

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (I.B.) No. 1176/KB/2024
In
C.P. (I.B.) No. 1340/KB/2018**

***An application under Sectio 60(5) of the Insolvency and
Bankruptcy Code, 2016 (as amended)***

**IN THE MATTER OF:
Varsha Bagri**

... Applicant

Versus

Sumit Binani and Anr.

... Respondents

Date of Pronouncement: 3rd July, 2024

CORAM:

**SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)
SHRI. D. ARVIND, MEMBER (TECHNICAL)**

APPEARANCE:

Mr. Rajib Ghosh, Adv. Ms. Gargi Mukherjee, Adv.]	For Applicant Suraksha Assets Reconstruction Ltd.
Mr. Joy Saha, Sr. Adv. Ms. Jayati Choudhary, Adv. Mr. Tanish Ganeriwala, Adv. Ms. Sucheta Mitra, Adv. Ms. Sreya Sen, Adv.]	For the Liquidator of Bharat NRE Coke Ltd.
Mr. Jishnu Chowdhury, Adv. Mr. Debasish Chakrabarti, Adv. Mr. Snehasish Chakraborty, Adv.]	For SCC (SBI)
Mr. Sumit Bisnoi]	Liquidator of Gujarat NRE in person
Ms. Uarsha Bagri,]	Liquidator of Bharat NRE Coke Ltd.
Mr. Rishav Dutt, Adv.]	For Respondent

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Mr. Debnath Ghosh, Adv.
Mr. Soumyajit Mishra, Adv.

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**For Respondent No. 2 in
IA(I.B.C)/1176(KB)2024**

ORDER

Per: D. Arvind, Member (Technical):

1. The Court congregated through hybrid mode.
2. Heard Ld. Counsels for the parties.
3. This application has been preferred by **Varsha Bagri, the Liquidator of Bharat NRE Coke Limited** (hereinafter referred as “**Applicant**”) against **Sumit Binani, the Liquidator of Gujarat NRE Coke Ltd. and another** (hereinafter referred as “**Respondents**”) seeking:

- “a) Declaration that the alleged sale of power plant situated in the premises of Bharat NRE Coke Limited in favour of respondent No. 2 Mono Steel (India) Ltd. is illegal, null and void;*
- b) Appoint an expert surveyor and valuer to assess the quantum of loss and damage caused by the respondents upon the assets of Bharat NRE Coke Limited while removing the power plant.*
- c) Appropriate direction to be given for restitution and repair of the said power plant by respondent No. 1 and 2 and are make payment of necessary compensation in this regard.*
- d) Injunction restraining the respondents and each of them and/or their main agents from entering upon the factory premises of Bharat NRE Coke Limited or from exercising any purported right of ownership in respect of said power plant and/or any other assets and properties of Bharat NRE Coke and/or of the said power plant.*
- e) To direct the respondent to deposit a sum of Rs. 18,13,61,616/- being the proceeds of sale received by the respondent No. 1 for*

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the sale of power plant situated over the said property in the joint common pool that will proceed the joint sale to be carried out by the liquidators of Bharat NRE Coke Ltd. and Gujarat NRE Coke Ltd.”

Factual Matrix:

- 4.** Bharat NRE Coke Ltd. is the absolute owner of 79.09 acres of land forming part and parcel of the survey Nos. 85(P) to 87(P), 93(P) to 99(P) and 111(P) in village Mummigatti, Garag Taluk, Dharwad District, Karnataka at Belur Industrial Area. Considering the factual position that the plant and machineries of both Bharat NRE Coke Ltd. and Gujarat NRE Coke Ltd. are situated in each other's land, it was considered imperative that there shall be a joint sale property, along with all the machineries present there in order to ensure maximisation of value of assets of the companies in liquidation. The possession of the entire factory premises and lands of Bharat NRE Coke Ltd. was with M/s. Jeju Metals Private Ltd. and by virtue of an Order passed by us dated 20.03.2024, Jeju Metals was directed to hand over the possession of the factory to the applicant. It may be relevantly stated that the promoters, majority shareholders and directors of Bharat NRE Coke Ltd. and Gujarat NRE Coke Ltd. were the same.
- 5.** There is a power plant situated over an area of approximately 20 acres constructed on the land belonging to Bharat NRE Coke Ltd. though the power plant belongs to Gujarat NRE Coke. The applicant became aware that respondent No. 1 has sold this power plant to the respondent No. 2 Mono Steel (India) Ltd. for a sum of Rs. 18,13,61,616/-. The respondents had deployed numerous workmen

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in the said property in Dharwad who were cutting and removing of the equipment of power plant that is attached to the said property and in the process causing damage to the property belonging to Bharat NRE Coke Ltd. Hence this application has been filed seeking necessary reliefs as mentioned in Para 3 of this Order.

Ld. Counsel for Applicant:

6. Ld. Counsel for the applicant produced photographs of power plant belonging to Gujarat NRE Coke Ltd. that is situated on the land of Bharat NRE Coke Ltd. Ld. Counsel produced two sets of photographs, one before the plant was dismantled and being removed and the other one, the current status where equipment has been cut and being removed by the workmen employed by the respondents. Photographs before the removal of power plant have been annexed in Page No. 53 to 57 of the application and photographs after cutting of the plant have been annexed at Pages No. 53 to 65 of the application.

7. Relying on the respondent No. 1's response by way of e-mail dated 03.06.2024, Ld. Sr. Counsel for the applicant submits that the men employed by the respondents No. 1 and 2 have damaged the properties of Bharat NRE Coke Ltd. while removing the power plant belonging to Gujarat NRE Coke Ltd. IN the said e-mail, the respondent No. 1 communicates as under:

“It is informed that the successful bidder concerned has confirmed that they shall repair the same without any cost to the undersigned or to the liquidator of Bharat NRE Coke Limited.”

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8. Ld. Sr. Counsel submits that this is a clear admission of damage of the property. However, in another e-mail addressed on 08.06.2024, the respondent No. 1 declined to appoint official for assessing the damage stating as under:

“The undersigned through his e-mail dated 03rd June, 2024 has already communicated that the successful bidder concerned in willing to repair the damage caused by them due to removal/dismantling of our power plant equipment sold to them. There is no need for appointment of a professional for assessing the damage when the same has been identified and agreed to repaired immediately by the successful bidder.”

9. Ld. Sr. Counsel submits that there is a need for appointment of government approved surveyor to assess the damage to make sure that applicant’s assets are properly assessed, so that steps be taken to get the same repaired and restored. Ld. Counsel also submits that sufficient compensation for the damages will have to be assessed and awarded. Accordingly, Ld. Sr. Counsel for the applicant presses for reliefs mentioned in Para 3 of this Order.

Ld. Counsel for CoC:

10. Ld. Counsel for CoC submits that this application has been filed without the written authorization of shareholders committee of Bharat NRE Coke Ltd. in terms of Regulation 31A (6A) of the Liquidation Process Regulation 2016. Sale notice date was 01.04.2023, however, an intimation of sale was given to the applicant by way of e-mail dated 14.01.2023. This is a last-minute attempt to stop the sale. Sale stood concluded more than a year ago

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and INR 18 crores has been received and appropriated by financial creditor and at this stage sale cannot be interdicted.

- 11.** Argument that power plant is an immovable property and has to be sold jointly is erroneous. To this proposition the Ld. Counsel relies on a case law rendered in ***Commissioner of Central Excise, Ahmedabad Vs. Solid and Correct Engineering Works and Ors. (2010) 5 SCC 122*** wherein it has been held that what can be removed and affixed elsewhere is not immovable property.
- 12.** Ld. Counsel further submits that only joint sale of coke plant has been agreed and not the power plant and in the current case only power plant has been sold. The liquidator and the successful bidder have agreed to the damages caused and have also agreed to repair the damages. Ld. Counsel further submits that the damages are minimum and unnecessarily magnified by the applicant to prevent the conclusion of sale. Final assessment of loss caused, attributable to the removal of power plant is possible only when the plant is finally removed and assessment and valuation be done. At this stage, when still some plant and machineries are being removed some minor but usual wear and tear to the premises are still likely.
- 13.** Ld. Counsel further submits that the auction purchaser is willing to repair and restore the premises of Bharat NRE Coke Ltd. Ultimately, respondent No. 1 is equally interested in restoring the properties of Bharat NRE Coke, as it has been proposed to conduct joint sale of coke plants of both the entities for the purpose of maximisation of the value of the corporate debtors.

Ld. Counsel for Respondent:

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- 14.** Ld. Counsel for respondent submits that power plant is not a part of joint sale as it has already been sold in April 2023, while the assets of the power plant of Gujarat NRE Coke Ltd. were being removed by respondent No. 1/respondent No. 2 recently due rainstorm, a power plant chimney fell on the shed of Bharat NRE and a boiler on the railway lines causing some external damage. The respondent immediately took up to respondent No. 2 to ensure that the damage caused by respondent No. 2 is repaired. The respondent No. 2 also confirmed that the cost of repairing shall be borne by them. Therefore, applicant's contentions that the plant's equipment/assets of power plant cannot be removed till such time the assets of Bharat NRE Coke are restored is not acceptable.
- 15.** Therefore, the Ld. Counsel submits that the removal of power plant which has already sold should not be interfered under the above said facts and circumstances.

Analysis and Findings:

- 16.** We find that respondent No. 2 has categorically and univocally admits repairing the damaged plant belonging to Bharat NRE assets at its cost. Respondent No. 1 also undertakes responsibility for ensuring the same. In order to pre-empt any dispute that can arise regarding the extent of damage, compensation payable, the manner in which the repairs are carried out etc. we feel appropriate to that an independent surveyor be appointed who will inspect the site and furnish a report to the stakeholders committee of both the entities.
- 17.** Before pronouncement of this order, the Ld. Counsel for the respondent pointed out that the Applicant Bharat NRE has appointed a surveyor unilaterally without consulting SCC of the
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respondent. We find that lenders to both the entities are by and large the same. It will be in their own interest to appoint surveyor mutually acceptable to the SCC of both the companies.

- 18.** Therefore, such unilateral appointment by the Applicant is not taken into cognizance. Appointment of an Independent surveyor approved by both the companies of SCC may be done within a week from the date of pronouncement of this order and within a week thereafter, the surveyor should submit his report to both the Liquidators for information and action by Respondent 1 and 2.
- 19.** On receipt of the report, the respondent 1 will take it up with Respondent No. 2 herein who should confirm that the repair will be carried out as assessed for the restoration of assets of Bharat NRE Coke or compensation as per the report will be paid. The entire exercise may be carried out strictly within the time frame provided in para 18 of this order and till such time Respondent 1 and 2 shall desist from taking any action with regard to removal of power plant's equipment from the site of Bharat NRE.
- 20.** This direction, however, would not impact the already removed equipment/parts of power plant till date of this order.
- 21.** In interest of both the companies in liquidation, we feel it appropriate not to consider the defence taken by CoC with regard to authorisation not being given to the liquidator for filing this application. However, liquidator of Bharath NRE is hereby directed to get prior approval of SCC before filing such application in future.

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- 22.** Accordingly, **Prayer c) and d)** are allowed as per the direction mentioned above in para 18 and 19 of this order.
- 23.** We do not feel that other prayers can be granted. Accordingly, this **I.A. (I.B.) No. 1176/KB/2024** is **disposed of**.
- 24.** Certified copy of this order, if applied for with the Registry be supplied to the parties in compliance with all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

Signed on this, the 3rd day of July, 2024.

PH(PS)