IN THE NATIONAL COMPANY LAW TRIBUNAL

Court No.1, MUMBAI BENCH

Under Section 60(5) of the I&B Code, 2016

M.A. No. 1512/2018

Liquidator of Precision Fasteners Limited
… Applicant
V/s
Siddhi Edibles Private Limited
… Respondent

And

M.A. No. 47/2019

Siddhi Edibles Private Limited
… Applicant
V/s
Liquidator of Precision Fasteners Limited
… Respondent

In the matter of

C.P. (IB) No. 1339/NCLT/MB/2017

Asset Reconstruction Company (India) Limited
… Petitioner
V/s
Precision Fasteners Limited
… Corporate Debtor

Order Dated: 27.10.2020

Coram:

Hon'ble Member (Judicial), Smt. Suchitra Kanuparthi

Hon'ble Member (Technical), Shri V. Nallasenapathy

Appearances:

MA 1512/2018

For Applicant	: Mr. Ankit Lohia a/w Ms. Vibha Kapoor, Mr. Chintan Gandhi, Ms. Girlu Makhija i/b Rajani Associates
For Respondent	: None Present

MA 47/2019

For Applicant	: None Present
For Respondent	: Mr. Ankit Lohia a/w Ms. Vibha Kapoor, Mr. Chintan Gandhi, Ms. Girlu Makhija i/b Rajani Associates

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. Both the MAs are interconnected and hence both are taken together for disposal.

MA 1512 of 2018

2. This is an application filed by the Liquidator of M/s Precision Fasteners Limited under Section 60(5) (c) of the Insolvency

and Bankruptcy Code, 2016 (Code) seeking the following reliefs:

a) *That this Hon'ble Tribunal be pleased to pass an order and declare that the occupation of the Subject property by the Respondent, by themselves, their respective servants, officials, representatives and agents is illegal;*

b) *That this Hon'ble Tribunal be pleased to pass an order and direct the Respondent, by themselves and their respective servants, officials, representatives and agents to vacate and handover the peaceful possession of the subject property to the Applicant;*

c) *That the Hon'ble Tribunal be pleased to order and direct the Respondent to pay a sum of Rs. 1,94,953 (Rupees One lakh ninety four thousand nine hundred fifty three) towards outstanding rent/ compensation in respect of the subject property to the Applicant along with interest of Rs. 12235 (Rupees Twelve thousand two hundred and thirty five) calculated at the rate of 12% per annum from the date of default till November 26, 2018 as per the statement annexed at Exhibit – O hereto.*

d) *That the Hon'ble Tribunal be pleased to order and direct the Respondent further interest on the amount of Rs. 2,07,187 (Rupees two lakh seven thousand one hundred and eighty seven) at the rate of 12% per annum to the Applicant from the date of filing of this petition till the date of realization of the outstanding rent / compensation.*

e) *That this Hon'ble Tribunal be pleased to pass an order allowing/permitting the Applicant to sell, dispose off and transfer the Subject property in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and the Regulations framed therein;*

f) *That this Hon'ble Tribunal be pleased to pass an order and direct the concerned local police authorities to provide police protection and support to the liquidator and his representatives in order to implement the order that may be passed by this Hon'ble Tribunal against the Respondents;*

g) *Pending the final hearing and disposal of this Application, this Hon'ble Tribunal be pleased to restrain the Respondent, by themselves or by their respective servants, officials, representatives and agents from dealing in any matter with the Subject Property;*

h) *Pending the final hearing and disposal of the Application, this Hon'ble Tribunal be pleased to pass an order and direct the Respondent, to deposit the rent at the rate of Rs. 26000 (Rupees twenty six thousand only), per month with the applicant in respect of the subject property.*

i) *Any other reliefs that the Hon'ble Tribunal may deem fit;*

3. Applicant submits that he has been appointed as the Liquidator of the Corporate debtor by an order dated 12/03/2018. He submits that the Corporate debtor has rented out a property

i.e. office Space No. 19, Ground floor at premise No. 8, Camac Street Kolkata to the respondent. It is submitted that the corporate debtor is the owner of the property.

4. The applicant submits that by way of an agreement dated 07/10/1983, one Pushpadevi Jain has assigned all the right, title and interest in respect of the above said property in favour of the Corporate Debtor. The said agreement also records that the Corporate Debtor has obtained the consent of Shantiniketan Estates Pvt. Ltd. (Developer) for the above said assignment. It is further submitted that the developer recognised the ownership, title and interest of the Corporate Debtor for the above said property by its letter dated 24/10/1986. It is submitted that the promoter of the Corporate Debtor previously entered into leave and license agreement with the respondent in respect of the property and thus the respondent has taken possession of the property under the leave and license agreement. It is further submitted that the Corporate Debtor does not have a copy of the leave and license agreement (which has already been expired). It is also submitted that leave and license agreement is also not traceable. The applicant submits that he has sent a notice on 17/04/2018 requesting the respondent to vacate and handover the possession of the property to the liquidator on or before 10/06/2018, for which the respondent through its advocate filed reply dated 14/05/2018 and refused to hand over the possession of the property. The said reply reveals that the respondent on the

request of the Corporate Debtor has paid Municipal Tax in respect of the property which was later adjusted towards rent paid to the Corporate Debtor. Further the respondent used to pay rent to the Corporate Debtor. The applicant submits that the above facts clearly shows that the Corporate Debtor is the owner of the property. The applicant by his letter dated 08/06/2018 addressed to the respondent and stated that the promoters of the Corporate Debtor have confirmed that the respondent is occupying property under leave and license agreement which expired before the commencement of the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor and the said agreement was not renewed.

5. It is submitted that the request of the applicant to the respondent to provide a copy of the leave and license agreement was not honoured. The applicant submits that the respondent filed application No. 546/2018 before this Tribunal against the applicant, for quashing the eviction notice dated 17/04/2018 issued by the applicant. The Respondent has enclosed the property tax receipt wherein the Corporate Debtor is named as the owner of the property.

6. In the said proceedings the respondent herein submitted that that they would not pay the rent to the Liquidator unless the liquidator establishes the valid title of the corporate debtor for the property. The said application was dismissed by this Tribunal on 06/08/2018. It is submitted that subsequent to the

dismissal of application No. 546/2018 the respondent has paid a sum of Rs. 6814/- on 07/08/2018. The respondent on its own reduced the rent of the property from Rs. 26,000/- per month to Rs. 21,000/- per month from December 2017. The respondent paid only Rs. 18,900/- in the month of June 2018 and subsequently stopped paying the rent. The action of the respondent is without any justification. On 12/09/2018 the applicant addressed a letter requesting the respondent to handover the possession of the property and the respondent by its reply dated 17/09/2018 wrongfully contended that the property cannot be included in the liquidation estate of the corporate debtor and refused to handover the possession of the property.

7. In July 2018, the applicant contacted M/s Onrush Building Maintenance Pvt. Ltd. (Onrush) which is managing the affairs of the building in which the property is situated, for collecting information/document in respect of the property.

8. Onrush provided the applicant a copy of the letter dated 02/02/2018 purportedly addressed by the corporate debtor and the response from Onrush dated 03/02/2018. The applicant was shocked to see the letter dated 02/02/2018 purportedly addressed on the letter head of the corporate debtor. It is submitted that the applicant has not issued any letter and even erstwhile management of the corporate debtor also confirmed that letter dated 02/02/2018 was not addressed by them. The

applicant submits that the letter dated 02/02/2018 is a forged one and the corporate debtor has not been using the letter head used in the letter dated 02/02/2018. It is submitted that the letter was addressed with the malafide motive with an intent to defraud the corporate debtor to usurp the property.

9. The applicant submits that the respondent wrongfully contended that he is a tenant in the West Bengal Tenancy Act, 1997. In fact Section 3 of the West Bengal Tenancy Act, 1997 specifically provides that in certain circumstances provisions of West Bengal Tenancy Act, 1997 do not apply when the property is let out for non-residential purpose which carries monthly rent of more than Rs. 10,000/-. Since the respondent has paid rent of Rs. 21,000/- for the month of May 2018, respondent will not get any benefit from the West Bengal Tenancy Act, 1997. The applicant submits that as per section 35(d) of the Code, the liquidator is empowered to take into his custody or control of all the assets, property, effects, actionable claims of the corporate debtor. It is further contended that the applicant has the power under Section 35(d) of the Code to take such measures to protect and preserve the assets of the corporate debtor as he considers necessary.

10. Applicant further relied on Section 36 of the code which provides as below: -

*"**36. Liquidation estate. -***

(1) For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which

will be called the liquidation estate in relation to the corporate debtor.

(2) The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.

(3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following:—

(a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;

(b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;

(c) tangible assets, whether movable or immovable;

(d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;

(e) assets subject to the determination of ownership by the court or authority;

(f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;

(g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;

(h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and

(i) all proceeds of liquidation as and when they are realised.

(4) The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation:—

(a) assets owned by a third party which are in possession of the corporate debtor, including—

(i) assets held in trust for any third party;

(ii) bailment contracts;

(iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;

(iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and

(v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;

(b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;

(c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;

(d) assets of any Indian or foreign subsidiary of the corporate debtor; or

(e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor."

- and submits that the respondent be directed to release or vacate the subject property owned by the corporate debtor. The applicant further relying on Regulation 44 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 submits that the Liquidator is required to liquidate the Corporate debtor within the period of 2 years and therefore submits that it is just and necessary that the relief be granted.

11. The applicant submits that he is required to liquidate the movable and immovable property etc. subject to section 52 of the code and then distribute the proceeds to the creditors as required under Section 53 of the code. The applicant further submits that considering the fact that the payment of rent by the respondent to the corporate debtor, payment of property tax by the respondent on behalf of the corporate debtor and name of the corporate debtor appearing on the property tax receipt, clearly shows that the corporate debtor is the owner of the property and hence the prayers as sought for by the applicant may be allowed.

MA 47 of 2019

12. This is an application filed by M/s Siddhi Edibles Private Limited seeking the following reliefs:
    (a) Your Honour would graciously be pleased to set aside and/or quash the eviction notice dated 17th April, 2018 and 12th September, 2018.
    (b) Pass such further and/or other order or orders as your Honour may deem fit and proper.

13. The applicant in this application, who is the respondent in the application No. 1512/2018, submits that they have received a

notice from the respondent to vacate the premises. It is submitted that the applicant is lawful tenant and bonafide occupant of the premises and paying rent regularly since 2019 to the Corporate debtor and enclosed the bank statement to that effect. The applicant submits that during October 2016 there was dispute between the Corporate debtor and Kolkata Municipal Corporation relating to the payment of the Municipal Tax. On the instruction of the corporate debtor the applicant paid a part of the rent to the Kolkata Municipal Corporation to prevent attachment of the premises by the Kolkata Municipal Corporation. It is further submitted that even though the Corporate Debtor entered into an agreement for sale with M/s Shantiniketan Estates Private Limited, ultimately there was no registered deed of conveyance in favour of the Corporate Debtor from M/s Shantiniketan Estates Private Limited. The applicant has no information relating to creation of security relating to the office space in favour of any secured creditor of the corporate debtor.

14. It is submitted that the applicant objected to the eviction notice dated 17/04/2018 sent by the respondent. It is further submitted that the applicant filed MA No. 546/2018 challenging the eviction notice, on the file of NCLT, Mumbai. The applicant in response to the notice dated 08/06/2018 issued by the respondent, replied on 27/06/2018 stating that the applicant is ready to pay rent to the respondent subject to production of document to establish that the property belongs to the

Corporate Debtor. It is further submitted that the applicant withdrawn the abovesaid application No. 546/2018 on 06/08/2018 with liberty to file fresh application. The applicant further submits that the respondent admitted that the ownership of the property has not been lying with the Corporate Debtor even though one Mrs. Pushpadevi Jain has assigned and transferred all her rights, title and interest in respect of the premises in favour of the Corporate Debtor but the said agreement is not registered. It is submitted by the respondent that by a subsequent letter the builder Shantiniketan Estate Pvt. Ltd. has acknowledged the right of the Corporate Debtor as owner of the premises though there was no valid registered deed of transfer in favour of the Corporate Debtor. The applicant submits that in view of the above, the property will not come under the liquidation estate as provided under Section 36(4)(a) of the Code but the Respondent on 12/09/2018 issued a notice to vacate the premises knowing fully well that the property in question does not come under the liquidation estate for which on 17/09/2018 a reply was given by the applicant against the eviction notice. The applicant submits that it is a settled position of law that without legal recourse a tenant cannot be evicted.

15. Heard the counsel for the Applicant in MA No. 1512 of 2018 and Respondent in MA No. 47 of 2019 and none present on behalf of the Respondent in MA No. 1512 of 2018 and Applicant in MA No. 47 of 2019.

16. At this juncture it is beneficial to refer to the judgment of the Hon'ble Supreme Court in the case of *Embassy Property Developments Pvt. Ltd…vs…State of Karnataka and Ors. (MANU/SC/1661/2019)* wherein it was held that:

"39. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority. In fact an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term "assets" under the Explanation to Section 18. This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word "assets", while Section 20(1) uses the word "property" together with the word "value". Sections 18 and 25 do not use the expression "property". Another important aspect is that Under Section 25(2)(b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

25. Duties of resolution professional -

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of Sub-section (1), the resolution professional shall undertake the following actions:
(a)............
(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings.
This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5)".

17. Further it is beneficial to refer the recent judgment of the Hon'ble NCLAT dated 20/02/2020 in the case of *K.L Jute Products Private Limited…Vs…Tirupti Jute Industries Ltd. and Ors. (MANU/NL/0131/2020),* wherein NCLAT while upholding the rejection of approval of resolution plan by the Kolkata Bench of NCLT for the reason, *inter alia* among others, the resolution applicant cannot impose a condition that he will proceed with the resolution plan only when the Adjudicating Authority orders eviction of the tenant of the corporate debtor. Para 65 of the order is extracted below:

"Insofar as, the eviction of 2nd Respondent is concerned, the Adjudicating Authority is not empowered to pass an order of eviction and it is for an 'Aggrieved party' to move the appropriate forum for redressal of its grievances in accordance with Law. In short, the Committee of Creditors had approved the Resolution Plan in utter disregard regard to the ingredient of Section 30(2)(e) of the I&B Code and as hence the same was rejected by the Adjudicating Authority. Moreover, the Adjudicating Authority had

appointed a 'Liquidator' other than the 'Existing Resolution Professional."

18. A doubt may be raised whether the above judgments dealing with the powers and duties of Resolution Professional can be made applicable to Liquidator. Section 35(1)(k) of the Code, is a clear answer to this, wherein it is provided that, subject to the directions of the Adjudicating Authority, the liquidator shall have the power to institute or defend any suit, prosecution or other legal proceedings, civil or criminal in the name of or on behalf of the Corporate Debtor.

19. It is to be noted that the Hon'ble Supreme Court in the case of *Embassy Property Developments Pvt. Ltd,* cited supra, in para 29 also held that NCLT is not a civil court and the same is extracted below:

    "29. The NCLT is not even a Civil Court, which has jurisdiction by virtue of Section 9 of the Code of Civil Procedure to try all suits of a civil nature excepting suits, of which their cognizance is either expressly or impliedly barred. Therefore NCLT can exercise only such powers within the contours of jurisdiction as prescribed by the statute, the law in respect of which, it is called upon to administer. Hence, let us now see the jurisdiction and powers conferred upon NCLT".

20. Sections 63 and 231 of the Code provides as below:

    *"**63. Civil court not to have jurisdiction. -***
    No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter

on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code".

*"**231. Bar of jurisdiction. -***
No civil court shall have jurisdiction in respect of any matter in which the Adjudicating Authority is empowered by, or under, this Code to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such Adjudicating Authority under this Code".

21. The above provisions show that when the Adjudicating Authority is provided with a specific jurisdiction, the Civil Courts have no jurisdiction in respect of those matters such as Preferential transactions (sections 43 and 44 of the Code), Undervalued transactions (sections 45 to 48 of the Code), etc. When these provisions are read in conjunction with other provisions of the Code such as 18(f)(vi), 25(2)(b) and 35(1)(k) of the Code, the jurisdiction of the Adjudicating Authority does not extend to subjects such as recovery of money, specific performance, eviction proceedings, etc. which were to be dealt with by Civil Courts only. It is to be borne in mind that on the guise that the Insolvency and Bankruptcy Code is a complete Code, the Adjudicating Authority can neither enlarge nor amplify its jurisdiction.

22. In view of the ratio laid down by the Hon'ble Supreme Court and the Hon'ble NCLAT, this bench is of the view that recovery

of rent from the tenant and the eviction of tenant from the property of the Corporate Debtor is in the exclusive domain of the civil courts and cannot be dealt with by the Adjudicating Authority by invoking section 60(5) of the Code and the jurisdiction lies with the Civil Court/Rent Control Court only.

23. In view of the fact that the respondent is paying rent all along for the property, which is an admitted fact, the liquidator is right in including this immoveable property in the liquidation estate of the Corporate Debtor. The Liquidator may take steps to register the sale deed for the property in his favour, if so advised, so that there will be a clear title for the property.

24. The applicants in both the applications are required to approach the appropriate jurisdictional Civil Court for the remedies claimed in these applications except the sale of the property. As far as sale of the property by the liquidator is concerned, he can do so after taking possession by due process of law.

25. In view of the above discussion, Application Nos. 1512/2018 and 47/2019 are dismissed. No Cost.

Sd/-	Sd/-
V. Nallasenapathy	Suchitra Kanuparthi
Member (Technical)	Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT I, MUMBAI BENCH

MA 47/2019,

MA 1512/MB/2019

In

C.P. (IB) 1339/MB/2017

CORAM: SMT. SUCHITRA KANUPARTHI

MEMBER (J)

SHRI. V. NALLASENAPATHY

MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 27.10.2020.

NAME OF THE PARTIES: Asset Reconstruction Company (India) Ltd

V/s

Precision Fasteners Ltd.

Section 7 of the Insolvency and Bankruptcy Code, 2016.

ORDER

2. MA 47/2019, MA 1512/2019 In C.P. (IB) 1339/MB-I/2017

MA 47/2019 & MA 1512/MB/2019:-

Counsel for the Applicant is present. Both the Applications are dismissed vide separate orders.

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SD/-
V. NALLASENAPATHY
Member (Technical)

SD/-
SUCHITRA KANUPARTHI
Member (Judicial)