

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

**I.A. (IB) No. 735/KB/2021**

**In**

**Company Petition (IB) No. 2078/KB/2019**

*An application under Section 60(5) read with Sections 18 and 25 of the  
Insolvency and Bankruptcy, Code, 2016.*

**Trimurti Association Private  
Limited**

**... Financial Creditor.**

***Versus***

**BKM Industries Limited**

**... Corporate Debtor.**

**And**

**Kanchan Dutta, the Resolution  
Professional of the Corporate  
Debtor**

**... Applicant.**

***Versus***

**Shyama Prasad Mukherjee Port,  
15 Strand Road, Kolkata - 700001**

**... Respondent.**

Date of Pronouncement: 26.04.2024.

**CORAM**

**SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)**

**SHRI. BALRAJ JOSHI, MEMBER (TECHNICAL)**

**Appearance:**

**For the Applicant:**

Mr. Rishav Banerjee, Adv.

Mr. Aishwaria Kumar Awasthi, Adv.

Ms. Prerna Shaha, Adv.

**For the Respondent:**

Mr. Pramit Bag, Adv.

Mr. Snehashis Sen, Adv.

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**In**  
**C.P. (IB) No. 2078/KB/2019**

**O R D E R**

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

1. This Court congregated through a hybrid mode.
2. The Learned Counsels Mr. Rishav Banerjee along with Mr. A.K. Awasthi and P. Shaha, appearing for the Applicant and the Learned Counsels Mr. Pramit Bag along with Mr. Snehashis Sen appearing for the respondents were heard in full.
3. The instant application has been filed by the erstwhile Resolution Professional **Kanchan Dutta** of BKM Industries Limited under Sections 60(5), 18 and 25 of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code" against **Shyama Prasad Mukherjee Port**, seeking the following reliefs:

- a) Direct the Respondent to cooperate with the Applicant and forthwith release the asset listed in the Schedule marked with the letter 'A-6' in favour of the Applicant thereby allowing him to take possession and control in respect of the same.*
- b) Ad-interim orders in terms of prayers (a) above.*
- c) Such other orders as may be deemed fit and proper.*

**4. Applicant's Contention:**

- 4.1.** The Corporate Debtor had taken the slipway no. 3 on rent from the Respondent for 'fabrication of ship building and ship repairing for its customers'.
- 4.2.** In the meantime, on 30/12/2020, the Corporate Debtor was put into CIRP by this Adjudicating Authority.

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- 4.3.** Through letters dated 04/06/2021 and 15/06/2021, Resolution Professional has intimated the same to the Respondent to release the goods and assets of the Corporate Debtor kept in its premises that was rented out to the Corporate Debtor by the Respondent.
- 4.4.** Instead of complying with the Resolution Professional, Shyama Prasad Mukherjee Port Authority has served a legal notice dated 25/06/2021 claiming that as per the agreement, the Respondent is entitled to seize and detain the said goods and assets of the Corporate Debtor lying at its premises unless licence fees are paid by the Corporate Debtor.
- 4.5.** The Resolution Professional intimates the Respondent that during the period of moratorium declared by this Adjudicating Authority, Respondent is liable to give access those assets of Corporate Debtor lying at the premises of the Respondent.

**5. Respondent's claim:**

- 5.1.** Shyama Prasad Mukherjee Port Authority being Respondent has claimed that the Corporate Debtor continued to occupy the premises but defaulted to pay the outstanding rent of more than Rs. 96 Lakh and as per Section 28 of the Major Port Authorities Act, 2021, Respondent has lien over the assets of the Corporate Debtor lying in its premises and unless the outstanding dues of Rs. 96 Lakh is cleared, it cannot hand over or allow the Applicant to take possession of the said assets.

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- 5.2.** Further, the Respondent claims that the declaration of moratorium by this Tribunal, under Section 14 of the I&B, Code, 2016, would have no impact on the lien under Section 28 of the Major Port Authorities Act, 2021.
- 5.3.** It is pleaded that in case of a conflict, although I&B, Code is a self-contained Code, the Major Port Authorities Act, 2021 which is a special legislation would override the I&B, Code.
- 6.** We have considered the rival contentions and perused the documents on record. We would note that the Resolution Plan application was heard and reserved for order on 21.02.2023 and has been duly approved on 19.09.2023.
- 7. Analysis and Findings:**
- 7.1.** It is evident that the Resolution Professional has preferred the instant application before this Adjudicating Authority long before the approval of the plan by the Committee of Creditors (CoC) of the Corporate Debtor.
- 7.2.** In view of the fact that Shyama Prasad Mukherjee Port Authority has failed to show its lien over the goods of the Corporate Debtor, it seems to have no right to retain the goods.
- 7.3.** Further, we find that in 2022, the Board of Trustees of the Shyama Prasad Mukherjee Port has filed its claim with the Resolution Professional which was initially rejected by the RP on 21.10.2022. The Board of Trustees of the Shyama Prasad

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Mukherjee Port had preferred an application being I.A. (IB) No. 1368/KB/2022 challenging the decision of RP. We find that vide an Order dated 21.02.2023, the application being I.A. (IB) No. 1368/KB/2022 was dismissed as Mr. Pranit Bag, Ld. Counsel for the Board of Trustees of the Shyama Prasad Mukherjee Port submitted that substantial amount of claim had been admitted by the Resolution Professional.

8. Hence, in view of above, we direct the Shyama Prasad Mukherjee Port to forthwith release the assets of the Corporate Debtor in favour of the Resolution Professional.
9. This interlocutory application stands **disposed of** accordingly.
10. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**This Order is signed on the 26th Day of April, 2024.**

Bose, R. K. [LRA]