

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Ins) Nos. 724-725 of 2020

IN THE MATTER OF:

1. Surajbari Traders Pvt. Ltd.

22, Camac Street, 5th Floor,

Block "C"

Kolkata – 700016

2. Kavita Jagatramka

1 Clyde Row Hastings

Kolkata - 700022

....Appellants

Versus

1. Sumit Binani Liquidator

Registration No. IBBI/IPA-001/IP-N00005/2016-17/10025

4th Floor, Room No. 6, Commerce House,

2A, Ganesh Chandra Avenue,

Kolkata – 700013

2. Gujarat NRE Coke Limited (In Liquidation)

Represented by the Liquidator Mr. Sumit Binani,

Registration No. IBBI/IPA-001/IP-N00005/2016-17/10025

Having his office at 4th Floor, Room No. 6, Commerce House,

2A, Ganesh Chandra Avenue,

Kolkata – 700013

3. Arun Kumar Jagatramka

Suspended Director of the board

1, Clyde Row, Hastings,
Kolkata – 700022.

.... **Respondents**

Present:

**For Appellants: Mr. Jayant Mehta, Mr. Bharat Sood and Mr. Surya Kapoor,
Advocates**

**For Respondents: Mr. Krishna Raj Thaker, Ms. Sreenita Ghosh, Mr. Arjun
Asthana, Advocates with Mr. Sumit Binani (Liquidator)
for R-1&2. Mr. MS Tiwari and Mr. Arun Jagatramka,
Advocates for R-3. Ms. Ujjaini Chatterjee, Advocate**

J U D G M E N T

Jarat Kumar Jain. J:

These Appeals are filed by the Appellant Surajbari Traders Pvt. Ltd. and its director Kavita Jagatramka against the orders dated 17.07.2020 and 14.08.2020 passed by the Adjudicating Authority (National Company Law Tribunal) Kolkata Bench, Kolkata. Whereby issued certain directions to the Key Personnel of the Corporate Debtor to provide cooperation for resumption of work by the Liquidator at the registered office of the Corporate Debtor M/s Gujarat NRE Coke Ltd.

2.(a) Brief facts of this case are that in January 2018 Mr. Sumit Binani (Respondent No. 1 herein) was appointed as Liquidator for the M/s Gujarat NRE Coke Ltd. (Corporate Debtor), and has commenced liquidation proceedings at head office of the Corporate Debtor, 22, Camac Street, Block -C, 5th Floor, Kolkata. (In Brief Office Premises) Due to pandemic Covid-19, lockdown w.e.f

25.03.2020 was enforced by the Central Government. Subsequently, w.e.f 31.05.2020 the Central Government as well as State Government granted numerous relaxations in the lockdown. Even though, the office premises was not opened. Therefore, the Liquidator has issued numerous emails and communications to the officials of the Corporate Debtor to open the office so he may be able to resume the work. However, one pretext or the other, the officials kept on citing reasons on the ground of Covid-19 Pandemic, thus, there was a great hindrance on the liquidation proceedings of the Corporate Debtor. In such a situation, the liquidator filed an Application under Section 19(2) r/w Section 34(3) of the Insolvency and Bankruptcy Code (In Short I&B Code), against the Key Personnel of the Corporate Debtor, Mr. Pawan Kumar, Chief Commercial Officer, Mr. Nitin Daga, Chief Financial Officer, Mr. Mukund Chandak, Company Secretary and Mr. Rajesh Agarwal, Vice President In-Charge of Accounts, for following reliefs:-

- a. To assist and cooperate with the liquidator in laying down adequate infrastructure for resumption of work at office and from home as the case may be.
- b. To open the offices of the Corporate Debtor at Kolkata by following social distancing norms and precautions as may be notified by the Government from time to time.
- c. To arrange for a separate set of keys of the office of the Corporate Debtor at Kolkata to be kept in the possession of the Liquidator.
- d. To extend full cooperation and assistance to the liquidator by following his instructions in carrying out his duties and responsibilities under law and to provide information and documents as may be required by him from time to time.

- e. An order directing the local police station to help and assist the Liquidator in the Respondent failed to cooperate with the Liquidator in a time bound manner.
- f. Interim and/or ad interim orders in terms of the prayers hereinabove.
- g. Such further order or orders as to which this Hon'ble Tribunal may and for this act of kindness, your applicant, as in duty bound, shall ever."

2(b). After considering the submissions of the parties Learned Adjudicating Authority vide impugned order dated 17.07.2020 passed the order/directions against the key personnel of the Corporate Debtor as under: -

- “(i). The Respondents, including the members of erstwhile board of directors, and other key personnel associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
- (ii). The Respondents and/or the owner of the premises, whosoever is in possession of the keys of the registered office premises, shall hand over the keys to the Liquidator immediacy, as and when required by the Liquidator.
- (iii). The Respondents shall depute at least 20% of their skeleton staff/officers/officials, on rotational basis, who are conversant with their respective jobs, for running the office and for providing full cooperation and assistance to the Liquidator.
- (iv). The remaining staff shall work from home and provide all assistance to the Liquidator as and when required.
- (v). The Liquidator shall provide all the basic facilities to the staff attending the office or work from home, as the case may be in accordance with the guidelines issued by the Government during the period of lockdown.
- (vi). In case any of the staff refused or fails to attend the office or work from home or provide necessary cooperation, as the directions of the Liquidator, the Liquidator shall be free to cut his proportionate salary/wages, as per applicable rules.

(vii). In case of failure to comply the directions from the side of respondents, the Liquidator shall be at liberty to move an application for initiating action under the Contempt of Courts Act.”

2(c). The Appellant No. 1 herein (Surajbari Traders Pvt. Ltd.) on 28.07.2020 filed an Application before the Adjudicating Authority seeking clarification of the impugned order dated 17.07.2020. It is also mentioned that the Appellant No. 1 was not arrayed as party by the Liquidator and hence, the Appellant No. 1 could not apprise the Hon’ble Tribunal the following facts.

(i) The premises is being used for more than 20 Companies as its registered office and their records/documents are maintained at the said premises, therefore, the said documents are required to be kept safe and secured.

(ii) Any office being open is required to comply with the SOP guidelines for office dated 04.07.2020.

The Relief prayed in the Application is as follows: -

“(a) Pass appropriate direction against the Liquidator thereby directing him not to claim the exclusive possession of the said premises located at 22, Camac Street, Block C 5th Floor Kolkata.

(b) Clarify that the liquidator has a right only to access the database/record/documents pertaining to Gujarat NRE Coke Limited (in Liquidation) being marinated at the said premises.

(c) Pass any such further and/ or other order as this Hon’ble Tribunal may deem fit and proper in the interest of Justice.”

2(d). Admittedly the aforesaid application has not been decided by the Adjudicating Authority till 14.08.2020 i.e when the second impugned order is passed.

2(e). After passing of the impugned order dated 17.07.2020, the Liquidator has sent several emails to the officials of the Corporate Debtor but they failed to comply the order. Therefore, the Liquidator filed an Application for initiation of Contempt Proceedings against Arun Kumar Jagatramka, Promoter and suspended Director of the Corporate Debtor and Kavita Jagatramka, Director of Surajbari Traders Pvt. Ltd. The Contempt Application is filed for the following relief:

“a. Rule and/or show-cause be issued calling upon the contemnor nos. 1 and 2 to show cause why they should not be held guilty of willful, deliberate and contumacious violation of the order dated 17th July 2020, inter alia, as stated in paragraph 40.

b. If the Contemnor Nos. 1 and 2 fail to show cause or show insufficient cause, then Rule, if issued herein, be made absolute.

c. The Contemnors be held guilty of contempt of the order dated 17th July, 2020 passed by this Hon’ble Tribunal and necessary consequential order be passed as this Hon’ble Tribunal may deem fit and proper.

d. The Contemnors No. 1 and 2 and the officers/employees of the Respondents No. 3 be forthwith directed to handover the keys of the 2(two) office premises of the Corporate Debtor in liquidation situated at 22 Camac Street Kolkata without any conditions so that the liquidator can carry the operations of the CD and the liquidation process as he has been carrying prior to the imposition

of lockdown without any hindrance and restrictions in a peaceful manner and further co-operate the liquidator and, in default, necessary order be passed appointing any competent person as Receiver who can take police assistance and can take further effective steps for implementation of the orders to be passed herein.

e. Ad-interim order in terms of prayers above.

f. Pass any other such order and/ or orders as this Hon'ble Tribunal may deem fit and proper in light of the peculiar facts and circumstances of the present case.”

3. The Contemnor Arun Kr. Jagatramka and Kavita Jagatramka resisted the Application and stated that they were not arrayed as party in the Application under Section 19 (2) r/w Section 34(3) of the I&B Code and the impugned order dated 17/07/2020 was passed without giving any opportunity of hearing to them. The office premises is used by 20 other Companies and their valuable record is laying in the said premises. The Keys of the office premises were with Kavita Jagatramka during the Lockdown period and she was stuck in Ahmadabad. Therefore, she could not make available keys to the officials of the Corporate Debtor.

4. After hearing learned counsel for the parties, ld. Adjudicating Authority on 14.08.2020 passed the following orders :-

“(i) The Respondents shall hand over a complete set of keys to the Liquidator to enable him to have an access to the registered office premises of the company any time, without any interruption or interface by the Respondents or anyone else at their behest;

(ii). The Respondents, however, shall have an access to that part of the premises which are being occupied or used by the other group companies.

(iii). The Respondents shall make their own arrangements for safeguarding and preservation of all their papers and the records and the records of other group companies, at their own costs and responsibility, either by employing a dedicated employee/security guard for that purpose. They shall not be entitled to raise any allegation in that regard against the Liquidator or any of the persons employed or deployed by the Liquidator.

(iv). In case the set of keys are not handed over to the Liquidator, the Liquidator is free to approach the Superintendent of Police of the area concerned, where the registered office of the company is located, who shall provide all necessary help and protection to the Liquidator in having the Lock(s) broken and replaced with new locks, without any delay;

In addition to the above directions, the Respondents are issued a Show Cause notice, as to why Rule Nisi be not issued against them returnable on 09.09.2020. All other applications filed by the parties to be heard on merit. Parties are directed to file reply affidavit by way of e-filing by serving copy to other sides within one week. Rejoinder, if any, to be filed before the date of hearing.

List all the applications on 09.09.2020.”

5. Being aggrieved with the orders dated 17.07.2020 and 14.08.2020 the Appellants have filed these Appeals under Section 61 of the I&B Code.

6. Learned Counsel for the Appellants submitted that in the Application under Section 19(2) r/w section 34(3), the Appellants were not arrayed as Respondent and without affording any opportunity of hearing, impugned order dated 17.07.2020 has been passed. Therefore, the Appellants cannot be

punished for contempt of court. It is further submitted that, the keys of the premise was never in possession of the Liquidator and the Liquidator has only access to the premise for last three years and the Liquidator has no hindrance in liquidation proceedings. Actually, the said premises was used by 20 other companies as their registered office and for maintaining the records. No sooner the Appellants came to know about the impugned order dated 17.07.2020, immediately they filed an application before the Adjudicating Authority for clarification of the order. However, the Application has not been considered and the Id. Adjudicating Authority passed the impugned order 14.08.2020, for taking coercive action against the Appellants. Both the orders are passed under misconception. Therefore, the impugned orders are liable to be set aside.

7. *Per Contra*, the Id. counsel for the Respondent No.1 submitted that vide order dated 14.08.2020, the Adjudicating Authority issued show cause to the Appellants and Respondent No.3 as to why *Rule Nisi* should not be issued against them. The grounds raised before this Appellate Tribunal have also been agitated by the Appellants before the Adjudicating Authority and the matter is still pending before the Adjudicating Authority. In such a situation, the Appeal is premature and deserves to be dismissed. It is further submitted that Appellants have filed these Appeals in collusion with the Respondent No. 3 (suspended Director of Corporate Debtor) who is father of the Appellant No. 2 to derail the liquidation process. It is further submitted that the Appellants time and again have given their un-conditional undertaking to comply with the directions of

Adjudicating Authority dated 17.07.2020. However, the keys of the office premises have not been handed over to the Respondent No.1 and thus the non-cooperation is still continuing. It is also submitted that the Respondent No.1 clarified that he does not seek any exclusive possession of the office premises even though he was not provided access to the office premises for the liquidation proceedings. It is settled law that contempt proceedings can lie against third parties who have willfully and knowingly thwarted the directions passed by the court/tribunal and further have knowingly aided and abetted in administration of justice. Thus, even without arraying as party, the Appellant can be punished for contempt of court. Thus these Appeals are liable to be dismissed.

8. The Appellants have filed Rejoinder Affidavit on 17.09.2020 and annexed copy of the order dated 09.09.2020 (Annexure R-3) passed by the Adjudicating Authority.

9. After hearing learned counsel for the parties, we have minutely gone through the record.

10. Admittedly in the Application under Section 19(2) r/w Section 34(3) of the I&B Code, the key personnel of the Corporate Debtor were arrayed as Respondent, and the Appellants and respondent no.3 were not arrayed as party. Thus, without giving any opportunity of hearing to the Appellants the impugned order 17.07.2020 was passed.

11. It is also admitted fact that when the Appellants came to know about the order dated 17.07.2020 then the Appellant No. 1 filed an Application for

clarification of the order dated 17.07.2020, but the Application has not been considered by the Adjudicating Authority and passed the impugned order dated 14.08.2020. In this Application it was prayed that a direction be issued against the Liquidator not to claim exclusive possession of the office premises as the premises used by other 20 companies as their head office and the liquidator has the right only to access the records and documents pertaining to the Corporate Debtor maintained in the office premises. The Learned Adjudicating Authority without considering the Application for clarification passed the impugned order dated 14.08.2020 on the Contempt Application. We are of the view that while considering the Contempt Application the Adjudicating Authority should have decided the Application for clarification.

12. Ld. Adjudicating Authority vide impugned order dated 17.07.2020 directed the key personnel of the Corporate Debtor or the owner of the premises, whosoever is in possession of the keys of the registered office premises shall handover the keys to the liquidator immediately. The Adjudicating Authority issued such direction as if the premises is in exclusive possession of the liquidator. However, the Liquidator himself after passing of this order sent an e-mail on 21.07.2020 to the appellant's counsel Mr. Sandeep Bajaj that he never claimed exclusive possession of the office of the Corporate Debtor and he only wants access of the office premises of the Corporate Debtor.

13. In the light of such admission, and the fact that office premises is used by other 20 Companies as their registered office, the direction of Adjudicating

Authority to hand over the keys to the liquidator and in case the set of keys are not handed over to the liquidator, the liquidator is free to approach the Superintendent of Police to provide necessary help and protection to the liquidator in having the lock(s) broken and replaced with new lock(s) without any delay, is erroneous and not sustainable.

14. It is pertinent to note that after passing of the impugned order dated 14.08.2020, the matter was listed for hearing before Adjudicating Authority on 09.09.2020, after hearing the parties following consent order has been passed by the Adjudicating Authority.

“ 5. During the course of hearing it was suggested by the parties that a clear picture would be brought before this Adjudicating Authority if a Special Officer is appointed., to visit the premises with advance intimation to the parties. We therefore, appoint two Special Officers namely, Mr. Sidharta Basu, Advocate (Contact No. 9903735892 and email id: sidharta.basu@gmail.com) suggested by Ms. Ujjaini Chatterjee, Adv. on behalf of the liquidator and Mr. Kamal Prakash Singh, CA(IBBI/IPA-001/IP-P-01722/2019-2020/12653) suggested by Mr. Moti Sagar Tiwari, Advocate on behalf of the Respondents in I.A. No. 694/KB/2020 as Special Officers to perform the above duties with the help of an architect/draughtsman of their choice. The parties will pay the fees of Special Officers suggested by each one of them. The Special Offices will understand the situation on the spot and give their report to this Adjudicating Authority within a period of two weeks. They will be free to take the help of an architect/draughtsman to take measurements of various office rooms involved in this controversy and he may also suggest whether an independent office can be curved out from the undivided office space for the use of the liquidator and the staff working with the company in liquidation so that liquidator may complete the liquidation process comfortably without any interference or disturbance, at the earliest. The fees of the

architect and other out of pocket expenses will be borne by the parties in equal proportion.

6. Heard both sides. Perused the records. It appears that the matter requires a detailed hearing for an overall view of the situation. Therefore, we are giving them further time for a detailed hearing, before taking any coercive steps in this matter. Hence, list the matter on 14.10.2020. in the meantime, the parties are directed to complete their pleadings by exchanging affidavit in reply and rejoinder without fail.”

15. With the aforesaid, it is clear that the Adjudicating Authority thought it proper that the matter requires a detailed hearing for an overall view of the situation. Therefore, granted further time for a detailed hearing before taking coercive steps in the matter.

16. As discussed above, the impugned orders are set aside.

17. The Adjudicating Authority is directed to consider the matter afresh and pass appropriate order as per law.

Thus, the Appeals are allowed. However, no order as to costs.

[Justice Jarat Kumar Jain]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

The Judgment is pronounced under the Rule 92 of the National Company Law Appellate Tribunal Rules 2016, in open Court on behalf of the Bench.

[Justice Jarat Kumar Jain]
Member (Judicial)

New Delhi
02nd February, 2021.
SC