

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

**I.A. (IB) No. 1857/KB/2023**

**In**

**Company Petition (IB) No. 1560/KB/2018**

*An application under Sub Section (5) of Section 60 the Insolvency and Bankruptcy Code, 2016, read with Clause (b) of Sub Section (1) of Section 35, Sub Section (1) of Section 43 read with Section 44, Section 66 and Section 67 of the Insolvency and Bankruptcy Code, 2016.*

**IN THE MATTER OF:**

**SPACE MATRIX PRIVATE LIMITED (IN LIQUIDATION)**

**... Corporate Debtor.**

**And**

**IN THE MATTER OF:**

**Soumitra Lahiri**, (Registration number – IBBI/IPA-001/IP-P00734/2017-18/11232) Flat No – 14D & E, Tower -32, Genexx Valley, Joka, Diamond Harbour Road, Kolkata – 700104.

**... Liquidator/ Applicant.**

**Versus**

**1. Kapil Shroff**, Promoter Director of Space Matrix Private Limited, 5, Lower Rowdon Street, Aakash Deep. P.O. Lajpat Rai Sarani, Kolkata – 700020.

**... Respondent No. 1.**

**2. Swaraj Dey**, Director of Space Matrix Private Limited & Starpoint Distributors Private Limited, 190, Kalibari, Second Land, Ward No.2 Barrackpur II, Kolkata – 700131.

**... Respondent No. 2.**

**3. CA Sanjoy Lodha**, Membership No.58266, Partner, J Jain & Company, Chartered Accountants, Statutory Auditors of Space Matrix Private Limited, having its address at 23A Netaji Subhas Road, 11<sup>th</sup> Floor, Room No. 44, Kolkata -700001.

**... Respondent No. 3.**

**4. Jacys Infrastructure Private Limited**, CIN U70109WB2011PTC163590 having its registered office at Room – 15, 11 Clive Row, Kolkata – 700001.

**... Respondent No. 4.**

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**5. Panchshree Housing Private Limited,** CIN U45400WB2013PTC194569, having registered office at 50 Burtolla Street, Kolkata -700001.

**... Respondent No. 5.**

**6. Mukhilan Retailers Private Limited,** CIN-U74999WB2013PTC193310 having registered office at 97/98 G.T. Road (N), Salkia, Howrah 711106.

**... Respondent No. 6.**

**7. Isleberg Cement Private Limited,** CIN-U24100WB2013PTC192965, having registered office at 162/164, M G Road, Kolkata- 700007.

**... Respondent No. 7.**

**8. Panchwati Residency Private Limited,** CIN-U45400WB2013PTC194572 having registered office at 50 Burtolla Street, Kolkata -700001.

**... Respondent No. 8.**

**9. Blockdeal Software Marketing Private Limited,** CIN-U72300WB2013PTC192887 having registered office at 5 Loudon Street, Park Circus, Kolkata -700017.

**... Respondent No. 9.**

**10. Mechfast Engineering Private Limited,** CIN-U27100WB2011PTC168219 having registered office at 20B Abdul Hamid Street, P.S. Hare Street FLAT NO.6, 6<sup>th</sup> Floor, Kolkata 700069.

**... Respondent No. 10.**

**11. Dipak Agarwala,** residing at Redwood Apartment, 149 Sombhu Dasgupta Sarani, Opposite – Pragati Sangha Club, Bhadrakali, Uttarpara Kotrung, Hooghly – 712232.

**... Respondent No. 11.**

**12. Ujjwal Agarwala,** residing at Redwood Apartment, 149 Sombhu Dasgupta Sarani, Opposite – Pragati Sangha Club, Bhadrakali, Uttarpara Kotrung, Hooghly – 712232.

**... Respondent No. 12.**

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**13. Amar Agarwal HUF**, of 4 Ho Chi Min Sarani, 5<sup>th</sup> Floor, Kolkata – 700071.

**... Respondent No. 13.**

**14. Savita Devi Jhunjhunwala**, residing at P72 CIT Road, Scheme VIMS, Phool Bagan, Kolkata – 700054.

**... Respondent No. 14.**

**15. Navodaya TrimpeX Private Limited**, CIN-U51109WB1994PTC063579 having registered office at Room No.3, 6<sup>th</sup> Floor Premises No.20B, Abdul Hamid Street, Kolkata 700069.

**... Respondent No. 15.**

**16. Sangita Sales Private Limited**, CIN-U51909WB1992PTC054910 having registered office at Room No. 4, 6<sup>th</sup> Floor Premises No. 20B, Abdul Hamid Street, Kolkata 700069.

**... Respondent No. 16.**

**17. Randhir Kumar**, residing at 12 Ankita Apartment, 1040 S.H.K.B Sarani, Kolkata – 700074.

**... Respondent No. 17.**

**Date of Pronouncement: July 01, 2024.**

**CORAM:**

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

**Appearances:**

**For the Liquidator:** Mr. Mayukh Roy, Adv.  
Mr. Vikram Wadehra, Adv.  
Mr. Soumitra Lahiri, Adv.

**For the SCC:** Ms. Sreenita Thaker, Adv.  
Ms. Sneha Singhania, Adv.

**For Customs Authority:** Mr. Vipul Kundalia, Adv.  
Mr. Abhradip Maity, Adv.

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**For the Suspended  
Management of  
the Corporate Debtor:**

**Mr. Mainak Bose, Adv.  
Mr. Sanawal Tibrewal, Adv.**

**For the  
Falta Special Economic Zone  
in I.A. (IB)/320(KB)2021:**

**Mr. Krishnika Chatterjee, Adv.**

**ORDER**

**Per: D. Arvind, Member (Technical)**

1. The Court is congregated through hybrid mode.
2. The instant application has been preferred under Section 60(5) read with Sections 35(1)(b), 43, 44, 66, 67 of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code" by Soumitra Lahiri, the Liquidator of the Space Matrix Private Limited, hereinafter referred to as "Applicant" against one Mr. Kapil Shroff, Promoter Director of Space Matrix Private Limited (Respondent No.1), Swaraj Dey, Director of Space Matrix Private Limited (Respondent No.2), CA Sanjoy Lodha, Statutory Auditor of Space Matrix Private Limited (Respondent No.3) and others seeking following reliefs:-
  - a. *To pass an order for liquidator to be handed over possession of flat at 5<sup>th</sup> floor, Building No. 1, Block D, Buro Shibtolla Main Road, Kolkata standing in the name of the Corporate Debtor;*
  - b. *To pass an order for liquidator to be handed over possession of entire area on the 6<sup>th</sup> floor, 20B Abdul Hamid Street, Kolkata in terms of paragraph (a) above;*

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- c. To pass an order stating that sub leases given out to be violative of Section 43 of the Code and as stipulated in clause (a) to sub section (1) of Section 44 transfer back to the Corporate Debtor all the sub lease created as tabulated in the said paragraph;*
- d. To pass an order to pierce the corporate veil of the Respondent No.4 and require the Respondent No. 4 and the Respondent No. 1 to jointly and/or severally, repay to Corporate Debtor Rs. 1,99,78,000/-*
- e. To pass an order stating all transactions pertaining to sub leasing of space to various vendors by Space Matrix Private Limited to be violative of Section 66 of the Insolvency and Bankruptcy Code, 2016 and Mr. Kapil Shroff Promoter Director and the Statutory Auditor to repay, jointly and/or severally to Corporate Debtor a sum of Rs.5,14,61,000/-*
- f. To pass such further and other orders and directions as the nature and circumstances of the case may require and as this Hon'ble Tribunal may deem fit and proper.*

**3. FACTUAL MATRIX:**

**3.1.** That, the Corporate Debtor, pursuant to an application under Section 7 of the I&B Code filed by Union Bank of India, had been admitted to CIRP on 28.08.2019, and Mr. Sanjai Kumar Gupta was appointed as Interim Resolution Professional of the Corporate Debtor. At 3<sup>rd</sup> CoC meeting on 14.11.2019, the CoC confirmed the appointment of IRP as Resolution Professional (RP).

**3.2.** Since, no resolution plan was received during the CIRP, at 5<sup>th</sup> CoC meeting on 14.01.2020, the CoC had adopted the resolution

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with 86% voting share to recommend liquidation of the Corporate Debtor which was approved by this Adjudicating Authority on 24.02.2020 and the applicant Soumitra Lahiri was appointed as the Liquidator of the Corporate Debtor.

**3.3.** In one of the SCC meetings, it was suggested that an asset search should be conducted before proceeding for dissolution of the Corporate Debtor and accordingly, Unified Management Limited (asset search agency) was appointed in 27<sup>th</sup> SCC meeting held on 18.08.2023.

**3.4.** The Asset Search Agency submitted its report on 19<sup>th</sup> August, 2023. The Agency has found one property in the name of the Company as on 19<sup>th</sup> August, 2023. The Agency also found that eight properties of the corporate debtor had been sold few days/months prior to initiation of CIRP and some properties have been sold on the date of commencement of the CIRP. Therefore, this application seeking cancellation of all such sale deed executed and also bring on record to the Liquidation estate, the one property which is still in the name of the Corporate Debtor as per the search report.

**4. LEARNED COUNSEL FOR THE APPLICANT:**

**4.1.** The property, flat 5/7 in South 24 Parganas Behala, Kolkata Municipal Corporation, Buro Shibtoia Main Road has been purchased in the name of the Corporate Debtor and registered with the registering authority on 30.03.2012. However, this Flat is not appearing as an asset in the books of the Corporate Debtor, the Applicant submits that this asset should belong to the liquidation

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estate of the Corporate Debtor and, accordingly, the Respondent must be directed to handover the original document along with the possession of the flat immediately to the liquidator to be included into the liquidation estate of the Corporate Debtor.

**4.2.** The Applicant further submits that the Corporate Debtor on 25<sup>th</sup> October, 2011 executed a deed for availing lease of 2289 Sq. ft. and 4251 Sq. ft. a floor space at 6<sup>th</sup> floor, 20B Abdul Hamid Street, Kolkata – 700001 for a period of 141 years renewable for term of further 99 years.

**4.3.** The Corporate Debtor has given out almost the entire property on rental/ lease basis to various parties on various dates retaining for its own use 447.8 sq. ft. The liquidator submits that all the rental due from various parties/lessee will have to form part of liquidation estate and the same should be recovered. Even the possession of the said property should be given back to the liquidator for appropriate action as per the decision that may be taken by the stakeholder's committee.

**4.4.** The Liquidator further submits that the Corporate Debtor on 31<sup>st</sup> March, 2012 sub leased the property comprising of 4251 Sq. ft. at 6<sup>th</sup> floor, 20B Abdul Hamid Street, Kolkata – 700001 for a period of 20 years against consideration of Rs. 2.75 lakhs while Corporate Debtor had paid Rs. 3,04,18,515/- to take the property on lease basis. Thus, this is not only fraudulent transaction and also an undervalued transaction and consequently at least the lease rent paid by the Corporate Debtor to get hold of the lease property should be recovered from the Respondent No. 4. None of these transactions

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were recorded in the financials of the Corporate Debtor claims, the Applicant. All these sub lease of various portions of 6<sup>th</sup> Floor of 20B Abdulla Amin Street is without the knowledge of any of the lender/consortium of banks of the corporate debtor. The Respondent No.4 was incorporated for such transaction, claims the applicant.

**4.5.** In view of above, the liquidator prays for confirming/ executing the reliefs claimed in the application.

**5.** We find that no reply has been filed in spite of several opportunities. When the matter was finally heard on 15<sup>th</sup> December 2023, after hearing learned Counsels for both the parties, we directed to file written notes of arguments within a period of three days. Till date no written note of argument has been filed. Therefore, we proceed based on submissions made during the course of hearing by the Learned Counsel for the respondents, and the applicant.

**6. ANALYSIS AND FINDINGS:**

**6.1.** The foundation of the application is the search report of Unified Management Private Limited dated 19<sup>th</sup> August 2023, and for ready reference the same is extracted and reproduced.




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SL No.	PARTICULARS	HOLDING & PLOT No.	DEED & ASSESSMENT No	DATE OF REGD.	DATE OF COMPLETION
A.	District: South 24-Parganas, P.S. Behala, Kolkata Municipal Corporation, Bura Shibtala Main Road, , Ward: 117, Floor No. : 5.	HOLDING No. -: 5/7.	I- 190102855/2012, A.R.A. - I KOLKATA.	30/03/2012	30/03/2012



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SL No.	PARTICULARS	HOLDING & PLOT No.	DEED & ASSESSMENT No	DATE OF REGD.	DATE OF COMPLETION
A.	District: Kolkata, P.S. Hare Street, Municipality: KOLKATA MUNICIPAL CORPORATION,, Road: Abdul Hamid Street, , Ward: 46, Floor No : 6	HOLDING No. -: 20B.	I- 190202159/2019, A.R.A. - II KOLKATA.	31/05/2019	07/06/2029
B.	District: Kolkata, P.S. Hare Street, Municipality: KOLKATA MUNICIPAL CORPORATION,, Road: Abdul Hamid Street, , Ward: 46, Floor No : 6	HOLDING No. -: 20B.	I- 190202499/2019, A.R.A. - II KOLKATA.	17/06/2019	24/06/2019
C.	District: Kolkata, P.S. Hare Street, Municipality: KOLKATA MUNICIPAL CORPORATION,, Road: Abdul Hamid Street, , Ward: 46, Floor No : 6	HOLDING No. -: 20B.	I- 190204477/2019, A.R.A. - II KOLKATA.	20/08/2019	02/09/2019



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D.	District: Kolkata, P.S. Hare Street, Municipality: KOLKATA MUNICIPAL CORPORATION,, Road: Abdul Hamid Street, , Ward: 46, Floor No : 6	HOLDING No. -: 20B.	I- 190204478/2019, A.R.A. - II KOLKATA.	20/08/2019	02/09/2019
E.	District: Kolkata, P.S. Hare Street, Municipality: KOLKATA MUNICIPAL CORPORATION,, Road: Abdul Hamid Street, , Ward: 46, Floor No : 6	HOLDING No. -: 20B.	I- 190204496/2019, A.R.A. - II KOLKATA.	21/08/2019	04/09/2019
F.	District: Kolkata, P.S.: Hare Street, Municipality: KOLKATA MUNICIPAL CORPORATION,, Road: Abdul Hamid Street, , Ward: 46, Floor No : 6	HOLDING No. -: 20B.	I- 190204710/2019, A.R.A. - II KOLKATA.	28/08/2019	06/09/2019
G.	District: Kolkata, P.S. Hare Street, Municipality: KOLKATA MUNICIPAL CORPORATION,, Road: Abdul Hamid Street, , Ward: 46, Floor No : 6	HOLDING No. -: 20B.	I- 190204711/2019, A.R.A. - II KOLKATA.	28/08/2019	06/09/2019
H.	District: Kolkata, PS: Hare Street, Municipality: KOLKATA MUNICIPAL CORPORATION,, Road: Abdul Hamid Street, , Ward: 46, Floor No : 6	HOLDING No. -: 20B.	I- 190204712/2019, A.R.A. - II KOLKATA.	28/08/2019	06/09/2019



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**6.2.** We find that property listed in Serial No. A of the report with following address is in the name of the company, though in company's books it is, however, has not been recorded as asset. As long as it is in the name of the company, we can infer that this has been brought by the company using its funds, directly or indirectly. It would be inconceivable to infer otherwise as promoters are no one else for that matter would use their funds, to acquire a property in the name of the Corporate Debtor. Therefore, this property acquired on lease basis for a period for 142 years should be handed over to the liquidator along with documents of title/ conveyance deed etc. to be included in the liquidation estate of the Corporate Debtor.

**6.3.** It appears that since the property has not been included as asset in the Books of Accounts of the Corporate Debtor even the sub-lease given by the Corporate Debtor to various lessee have not come into the Books of Accounts of the Corporate Debtor and consequently, all the rentals/leased amounts payable/paid by the lessees should be paid back to the liquidator to be included in the liquidation estate. It is apparent that Respondent No. 4 has been formed to confirm these lease/ sub-lease and consequently, whatever money that has been received or receivable by Jacy Infrastructure Private Limited (Respondent No.4) is recoverable. The breakup of sub-lease and the consideration involved in sub-lease have already been produced as a table in in para 6.1. of the Order.

**6.4.** In the absence of any counter to the numbers/amount mentioned in the table, the amount recoverable form the Respondent jointly and severally a sum of **Rs. 7,14,39,000/-** as contribution to

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the **liquidation asset** of the Corporate Debtor. Out of Rs.7,14,39,000/- sum of **Rs. 1,99,78,000/-** is to be recovered from Respondent No.4 who in our view has been specifically formed for executing the above transactions.

**6.5.** Therefore, we grant reliefs claimed by the Liquidator is tabulated herein under:

<b>Sl. No.</b>	<b>Reliefs sought for</b>	<b>Our order thereon</b>
a.	<i>To pass an order for liquidator to be handed over possession of flat at 5<sup>th</sup> floor, Building No. 1, Block D, Buro Shibtolla Main Road, Kolkata standing in the name of the Corporate Debtor;</i>	Allowed.
b.	<i>To pass an order for liquidator to be handed over possession of entire area on the 6<sup>th</sup> floor, 20B Abdul Hamid Street, Kolkata in terms of paragraph (q) above;</i>	Allowed.
c.	<i>To pass an order stating that sub leases given out to be violative of Section 43 of the Code and as stipulated in clause (a) to sub section (1) of Section 44 transfer</i>	Allowed.

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	<i>back to the Corporate Debtor all the sub lease created as tabulated in the said paragraph.</i>	
d.	<i>To pass an order to pierce the corporate veil of the Respondent No.4 and require the Respondent No. 4 and the Respondent No. 1 to jointly and/or severally, repay to Corporate Debtor Rs. 1,99,78,000/- .</i>	Allowed.
e.	<i>To pass an order stating all transactions pertaining to sub leasing of space to various vendors by Space Matrix Private Limited to be violative of Section 66 of the Insolvency and Bankruptcy Code, 2016 and Mr. Kapil Shroff Promoter Director and the Statutory Auditor to repay, jointly and/or severally to Corporate Debtor a sum of Rs.5,14,61,000/-.</i>	Partly Allowed. Only Mr. Kapil Shroff, Promoter Director and the Directors are liable to pay the amount.

7. We don't find any basis for including Statutory Auditors as a respondent, for the purpose of recovery. All that can be alleged is negligence on the part of him in not collecting sufficient information or

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records from the suspended board and its team while doing the audit and certifying the financials.

**8.** Accordingly, the application is **disposed of**.

**9.** The certified copy of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties, subject to compliance with all requisite formalities.

**D. Arvind  
Member (Technical)**

**Bidisha Banerjee  
Member (Judicial)**

**This Order is signed on the 01<sup>st</sup> Day of July, 2024.**

SG\_Steno/ Bose, R. K. [LRA]