

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

I.A. 1835 OF 2022

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016

Mr. Dharit Kishorbhai Shah
The Liquidator

...Applicant

Vs.

Dhawalsinh Mohite Patil Pratapsinh &
Ors

...Respondents

In the matter of

C.P.(IB) No. 3610/MB/2019

Punjab National Bank

Financial Creditor

Vs.

Dhawal Pratap Singh Mohite Patil Agro
Industries Limited

Corporate Debtor

Order delivered on: 05.12.2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

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

Appearances

For the Applicant : Mr. Rohan Agarwal, Advocate a/w Mr.
Amey Hadwale, Advocate, Ms. Geeta
Lundwani, Advocate

For the Respondent : None

ORDER

Per: V.G. Bisht, Member (Judicial)

1. This IA 1835/2022 is filed by Sh. Dharit Kishorebhai Shah, the Liquidator of the Corporate Debtor ("Applicant") in the Liquidation Process of M/s Dhavalpratapsinh Mohitepatil Agro Industries Limited ("Corporate Debtor") seeking initiation of contempt proceedings under Section 425 of the Companies Act, 2013 against the Respondents No. 1 to 3 who are suspended directors of the Corporate Debtor; and for punishing them in terms of Section 68 to 77 of the Code read with Section 12 of the Contempt of Courts Act, 1971; for directions to the Respondent to handover peaceful possession of the factory premises of the Corporate Debtor; and for direction to the Superintendent of Police, Solapur and/or concerned police authorities to provide prompt and adequate police assistance/protection to the Applicants and its representative, and to take cognizance of complaint dated 30.01.2021, 14.04.2021 & 22.06.2021.
2. A petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 ("IBC") being CP (IB) No. 3610 (MB) of 2019 was admitted by this Tribunal vide its order dated 20th February 2020. Thereafter, the Applicant preferred an application for commencing liquidation of the Corporate Debtor being IA No. 798 of 2021, which was allowed by this Tribunal vide its order dated 29th July 2021. The Applicant was appointed as the liquidator for the liquidation of the Corporate Debtor.

3. Aggrieved by the conduct and non- cooperation of the erstwhile directors of the Corporate Debtor, the applicant has already preferred an Interlocutory Application No.1189 of 2020 u/s 19 of the Code and following directions were passed vide order dated 21.01.2021 –
 1. *Respondent is directed to handover the possession of the Property as required by the Resolution Professional by tomorrow.*
 2. *Failing which Resolution Professional may take the assistance of the Local Police for taking over the possession of the property. The Resolution Professional may approach the Station House Officer of the concerned Police station and the officer shall provide all assistance to the Resolution Professional for taking over the possession of the properties of the Corporate Debtor.*
 3. *Resolution Professional may record the proceedings of the taking over of the possession of the property by videography for record and reference.”*
4. Thereafter on 30.01.2021, the Applicant visited the Plant premises at Akluj and was making endeavours to take the possession of the premises, where some violent people/goons unlawfully restrained the Applicant and refused to accept the Order dated 21.01.2021 and denied to handover peaceful possession of the premises.
5. On the very same day, the Applicant visited Akluj Police Station and narrated the entire series of events to the Police Inspector and handed him a Letter No. CIRP/Dhavalpratap/Corr/10 dated 29.01.2021 along with visit report dated 30.01.2021. However, the Police Inspector informed the applicant that for providing assistance protection, appropriate approval and permission would be required from the Superintendent of Police, Solapur. Therefore, the Applicant vide letter dated 30.01.2021 requested for the approval from the Superintendent of Police, Solapur. Only after persistent efforts, the Applicant with the help

of local police could secure the possession of the assets and factory premises on 08.02.2021.

6. On 01.04.2021, some violent people/goons trespassed and illegally forced the security guards out of the premises leading to securing unlawful possession of the property of the corporate debtor. The Applicant vide its letter dated 14.04.2021, again lodged a complaint at Akluj, Police Station seeking police assistance for repossession of the property of the corporate debtor. The Applicant vide its letter dated on 22.06.2021 requested the Police Inspector at Akluj Police station for again providing Police Assistance / Protection as the Suspended Board of directors are creating hindrances and reluctantly withdrawing themselves from providing co-operation to the Applicant. On 22.07.2021, the applicant once again received the Police Protection and accordingly could take the custody and control of the Assets / Property of the corporate debtor
7. On 21.01.2022 some violent people/goons entered in the premises of the corporate debtor and illegally forced the security guards out of the premises leading to securing unlawful possession of the property of the corporate debtor. The applicant on 14.02.2022 filed a complaint at Akluj Police Station for taking strict action against the suspended directors and also requested to file a FIR and investigate into the matter
8. It is the case of the Applicant that, afore stated correspondences and conduct of the Respondents makes it is amply clear that the Respondents are deliberately creating hindrances and reluctantly withdrawing themselves from providing co-operation to the Applicant. Despite the specific order of the Tribunal dated 21.01.2021 for providing co-operation to the Applicant, the Respondents along with their goons have

left no stone unturned to obstruct the Applicant in discharging his duties and have been wilfully violating the order dated 21.01.2021.

9. In view of the aforesaid facts, this Tribunal consider it appropriate to refer the matter to IBBI for taking up appropriate proceedings for obstructions caused to the CIRP/liquidation process by the persons of the Respondent No. 1 to 3 and file a complaint with the court of appropriate jurisdiction. As regards prayer for contempt of order is concerned, we are of the considered view that since the possession of factory was obtained, even if it came with the intervention of the local police authorities, no purpose would be served if separate contempt proceedings are also initiated. The criminal proceedings in terms of Section 68 to 77 of the Code would be enough to punish the erring Respondent No. 1 to 3.
10. Further, we direct the Superintendent of Police, Solapur, the Respondent No. 4 and the jurisdictional SHO to register a case against the Respondent No. 1 to 3 in terms of complaints dated 30.01.2021, 14.04.2021 & 22.06.2021 lodged by applicant under appropriate provisions of Indian Penal Code. Needless to say, the Superintendent of Police, Solapur, the Respondent No. 4 and the jurisdictional SHO shall continue to provide their assistance and protection to the Applicant and his representative including successful buyers of the properties of the Corporate Debtor, whenever requested by the Applicant.
11. In view of the foregoing, the IA 1835/2022 is partly allowed and disposed of accordingly.

Sd/

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)