
Bank of India	

Coram:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)
Hon'ble Shri Man Mohan Gupta Member (T)

PRONOUCNEMENT OF ORDER

Delivered on 10/07/2026

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-	Sd/-
MAN MOHAN GUPTA	**BRAJENDRA MANI TRIPATHI**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

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BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

I.A. No. 42 (MP) of 2021
IN
TP No. 162 of 2019
(Arising out of C.P. (I.B.) No. 18 of 2017)

Application under Section 60(5) read with Section 35 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules,

IN THE MATTER OF:

Mr. Prawinchandra Prafulchandra Dwary
Liquidator of Bhatia Global Trading Ltd.
407, Akchhat Tower, Pakwan Cross Road,
S.G. Highway, Bodakdev, Ahmedabad – 380054

....Applicant

VERSUS

Bank of India
Indore Mid Corporate Branch, Ground Floor,
Airen Heights, Plot No. 14-PU-3, Scheme No. 54,
Opp. Orbit Mall, A.B. Road, Indore

....Respondent

C O R A M:

HON'BLE SH. BRAJENDRA MANI TRIPATHI, MEMBER (J)

HON'BLE SH. MAN MOHAN GUPTA, MEMBER (T)

Order Pronounced on 10.07.2026

ORDER

I. FACTS / PROCEDURAL BACKGROUND

1. This I.A. No. 42 of 2021 has been filed by Mr. Prawincharan Prafulcharan Dwary, presently the Liquidator of Bhatia Global Trading Ltd. ("Corporate Debtor") and successor to the erstwhile Resolution Professional, Mr. Nitin Hasmukhlal Parikh, under Section 60(5) read with Section 35 of the Insolvency and Bankruptcy Code, 2016 ("the Code") read with Rule 11 of the NCLT Rules, 2016, seeking a direction to the Respondent, Bank of India, to reverse the amount appropriated by it in priority over other Financial Creditors and to credit the same to the account of the Corporate Debtor maintained by the Applicant.

2. CIRP was initiated against the Corporate Debtor vide order dated 23.05.2017 in C.P. (I.B.) No. 18 of 2017, whereupon a moratorium under Section 14 of the Code came into force ("Insolvency Commencement Date" or "ICD").

3. The Respondent lodged a claim of INR 43 Crore on commencement of CIRP, of which the erstwhile IRP admitted a sum of INR 40 Crore. It is stated by the Applicant that the Respondent thereafter sent an e-mail to the State Bank of India (a consortium creditor) confirming that no amount remained outstanding from the Corporate Debtor, and did not file any claim with the Applicant/Liquidator upon commencement of liquidation on 29.05.2020.

4. The present I.A. was filed on or about 17.02.2021 claiming reversal of INR 40 Crore alleged to have been appropriated by the Respondent from the Corporate Debtor's Cash Credit Account No. 883730110000004. The Respondent, in its Reply, admitted the appropriation (Para 6, Page 4 of Reply) but contended that the same was carried out at the authorisation/instructions of the erstwhile IRP, Mr. Nitin Parikh.

5. In compliance with this Tribunal's specific directions vide order dated 09.04.2025, the Applicant filed an Affidavit dated 04.06.2025 placing on record a chart of the debit entries alleged to have been appropriated by the Respondent (Annexure 2), together with the statement of the Cash Credit Account No. 883730110000004 for the relevant period (Annexure 3, Pages 6–79).

6. The Respondent thereafter filed a rebuttal/Additional Affidavit dated 04.07.2025 placing on record various letters/e-mails written by or acknowledged by the erstwhile IRP, authorising payment of certain LCs and the opening of other LCs for the uninterrupted operation of the Corporate Debtor.

II. SUBMISSIONS OF THE RESPONDENT

1. Maintainability: It is submitted that (a) the I.A. has been filed without placing on record the approval of the Stakeholders' Consultation Committee, and the Liquidator cannot have a personal interest in the matter; (b) the I.A., filed on or about 17.02.2021, is barred by limitation under Article 137 of the

Limitation Act, 1963, since it is filed more than three years after the date of the last alleged transaction, i.e., 08.11.2017 (as stated at Page 5 of the Applicant's own Affidavit dated 04.06.2025); and (c) the I.A. is bad for non-joinder, since it has been filed without impleading the erstwhile IRP and the beneficiaries under the LCs, notwithstanding that it is the Respondent's case that the erstwhile IRP had approved and directed the impugned remittances.

2. No violation of Section 14: It is submitted that the facility availed by the Corporate Debtor was a Non-Fund Based (Letter of Credit) facility, and that the bar of moratorium under Section 14 does not extend to such a facility, in reliance upon the Hon'ble NCLAT's decisions in Mitsubishi Heavy Industries Ltd. v. M/s Punj Lloyd Ltd. and Ors. and Punjab National Bank and Ors. v. Supriyo Kumar Chaudhuri RP. It is further submitted that, under Section 14(2) and 14(2A) of the Code, the IRP/RP has the discretion to continue the supply of goods and services critical to preserve the value of the Corporate Debtor, which cannot be suspended during moratorium, and that all approvals for the LC payments in question were granted by the erstwhile IRP, Mr. Nitin Parikh, himself for continuing the Corporate Debtor's business operations (R/1@6, Additional Affidavit dated 04.07.2025).

3. It is submitted that the transactions relied upon by the Applicant, as summarised in the Applicant's own chart (Annexure 2 to the Affidavit dated 04.06.2025), all pertain to dates subsequent to commencement of CIRP, and that the

Respondent has placed on record the erstwhile IRP's approval for each such transaction, rendering the Applicant's case untenable. It is denied that any amount has been misappropriated by the Respondent for its own recovery, it being submitted that the facility was a Non-Fund Based LC limit of Rs. 40 Crore crystallised through bills/documentary credit; that the erstwhile IRP, desirous of running the Corporate Debtor as a going concern, approved and consented to the LC issuances, pursuant to which the Respondent merely remitted payments to honour the LCs and charged its facilitation fee; and that even the claim lodged by the Respondent with the IRP was itself contingent upon rollover of the LCs for payment.

4. Other grounds: It is submitted that the Applicant has suppressed the Respondent's response to the RP's letter dated 05.03.2019, the Respondent having in fact replied thereto vide e-mails dated 08.07.2019, 17.07.2019, 29.07.2019 and 15.11.2019, to which the erstwhile IRP sent no further reply. It is submitted that the I.A. has been filed with an oblique motive and is liable to be dismissed on this ground as well.

III. SUBMISSIONS / REPLY OF THE APPLICANT

1. The Applicant reiterates that the Respondent has grossly neglected and violated the statutory moratorium under Section 14 of the Code by wrongfully adjusting the funds available in the Cash Credit Account No. 883730110000004

towards its own obligations qua open Letters of Credit, as they stood on the date of commencement of CIRP.

2. It is submitted that the Respondent's claim on commencement of CIRP was INR 43 Crore, of which INR 40 Crore was admitted by the IRP; that the Respondent thereafter confirmed to SBI (a consortium creditor) that no dues remained outstanding from the Corporate Debtor; and that the Respondent did not thereafter file any claim with the Applicant/Liquidator after commencement of liquidation (29.05.2020) – circumstances which, according to the Applicant, corroborate that the Respondent had, in substance, already recovered its dues during the CIRP period.

3. Significantly, the Applicant submits that the Respondent's own rebuttal affidavit admits that there existed certain outstanding LCs as on the Insolvency Commencement Date, i.e., 23.05.2017, being Serial Nos. 1 to 5 of the chart filed with the Applicant's Affidavit dated 04.06.2025, aggregating INR 16,49,75,824/- (LCs issued between 28.02.2017 and 18.05.2017, i.e., all prior to the ICD), the dates of issuance whereof also stand corroborated by the chart annexed to the Respondent's own rebuttal affidavit (Page 51 & 51A, Annexure R/3). The balance of the sum originally claimed (approximately INR 24 Crore) relates to LCs opened during the currency of CIRP for keeping the Corporate Debtor running as a going concern, which the Respondent contends were ratified by the RP.

4. The Applicant has accordingly confined and narrowed the relief presently pressed to a refund of INR 16,49,75,824/- only – being the amount corresponding to the five pre-ICD LCs – and does not press the claim in respect of the balance amount relatable to LCs opened during CIRP. It is submitted that these particular payments ought to have been made by the Respondent debiting the devolved LC/advance Bill Account, in respect of which the Respondent's claim already stood filed with the IRP/RP, and not by debiting the Corporate Debtor's Cash Credit Account, into which credits from the Corporate Debtor's customers/debtors were being received in the ordinary course; that, in substance, the Respondent recovered its own pre-CIRP dues out of monies that would otherwise have been available for distribution in accordance with the waterfall mechanism under Section 53 of the Code.

5. It is further submitted that even where the erstwhile RP may have authorised or ratified individual debit entries for the sake of continuity of the LC arrangement, such ratification cannot cure an act that is itself prohibited by Section 14 of the Code, since the RP does not have the power to sanction a recovery that the statute itself bars; an act which is bad in law cannot be validated merely because it carries the RP's approval.

6. The Applicant places reliance on the decision of the Hon'ble NCLAT in Bank of India & Ors. v. Bhuban Madan, RP of Ferro Alloys Corporation Ltd. and the order of the Hon'ble NCLT,

Chennai Bench in Subrata M. Maity, RP of M/s Bhatia Coke and Energy Ltd. v. Punjab National Bank, and submits that the Respondent's reliance on Mitsubishi Heavy Industries Ltd. v. M/s Punj Lloyd Ltd. and Punjab National Bank and Ors. v. Supriyo Kumar Chaudhuri RP is completely misconceived, since those decisions address invocation of a Performance Bank Guarantee and appropriation of Margin Money in respect of Letters of Credit during moratorium – both instruments held to fall outside the definition of "security interest" under Section 3(31) of the Code – whereas the present I.A. concerns recovery/appropriation of amounts by the Respondent against LCs issued prior to the ICD, directly from the Corporate Debtor's own Cash Credit Account, where, in the ordinary course, credits are received from the Corporate Debtor's own customers against its sales.

7. On the objection of limitation, raised for the first time in the Respondent's rebuttal affidavit, the Applicant submits that Section 60(6) of the Code specifically excludes the period covered by the moratorium/CIRP for the purposes of computing limitation, and that the present Application, though relating to transactions of 2017 and filed in 2021, is accordingly well within limitation.

8. In light of the above, the Applicant prays that the amount of INR 16,49,75,824/- be refunded/credited by the Respondent, as it amounts to a clear violation of the provisions of the Code.

IV. OBSERVATIONS AND ANALYSIS

1. We have considered the pleadings, the Affidavit and Additional Affidavit filed by the respective parties, and the Written Submissions filed on behalf of the Applicant and the Respondent, together with the judgments relied upon by them.

2. The following facts stand undisputed: (i) CIRP was initiated against the Corporate Debtor vide order dated 23.05.2017; (ii) the Respondent's claim came to be registered at a sum in the region of INR 40 Crore; (iii) the Corporate Debtor's Cash Credit Account No. 883730110000004 continued to be operated with the Respondent during CIRP; and (iv) of the total amount originally claimed as appropriated, an amount of INR 16,49,75,824/- corresponds to five Letters of Credit that were already outstanding as on the Insolvency Commencement Date (issued between 28.02.2017 and 18.05.2017), while the balance (approximately INR 24 Crore) corresponds to LCs opened afresh during the CIRP period.

3. We note that the Applicant has, before us, confined the relief pressed to the sum of INR 16,49,75,824/- relatable to the pre-Insolvency Commencement Date LCs, and has not pressed the claim in respect of the LCs opened during CIRP. The details of Letter of Credit that were outstanding as on the Insolvency Commencement Date are as follows:

S. No.	LC Number	LC Amount/ Amount Appropriated	Corresponding debit entry in the account statement entry S. no. and page no.	Narration in the account statement mentioning bill no.	Bill ID as could be validated against the LC number from the rebuttal affidavit filed by respondent
1	Unknown	71,765	1140, pg no. 34	ToBill: 88370BN17000475	88370BN17000475
2	8837ILCDA170027 [Issue Date – 28.2.2017]	5,00,93,071	1428, pg no. 42	ToBill: 8837IBN17000025	8837IBN17000025
3	8837ILCDA170051 [Issue Date – 22.3.2017]	4,84,00,427	1480, pg no. 43	ToBill: 8837IBN17000082	8837IBN17000082
4	88371LCDA170070 [Issue Date – 07.04.2017]	3,49,27,548	376, pg no. 53	ToBill: 8837IBN17000089	88371BN17000089
5	88371LCDA170081 [Issue Date – 18.05.2017]	3,14,83,013	693, pg no. 61	ToBill: 8837IBN17000108	8837IBN17000108
	TOTAL	**16,49,75,824**			

We accordingly confine our consideration, and this Order, to the narrowed claim, and refrain from returning any finding on the amount relatable to LCs opened during the CIRP period, which is not now in issue.

4. The question that falls for consideration, therefore, is a narrow one: whether the Respondent's act of applying credits/receipts in the Corporate Debtor's own Cash Credit Account, after the Insolvency Commencement Date, towards discharge of the Respondent's own pre-ICD LC obligations – obligations in respect of which the Respondent had itself lodged a claim with the erstwhile IRP/RP – amounts to a prohibited recovery/appropriation under Section 14(1)(b) and (c) of the Code, notwithstanding that the underlying LC payments may have been made pursuant to the then-IRP's authorisation for continuity of the Corporate Debtor's business.

5. On the Respondent's reliance on Mitsubishi Heavy Industries Ltd. v. M/s Punj Lloyd Ltd. and Punjab National Bank and Ors. v. Supriyo Kumar Chaudhuri RP, we find, with respect, that both decisions are distinguishable on facts. Mitsubishi Heavy Industries concerned invocation of an unconditional and irrevocable Performance Bank Guarantee issued by a third-party bank (State Bank of India) in favour of an employer under a construction contract – an instrument expressly excluded from the definition of “security interest” under the proviso to Section 3(31) of the Code, and further carved out of Section 14 by virtue of Section 14(3) – and did not involve any debit to the corporate debtor's own account. The Section 3 (31) of the Code is given below:

> *"3 (31) "**security interest**" means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person:*
>
> *Provided that security interest shall not include a performance guarantee"*

In Punjab National Bank v. Supriyo Kumar Chaudhuri RP concerned margin money held as an FDR against Letters of Credit, which the Hon'ble NCLAT held to be impressed with the character of a trust for the benefit of the LC beneficiary, and therefore not an asset of the corporate debtor at all. Neither decision, therefore, dealt with a creditor directly debiting the corporate debtor's own operational account to recover its own pre-existing dues.

6. The fact pattern before us, by contrast, is that of a creditor bank applying credits received in the Corporate Debtor's own Cash Credit Account, after the Insolvency Commencement Date, towards discharge of its own pre-ICD dues/claim. This is, in substance, the fact pattern considered by the Hon'ble NCLAT in Bank of India & Ors. v. Bhuban Madan, RP of Ferro Alloys Corporation Ltd., where recovery of amounts by consortium banks from the corporate debtor's accounts during CIRP – even where the underlying remittances were made pursuant to the erstwhile RP's own commercial decisions to reduce interest costs – was held to amount to preferential recovery in violation of Section 14, and reversal was directed. A similar view was taken by the Hon'ble NCLT, Chennai Bench in Subrata M. Maity, RP of M/s Bhatia Coke

and Energy Ltd. v. Punjab National Bank, where amounts debited to the corporate debtor's account during CIRP for having honoured pre-CIRP LCs were directed to be reversed, while amounts relatable to LCs freshly opened during CIRP were treated differently, being made subject to the RP's/CoC's directions.

7. We are inclined to adopt the same distinction in the present case. Insofar as the narrowed claim of INR 16,49,75,824/- relates exclusively to LCs already outstanding as on the ICD – i.e., pre-existing obligations of the Corporate Debtor for which the Respondent had itself lodged a claim with the erstwhile IRP/RP – the subsequent discharge/adjustment of these very obligations by debit to the Corporate Debtor's own Cash Credit Account, after the ICD, amounts, in substance, to the Respondent recovering its own pre-CIRP dues out of the assets of the Corporate Debtor during the currency of the moratorium. That the erstwhile IRP may have authorised or acquiesced in the individual debit entries for the sake of continuing the LC arrangement does not, in our view, alter this character: neither the IRP nor the RP has the power to sanction a recovery that Section 14 of the Code itself prohibits, and an authorisation which has the effect of enabling one creditor to prefer itself over similarly placed creditors cannot cure the resulting contravention of the moratorium merely because it carries the erstwhile IRP's imprimatur.

8. On maintainability, we are not persuaded that the absence of a recorded Stakeholders' Consultation Committee approval renders the present I.A. non-maintainable, since seeking reversal of amounts alleged to have been wrongfully appropriated in contravention of the statutory moratorium falls squarely within the Liquidator's duty under Section 35(1)(d) of the Code to take measures to protect and preserve the assets of the Corporate Debtor, and it has not been shown that prior SCC approval is a condition precedent to the maintainability of such a proceeding.

9. The objection of non-joinder of the erstwhile IRP and the LC beneficiaries is also, in Tribunal’s view, misconceived in the facts of this case: the relief sought is confined to a direction against the Respondent Bank alone, concerning entries in the Corporate Debtor's own account maintained with the Respondent, and does not seek any relief against the erstwhile IRP personally or against the beneficiaries under the LCs; further, the material relied upon by the Respondent to establish the erstwhile IRP's authorisation has, in any event, been placed on record through the Respondent's own Additional Affidavit and has been duly considered by us.

10. On limitation, The Respondent has raised a legal question with respect to the limitation of the preferential transaction. He has stated that the Application filed beyond the prescribed limitation and, therefore the petition is not maintainable. We have examined the above contention raised by the Respondent. As far as the limitation with respect to the

preferential transaction is concerned Section 43 and 44 of IB Code, 2016 do not prescribe any specific period of limitation for filing an application seeking avoidance or restoration of a preferential transaction. The only statutory requirement is that the impugned transaction must have been entered into within the relevant look-back period prescribed under Section 43(4) of the Code. It would be appropriate to reproduce the provision of IBC of Section 43:-

"43. Preferential transactions and relevant time.—(1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44."

11. The opening sentence of the above section shows that a petition for preferential transaction can be moved by the RP or Liquidator during the proceedings of the CIRP/ Liquidation. Therefore, it is explicitly clear that the petition filed seeking restoration of preferential transaction can be moved during the CIRP/ liquidation period.

12. In this case, the Hon'ble Delhi High Court in M/s Venus Recruiters Private Limited Vs Union of India and Ors. had examined the limitation period for preferential transaction. The Hon'ble Delhi High Court has examined the provision of the IBC at length and has explained wisdom behind these observations that the preferential transaction is for the benefit either of the Corporate Debtor or Creditors. Once the

Resolution Plan is approved the preferential transaction cannot be procured for benefit of the creditors. Therefore, a petition beyond the approval of the Resolution Plan cannot be filed. Unless there is a specific provision in the Resolution Plan itself. Further the Hon'ble Court has observed that the above principle applied only in a proceeding where a Resolution Plan has come to resolve stressed Corporate Debtor and certainly it does not apply to the liquidation proceeding. The Hon'ble Court has observed as follows: -

"53. As per Section 43, if the RP is of the opinion that any preferential transaction has taken place, by which the Corporate Debtor has given any benefit to a related party, two years prior to the insolvency commencement date or a preference to an unrelated party one year prior to the said date, he can move an application with the NCLT for avoidance of the same. If the NCLT is of the view that the transaction was a preferential transaction, it can pass various types of orders as set out in Section 44, in effect neutralising the transaction. Such an order could include the reversal of the transaction, sale of any property given under the transaction, amounts being paid in respect of benefits received and such like orders."

On the basis of the above analysis, we seek the guidance to apply the same principle in the facts of the present case. The present Application seeking restoration of preferential transaction has been moved by the Liquidator during the liquidation proceeding and therefore it is well within the limitation.

13. For the reasons aforestated, we are satisfied that the Applicant has made out a case for reversal only to the extent

of INR 16,49,75,824/-, being the amount corresponding to the five Letters of Credit (as tabulated in the Applicant's Written Submissions) that were outstanding as on the Insolvency Commencement Date and were subsequently discharged/appropriated by debit to the Corporate Debtor's Cash Credit Account No. 883730110000004 after the Insolvency Commencement Date. No case is made out, on the material before us, for any further amount, and none is pressed.

V. ORDER

1. The Respondent, Bank of India, is directed to reverse the appropriation and credit to the account of the Corporate Debtor maintained by the Applicant/Liquidator the sum of INR 16,49,75,824/- (Rupees Sixteen Crore Forty-Nine Lakh Seventy-Five Thousand Eight Hundred and Twenty-Four only), within a period of four weeks from the date of receipt of a copy of this Order.

2. I.A. No. 42 of 2021 stands partly allowed and disposed of in the above terms.

Sd/-	Sd/-
MAN MOHAN GUPTA	**BRAJENDRA MANI TRIPATHI**
(MEMBER TECHNICAL)	**(MEMBER JUDICIAL)**

Vanshika-LRA