

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 207
(IB)-230(PB)/2021
Contt. Pett.-38/2023, IA- 1435/2024,
New IA- 1823/2024

IN THE MATTER OF:

Kaliber Associates Pvt. Ltd. ... Applicant/Petitioner
(Thorough its Liquidator Mohan Lal Jain)

Versus

HPT Constructions Private Limited ... Respondent

Under Section: 7 of IBC, 2016 (Liq.)

Order delivered on 02.05.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH
HON'BLE MEMBER (T)

PRESENT:

For the Respondent : Adv. Mayank Goel for R-3 to R-6

For the Liquidator : Adv. Sanjeev Kataria, Adv. Rakhi Tyagi, Adv. Gulshan
Kumar Gupta

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

IA-1435/2024: Mr. Mayank Goel, Ld. Counsel appearing for Respondent Nos. 3 to 6 viz., Bullion Infrastructure Pvt. Ltd., Mr. Roop Kishore Madan, Ms. Chhavi Sharma Das, Mr. Sanjay Thukral, submitted that the said Respondents are third parties and the application filed under Section 66 of IBC, 2016 against them is not maintainable. To buttress the plea he relied upon the Judgment of Hon'ble Supreme Court in **Gluckrich Capital Pvt. Ltd. vs. The State of West Bengal & Ors.** (Special Leave Petition (Crl.) No. of 2023). The relevant excerpt of the Judgment reads thus:-

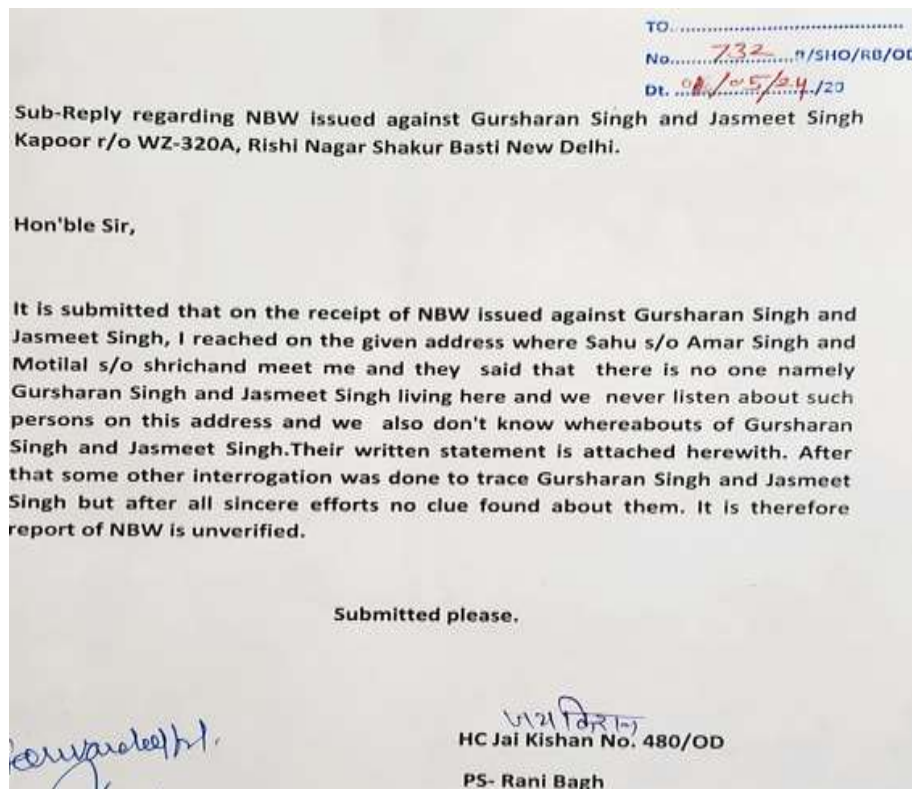
“10. We are of the considered opinion that in such circumstances, it is for the Resolution Professional or the successful resolution applicant, as the case may be, to take such civil remedies against third party, for recovery of dues payable to corporate debtor, which may be available in law. The remedy against third party, however, is not available under Section 66 of IBC, and the civil remedies which may be available in law, are independent of the said Section.”

In view of the aforementioned Judgment passed by Hon'ble Supreme Court, the notice issued to Respondent Nos. 3 to 6 is discharged.

At this stage, when we had dictated the order, Mr. Sanjeev Kataria, Ld. Counsel for the Liquidator entered his appearance and submitted that the facts of the present case are distinct from those involved in Judgment passed by Hon'ble Supreme Court in Gluckrich Capital Pvt. Ltd.(ibid).

Since at this stage Mr. Sanjeev Kataria wants to make submission in the matter, the hearing qua the IA is deferred to 27.05.2024.

Contt. Pett.-38/2023: Non-bailable warrant for production of the contemnors could not be executed. The report of the executing agency reads thus:-



Issue proclamation qua production of the contemnors. Let a written proclamation for appearance of the contemnors on 27.05.2024, before this Tribunal be published as per procedure laid down in Section 82(2) of the Cr.P.C. The Petitioner is directed to deposit the requisite expenses, to be

assessed by Registrar with the Registry and would take out the required statement for compliance.

List on 27.05.2024.

IA-1823/2024: List the IA on 27.05.2024.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)