

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

I.A.No.(IBC)/302/2022
In
C.P. (IB) No. 188/KB/2019

In the Matter of:

*An application Under section 60(5) and Read with Section 34 of the
Insolvency and Bankruptcy Code, 2016.*

And

In the Matter of:

Monotrone Leasing Private Limited **....Financial Creditor**

Versus

B.D.Motors Limited **.... Corporate Debtor**

And

In the Matter of:

Bimal Kanti Choudhury, Liquidator **... Applicant**

-Versus-

Animesh Mozumder & others **...Respondents**

**Date of Hearing : 06/05/2022
Date of pronouncing the order: 13/06/2022**

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsel appeared physically/through video conference :

For Liquidator : Mr. Rishav Banerjee, Adv.
Mr. A.K.Awasthi, Adv.

O R D E R

PER: Harish Chander Suri, Member (Technical):

1. This Court convened through physically/through video conference.
2. By way of this Interlocutory Application, the applicant has submitted that pursuant to filing of an application under Section 7 of the Code by Monotrone Leasing Private, the Financial Creditor, which was admitted by this Adjudicating Authority on 12th March, 2020, since there was no resolution plan received in this matter, the applicant was appointed as the Liquidator in the matter vide order dated 6th January, 2022.
3. Thereafter, the applicant made a public announcement on January, 11, 2022 thereby stipulating 5th February, 2022 as the last date of submission of claims. On 27th February, 2022, the applicant submitted the list of stakeholders to this Adjudicating Authority and the Stakeholders Consultation Committee was constituted on 1st March, 2022.
4. It is submitted that in the meanwhile, on or about January 12, 2022, the applicant appointed Mr. Sandip Bhattacharyya and Mr. Pritam Kumar Nag for the purpose of valuation of the Land and Building of the Corporate Debtor. The applicant sent an email dated 16th January, 2022 to Respondent No.1 for the purpose of taking vacant and peaceful possession of the Durgapur Unit of the Corporate

Debtor. The Email was not replied to by Respondent No.1. The applicant also personally visited the Durgapur Unit of the Corporate Debtor to take vacant and peaceful possession of the said Unit and handed over the said letter dated 16th January, 2022 to Respondent No.1 who at all material times was and is in wrongful and illegal possession of the said Durgapur Unit of the Corporate Debtor. Respondent No.1 received the said letter, but refused to acknowledge in writing the receipt thereof. In these circumstances, the applicant sent the said letter dated 16th January 2022 to Respondent No.1 by speed post. The said letter was served by Speed Post on Respondent No.1 on 11th February, 2022, (Annexure-C Colly.)

5. It is further submitted by the applicant that despite receipt of the said letter dated 11th February, 2022, Respondent No.1 did not vacate and continued to remain in wrongful and illegal occupation of the said Durgapur Unit. Thereafter on 25th January, 2022, the applicant along with the said valuers visited the said Durgapur Unit of the Corporate Debtor for the purpose of carrying out of the valuation of the land and building of the said unit but the said valuers and the applicant were manhandled and intimidated by Respondent No.1 and his 10-12 accomplices. The valuers expressed their concern and dismay over the incident which took place on January 25, 2022 and sent to the applicant two separate emails both dated January, 26, 2022 thereby recording such unfortunate incident of manhandling and threats during the course of inspection and measurement of the land and building of the said unit. The copies of the letters and emails sent by these two valuers are enclosed as Annexure-D.

6. Pursuant to that incident, the applicant visited the Kanska Police Station on January 28, 2022 and met the Inspector Incharge and filed

the complaint dated 28, January, 2022 against Respondent No.1, which was treated as an FIR by said Respondent No.3. The applicant also submitted a copy of the FIR with the office of Commissioner of Police, Asansol. The Police thereafter, considering the said letter of complaint of the applicant, initiated Police Case No. 31/2022 on January 29, 2022 against Respondent No.1 under Section 341/323/506/34 of IPC,1860.Copy of the said case no. 31/2022 and acknowledgement of receipt is annexed as Annexure-E. Thereafter, on or about January 31,2022, the applicant, apprehending some legal action from Respondent No.1, filed Caveat under Section 148A of the Civil Procedure Code, 1908 in the Court of Civil Judge, Sr.Division,1st Court and also the Ld. Civil Judge, Jr. Division, 1st Court at Durgapur, being the courts within the territorial jurisdiction.

7. It is submitted that on February 10,2022, the applicant with the help of one police personnel Mr. Palash Mondal, SI, deputed by the said Kanksa Police Station, entered into the said Durgapur Unit of the Corporate Debtor and pasted two notices one inside and one outside the Unit.

8. The notices were relating to the information that B.D. Motors Limited is under liquidation with effect from January 6, 2022 and that Respondent No.1 is an illegal encroacher and carrying on motor repairing services wrongfully and illegally.

9. It is submitted that the applicant once again visited the Police Station on February 17, 2022 and submitted a written request to Respondent No.3 for providing necessary police assistance for taking physical custody and possession of the Durgapur Unit of the Corporate Debtor for completion of liquidation proceedings. When he was asked to come in the evening after working hours of the Durgapur Unit. On

reaching the Police Station in the evening, the applicant was asked to visit the Durgapur Unit with the assurance that appropriate police protection would be provided to the applicant. The applicant was given the contact number of one Mr. Subir Sarkar, an officials of the police station to be contacted in case there is any exigency. Accordingly, the applicant visited the Durgapur Unit with a Private Security Agency named Vigilance Security as recommended by the State Bank of India, being a member of the Stakeholders Consultation Committee of the Corporate Debtor with 97% Stake therein.

10. It is submitted that on reaching the said Durgapur Unit, the Private Security faced stiff resistance from the said Respondent No.1 and his accomplices. The applicant was manhandled again and was threatened with dire consequences by the said Respondent and his stooges and as such the applicant could not take custody and control of the said Unit because there was no police protection and the police did not respond in spite of repeated phone calls. It was informed by the said Mr. Subir Sarkar, police officials that for such eviction of Respondent No.1 a specific order from Court for granting police help is required and Police can interfere only in case of breach of law and order situation.

11. The applicant pasted a notice for information of the Public at large near the main entrance gate of the said Durgapur Unit that the custody and control of the said Durgapur Unit belongs the applicant. The applicant again visited the Kanksa Police Station on February 18,2022 and met Mr. Subrata Ghosh, Inspector-in-Charge, Kanksa Police Station and narrated to him all the incidents that happened at the said Durgapur Unit on February 17, 2022 and submitted a hand written letter to Kanksa Police Station. The applicant requested

Respondent No.3 to take all steps to preserve and protect the movable and immovable properties of the Corporate Debtor situated in the said Durgapur Unit. Copy of the said letter annexed as Annexure- G to the application.

12. It is submitted that Respondent No.1, in addition to his continuous non-cooperation, illegal use and occupation of the said Durgapur Unit of the Corporate Debtor, has filed a suit being Title Suit No. 373 of 2022 (Mr. Animesh Mozumdar Vs. B.D. Motors Limited & Ors.) before the City Civil Court, Calcutta, seeking declaration that Respondent No.1 is a tenant under the Corporate Debtor at a monthly rental of Rs.1,00,000/- In the said suit, Respondent No.1 is claiming himself to be a tenant under the Corporate Debtor and one of its Ex. Directors, Mr. Narendra Kumar Agarwal, and Respondent No.1 has stated that a sum of Rs.8,42,000/- has been paid by him in cash to the Corporate Debtor for purchasing machinery. Respondent No.1 has obtained an order dated 18th February, 2022.

13. It is submitted by the applicant that the City Civil Court at Calcutta has no jurisdiction to receive or entertain, the said Suit or grant any reliefs prayed therein because the applicant Respondent No.1 is seeking a declaration of tenancy right with respect to the property situated at Durgapur.

14. It is submitted that the applicant has been appointed as a Liquidator of the Corporate Debtor and rent @ Rs. 1,00,000/- per month is claimed to have been paid by Respondent No.1 to the Corporate Debtor. The said suit and the application have been filed on the basis of false, fictitious and forged documents. It is submitted that the so-called tenancy agreements, documents showing sale and purchase of machinery from the corporate debtor and payment of rent

are all forged and fabricated documents, brought into existence with mala fide intent and motive to usurp the assets and properties of the Corporate Debtor. It is submitted that the said documents were never disclosed either by the Ex-Directors of the Corporate Debtor or by Respondent No.1 to the applicant ever since his appointment as the Resolution Professional on March 12, 2020.

15. On enquiry by the applicant, Mr. Narendra Kumar Agarwal, the Ex. Directors of the Corporate Debtor, denied the genuineness of all such documents and denied receipt of any amount on account of rent of the said Durgapur Unit. It is submitted that Respondent No.1 has not been cooperating with the applicant at all and applicant bona fide apprehends that Respondent No.1 is in the process of removing or disposing of the plant and machinery of the Corporate Debtor and as such the applicant has on a number of occasions been manhandled by Respondent No.1 and his associates and their misconduct has resulted into loss of valuable time and cost besides causing mental agony and harassment to the applicant. The applicant has sought directions upon the Commissioner of Police, Asansol-Durgapur and the Officer-in-Charge of Kanksa Police Station, Durgapur to provide Police assistance and protection to the applicant to enable him to enter into the Durgapur Unit of the Corporate Debtor situated at Banskopa, L&T More, NH-2, Durgapur, under Gopalpur Gram Panchayat, Police Station- Kanksa, District- Paschim Burdwan, Pin-713212 for the purpose of taking custody, control and possession of the said Unit and to discharge his duties as the Liquidator.

16. We have heard Ld. Counsel for the Liquidator. The respondents in this matter are not represented in spite of notice having been served on the respondents. It is very important to notice here that the

Liquidator, is an Officer of the Court appointed under the Code for the purpose of performing his statutory duties under section 35 of the Code. The Liquidator has the power to take into custody and control all the assets, property, effects and actionable claims of the Corporate Debtor and have them evaluated, and to take all such measures to protect and preserve the assets and properties of the Corporate Debtor as he considers necessary. The statutory duties assigned to the Liquidator under the Code cannot be performed if the other law enforcing authorities do not cooperate with the Liquidator and provide him necessary aid and assistance, when it is required to enable him to perform his duties as per law. In this matter the timely assistance has not been provided by Respondent Nos.2 and 3 to have the custody and possession of the immovable and moveable properties of the Durgapur Unit of the Corporate Debtor from Respondent No.1. If the police had provided timely assistance to the applicant, the applicant would have successfully taken possession of the said unit and other properties lying therein which belong to the Corporate Debtor and the liquidation process would have been completed by now.

17. We, therefore, direct Respondent No.1 to immediately hand over the Durgapur Unit of the Corporate Debtor situated at Banskopa, L&T More, NH-2, Durgapur, under Gopalpur Gram Panchayat, Police Station- Kanksa, District- Paschim Burdwan, Pin-713212, which is being illegally occupied by Respondent No.1 including all the moveable lying therein that belong to the Corporate Debtor. If there is any disobedience or reluctance or resistance on the part of Respondent No.1 in handing over the said premises to the applicant as directed herein, Respondent No.2 and 3 are directed to provide all types of assistance and protection to the applicant to enable him to enter into and take custody, control and possession of the said unit and

discharge his duties as the Liquidator and carry out the orders passed by this Adjudicating Authority. In case respondent No.1 or any of his associates, subordinates create any hindrance or resistance, then the police authorities shall deal with them strictly as per the law and book them by lodging F.I.R., and take immediate legal action against them in compliance of these orders. The Liquidator shall go to the said premises on 15th June, 2022 with necessary force to be provided by Respondent No.2 and 3 and carry out his duties as per the provisions of the Code and file a report before this Adjudicating Authority within one week thereafter.

18. With these directions, the I.A.No.(IBC)/302/2022 stands disposed of .

19. List the main C.P. (IB) No. 188/KB/2019 on **02/08/2022**.

20. 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, the 13th day of June , 2022

PJ.