NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1300 of 2025
& I.A. No. 5086 of 2025

[Arising out of Order dated 06.06.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Jaipur Bench in IA (IBC) No.585/JPR/2024 in CP No.(IB)- 27/122/JPR/2024]

In the matter of:

Subhash Chandra Mishra, Personal Guarantor ...Appellant

Vs.

Sunil Kumar, Bankrupt Trustee & Anr. ...Respondents

For Appellant:	**Mr. Nitesh Shrivastava, Mr. Mohit Sharma, Advocates**
For Respondent:	**Mr. Rishabh Khandelwal, Advocate**
	Mr. Shubham Singh, Proxy Counsel for R-2

J U D G M E N T

(14th January, 2026)

Ashok Bhushan, J.

This Appeal by a Bankrupt has been filed challenging the order dated 06.06.2025 passed by the Adjudicating Authority (National Company Law Tribunal) Jaipur Bench in IA (IBC) No.585/JPR/2024 in CP No.(IB)-27/122/JPR/2024. The application filed by bankrupt praying for various directions have been rejected by the impugned order aggrieved by which order, this Appeal has been filed.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:-

2.1. The Appellant- Subhash Chandra Mishra has given personal guarantee for Corporate Debtor- M/s. Niroz Insulations Pvt. Ltd. and M/s. Triveni Agrotraders Pvt. Ltd. The Appellant filed an application under Section 94(1) for initiating personal insolvency against the Appellant with respect to amount of Rs.5,35,53,097/-. The Adjudicating Authority appointed a Resolution Professional who submitted report on the basis of which order was passed admitting Section 94 application. Resolution Professional prepared list of creditors. Repayment plan was placed before the creditors which plan was rejected by the creditors. Adjudicating Authority vide order dated 05.01.2024 rejected the Resolution Plan and permitted the Applicant to file application for initiation of bankruptcy process. CP No.(IB)- 27/122/JPR/2024 was filed by the Appellant seeking initiation of bankruptcy against the Applicant/personal guarantor which application came to be allowed by the Adjudicating Authority vide order dated 06.11.2024. The Respondent No.1 was appointed as Bankruptcy Trustee. Consequential orders were also passed by the Adjudicating Authority. Bankruptcy Trustee after having been appointed directed the Bank to freeze the account of the Appellant. Appellant attempted to make transaction in his bank account which was not allowed. He sent an e-mail dated 19.11.2024 to bankruptcy trustee objecting to the freezing of the account. Appellant prayed to the bankruptcy trustee to remove debit freeze from all account. The bankruptcy trustee replied by e-mail dated 20.11.2024

that in pursuance of the order dated 06.11.2024, bankruptcy trustee has to take custody and control of all assets, properties and actionable claims belonging to the bankruptcy estate. Bankruptcy trustee further communicated that he has no authority to release funds from the account of the Appellant and if Appellant require funds for specific purpose is advised to file an application with the NCLT to seek approval. After receipt of the said e-mail from the bankruptcy trustee, Appellant filed an IA (IBC) No.585/JPR/2024 praying for reliefs which have been extracted in paragraph 1 of the impugned order to the following effect:-

> *"a) Allow the present Application;*
>
> *b) Direct the Respondent No. 1 and Respondent No. 2 to unfreeze the bank account bearing A/c No. 1911225023574190 and allow the Applicant to use the deposited amount without any hinderance.*
>
> *c) Refrain the Respondent No. 1 from freezing the bank accounts in future being the essential provision for maintaining the livelihood of the Applicant and immediate family."*

2.2. Bankruptcy Trustee filed the reply to the application pleaded that the amount lying in the bank account of the bankrupt is the Estate of the Bankrupt and as per the provisions of the IBC, the bankruptcy trustee was well within its power to freeze all the assets of the applicant. It was pleaded that the amount in the bank account is not excluded assets of the bankrupt. Adjudicating Authority heard the parties and by impugned order rejected the application. Adjudicating Authority rejected the application holding that the applicant has failed to furnish any document or evidence on record to

substantiate the claim that the amount held in the bankrupt's account is 'in trust' of borrowed from friends and family. The Adjudicating Authority held that the relief sought by the Applicant i.e. unfreezing of the bank account and permission to utilise the deposited funds without restriction does not fall within the ambit of excluded assets under Section 79(14)(b) of the Code.

2.3. Bankrupt aggrieved by the said order has come up in this Appeal. On 11.09.2025, following order was passed by this Tribunal:-

> *"**11.09.2025:** Respondents dasti. Issue notice. Appellant is also permitted to serve both the Appellant is also permitted to file an Additional Affidavit.*
>
> *Let Reply be filed by the Respondents within three weeks.*
>
> *List this appeal on 07.10.2025.*
>
> *In the meantime, we permit the appellant to approach the Bankruptcy Trustee praying for transfer of particular amount supported by necessary document to justify the withdrawal of the amount, which may be considered by the Bankruptcy Trustee and appropriate instructions may be given to the Bank."*

2.4. A reply has been filed to the Appeal by the Bankruptcy Trustee. An additional-affidavit has also been filed by the Appellant on 13.11.2025. An additional affidavit dated 06.11.2025 has also been filed by the Appellant.

3. Learned Counsel for the Appellant challenging the order impugned submits that the amount lying in the bank account of the Appellant were amount which amount was sent by Appellant's daughter and other members

of the family and friends which amount cannot be said to be part of the bankruptcy estate. Learned Counsel for the Appellant relying on Section 79(14)(b) submits that provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his immediate family are excluded assets. Bankruptcy trustee thus, has to make provision for satisfying the basic domestic needs of the bankrupt under which requirement bankruptcy trustee was not entitled to freeze the account of the Appellant. Further, Appellant has filed relevant materials to indicate that the Appellant need expenses for his medical treatment with regard to which relevant prescription and materials were submitted before bankruptcy trustee. In spite of the order of this Tribunal in this Appeal passed on 11.09.2025, bankruptcy trustee has not permitted any withdrawal from the amount lying in the bank account of the Appellant. It is submitted that the bankruptcy trustee is under obligation to ensure that all necessary domestic needs of the Appellant are fulfilled. Learned Counsel for the Appellant has placed reliance on the judgment of the Hon'ble Supreme Court in ***"P. Veerasamy vs. Official Assignee High Court, Madras- (1999) 2 SCC 505"***.

4. The submissions made by the Counsel for the Appellant has refuted by the learned counsel for the Bankruptcy Trustee who submits that as per Section 155 (1), the estate of the bankrupt shall include all property belonging to or vested in the bankrupt at the bankruptcy commencement date. The amount lying in the account of the Appellant are also covered in the bankruptcy estate. It is submitted that the submission of the Appellant that under Section 79(14)(b) of the Code, the amount lying in the account is

excluded is not correct. The amount lying in the bank account of the Appellant cannot be termed to be "provisions" as has been argued by the Appellant. The provision at best relate to items lying in the household of the bankrupt such as grains, vegetables or similar items which are non-current assets. It is submitted that under Section 128 of the Code, estate of the bankrupt shall be divided among his creditors. Thus, no amount can be withdrawn by the bankrupt. The case of the Appellant that money lying the bank account is being held in trust for any other person is unsubstantiated and baseless. All the entries of money received relates to prior to the Bankruptcy Commencement Date i.e. 06.11.2024, hence, the said money has rightly been taken into custody/ control by the Respondent for distribution to the creditors. Adjudicating Authority by the impugned order has rightly dismissed the application. The judgment relied by the Appellant in ***"P. Veerasamy vs. Official Assignee High Court, Madras"*** (supra) is not applicable. The said judgment relates to the provisions of the Presidency Towns Insolvency Act, 1909. Under the IBC Code, there is no provisions exist, which allows the Bankruptcy Trustee to pay money to the bankrupt from the money lying the bank account of the bankrupt.

5. We have considered the submissions of the Counsel for the parties and perused the record.

6. Before we proceed to enter into respective submissions of the parties, certain provisions of the IBC relating to bankruptcy need to be noticed. Bankruptcy order is contemplated under Section 126 of the IBC. In the

present case bankruptcy order was passed on 06.11.2024. Section 128 of the IBC provides for 'effect of bankruptcy order' which is as follows:-

> *"**128. Effect of bankruptcy order.** - (1) On the passing of the bankruptcy order under section 126, –*
>
> *(a) the estate of the bankrupt shall vest in the bankruptcy trustee as provided in section 154;*
>
> *(b) the estate of the bankrupt shall be divided among his creditors;*
>
> *(c) subject to provisions of sub-section (2), a creditor of the bankrupt indebted in respect of any debt claimed as a bankruptcy debt shall not–*
>
> *(i) initiate any action against the property of the bankrupt in respect of such debt; or*
>
> *(ii) commence any suit or other legal proceedings except with the leave of the Adjudicating Authority and on such terms as the Adjudicating Authority may impose.*
>
> *(2) Subject to the provisions of section 123, the bankruptcy order shall not affect the right of any secured creditor to realise or otherwise deal with his security interest in the same manner as he would have been entitled if the bankruptcy order had not been passed:*
>
> *Provided that no secured creditor shall be entitled to any interest in respect of his debt after the bankruptcy commencement date if he does not take any action to realise his security within thirty days from the said date.*

(3) Where a bankruptcy order under section 126 has been passed against a firm, the order shall operate as if it were a bankruptcy order made against each of the individuals who, on the date of the order, is a partner in the firm.

(4) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator."

7. Section 136 of the IBC provides for 'administration and distribution of estate of bankrupt'. Section 136 is as follows:-

*"**136. Administration and distribution of estate of bankrupt. –** The bankruptcy trustee shall conduct the administration and distribution of the estate of the bankrupt in accordance with the provisions of Chapter V."*

8. Chapter 5 of Part III deals with 'administration and distribution of estate of bankrupt'. Section 154 deals with 'vesting of estate of bankrupt in bankruptcy trustee'. Section 154 is as follows:-

*"**154. Vesting of estate of bankrupt in bankruptcy trustee. -** (1) The estate of the bankrupt shall vest in the bankruptcy trustee immediately from the date of his appointment.*

(2) The vesting under sub-section (1) shall take effect without any conveyance, assignment or transfer."

9. Section 155 deals with 'estate of bankrupt'. Section 155 is as follows:-

*"**155. Estate of bankrupt. -** (1) The estate of the bankrupt shall include, –*

(a)all property belonging to or vested in the bankrupt at the bankruptcy commencement date;

(b)the capacity to exercise and to initiate proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the bankruptcy commencement date or before the date of the discharge order passed under section 138; and

(c) all property which by virtue of any of the provisions of this Chapter is comprised in the estate.

(2) The estate of the bankrupt shall not include –

(a) excluded assets;

(b) property held by the bankrupt on trust for any other person;

(c) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund; and

(d)such assets as may be notified by the Central Government in consultation with any financial sector regulator."

10. One more relevant provision to be noticed is Section 159 which deals with 'after-acquired property of bankrupt'. Section 159 is as follows:-

*"**159. After-acquired property of bankrupt. –** (1) The bankruptcy trustee shall be entitled to claim for the estate of the bankrupt, any after-acquired property by giving a notice to the bankrupt.*

(2) A notice under sub-section (1) shall not be served in respect of –

(a) excluded assets, or

(b) any property which is acquired by or devolves upon the bankrupt after a discharge order is passed under section 138.

(3) The notice under sub-section (2) shall be given within fifteen days from the day on which the acquisition or devolution of the after-acquired property comes to the knowledge of the bankruptcy trustee.

(4) For the purposes of sub-section (3)-

(a) anything which comes to the knowledge of the bankruptcy trustee shall be deemed to have come to the knowledge of the successor of the bankruptcy trustee at the same time; and

(b) anything which comes to the knowledge of a person before he is appointed as a bankruptcy trustee shall be deemed to have come to his knowledge on the date of his appointment as bankruptcy trustee.

(5) The bankruptcy trustee shall not be entitled, by virtue of this section, to claim from any person who has acquired any right over after-acquired property, in good faith, for value and without notice of the bankruptcy.

(6) A notice may be served after the expiry of the period under sub-section (3) only with the approval of the Adjudicating Authority.

Explanation. – For the purposes of this section, the term "after-acquired property" means any property which has been acquired by or has devolved upon the bankrupt after the bankruptcy commencement date."

11. IB Code 2016 has repealed 'The Presidency-Towns Insolvency Act, 1909' and 'The Provincial Insolvency Act, 1920'. The above two acts were thus governing the insolvency and bankruptcy prior to enactment of IBC. We also need to notice certain provisions of 'The Presidency-Towns Insolvency Act, 1909' and 'The Provincial Insolvency Act, 1920'. 'The Presidency-Towns Insolvency Act, 1909' contained a provision in Section 75 which is as follows:-

> ***"75. Power to allow insolvent to manage property, and allowance to insolvent for maintenance or service.—*** *(1) Subject to such conditions and limitations as may be prescribed, the official assignee may appoint the insolvent himself to superintend the management of the property of the insolvent or of any part thereof, or to carry on the trade (if any) of the insolvent, for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the official assignee may direct.*
>
> *(2) Subject as aforesaid, the Court may, from time to time, make such allowance as it thinks just to the insolvent out of his property, for the support of the insolvent and his family, or in consideration of his services, if he is engaged in winding up his estate, but any such allowance may at any time be varied or determined by the Court."*

12. Section 75(2) empowers the Court from time to time, make such allowance as it thinks just to the insolvent out of his property, for the support of the insolvent and his family. In 'The Provincial Insolvency Act,

1920', Section 66 also contained provision 'management by and allowance to insolvent'. Section 66 of the Act is as follows:-

> *"**66. Management by and allowance to insolvent.—(**1) The Court may appoint the insolvent himself to superintend the management of the property of the insolvent or of any part thereof, or to carry on the trade (if any) of the insolvent force in the benefit of the creditors, and in any other respect to aid in administering the property in such manner and on such terms as the Court may direct.*
>
> *(2) The Court may, from time to time, make such allowance as it may think just to the insolvent out of his property for the support of himself and his family, or in consideration of his services if he is engaged in winding up his estate; but any such allowance may, at any time, be varied or determined by the Court."*

12. Section 75(2) of 'The Presidency-Towns Insolvency Act, 1909' and Section 66(2) of 'The Provincial Insolvency Act, 1920' empowers the Court to make such allowance as it may think just to the insolvent out of his property.

13. Now coming back to the facts and submissions of the parties, as noted above. Following are the questions which arise for consideration in this Appeal:-

(I) Whether the amounts lying in the account of bankrupt is included in the 'bankruptcy estate' or are 'excluded assets' within the meaning of Section 79(14)(b) of the IBC?

(II) Whether by virtue of provision of Section 79(14)(b) of the IBC, bankruptcy trustee is obliged to release an amount from the bank account for provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his immediate family?

(III) Whether action of the bankruptcy trustee in freezing the account of the bankrupt was not in accordance with the provisions of the IBC and Adjudicating Authority ought to have allowed the application filed by the Appellant for de-freezing the account?

(IV) Whether in the facts of the present case, Appellant was entitled to release any amount lying in the account of the Appellant which has been freezed by the bankruptcy trustee?

(V) Whether the bankruptcy trustee was obliged to consider the request of the Appellant for release of the amount for medical necessity of the Appellant out of the amount lying in the bank account of the bankrupt?

(VI) Relief, if any, to which Appellant may be entitled in this Appeal?

14. The questions which have been noticed above are all inter-connected, hence, are being taken together.

15. The Appellant in his Appeal has brought on record the statement of account from AU Small Finance Bank which account is in the name of the Appellant in the concerned branch. The first question is considered as to whether the said amount lying in the account is part of the assets of

bankrupt and whether the amount can be held to be covered by excluded assets within the meaning of Section 79(14)(b) of the Code.

16. Bankruptcy order was passed against the Appellant on 06.11.2024. Section 128 deals with 'effect of bankruptcy order'. By virtue of Section 128 on the passing of the bankruptcy order, the estate of the bankrupt shall vest in the bankruptcy trustee. Section 154 provides that the estate of the bankrupt shall vest in the bankruptcy trustee immediately from the date of his appointment. Bankruptcy trustee is appointed by the same order dated 06.11.2024 by which bankruptcy commenced. Section 155 deals with the 'estate of the bankrupt'. Sub-section (1) of Section 155 provides that the estate of the bankrupt includes all property belonging to or vested in the bankrupt at the bankruptcy commencement date. The expression of 'property' is defined in Section 3(27) which contains a very vide definition. Amount lying in the bank account of the Appellant is clearly property of the Appellant which amount shall stand vested in the bankruptcy trustee on passing of the bankruptcy order. When estate vests in the bankruptcy trustee on passing of the bankruptcy order, it is the bankruptcy trustee who is to administer the estate, hence, the direction of the bankruptcy trustee to debit freeze of the account cannot be said to be outside scope of the bankruptcy trustee. Learned Counsel for the Appellant has placed reliance on Section 79(14) which defines 'excluded assets'. Section 79(14) is as follows:-

> *"**79. Definitions.** - (14) "excluded assets" for the purposes of this part includes –*

(a) unencumbered tools, books, vehicles and other equipment as are necessary to the debtor or bankrupt for his personal use or for the purpose of his employment, business or vocation,

(b) unencumbered furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his immediate family;

(c) any unencumbered personal ornaments of such value, as may be prescribed, of the debtor or his immediate family which cannot be parted with, in accordance with religious usage;

(d) any unencumbered life insurance policy or pension plan taken in the name of debtor or his immediate family; and

(e) an unencumbered single dwelling unit owned by the debtor of such value as may be prescribed"

17. Learned Counsel for the Appellant has placed reliance on Section 79(14)(b) especially the expression "*provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his immediate family"*. Learned Counsel for the Appellant sought to contend that the amount which was lying in the account of the bankrupt are necessary for satisfying the basic domestic needs of the bankrupt and his immediate family, hence, the said account to be included in the 'excluded assets'. Section 155(2) provides that the estate of the bankrupt shall not include excluded assets and property held by the bankrupt on trust for any other person, thus, the estate of the bankrupt does not include the excluded assets.

18. Now we need to consider the expression occurring in sub-clause (b) of Section 79(14), as noted above. Sub clause (b) uses several expressions which include unencumbered furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his immediate family. Similarly, in sub-clause (a) 'excluded assets' include unencumbered tools, books, vehicles and other equipment as are necessary to the debtor or bankrupt for his personal use or for the purpose of his employment, business or vocation. The word used in sub-clause (b) has to be interpreted *ejusdem generis*. When we look into the word 'provisions' as occurring in sub-clause (b), the said word has to take colour from other expressions used in same sub-section (b) i.e. unencumbered furniture, household equipment. The expression 'provisions' as are necessary for satisfying the basic domestic needs of the bankrupt and his immediate family. This can be explained by taking an example in one dwelling unit which is as per the Regulation namely— Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtor) Rules, 2019. One unencumbered single dwelling unit owned by the debtor is excluded assets as per Section 79(14)(b) read with Rule 5 of 2019 Rules. The provisions which are lying in the dwelling unit which are necessary for satisfying the basic domestic needs of the bankrupt and his immediate family are included in the excluded assets thus, provisions like food grains, vegetables and other edibles have to be treated to be 'excluded assets'. However, the submission of the Appellant that the said expression also covered the amount lying in the account of the bankrupt cannot be accepted. All property of the

bankrupt being included in the bankruptcy estates which clearly include any amount lying the bank account. Section 79(14)(b) cannot be read to mean that the said expression of provision shall also cover the amount lying in the bank account. Thus, the submission of the Appellant based on Section 79(14)(b) to claim that the amount lying in the account of bankrupt as excluded asset cannot be accepted.

19. We have noticed the provisions of Section 159 of the IBC which deals with 'after-acquired property of bankrupt'. Bankruptcy commencement date being 06.11.2024, any property acquired subsequent to that shall not be automatically part of the bankruptcy estate which is clear from Section 159. When we look into the bank account of the Appellant in AU Small Finance Bank which statement of account is filed as Annexure A-5 to the Appeal, it is clear that there are certain credit entries after 06.11.2024, one credit entry of 10,000 on 15.11.2024 another credit entry of 10,000 on 15.11.2024. Any amount which has been received by the bankrupt subsequent to bankruptcy commencement date shall not be automatically part of the bankruptcy estate unless a notice is issued under sub-section (1) of Section 159. Present is not a case that any notice has been given by bankruptcy trustee for the amount which has been received in the bank account subsequent to 06.11.2024. Thus, Appellant was clearly entitled for release of the aforesaid amount from the account of the Appellant which was acquired subsequent to bankruptcy commencement order.

20. Learned Counsel for the Appellant has also contended that various amounts received in the account were from daughter of the Appellant and

other relatives which cannot be part of the bankruptcy and those amounts were amount which was given to the Appellant to be kept in trust. There are no material on record with respect to any amount which according to the Appellant was to be kept in trust. There being no material on the record, we are of the view that the present is not a case for applicability of Section 155(2)(b) and Appellant having not established that any amount was held by the bankrupt on trust for any other person no direction could have been passed for release of such amount.

21. Learned Counsel for the Appellant has relied on judgment of the Hon'ble Supreme Court in ***"P. Veerasamy vs. Official Assignee High Court, Madras"*** (supra) which need to be noticed. The above judgment of the Hon'ble Supreme Court arose out of the proceeding under the Presidency Towns Insolvency Act, 1909. The Appellant before the Hon'ble Supreme Court was declared as bankrupt under the Act and he filed an application before the insolvency court for permitting the Appellant to restart his kerosene business under license as agent of the Tamil Nadu Civil Supplies Department which application was rejected. The Division Bench also affirmed the Appeal against which order the matter was taken in the Hon'ble Supreme Court. Reliance was placed on Section 75 and other provisions of the Presidency Towns Insolvency Act, 1909. In the above context, the Hon'ble Supreme Court had occasion to consider common law principles and Section 75 of the Act. In paragraphs 35, 36 and 37 of the judgment, following was laid down:-

*"**35.** In our view, the above common law principles relating to earnings from personal labour of the insolvent are equally applicable in our country and in spite of Section 52(2)(a), the said earnings of the insolvent from his labour to the extent necessary for the support of the insolvent and his family, do not vest in the assignee. There is a further rider to be added to the common law principles, namely, that the balance of the personal earnings, — after deducting what is necessary for the support of the insolvent and his family, does not automatically vest in the assignee but is subject to the orders that may be passed by the court under Section 60(2). Point 4 is decided accordingly.*

***36.** We finally come to Section 75 of the Act which is the statutory provision dealing with the assignee granting permission to the insolvent to carry on trade. That section also deals with the court allowing the insolvent an allowance for the support of himself and his family or in consideration of his services, if he is engaged in winding up his estate. Section 75 reads as follows:*

"75. (1) Subject to such conditions and limitations as may be prescribed, the official assignee may appoint the insolvent himself to superintend the management of the property of the insolvent or of any part thereof, or to carry on the trade (if any) of the insolvent for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the official assignee may direct.

(2) Subject as aforesaid, the Court may, from time to time, make such allowance as it thinks just to the insolvent out of his property, for the support of the insolvent and his family, or in consideration of his services, if he is engaged in winding up his estate, but any such allowance may at any time be varied or determined by the Court."

37. *In our view, the above provision in Section 75 is based on a humane consideration of the condition of the insolvent and his family. In the book, The Law of Insolvency by Ian Fletcher (1990), referred to earlier, it is stated in the introductory chapter: (at p. 3)*

"After a time, a position is reached in which some effort is made to treat individual cases on their merits and to explore the possibilities for rehabilitation of the debtor under a controlled and more humane legal process."

After referring to the Cork Report which led to the passing of the English Act, 1986, the author says (p. 188) that the principle of releasing monies for the support of the insolvent and his family is based on a policy

"both as an aspect of the device to preserve the dignity and self-respect of the bankrupt and his dependants, and in the interests of avoiding the creation of a further burden on the resources of the State if the bankrupt's family are rendered destitute. A rule has therefore been adopted whereby the bankrupt is allowed to retain a proportion of his income to the extent deemed necessary to maintain him and his family in reasonable circumstances".

As to what is a reasonable provision for support of the insolvent and his family, the author says: (p. 190) "It will be a question of fact in each case to establish what are to be considered as the reasonable domestic needs of the bankrupt and his family and what proportion of his income he should be allowed to meet them." After the Cork Report and Section 310 of the English Act, 1986, "the court would be acting within a spirit expressed in the Cork Report in advocating the adoption of a more humane and realistic attitude towards the position of the debtor and his family, and the more imaginative utilisation of the bankrupt's surplus future income" (Comnd & 558, paras 591-598, 1158-1163). "In respect of that portion of his earnings or income which he is allowed to retain in consequence of an order under Section 310, the bankrupt enjoys full freedom and disposition." We may add that if over a period, out of the amounts allowed by the court for the support of the insolvent and his family, there is a surplus or excess, then the creditors or the assignee can apply to the court for a review of previous orders. The above procedure will, in our opinion, be clearly consistent with Article 19(1)(g) and Article 21 of the Constitution of India."

22. The Hon'ble Supreme Court also in the above case has held that the Court has to take a humanistic view towards honest insolvents, the court must also guard against undue exploitation of the above principles and provisions of law. In paragraph 38 of the judgment, following was held:-

> *"**38.** Before parting with this aspect of the matter, we might add that while the court has to take a humanistic view towards honest insolvents, the court must also guard against undue exploitation of the above principles and provisions of law, by unscrupulous persons who get adjudicated as insolvents. Point 5 is decided accordingly."*

23. The above judgment of the Hon'ble Supreme Court was delivered in reference to Section 75 of 'The Presidency-Towns Insolvency Act, 1909'. In the IBC Code, there is no provision akin to Section 75 of 'The Presidency-Towns Insolvency Act, 1909' or Section 66 of 'The Provincial Insolvency Act, 1920'. The IBC does not contain any provision for granting any allowance to the bankrupt. Counsel for the Respondent has relied on Section 128 (1)(b) where the estate of the bankrupt shall be divided among the creditors. The submission which has been pressed by the Counsel for the Appellant is that even though there is no expressed provision for granting any allowance to the bankrupt, the bankruptcy trustee who is administering the assets of the corporate debtor does not lack jurisdiction to release any amount to the bankrupt for medical needs as in the present case. The scheme of the IBC indicates that the bankruptcy trustee is entrusted with the administration and distribution of the estate of the bankrupt. The word 'administration' which occurring in Section 136 of the IBC provides that bankruptcy trustee shall conduct the administration and distribution of the estate of the bankrupt. Thus, the said provision entrust the administration of the estate of the bankrupt on bankruptcy trustee. It is true that the estate of the bankruptcy trustee is essentially for distribution of the estate of bankrupt in

accordance with provision of Chapter V of Part III and the assets are to be distributed amongst the creditors as provided under Section 128(1)(b). The entire estates of the bankrupt having been taken under by the bankruptcy trustee which estate are essentially for distribution amongst the creditors. The question for which there is no clear answer in the IBC is as to whether the bankrupt can be allowed utilisation of any part of the assets for any genuine purpose including the medical need. In this context, we need to refer the correspondence between the bankrupt and the bankruptcy trustee which has been brought on the record. On 19.11.2024 bankrupt has written an e-mail to the bankruptcy trustee which is brought on record as Annexure A3 to the following effect:-

> *"Subhash Chandra Mishra <subhashchandramishra54@gmail.com>*
>
> *Tue, Nov 19, 2024 at 3:10 PM*
>
> *To: Sunil Kumar <sunilca84@gmail.com>*
>
> *Sir,*
>
> *I tried internet banking for transferring funds for my personal use and found that no transactions are allowed. I immediately visited my bank branch today for the purpose of transferring funds towards my personal requirements. However, bank informed me that my account is debit freeze as per your directions on basis of NCLT order dated 05.11.2024.*
>
> *Please be informed that you have without issuing any notice to me in this regard have unlawfully freezed my and my wife accounts without any specific order from court to freeze account. You are requested to immediately remove debit freeze of account. We are old senior citizen living alone. By debit*

freezing, you have harassed us and if account is not released, we will go to court against you.

I have assured you that except ordinarrly transaction, we are not diverting any funds and there is very less amount in our account which is transfered to us by our daughters and relative for our living and medical expenses.

Remove debit freez from all accounts of me and my wife Jai Shree Mishra within 1 hour. My Advocate will contact you if required.

Regards,

Subhash Chandra Mishra Kota,
Rajasthan
+91 98291 89806"

24. The bankruptcy trustee has sent his response by e-mail dated 20.11.2024 in following manner:-

"Wed, Nov 20, 2024 at 12:15 PM

CA Sunil Agrawal *<sunilca84@gmail.com>*
To: Subhash Chandra Mishra
<subhashchandramishra54@gmail.com>
Cc: trustee.scmishra@gmail.com, trustee.jsmishra@gmail.com
Subject: *Response to Your Concerns Regarding Account Freeze*

Dear Sir,

As you are aware, the debit freeze was implemented following my appointment as Bankruptcy Trustee under the order of the National Company Law Tribunal (NCLT), Jaipur Bench, dated 06-11-2024, which was shared with you earlier.

The NCLT order explicitly directs me to take custody and control of all assets, properties, and actionable claims belonging to the

bankruptcy estate. Under the Insolvency and Bankruptcy Code (IBC), 2016, these rights and responsibilities are vested in me as the Bankruptcy Trustee, and your bank accounts are part of the assets under my custody.

Regarding Your Concerns

1. Medical and Household Expenses

I understand your concerns regarding medical expenses, household needs, and other financial requirements. However, as per the NCLT order and the IBC, I do not have the authority to release funds from your accounts independently. If you require access to funds for specific purposes, you are advised to file an application with the NCLT to seek approval.

2. Legal Position on Account Freeze

The freezing of your accounts is in compliance with my duties as Bankruptcy Trustee, as mandated by the NCLT order and the provisions of the IBC. This action is not intended to cause inconvenience but is necessary to preserve the bankruptcy estate and ensure compliance with the law.

3. Adjudication

Please note that I am not an adjudicating authority and cannot decide on the release of funds for purposes outside the bankruptcy process. Such matters require the approval of the NCLT or a competent authority.

Clarification on Telephonic Discussion

During our recent telephonic discussion, I did not state that I would approve individual transactions. Instead, I requested specific details and supporting documents for any immediate and essential expenses, which would require appropriate authorization.

Next Steps

If you require funds for essential needs, you are advised to:

1. File an application with the NCLT specifying the amount required and the purpose

2. Provide supporting documents such as invoices or medical reports to justify the request.

Thank you for your understanding and cooperation. Please feel free to reach out if you need assistance in the process or have further questions.

Thanking You.
Yours Faithfully

SUNIL KUMAR
(Bankruptcy Trustee) IP Registration. No. IBBI/IPA-001/IP-P-02607/2021-2022/14018
AFA Certificate No. AA1/14018/02/300625/106827 Valid upto 30-Jun-25"

25. Bankruptcy Trustee has indicated in the said response that as per the NCLT order and the IBC, he does not have authority to release the funds from the account and if bankrupt requires access to funds for specific purposes, he is advised to file an application with the NCLT to seek approval. The above communication by bankruptcy trustee clearly means that bankruptcy trustee communicated to the bankrupt that for any release of the amount he has to approach the NCLT. In the present case, the application was filed by the bankrupt before the Adjudicating Authority giving rise to this appeal. The prayers in the above application as extracted in paragraph 1 of the order only confined to defreezing of the account of the bankrupt. It was further prayed that the said account is essential for

maintaining the livelihood of the applicant and the family. In the present appeal, the Appellant has filed additional affidavit bringing on record subsequent communication communicating requirement of Rs.2,50,000/- to discharge past and upcoming liabilities and medical requirements. In the Affidavit, Appellant has also brought on record medical prescriptions and medical bills. However, the said claim was rejected by the bankruptcy trustee. The Appellant further contended that the bankruptcy trustee is charging Rs.45,000 per month per matter as bankruptcy trustee fee and spending almost Rs.75,000/- on litigation but has not considered the request of the bankruptcy trustee to release any amount as prayed by bankruptcy trustee.

26. The bankruptcy trustee, thus, has taken stand for release of any funds for specific purpose, Bankrupt can approach the NCLT. The bankruptcy trustee being administering the estates of the bankrupt and the NCLT being control of the entire bankruptcy process is fully entitled to consider any application filed by the bankrupt for release of any amount for any specific purpose which is proved by bankruptcy trustee. The Hon'ble Supreme Court in ***"P. Veerasamy vs. Official Assignee High Court, Madras"*** (supra), as noted above, has categorically held that the Court has to take a humanistic view towards honest insolvents and the court must also guard against undue exploitation of the above principles and provisions of law. The estate of the bankrupt being under the administration of the bankruptcy trustee and the bankruptcy trustee himself having taken the stand for specific purpose, bankrupt should approach the NCLT for filing an

application. We are of the view that it is open for the Appellant to make appropriate application before the NCLT seeking any direction for release of any amount from the estate of the bankruptcy estate which NCLT can consider and decide in accordance with law. Application which has given rise to this Appeal having contained only prayer for defreezing account which prayer was rightly rejected by NCLT, we do not find any ground to interfere with the impugned order.

27. We have already noticed the provisions of Section 159 of the IBC which deals with 'after-acquired property of bankrupt'. We have noticed above that after the bankruptcy commencement date in the account of the Appellant there has been further acquisition i.e. by means of two credit entries of Rs.10,000/- each. In the judgment of Hon'ble Supreme Court in ***"P. Veerasamy vs. Official Assignee High Court, Madras"*** (supra), one of the questions which was considered was 'are 'personal earnings' of the insolvent earned after adjudication exempt from vesting under the common law relating to insolvency?'. The above question was considered and answered by the Hon'ble Supreme Court from paragraphs 31 to 35. It was held that the earnings of the insolvent after adjudication does not automatically vest in the assignee but are subject to the order that are passed by the court under sub-section (2) of Section 60. We have already extracted paragraph 35 of the judgment above. We have noticed above Section 159 of the IBC which clearly provides that assets acquired after bankruptcy commencement date can be claimed by the bankruptcy trustee by giving a notice. The scheme of Section 159 thus, clearly indicates that the

assets acquired subsequent to bankruptcy commencement order shall notautomatically vest with the bankruptcy trustee. Thus, the amount which has been received in the account of the Corporate Debtor subsequent to 06.11.2024 which has not been claimed by the bankruptcy trustee by giving a notice under Section 159 has to be released in favour of the Appellant.

28. In view of the foregoing discussions and our conclusion, we dispose of the Appeal in following manner:-

(i) The order dated 06.04.2025 passed by the Adjudicating Authority rejecting the prayer of the Appellant to unfreeze the bank account is upheld.

(ii) The amounts which have been received in the account of the bankrupt subsequent to 06.11.2024 which has not been claimed by the bankruptcy trustee by issuing any notice under Section 159(1) is required to be released to the Appellant.

(iii) The Appellant is at liberty to make an appropriate application before the NCLT praying for release of any amount lying in the account of the bankrupt for any specific purpose including medical needs which application need to be decided after giving opportunity to the bankruptcy trustee in accordance with law.

Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

New Delhi

Anjali