

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

**I.A (IB) No.550/KB/2024**

**In**

**C.P. (IB) No.482/KB/2019**

*An application under Section 60(5) of the Insolvency & Bankruptcy Code,  
2016 read with Rule 11 of the NCLT Rules, 2016:*

**IN THE MATTER OF:**

**Stressed Assets Stabilization Fund carrying on its business, inter alia from  
3<sup>rd</sup> Floor, D-Wing, IDBI Tower, WTC Complex, Cuffe Parade, Mumbai-400005**

**... Financial Creditor**

**Versus**

**ER Textiles Limited, a company within the meaning of the Companies Act,  
2013 and having its registered office at 1/433, Gariahat Road, Block-4A (4<sup>th</sup>  
Floor), Jodhpur Park, Kolkata-700068, West Bengal.**

**... Corporate Debtor**

**AND**

**IN THE MATTER OF:**

**Vajram Estates Pvt Ltd. having its registered office at 3/28/54/1, Brindavan  
Gardens, Guntur-522006**

**... Applicant**

**Versus**

**Anup Kumar Singh, Chairman of the Monitoring Committee of ER Textiles  
Limited having its office at Suite 1B, 1<sup>st</sup> Floor, 22/28A, Manoharpukur Road,  
Deshopriya Park, Kolkata-700029.**

**... Respondent**

**Date of Pronouncement of order: 5<sup>th</sup> June 2024**

**CORAM:**

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)**

**SHRI. D.ARVIND, HON'BLE MEMBER (TECHNICAL)**

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**APPEARANCE**

**Mr. Ratnanko Banerji, Sr. Adv. ] For the Applicant in  
IA(I.B.C)/440(KB)2024**

**Mr. Aman Agarwal, Adv. ] IA(I.B.C)/550(KB)2024**

**Ms. Madhuja Barman, Adv. ] IA(I.B.C)/796(KB)2024**

**Mr. Deep Roy, Adv**

**Mr. Joy Saha, Sr. Adv. ] For the Applicant/RP in**

**Mr. Ritoban Sarkar, Adv. ] IA(I.B.C)/410(KB)2024**

**Mr. Avishek Das, Adv. ]**

**Mr. T. V. Suresh Kumar, Adv. ] For the Respondents in**

**Mr. N. A. Srinivasan, Adv. ] IA(I.B.C)/410(KB)2024**

**Mr. Gokulakrishnan, Adv. ] IA(I.B.C)/440(KB)2024**

**ORDER**

**Per: Bidisha Banerjee, Member (Judicial)**

1. The court congregated through hybrid mode.
2. Ld. Counsels/Sr. Counsels were heard.
3. This application has been preferred to seek the following relief.
  - a. An order granting Application extension of time by 90 days on and from 19<sup>th</sup> March 2024 i.e, till 17<sup>th</sup> June 2024 to make payments of outstanding resolution plan amount to the creditors and stakeholders of the Corporate Debtor as proposed in the approved resolution plan.
  - b. An order granting exclusion of time taken by the Applicant to obtain possession of the Corporate Debtor's land situated at 2/1, Nariganapuram Village, Berigai Post, Hosur-635105, Tamil Nadu along with plant and machinery thereon from the time to implement the Resolution Plan in terms of the Resolution Plan approved by this Adjudicating Authority vide its order dated 20<sup>th</sup> December 2023 passed in IA (IB) 1539/KB/2022.

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**4. FACTS IN NUTSHELL**

**4.1** An application under section 7 of the Insolvency and Bankruptcy Code, 2016 was filed against ER Textiles Limited.

**4.2** By an order dated 14<sup>th</sup> January 2022 the said application was admitted. The Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) was initiated against ER Textiles Limited.

**4.3** On 15<sup>th</sup> October 2022, the resolution plan proposed by the Applicant herein was approved by the CoC with 100% votes.

**4.4** The Corporate Debtor (**ER Textiles Limited**) was in control and possession of a piece of land located at 2/1, Nariganapuram Village, Berigai Post, Hosur-635105, Tamil Nadu with plant and machinery standing thereon (hereinafter referred to as “**the said premises**”).

**4.5** Prior to commencement of CIRP, the said premises had purportedly been granted on lease to one, Annapoorani Textiles Pvt Ltd. (“**Annapoorani**” for **short**) by a Memorandum of Understanding dated 19<sup>th</sup> February 2018.

**4.6** In and around February 2023, the Corporate Debtor had terminated the MOU and called upon Annapoorani to quit and vacate the said premises and deliver khas, vacant and peaceful possession of the said premises to the Corporate Debtor.

**4.7** On Annapoorani’s failure to vacate the land, an application was filed by Anup Kumar Singh, the Resolution Professional of ER Textiles seeking inter alia directions upon Annapoorani to handover the vacant and peaceful possession of the land.

**4.8** On 20<sup>th</sup> December 2023, in **IA (IB) No.1539/KB/2022** the resolution plan proposed by the Applicant was approved by this Adjudicating Authority.

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**4.9** Pursuant thereto the applicant had made several attempts to visit the said premises with the intention to take possession but has always met with stringent resistance at the entrance.

**4.10** Vide an order dated 31<sup>st</sup> January 2024, this Adjudicating Authority was pleased to dispose of the applications being **IA (IBC) 300/KB/2023** and **IA (IBC) 1200/KB/2023** whereby Annapoorani was directed to hand over vacant and peaceful possession of the said premises to the Corporate Debtor within a period of two weeks from the expiry of a lease in term of a MOU. The order dated 31<sup>st</sup> January 2024 reads thus

*“12. We have considered the rival contentions. This Adjudicating Authority may not be empowered to order eviction in a subsisting lease. However, the effectuate implementation of provisions of Code, we permit RP to take possession of the property in question soon after expiry of the lease period in accordance with law.*

*13. Annapoorani Textiles Private Limited is directed to hand over possession of said property in question to the RP within a period of two weeks of expiry of the said lease of the property, in accordance with law.”*

**4.11** Despite communication of the order dated 31<sup>st</sup> January 2024, a letter dated 21<sup>st</sup> February 2024 was addressed to the respondent RP wherein Annapoorani refused to leave the said premises in terms of the order dated 31.01.2024. It alleged that there was another lease dated 12<sup>th</sup> June 2019 executed between the Corporate Debtor and Annapoorani subsisting. They also demanded a sum of Rs. 20.97 crores to leave the said premises.

**4.12** The Applicant to ensure effective implementation of its Resolution Plan took out an application being **IA (IB) No.440/KB/2024 (Vajram Estates Pvt Ltd. Versus Anup Kumar Singh & Anr.)** praying for

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a. Physical inspection and verification of the constructed area with 180 looms, warping, sizing and other machinery located at 2/1,Naringanapuram Village, Berigai Post, Hosur-635105 to the Applicant and its personnel and bankers along with the Respondent no.1 being the Resolution Professional and his representatives.

An order was passed on 28<sup>th</sup> February 2024 inter alia directing Annapoorani to give inspection of the said premises to the Applicant and the local police to render necessary assistance.

**4.13** On 4<sup>th</sup> March 2024, the Applicant visited the said premises to take possession of the said premises. However, Annapoorani failed, neglected and refused to hand over the said premises. The applicant thus alleges that despite termination of its purported lease agreement with the Corporate Debtor and expiry of time granted to vacate the said premises, Annapoorani's refusal to handover possession has a detrimental impact on the implementation of the Resolution Plan proposed by the Applicant.

**4.14** Further out of the total proposed resolution plan outlay of Rs. 65,00,00,000 (Rupees Sixty Five Crores Only), the Applicant has already made payment of a sum of Rs. 28,00,00,000 (Rupees Twenty Eight Crores Only) to the creditors and stakeholders of the Corporate Debtor and an additional sum of Rs. 6,51,00,000 (Rupees Six Crores Fifty One Lakhs Only) has been provided in the form of Performance Bank Guarantee backed by Fixed deposits both totaling to Rs. 34,51,00,000 (Rupees Thirty Four Crores Fifty One Lakhs Only). Yet, the only cash flow generating asset of the Corporate Debtor has not been handed over to the Petitioner.

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**4.16** The Applicant thus seeks extension of a period of 90 days on and from 19<sup>th</sup> March 2024 i.e, till 17<sup>th</sup> June 2024 to make payments in terms of the plan.

**5.** In course of hearing it transpired that both Annapoorani as well as the applicant have assailed the order dated 31.01.2024 for separate reasons.

**6.** Having noted that the applicant has not been able to get possession of the premises in question being 2/1, Nariganapuram Village, Berigai Post, Hosur-635105, Tamil Nadu along with plant and machinery thereon which is stated to be one of the lone assets of the Corporate Debtor, ER Textiles, we allow extension of time by 90 days on and from 19<sup>th</sup> March 2024, i.e, till 17<sup>th</sup> June 2024 to make payments of outstanding resolution plan amount to the creditors and stakeholders of the Corporate Debtor as proposed in the approved resolution plan to ensure fairness qua the applicant, as well as having noted the pendency of appeal before the Hon'ble NCLAT, **we allow the prayer. No costs.**

**7.** A certified copy of the order be issued, if applied for with the Registry upon the necessary compliance of all requisite formalities.

**D. Arvind  
Member (Technical)**

**Bidisha Banerjee  
Member (Judicial)**

**This Order is signed on the 5<sup>th</sup> Day of June, 2024**

Oindrila, K. [LRA]