

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

Interlocutory Application No. 1442/KB/2020

IN

Company Petition (IB) No. 508/KB/2017

*Under section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with  
Rule 11 of the National Company Law Tribunal Rules, 2016*

**IN THE MATTER OF:**

**Small Industries Development Bank of India**

**... Financial Creditor.**

**Verses**

**Tirupati Jute Industries Ltd. (in Liquidation)**

**....Corporate Debtor**

**And**

***In the matter of :***

**National Federation of jute Workers & Anr.**

**.....Applicant/Intervener**

**Verses**

**Mr. ChhediRajbhar, Liquidator &Ors.**

**.....Respondents**

**Date of Pronouncement:10<sup>th</sup> April,2024.**

**CORAM:**

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

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

**Appearance:**

Mr. Ratnako Banerji, Sr. Adv. ] For Daksh Jute LLP

Ms. Manju Bhuteria, Adv. ]

Mr. Rishav Banerjee, Adv. ]

Mr. Arkodeb Sinha, Adv. ]

Mr. Mainak Biswas, Adv. ]

Mr. Joy Saha, Sr. Adv. ] For the Liquidator

Mr. Arik Banerjee, Adv. ]

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

Interlocutory Application No. 1442/KB/2020  
In Company Petition (IB) No. 508/KB/2017

Mr. Arun Kumar Gupta, CA ]  
Mr. Chhedi Rajbhar ] Liq.-in-person

Mr. D.N. Sharma, Adv. ] For the Workers  
Ms. U. Chakraborty, Adv. ]  
Ms. M. Manot, Adv. ]  
Mr. N. Sengupta, Adv. ]

Ms. Aparajita Rao, Adv. ] For the Federal Bank  
Ms. Swastika Roy, Adv. ]

**ORDER**

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

1. This Court is congregated through a hybrid mode.
2. Learned Counsels for both parties were heard at length.
3. **IA 1442/KB/2020** is an application that has been filed by National Federation of jute Workers & Anr , Bengal Chatkal Mazdoor Union (Unit: Triupati Jute Industries Ltd.) to seek removal of the Liquidator Mr. Chhedi Rajbhar on the following Grounds:
  - i. The Liquidator has not been able to make any progress in the liquidation process of the Corporate Debtor since, February 2021 and till 2021 no steps taken on progress.
  - ii. The Liquidator has been taking steps which are not only inconsistent with the order dated February 13, 2019, passed by this Adjudicating Authority as confirmed by the order dated February

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

Interlocutory Application No. 1442/KB/2020  
In Company Petition (IB) No. 508/KB/2017

20, 2020 passed by the Hon'ble NCLAT, but is also acting in a manner which is detrimental and prejudicial to the interest of the applicants whose livelihood depends on the running of the jute mill.

- iii.** The liquidator is only interested to evict the respondent no. 2 and to prevent the respondent no. 2 from running the jute mill of the corporate debtor.
- iv.** The liquidator has not taken any steps to even verify the claims submitted by the applicants as mentioned under Rule 30 of the IBBI (Liquidation Process) Regulation, 2016 .
- v.** The applicants are not aware about the contents of the various progress reports which have been filed by the Liquidator from time to time .
- vi.** No steps have been taken by the liquidator within the meaning of the IBBI (Liquidation Process) Regulation, 2016 for liquidating the corporate debtor as a going concern under Regulation 32(c) of the IBBI (Liquidation Process) Regulation, 2016.
- vii.** The Liquidator has demonstrated scant regard to the order dated February 13, 2019, passed by this Adjudicating Authority to run the corporate debtor as a going concern. Rather, for the last one year he has been filing several applications only to evict the respondent no.2 .
- viii.** The liquidator is trying to sell the factory land of the corporate debtor and is probably working at the behest of some of the promoters to make secret and undisclosed gains from such clandestine deal.

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

Interlocutory Application No. 1442/KB/2020  
In Company Petition (IB) No. 508/KB/2017

- ix.** The action and conduct of the liquidator/respondent no. 1 are against the intent and spirit of IBC, 2016 which is to keep the corporate debtor as a going concern; maximization of the assets value and to maximize the value for stakeholders.
- 4.** The applicants claim that they are stakeholders in the liquidation process of the corporate debtor by reason of Regulation 2(1)(k) of the IBBI (Liquidation Process) Regulations, 2016 read with section 53 of the Code of 2016. They would contend that :
- 4.1** If the secret object of the respondent no. 1 is achieved, it will amount to closure of the jute mill of the corporate debtor thereby give rise to the unemployment, starvation, unrest and breach of peace.
- 4.2** That eviction of the respondent no. 2 has already been held not maintainable by both this Adjudicating Authority as also by the Hon'ble NCLAT.
- 4.3** The Corporate Debtor is a MSME and had availed financial loan from Small Industries Development Bank of India (SIDBI). Further, such loan was given by SIDBI only because the corporate debtor was a MSME. The Liquidator has indulged in speculative litigation and has already wasted valuable resources and revenue of the corporate debtor by filling multifarious applications one after another.
- 4.4** The Liquidator is not interested in the welfare of the workers nor in the smooth running of the corporate debtor .

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

Interlocutory Application No. 1442/KB/2020  
In Company Petition (IB) No. 508/KB/2017

**4.5** If the object of the liquidator is achieved without making alternative arrangement for another Investor who can assume the charge of the jute mill and take care of the livelihood of the workers, such steps would prove detrimental for the 1200 workers and further 3600 dependent family members of those workers.

**5. *Per contra the Liquidator by way of his reply would submit as under :***

**5.1** The Jute Workers Union cannot put a spanner in the smooth progress of the said process as that will amount to violation of the statutory duties which the Liquidator is liable to perform under Section 35 of the Code.

**5.2** The Workers Union cannot have any grievance once the company is Liquidated under Section 53 of the Code, for the workers dues and the claim of the secured creditors shall be satisfied first and thereafter if any balance is left, it shall be paid to the other creditors.

**5.3** Daaksh Jute LLP is in illegal possession of the factory and the Head office of the Corporate Debtor by virtue of an illegal lease agreement.

**5.4** It is evident that the Daaksh Jute LLP has set up the Jute Workers Union to espouse their cause before the National Company Law Tribunal.

**5.5** Once the order of liquidation is passed, it is between the Adjudicating Authority and the Liquidator and thus the Workers

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

Interlocutory Application No. 1442/KB/2020  
In Company Petition (IB) No. 508/KB/2017

Union and/or the Daaksh Jute LLP who is in illegal possession cannot stop the Liquidator from performing his statutory duties of taking control and custody of the Corporate Debtor.

- 5.6** It is denied that the members of the applicants were in hand to mouth condition and introduction of the Daaksh Jute LLP gave them a huge relief as no documentary evidence has been produced by the applicants.
- 5.7** It is evident that the Daaksh Jute LLP has set up the Jute Workers Union to espouse their cause before the National Company Law Tribunal .
- 5.8** That the Daaksh Jute LLP was formed three days before execution of the unregistered lease i.e. on 28<sup>th</sup> July 2016. The agreement was unregistered , unstamped and would not be looked into by this Adjudicating Authority as it was executed in violation Section 13 of the SARFAESI Act, 2002 as this arrangement was entered into after the issuance of Section 13 (2) notice on 1<sup>st</sup> April, 2016. This agreement is also in violation of Section 65A of the Transfer of Property Act, 1882 as the lease was made of a mortgaged property and that too beyond three years.
- 5.9** This lease in favour of the Daaksh Jute LLP is also in violation of Section 5(24) of the Code and as such it is a preferential and fraudulent transaction made within the look back period from the date of order of admission which was passed on 12/01/2018.
- 5.10** That the Liquidator has statutory duty of preservation of and taking custody of the assets which will prevail over any other right created in favour of any other third party by way of personal

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

Interlocutory Application No. 1442/KB/2020  
In Company Petition (IB) No. 508/KB/2017

arrangement or by agreement as by virtue of Section 238 of the Code which gives overriding effect over any other law or over any other agreement executed under such law.

**5.11** The Jute Workers Union cannot ask Daaksh Jute LLP to remain in the property while seek removal of the liquidator for their only concern should be with the payment of wages which they will get either under the supervision of the Liquidator or under the supervision or control of any other party who will take possession of the factory once the corporate debtor and its assets are sold as a going concern .

**6.** By way of rejoinder, no new facts have been agitated by the applicants other than their grumble for the liquidator has taken steps to get Daaksh Jute LLP evicted from the premises in question which is essentially in violation of previous orders of this Tribunal.

***Analysis and Findings***

**7.** We have duly considered the rival contentions placed by both the parties and perused the records.

**8.** We would note that in this very matter the Hon'ble NCLAT in Company Appeal (AT)(INS) No. 277 of 2019 has held as under :

*“26. This takes me to consider one more crucial aspect due to which I feel that the resolution plan submitted for my approval, cannot be approved. Section 30(2)(e) of I&B Code states that the resolution plan should not contravene any provisions of law by the time being in force. Successful Resolution Applicant, M/s. K.L.Jute clearly stated in their plan that this authority while approving their plan has to pass the*

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

Interlocutory Application No. 1442/KB/2020  
In Company Petition (IB) No. 508/KB/2017

order cancelling the lease deed dated 01.08.2016 executed in between the Corporate Debtor and Daaksh Jute LLP. To my mind, this condition in the plan is contrary to the established procedure of law. Hon'ble NCLAT in case of Raj Builders vs. Raj oil Mills ltd. (Company Appeal No. 304 of 2018) clearly stated the position of law in this aspect. It was appeal against the order of NCLT, Mumbai bench, in that case, the Corporate Debtor was tenant holding over in the premises which was to go in possession of Successful Resolution Applicant. NCLT, Mumbai bench noted this fact while approving the plan but did not pass order of eviction of the corporate debtor/tenant. Successful Resolution Application filed appeal against the order refusing to evict the tenant. The Hon'ble NCLAT considering that facts held that, "Adjudicating Authority is not competent to pass any order for eviction". In this case M/s. Daaksh Jute LLP is lessee in possession of Jute Mill owned by the Corporate Debtor. The Lease period is yet to over. **It may be true that lease deed was executed by the corporate debtor after receipt of notice under Section 13(2) of SARFAESI Act. Real question is whether this authority has jurisdiction to hold that the lease is bad in law a pass order of eviction of the Daaksh Jute LLP from possession of the premises of the corporate debtor**, as per the condition laid down in the resolution plan of Successful Resolution Applicant?

27. My answer to this question is that this Authority does not have such jurisdiction. M/s. K.L.Jute has submitted plan to the CoC stating the above conditions ie. eviction of Daaksh Jute LLP. The CoC having issued public notice of invitation of EoI/ Plan as AS IS WHERE IS AND AS IS WHAT IS basis, the CoC made exception to the above condition and approved the plan. The plan as approved by them cannot be



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

Interlocutory Application No. 1442/KB/2020  
In Company Petition (IB) No. 508/KB/2017

*effectively implemented because resolution applicant made it very clear that his plan is subject to fulfilment of conditions ie. eviction of Daaksh Jute LLP. To evict Daaksh Jute LLP, one has to approach proper forum. One does not know as to what time will require to get such eviction order. In such a situation, CoC ought not have approved the plan. I do not question commercial wisdom of CoC herein but it appears to me that the CoC did not consider the legal implications while approving the plan. They approved the plan ignoring the provisions of Section 30(2)(e) of I&B Code. I hold that resolution plan submitted for my approval is in a contravention of above provision of law. It cannot be approved by this authority. I reject the resolution plan of M/s.K.L. Jute Products Private Limited for the above reasons”.*

**(Emphasis added)**

9. Thus, eviction of the Daaksh Jute by this Adjudicating Authority has been already held as impermissible, yet the liquidator has time and again raked up the issue and has caused application to be filed to challenge the lease deed and to seek eviction of Daaksh. The defiance on the part of the present liquidator is palpable. Be that as it may, irrespective of the fact whether the liquidator has sought eviction of Daaksh Jute LLP which may not be permissible in the view of the extract *supra* which the liquidator must bear in mind, we find force in the submission made by the workers to seek replacement of the Liquidator. The workers being the stakeholders in the process have a genuine grievance and apprehend that the steps taken by the present liquidator may not be conducive to them, they may be rendered jobless if they are thrown out of the factory and the entire assets of the CD may pass to a wrong person who may not be interested to run a Jute Mill on the said premises. We feel that this Adjudicating Authority is not denuded of its inherent power to get a

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

Interlocutory Application No. 1442/KB/2020  
In Company Petition (IB) No. 508/KB/2017

liquidator replaced, to do substantial justice and to ensure that the liquidator is in the form of the going concern sale.

- 10.** Hence, we deem it appropriate to entertain this application to seek change of liquidator.
  
- 11.** Accordingly, we direct the Stakeholders' Consultation Committee to replace the present liquidator by a liquidator of their choice, within 7 days of receipt of a copy of this order and report to this Adjudicating Authority, failing which a liquidator from IBBI list will be appointed by us.
  
- 12.** In view of the above, the prayer is allowed and accordingly, **I.A.(IB)1442/KB/2020 is disposed of.**
  
- 13.** Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties for compliance with all requisite formalities.

**D. Arvind  
Member (Technical)**

**Bidisha Banerjee  
Member (Judicial)**

**This order is signed on 10<sup>th</sup> Day of April 2024.**

Tiwari. V. [LRA]