

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-II)  
KOLKATA**

**IA(I.B.C)/849(KB)2023  
In  
C.P. (IB)/600(KB)2019**

In the matter of:

An application under Section 60 (5) of the Code;

And

In the matter of:

UCO Bank, having its Head Office at 10, Biplabi Trailokya Maharaj Sarani, Kolkata - 700001;

... .. Financial Creditor

Versus

M/s. GIT Textiles Manufacturing Limited, having its registered office at 20, Maharishi Devendra Road, Kolkata – 700007 in the State of West Bengal;

... .. Corporate Debtor

And

In the matter of:

M/s. H.S. Mercantile Limited, having its office at 204 & 208, Mahatma Gandhi Road, Kolkata – 700001;

... .. Applicant

Versus

1. Mr. Ramchandra Dallaram Choudhury, Resolution Professional of M/s. GIT Textiles Manufacturing Limited, 9B, Vardan Tower, NR Vimal House, Lakhudi Circle, Navarangpura, Ahmedabad – 380014;
2. Committee of Creditor of M/s. GIT Textiles Manufacturing Limited, wherein UCO Bank is the sole member, having its Head Office at 10, Biplabi Trailokya Maharaj Sarani, Kolkata – 700001.

... .. Respondents

**IN THE NATIONAL COMPANY LAW TRIBUNL  
KOLKATA BENCH (Court-II)  
KOLKATA**

**IA(I.B.C)/849(KB)2023  
In  
C.P. (IB)/600(KB)2019**

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Date of pronouncement of the Order: 23<sup>rd</sup> April, 2024.

**CORAM:**

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

**Appearance (via video conferencing/physically)**

Mr. Joy Saha, Sr. Adv.	] For the Petitioner in
Mr. Rishav Banerjee, Adv.	] IA(I.B.C)/849(KB)2023
Ms. Suranjana Chatterjee, Adv.	]
Mr. Mainak Bose, Adv.	] For the Resolution Professional
Mr. Arnab Dutta, Adv.	]
Ms. Purna Choudhury, Adv.	]
Mr. Jishnu Chowdhury, Adv.	] For the Suspended Board of
Mr. Kanishk Kejriwal, Adv.	] Directors
Mr. Patita Paban Bishwal, Adv.	]
Mr. Shaunak Mitra, Adv.	] For H.R. Bros. Ltd.
Mr. Dripto Majumdar, Adv.	]
Ms. Madhusmita Senapati, Adv.	]

**O R D E R**

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

1. This Court convened through a hybrid mode.
2. This application has been filed by the applicant H.S. Mercantile Limited to seek the following reliefs:
  - (a) To pass necessary order and/or orders directing the Respondents to not to include the said property of the Corporate Debtor in the Information Memorandum;
  - (b) To pass an order and/or orders directing deletion of the said property in question from any Resolution Plan received in respect of the Corporate Debtor;

**IN THE NATIONAL COMPANY LAW TRIBUNL  
KOLKATA BENCH (Court-II)  
KOLKATA**

**IA(I.B.C)/849(KB)2023  
In  
C.P. (IB)/600(KB)2019**

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- (c) To pass an order and/or orders directing the Respondent Resolution Professional and/or Resolution Applicant, if any, not to deal with and/or extinguish the leasehold interest of the Applicant in the said property in question;
- (d) To pass an order and/or orders directing the Resolution Professional to forthwith handover the said property in question to the Applicant;
- (e) To pass an order directing the Respondent Resolution Professional not to deal with the leasehold interest of the Applicant in the said property in question in the CIRP of the Corporate Debtor and/or not to deal with the leasehold interest of the Applicant in respect of the said property in question under any Resolution Plan of the Corporate Debtor;
- (f) To pass an interim order to stay of approval of the Respondent Resolution Professional, if any, in respect of the Corporate Debtor till the adjudication of this instant application;
- (g) To pass an ad-interim orders in terms of prayers above;
- 3.** Learned Senior Counsel Mr. Joy Saha appearing for M/s. H.S. Mercantile Limited and learned Counsel Mr. Mainak Bose appearing for Resolution Professional were heard at length.
- 4. Facts in a nutshell:**
- 4.1.** The Applicant, H.S. Mercantile Limited claims that it is a lessee/tenant of the Corporate Debtor, GIT Textile pertaining to Land bearing Sub Plot No. 1/A/1, 1/B, 1/C/1 And 1/D, admeasuring about 11223 Sq. Mtrs., situated on land bearing Survey No. 263/A, Old Survey No.263, 249+ 250/1+7 at Mouja: Vasna Lyava, Taluka Sanand, District: Ahmedabad.

**IN THE NATIONAL COMPANY LAW TRIBUNL  
KOLKATA BENCH (Court-II)  
KOLKATA**

**IA(I.B.C)/849(KB)2023  
In  
C.P. (IB)/600(KB)2019**

- 
- 4.2.** That the Applicant had entered into one Memorandum of Agreement dated 2<sup>nd</sup> August, 2007 with M/s. GIT Textile Manufacturing Ltd., the Corporate Debtor, wherein an amount of Rs.1,00,00,000/- (Rupees One crores) was given to the Corporate Debtor for construction of warehouse building on the basis of share of profit. It was decided as per the agreement that if the Corporate Debtor was unable to construct the said warehouse within three years, the property/land in question was required to be given on lease for a period of 99 years with a rider for another 99 years.
- 4.3.** An Agreement of Tenancy dated 1<sup>st</sup> October, 2007 was executed between the Applicant and the Corporate Debtor wherein it was mentioned that the Applicant will pay a rent of Rs.10,000/- (Rupees Ten thousand only) to the Corporate Debtor and an amount of Rs.1,50,00,000/- (Rupees One crore fifty lakhs only) will be paid as security deposit.
- 4.4.** One license agreement dated 10<sup>th</sup> July, 2008 was executed between the Applicant and the Corporate Debtor for a period of six years for temporary use and accordingly, after completion of the said period, the possession of the property was given back to the Applicant in pursuance of the original Tenancy Agreement and Memorandum of Agreement by the Corporate Debtor.
- 4.5.** The Applicant invoked the arbitration clause in the agreement, and as per the agreement a sole arbitrator was appointed and an award was passed for registration of deeds.
- 4.6.** The Applicant claims that pursuant to the execution of the Registered Deeds of Lease in favour of the Applicant for a period of 99 years, the Applicant has acquired right, title and interest over the property in question and accordingly, possession of the

**IN THE NATIONAL COMPANY LAW TRIBUNL  
KOLKATA BENCH (Court-II)  
KOLKATA**

**IA(I.B.C)/849(KB)2023  
In  
C.P. (IB)/600(KB)2019**

---

Applicant was re confirmed by the Corporate Debtor and the Applicant's name has also been duly recorded in Records of Revenue as "Lessee" of the said property in question.

- 4.7.** The Applicant alleges that the UCO Bank forcefully tried to take possession of the said property. The Applicant, thus, approached the Debts Recovery Tribunal-I, Ahmedabad by filing an application being SARFEASI Application No. 115 of 2022 under the SARFEASI Act, 2002 challenging the illegal and wrongful act committed by UCO Bank. The matter is still pending before the Learned Debts Recovery Tribunal.
- 4.8.** The Applicant H.S. Mercantile Limited is aggrieved as the property in question over which it exercises leasehold rights, have been included in the Information memorandum ("IM" in short) by the Resolution Professional ("RP" in short) as an asset of the Corporate Debtor ("CD" in short).
- 4.9. The list of dates/events have been tabularized as under:**

<b>Sl. No.</b>	<b>Dates</b>	<b>Particulars</b>
01.	02.08.2007	The Applicant had entered into one Memorandum of Agreement with M/s. GIT Textile Manufacturing Ltd of Rs.1,00,00,000/-
02.	01.10.2007	An Agreement of Tenancy was executed for Plots Numbered 1/A/1, 1/B, 1/C/1 and 1/D
03.	10.07.2008	One License Agreement came to be executed by and between the Applicant and the Corporate Debtor.

**IN THE NATIONAL COMPANY LAW TRIBUNL  
KOLKATA BENCH (Court-II)  
KOLKATA**

**IA(I.B.C)/849(KB)2023  
In  
C.P. (IB)/600(KB)2019**

---

04	13.10.2010	The Applicant had invoked the arbitration clause and issued a notice appointing Mr. Anjan Biswas, Advocate as the Sole Arbitrator.
05	11.09.2012	The sole arbitrator passed an award and thereby directed the Corporate Debtor to execute a registered lease deed in favour of the applicant, or to make payment of Rs.1,00,00,000/- with interest calculated @ 12% per annum.
06	26.09.2012	Deeds of lease being Nos.5779 and 5781, were registered.
07	29.03.2016	A sole arbitrator was appointed and arbitration proceedings commenced, and an award was passed.
08	25.03.2022	UCO Bank exercising its right under the SARFASI Act, 2002 forcefully took physical possession of the property.
09	26.03.2008	A letter addressed by the Corporate Debtor to the UCO Bank, duly received by UCO Bank, which shows that UCO Bank had knowledge about the valuable right already accrued in favour of the applicant.
10	23.02.2021 And 01.03.2021	UCO Bank obtained a valuation report of the said property
11	22.06.2022	An Order was passed by the Hon'ble Tribunal, Kolkata Bench for the

**IN THE NATIONAL COMPANY LAW TRIBUNL  
KOLKATA BENCH (Court-II)  
KOLKATA**

**IA(I.B.C)/849(KB)2023  
In  
C.P. (IB)/600(KB)2019**

---

		Commencement of Corporate Insolvency Resolution Process of the Company.
12	18.04.2022	An Order was passed by the Hon'ble Single Judge of Hon'ble High Court of Gujarat Court restraining UCO bank from taking any coercive action against the Applicant till the Presiding Officer of Debts Recovery Tribunal-I takes charge.
13	02.05.2022	An order was passed by Hon'ble Division Bench of the Hon'ble Gujarat High Court in an appeal filed by Applicant directing UCO Bank not to take any coercive action and UCO Bank was directed to issue 15 day's notice to the Applicant before taking any further action
14	08.12.2022	The Applicant has sent an electronic mail requesting the Respondent No. 1 to inform them if Form G was published for filing a resolution plan and expression of interest.
15	19.01.2023	The RP has made a forensic and Transaction Audit report.
16.	15.02.2023	The Applicant has sent an electronic mail requesting the Respondent No.1 to provide the copy of the information of memorandum within 3 days.

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**5. Submissions of Learned Senior Counsel Mr. Joy Saha appearing for the H.S. Mercantile Limited:**

- 5.1.** Learned Senior Counsel would vociferously plead that the Resolution Professional lacks adjudicating power and as such, the Resolution Professional could not have adjudicated upon the rights of H.S. Mercantile Limited ignoring the lease and included the parcel of land being the subject property of the leased deed in the Information Memorandum (IM).
- 5.2.** Learned Senior Counsel would forcefully argue that the lease deed being executed on 29<sup>th</sup> September, 2012 i.e., almost 10 years before the commencement of CIRP process against the Corporate Debtor, could not have been included in the IM.
- 5.3.** The Resolution Professional had preferred an IA(I.B.C)/849(KB)2023 alleging that the said lease by GIT Textiles Manufacturing Limited in favour of the Applicant H.S. Mercantile Limited be treated as a fraudulent transaction under Section 66 of the IBC. The Resolution Professional subsequently withdrawn its prayer which is -

*“c) Your Lordship may be pleased to pass an appropriate orders directing the Respondents for reversal of fraudulent lease transaction entered with M/s. H.S. Mercantile Limited in respect of the mortgage property of the Corporate Debtor located as Sanand, Ahmedabad.”*

In view of such withdrawal, the Resolution Professional loses its right to challenge the said lease as a fraudulent one.

- 5.4.** That the entire consideration money out of the lease was paid for creation of lease. Resolution Professional having no power of adjudication in regard to the creation of lease could not have



**IN THE NATIONAL COMPANY LAW TRIBUNL  
KOLKATA BENCH (Court-II)  
KOLKATA**

**IA(I.B.C)/849(KB)2023  
In  
C.P. (IB)/600(KB)2019**

---

included it in the IM, the Resolution Professional has thereby overstepped his authority.

**5.5.** That the existence of lease is recorded in the balance sheet of the Company.

**6. Per contra, the Resolution Professional would submit as under:**

**6.1.** That the subject property is now under possession of the Resolution Professional on being handed over by UCO Bank, the Financial Creditor of the Corporate Debtor.

**6.2.** The UCO Bank has obtained possession of the piece of land under SARFAESI proceeding.

**6.3.** The MOA dated 2<sup>nd</sup> July, 2007, the Tenancy Agreement dated 1<sup>st</sup> October, 2007 and the License Agreement dated 10<sup>th</sup> July, 2007 as well as the lease Agreement dated 26<sup>th</sup> April, 2012 are all fraudulent documents created by none other than the Corporate Debtor to encumber and take away the only valuable immovable asset of the Corporate Debtor from the Resolution Process thereby rendering the process infructuous.

**6.4.** The Applicant is nothing but an alter-ego of the Corporate Debtor as would be evident from the share holding pattern and the Board of the applicant and the Corporate Debtor for the relevant years, 2007 to 2012. The fact that the Applicant is a related party of the Corporate Debtor cannot be of any dispute. Reply affidavit (Para II at page 4). Supporting documents have been disclosed in Annexure R2, pages 45 to 91 of the reply affidavit. It would be evident therefrom that both the Companies are controlled and managed by Mahendra Kumar Goenka, his wife, Manjula and sons, Rajib and Hemant. Mahendra Goyenka and his family during the year 2007-08 to 2012-13 held majority shares in the

**IN THE NATIONAL COMPANY LAW TRIBUNL  
KOLKATA BENCH (Court-II)  
KOLKATA**

**IA(I.B.C)/849(KB)2023  
In  
C.P. (IB)/600(KB)2019**

---

Corporate Debtor. As such, the Suspended Board and their family members have a direct control over the management of the Corporate Debtor as well as the Applicant Company. The present shareholding pattern as per the last audited balance sheet of the Applicant and the Corporate Debtor as in page 7 of the reply affidavit, also shows that the Applicant is presently also a related party of the Corporate Debtor.

- 6.5.** The present application is, thus, a gross abuse of the process of law and is fraudulent attempt to jeopardize the Resolution process.
- 6.6.** No Board Meeting was held of either the Corporate Debtor or Applicant Company on 30<sup>th</sup> July, 2007 as would be evident from the Secretarial Compliance Certificates of the two Companies (pages 94 to 100, reply affidavit). Interestingly, the certificates have been issued by the same person which shows that both Companies are one and the same. Moreover, the entire exercise has been engineered fraudulently and with the sole intention of keeping the valuable land away from the resolution process.
- 6.7.** All the documents (the purported Memorandum of Understanding, Tenancy and License Agreement) are antedated, would further be evident from the fact that the Corporate Debtor's account stood classified as non-performing asset on 30<sup>th</sup> September, 2012. It is only at that time realizing the consequence the aforesaid documents were fraudulently created to encumber the subject property. Interestingly, through the property is located in Ahmedabad, Gujarat and in accordance with the Stamp Act and Registration Act, all instruments of transfer and lease are required to be registered and notarized within the territorial jurisdiction of the state where the land is

**IN THE NATIONAL COMPANY LAW TRIBUNL  
KOLKATA BENCH (Court-II)  
KOLKATA**

**IA(I.B.C)/849(KB)2023  
In  
C.P. (IB)/600(KB)2019**

---

situated, the purported registered lease has been executed in Gujarat, however, notarized deed of 2007 was executed in Kolkata.

**6.8.** The purported lease agreement is *void ab initio* and a nullity in the eye of law as it is in violation of Section 65A of the transfer of Property Act, 1882 which provides for the Mortgager's right to lease. It specifically provides that a Mortgagor, who is in lawful possession of the mortgaged property has the power to make lease which would be binding upon the Mortgagee, only if the lease fulfils the conditions contained in Section 65A (2), that every lease by the Mortgagor shall be in the ordinary course of management of the property, it shall reserve the best rent and no premium shall be paid and no rent shall be payable in advance. It is further provides that no lease shall contain a covenant for renewal. It further prohibits that grant of a lease in excess of 3 years. The subject lease has not been granted in usual course of management, it does not provide for best and reasonable rent. Rent has been paid in advance. The lease deed contains a covenant of renewal and that the lease deed also extends beyond the period of 3 years. it is well settled that an instrument which is in violation of a statutory provision is *ab initio* void and can neither be enforced nor create any right in favour of any party.

**6.9.** In support of the contention, a Division Bench judgment of Kerala High Court reported in **(2016) SCC OnLine KER 41122 Kelukutty P.M. vs. Young Men's Christian Association**, [para 36] would be relied upon to contend that a lease granted contrary to Section 65A (2) is not valid. Further para 38 of the judgment of the Hon'ble Supreme Court judgment, reported in **(2014) 6**

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**SCC 1 Harshad Govardhan Sondagar vs. International Assets Reconstruction Co. Ltd.** is referred wherein it has been held that only those lessees where lease are valid and has been executed in terms of the Transfer of Property Act, 1882, including Section 65A (2) would be entitled to protection from dispossession under the SURFAESI Act of 2002.

- 6.10.** Reference is also made to a decision rendered by National Company Law Appellate Tribunal, in the case of **M/s. Jhanvi Rajpa Automotive Pvt. Ltd. vs. R.P. of Rajpal Abhikaran Pvt. Ltd. and Anr. in Company Appeal (AT) (Insolvency) No.1417 of 2022** paragraph 12 and 21 reads as under:

*“12. The Learned Senior Counsel for Appellant has referred to the e-mail dated 14.02.2022 of the Liquidator wherein he has confirmed payment of ‘Rent’ for the period of June 2021 to January 2022. He has further referred to the e-auction notice issued by the Liquidator dated 16.03.2022 to point out that the subject property was to be auctioned on “As Is Where Is”, “As Is What Is” and “Whatever There Is Basis” and therefore the bidders were advised to satisfy themselves about the title and occupation and physically verify the site and subject property prior to bidding, which means that the Liquidator was well aware that the Appellant was a tenant under whose lawful and peaceful possession the subject property continued to be in. He has also referred to the e-mail dated 24.03.2022 of the Liquidator to the successful bidder to say that after noticing the conditions of the e-auction document and the fact that the subject property was in the possession of the Appellant as a tenant, the successful bidder decided to bid and*

**IN THE NATIONAL COMPANY LAW TRIBUNL  
KOLKATA BENCH (Court-II)  
KOLKATA**

**IA(I.B.C)/849(KB)2023  
In  
C.P. (IB)/600(KB)2019**

---

*deposited the EMD with the Liquidator. He had said that in such a situation the e-auction was carried out and was the Bidder (R-2) has declared as the successful bidder, then it was the responsibility of the successful bidder or the Liquidator to get back the possession of the subject property from the Appellant after following the due process of law and they should subject themselves to the lawful authority of the Small Causes Court which has the jurisdiction under Maharashtra Rent Control Act, 1999.*

21. *The Learned Senior Counsel for Liquidator/ Respondent No. 1 has further referred to Section 33 (5) of the IBC to claim that once a Liquidation order has been passed, no suit or other legal proceedings can be instituted by or against the Corporate Debtor and any suit or legal proceeding may be instituted by the Liquidator on behalf of the Corporate Debtor with the prior approval of the Adjudicating Authority. He has thus clarified that the Liquidator filed I.A. No. 1635 of 2022 before the Adjudicating Authority in accordance with the requirement of Section 33 (5) since it was the duty and responsibility of the Liquidator to take into custody and control the assets of the Corporate Debtor.”*

and **Adinath Jewelry Exports vs. Mr. Brijendra Kumar Mishra and Anr.** reported in **Company Appeal (AT) (Insolvency) No.748 of 2022** (paragraph 62), to contend that the provisions of the IBC Code authorizes the Resolution Professional in exercise of his power under Section 25 of the Code to take possession of the Assets of the Corporate Debtor. The Resolution Professional can also evict persons from possession of the

**IN THE NATIONAL COMPANY LAW TRIBUNL  
KOLKATA BENCH (Court-II)  
KOLKATA**

**IA(I.B.C)/849(KB)2023  
In  
C.P. (IB)/600(KB)2019**

---

property of the Corporate Debtor and such right of eviction is within the scope of the IBC Code and within the jurisdiction of the adjudicating authority.

- 6.11.** That since 2008 till date, though it has been alleged that the Applicant has been in possession initially as a tenant and thereafter under the lease but no valid documents have been disclosed to substantiate payment of rent for the aforesaid period. Moreover, the order of the DRT, Ahmedabad disclosed in the rejoinder at page 19 by the Applicant, states or records that there is a subsisting lease of 99 years and in terms whereof, the present applicant is in possession.
- 7.** At hearing the learned Senior Counsel Mr. Joy Saha would refute the claim. Learned Senior Counsel would submit that possession of piece of land by Resolution Professional does not confer on him title in regard to the said piece of land, neither UCO Bank can seek its title over the said piece of land and this Tribunal cannot adjudicate on the right, title and interest of the Lessee over the piece of land.
- 8.** Learned Senior Counsel for the Applicant would cite the following decisions in support of his contentions as under:
- A. *ITC Limited vs. State of U.P* (2011) 7 SCC 493** on the proposition that lease deed can only be cancelled by a Civil Court.
- B. *Small Industries Development Bank of India v. Tirupati Jute Mills* [CP (IB) No.508 of 2018].**
- K.L. Jute Products Private Limited vs. Tirupati Jute Industries Limited* [Company Appeal (AT) (Ins) No.277 of 2019]**

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**C. Gujarat Ujra Vikas Nigam Ltd. vs. Amit Gupta (2021)**  
SC 123

**D. Embassy Property Developers Pvt. Ltd. vs. State of  
Karnataka (2020) 13 SCC 308.**

9. Confronted with the rival claims as above, we would note that the issue that has cropped up for determination in this application is whether the piece of land which the Corporate Debtor as a Lessor had leased out to the H.S. Mercantile Limited the Applicant herein, could be included in the Information Memo (IM) prepared by the Resolution Professional, in the CIRP process of the Corporate Debtor.
10. Admittedly and irrefutably, GIT Textiles Manufacturing Limited, the Corporate Debtor is the owner of the subject property over which the H.S. Mercantile Limited, the Applicant herein as a Lessee has leasehold rights. No authority has been cited to substantiate the stand of the Applicant H.S. Mercantile Limited, that, as a Lessee of the property it would exert more right over the land than the owner GIT, the Corporate Debtor or that the subject property cannot be termed as an “asset” of the Corporate Debtor, unless the lease is cancelled by the Court of Competent Jurisdiction.
11. We would note that Section 18 (1) (f) of the Insolvency and Bankruptcy Code, 2016 explicitly declares the right of a Resolution Professional to:
- “(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any*

**IN THE NATIONAL COMPANY LAW TRIBUNL  
KOLKATA BENCH (Court-II)  
KOLKATA**

**IA(I.B.C)/849(KB)2023  
In  
C.P. (IB)/600(KB)2019**

---

*other registry that records the ownership of assets including –*

- (i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;*
- (ii) assets that may or may not be in possession of the corporate debtor;*
- (iii) tangible assets, whether movable or immovable;*
- (iv) intangible assets including intellectual property;*
- (v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;*
- (vi) assets subject to the determination of ownership by a court or authorities;*
- (g) to perform such other duties as may be specified by the Board.”*

However, it also imposes a specific restriction on such rights when it comes to assets owned by a third party in possession of the Corporate Debtor as explanation thereto envisages as follows:

*Explanation – For the purpose of this section, the term “**asset**” shall not include the following, namely:-*

- (a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;*
- (b) assets of any Indian or foreign subsidiary of the corporate debtor; and*



**IN THE NATIONAL COMPANY LAW TRIBUNL  
KOLKATA BENCH (Court-II)  
KOLKATA**

**IA(I.B.C)/849(KB)2023  
In  
C.P. (IB)/600(KB)2019**

---

*(c) such other assets as may be notified by the  
Central Government in consultation with any  
financial sector regulator.”*

**12.** “Section 25 (1) of the IBC casts a duty on the resolution professional

*“to preserve and protect the assets of the corporate debtor,  
including the continued business operations of the  
corporate debtor.”*

and Section 25 (2) (g) envisages that –

*“(2) For the purpose of sub-section (1), the resolution  
professional shall undertake the following actions, namely:-  
(h) prepare the information memorandum in accordance with  
section 29.”*

**13.** Section 5 (10) of the IBC provides that “*Information Memorandum (statutory IM) is a memorandum prepared by resolution professional under section 29 (1).*”

**14.** Section 29 reads as under:

*“29. (1) The resolution professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board for formulating a resolution plan.*

*(2) The resolution professional shall provide to the resolution applicant access to all relevant information in physical and electronic form, provided such resolution applicant undertakes –*

*(a) to comply with provisions of law for the time being in force relating to confidentiality and insider trading;*

*(b) to protect any intellectual property of the corporate debtor it may have access to; and*

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*(c) not to share relevant information with third parties unless clauses (a) and (b) of this sub-section are complied with.”*

*Explanation – For the purpose of this section, “relevant information” means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified.*

- 15.** Regulation 36 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, provides for the contents of the statutory IM and the manner in which it will be submitted to each member of the COC and any potential resolution applicant. The Regulation explicates the mandatory contents of an IM as under:

*“36 (2) The information memorandum shall contain the following details of the corporate debtor-*

*(a) **assets** and liabilities with such description, as on the insolvency commencement date, as are generally necessary for ascertaining their values*

*Explanation: ‘Description’ includes the details such as date of acquisition, cost of acquisition, remaining useful life, identification number, depreciation charged, book value, and any other relevant details.]*

*(b) the latest annual financial statements;*

*(c) audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year made up to a date*

**IN THE NATIONAL COMPANY LAW TRIBUNL  
KOLKATA BENCH (Court-II)  
KOLKATA**

**IA(I.B.C)/849(KB)2023  
In  
C.P. (IB)/600(KB)2019**

---

*not earlier than fourteen days from the date of the application;*

*(d) a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims;*

*(e) particulars of a debt due from or to the corporate debtor with respect to related parties;*

*(f) details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party;*

*(g) the names and addresses of the members or partners holding at least one per cent stake in the corporate debtor along with the size of stake;*

*(h) details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;*

*(i) the number of workers and employees and liabilities of the corporate debtor towards them;*

*(j) & (k) [\*\*\*]*

*(l) other information, which the resolution professional deems relevant to the committee.”*

- 16.** Hon’ble Apex Court in **Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited** reported in **MANU/SC/0628/2021** and **Kundan Care Products Limited Vs. Mr Amit Gupta** in **Civil Appeal No. 3560 of 2020** has deliberated upon the duty of Resolution Professional to provide accurate information of the Corporate Debtor, in the following words –

**IN THE NATIONAL COMPANY LAW TRIBUNL  
KOLKATA BENCH (Court-II)  
KOLKATA**

**IA(I.B.C)/849(KB)2023  
In  
C.P. (IB)/600(KB)2019**

---

*“189. Under the IBC, there is a duty upon the RP to collect as much information about the Corporate Debtor as is accurately possible to do. When such information is communicated through an IM to the Resolution Applicant, the RP must be careful to clarify when its information is not comprehensive and what factors may cause a change.”*

- 17.** Hon’ble NCLAT in ***Kushal Ltd. and Ors. vs. Kartik Baldwa*** reported in **MANU/NL/0460/2022** has observed that –
- “54. Thus, the Resolution Professional disclosed relevant information enabling the resolution applicants/appellants to make appropriate application by submitting resolution plan for the Corporate Debtor. Such act would not amount to fraudulent misrepresentation.”*
- 18.** An IM is thus regarded as a comprehensive document that provides significant details of the Corporate Debtor to prospective Resolution Applicants, including its assets, liabilities, financial statements, list of creditors, related party debts, guarantees, stakeholders details, pending litigations and investigations. Thus, an IM provides all relevant information to a prospective Resolution Applicant to enable the Resolution Applicant to assess the liability of the business of the Corporate Debtor and submit an effective Resolution Plan.
- 19.** In such view of the matter, we find no infirmity with the Information Memorandum for inclusion of the subject property as an asset of the Corporate Debtor, the Corporate Debtor being the owner of the subject property over which the Applicant claims to have leasehold rights, without setting into the merits of such lease agreement .

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-II)  
KOLKATA**

**IA(I.B.C)/849(KB)2023  
In  
C.P. (IB)/600(KB)2019**

- 
- 20.** As such, IA(I.B.C)/849(KB)2023 is dismissed.
- 21.** Urgent Certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

**D. Arvind  
Member (Technical)**

**Bidisha Banerjee  
Member (Judicial)**

**This Order signed on this, the 23<sup>rd</sup> day of April, 2024.**

Sayon [Steno]