

NATIONAL COMPANY LAW TRIBUNAL KOLKATA BENCH-II

AT KOLKATA

IVN No.06 of 2024

in

CP (IB) No.52/KB/2022

Date of Order: 08.05.2026**In the matter of:**

TATANAGAR FINANCIAL SERVICES LIMITED

Operation Creditor

Versus

M/s SIS MOHAN REAL ESTATE PVT. LTD

Corporate Debtor

And

In the matter of:**Karbi Anglong Autonomous Council, (KAAC)**by an Act of Parliament by incorporating the
Sixth Schedule to the Constitution (Amendment) Act,

To the Constitution of India having its

head quarter at Diphu, through its Manager,

Karbi Bhawan, Kolkata, KAAC, Diphu,

Sri Surajit Ghosh, and having its registered

office at MG Road, Town - Diphu,

District- Karbi Anglong, Assam - 782460

Applicant

Versus

**1. Abhishek Khemka, Interim Resolution Professional**

of M/s SIS MOHAN REAL ESTATE PVT. LTD (in CIRP),

having its registered office at village:

Chackraju Molla P.O- Pailan, P.S-

Bishnupur, District- South 24

Parganas, West Bengal - 700104;

2. TATANAGAR FINANCIAL SERVICES LIMITED

having its registered office at 109/38,

Hazra Road, Post Office - Kalighat,

Police Station- Tollygunge,

Kolkata - 700026

Respondent

An application under Section 60(5) of Insolvency and
Bankruptcy Code, 2016 read with rule 11 of National Company
Law Tribunal 2016.

Coram:

Mr. Labh Singh, Hon'ble Member(Judicial)

Ms. Rekha Kantilal Shah, Hon'ble Member(Technical)

Present:

For Applicant: Mr. Shaunak Mitra Learned Advocate

For Respondent: Mr. Swaranendu Chatterjee Ld. Advocate

Mr. S. Auddy Ld. Advocate

Ms. Alisha Kar Ld. Advocate


Ms. Nisha Nahata Ld. Advocate

ORDER




Labh Singh, Judicial Member

1. The present application has been filed under Section 60(5) of Insolvency and Bankruptcy Code 2016(for short “IBC Code 2016”) read with Rule 11 of the National Company Law Tribunal(Rules) 2016 (for short “NCLT Rules 2016”) with the following prayers:
 - (a) A declaration may be passed that the applicant is absolve owner of the property as mentioned in the paragraph no. 1 and further return of possession of the property;
 - (b) To direct the IRP not to proceed to take any steps in connection with the property as mentioned in paragraph no. (1);
 - (c) Such further order or orders to be passed and/or direction be given as to this Learned Tribunal my deem fit and proper.
2. The applicant is a legally constituted entity established under the framework of the Sixth Schedule of the Constitution of India and operates within the jurisdiction of the Karbi Anglong Autonomous Council (KAAC), department of Revenue, KAAC Secretariat, Diphu, PIN - 782460. Dedicated to promoting the well-being of the Karbi community, the Applicant spearheads initiatives that drive industrial development across the Karbi Anglong and West Karbi Anglong




districts. This commitment extends to conducting comprehensive exploration activities in mining and allied fields, contributing to the sustainable development of the region's natural resources. That the applicant is legally constituted under the "Assam Autonomous Districts (constitution of district council) Rules, 1951".

3. It is submitted that the applicant, vide deed of conveyance dated 5th November, 2020 registered on 07.12.2020 executed and registered before DSR-V, South 24 Parganas, purchased the property demised under the sale deed being Assesses No. 41- 121-05-0002-2 known as Premises No.2, Jadu Nagar Colony, mailing address P-19, Sahid Dinesh Gupta Road (Jadu Colony), Kolkata -700034, Police Station - Behala, District of south 24 Parganas, Registry Office DSR - II and ADSR Behala, South 24 Parngas, more fully and specifically mentioned in the said registered deed, for a sale consideration for a consideration of Rs. 7,50,00,000/- (Rupees Seven Crore Fifty Lakhs only) from SIS Mohan Real Estate Private Limited having its registered office at Chakrajumolla, P.O. Pailan, P.S. Bishnupur, Kolkata - 700104, District - South 24 Parganas, the Corporate Debtor.
4. The land purchased is measuring 3 Cottahs 3 Chittaks 0 Sq. ft. with building constructed thereon comprising J.L. No. 6.




R.S. No. 190, Touzi No. 23, 26, 32, 69 and 411. Pargaria Magura, appertaining to Dag No. 39 under Khatian No. 125 together with easement right and amenities, facilities situated at Mouza Mondalpara, Ward No. 121, Kolkata Municipal Corporation. Thus, the applicant became absolute owner of the property in question and has been in peaceful possession of the said property in exercising its right as absolute owner of the said property.

5. That, on and about September 2nd, 2023 the Respondent No. 1 the IRP along with his representatives came to aforesaid premises of the applicant and affixed a Form "A" which is the public announcement under Regulation 6 of the IBBI Regulations, 2016, and ordered to vacate the property in order to take possession of the property. Upon inquiry, the applicant came to know of the order dated August 31, 2023 whereby this Tribunal has admitted the Corporate Debtor into CIRP and moratorium under Section 14 has been imposed.
6. It transpired from the said notice affixed on the premises of the applicant that an order dated 03.07.2023 has been passed in IA (IB) No. 1090/KB/2023 filed in CP (IB) No.52/KB/2022. The applicant had been in possession of the said property as per sale deed dated 05.11.2020 and




exercising right, title, interest and possession and also ceased and possessed the said property absolutely.

7. The order passed in the aforesaid proceedings does not entitle the operational creditor, Tata Nagar Financial Services Limited to take possession of the said property of which the applicant is absolute owner and in possession thereof. The right of a third party who is absolute owner cannot be effected in any manner whatsoever.
8. The applicant further submits the act of taking possession of the property which absolutely belongs to the applicant and of which the applicant is the absolute owner is per-se illegal and contrary to law.
9. It is further submitted that on 02.09.2023, a notice was affixed on the premises of the applicant informing that in view of the order passed by this Tribunal, the possession of the premises was taken. On 22.01.2024, in pursuance of the order passed by this Tribunal, the men and agent of the Authorities came to take possession and took possession in absence of the petitioner's representative.
10. The property does not belong to the corporate debtor viz., M/s. SIS Mohan Real Estate Pvt. Ltd. The applicant, in view of the order dated 31.08.2023 passed in the instant proceeding, made a representation dated 29.01.2024,




requesting the Respondent No. 1, the IRP herein to release the property of the applicant as the said property is not involved in any manner in the said proceeding nor does the said order passed in the aforesaid proceeding entitle the operational creditor to take possession of the suit property. Despite receipt of the said representation, no response was received with regard to the said request made by the applicant.


11. The applicant further submits that the respondent no.1 had no right in attaching and taking possession of a property belonging to a third party. The respondent no. 1 has acted in a high-handed manner and acted in colourable exercise of his power which is otherwise not vested in him by law. By taking possession of the applicant property, the respondent no. 1 has committed irreparable loss and injury to the applicant herein and has snatched away a valuable right protected under Article 300-A of the Constitution of India.
12. It is further submitted that the applicant was not even provided a chance to explain the current circumstances and before any action could have been taken, the applicant wrongly deprived of the property of which the applicant is a lawful owner. In fact in the garb of exercising his rights



as an IRP under IBC,2016, the respondent no. I has illegally detained the property of the third party/applicant.


13. The applicant further submits that the said property was purchased by the applicant long before filing of the application under section 8 and 9 of the IBC, 2016 and before initiation of CIRP against the Corporate Debtor. It is a settled principle that the interim resolution professional or Resolution Professional has no right to attach any property owned but transferred long before initiation of CIRP process of the corporate debtor.
14. The applicant further states that the Corporate Debtor had neither mortgaged the said property nor the operational creditor is a financial institution. It is also a fact that the contract between the operational creditor and corporate debtor was apropos to rental of JCB's where no clause mentions that any property of the Corporate Debtor be confiscated if there is breach of the contract. The applicant has purchased the said property and was enjoying possession until the respondent no. 1 illegally took possession without the proper inquiry. Therefore, an appropriate order directing the operational creditor to immediately release the property requires to be passed.

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15. Respondent No. 1 appeared in pursuance of notice issued by this Tribunal replying therein that the present applicant has sought to intervene in the main application under Section 9 which was allowed and disposed of on 31.08.2023 appointing the present answering respondent as the Interim Resolution Professional and thereafter confirmed as Resolution Professional.
 16. It is further replied that a perusal of relief makes it clear that the present applicant in the garb of intervention has filed a recalling application.
 17. The present applicant cannot be a necessary party in the main Company Petition. It is settled law that a financial creditor alleging fraud can be allowed to intervene in applications filed under Section 7 or 9 of IBC 2016, if there is allegation of fraud; however, in the present proceeding, the present applicant had sat on the fence even though, he was admittedly served with the order on 02.09.2023 and filed the application on 03.02.2024.
 18. Therefore it is submitted that the present applicant lacks locus to intervene in the present matter and the main company petition. It has been held by the Hon'ble Appellate Tribunal that no third party intervention is required alleging this kind of proceeding like the instant case




before or after admission of either Section 7 or Section 9 applications.

19. At present, the resolution plan stand approved by COC and pending approval of this Court. It is not clear from the perusal of the resolution plan that whether this is part of asset list or not; whether set up land is the part of list of assets owned by corporate debtor or not, as suspended board of director did not even hand over the list of assets which is recorded in the order sheet of this Tribunal. This application is premature in nature, as well as pre-emptive.
20. In the garb of all this proceeding, a third party cannot be given a right to intervene and indirectly challenge a resolution plan which has been approved by COC by 100% majority. As per the Law laid down by Hon'ble Supreme Court of India in K. Sashidhar - Versus- Indian Overseas Bank reported in 2019 (12) SCC 150, the COC has been vested with commercial wisdom which can not be questioned on flimsy ground. Further the Hon'ble Supreme Court of India in the judgement of Ebix Singapore Private Limited -Versus- Committee of Creditors of Educomp Solutions Limited reported in 2022 (2) SCC 401 has clearly held that no party can seek a modification or recession from the resolution plan as soon as it is approved by COC, it become creation of Code



Itself. Therefore, it is respectively submitted that this Hon'ble Court should dismiss this vexatious attempt to abuse the process of Law by the applicant with heavy cost and in fact draw Contempt proceeding for obstructing the process of Law and deliberately coming at the belated stage.

21. It is not clear whether they have been set up by the erstwhile suspended board of directors to reclaim land which is a valuable piece of asset.
22. Respondent No. 2 also appeared and filed its reply stating therein that the present application is not maintainable as the applicant has sought to file the present application in the main company petition approximately five (5) months after the admission of petition. It is admitted by the applicant that they were in receipt of order dated 31.08.2023 passed under Section 9 of IBC on 02.09.2023. They waited for 5 months without challenging the main order before the Appellate Tribunal. This application was filed conspicuously in the main company petition, in which the present applicant lacks locus being a non-necessary party and is a way to abuse the process of Law.
23. It is trite in Law that intervention in the garb of recalling Corporate Insolvency Resolution Process (CIRP) admission orders cannot be filed or entertained. Hence, it




is clear from the aforesaid judgement that only when allegations of fraud, collusion or malicious intent are raised, only then an intervention application can be entertained at Pre-CIRP stage or Post-admission stage. Hence, the present application is not maintainable on the ground of locus as well as non-necessary party in the main company petition.

24. It is further replied that as per records, the resolution plan is pending approval of this Tribunal since last September last year and the present respondent is a member of the COC which has been approved by COC . The resolution plan and the order sheet regarding IA (IBC) No.968(KB)/2023 reveals that proceeding under Section 19(2) of the Code, is yet to yield any positive result regarding the document and assets of the corporate debtor.
25. Hence, as per the last available record, the COC and the RP in its bonafide belief acted in consonance under Section 18 read with Section 25 of the Code to preserve any assets of the corporate debtor. It is clear that despite issuance of non-bailable warrant and arrest warrant, the suspended board of directors has neither appeared nor has supplied any documents.



26. The applicant, in the instant application, seeks a declaratory relief of title which is completely beyond the power of this Tribunal, as held by Hon'ble NCLAT reported in 2023 ibclaw.in 664 NCLAT.
27. In view of the aforesaid, it is clear that the present set up proceedings are premature, motivated and with an intent probably at the behest of suspended board of directors to stall proceeding regarding approval of resolution plan which should be seriously deprecated and heavily penalized.
28. Heard Learned Counsel for the parties, perused the entire record of the present case and considered the law applicable on the facts and circumstances of the present case.
29. It is undisputed fact that the applicant purchased property question, being land admeasuring 3 Cottahs 3 Chittaks 0 Sq. ft. with building constructed thereon comprising J.L. No. 6. R.S. No. 190, Touzi No. 23, 26, 32, 69 and 411. Pargaria Magura, appertaining to Dag No. 39 under Khatian No. 125 together with easement right and amenities, facilities situated at Mouza Mondalpara, Ward No. 121, Kolkata Municipal Corporation, for a consideration of Rs. 7,50,00,000/- (Rupees Seven Crore Fifty Lakhs only) vide deed of conveyance dated 5th November, 2020 registered on




07.12.2020 with DSR-V, South 24 Parganas before filing of the application under section 8 and 9 of the IBC, 2016.

30. It is pertinent to note that the applicant by filing the present application is seeking declaratory relief and restoration of possession of the property in question and further direction to IRP not to proceed to take any steps in connection with the property in question.
31. It is pertinent to refer provision of Section 18 of IBC 2016 which provides for duties of interim resolution professional and the same is as under:

“Section 18: Duties of interim resolution professional.

The interim resolution professional shall perform the following duties, namely:—

- (a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—
- (i) business operations for the previous two years;
 - (ii) financial and operational payments for the previous two years;
 - (iii) list of assets and liabilities as on the initiation date; and
 - (iv) such other matters as may be specified;
- (b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;
- (c) constitute a committee of creditors;



(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;

(e) file information collected with the information utility, if necessary; and

(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 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 authority;


(g) to perform such other duties as may be specified by the Board.

Explanation.—For the purposes of this section, the term “assets” shall not include the following, namely:—

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

32. Thus, proviso to Section 18(1) of IBC 2016 provides that assets owned by a third party in possession of the Corporate Debtor held under trust or under contractual agreement shall not be included in the term 'assets'. This implies that the interim resolution professional can only take control of the assets belonging to the corporate debtor itself and he do not have the authority to take control of assets owned by third parties. The property in question is not hold by the Corporate Debtor in trust or under contractual agreement and therefore, proviso to Section 18(1) is not applicable.

33. It has been provided in Section 18(1)(f)(vi) that Resolution Professional to 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 other registry that records the ownership of assets




including assets subject to the determination of ownership by a court or authority.

34. On the exercise of jurisdiction over matters before it by the Adjudicating Authority, Hon'ble Supreme Court in case of *Gloster Ltd. v. Gloster Cables Ltd. and Ors. 2026 INSC 81* held that

“29. This Court clarified that the validity of the exercise of the residuary power was being adjudged in the case, on the facts obtained thereon and that they were not laying down a general principle on the contours of the exercise of residuary power by the Adjudicating Authority. It was further reiterated emphatically that the Adjudicating Authority cannot exercise its jurisdiction over matters dehors the insolvency proceedings since such matters fall outside the realm of IBC.


30. In the said context, this Court observed thus:-

“55. A textual comparison of the provisions of Section 60(5) of IBC with Section 446(2) of the Companies Act, 1956 would reveal some similarities of expression, with textual variations. For the purposes of the present proceedings, it suffices to note that clause (c) of Section 60(5) confers jurisdiction on NCLT to entertain or dispose of “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 debtor or corporate person under the



Code”. Section 446(2)(d) of the Companies Act, 1956 and Section 280(d) of the Companies Act, 2013 use the expression any question of priorities or any other question whatsoever whether of law or fact. These words bear a striking resemblance to the provisions of Section 60(5)(c) of IBC. But textually similar language in different enactments has to be construed in the context and scheme of the statute in which the words appear. The meaning and content attributed to statutory language in one enactment cannot in all circumstances be transplanted into a distinct, if not, alien soil. For, it is trite law that the words of a statute have to be construed in a manner which would give them a sensible meaning which accords with the overall scheme of the statute, the context in which the words are used and the purpose of the underlying provision. Therefore, while construing of Section 60(5), a starting point for the analysis must be to decipher parliamentary intent based on the object underlying the enactment of IBC.....

69. The institutional framework under IBC contemplated the establishment of a single forum to deal with matters of insolvency, which were distributed earlier across multiple fora. In the absence of a court exercising exclusive jurisdiction over matters relating to insolvency, the corporate debtor would have to file and/or defend multiple proceedings in different fora. These proceedings may cause undue delay in the insolvency resolution process due to multiple proceedings in trial courts and courts of appeal. A delay in completion of the insolvency proceedings would diminish the value of




the debtor's assets and hamper the prospects of a successful reorganisation or liquidation. For the success of an insolvency regime, it is necessary that insolvency proceedings are dealt with in a timely, effective and efficient manner. Pursuing this theme in Innovative [Innovative Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407] this Court observed that : (SCC p. 422, para 13)

“13. One of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process.”

The principle was reiterated in ArcelorMittal [ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1] where this Court held that : (SCC p. 88, para 84)

“84. ... The non obstante clause in Section 60(5) is designed for a different purpose : to ensure that NCLT alone has jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings.”


Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the corporate debtor. However, in doing so, we issue a note of caution to NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals



and fora when the dispute is one which does not arise solely from or relate to the insolvency of the corporate debtor. The nexus with the insolvency of the corporate debtor must exist.

71. In the present case, PPA was terminated solely on the ground of insolvency, since the event of default contemplated under Article 9.2.1(e) was the commencement of insolvency proceedings against the corporate debtor. In the absence of the insolvency of the corporate debtor, there would be no ground to terminate PPA. The termination is not on a ground independent of the insolvency. The present dispute solely arises out of and relates to the insolvency of the corporate debtor.


91. The residuary jurisdiction of NCLT under Section 60(5)(c) of IBC provides it a wide discretion to adjudicate questions of law or fact arising from or in relation to the insolvency resolution proceedings. If the jurisdiction of NCLT were to be confined to actions prohibited by Section 14 of IBC, there would have been no requirement for the legislature to enact Section 60(5)(c) of IBC. Section 60(5)(c) would be rendered otiose if Section 14 is held to be exhaustive of the grounds of judicial intervention contemplated under IBC in matters of preserving the value of the corporate debtor and its status as a “going concern”. We hasten to add that our finding on the validity of the exercise of residuary power by NCLT is premised on the facts of this case. We are not laying down a general principle on the contours of the exercise of residuary power by NCLT. However,



it is pertinent to mention that NCLT cannot exercise its jurisdiction over matters dehors the insolvency proceedings since such matters would fall outside the realm of IBC. Any other interpretation of Section 60(5)(c) would be in contradiction of the holding of this Court in Satish Kumar Gupta [Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] .

173. Although various provisions of IBC indicate that the objective of the statute is to ensure that the corporate debtor remains a “going concern”, there must be a specific textual hook for NCLT to exercise its jurisdiction. NCLT cannot derive its powers from the “spirit” or “object” of IBC. Section 60(5)(c) of IBC vests NCLT with wide powers since it can entertain and dispose of any question of fact or law arising out or in relation to the insolvency resolution process. We hasten to add, however, that NCLT's residuary jurisdiction, though wide, is nonetheless defined by the text of IBC. Specifically, NCLT cannot do what IBC consciously did not provide it the power to do.

174. In this case, PPA has been terminated solely on the ground of insolvency, which gives NCLT jurisdiction under Section 60(5)(c) to adjudicate this matter and invalidate the termination of PPA as it is the forum vested with the responsibility of ensuring the continuation of the insolvency resolution process, which requires preservation of the corporate debtor as a going concern. In view of the centrality of PPA to CIRP in the unique factual



matrix of this case, this Court must adopt an interpretation of NCLT's residuary jurisdiction which comports with the broader goals of IBC.”

(Emphasis supplied)

35. The property in question is not mutated in the name of the applicant. The property is standing in the name of the Corporate Debtor in the revenue record. Therefore, the ownership as claimed can be determined by the Civil Court and not by this Tribunal. Therefore, the Resolution Professional has rightly taken custody and control of the property in question.
36. Therefore, in view of our aforesaid observation and law applicable thereon, we are of view that the present application is not maintainable at law and hence the same is dismissed being devoid of merits.
37. It is made clear that nothing observed herein shall effect the right of the applicant to seek alternative remedy available at law .

Rekha Kantilal Shah
Member(Technical)

Labh Singh
Member(Judicial)