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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH-I, CHENNAI**

MA/54/2020 in CP/1210/IB/2018

*(Filed under Sections 33 (2) r/w Section 60(5) of the Insolvency and
Bankruptcy Code, 2016)*

Along with

IA/507/2021 in MA/54/2020 in CP/1210/IB/2018

*(Filed under Sections 60(2) & Section 60(5) of the Insolvency and
Bankruptcy Code, 2016) r/w Rule 11 & 48 of the NCLT Rules, 2016*

In the matter of M/s. Adept Technology Private Limited

M/s. Adept Technology Private Limited

(Under Corporate Insolvency Resolution Process)

Represented by Shri Ashok Seshadri

Resolution Professional,

A2, Second Floor, Dynamic Apartments,

Parangusapuram Street, Aziz Nagar,

Chennai - 600024

... Respondent / Applicant

-Vs-

T. Sundaravel

80, Cathedral Road,

Gopalapuram,

Chennai-600086

... Applicant / Respondent

Order Pronounced on 13th October 2021

CORAM:

R. SUCHARITHA, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

For Applicant : P.C. Harikumar, Advocate

For Respondent : Ashok Seshadri, Liquidator

ORDER

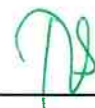
Per: R. SUCHARITHA, MEMBER (JUDICIAL)

IA/507/CHE/2021 has been filed by the Respondent / Applicant viz. Ms. T. Sundaravel, under Section 60(2) & 60(5) of the Insolvency and Bankruptcy Code, 2016, (in short 'I&B Code, 2016'), seeking relief as follows;

To recall / set aside the Order dated 11.03.2021 made in M.A.No.54 of 2020 in C.P/1210/IB/2018 pending on the file of this Hon'ble Tribunal and pass such further or other orders or directions or grant any other relief in the circumstances of the case and thus render justice.

2. MA/54/2020 in CP/1210/IB/2018 has been filed by the Resolution Professional viz., Mr. Ashok Seshadri under Section 33(2) of the Insolvency and Bankruptcy Code, 2016, seeking relief as follows;

- i. To pass appropriate order directing the Respondent, who is in possession of the movable properties of the CD, as the erstwhile landlord of the CD's old office, to cooperate with the company Liquidator, in collection of information about the movable assets which is in their physical possession and custody, so as to enable him to sell them in accordance with law;*
- ii. To permit the Company Liquidator to sell the movable assets of the CD as per the lists given in the Minutes of the 1stCoC meeting dated 25.04.2019 by private sale; and*



iii. *To pass any other order or direction or grant any other relief in the circumstances of the case and thus render justice.*

3. In relation to IA/507/CHE/2021, the Learned Counsel for the Applicant submitted that on 11.03.2021, this Tribunal, without the presence of the Respondent viz. Ms. T. Sundaravel in MA/54/2020 had passed the following order.

"None appears on the part of Petitioner. Ld. Liquidator Mr. Ashok Seshadri is present through video conferencing mode. None appears for the Respondent.

Ld. Liquidator submits that the Respondent is landlord of the premises which was taken by the Corporate Debtor on lease, presently, in liquidation and that the landlord has also filed a claim before the Liquidator in relation to the arrears of rent. Since the rent claim has not been settled, Ld. Liquidator represents that the Respondent landlord is illegally holding the properties/assets belonging to the Company under liquidation.

Ld. Liquidator also points out the list of assets which has been held by the Respondent landlord as given in typed set (Page No.26) filed along with the Application. Ld. Liquidator appraises this Tribunal that this is an Application seeking for the following reliefs as given in Paragraph no.8 of the said Application.

- i. *to pass an appropriate order directing the Respondent, who is in possession of the movable properties of the CD, as the erstwhile landlord of the CD's old office, to cooperate with the Company Liquidator, in collection of information about the movable assets which is in their physical possession and custody, so as to enable him to sell them in accordance with law;*
- ii. *to permit the Company Liquidator to sell the movable assets of the CD as per the lists given the*

*Minutes of the 1st CoC meeting dated 25.04.2019,
by private sale; and*

- iii. *to pass any other order or direction or grant any other relief in the circumstances of the case and thus render justice.*

Prior to any Order that can be passed in this Application, it is to be noted that the Liquidator is required to take possession of the assets and then value the same in accordance with the provisions of IBC and then only can go for a private sale of the said assets, which is sought to be sold.

Since the Respondent is consistently absent before this Tribunal despite notice of the Proceedings having been issued to the Respondent which also stands recorded as seen from the record of the Proceedings dated 12.02.2021, the Respondent is directed to hand over voluntarily forthwith the items as listed at Page No.26 of the typed set filed along with the present Application within a period of two weeks' from today, failing which, the Liquidator is directed to take assistance from the concerned Police Station in this regard for the implementation of the Order on the part of the Respondent.

The concerned Police Authorities or Revenue Authorities, namely, the Tahsildar are directed to cooperate in this regard with the Liquidator in taking out the assets as listed at Page No.26 typed set filed along with the Application from the premises. The Liquidator to appraise this Tribunal about the development based on which the relief sought for in the Application can be taken up by this Tribunal.

Post this matter on **15.04.2021**.

4. Aggrieved by the aforesaid order, the Respondent has filed IA/507/CHE/2021 to set aside the order passed by this Tribunal on 11.03.2021 in the absence of the Respondent. The Learned Counsel for the Applicant submitted that he has filed a detailed

counter objecting to the jurisdiction of the Liquidator to maintain the MA/54/2020 before this Tribunal. It was further submitted that pursuant to the counter filed by the Respondent, the case was adjourned to 09.03.2020, on that day, the Respondent counsel argued partly. However, this Tribunal had posted the matter to 16.03.2020 for arguments of both counsels. Thereafter due to Covid-19 pandemic and consequent lockdown imposed by the State / Central Government, the matter was not listed till the month of January 2021. The Learned Counsel for the Respondent / Applicant further submitted that he could not contact the office of this Tribunal on 15.03.2021, by that time, the office has informed that the order has been passed in MA/54/2020 without the Respondent.

5. We have heard the submissions made by the Learned Counsel for the Respondent / Applicant. The IA/507/CHE/2021 is an Application filed by the Respondent to recall/ set-aside the order dated 11.03.2021 passed in MA/54/2020. At this juncture, it is pertinent to point out that the Hon'ble NCLAT in the matter of *Deepakk Kumar, Director of M/s Sovereign Infrastructure & Developers Ltd. -Vs- Phoenix ARC Pvt Ltd. (2020 SCC Online NCLAT 648)* through *Justice Venugopal M* had held as follows;

16. It is to be pointed out that the power to 'Review' is not an 'inherent power' and must be showered by Law either expressly or by necessary implication. As a

matter of fact, the power to 'review' is a creation of statute. Indeed, a 'Review Jurisdiction' cannot be pressed into service as an 'Appellate Jurisdiction'. Moreover, the 'Power of Review' is not to be confused with an Appellate power. A 'review' cannot be claimed or asked for merely for a fresh hearing or arguments or the correction of an erroneous view taken earlier.

23. A mere perusal of the 'NCLAT' Rules, 2016 unerringly point out that there is no express provision for 'Review' and further that the Review Applicant /Appellant cannot seek the aid of Rule 11 of the 'NCLAT' Rules, 2016 which speaks of inherent powers. Also, that the Review Applicant cannot seek umbrage under section 420(2) of the Companies Act, 2013 for filing the 'Review Application' on the purported ground of rectifying any mistake apparent from the record, within two years from the date of order passed, in the considered opinion of this Court.
25. It cannot be gainsaid that 'I&B' Code, 2016 does not contain any provision for 'Review'. Also, it does not contain any provision similar to Section 420 of the Companies Act, 2013. In this connection, a mere perusal of the 'National Company Law Appellate Rule' 2016 unerringly point out that there is no express Rule for 'Review'. There can be no two opinion of a prime fact that Rule 11 of 'NCLAT' Rules, 2016 is not a substantive Rule which confers any power or jurisdiction on the 'Tribunal'. A 'Tribunal' has no power to perform an act which is forbidden by Law.

6. Similarly, it is required to be noted that the NCLT Rules 2016 do not contain any powers similar to Review / Recall the order passed by this Tribunal. Further as held by the Hon'ble NCLAT Rule 11 of NCLT Rules, 2016 is not a 'substantive rule' which confers any power or jurisdiction on the Tribunal. Therefore, in view of the aforesaid Judgement cited supra, which clearly states that NCLT has no power to recall/review its own order the IA/507/CHE/2021 is not maintainable and accordingly stands **dismissed**.



7. In relation to MA/54/2020, it is seen that the Applicant / Liquidator has filed the said Application seeking directions against the Respondent, who is in possession of the movable properties of the Corporate Debtor and to cooperate with the company Liquidator, in collection of information about the movable assets which are in their physical possession and custody, so as to enable the Liquidator to sell them.

8. It is seen that the CIRP in relation to the Corporate Debtor was ordered by this Tribunal vide Order dated 26.03.2019 passed in CP/1210/(IB)/2018 and the Applicant herein was appointed as the Interim Resolution Professional. Pursuant to the same, the IRP had taken over the management of the Corporate Debtor and issued the Newspaper Publication dated 31.03.2019 in two editions one in English and another in vernacular as per Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016, inviting the claims from the creditors. The last date for the receipt of claim was 09.04.2019 in accordance with chapter IV of the IBC, 2016.

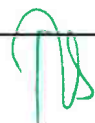
9. It was submitted that the 1st Meeting of the CoC was held on 25.04.2019, the Applicant herein was appointed as the Resolution

Professional by the CoC. It was submitted that the Second CoC meeting was held on 19.07.2019 and in the said CoC meeting, it was resolved to go for early liquidation of the Corporate Debtor in view of the following factors:-

- i. The Company is not in business. There is no revenue, no employees.*
- ii. It has no premises to operate from*
- iii. It has virtually no assets excepting a few pieces of furniture and office equipment.*
- iv. It has been out of business for a considerable period of time and as such the brand has no recall value.*
- v. On the other hand, it has liability of nearly Rs.3 crore for which claims have been submitted. According to the Directors of the Suspended Board, it has claims of another 93 lakh due to other Financial Creditors for which there has been no claims so far.*

10. It was submitted that considering the above factors, the Committee of Creditors had unanimously resolved to liquidate the Corporate Debtor and accordingly the Applicant had filed an Application for Liquidation of the Corporate Debtor under Section 33(2) of IBC 2016 before this Tribunal.

11. It further submitted that this Tribunal vide its order dated 03.09.2019 had ordered for Liquidation of the Corporate Debtor and appointed the Applicant herein as the Liquidator. It was further submitted that the Liquidator has been taking steps for realizing



the available assets. In this connection, it is submitted that there are certain movable assets of the Corporate Debtor which are available in two locations as reported in the minutes of the 1stCoC meeting 27.04.2019, and of the movable assets, those which are kept in the old premise at Cathedral Road, Chennai, are still in the custody of the Ms. Sundaravel T, the Respondent herein, who is the landlord, who has also submitted her claim as rent arrears from the Corporate Debtor and she was being represented by one Shri Gouthaman, her son. It was submitted that despite the efforts of the Liquidator to persuade the Respondent through her son, the Liquidator could not take a valuer to the premises for assessment of the value of the assets. In support of his contention the Liquidator relied upon an email Communication dated 22.11.2019. Further, the Liquidator apprehends that any further delay will result in further deterioration of the value of the assets.

12. Hence, it was decided in the stakeholders meeting held on 21.11.2019, that all the available movable assets like furniture and computers etc kept in the two locations be disposed of by private sale so as to realize the maximum value of the said assets.

13. The Respondent has filed the Counter and the Learned Counsel for the Respondent submitted that the very initiation of the CIRP by the Operational Creditor against the Corporate Debtor

Viz. M/s. Adept Technology Private Limited is nothing but collusion in order to defraud the other Operational Creditors, Financial Creditors, statutory and others dues. The Learned Counsel for the Respondent further alleged that the IRP who has got administrative and management power and duties cast upon him to discover the assets was not exercised properly and no efforts have been taken to bring the Suspended Board of Directors of the Corporate Debtor to collect the information and no documents have been collected from them.

14. The Learned Counsel for the Respondent submitted that as soon as the CoC is constituted, the IRP has miserably failed to furnish the information and assess details of the Corporate Debtor which is mandatory under Section 21(9) of the IBC, 2016. It was further submitted that in the CoC meeting there was no discussion about the submission of the Resolution Plan and its approval for liquidation and in the said CoC meeting there is no discussion or no agenda with respect to the various cases initiated by the Financial Creditors for collecting the dues. Furthermore, when the stakeholders meeting has been constituted wherein there is no representation by the Applicant, on whose instance the CIRP in relation to the Corporate Debtor was triggered which goes on to show the record of collusion.



15. It was submitted by the Respondent that the present application filed by the IRP under Section 33(2) read with Section 60(5) of the IBC is not maintainable. It was further submitted that the IRP has not submitted any resolution plan on the basis of the information received from the Corporate Debtor and the decision taken and approved by the CoC had resulted in Liquidation of the Corporate Debtor. Hence, it was submitted that the present Application is not maintainable.

16. The Respondent further submitted that liquidator has neither filed the Preliminary Report to the Adjudicating Authority within 75 days from the liquidation commencement date which is mandatory as per Regulation 13 of the IBBI (Liquidation Process) Regulations 2016 nor submitted the progress report to the Adjudicating Authority in accordance with Regulation 15 of the aforesaid Regulation within 15 days after the end of the quarter in which he is appointed. Further, it was submitted that neither the IRP nor the Corporate Debtor has taken any efforts to find out the assets of the Corporate Debtor. Further, it was submitted that no Nationalized Bank or Financial Institutions would extend the loan without the movable security and admittedly no reference has been made with respect to the Immovable properties of the Corporate Debtors in para 3 of the application. In para 3, Canara Bank, Dutch Bank have shown as secured financial creditors, but admittedly it is bereft of

particulars about the security details. Hence, the Respondent sought for the dismissal of the present application which has been filed by the Applicant/Resolution Professional.

17. Heard the submissions made by the Learned Counsel for both the parties. In so far as the merits of the case are concerned, this Tribunal already vide its order dated 11.03.2021 has directed the Respondent to hand over voluntarily forthwith the items as listed at Page No.26 of the typed set filed along with the present Application within a period of two weeks' from the date of the order, failing which, the Liquidator was directed to take assistance from the Police Station concerned in this regard for the implementation of the Order on the part of the Respondent.

18. However, from the facts narrated above, it is seen that the Corporate Debtor is under Liquidation and it necessary to set right the legal position as on the 'Liquidation Estate' of the Corporate Debtor. Sec. 36 of IBC, 2016 deals with the Liquidation Estate of the Corporate Debtor which is extracted as follows;

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.

19. It is seen that the movable assets, which are kept in the old premise at Cathedral Road, Chennai, are still in the custody of the Ms. Sundaravel T, the Respondent herein and that the Respondent refuses the Liquidator to value the said assets. Further, it is also pertinent to note that the Respondent had filed claims in Form-C before the liquidator for a sum of Rs. 27,21,744/- by attaching the

lease agreement and rent working in order to substantiate the claim. At this juncture, it is pertinent to point out that once the creditor had submitted the claim in Form-C, the Creditor cannot hold back the movable assets of Corporate Debtor as a security for his claim, which goes against the principles of IBC, 2016. Ultimately, the said moveable assets of the Corporate Debtor would come within the purview of 'Liquidation Estate' and the Respondent is in possession of the same and not willing to hand over the said moveable assets to the Liquidator.

20. Under such circumstances, we hereby direct the Respondent to hand over the moveable assets of the Corporate Debtor, as narrated in page 26 of the typed set of the Application within a period of 15 days from the date of this Order, failing which coercive action will be taken against the Respondent.

21. With the above said directions, MA/54/2020 stands **disposed of.**

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond