

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P.(IB)- 1055/(MB)/2017
MA 205/2020 MA 241/2020
MA 242/2020 MA 282/2020

CORAM:

SHRI BHASKARA PANTULA MOHAN
MEMBER (J)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON 24.01.2020

NAME OF THE PARTIES: Roofit Industries Limited

Section 10 of Insolvency & Bankruptcy Code 2016.

ORDER

124.MA 205/2020, MA 241/2020, MA 242/2020, MA 282/2020 In
C.P. (IB) 1055/(MB)/2017

MA 282/2020:

This is an application filed by the Liquidator of Roofit Industries Limited with the prayer to quash the Civil Suit No. 251/2019 on the file of Civil Court Junior Division, Wada District Palghar filed by Respondent No. 1 Mr. E.C. John.

Mr. E.C. John was also the occupant of the Corporate Debtor and later when the CIRP orders were passed, this Bench suspended the earlier directors of the Corporate Debtor and Mr. Jitendra Kumar Jain was appointed as the IRP and later who become RP. Subsequently when the Liquidator Orders were passed, as there was no resolution forth coming, this Bench had ordered for the Liquidation of the company and the Said Mr.

Jitendra Kumar Jain had taken over as the Liquidator of the Corporate Debtor.

Now it is the duty of the Liquidator who is an officer of the court to comply with the requirements of IBC, 2016 and see that the assets of the company are disposed of and the proceeds of the same are distributed among all the creditors, shareholders and stakeholders of the erstwhile Corporate Debtor.

This being so the subject matter of the Property in the suit which actually belong to the Corporate Debtor later on ought to have been handed over by the said plaintiff i.e. Mr. John to the RP, did not comply with the requirements of the IBC, 2016 but when the liquidation orders were passed and the property was put up for sell the very same Mr. John had come forward and on 09.10.2018 had written a letter to the liquidator evincing keen interest in purchasing the subject matter of the property. And on 18.09.2019 also another letter for the very same purpose has been written by the plaintiff.

However, the price offered by the said person is no anywhere nearer to the market value hence the liquidator could not consider the same.

Subsequently on procuring a higher better price for the very same property the Liquidator in his rightful duty had sold away the property to some third parties on 27.11.2019 as per law i.e. as per provision of IBC, 2016.

However, the said Mr. John fully knowing all this background, had wrongly approached the civil court seeking direction or decree for grant of

prohibitory injunction restraining the defendant i.e. Liquidator, its agents, servants or anyone claiming through them or acting on its behalf from disturbing the lawful possession and not to demolish the structure constructed by the Plaintiff over the suit property.

At this point of time when the hearing is going on, the said plaintiff Mr. E.C. John entered the court room with his counsel Mr. Ajay Fernandes and tried to submit that he has constructed a wall around the subject matter of the property and hence there is some understanding and he be given the possession and sought time to proceed with the matter in this Bench.

The submission made by the said counsel that wall has been constructed around the property, does not and will not create rights of whatsoever nature to the plaintiff and the impertinence on the part of the plaintiff who is Respondent herein is apparent and when this Bench questioned him whether he is prepared to withdraw the suit, he vehemently refused and went on to argue his point that wall has been constructed and hence he has got some rights.

After hearing the parties concerned in view of the Section 33 (5) of the Code which reads as follows: -

“Therefore, any suit that has been instituted seeking to disturbed the proceedings of the Liquidator or provisions of the IBC, 2016 are barred under law.”

And hence we hereby quash the civil suit No. 251/2019 on the file of the Civil Court Junior Division, Wada District Palghar, Maharashtra forth with.

We make it very clear that any disturbance to the possession of the Liquidator or any obstruction if at all is caused by the said plaintiff who is Respondent in the present application shall be viewed very seriously by this Bench and liquidator is at liberty to approach the Police station of the concerned jurisdiction to file appropriate complaint as the very same would amount to trespass under Criminal law.

However, the above Liquidator informed us that the very same plaintiff Mr. E.C. John had threatened the liquidator for life and obstructed him and when the police complaint is lodged they are not taking any action against the Respondent.

In view of the orders passed by this Bench we hereby direct the Superintendent of Police, District Palghar, forth with look into the matter and provide the necessary security to the liquidator and also take stringent, penal action against the plaintiff Mr. E.C. John by arresting him and secure the life of the Liquidator who is an officer of the court.

Application is allowed.

List all other MAs on 06.02.2020.

Sd/-
BHASKARA PANTULA MOHAN
Member (Judicial)