

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

Cont. Petition. 15 OF 2023

Under Rule 11 of NCLT Rules, 2016

Mr. Ajay Gupta,

The Resolution Professional

...Applicant

Vs.

Nagpur Improvement Trust & others

...Respondents

In the matter of

C.P.(IB) No. 1900/MB/2019

Mumbai District Central Cooperative

Bank Limited

...Financial Creditor

Vs.

Latakisan Infra Private Limited

..Corporate Debtor

Order delivered on: 07.02.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

Cont. Petition. 15 OF 2023

For the Applicant	:	Mr. Harsh Kesharia, Advocate
For the Respondents	:	Mr. Kunal Kanungo a/w Ms. Tanushree Sogani and Mr. Atishay Jain, Advocates

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Contempt Application No. 15/2023 has been filed by Mr. Ajay Gupta, Resolution ("Applicant") against Nagpur Improvement Trust, Shri Manojkumar Suryawanshi, Shri Anilkumar Shankarrao Patode and Shri Dharmendra Shailikaram Chute ("Contemnor No.1, to 4" respectively) in CP (IB) No. 1900/2019. The Applicant has sought following reliefs:
 - a. To punish the Respondents in terms of Section 12 of the Contempt of Court Act, 1971 read with Section 425 of Companies Act, 2013, in the strictest terms;
 - b. To injunct the Respondents from taking any coercive steps against the Corporate Debtor till final hearing of Interlocutory Application No. 2675 of 2023;
 - c. To injunct the Respondents from taking possession of the terminated portion of land of the Corporate Debtor till final hearing of Interlocutory Application No. 2675 of 2023;
2. The Respondent No. 1 on 29-04-2014 entered into a Concession Agreement (hereinafter referred to as the "Concession Agreement") with Latakisan Constructions Private Limited to develop Bus Terminal and Ancillary facilities on Build, Finance, Operate and Transfer (BFOT) basis on land bearing Khasara No. 576, 324/1(P), mouza Nagpur at

Jagnade Square, Great Nag Road, Nagpur on area admeasuring 10132.775 square meters.

- 2.1. The Respondent No. 1 and the Concessionaire had also entered into an Indenture of Lease dated 07-07-2014 for a period of 30 years upto 28-04-2044 As per the terms stipulated in the said Lease Deed, the lease would be renewed twice for a period of 30 years each i.e., up till 28-08-2074 and 28-04-2104.
- 2.2. The Concessionaire entered into a Sub Lease Deed with the Corporate Debtor and upon said execution, the sub-lessee of 47 91% of land leased by the Respondent to the Concessionaire alongwith RCC superstructure comprising Hotel Building in Wing - B having a total built up area admeasuring 4871.14 square meters.
- 2.3. The Corporate Debtor in order to mortgage the sub-leased premises requested the Respondent vide its letter dated 24-03-2017 to issue a No Objection Certificate.
- 2.4. On 06-11-2019, the Corporate Debtor was admitted into CIRP and the Applicant had taken charge of the affairs of the Corporate Debtor.
- 2.5. The Applicant received a notice dated 06-01-2023 from Nagpur Institute of Surgical Sciences Private Limited alleging therein the purported violation of the terms and conditions of the Concession Agreement by the Corporate Debtor in collusion with Concessionaire.
- 2.6. The Applicant filed a reply to the notice dated 06-04-2023 and requested the suspended director of the Corporate Debtor to file the same before Hon'ble Chairman of the Nagpur Improvement Trust.

- 2.7. The Respondent passed an Order on 31st day of April, 2023 (sic) thereby terminating the Concession Agreement dated 29-04-2014 as well as lease deed dated 07-07-2014 with respect to land comprising of Hotel, the area of which comes to 47.91% (4854.612 square meters) of the total area and directed the Divisional officer (South) to take possession of the terminated portion of Land.
- 2.8. Being aggrieved by the Order dated 31st day of April, 2023 (sic) the Applicant filed Interlocutory Application No. 2675 of 2023 and this Tribunal vide Order dated 27-06-2023 restrained the Respondent No. 1 from taking any coercive steps against the Corporate Debtor. The said interim order was extended vide Orders dated 26-07-2023 and 21-08-2023 by this Tribunal. Despite restraining orders issued by this Tribunal, the Respondent No. 3 in gross violation of the said orders directed the Respondent No. 4 to take possession of the Land on which the Hotel of the Corporate Debtor is terminated.
3. The Respondents had filed affidavit in reply dated September 2023 stating that it is important to note that from reading all the entire contempt petition no allegation is made against the respondent No. 2 Chairman of Nagpur Improvement Trust and therefore as such the Chairman of Nagpur Improvement Trust as not taken any action which would amount a wilful disobedience on behalf of the said Respondent.
- 3.1. Although a prayer is made to punish the Respondents in terms of Section 12 of the Contempt of Court Act, 1971 read with Section 425 of the Companies Act, 2013 placed reliance for termination of the lease is based on the pleadings in Paragraph No. 4.25, which is

a letter dated 18 August, 2023 issued by the Respondent No. 3 Mr. Anil Kumar Patode and which is annexed to the Contempt Petition at Exhibit-F, Pg. No. 47. The Respondents however, submit their unconditional apology if by issuance of said letter an impression is given that the respondents are wilfully breaching the order of this Hon'ble Tribunal.

3.2. It is respectfully submitted that there was absolutely no intention on part of the Respondents of disobeying the order of Hon'ble Tribunal and that the letter dated 18 August, 2023 would be construed only for information purpose and not as a willful disobedience of the order passed by the Hon'ble Tribunal on 27 June, 2023 and then extended further on 10 July, 2023 and thereafter, on 21 August 2023.

3.3. However, it is also required to place on record certain events which have transpired after the order of 31 April 2023 which is assailed by Mr. Ajay Gupta, Resolution Professional, in IA No. 2675/2023. The Corporate Debtor was illegally running a bar in the premises. The Nagpur Improvement Trust in the list of banned activities annexed to the Concession Agreement made it clear that no such activity in relation to sale of alcohol or tobacco was permitted.

3.4. The Bombay Foreign Liquor Rules, 1953 also prohibited carrying out of such an activity in proximate of a bus terminal, however, the Corporate Debtor continued to disobey the law. The Nagpur Improvement Trust is a public authority and is a planning authority as such is required to act in accordance with law and has taken the said decision which is assailed in IA No. 2675/2023. The said matter is already pending and the Nagpur improvement Frust has

filed its reply and therefore the present contempt petition be disposed of while keeping all the contention on merit open

3.5. It is submitted that prior to passing of the order dated 31.04.2023, a letter 10.02.2023 was issued by the Divisional Officer- South asking for clarification from Latakishan Construction Private Limited with respect of storage and sale of liquor and alcohol based drinks. It is submitted that the order dated 31.04.2023 was passed by the Respondent No.2 and consequently, a letter dated 07.06.2023 was issued cancelling the lease in pursuance of the said order dated 31.04.2023. It is pertinent to mention that order dated 31.04.2023 terminating the Concession Agreement and Lease Deed dated 07.07.2014 was undertaken as per the inquiry conducted in pursuance of the order of the Hon'ble Bombay High Court. Nagpur Bench and taking into consideration the terms & conditions of the Lease Deed. It is submitted that the said letter dated 07.06.2023 was issued prior to the order dated 27.06.2023 passed by the Hon'ble Tribunal. A copy of the said letters dated 10.02.2023 & 07.06.2023 are annexed herewith and marked as Exhibit

3.6. It is further submitted that in pursuance thereof, the Respondent No. 4 vide the letter dated 17.08.2023 informed the office whether the Respondent No.3 has cancelled the lease of the Corporate Debtor. Accordingly, the Respondent No. 3 had issued the informatory letter dated 18.08.2023 to the Corporate Debtor and the Respondent No.4 on the ground that a) the lease was already cancelled with the letter dated 07.06.2023 by the Respondent No.1, b) the same order of Respondent No.1 was forwarded by Respondent No.4 vide his letter dated 09.06.2023 to Respondent

No.3. c) certain directions were given in the order to Respondent No.3 & Respondent No. 4. Accordingly, in view of the letter of Respondent. No. 4 dated 17.08.2023 and the order dated 31.04.2023, the Respondent No.1 issued the letter dated 18.08.2023 See information only As such there was no deliberate intention of the Respondents to disobey the order of the Tribunal to issue such informatory letter to Corporate Debtor and Respondent No.4

3.7. It is further submitted that after this Respondent No.4 vide letter dated 01.09.2023 has not taken any action as per order of the Respondent No. 1 and as informed by the Respondent No.3 vide letter dated 18.08.2023 in view of the matter pending before the Tribunal.

3.8. As per the facts mentioned above and in wake of the order of the Tribunal that "Respondent shall not take any coercive action against the Liquidator of the Corporate Debtor the Divisional Officer (South) has not taken any coercive action against the liquidator of the Corporate Debtor and was awaiting the opinion of the legal officer.

4. Heard the learned Counsel and perused the material available on record.
5. This Contempt Application is arising from disobedience of order directing the contemnor not to take any coercive steps in relation to plot of land leased by contemnor to the Applicant for construction of Hotel thereon. It is the case of the Applicant that the letter dated 18.08.2023 issued by the contemnor cancelling the lease was issued during the course of restrain order which was valid till 21.08.2023. The contemnor has pleaded that the cancellation happened after following

due process in public interest and the applicant was found guilty of running a bar, which was not permissible in terms of the conditions of licence. It is also submitted that the letter dated 18.08.2023 was issued in ignorance of the restrained order and it was not an wilful Act on the part of the contemnor to disobey this Tribunal's order.

6. We find the merit in the contentions of the contemnor. It is also noticed that this Bench has already set aside the Order dated 30th April, 2023 and the letter dated 18.08.2023 came to be issued pursuant to such letter while disposing of IA 2675/2023 in CP 1900/2019 with a direction to the Corporate Debtor to terminate all business activities pertaining to banned products including consumption thereof from the leased land in so far as such activities are in violation of the terms of the concession agreement.
7. The contempt proceedings are maintainable only if there is a wilful intent to disobey and not otherwise. We find that there is no wilful disobedience of the order of this Bench restraining the contemnor from taking any coercive action.
8. In view of the forgoing, Contempt Application bearing No. 15 of 2023, is dismissed.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)