

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I
KOLKATA**

**I.A. (IB) 76/KB/2021
And
Inv. P. No. 03/KB/2022
in
CP (IB) No. 93/KB/2018**

A petition under section 9 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Bengal Polypet

...Operational Creditor

Versus

Pincon Spirit Limited

...Corporate Debtor

And

I.A. (IB) No. 76/KB/2021

An application under section 35(b) of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the National Company Law Tribunal Rules, 2016.

In the matter of:

Mr. Binay Kumar Singhania,

Liquidator of Pincon Spirit Limited

... Applicant

Versus

Mr. Bahadur Singh Kathotia

... Respondent

Inv. P. (IB) No. 03/KB/2022

An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the National Company Law Tribunal Rules, 2016.

In the matter of:

- 1. Ekta Kathotia**
- 2. Adarsh Kathotia**
- 3. Sanjay Shaw**

... Intervenors

Versus

Mr. Binay Kumar Singhania,

Liquidator of Pincon Spirit Limited

... Respondent

Order reserved on: 13 June 2022

Order pronounced on: 30 June 2022

Coram:

Shri Rajasekhar V.K. : Member (Judicial)
Shri Balraj Joshi : Member (Technical)

Appearances (through hybrid mode):

For the Liquidator : Mr. Krishnaraj Thaker, Advocate

Mr. Arun Kumar Gupta, PCA

For the Intervenor : Mr. Arnab Sardar, Advocate

Mr. Abhidipto Tarafdar, Advocate

COMMON ORDER

(I.A. (IB) 76/KB/2021 and Inv. P. (IB) No. 03/KB/2022)

Rajasekhar V.K., Member (Judicial)

1. This Court convened through hybrid mode.
2. **I.A. (IB) 76/KB/2021 and Inv. P. (IB) No. 03/KB/2022** are being considered in a common order as the subject matter under consideration of both the applications is the same.

3. **I.A. (IB) 76/KB/2021**

The instant application has been filed by Mr. Binay Kumar Singhania, the Liquidator of Pincon Spirit Limited under sections 14, 35(b) of the Insolvency and Bankruptcy Code, 2016 (“Code”) read with rule 11 of the National Company Law Tribunal Rules, 2016, seeking the following reliefs:

- a) *To direct the respondent to vacate and handover the peaceful possession of the above-mentioned properties of the Corporate Debtor to the Liquidator;*
- b) *To pass necessary orders issuing directions upon the Commissioner of Police, Kolkata as also the concerned police personnel in charge of Garfa PS and/or the concerned local district administration to render all necessary assistance and security to the applicant so as to take control and custody of a vacant, peaceful and lawful possession of the aforementioned premises on specified date and time to be fixed by him upon prior notice along with the personnel to be accompanied by him;*
- c) *To direct the respondent to maintain status quo in respect of the aforementioned premises;*
- d) *Ad interim orders in terms of prayers above*

4. Submissions of the Applicant in I.A. (IB) 76/KB/2021:

- 4.1 The case of the Applicant is that subsequent to admitting the Corporate Debtor into Corporate Insolvency Resolution Process (“CIRP”) *vide* order dated 19 July 2018 in C.P. (I.B.) No. 93/KB/2018, this Adjudicating Authority passed an order for liquidation of the Corporate Debtor on 30 September 2019. The Adjudicating Authority *vide* the said order appointed the Applicant herein as the Liquidator.
- 4.2 During the commencement of CIRP, the Applicant, as the Resolution Professional, filed an application being C.A. (I.B.) No. 62/KB/2019 under sections 18, 19(2), 23 and 25 of the Code read with Regulation 30 IBBI (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 read with Rule 11 and read with Rule 15 of the National Company Law Tribunal Rules, 2016 for seeking appropriate directions on 11th January, 2019. The said application was heard and disposed of by this Adjudicating Authority’s order dated 15 February, 2019 thereby directing the Resolution Professional to take Local Police help in case of any resistance by the tenants during inspection and evaluation by the Applicant.
- 4.3 In order to comply with the duties as specified under this Code, specifically under section 25(2)(a) of the Code, the Resolution Professional needs to take immediate custody and control of all assets of the Corporate Debtor, including the business records of the corporate debtor. Accordingly, the representative from the Applicant's office had visited the premises owned by the Corporate Debtor on 13th and 14th of November, 2018 to assess the assets and take custody of the same. However, the Resolution Professional and his representative were unable to access the premises as they have been illegally occupied by one Mr. Bahadur Singh Kathotia.

4.4 Upon conducting inspections of the following premises, it was observed by the applicant's representative that Mr. Kathotia is currently in possession of the following:

- a. The entire 3rd floor, one servant room on the roof top 86 one covered car parking space on the ground floor of multi-storied building at Mouza - Kasba, J.L. No 13, Touzi No. 145, Dag No. 4119, Khaitan No. 840, R.S. Khaitan 0.90 No. 578/2, Purbachal Road under ward No. 106 of Kolkata Municipal Corporation, Kolkata – 700078;
- b. The entire 1st floor and one covered car parking space on the ground floor of multi-storied building at Mouza -Kasba, J.L. No 13, Touzi No. 145, Dag No. 4119, Khaitan No. 840, R.S. Khaitan 0.90 No. 578/2, Purbachal Road under ward No. 106 of Kolkata Municipal Corporation, Kolkata – 700078;
- c. The entire 3rd floor, one servant room on the roof top 86 one covered car parking space on the ground floor of multi-storied building at Mouza - Kasba, J.L. No 13, Touzi No. 145, Dag No. 4119, Khaitan No. 840, R.S. Khaitan 0.90 No. 578/3, Purbachal Road under ward No. 106 of Kolkata Municipal Corporation, Kolkata – 700078;
- d. The entire 2nd floor 8s one covered car parking space on the ground floor of multistoried building at Mouza -Kasba, J.L. No 13, Touzi No. 145, Dag No. 4119, Khaitan No. 840, R.S. Khaitan 0.90 No. 578/3, Purbachal Road under ward No. 106 of Kolkata Municipal Corporation, Kolkata – 700078.

4.5 The ownership of all the aforementioned properties can be easily established from the registered deeds of conveyance (title deeds) and leaves no scope for ambiguity or doubt that the said properties belong to the Corporate Debtor.

4.6 Thereafter the Applicant along with his representative has requested Mr. Bahadur Singh Kathotia to vacate the said premises on several occasions both in person and via telephonic conversations. However Mr. Kathotia did not comply with the same. Thereafter, Mr. Bahadur Singh Kathotia still remained in illegal and unlawful possession of the aforementioned premises. The letter dated 17 December 2018 also mentioned that upon non-compliance with the stipulated conditions the applicant shall be left with no recourse other than to approach the Kolkata Police and to simultaneously initiate proceedings against the illegal occupant under the Insolvency and Bankruptcy Code, 2016.

4.7 Further, a request for Police assistance was sent to the Commissioner of Police by the Applicant in the form of a letter was sent on 11 January 2019 requesting for Police protection and assistance to claim vacant, peaceful and lawful possession of the said properties.

4.8 By the order dated 15th February, 2019 in CA (IB) No. 62/KB/2019, this Adjudicating Authority was pleased to direct that Resolution Professional might get the properties inspected and evaluated and might seek assistance of the Local Police Station. The Resolution Professional then proceeded to instruct the appointed registered valuers being United Surveyor and Valuers and LSI Engineering and Consultants Limited to conduct the valuation in compliance of the order.

4.9 However, no direction was given by the Adjudicating Authority to take custody and control of the premises and therefore, the applicant filed an application being CA (IB) No. 422/KB/2019 for custody and control of the premises.

4.10 The said application was pending when the order for liquidation was passed. As such, the said application became infructuous on passing of the order for liquidation.

4.11 The applicant as the liquidator is duty bound under section 35(b) to take into his custody and control all the assets, property, effects and

actionable claims of the corporate debtor. However, the liquidator is unable to take custody and control of the said premises owing to the illegal possession by Mr. Bahadur Singh Kathotia, the Respondent herein.

4.12 The applicant states and submits that it is evident that the Respondent is not only acting illegally and wrongfully but also *mala fide* which amounts to interference with the administration of justice.

5 **IVN. P. 3/KB/2022**

The instant application has been filed by Ekta Kathotia, Adarsh Kathotia and Sanjay Shaw under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“Code”) read with rule 11 of the National Company Law Tribunal Rules, 2016, seeking the following reliefs:

- a. *Four flats (the description of which is given in paragraphs 2-5 of the Application) of which the Applicants are the real owners be kept outside the purview of the assets of the Corporate Debtor and hence not be subjected to sale;*
- b. *In the alternative, if the Tribunal wishes to go ahead with the proceedings with regard to the sale of the assets of the Corporate Debtor, any auction sale of the four flats by the Liquidator, be conducted with a caveat that there is a suit pending before the Civil Court challenging the deeds of conveyance by which the Corporate Debtor is assuming ownership of the properties belonging to the Applicants;*
- c. *Any deed executed in the favour of the successful purchaser pursuant to the auction sale with respect to the aforementioned four flats should contain a rider that there is an objection to these flats being the assets of the Corporate Debtor;*
- d. *Ad-interim orders in terms of prayers above*

6 Submissions of the Applicants in IVN. P. 3/KB/2022:

- 6.1 The Applicants herein are the sole and absolute owners of the four above-mentioned flats by the virtue of various deeds of conveyances which are annexed to the application as Annexures A1, A2, A3 and A4.
- 6.2 Four Power of Attorneys were executed by the Applicants with respect to the said four flats in favour of one Bahadur Singh Kathotia, who is the father of Applicant No.1 and Applicant No.2 and father-in-law of Applicant No.3 for the purpose of performing different acts, including application for mutation of the properties above named, paying necessary taxes and all other incidental activities. The said Power of Attorney expressly prohibited the Power of Attorney holder from transferring and/or alienating and/or creating third party rights over or in respect of the four flats as mentioned above or earning any profits therefrom.
- 6.3 After the execution of the General Power of Attorneys, the said Bahadur Singh Kathotia let out the suit properties to various tenants from time to time against payment of agreed monthly rent duly received by the Applicants, with proper acknowledgement of receipts and as such the legal possession of all the flats above mentioned are lying under the direct control of the Applicants, in absolute exclusion of any right, title and interest on the part of any person whatsoever.
- 6.4 It was only on April 4, 2019, when, some people claiming to be under the authority of the Official Liquidator visited the said flats to investigate into the properties of Pincon Spirit Limited, the corporate debtor in CP(IB) 93/KB/2018, that for the first time the Applicants came to know that by the Adjudicating Authority's order dated 19 July 2018, the Corporate Insolvency Resolution Process of the Pincon Spirit Limited was commenced and by an order dated 25 September 2018, one Mr. Binay Kumar Singhania was appointed as the Resolution Professional.

- 6.5 On deep probe, the Applicants found out that Mr. Bahadur Singh Kathotia, the Power of Attorney holder, had, with a *mala fide* intention, had fraudulently executed and registered four different deeds of Conveyance in favour of the Corporate Debtor in respect of the aforementioned flats and handed over to the Corporate Debtor, three out of four original deeds belonging to the Applicants, without delivering the actual possession thereof.
- 6.6 No power or authority whatsoever was conferred upon Mr. Bahadur Singh Kathotia to execute any Deed of Sale or to present the same for registration before the concerned authority and that the same was executed without the knowledge of the Applicants and without any consideration being paid to the. Applicants.
- 6.7 From the purported deeds it appeared that that the Corporate Debtor had against the transfer of those flats paid a considerable amount of money to the Applicants as consideration towards the aforementioned flats. However, the Applicants had neither had any knowledge about the existence of those deeds nor have they ever received any consideration amount from the Corporate Debtor.
- 6.8 Accordingly, the Applicants approached the Adjudicating Authority by filing an Intervening application, being I.A. (IB) No. 929 (KB)/ 2019 under section 60(5)(c) of the Code. The Adjudicating Authority, however, by an order dated 30 September 2019, dismissed the said Intervening application on the ground that it had become infructuous and that it was left open for determination by the Liquidator, by taking appropriate steps under the provisions of the Code, Regulations and Law in force.
- 6.9 The Applicants herein have also filed a Suit being Title Suit No.452 of 2019 (Smt. Ekta Kathotia & Ors. Vs. M/ s. Bengal Polypet & Ors.) before the Court of the Learned 5th Civil Judge (Senior Division) at

Alipore, praying inter alia that the Deeds of Sale as mentioned in paragraph 9 above, alleged to be executed in favour of the Corporate Debtor herein be declared null, void ab initio and not binding on the Applicants. The Applicants have also filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908, before the Learned Court at Alipore.

6.10 The above-mentioned Conveyance Deeds executed by and between Bahadur Singh Kathotia as lawful Constituted Attorney on behalf of the Applicants as owners and corporate debtors as purchasers are invalid and not binding upon the Applicants herein.

6.11 The Applicants have by a letter dated 10 August 2021 written to the Liquidator requesting him to keep the aforesaid four flats belonging to the Applicants outside the purview of the assets of the corporate debtor citing the reasons as given above for the same. The said letter was received by the Learned Liquidator on August 12, 2021. However, there has been no reply to the same by the Learned Liquidator till date.

6.12 The Applicants submit that the sale deeds were executed by practicing fraud and arising out of sham transactions as is evident from the fact that the Deeds of conveyance were executed without being backed by any authority for doing the same. Neither any consideration was ever paid by the Corporate Debtor or received by the Applicants at any point of time in pursuance of the said deeds nor the possession of the said flats was ever delivered to nor was it ever received by the corporate debtor at any point of time and the same is very much in possession of the Applicants.

6.13 The Applicants submit that as no actual transfer of right, title and interest has occurred in favour of the corporate debtor in respect of the four flats, the same cannot be projected to be the assets of the corporate debtor. In the absence of the title of the four flats having been passed onto the

corporate debtor, any auction in respect of them would ultimately amount to nullity. Any auction conducted of the four flats of which the Applicants are the real owners may lead to multiplicity of proceedings as, when the successful purchaser may try to take possession of the flats, the Applicants will be left with no other option but to initiate legal proceedings against the purchaser.

7 Submissions of the Respondent No. 1 in IVN. P. 3/KB/2022:

7.1 Upon appointment of the Respondent No.1 as the Liquidator of the Corporate Debtor, the representative of the Respondent No.1 located and visited the premises owned by the Corporate Debtor on 13th and 14th of November, 2018. However, the Respondent No.1 and his representative were unable to access the premises as they have been illegally occupied by Mr. Bahadur Singh Kathotia father of Applicant No.1 and Applicant No.2.

7.2 Subsequently, the Respondent No.1 undertook investigations into the assets and liabilities of the Corporate Debtor and upon conducting inspections of the above-mentioned premises, it was observed by the Respondent No.1 that Mr. Bahadur Singh Kathotia by illegal means occupied the said four flats of the Corporate Debtor.

7.3 The ownership of all the aforementioned properties can be easily established from the registered deeds of conveyance (title deeds) executed by Applicant No.1 and Applicant No.2 in favour of the Corporate Debtor. The properties were purchased by the Corporate Debtor back in the year 2012.

7.4 The Respondent No. 1, being aggrieved by the conduct of the Mr. Bhadur Singh Kathotia, preferred an application bearing No. IA(I.B.C)/76(KB)2021 before this Adjudicating Authority seeking directions upon Mr. Bahadur Singh Kathotia to vacate and handover peaceful possession of aforementioned four properties. Therein, the

Adjudicating Authority *vide* order dated 31 January 2022 directed that the liquidator has the right to take possession of the said premises as they are in the name of the Corporate Debtor.

- 7.5 Applicant No.1, as an afterthought, had also filed title suit no. 249 of 2022 before the 5th Court of Civil Judge (Senior Division) at Alipore seeking restrain against the Respondent No.1 from taking control and custody of the assets of the Corporate Debtor. The Ld. Court of Civil Judge (Senior Division) at Alipore heard the title suit no. 249 of 2022 on 25.02.2022 and *vide* Order dated 25.02.2022 the Ld. 5th Civil Judge (Senior Division) restrained the Respondent No.1 from taking the assets of the Corporate Debtor into his own custody.
- 7.6 Applicant No.1 had also preferred an appeal before the Hon'ble National Company Law Appellate Tribunal being company Appeal (AT) Insolvency No. 213 of 2022 against order passed by this bench on 31 January 2022. The said appeal against the Order dated 31.01.2022 was dismissed as withdrawn by the Hon'ble NCLAT.
- 7.7 Both the orders of the Ld. Civil Court and the Hon'ble NCLAT dated 25 February and 28 February 2022 were obtained *ex-parte*. In this regard, section 33 (5) of the Code can be referred to which provides that upon passing of order of liquidation, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor.
- 7.8 According to the statement of object and reasons to section 33(5) of the Code, the liquidation order shall result in a moratorium on the initiation or continuation of any suit or legal proceeding by or against the Corporate Debtor except proceedings pending in appeal before the Supreme Court or the High Court. However, a liquidator may initiate a suit or legal proceeding on behalf of the corporate debtor with the prior permission of the adjudicating authority. However, this moratorium shall not prevent a secured creditor from realizing its security in accordance with Clause 52.

- 7.9 Therefore, restraining Respondent No. 1 from taking control of the assets of the Corporate Debtor by way of order dated 25 February 2022 in relation to civil suit instituted on or after the insolvency commencement date is illegal and without jurisdiction. In this regard, paragraph 13 of the decision of Hon'ble Supreme Court in the matter of *Central Bank of India vs. Elmot Engineering Co.*¹ has been referred to.
- 7.10 Regulation 44 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 directs the liquidator to liquidate the Corporate Debtor within one year and it is necessary to take possession of the liquidation estate.
- 7.11 Further, section 231 of the Code provides for bar on the jurisdiction of civil courts. Accordingly, in the instant case, since the order dated 31 January 2022 was already in operation, the order dated 25 February 2022 in Title Suit No. 249 of 2022 ought not to have been passed.
- 7.12 In the long run, potential investors could be disincentivised from bidding for the sale of such assets of the Corporate Debtor. The assets will be priced lower on an average as it would raise potential concern in the market even merely on apprehension of litigation and dispute. Thus, the threat of liability falling on bona fide persons who acquire such property, could substantially lower the chances of its successful sale. Therefore, any such conduct is in a direct conflict with the objective of the Code which is maximization of the value of the assets.
- 7.13 Restraining the Respondent No. 1 from taking control of and thereby selling the assets of the Corporate Debtor could be contrary to the interest of value- maximization of the Corporate Debtor's assets.

¹ AIR 2358; 1994 SCC (4) 159 decided on 27 April, 1994

7.14 Regarding time being the essence of the process of liquidation, para 16 of the decision of the Hon'ble Supreme Court in the case of *Innoventive Industries Lt. vs. ICICI Bank & Ors*² has been relied on.

7.15 The deeds were executed between the Corporate Debtor and the Applicants herein with bona-fide intention and by paying the full consideration and hence, the Corporate Debtor is the true owner of the flats mentioned. The institution of Civil Suit bearing No. filed title suit no. 249 of 2022 is a manifest error apparent on the face of the proceedings under the Insolvency and Bankruptcy Code, 2016 and it is based on clear ignorance of the provisions of law.

8. *Analysis and Findings:*

8.1 Heard the Ld. Counsel for the parties and perused the record.

8.2 It is to be noted that in the matter In IA(I.B.C)/76(KB)2021, the Adjudicating Authority *vide* order dated 31 January 2022 has already directed that the liquidator has the right to take possession of the said premises as they are in the name of the Corporate Debtor. In compliance of the said order, the Liquidator has also filed a progress report dated 03 March 2022.

8.3 A contradictory order was passed by Ld. 5th Civil Judge (Senior Division) in title suit no. 249 of 2022 before the 5th Court of Civil Judge (Senior Division) at Alipore, whereby the Respondent No.1 was restrained from taking the assets of the Corporate Debtor into his own custody.

8.4 However, the said order dated 25 February 2022 is instantly hit by section 33(5) of the Code, according to which the liquidation order shall result in a moratorium on the initiation or continuation of any suit or legal proceeding by or against the Corporate Debtor except proceedings pending in appeal before the Supreme Court or the High Court.

² AIR2017SC4084, decided on 31 August 2017

- 8.5 Since in the instant matter, liquidation was initiated in respect of the Corporate Debtor *vide* order dated 30 September 2019, moratorium would have been imposed on the civil proceedings being Title Suit 248 of 2022. Therefore, any order passed after 30 September 2019 in the said title suit will not be valid. Further, relying on the Hon'ble Supreme Court's decision in *Central Bank of India vs. Elmot Engineering Co (supra)*, it is clear that once the order for liquidation is made, the court has laid hands upon the assets of the Corporate Debtor, no claimant or creditor can be allowed to touch the said assets or take proceedings by way of action, execution or attachment pending the distribution by the Court in due course of administration.
- 8.6 Further, section 231 of the Code also provides that no civil court shall have jurisdiction in respect of any matter in which the Adjudicating Authority is empowered to pass any order under the Code. As such, according to the provisions of the Code, the order passed by Ld. 5th Civil Judge (Senior Division) is invalid due to want of jurisdiction.
- 8.7 In light of the above facts and circumstances, this Adjudicating Authority is satisfied that the Inv. P. (IB) No. 03/KB/2022 is not maintainable and is accordingly **dismissed**.
- 8.8 Having said that, this Adjudicating Authority, within its jurisdiction under the Insolvency and Bankruptcy Code, 2016 does not have the power to reverse the order passed in the abovementioned civil proceedings. Therefore, in light of the order passed on 25 February 2022, the Liquidator is directed to approach the appropriate court having the jurisdiction to adjudicate upon the validity of the said order, in order to file appropriate application for removal of the injunction imposed thereby.
- 8.9 Therefore, I.A. (IB) 76/KB/2021 is not disposed of at this stage.
- 8.10 List CP(IB) No. 93 /KB/2018 on 10 October 2022.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- I

IA. (IBC) 76/KB/2021 & IVN. P. 3/KB/2022 in CP(IB) No. 93/KB/2018
Bengal Polypet vs. Pincon Spirit Limited

8.11 The registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

8.12 A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**BALRAJ
JOSHI**

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Balraj Joshi
Member (Technical)

**Rajasekha
r V K**

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Rajasekhar V.K.
Member (Judicial)

Signed this the 30th day of June, 2022

SM[LRA]

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I
KOLKATA
I.A. (IB) 137/KB/2021
in
CP (IB) No. 93/KB/2019**

In the matter of:

A petition under section 9 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Bengal Polypet

...Operational Creditor

Versus

Pincon Spirit Limited

...Corporate Debtor

And

I.A. (IB) No. 137/KB/2021

An application under section 60((5) of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the National Company Law Tribunal Rules, 2016.

In the matter of:

Mr. Binay Kumar Singhania,

Liquidator of Pincon Spirit Limited

... Applicant

Versus

Block Land & Land Reforms Officer,

Officer of the Block Land & land Reforms, Barrackpore

... Respondent

Order reserved on: 13 June 2022

Order pronounced on: 30 June 2022

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I

Mr. Binay Kumar Singhani v. BLLRO
I.A. (IB) 137/KB/2021 in CP (IB) No. 93/KB/2019

Coram:

Shri Rajasekhar V.K. : **Member (Judicial)**
Shri Balraj Joshi : **Member (Technical)**

Appearances (through hybrid mode):

For the Applicant : Mr. Krishnaraj Thaker, Advocate
Mr. Arun Kumar Gupta, PCA

ORDER

Rajasekhar V.K., Member (Judicial)

1. This Court convened through hybrid mode.
2. I.A. (IB) No. 137/KB/2021 has been filed by Mr. Binay Kumar Singhani, the Liquidator of Pincon Spirit Limited (Corporate Debtor) under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (Code) read with rule 11 of the National Company Law Tribunal, 2016 seeking directions upon the Block Land & Land Reforms Officer, Barrackpore-I to assist the Applicant endeavor to demarcate the property of the Corporate Debtor situated within P.S. Jagaddal and to appoint a surveyor for the said purpose.
3. This Adjudicating Authority *vide* order dated 19 July 2018 admitted the Corporate Debtor into Corporate Insolvency Resolution Process on a Petition filed by Bengal Polypet and appointed Mr. Partha Kamal Sen as the Interim Resolution Professional (IRP). The IRP was replaced by Mr. Binay Kumar Singhania on 25 September 2018.
4. *Vide* order dated 30 September 2019, this Adjudicating Authority directed commencement of the liquidation process of the Corporate Debtor and the Applicant was appointed as the Liquidator.
5. The Corporate Debtor owns the following property *vide* Deed of Lease between Bhatpara Municipality and Pincon Spirit Limited for a

period of 999 years commencing on the date of registration dated 13 October 2015, registered and endorsed by the Government of West Bengal on 14 October 2015 in Book 1, Volume No. 1501-2015, Page from 64513 to 64566 being No. 150108146 for the year 2015.

6. The Applicant visited the premises i.e. *“All that piece and parcel of land for industrial purpose, shall now, found, being, lying and situate at Mouza: Narayanpur, J.L. No., within the ambit/purview of Ward No. 34 of Bhatpara Municipality, within the periphery of nearest road- Narayanpur Link Road (Road Zone), within the jurisdiction of Police Station: Jaggadal, District North 24 Paraganas, ADSR Office Naihati, Halisahar, admeasuring in aggregate an area of 10.1347 Acre, equivalent to 1013.47 decimal, be the same a little more or little less comprised in the several Dags with the corresponding area and under L.R. Khatian No. 2001 as further described in Schedule 1 of the lease deed”*¹. But the Applicant was unable to determine the exact parameters and observed that the land was vacant, scattered and not consolidated.
7. The Applicant, in its capacity as Resolution Professional, had appointed two registered valuers, but the said registered valuers were unable to identify the entire land and that as per their physical verification, some land had been encroached and construction work was in progress. The Registered Valuers suggested to confirm the exact location of the area of the Corporate Debtor with the help of a local Amin.
8. The Applicant had requested the assistance of the Office of the Block Land & Land Reforms Officer on 22 February 2019 requesting for assistance to demarcate the property of the Corporate Debtor.

¹ Paragraph D, Page 5 of Lease Deed

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I**

**Mr. Binay Kumar Singhani v. BLLRO
I.A. (IB) 137/KB/2021 in CP (IB) No. 93/KB/2019**

9. The Applicant as a Resolution Professional has filed I.A. (IB) No. 412/KB.2019 for appointment of valuers but in view of the order commencing liquidation of the Corporate Debtor, the said I.A. became infructuous.
10. Hence, the Liquidator has filed the present I.A., as there is risk of the encroachment on the property of the Corporate Debtor.
11. This Adjudicating Authority *vide* order dated 11 February 2021 had directed the BLLRO to extend all assistance to the Liquidator to demarcate the property and has also directed the local Police Officer/Station House Officer/Officer-in-charge of Jagaddal P.S. to extend all necessary Police assistance. Further direction was given to the Liquidator to file an application before the appropriate authority for appointment of Surveyor and directed the BLLRO to file an affidavit in compliance of the order.
12. Thereafter on 16 November 2021, the Liquidator sought time on the ground that the demarcation of the property was under process, but there was no progress till 31 January 2022.
13. Hence, this Adjudicating Authority *vide* order dated 31 January 2022, gave a last opportunity and directed the Block Land & Land Reforms Officer (BLLRO) to complete the demarcation exercise and file a report on or before 01 March 2022.
14. The Liquidator wrote to the BLLRO and the Executive Officer, Bhatpara Municipality on 22 February 2022 to requesting the Officers to take steps as per the order dated 31 January 2022.
15. The BLLRO, Mr. Atanu Das informed the Liquidator that due to Municipality Elections that was due on 27 February 2022, the situation was not under control in the said Office hence further time was requested to complete the demarcation process. A notice for initiation

of demarcation process dated 25 February 2022 was received from the office of the Block Land & Land Reforms Office informing the Liquidator that the demarcation process would be on 14 March 2022 and 15 March 2022.

16. Thereafter, another notice for initiation of demarcation process dated 24 March 2022 was received from the office of the Block Land & Land Reforms Office informing the Liquidator that the demarcation process would be on 31 March 2022 and 01 April 2022.

17. The Block Land and Land Reforms Officer sent a letter dated 04 April 2022² intimating the Liquidator of the status of the demarcation of land wherein it was stated that on 31 March 2022 and 01 April 2022, the officials had visited the property and found that the entire property was under lock and key, hence the demarcation work could not be done as the property to be demarcated was lying within the boundary wall and the main gate of the said premises was under lock and key. Further, no official from the Bhatpara Municipality was present during the time of demarcation.

18. We have heard the learned Counsel appearing on behalf of the Applicant. It is the duty of Liquidator to take possession of all the assets of the Corporate Debtor and in the present case, the Liquidator is not able to determine the exact premise of the Corporate Debtor. The Applicant had sought assistance from the Respondent but to no avail.

19. The entire process of liquidation is to be completed within a timebound manner and excluding the period of the disturbance caused due to Covid-19 pandemic, there is not much time left for completion of the liquidation process.

² Page 33 of 11th Progress Report

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I

Mr. Binay Kumar Singhani v. BLLRO
I.A. (IB) 137/KB/2021 in CP (IB) No. 93/KB/2019

20. On perusal of the status report of the BLLRO, it is noted that on both the scheduled dates i.e. on 14 March 2022 and 31 March 2022, the demarcation process could not be conducted due to the absence of a representative from the Bhatpara Municipality. Hence, we direct the Block Land & Land Reforms Officer, Barrackpore1, the Sub Divisional Officer of the Bhatpara Municipality and local Police Officer/Station House Officer/Officer-in-charge of Jagaddal P.S to aid the Liquidator in demarcating the land of the Corporate Debtor as per the Lease Deed and also appoint an Amin to aid the Liquidator and provide a Certificate to the Liquidator within two weeks from the date of this order.
21. The Liquidator shall submit this order within two days before the Respondent. The Registry is directed to communicate this Order to the Applicant and Respondent by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
22. In view of the above directions **I.A. (IB) No. 137/KB/2021** and **CP (IB) No. 93/KB/2019** to come up on 28 July 2022 for further consideration.
23. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

BALRAJ
JOSHI

Digitally signed by
BALRAJ JOSHI
Date: 2022.06.30
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Balraj Joshi
Member (Technical)

GGRB_LRA

Rajasekh
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Rajasekhar V.K.
Member (Judicial)

Digitally signed by Rajasekhar V.K.
DN: cn=B, o=Personal, title=0625,
serialNumber=490a45134c9e9f88ed2365dbf55b7
304eac1a6491c9e480a6d957a2c6e45fc,
postalCode=600018, st=Tamil Nadu,
serialNumber=F05120a9e9b7978af74f18a3ac75e
1c2046e5e18e5c085059310c0e0e8ab07398,
cn=Rajasekhar V.K.
Date: 2022.06.30 20:05:59 +05'30'
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Order signed on the 30th day of June 2022