

**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – II
CHENNAI**

(15)

**ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 12-01-2021 AT 10:30 AM THROUGH
VIDEO CONFERENCING:**

**PRESENT: SMT. R. SUCHARITHA MEMBER (JUDICIAL)
SHRI B. ANIL KUMAR, MEMBER (TECHNICAL)**

APPLICATION NUMBER : IA/05/2021

PETITION NUMBER : IBA/307/2019

**NAME OF THE PETITIONER(S) : SUBRATA MONINDRANATH MAITY
(BHATIA COKE AND ENERGY LTD)**

NAME OF THE RESPONDENT(S) : SURENDER SINGH BHATIA & 4 ORS

UNDER SECTION : 19(3),20(2)(E) & 23(2)

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ORDER

Ld. Senior Counsel Mr. Satish Parasaran for the Applicant is present. Mr. Subrata Monindranath Maity, RP/Applicant present in person. Authorized Representative Mr. V. Venkata Sivakumar, Chartered Accountant is present.

This application is filed by the RP. It is brought to our notice that the RP in the present application has been harassed from discharging his duties under relevant rules. The Resolution Professional Mr. Subrata Monindranath Maity was appointed by this Tribunal to take over the insolvent company M/s. Bhatia Coke and Energy Limited and function as Resolution Professional to conduct CIRP (Corporate Insolvency Resolution Process). There are allegations against the RP under Sections 406, 408, 417, 468, 471, 506(i) and 420 of I.P.C. by erstwhile directors and criminal prosecution has been commenced against the RP. F.I.R. was filed before the State of Madhya Pradesh and another F.I.R. has been registered at Tamil Nadu. Private complaint with 6th Respondent herein has also been registered. The police has also registered the F.I.Rs and has commenced investigations as per I.P.C. and Cr. P.C.

Meanwhile, Counsel for the Applicant submits that if the RP in discharging his duties is put to harassment in the hands of the police or any other authorities, he will not be in a position to continue to conduct the proceedings under Insolvency & Bankruptcy Code ("IBC") without fear or favour. The entire professional conduct of the RP is covered by IBC Rules. IBBI is a regulatory authority. Any complaint against the RP/Liquidator or any violation by the RP/Liquidator under IBC, under the Rules and Regulations can be placed before Internal Monitoring Committee of IBBI for assessment and necessary action.



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However, criminal complaint has been filed against the RP and his team. The contents of this complaint relate to the CIRP which has been assigned to the RP.

There is also a submission that RP, his team and their families have been threatened by the erstwhile directors. There is a great danger to the life of the RP. The contents of the F.I.R. relates to the sum and substance of CIRP work related under IBA/307/2019. It is pertinent to hear this application and protect the RP and his team from any further harassment. However, this Adjudicating Authority at this stage of the case is not passing any orders on merits of the F.I.R. The RP and his family and the entire team involving for conduct of the CIRP in IBA/307/2019 shall be protected by the police. The RP and his family members shall also be given adequate protection. The entire F.I.R filed against the RP relates to CIRP in IBA/307/2019. Hence, it is imperative to protect them from any difficulties, violations, life threat etc. If there are any irregularities on the part of the RP or his team, the erstwhile director could have filed necessary applications before this Tribunal and also could have registered complaints with IBBI. No application has been filed before this Tribunal. For lawful discharge of duty as RP, accelerating criminal charges and using police to register complaint of criminal nature is not appropriate.

If every Resolution Professional is bombarded with criminal prosecution and police investigation, then no RP shall be able to conduct CIRP without fear and favour. Since the entire allegation in FIR relates to CIRP under IBC by RP, this Tribunal ought to protect the RP and his team. The RP is permitted to take out



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necessary actions to protect and safeguard including quash of F.I.R. before concerned courts.

The police concerned is permitted to do as per the Criminal Procedure Code. However, no action or harassment or arrest by the police shall be taken until this IA is disposed by this Adjudicating Authority. Police concerned shall also give necessary protection to the RP, his team and his family till final orders are passed in this IA.

There is no representation for R1 to R4 in IA/06/2021.

The Registry shall issue notice to all the Respondents.

The Registry shall mark the copy of this order to the respective police station and a copy shall be marked to IBBI for records and further action.

List this IA/05/2021 along with IA/06/2021 on **05.03.2021** for final hearing and disposal.

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(ANIL KUMAR B)
MEMBER (TECHNICAL)

VS

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(R. SUCHARITHA)
MEMBER (JUDICIAL)