

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

**I.A. No. 606 OF 2020  
In  
CP (IB) No. 1400/KB/2018**

In the matter of:

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Section 25 of the Insolvency and Bankruptcy Code, 2016 and Regulation 30 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

And

In the matter of:

**M/s Stressed Assets Stabilization Fund**, having its registered office at IDBI Tower, 3<sup>rd</sup> Floor, WTC Complex, Cuffe Parade, Mumbai – 400005.

**....Financial Creditor**

**Ispat Profiles India Limited**, having its registered office at Park Plaza, 71, Park Street, Kolkata – 700 016;

**.... Corporate Debtor**

**Rajiv Kumar Agarwal** , Resolution Professional of Ispat Profiles India Limited having his office at 7 Grant Lane, 3<sup>rd</sup> Floor, Room No. 317, Kolkata – 700012.

**.... Applicant**

Versus

**Bharat Sanchar Nigam Limited**, a wholly owned government company having its registered office at Sanchar Bhawan, New Delhi – 100 001 and its regional office at MHS Bhavan, Pune 411 001.

**.... Respondent**

**Date of hearing: 16/02/2022**

IN THE NATIONAL COMPANY LAW TRIBUNAL  
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Order Pronounced on : 5/ 04/2022

**Coram:**

***Mr. Rohit Kapoor, Member (Judicial)***

***Mr. Harish Chander Suri, Member (Technical)***

**Counsels appeared through Video Conference**

For RP in IA/678/2021	: Ms. Mamta Binani, Adv. Ms. Anshumala Bansal, Adv. Mr. Rohit Sharma, PCS Mr. Rajiv Kumar Agarwal, RP in person
For RP in IA/606/2020, IA/1277/2020, IA/1278/2020 & IA/1053/2021	: Ms. Anshumala Bansal, Adv. Mr. Rajiv Kumar Agarwal, RP in person
For applicant in IA/1053/2021	: Mr. Jishnu Chowdhury, Adv. Ms. Rashmi Singhee, Adv. Ms. Namrata Basu, Adv.
For CoC	: Ms. Manju Bhuteria, Adv. Ms. Shreya Choudhary, Adv.
For respondent BSNL in IA/606/2020	: Mr. Vilas Lolage, SDE (Legal), BSNL, Pune
For successful Resolution Applicant	: Mr. Ratnanko Banerji, Sr. Adv. Mr. Dharendra Nath Sharma, Adv. Mr. Chayan Gupta, Adv. Ms. Shruti Swaika, Adv. Ms. Iram Hassan, Adv.
For R-1 & R-4 in IA/1277/2020	: Mr. Jishnu Chowdhury, Adv. Ms. Rashmi Bothra, Adv.

**ORDER**

**Per: Rohit Kapoor, Member (Judicial)**

1. The court convened by video conference today.
2. This Application under section 60(5) of the Insolvency and Bankruptcy Code, read with section 25 of the Insolvency and Bankruptcy Code, 2016 and regulation 30 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 has been filed by Rajiv Kumar Agarwal , Resolution Professional of Ispat Profiles India Limited, seeking the following reliefs:
  - a. *To pass necessary directions on the respondent to deliver up free and vacant possession of the said property to the applicant and also direct the concerned local district administration to render all necessary assistance and security to the applicant/ Resolution Professional 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 upon prior notice along with the personnel to be accompanied by him to conduct the CIRP proceedings to be accompanied by him to conduct the CIRP proceedings in a timely and efficient manner to carry out his statutory duties and obligations peacefully and without any hindrance or resistance whatsoever*
3. By an order dated 28<sup>th</sup> November, 2019, the applicant was appointed as Resolution Professional of the Corporate Debtor, M/s Ispat Profiles Limited, who is the owner of the property being land consisting of 6,534 sq. ft with a single story building having total constructed area of 2,030 sq. feet at Koregaon, Pune which had been leased to Bharat Sanchar Nigam Limited (hereinafter referred to as the BSNL).

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---

4. According to the Applicant, in due course of the Corporate Insolvency Resolution Process (“CIRP”), applicant became aware that the lease granted to BSNL had expired in 2012 and accordingly issued notices, including Advocate’s notice to BSNL to vacate the property. This fact is admitted by BSNL in its reply.
5. Reply affidavit has been filed by BSNL through its Assistant General Manager (legal) with the authorization of Principal General Manager (Admn) BSNL SATARA Road Pune, wherein it has been stated ;-
  - i. Koregaon Bhima Telephone Exchange has been established and been operative and in occupation since 1989. Since last 30 years, the Exchange has been running and various developments occurred in this duration like erection of 40 mtr. mobile tower, 2G/3G, OLT, DSLAM, WTR Station, GD Set etc. The last Agreement of Lease was executed with Ispat Profiles India Ltd. in 2008 which was valid upto 31.12.2012. Thereafter, even after many reminders the Lessor M/s. Ispat Profiles India Ltd. has not visited office of B.S.N.L. (Lessee) for renewal of the Agreement for executed period from 01/01/2013 till date.
  - ii. The Lessor had been demanding the increase in rates heavily absurd more than and above the prevailing rates of agreement. The Lessor Ispat Profiles India Ltd. was offered enhanced rate of Rs. 13225/- in lieu of Rs. 11500/- per month of old Agreement rate as per recommendation of fair Rent Committee of BSNL, and same was conveyed to M/s. Ispat Profiles India Ltd. by Letter No. AGM/Rural-1/BKOG/R. Bldg/ 2014-15 dated 06.05.2014, AGM / Rural-1/B-KOG/R. Bldg/2016-17 dated 17.03.2017 and DET(R-1) Koregaon Bhima/Rent Corr / 2019-20 / 52 dated 6.03.2020 but no response received from the Ispat profiles India Ltd. However payment of rent at old rate i.e. @ Rs. 11500 per month has been paid to the Lessor upto November, 2019 and rent for remaining period is in process for payment.

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---

- iii. The last Lease Agreement was signed by both parties is that of 01-01-2008, valid for 5 years i.e. upto 31.12.2012. Thereafter, Lessor was repeatedly requested to sign the renewal of the Agreement at enhanced rate of Rs. 13225/- per month but not responded. It is clear from the records available that the Lessor has been receiving and accepting the payments of rent from the Lessee regularly in consideration of the leased premises without any objection till November, 2019. Hence, it is implied that both the parties Lessor and Lessee agree and accept to abide by the terms and conditions of the last signed agreement that of year 2008. Thus, the provisions of Agreement of 2008 are still in force.
- iv. As per Clause No. 23 of the Agreement dated 01.01.2008 signed by both the parties, the jurisdiction of Court is stipulated as “In case of any dispute with regard to lease agreement, the matter shall be subject to jurisdiction at the place/circle where agreement is signed”. As the Agreement of 2008 is Deed of Lease of property situated in Maharashtra, it is governed by the “Maharashtra Rent Control Act-1999” and provisions of this specific State Legislated Act apply for any disputes arising between the parties, that may be recovery of rent or prayer for possession of leased premises.
- v. As per Clause 17 of Agreement, if BSNL is desirous of extending the Lease on expiration of term, the Lessor will renew the Lease for a period mutually agreed upon by BSNL and the Lessor. If no mutual condition is reached, BSNL shall have option of relating the premises for further period of one year from the date of expiration so that BSNL gets reasonable time for making alternate arrangements. Regarding this leased premises, the payment had been made upto November 2019 to lessor and lessor accepted the money without any objection.

IN THE NATIONAL COMPANY LAW TRIBUNAL  
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Stressed Assets Stabilization Fund vs. Ispat Profiles India Ltd  
I.A. No. 606 OF 2020  
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CP (IB) NO. 1400/KB/2018

---

- vi. Suddenly, the Lessor has issued legal Notice (through its Advocate) dated 25.02.2020 and 28.05.2020 for peaceful vacation of the leased premises at Koregaon Bhima Exchange.
- vii. With reference to the statements made in paragraphs 10 of the said application are matters of record and anything beyond such record is denied. With reference to Para-11, though Section 259(2) (a) of Bankruptcy Code, 2016 provides, “Immediate custody and control of all assets of the Corporate Debtor,” proper adjudication of the dispute is necessary by the Competent Court / Adjudicating Authority when the Assets are let out on lease to any third party, for ends of justice.
- viii. The deponent submits that the said application is devoid of merit in law and facts particularly the Learned NCLT is lack of jurisdiction in trying the same in accordance with Clause 23 of the Lease. The deponent further submits that the said application is liable to be dismissed in limine.
6. In its reply, BSNL has asserted that rent at the old rate has been paid till November, 2019 (part of Para 5 at Page 4 of Reply). At the time of arguments, BSNL has contended that rent has been paid till May, 2020, however, the argument on behalf of the BSNL has been disputed by applicant by stating that the rent has been paid only till December, 2019.
7. It has been argued on behalf of the BSNL, in the instant case, Section 116 of the Transfer of Property Act, 1882 will apply. Section 116 refers to Section 106 of the said Act clearly states that effect of holding over will be for year to year or month to month as per the purpose for which the property was leased as specified in Section 106. Since the lease to BSNL was neither for agricultural or manufacturing purpose, the same would at best amount to a month to month lease. It is contended on behalf of the applicant that 2 notices dated 25.02.2020 and 28.05.2020 for termination of lease were served upon the BSNL (page 36-37 of the application).
8. It is further contended by the respondent that according to Section 2 of Indian Contract Act, 1872, the contract can be expressed or implied in

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CP (IB) NO. 1400/KB/2018

---

conduct of the party. The applicant has been receiving payments of rents in consideration of leased space, hence it is implied that lease contract agreement of 2008 is still in force and parties to contract are under obligation to abide by its terms and conditions.

9. It is contended on behalf of BSNL that in view of Section 5(5) and 5(6) of IBC, the applicant is not entitled to come before the Tribunal in the facts of the case. The Applicant has stated that Section 5(5) and 5(6) stage has been satisfied at the time of admission of C.P. (I.B.) No. 1400/KB/2018 and the present application is under Section 60(5) read with Section 25 detailing the duties of the RP. In its reply, BSNL has contended that it is desirous of availing of the extension clause and that the said lease would be governed by the Maharashtra Rent Control Act, 1999. Subsequently, it has argued that the arbitration clause contained in Clause 24 would be applicable. On these grounds BSNL contends that this Tribunal does not have jurisdiction to try the matter. While BSNL has referred to Section 63 of the Code, it has failed to consider Section 238 of the Code which provides that the provisions of the Code shall have overriding effect on other laws. In fact, in the judgment of **Innoventive Industries Limited versus ICICI Bank & Anr (2018) 1 SCC 407** the Hon'ble Supreme Court has, inter- alia, upheld the applicability of Section 238 of the Code (para 60).
10. The Applicant has submitted that none of the judgments cited by BSNL in its reply have any applicability in the facts of the present case. It is further submitted that under the Code and especially in view of Section 238, this Tribunal has jurisdiction to try and determine the present issue and grant relief as sought for to the Corporate Debtor which is under the CIRP.
11. The Respondent has submitted that the resolution of the CoC meeting is not properly done because the applicant placed the status of BSNL in improper manner to the CoC and as such resolution of CoC is incorrect.

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In  
CP (IB) NO. 1400/KB/2018

---

12. The Respondent submits that the said application is devoid of merit in law and facts particularly the NCLT is lack of jurisdiction in trying the same in accordance with Clause 23 of the Lease.
13. Heard the Ld. Counsel for the Applicant and the Respondent and perused the records.
14. As evident from clause 17 of the Lease Agreement, BSNL was only entitled to get a reasonable time for making an alternate arrangements, such time being not more than one year after of the expiry of the lease. This affidavit was signed and executed on 3<sup>rd</sup> of November, 2020. Hence, more than one year is lapsed, respondent has expressed its inability to vacate premises for the reasons stated in reply affidavit particularly at Page – 3 of the reply affidavit.
15. As far as the jurisdiction of this Tribunal is concerned, we would like to rely on the decision taken by the NCLT Mumbai Bench in *Pravi Blaggan & Ors v. Suresh Saluja [MANU/NC/12545/2019]*, wherein it was held that:

*“2 3 . Section 60(5) and (b)(c) of the Code empowers NCLT to entertain the dispute raised in the suit, section 63 of the Code further bars the jurisdiction of the civil court in matters pertaining to the NCLAT, section 231 of the Code also bar the jurisdiction of the civil court from granting any injunction in respect of any action taken or in pursuance of any order passed by the Adjudicating authority under this Code. This code is a self contained legislation conferring the supervisory powers on the NCLT over CIRP process right from the stage of application being made for initiation of the CIRP process to the completion of the CIRP/ Liquidation as the case may be.*

*Upon conjoint reading of section 60(5), section 63, section 231 and section 238, the jurisdiction of Civil Court is excluded related to the matters related to I & B code. Therefore, it can be held that NCLT can*

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Stressed Assets Stabilization Fund vs. Ispat Profiles India Ltd  
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CP (IB) NO. 1400/KB/2018

---

*order possession of the property of Corporate Applicant to facilitate the CIRP process and allow the Resolution Professional to take possession of the assets of Corporate Applicant.”*

- 16.** In view of the settled position of law we are of the view that the liquidator appointed by this Adjudicating Authority under the provisions of Insolvency and Bankruptcy Code, 2016 is right in seeking the directions for seeking the vacant possession of the property currently being occupied by the respondent as this property is the subject matter of the CIRP process.
- 17.** Keeping in view the difficulty expressed by the BSNL for shifting of the equipment to another premises, we grant BSNL Six months time from today to vacate the premises and handover its possession to the R.P, failing which the RP shall be at liberty to take further steps as may be required to seek the possession of the premises.
- 18.** With the above observations we allow **IA 606/KB/2020**.
- 19.** List **CP (IB) NO. 1400/KB/2018** on **20/04/2022** as scheduled.
- 20.** 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.
- 21.** Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**Harish Chander Suri**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

Order signed on 5<sup>th</sup> of April, 2022.

zu [Steno]/SM[LRA]