

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

IA (IB) 156/KB/2021

in

CP (IB) 70/KB/2018

In the matter of

An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016

and

In the matter of

State Bank of India

...

Financial creditor

Versus

Network Industries Limited

...

Corporate Debtor

IA (IB) 156/KB/2021

1. Gloster Limited

2. Network Industries Limited

...

Applicants

Versus

1. Samir Kumar Bhattacharya

2. Monitoring Committee of Network Industries Limited

3. Ram Kumar Bagri

4. Vimal Kumar Golchha

5. Jitendra Prasad Singh

...

Respondents

Date of Hearing: 05/04/2021

Date of pronouncement: 12/05/2021

Coram:

Shri Rajasekhar V.K.

: Member (Judicial)

Shri Harish Chander Suri

: Member (Technical)

Appearances (via video-conference):

For the Applicants

: Mr Shaunak Mitra, Advocate
Mr PK Jhunjhunwala, Advocate

For the Monitoring Committee

: Mr Rahul Auddy, Advocate

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is an application filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (*IBC* or *the Code*) seeking a direction to the Officer-in-Charge of Shakespeare Sarani Police Station to render all necessary police assistance to the applicants for breaking open the locks or the main gate of the said office. The other prayer – for a direction to India Bulls Housing Finance Limited to hand over the original title deeds to the applicants – has become infructuous since the same have been handed over. This fact has also been recorded in the order dated 22.02.2021 passed by us.
2. The narrow compass of facts within which this application is required to be considered is as follows:
 - (a) This Adjudicating Authority had initiated Corporate Insolvency Resolution Process (CIRP) against the corporate debtor – Network Industries Limited, *vide* order dated 26.09.2018. Subsequently, in pursuance of the Expressions of Interest by the Resolution Professional, Gloster Limited, the first applicant herein, submitted its resolution plan on 03.06.2019.
 - (b) On 04.07.2019, the resolution plan submitted by the first applicant herein (Gloster Limited) was approved by this Adjudicating Authority. By 19.07.2019, the first applicant brought in the entire resolution amount to the specified bank account of the corporate debtor.
 - (c) On 20.07.2019, the resolution professional handed over possession of the immovable property situated at Bauria, to the first applicant herein.
 - (d) On 09.09.2019, when the representatives of Gloster Limited and the corporate debtor visited the registered office of the corporate debtor to take physical possession, they found the premises under lock and key. When they approached the officer-in-charge of Shakespeare Sarani

Police Station refused to provide any police assistance to break open the lock and key without specific directions of this Adjudicating Authority.

- (e) The successful resolution applicant has not been able to take possession of the corporate office since, as per the Resolution Professional, he did not have physical possession of the same.
 - (f) The present application has been filed seeking directions to the Officer-in-Charge of Shakespeare Sarani Police Station to render all necessary police assistance to the applicants for breaking open the locks or the main gate of the registered office.
3. When the matter was moved on 22.02.2021 by learned counsel for the applicants, Mr Rahul Auddy, learned counsel appeared for the Respondent No.2 (Monitoring Committee) and accepted notice. The Registry was directed to issue notice to the other respondents. All the respondents were given two weeks within which to file replies. Since there was no clarity as to whether the Resolution Profession had taken physical possession of the registered and corporate offices of the corporate debtor during the CIRP, the RP was specifically directed to be present on the next date to answer these and other questions. The matter was then posted to 05.04.2021.
 4. On 05.04.2021, except for the learned counsel appearing for the Monitoring Committee (R2), none of the respondents were represented. Reply affidavit dated 01.04.2021 was also filed only by the Monitoring Committee (R2).
 5. In the reply affidavit, it has been stated that the RP has undergone a complex brain surgery in the middle of March 2021, and that he was recuperating at the National Institute of Mental Health & Neurological Sciences (NIMHANS), Bengaluru. He was admitted at the said hospital since February 2021 for tests and observations and that at the time of swearing

the affidavit, the RP was not yet discharged. Therefore, he could not be present through videoconferencing on 05.04.2021.¹

6. It is stated in the reply affidavit filed by the Monitoring Committee (R2) that the existence of the Park Street Office premises (corporate office) was not known to the RP and neither did it appear in the books of accounts of the corporate debtor. It was only when Indiabulls Housing Finance Limited (Indiabulls) filed a claim with the RP, did the latter come to know of the existence of the asset owned by the corporate debtor. Having come to know of the asset, the RP visited the office and had access. Two or three officials of the corporate debtor used to operate from there, so did one of the directors. The RP, therefore, had possession of the office premises during the CIRP period²
7. After the Resolution Plan was approved by this Adjudicating Authority on 04.07.2019, the RP and his visited the premises and found that the premises to be under lock and key. The RP wrote two letters, on 30.08.2019 and 13.09.2019, requesting police assistance, but which was not forthcoming.
8. In response to the specific question as to why physical possession of the premises was not secured, the affidavit dated 01.04.2021 states that Indiabulls had custody of the title deeds of the Park Street office. Litigations initiated by Indiabulls were dismissed finally by the Hon'ble Supreme Court only in February 2021, and thereafter Indiabulls handed over the title deeds to the Monitoring Committee.³ Therefore, it is the RP's stand that the right to possession can be enforced only after the title deeds have come to the Monitoring Committee.⁴

¹ Paras (c), (d) and (f) at page 3 of the Reply Affidavit

² Paras (g) to (k) at page 4 of the Reply Affidavit

³ Para (q) at page 5 of the Reply Affidavit

⁴ Para (r) at page 6 of the Reply Affidavit

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9. We have considered the pleadings and the submissions of the learned counsel appearing for the applicant and for the Monitoring Committee, and perused the records.
10. At the outset, we get this feeling from the affidavit dated 01.04.2021 filed by the Monitoring Committee that the RP has been trying to justify certain actions which are not in consonance with the Code and the regulations made thereunder. The RP was supposed to ensure physical possession of all the assets of the corporate debtor as mandated under section 18(1)(f) of the Code.⁵
11. The RP having gained knowledge of the existence of the asset in the early days, and having access to the Park Street Office, left the physical custody to either the members of the suspended board or their employees. In the course of hearings, we were informed that the keys to the said premises was with a peon, who would open the door as and when the RP or other officials came to the premises. The RP has completely failed to take physical control of the premises. This has not been done. Either he has blindly trusted the lowermost functionary of the corporate debtor, or he was sweet-talked into not asking for physical custody of the premises. Whichever way one looks at it, the RP has failed in his most basic responsibility of taking control and custody of assets of the corporate debtor. That cannot be wished away. We shall come to this aspect presently.
12. On the larger point, we deem it fit to direct the Officer in charge of Shakespeare Sarani Police Station to extend full cooperation to the

⁵ The interim resolution professional shall perform the following duties, namely:-

(a) to (e) * * *

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets, including – (i) * * *; (ii) assets that may or may not be in possession of the corporate debtor; (iii) tangible assets, whether movable or immovable; (iv) * * *; (v) & (vi) * * *

representatives of Gloster Limited and Network Industries Limited to gain physical custody of the Park Street Office premises of the corporate debtor immediately. If the keys to the locks on the premises are not found, then the representatives of Gloster Limited and Network Industries Limited shall be entitled to get the locks broken in the presence of the police personnel. The entire exercise be completed within a period of fifteen days from the date of this order and a report in this regard shall be filed with the Registry within a period of five days thereafter.

13. Coming back to the RP, we feel that there is grave error of judgment committed by the RP in trusting the lowermost functionary, who cannot really be stated to be a responsible official. However, we are at the moment also concerned about the physical wellbeing of the RP, since he is stated to have undergone a complex brain surgery. Therefore, we stay our hand and refrain from making a formal reference to the Insolvency & Bankruptcy Board of India (IBBI).
14. The Registry is directed to communicate a copy of this order to the parties and to their counsel.
15. List this matter **on 22.06.2021** for further consideration.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

12.05.2021