

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH**

MA No. 130/2019  
IN  
C.P. (IB)-3863/MB/2018

Pravin Blaggan

... Applicant

In the matter of:

Goa Auto Accessories,  
Mezzanine Floor, C/o EDC Limited,  
EDC House, Panaji,  
Goa - 403001

.... Petitioner

AND

Mr. Suresh Saluja

Plot No. 23, Jaripatka,  
Nagpur - 440014

...Interim Resolution Professional

Order delivered on: 12.12.2019

Coram: Hon'ble Suchitra Kanuparthi, Member (Judicial)

For the Applicant: Mr. Jai Chhabria a/w Mr. Arnav Misra, Advocate i/b K Ashar & Co

For the Respondent: Mr. Rahul Dev, Advocate for Resolution Professional

*Per: Suchitra Kanuparthi, Member (Judicial)*

**ORDER**

1. This Miscellaneous Application is filed by Pravin Blaggan (hereinafter called "Applicant") in view of the order passed by this Tribunal dated 11.12.2018 in the matter of Goa Auto Accessories Limited (CP IB – 3863 (MB) 2018). Goa Auto Accessories Limited (hereinafter called "Corporate Applicant") filed an under Section 10 of Insolvency and Bankruptcy Code 2016 ("the Code") read with Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, for initiation of Corporate Insolvency Resolution process.
2. The above M.A. was heard by Division Bench consisting of Hon'ble Bhaskara Pantula Mohan, Member(J) and Hon'ble V. Nallasenapathy, Member (T) and an order directing the Resolution Professional to take possession of the Shed from the applicant was passed and dissenting order dismissing the application was passed on 20.08.2019.

3. The said matter was referred to me as a third member as there was a difference of opinion among the members vide orders dated 04.11.2019. the matter was initially posted for hearing on 05.11.2019 and posted to final hearing on 14.11.2019.
4. This court had vide its order dated 11.12.2018 admitted the Petition filed by the Corporate Applicant under Section 10 of the Code declaration moratorium. As a consequential direction this bench also appointed Mr. Suresh Saluja as the Interim Resolution Professional (hereinafter called "IRP").
5. According to the Applicant, on 21.12.2018 he received a letter from the IRP, who informed him about the above Company petition. Vide his letter the IRP further stated that the Applicant herein is allegedly in illegal occupation of a Shed owned by the Petitioner viz. Shed bearing No. D3-3 at Honda Industrial Estate, Goa, and called upon the Applicant to handover possession of the said Shed to the IRP by removing Applicant's movables from the said Shed. Applicant was called upon to comply with direction of the IRP within 24 hours of the receipt of the said letter.
6. The Applicant submits that he is not in illegal occupation of the said Shed and has been occupying the same under an Agreement dated 28<sup>th</sup> January, 1997 entered into between the Petitioner and Applicant. It is further contended that the Applicant is an erstwhile employee of the Petitioner who was engaged in the business of manufacturing spare parts of automobiles. Applicant was an employee of the Petitioner from 1982 to January 1993, after which he started his own proprietary concern by the name of Siyaram Engineering Industry and carried on business from the Shed of job work assigned by the Petitioner in respect of Components of spare parts of Auto mobiles.
7. It is also submitted by the Applicant filed Special Suit No.23 of 2009 on the file of Court of Civil Senior Judge, senior division at Bicholim, Goa, for recovery of monies from the Corporate Applicant.
8. The applicant submits that he has replied to the IRP's letter dated 21.12.2018 vide his letter dated 29.12.2018. The Applicant further submits that in interest of justice and equity the Applicant has sought intervening from this Tribunal, seeking an opportunity to make submissions and be heard in the matter of Shed. It is also prayed by the Applicant that the Tribunal

may order the IRP, refraining him from acting in furtherance of its letter dated 21.12.2018.

9. The Resolution Professional has also filed a reply to the Miscellaneous Application. Vide this reply the Resolution Professional submitted that the Petitioner had given the right to use the aforementioned Shed to the Applicant for setting up a welding, fabrication, milling, drilling and deburring unit for carrying out job work for the Petitioner under an agreement dated 28.01.1997.
10. Further it is submitted by the Resolution Professional that as per Clause 7 of the Agreement, Petitioner was entitled to ask the Applicant to vacate the said Shed within one month of such notice. As per the Resolution Professional certain disputes arose between the Petitioner and the Applicant. Since the Applicant had committed breach of certain conditions of the Agreement and called upon the Applicant to vacate the Shed invoking Clause of the Agreement vide his Notice dated 22.08.2008. The Corporate applicant filed Special Suit No. 21/2009/A on the file of Hon'ble Civil Court at Bicholim, Goa seeking possession of the said shed from the Applicant.
11. The Resolution Professional further pointed out in his reply that since he has been appointed as the Interim Resolution Professional by this court, it is his duty to take control and custody of any asset over which the Corporate Applicant has an ownership right including assets which may or may not be in the possession of the Corporate Applicant. The Applicant is claiming lien on the Shed under the guise of a pending suit before Civil Court and there is no interim order therein. Therefore, as per the Resolution Professional the same cannot prejudice the right of Resolution Professional under the provisions of the code and has further prayed that he may be allowed to take possession of the said Shed.
12. The counsel for the Petitioner argued and relied on a judgement of "*Swiss Ribbons (P) Ltd. Vs. Union of India*" wherein the Hon'ble Supreme Court at para 88 held as follows;

*"it is clear from a reading of the Code as well as the Regulations that the resolution professional has no adjudicatory powers."*

Therefore, he asserted that the Resolution Professional has a duty to take control and custody of any asset over which the Corporate Applicant has ownership rights but subject to the determination of ownership by a court or authority. And in the instant case in view of pendency of suit before the

Courts in Goa, the Resolution professional cannot seek possession over the same. Thereby the Resolution Professional had no right to seek possession of the property which was subject to a pending suit before the Courts in Goa.

13. The counsel for the Applicant further relied on the definition subject to as per the "Judicial Dictionary of Words and Phrases" which states that the term subject to means conditional upon and therefore in view of section 18 (1)(f)(6) the assets subject to determination of ownership of court /Authority, possession cannot be sought for by the Resolution Professional more particularly when the Corporate Applicant as filed a suit of recovery for possession before the Court in Goa and the same is pending adjudication.
14. The counsel for the Petitioner also relied on the judgement of Hon'ble Punjab and Haryana High Court in "*Joint Liquidators of the City Bank of Lahore Ltd. Vs. Pandit Shiv Sharma*" reported in AIR, 1951 P& H 144. Wherein it was held that a company in liquidation retains its corporate powers including the power to sue, although such powers must be exercised through the liquidator under the authority of court.  
The counsel for the Petitioner thus pointed out that the liquidator exercises his power qua the company.
15. The counsel for the Petitioner has also relied upon the judgement of *Tata Steel BSL Ltd. Vs. Varsha* Hon'ble Bombay High Court reported in (2019) 3 AIRBOMR351, wherein a question for consideration was whether the Petitioner is justified in contending that upon process of CIRP being triggered under the IB Code, the Respondent No.1 having participated in the same, the suit for recovery of amount filed by Respondent no.1 could no longer survive? Whether the Trial Court committed an error in rejecting the application filed by the Petitioner for dismissal of the suit. The contention raised on behalf of the Petitioner rests on the assertion that IBC has overriding effect over other laws and that the effect of CIRP having been triggered in the context of the Petitioner in the present case resulted in rendering all proceedings like suit filed by respondent no.1 as not maintainable and liable to be dismissed.

The Court held that the such a dispute, which not only existed but stood recognised as a *sub judice* claim for which an inbuilt mechanism was incorporated in the resolution plan, could not be extinguished, merely because CIRP process had been undertaken.

The Court at para 37 held as follows:

*"the aforesaid position of law, when applied to the facts of the present case clearly demonstrates that the attempt to the facts of the present case clearly demonstrates that the attempt on the part of the Petitioner to escape liability of paying dues of respondent no.1 as an operational creditor, was correctly shot down by the Trial court by passing the impugned order."*

Therefore, it is held that the suit filed by respondent no.1 cannot be dismissed as claimed by the Petitioner. Accordingly, the writ petition is found to be without any merit and it is dismissed.

16. Further the counsel for the Applicant claimed that pending finalisation of suit, the possession of the Shed cannot be sought for by the Resolution Professional and he has only an administrative function and has no adjudicatory powers to claim possession of the Shed.
17. The counsel representing the RP relied on the judgement of NCLAT in C.A. No. 719 of 2018, wherein it was held that at para 13 as follows: -

*"it is not the case of the Appellant that the title of the assets has already been transferred or they have sold the assets in terms of section 13(4) of the SARFAESI Act, 2002'. It was also not the case of the Appellant that the assets owned by a third party is in possession of the 'Corporate Applicant' in terms of Section 18, as it is the duty of the "Interim Resolution Professional" to take control and custody of any asset over which the 'Corporate Applicant' has "ownership rights" as recorded in the balance sheet of the 'Corporate Applicant'. Even if it is not in possession of the 'Corporate Applicant', a person who is in possession of the same, including the 'Dena Bank' or 'Encore Asset Reconstruction Company Pvt. Ltd.' is bound to hand over the same to the 'Resolution Professional', when title still vests with 'Corporate Applicant'".*

*At para 16 the court held has follows;*

*"in the aforesaid background, we hold that section 18 of the I&B Code will prevail over section 13(4) of the "SARFAESI Act, 2002" and the "Dena Bank" cannot retain the possession of the property in question of which the Corporate Applicant is the owner"*

In view of the above, the counsel for the RP claims that his right in claiming the possession of the said property belonging to Corporate Applicant under section 18 (1)(f)(ii) and that his right to claim possession is not affected

under section 18(1)(f)(ii)(vi) wherein the property in question is subject to determination of ownership by a Court or Authority. He reiterated that the subject matter of the said suit is with regard to the possession of the Shed and the right to use the Shed was transferred to the applicant. Further, there is no dispute with regard to the ownership of the Shed. The counsel for RP further claimed that the judgement of Learned Dissenting member has not considered that there is no dispute of ownership rights and went to hold that he has to take a symbolic possession of the property.

18. I have considered the judgement of the Hon'ble High Court of Delhi in *Liberty House Group Pte Ltd. Vs. State Bank of India and Ors.* reported in (MANU/DE/0727/2019) which dealt with the issue regarding the jurisdiction of the Civil Court to entertain any suit or proceedings and grant interim injunction restraining encashment of bank guarantees and the objection of the defendants to the subject jurisdiction of the Civil Court was for consideration and whether NCLT has the jurisdiction under the I &B Code, 2016. The Court at para 43, 45 and 46 held as follows;

*"43. It cannot also be lost sight of that in the whole process, considerable time, out of the time bound schedule in terms of the Code for the resolution process, has been wasted and wastage of which time may ultimately result in the possibility of Castex and ARGL Limited being restructured ceasing to exist and being inevitably required to be liquidated, all at the cost of the creditors thereof and wastage of the stressed assets of the said two companies. The loss caused by such conduct of the plaintiff is thus mammoth, having adverse consequences on all the creditors and shareholders of the said two companies and also on the economy of the country and to remedy which, the code was enacted. The NCLT is best equipped to also deal with apportionment of the amount of the BBGs in proper account.*

*"45. On merits also thus, I do not find the plaintiff entitled to a restraint against encashment/payment under the BG".*

*"46. However, since this Court has been found to be not having subject jurisdiction to entertain the suits, the plaint in both the suits is rejected.*

Therefore, it can be said that the ratio laid down in the above judgement clearly states that no Civil Court shall have the jurisdiction to entertain any

suit or proceedings in respect of any matter on which the National Law Company Tribunal has jurisdiction under the I & B Code, 2016.

19. In *Innoventive Industries Ltd. Vs. ICICI bank* reported in MANU/SC/1063/2017, it was held that the objective of the Code is to bring insolvency law in India within a single unified umbrella. The scheme of the Code is to make an attempt in divesting the erstwhile management of the Corporate Applicant of its power and vesting it in a professional agency to continue the business of the Corporate body as a going concern until the resolution plan is drawn up in a time bound period of 270 days is an exhaustive Code by itself.
20. In *Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta* reported in MANU/SC/1123/2018 : (2019) 2 SCC 1, the court held that speed is the essence and timelines are to be observed and the non-obstante clause in section 60(5) is designed to ensure that the NCLT alone has jurisdiction when it comes to applications as and proceedings by or against a Corporate Applicant covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings; (xiv) if it were to be held the Civil Court also has jurisdiction, the same would introduce manipulations to frustrate the resolution process.
21. The Core issue is whether NCLT can order possession of the property of Corporate Applicant to facilitate the CIRP process and allow the Resolution Professional to take possession of the assets of Corporate Applicant, pending adjudication of pending suit filed by Corporate Applicant seeking possession of the shed from the applicant.
22. Section 60(5) of the I & B Code, 2016 states that notwithstanding anything contained to the contrary contained in any other law for the time being enforced, the National Company Law Tribunal shall have jurisdiction to entertain and dispose of any application
  - (a) Any application or proceeding by or against the Corporate Applicant or Corporate Person
  - (b) any claim made by or against the Corporate Applicant or Corporate Person by or against any of its subsidiaries situated in India; and
  - (c) Any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the Corporate Applicant or Corporate Person under this Code.

23. Section 60(5) and (b)(c) of the Code empowers NCLT to entertain the dispute raised in the suit, section 63 of the Code further bars the jurisdiction of the civil court in matters pertaining to the NCLAT, section 231 of the Code also bar the jurisdiction of the civil court from granting any injunction in respect of any action taken or in pursuance of any order passed by the Adjudicating authority under this Code. This code is a self-contained legislation conferring the supervisory powers on the NCLT over CIRP process right from the stage of application being made for initiation of the CIRP process to the completion of the CIRP/ Liquidation as the case may be.

Upon conjoint reading of section 60(5), section 63, section 231 and section 238, the jurisdiction of Civil Court is excluded related to the matters related to I & B code. Therefore, it can be held that NCLT can order possession of the property of Corporate Applicant to facilitate the CIRP process and allow the Resolution Professional to take possession of the assets of Corporate Applicant.

24. The principles of comity would be affected if conflicting order were passed by the Civil Court and the NCLT the same would be detrimental to the resolution process. The office of Resolution Professional has become functus officio, the Liquidator has been appointed, the liquidator subject to the directions of the Adjudicating Authority under section 35(1)(b) has the power to take into his custody or control all the assets, property effects an actionable claim of the Corporate Applicant.

25. There are similar provisions under the SARFAESI proceedings, wherein section 14 prescribes that a secured creditor may for the purpose of taking possession or control of any secured assets request in writing to the Chief metropolitan or District Magistrate within whose jurisdiction any such secured asset, shall make an application to take possession of such assets. The District Magistrate under section 14 (1-A) on being such request made to him, may authorise any officer subordinate to him to take possession of such assets and documents relating to thereto and to forward such assets to the secured creditors.

26. Further, the non-obstante clause as prescribed section 238 of the I & B Code, 2016, provides that the provisions of the Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.



27. Further from the facts of the given case, it clear that there are two suits pending, one Special Suit No. 21/2009/A on the file of Hon'ble Civil Court at Bicholim, Goa, filed by the Corporate Applicant seeking the following prayers:

- I) The defendant be decreed and ordered to quit, vacate and deliver peaceful possession of the suit property, i.e., Shed D3-3 at Honda Industrial Estate in safe and good condition back to the plaintiffs;
- II) The defendant be ordered to pay to the plaintiff's mesne profits at the rate of ₹7,000/- per month from 1<sup>st</sup> October 2008 till effective delivery of possession of the suit property (Shed No. D3-3) to the plaintiffs;
- III) The defendant be ordered to pay to the plaintiffs ₹1,29,292.95/- with interest at the rate of 15% per annum from filing of the suit till payment, being the value of the material belonging to the plaintiffs, which is in possession of the defendant;
- IV) The costs of this suit be awarded to the plaintiffs.

And the other Special Suit No.23 of 2009 on the file of Court of Civil Senior Judge, senior division at Bicholim, Goa filed by the Applicant for recovery of money for the following prayers:

- A) *"That the plaintiffs are entitle to recover from the defendants a sum of ₹1,40,000/- being the rent/hire charges of the said milling machine from 01.11.2006 to 28.02.2009 along with the interest at the rate of 10% p.a. and further ₹5,000/- per month from 01.03.2009 till the said milling machine is reinstalled by the defendant in the Shed No. D3-3 of the plaintiffs at Honda Industrial Estate.*
- B) *The plaintiffs are also entitled for a direction to the defendant to reinstall the said milling machine back in the Shed No. D3-3 at Honda Industrial Estate at the place where it was installed and from where the defendant had shifted the same.*
- C) *Any other and further order this Hon'ble Court deems fit and proper in the circumstances of the suit.*
- D) *For a cost."*

It is the case of Corporate Applicant that he is seeking possession in the suit, whereas the Applicant is only claiming recovery of monies in his suit. There are no restraint orders passed in both the cases. Therefore, the Resolutions Professional's claim for possession of shed before the adjudicating authority in view of CIRP order, can be entertained under the I & B Code in view of the above discussion in para 22, 23 & 24 supra.

28. The applicant has also filed his claim before the Resolution Professional and has subjected himself to the jurisdiction of the CIRP. His claim was rejected by the RP. In view of the moratorium, the suit filed by the applicant was temporarily stayed, but the suit filed for recovery of possession filed by the Corporate Applicant would be deemed to continue. With the given factual matrix, the CIRP period of 270 days having come to an end, the office of IRP has become functus officio. Thereafter, the resolution professional has filed an application to liquidate the company under section 31 of the Code as no resolution plan was received by him. Be that as it may, the tenure of Resolution Professional has come to an end and he has appointed as a liquidator by this Court. The Resolution Professional has not taken steps to amend his status as a liquidator.
29. Therefore, in view of the overriding powers under section 238 of the Code and Rule 11 of NCLT Rules 2016, and it is directed that Resolution Professional/ Liquidator shall be allowed to take possession of the Shed from the Applicant.
30. Hence, I agree with the decision of Member (Judicial) and direct the RP/ Liquidator to take possession of the Shed and accordingly, the application is disposed of in terms of the above order.

Sd/-

Suchitra Kanuparthi  
Member (Judicial)