

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) (Ins) No.249 of 2020**

**IN THE MATTER OF:**

**E.C. John**

**...Appellant**

**Versus**

**Jitender Kumar Jain & Ors.**

**...Respondents**

**For Appellant:**

**Shri Ghanshyam Singh and Shri Om Prakash,  
Advocates**

**For Respondents:**

**Shri Sukumar Pattjoshi, Sr. Advocate  
Shri Ravinder Rawat, Advocate (R-1)  
Shri Jitender Jain, Liquidator of Roofit**

**ORDER**  
**(Virtual Mode)**

**1.09.2020** Heard learned Counsel for the Appellant. This Appeal has been filed by the Appellant being aggrieved by the Order dated 24<sup>th</sup> January, 2020 passed by learned NCLT in MA No.282 of 2020 filed by Liquidator in C.P.(IB)-1055/(MB)/2017. By the said Order, the Application of Liquidator was accepted and the Appellant who claimed to be in possession of part of property of the Corporate Debtor on the strength of a letter dated 17<sup>th</sup> August, 2002 (Annexure A-2) was directed not to disturb the possession of the Liquidator or to create obstruction. By the same Impugned Order, the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) quashed Civil Suit No.251/2019 on the file of Civil Court, Junior Division, Wada District Palghar, Maharashtra, and inter alia directed Police to arrest Appellant for threatening and obstructing Liquidator.

2. The Appellant claims that by Annexure A-2 (Page – 34) letter dated 17<sup>th</sup> August, 2002 was issued by Vinod Gurbux Motwani. Appellant claimed that by such letter, Vinod Motwani who was Director to the Corporate Debtor had handed over possession of the part of the property of Corporate Debtor to the Appellant and thus, since 17<sup>th</sup> August, 2002, he has been in possession. Appellant claims that the School and Teachers quarters and staff quarters including that of factory were handed over by the Trustee to undertake education and charitable activities in furtherance of objective of the Motwani Education Trust. It is stated that Appellant has also constructed a wall around the property. The learned Counsel for the Appellant states that the Appellant has even paid property tax and thus, he claims that the Appellant is entitled to protect his possession.

3. The copy of MA filed by the Liquidator is at Annexure A-14 and Liquidator pointed out that CIRP process was initiated with regard to Roofit Industry Ltd. on 28<sup>th</sup> June, 2017 and that even the Respondent No.1 had sent Expression of Interest to purchase property. It is stated that the Liquidator was appointed on 22<sup>nd</sup> January, 2018 and when the Liquidator visited the property, he came to know that the wall has been constructed to let the Appellant and Gurbuk Gyanchand Motwani use the property. The Liquidator claimed that he had asked the Appellant and other Respondents (to the MA filed before the Adjudicating Authority) not the trespass on the property of the Corporate Debtor. The Liquidator also claimed that this Appellant had even sent e-mail showing interest in part of the property but the same did not materialize and the property came to be e-auctioned to third party on 27<sup>th</sup> November, 2019. Thereafter, it is stated that Respondent No.1 filed Civil Suit

seeking injunction against the Corporate Debtor with respect to the Wada property and the Liquidator received Summons from Civil Court on 20<sup>th</sup> January, 2020. Thus, he moved the Application against the Appellant and others claiming that Civil Court has no jurisdiction in view of provision of Sections 33(5), 60(5), 63(3), 231 and 238 of Insolvency and Bankruptcy Code, 2016 (IBC – in short) and sought reliefs that Respondent No.1 (present Appellant) should remove goods from the Wada property and he should also be directed to pay rent for using the property. Further reliefs were sought to protect the property, by asking Police to act on his Complaint.

4. The Application came to be allowed by the Impugned Order. We asked the learned Counsel for the Appellant as to what is Appellant's status in law to be on the property. The Counsel stated that he was on the part of property of Corporate Debtor on the strength of letter dated 17<sup>th</sup> August, 2002. He states that the possession is with him. However, when we see this letter, it only appears to be stating that the possession was being handed over to the Appellant and his proposed organisation "for management of the school". The letter also states that formal Memorandum of Understanding and/or Agreement will be entered shortly. However, no such documents are there and this document which has surfaced after the CIRP proceedings even if read to the best advantage of the Appellant, would only mean that the Appellant is being given possession to manage school. A person coming on property to manage the school would require to show legal status so as to avoid Liquidator taking action when the property is in liquidation. In law, possession would require two elements – one, 'corpus' and the other is 'animus'. Even if corpus is there, but animus to hold property by way of a confirmed right or title does

not appear to be there. Merely being on property does not give title. The letter is not based on any resolution of Trust. The Appellant does not show that he is in possession as owner or tenant, or licensee as such. Only giving property to manage school at the place would not be sufficient for the Appellant, to claim possession, when the Corporate Debtor goes in liquidation.

5. We do not find any error in the Impugned Order where it directs that the Appellant will not disturb or obstruct the possession of Liquidator with regard to the property concerned. However, it appears to us that the direction passed by the Adjudicating Authority quashing Civil Suit, is not legal. The Adjudicating Authority referred to Section 33(5). Section 33(5) of IBC reads as under:-

“(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.”

6. Even if such bar is there, it is not appropriate for the Adjudicating Authority to quash the concerned suit which is filed in the Civil Court. It would be for the Liquidator to move the concerned Civil Court pointing out the provision of IBC or to move the District Court in the hierarchy for quashing of the Suit concerned.

7. As regards the argument of the learned Counsel for the Appellant that the Liquidator has in the MA claimed rent in the prayer and so the Liquidator accepts that the Appellant should be treated as person liable to pay rent. What

appears from the records and facts is that the Liquidator claimed that the Appellant should pay the rent “for use of the Wada property”. This is more saying that mesne profits should be paid. Such claim by liquidator does not create right of lessor or lessee. One cannot cling to such words to create a title as such.

8. For the above reasons, we partly allow the Appeal. The direction in the Impugned Order quashing the Civil Suit No.251 of 2019 on the file of Civil Court, Junior Division, Wada District Palghar, Maharashtra is set aside. The Liquidator would be at liberty to move Civil Court concerned or move the District Court as may be advised for appropriate relief.

9. The learned Counsel for the Appellant has argued that the Impugned Order directs that the Appellant should be arrested by the Police. The direction appears to have been given because the Appellant had threatened the Liquidator with life and obstructed him. We substitute the direction that the Appellant should be arrested by directing that the Police concerned should take suitable action as per law.

Rest of the Impugned Order we maintain. With such directions, the present Appeal stands disposed of.

[Justice A.I.S. Cheema]  
Member (Judicial)

(Dr. Ashok Kumar Mishra)  
Member (Technical)

*/rs/md*