

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P. No.(IB)1882(MB)/2018

CORAM: SHRI V. P. SINGH
MEMBER (J)
SHRI RAVIKUMAR DURAISAMY
MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 18.2.2019

NAME OF THE PARTIES: Asset Reconstruction Company (India) Pvt Ltd

Vs

Shivam Water Treaters Pvt Ltd

Section 7 of the Insolvency and Bankruptcy Code, 2016.

ORDER

14. CP (IB)-1882/MB/2018

Ld. Counsel representing the suspended Director Mr Gaurav Dave and Counsel representing the Resolution Professional and Counsel representing the workers are present.

Resolution Professional has filed the status report. It is stated in the status report that “*she along with her team visited the site with the assistance of the police. The son/Business Head of the Ex-director Mr Vishal Dave was present at the side, and the union leader along with about 10 workers accompanied him at the site. Mr Vishal Dave informed the RP that the site identified by the RP and her team was not the site of SWTPL. He further informed that the property belonged to him and showed the RP a bunch of documents which he claimed to be the title documents of the property. However, when the RP requested him to show her the title documents, he refused, and on*

asking for a copy of the same, he refused to give the same stating that RP should write an official letter to obtain the same. In the meanwhile, the union leader along with the workers kept on creating a nuisance on the site making false allegations against the RP and her team of not clearing their salary.

The RP further informed the police that her team member, Mr Choudhary had visited the site along with the Ex-director Mr Gaurav Dave through the gate identified by Mr Choudhary at the site and that Mr Gaurav Dave had taken him to SWTPL through the said gate. The RP also informed the police that, they had deployed security at the site since last three months and the security personnel also told the police that Mr Gaurav Dave, Mr Vishal Dave and the workers enter through this gate every day. They also told the police that the gate opens only for the Ex-director, Business Head and the workers and then is locked from inside. On the site, it also appeared that there was no lock on the gate from outside. However, the gate was locked from inside. The RP asked the police to open the said gate for them for entering into the factory premises for taking control. However, as Mr Vishal Dave said that SWTPL location is elsewhere the RP and his team along with the police also visited that particular area. However, it was observed by the RP and her team that there was a broken gate which was locked from inside. The senior police officer was of the opinion that as there was a discrepancy with regard to identifying the exact location of the factory premises, and both the gates were locked from inside, and Mr Vishal Dave obstructed the entrance to the gate which the RP and her team had identified, he suggested to get it verified from a notified surveyor before entering into the premises.

It is further reported that “the police officer was reluctant to provide any assistance as there was no clarity regarding the entrance of the factory premises. Accordingly, the RP recorded the Panchanama and concluded the affairs of the day.”

Regarding the Corporate Office of SWTPL, the RP has reported that “*RP along with her team visited the site with the assistance of the police. The son/Business Head of the Ex-Director, Mr Vishal Dave, was present at the site along with two lawyers, and a photographer and videographer who accompanied him. The RP and her team along with the police after reaching the site observed that the said shops/offices, i.e. 201, 202, 203 and 204 of the ownership of the ex-directors Mr Gaurav Dave and Mrs Ami Dave were sealed by the Ahmedabad Municipal Corporation (AMC). After going through the notice of the possession by the AMC on the site, the RP came to know that the Corporate Debtor has not paid the municipal taxes of the premises mentioned above.*

It is further reported that the notice and seal on the locks were put by the AMC on the same day early morning before the RP could reach the site at 10.30 a.m.

It is pertinent to mention that during CIRP period the moratorium under Section 14 of the IBC, 2016 exists and during this period 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and further the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor is stayed by the moratorium order and that the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

This is the case, where despite moratorium order, Municipal Authorities have sealed the Corporate Office/Registered Office of the Corporate Debtor. Section 238 of the IBC, 2016 provides the overriding effect. Moratorium order has been passed under Section 14 of the IBC on 15.10.2018. After that Municipal Corporation had no authority to seal the property of the Corporate Debtor.

The Municipal Corporation of Ahmedabad is directed to immediately open the seal and hand over the possession of the entire property of the Corporate Debtor to the Resolution Professional. As far as the conduct of Mr Gaurav Dave, Ex-Director of the Corporate Debtor and his son/Business Head Mr Vishal Dave are concerned, they are directed to file affidavit relating to non co-operation with the RP. It is to be clarified that RP is discharging her duties as Court Officer and any noncompliance of the Court Officer will be deemed as Contempt of Court.

It is also to be pointed out that section 70 of IBC provides that

70. (1) *On or after the insolvency commencement date, where an officer of the corporate debtor—*

- (a) *does not disclose to the resolution professional all the details of property of the corporate debtor, and details of transactions thereof, or any such other information as the resolution professional may require; or*
- (b) *does not deliver to the resolution professional all or part of the property of the corporate debtor in his control or custody and which he is required to deliver; or*
- (c) *does not deliver to the resolution professional all books and papers in his control or custody belonging to the corporate debtor and which he is required to deliver; or*
- (d) *fails to inform the resolution professional the information in his knowledge that a debt has been falsely proved by any person during the corporate insolvency resolution process; or*
- (e) *prevents the production of any book or paper affecting or relating to the property or affairs of the corporate debtor; or*

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(f) *accounts for any part of the property of the corporate debtor by fictitious losses or expenses, or if he has so attempted at any meeting of the creditors of the corporate debtor within the twelve months immediately preceding the insolvency commencement date,*

he shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both:

The above provision is very much clear and till date the Ex-director Mr Gaurav Dave and his son Business Head Mr Vishal Dave has not complied with the direction of the Court, and they have not handed over the possession of the property to the Resolution Professional.

The Resolution professional has also reported that Mr Gaurav Dave abused the RP while she was discharging her duties as Court officer. Such actions of the Ex-directors can never be tolerated.

We at this moment provide two days to the Ex-Directors to comply with the directions given by us and hand over the entire possession of the property, papers and all documents relating to the Corporate Debtor company to the RP.

RP is directed to submit the status report on 25.2.2019. Mr Gaurav Dave and Mr Vishal Dave should remain present in person in the court on 25.2.2019, and they have to file compliance of the court order, failing which we shall be forced to take action against them.

Ld. Counsel for the workers has filed the IA 648/2019 wherein directions of Hon'ble NCLAT dated 26.10. 2018 is annexed. We have perused the order of Hon'ble NCLAT wherein directions were given to RP *“that the company should remain as a going concern so that the manufacturing and production of the company do not suffer, payment of wages to the employees/*

workmen are made on time and if any material is supplied during the corporate resolution process.

It is further stated in the order that IRP will take the aid of suspended Board of Directors. The bank has an account of the Corporate Debtor will also co-operate with the IRP to ensure compliance of this order”.

In this case, till date, RP has not got the control of the Corporate Debtor. After taking full control of the Corporate Debtor, she has to comply with the directions of the Hon’ble NCLAT.

List on 25.2.2019.

Sd/-
RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-
V. P. SINGH
Member (Judicial)