

**BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT – V**

**IA No.3798 OF 2023**

**IN**

**CP No. 115/MB/2021**

Under section under section 18 read with Section 25(2)(a) and Section 60(5) of Insolvency and Bankruptcy Code, 2016 (“the Code”) and Rule 11 of the National Company Law Tribunal Rules, 2016.

Mr. Shailesh Bhalchandra Desai Resolution Professional.

.... Applicant

Versus

The District collector through Mr. Ajay Patil  
Tehsildar

...Respondent

**IN THE MATTER OF**

Axis Bank Limited

... Applicant

Versus

Maharashtra Theatres Private Limited

...Respondent

**Order Dated: 22.12.2023**

**coram:**

Hon'ble Reeta Kohli, Member (Judicial)

Hon'ble Madhu Sinha, Member (Technical)

**Appearance: Physical**

For the Petitioner: Counsel for Petitioner.

For Respondent: Counsel for the Respondent

**ORDER**

***Per: Reeta Kohli, Member (Judicial)***

The present application has been preferred by the RP with the following prayers:

“ a) *Consider the present IA 3798 of 2023 under section 18 read with Section 25(2)(a) and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 for seeking necessary directions;*

*b) Pass necessary Orders directing the Respondents to hand over the possession of property bearing No. SAC No. HE2110 650200000 situated at H/E ward i.e. 8<sup>th</sup> Floor and theatre at ground floor namely RNA Cinemax of the RNA Corporate Park located at RNA Corporate Park Next to Collector Office, Kalanagar, Bandra (East), Mumbai – 400051 in terms of provisions of Section 18 and 25(2)(a) of the Code forthwith;*

*c) Pass necessary Orders by exercising the inherent powers under Rule 11 of the Hon'ble NCLT Rules, 2016 in the interest of all stakeholders of the Corporate Debtor.*

*d) Pass necessary order directing the Respondents to file their claim with the Applicant towards their outstanding property tax dues.*

*e) Pass necessary Orders directing Respondents to refrain from creating any hinderance or difficulties for the Applicant from taking over the possession of the subject property and being officer of the Court to co-operate with the Applicant.*

*f) Issue such other orders as the Hon'ble Tribunal may deem fit.”*

The case of the applicant is that the Corporate Debtor i.e. Maharashtra Theatres Private Limited was admitted to CIRP on 31.03.2023 and applicant was appointed as IRP. In terms of Section 15 of IBC, 2016, the IRP made public announcement on 14.04.2023 in Form A calling for submission of claims till 17.04.2023. During the first COC meeting held on 03.05.2023, the applicant was confirmed as RP. At the time of Collation of assets of the Corporate Debtor, the applicant got to know that property bearing no. SAC No. HE2110 650200000 situated at H/E ward i.e. 8<sup>th</sup> Floor and theatre at ground floor namely RNA Cinemax of the RNA Corporate Park located at RNA Corporate Park Next to Collector Office, Kalanagar, Bandra (East), Mumbai – 400051 belongs to the Corporate Debtor. Upon visiting the premises, he found that the possession of the same is with the respondent Deputy Collector through Tehsildar since 18.05.2023 as the notice

was affixed on the said property. The applicant visited the office of the respondent and requested for handing over the possession of above-mentioned assets of the Corporate Debtor in terms of section 18 and section 25(2)(a) of the Code. The applicant further submits that he also informed the respondent to file their claim before the applicant towards their outstanding property tax dues and also shared format of claim form. The Copy of the letter dated 18.05.2023 was diarised in the office of the respondent. The copy of the same has also been placed on record of the present application. The applicant further submits that various reminders through E-mails dated 30.05.2023, 07.06.2023 and also dated 14.06.2023 were sent by the applicant, but the applicant failed to elucidate any response from the respondent. The applicant further submitted that the perusal of the record shows that vide order dated 24.11.2022 the said property of the Corporate Debtor was confiscated by the office of the Tehsildar, Executive Magistrate Andheri (West) because of non-payment of dues amounting Rs. 67,38,20,690/-.

Despite service none has appeared on behalf of the respondent. During the pendency of the present IA on the asking

of the Court, applicant/RP once again sent notice, informing the respondent about the pendency of the present IA, through Speed-post dated 04.12.2023 which was delivered on 05.12.2023. The track report has been placed on record. The hand delivery of the said letter was also done in the office of Tehsildar (Bandra). The diarised copy of the same showing receipt of the letter in the office of Tehsildar has also been placed on record by the applicant. In the absence of respondent, we are constrained to proceed against them ex-parte.

Taking note of the above stated facts and circumstances and also in view of the legal position wherein it is incumbent upon the RP to collate the assets of the Corporate Debtor so as to ensure the maximization of the assets of the Corporate Debtor at the time of resolution. Section 18(1)(f) of IBC, 2016 deserves to be appreciated & the same is reproduced hereunder:-

*“(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including –*

- (i) Assets over which the corporate debtor has ownership rights which may be located in a foreign country;*
- (ii) Assets that may or may not be in possession of the corporate debtor;*
- (iii) Tangible assets whether movable or immovable;*
- (iv) Intangible assets including intellectual property;*
- (v) Securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;*
- (vi) Assets subject to the determination of ownership by a court or authority;”*

*(g) to perform such other duties as may be specified by the Board.*

*Explanation – For the purposes of this [selection], the term “assets” shall not include the following, namely –*

- (a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;*
- (b) assets of any Indian or foreign subsidiary of the corporate debtor; and*

*(c) such other assets as may be notified by the Central Government in consultation with any financial section regulator.”*

In addition, the reference by the RP has also been made to Section 25 of IBC 2016, regarding duties of Resolution Professional. Keeping in view the above stated facts and also in view of the fact that applicant/RP is duty bound to ensure the maximization of the assets of the Corporate Debtor and also in view of the fact that he is duty bound to collate all the assets of the Corporate Debtor, the present application for the release of the attached property is well within the objects of the IBC, 2016. In the present case CIRP under IBC, 2016 was initiated against the Corporate Debtor on 31.03.2023. Thus, in view of the fact that CIRP process has been initiated and it has become the duty of the RP to consolidate all the assets of the Corporate Debtor to fulfil the objects of the IBC, 2016. The admission of the Corporate Debtor into CIRP brings section 14 of IBC, 2016 into operation, regarding the moratorium on the commencement of CIRP, which resultantly imposes

prohibition on any such act or action which inturn diminishes the value of assets of Corporate Debtor. Section 14(1) regarding moratorium is reproduced hereunder:

*“(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:— (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; (d) the recovery of any property by an owner or lessor*

*where such property is occupied by or in the possession of the corporate debtor..”*

From the perusal of the above section it is evident that no other court or authority has the power to pursue any actions in realisation to the properties under CIRP. Further by virtue of section 63 of IBC, 2016 jurisdiction on commencement of CIRP against the Corporate Debtor lies only with the NCLT and NCLAT. Section 63 reads as follows:

*“No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this code. Civil court not to have jurisdiction.”*

On the detail perusal of the facts and circumstances of the present case and submissions by the Applicant and also taking into consideration relevant provisions of law, we are of the considered opinion that the property of the Corporate Debtor confiscated vide order dated 24.11.2022 by respondent deserve to be released to the respondent. Thus the respondents are directed to release the property of the

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Corporate Debtor situated at H/E ward i.e. 8<sup>th</sup> Floor and theatre at ground floor namely RNA Cinemax of the RNA Corporate Park located at RNA Corporate Park Next to Collector Office, Kalanagar, Bandra (East), Mumbai – 400051. Thus this IA 3798/2023 is **allowed** to that extent.

**Sd/-**

**Madhu Sinha**

**Member (Technical)**

/Manish Tiwari/

**Sd/-**

**Reeta Kohli**

**Member (Judicial)**