

IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH,

KOLKATA

IA No. 604/KB/2021

IN

C.P (IB) No.972/KB/2018

In the matter of

An application under section 35(1)(b) and 60(5) of the Insolvency and Bankruptcy Code, 2016.

And

In the matter of:

Bell Finvest (India) Limited,(CIN U32200MH1994PL080907) a Company incorporated under the provisions of the Companies Act, 1956, having its registered office at 1107, Maker Chambers V, Nariman Point, Mumbai, 400021.

... Financial Creditor

Versus

In the matter of:

Duckbill Drugs Private Limited,(CIN U24232WB1994PTC063258) having its registered office at D-660, Lake Gardens, Kolkata, West Bengal-700045.

...Corporate Debtor

And

In the matter of

CA Santanu Brahma, son of Late Amalendu Brahma, Liquidator of Duckbill Drugs Private Limited (in liquidation) having registration number IBBI/IPA-001/IP-P01482/2018-2019/1225 and having its office at AH 276,Salt Lake Sector II, Kolkata-700091.

...Liquidator/Applicant

Versus

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1. Mr. Swapan Mukherjee, Director of the suspended board of the corporate debtor, residing at Shubham Apartment, 18/50 Dover Lane, Sarat Bose Road, Kolkata-700029.
 2. Mr. Arjun Mukherjee, Director of the suspended board of the corporate debtor, residing at Shubham Apartment, 18/50 Dover Lane, Sarat Bose Road, Kolkata-700029.
 3. CA M C Das (Membership No.305890) Partner, MGSK & Associates Chartered Accountants (FRN.328275E), residing at Pratima Apartment (3rd Floor), Flat No. B Jagacha, Mohinary Road, GIP Colony, Howrah-711112.
 4. ICICI Bank, through its Branch Manager, Gariahat Branch, 2/3 Hindustan Road, Gariahat, Kolkata-700029.

... Respondents

Date of hearing : 14/01/2022

Order Pronounced on : 16/02/2022

Coram:

Mr. Rohit Kappor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Ms.Debaleena Ganguly,Adv] For the RP
2. Mr. Debarata Ganguly, Adv.
3. Mr.Santanu Brahma, RP in person

1. Mr.R.C.Prusti,Adv.] For R-1 &R-2 in IA/604/2001
2. Ms.Pampa Dey Dhabal,Adv.]
3. Mr.Balaram Pandit,

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. This is a case with peculiar facts where the members of the suspended

Board of Director of the Corporate Debtor are stated to have been flouting the orders of this Adjudicating Authority with impunity which is quite visible from the facts placed on record, and this Adjudicating Authority is constrained to pass equally befitting orders and issue coercive directions, lest it should not be taken as the helplessness of the Adjudicating Authority to have its orders complied with, or show the dearth of power in the Adjudicating Authority to have the compliance of its fair and reasonable orders by all concerned.

3. In this case the respondents/the Members of the suspended Board of Directors have been successfully avoiding the compliance of the orders directly or indirectly which cannot be turned blind eye to.
4. The brief facts leading to the a rather unhappy situation that has arisen in this matter are as under:-
 - i. Bell Finvest (India) Limited, the Financial Creditor had filed a petition under section 7 of the Insolvency and Bankruptcy Code, 2016 for initiating CIRP against Duckbill Drugs Pvt. Ltd. and vide order dated 17.12.2019, the petition was admitted and Mr. Bhupendra Singh Narayan Singh Rajput was appointed as the Interim Resolution Professional. Thereafter, when the order of the liquidation was passed on 13th April, 2021, specific directions were given to the personnel of the Corporate Debtor i.e. the promoters and Ex. Directors to extend all assistance and cooperation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
 - ii. It was further directed that in I.A.59/KB/2021 moved under section 19(2) of the Code, that the respondents would extend full cooperation to the liquidator and the liquidator was directed to provide a list of specific documents and information required from the suspended Board within a period of 15 days from the

said date i.e. 28.04.2021 and the respondents were directed to make available to the liquidator all that information within a period of 10 days i.e. upto 6th May, 2021. It was made specifically clear that any failure to such directions would be visited with adverse consequences.

- iii. The Liquidator sent an email on 26.04.2021 detailing the list of document and information required for the purpose of liquidation process. Besides that, a speed post letter dated 27th April, 2021 was also delivered on 28th April 2021.
- iv. The Liquidator has submitted that respondents have grossly failed to comply with the directions given in the order dated 13th April, 2021. The application I.A./604/KB/2021 was taken up on 14th September, 2021 and on the said date respondents through their counsel gave an undertaking that the requisite information and documents would be made available to the liquidator within one week but that order has also been grossly violated by the Respondents.
- v. In a similar order passed on 18.11.2021, the promoters/Directors of the Corporate Debtor were directed to hand over possession of the premises along with all requisite information and documents within 14 days, failing which, appropriate steps would be taken against them but unfortunately that order also appears to be have been neglected and violated by the respondents.
- vi. The matter was once again listed on 28.12.2021 when this Adjudicating Authority passed the orders directing the Ex Directors to hand over the immovable properties /assets located at Behala Industrial Estate, Kolkata to the liquidator on

08.01.2021 at 11 a.m. in the presence of Ld. Counsel for the Respondents/ Ex. Directors and Ms. Debaleena Ganguly, counsel for the liquidator. This Tribunal specifically directed the erstwhile Directors to hand over the books of accounts of Corporate Debtor in Tally system to the Liquidator at his office (AH 276 Salt Lake, Sector-II, Kolkata 700091) latest by 08.01.2022. The said order has also not been complied.

5. It is submitted that on 08.01.2022, the Liquidator along with his counsel Ms. Debaleena Ganguly and other associates like Registered Valuers, Security Guard reached the factory premises of the Corporate Debtor at Industrial Complex, Behala to comply with the order dated 28.12.2021, the Liquidator was obstructed at the factory gate from entering the premises by the Directors and employee who gathered in around 20 to 25 members. It is submitted that one Dulal Das @ Krishnendu Das has been specifically planted to cause hindrance to the liquidator in carrying out his statutory duties under the orders of this Adjudicating Authority. It is submitted that the workers and employees informed that they would be willing to cooperate with the liquidator only if assurance is given to them that their erstwhile management Mr. Swapan Mukherjee and Mr. Arjun Mukherjee would be allowed to regain possession of the factory.
6. The liquidator also submitted the report on compliance of orders dated 28th December, 2021, on 9th January, 2022 along with the minutes of the events recorded on 8th January, 2022 by the liquidator. It is submitted by the liquidator that no books of accounts in the Tally System were received on or before 8th January, 2022 and one Mr. Arjun Mukherjee, Promotor sent an email on 11.01.2022 containing some Tally Data files, which presently are under verification by the liquidator and his team.
7. It is further submitted that no possession of the immovable property

was given to the liquidator. The liquidator has further submitted that after the order of liquidation on 13th April, 2021, CA Santanu Brahma was appointed as liquidator because the erstwhile RP did not want to continue as liquidator seriously, on this the liquidator could not get the opportunity to negotiate with the CoC members on matters relating to his remuneration and others, as is permissible as per the relevant provisions of the Code. It is submitted that after resuming the office of liquidator, he has been doing the role of de facto RP, and which included trying to get possession of the assets of the Corporate Debtor and tracing out the bank account of the Corporate Debtor, apart from recovering around Rs.80,00,000/-which is presently lying in the liquidation account and to gain possession of the books of accounts and others.

8. After hearing the Ld. Counsel for the liquidator and the liquidator present in person, and learned counsel for the Ex-Directors/respondents, we pass the following orders:-
- i. Ex. Director/ Respondents shall immediately handover peaceful possession of the assets of the Corporate Debtor, Property 1: Immovable Property being piece and parcel of Building No. 1, Gr. Flr (North Part), measuring 2729 sq.ft. situated at Behala Industrial Estate, Building No. 1&2, 620 Diamond Harbour Road, Kolkata- 700034, West Bengal,
 - ii. Property 2: Immovable Property being piece and parcel of Building no.II Gr. Flr (Southern Part) measuring 1383.90 sq. ft. situated at Behala Industrial Estate, Building No.1 & 2, 620 Diamond Harbour Road, Kolkata- 700034, West Bengal;
 - iii. Property 3: Immovable Property being piece and parcel of Building No.II (Southern Part) 1st Floor, measuring 3322 sq.ft. situated at Behala Industrial Estate, Building No.1 & 2, 620 Diamond Harbour Road, Kolkata-700034, West Bengal.
 - iv. Property 4: Immovable Property being Piece and parcel of

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- Building no.II (Southern Part) 2nd Floor, measuring 1517 sq. ft. situated at Behala Industrial Estate, Building No. 1 & 2, 620 Diamond Harbour Road, Kolkata- 700034, West Bengal;
- v. Motor Vehicle being Honda Car bearing registration no. WB 02V 6363;
- vi. Motor Vehicle being Maruti Wagon R bearing registration no. WB 06 J0681;
- vii. Plant & Machinery, Office Equipments, Electrical Installation and others stationed and available at Behala Industrial Estate, Building No. 1 & 2, 620, Diamond Harbour Road, Kolkata-700034, West Bengal.
9. Since, there is no registered office of the Corporate Debtor, these respondents/ Directors shall hand over all the 'Books of Accounts' which shall include but are not limited to sales register, purchase register, Journal, ledgers, cash book as defined in section 2(13) of the Companies Act, 2013, need to be handed over, stored and delivered at the factory premises. The 'Books of Accounts' in Tally format may be specifically directed to be made available at the factory premises.
10. It is further ordered that for ensuring that the Corporate Debtor runs as a going concern, the designated person who has been mentioned as a responsible person under the Pharmacy Act, 1948 or the Drugs and Cosmetics Rule, 1945 or any other relevant Act, for running this pharmaceutical company needs to be identified. The said person may also be directed to cooperate with the liquidator to maintain the continuing operation of the Corporate Debtor.
11. For compliance of the aforesaid order, we direct the Deputy Commissioner, Parnashree Police Station, Kolkata, West Bengal to provide necessary police assistance to the liquidator, who is an officer of the court and is performing his statutory duties under section 35(1)(b) of

I&B Code, 2016, as per the orders of National Company Law Tribunal, Kolkata. The Police Officer/official deputed for the purpose, shall not allow any hindrance or obstruction to be caused in the working of the liquidator, either by the respondents or their associate workers/employees and if anybody causes obstruction, the Liquidator shall lodge an FIR with the police against the miscreants whosoever he/she may be and the Police shall take appropriate legal action against them, under the Indian Penal Code. In case the orders/directions of this Adjudicating Authority are not complied, appropriate action shall be taken by this Authority as per the law/rules.

12. The Liquidator shall perform his duties as per the provisions of the Code; A copy of this order shall be forwarded to the Police Officers concerned, at least one day in advance for making the Police arrangement for the purpose.
13. **IA No.604/KB/2021** is disposed of with the aforesaid directions.
14. List the matter on **19/04/2022** for filing of **Progress Report**.
15. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on, this. 16th day of February, 2022

Pj