



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

Item No. 11

IA(I.B.C)/1811(MB)2025 IN C.P. (IB)/3080(MB)2018

CORAM:

SH. PRABHAT KUMAR SH. SUSHIL MAHADEORAO KOCHEY
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON 30.07.2025

NAME OF THE PARTIES: PUNJAB NATIONAL BANK V/s UNIJULES
LIFE SCIENCES LIMITED

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

ORDER

IA(I.B.C)/1811(MB)2025

1. Adv. Malavika Sachin a/w Adv. Narpat Singh for the Applicant/Resolution Professional present. None appear for the Income tax Department.
2. This Application has been filed by Resolution Professional of Unijules Life Sciences Ltd., under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of National Company Law Tribunal Rules, 2016 seeking following reliefs;
 - a. *That this Tribunal be pleased to declare that the adjustment of pre-CIRP tax dues against post-CIRP tax refunds by the Respondent is illegal void ad initio, and in contravention of the provisions of the IBC.*
 - b. *That this Tribunal be pleased to direct the Respondent to forthwith reverse the unlawful adjustment and release the refund amount of INR 25,90,790/- along with applicable interest, to the Corporate Debtor;*



c. That this Tribunal be pleased to direct the Respondent to refrain from making such adjustments in future as well.

d. That this Tribunal be pleased to pass any such further other orders and reliefs as this Tribunal deem fit and proper given the facts and circumstances of the present case.

3. The present Interlocutory Application has been filed by the Resolution Professional of Unijules Life Sciences Ltd., under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 seeking to declare that the adjustment of pre-CIRP tax dues against post-CIRP tax refunds by the Respondent is illegal, void ab initio, and in contravention of the provisions of the IBC on behalf of the Applicant.
4. CIRP was commenced on 8.3.2019 by this Tribunal on an application u/s 7 of I B Code filed by Punjab National Bank. The Respondent Income Tax Department had filed their claim on 1.4.2019 in Form 'B', before the Applicant. The Applicant through an email intimated the Respondent that their claim had been admitted to the tune of INR 64,06,02,139/- (Rupees Sixty-Four Crores, Six Lakhs, Two Thousand, One Hundred and Thirty Nine Only) as Operational Creditor and the Respondent's name had been included in the list of creditors. The Respondent Income Tax Department is stated to have adjusted demands outstanding for A.Y. 2006-07, 2007-08 and 2011-12 against the refunds claimed in the Income Tax Return filed by the Applicant Resolution Professional after commencement of CIRP period i.e. A.Y. 2019-20, 2021-22, 2022-23 and 2023-24.
5. The Applicant addressed another email dated 27.02.2025 and 26.3.2025, to the Respondent Department and once again requested to refund the adjusted amount of INR 25,90,790/- along with interest at 12% p.a., which had been adjusted against pre-CIRP demands, however, the Respondent has not taken any step to annul the said appropriation.



6. The Respondent Assessing Officer, Income Tax Department was served by the Applicant vide speed post delivered on 7.5.2025 informing them the listing of this application before this Tribunal on 9.6.2025. However, none appeared on that date. Thereafter, the Applicant was also directed to serve the copy of Order to the Principal Commissioner Income Tax, holding charge over the assessing officer, and Commissioner of Income Tax (Judicial) and the same was served via email dated 16.6.2025 as well as via speed post letter delivered on 19.6.2025 to these officers alongwith assessing officer. However, none appeared. Accordingly, this matter was proceeded further and the Counsel present on the date of last hearing were heard.
7. The Hon'ble Supreme Court in case of ***Bharti Airtel Ltd. and Anr. v. Vijaykumar V. Iyer and Ors.***, [\(2024\) ibclaw.in 02 SC](#) explained the law on set off in CIRP process and Liquidation Proceedings under the IBC law. It held that “**30.** *Given the aforesaid legal position, we do not think that the provisions of statutory set-off in terms of Order VIII Rule 6 of CPC or insolvency set-off as permitted by Regulation 29 of the Liquidation Regulations can be applied to the Corporate Insolvency Resolution Process. The aforesaid rule would be, however, subject to two exceptions or situations. The first, if at all it can be called an exception, is where a party is entitled to contractual set-off, on the date which is effective before or on the date the Corporate Insolvency Resolution Process is put into motion or commences. The reason is simple. The Corporate Insolvency Resolution Process does not preclude application of contractual set-off. During the moratorium period with initiation of the Corporate Insolvency Resolution Process, recovery, legal proceedings etc. cannot be initiated, enforced or remain in abeyance. Besides the moratorium effect, the terms of the contract remain binding and are not altered or modified.*” In the present case, it is undisputed fact that the debt was owed by the Corporate



Debtor to the Respondent Income Tax Department prior to commencement of CIRP and the amounts against which such debt was set off by the Income Tax Department were determined payable to the Corporate Debtor on filing of Income Tax Returns for the relevant years during the CIRP process. Hence, this exception does not apply to the present case.

8. Further, the Hon'ble Supreme Court held in *Bharti Airtel Ltd. (Supra)* that *"32. The second exception will be in the case of 'equitable set-off' when the claim and counter claim in the form of set-off are linked and connected on account of one or more transactions that can be treated as one. The set-off should be genuine and clearly established on facts and in law, so as to make it inequitable and unfair that the debtor be asked to pay money, without adjustment sought that is fully justified and legal. The amount to be adjusted should be a quantifiable and unquestionable monetary claim, as the Corporate Insolvency Resolution Process is a time-bound summary procedure. It is not a civil suit where disputed questions of law and facts are adjudicated after recording evidence. Set-off of this nature does not require legal proceedings. Further, set-off of money is to be given against money alone. It will not apply to assets. Lastly, being an equitable right, it can be denied when grant of relief will defeat equity and justice."* In the present case, the amounts determined payable to the Corporate Debtor during the CIRP period pertains to different Assessment Year(s) as the amounts payable by the Corporate Debtor as on Insolvency Commencement date pertains to. Accordingly, this exception also does not apply.
9. The Hon'ble Supreme Court also held in *Bharti Airtel Ltd. (Supra)* that *"41. There are several reasons why in our opinion clause (ii) to sub-section (2)(b) of Section 30 does not support the plea of insolvency set-off. The section does not make Chapter III Part II, that is, Section 36(4)(e) or Regulation 29, applicable to the Corporate Insolvency Resolution Process"*



under Chapter II Part II of the IBC. Secondly, clause (ii) to Section 30(2)(b) deals with the amounts to be paid to the creditors and not the amount payable by the creditors to the corporate debtor. Thirdly, clause (ii) to Section 30(2)(b) has appliance when the resolution plan is being considered for approval. Fourthly, and for the reasons elaborated earlier, and in view of the specific legislative mandate as incorporated and reflected in Chapter II Part II of the IBC, we should hold that the provisions of the IBC relating to Corporate Insolvency Resolution Process do not recognise the principle of insolvency set-off. We would not extend it by implication, when the legislature has not accepted applicability of mutual set-off at the initial stage, that is, the Corporate Insolvency Resolution Process stage.”

10. It is trite law that the claims of the creditors as on Insolvency Commencement date are to be settled in accordance with the approved Resolution Plan. Accordingly, the amounts of refund determined due to the Corporate Debtor for the year(s) beginning after the commencement of CIRP and during the CIRP period could not have been set off against the amounts payable by the Corporate Debtor as on Insolvency Commencement date. Hence, we direct the Respondent to release the refund amount of INR 25,90,790/- along with interest @ 6% as prescribed u/s 244A of the Income Tax act, 1961 to the Corporate Debtor.

11. In view of the aforesaid, IA(IB) 1811 of 2025 is **allowed and disposed of** accordingly.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Shubham Bide

Sd/-

SUSHIL MAHADEORAO KOCHEY
MEMBER (JUDICIAL)