

(2022) 06 NCLT CK 0017

In the National Company Law Tribunal

Case No : I.A (IBC) No. 1326/KB/2020 In C.P. (IB) No. 1512/KB/2018

Sanjit Kumar Nayak

APPELLANT

Vs

Niraj Khaitan

RESPONDENT

Date of Decision : 09-06-2022

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 19(2), 35(1)(b), 52, 60(5)

Citation : (2022) 06 NCLT CK 0017

Hon'ble Judges : Rohit Kapoor, Member (J); Harish Chander Suri, Member (T)

Bench : Division Bench

Advocate : Shaunak Mitra, Vikash Singh, Sharfoo Ahmed, Sudha Singh, Sanjit Kumar Nayak, Rahul Auddy, Bhaskar Dwivedi, Deepnath Roy Chowdhury, Dhiman Ray, Dip Chanda, Ashok Bhowmick

Final Decision : Dismissed

Judgement

Harish Chander Suri, Member (Technical)

1. This Court convened through video conferencing.
2. This Interlocutory Application No. 1326 of 2020 has been filed by the Applicant under section Under Section 35(1)(b) and Section 60(5) Insolvency and Bankruptcy Code, 2016, seeking the following reliefs from this Adjudicating Authority :
 - a. Admit and allow the present application;
 - b. To pass an order directing the respondent to vacate the Duplex Dwelling Unit in Vedic Village Plot No. AD-02 of Vedic Village Scheme, Chandpur Gram Panchyat, Mouza - Shikharpur, N-24 Pargana, Touzi No. 49, Police Station- Rajarhat, Kolkata-700135 and handover the same to the Liquidator;
 - c. An order of injunction be passed restraining the respondent from making any further encumbrance or creating any third party right in respect of the Office of the Corporate Debtor;

- d. Ad interim orders in terms of prayers above;
- e. Costs and incidental of this application be paid by the respondents;
- f. Such further order or orders be passed and direction / directions be given as this Hon'ble Tribunal may deem fit and proper.

3. The applicant Sanjit Kumar Nayak, Liquidator of Skyrise Overseas Private Limited, Corporate Debtor has submitted that he informed the Corporate Debtor formerly known as Saraf Impex Pvt. Ltd. through e-mail that this Adjudicating Authority had ordered liquidation of M/s Skyrise, Corporate Debtor and appointed him as the Liquidator replacing the earlier liquidator Vikram Kumar. The Liquidator started putting his efforts to liquidate the assets. The Liquidator had received Balance Sheet and Profit and Loss Account of the Corporate Debtor for the year 2015-2016 but could not get the details of activities of the Corporate Debtor from April 1, 2016 to February 11, 2020 i.e. the Liquidation Commencement date. It is submitted by the Liquidator that even the RP during the CIRP could not get the activities for that period, as a result, the RP had filed application under section 19(2) of the Code seeking directions from this Adjudicating Authority to share information/ documents by the Directors of the Corporate Debtor vide IA (IB) 1678/KB/2019, wherein directions were issued to the Corporate Debtor to cooperate with the RP for successful completion of CIRP and that if they did not cooperate, RP shall approach Police for help and with the help of local police, he can take all records and books of accounts and file report to this Adjudicating Authority.

4. It is further submitted that the RP could not take the help of local police as suspended Director Mr. Pravin Saraf was sick till the order of Liquidation was passed by this Adjudicating Authority.

5. It is submitted that the Liquidator has received claims from the Secured and Unsecured Financial Creditors, Government Department and Employee and the same could not be counter verified from the Corporate Debtor.

6. It is submitted that the State Bank of India, Secured Financial Creditor has lodged claim of Rs.47,46,30,341.27 and the following were the security held by State Bank of India:-

1.

Commercial Office space having 1489 Sq. ft. along with 1 Car Parking space at 1st Floor of Diamond Prestige at 41A, A.JC. Bose Road, PS-Park Street, Kolkata-17 registered vide Deed No. 1339 of 2012 in the name of Saraf Impex Pvt. Ltd. Which was changed to M/s Skyrise Overseas Private Limited.

2.

Duplex Bungalow No.AD-02, Located within Vedic Village Complex at PO, Bagu, PS- Rajarhat, Dist-24 Pargarns (North) Kolkata- 700135 registered vide Deed No. 7618 of 2012 in the name of Saraf Impex Pvt. Ltd. which was changed to M/

s Skyrise Overseas Private Limited

7. It is submitted that the Liquidator visited both assets mentioned above, to take possession of the assets of the Corporate Debtor. During the visit on June, 22, 2020, the Liquidator found that the said Duplex Bungalow AD-02 was under lock and key. The Liquidator affixed notice to vacate the said Premises. The Liquidator has also met Mr. Raju Bhattacharjee, a representative of Vedic Real Estate who has confirmed verbally that the Duplex No. AD-02 is lying vacant for a long time and Mr. Praveen Saraf, owner of the Duplex Bungalow sent some of his guests in the month of November, 2019. The Liquidator has handed over a notice to Mr. Raju Bhattacharjee and asked him to submit the maintenance related documents which they charge from each owner. Mr. Raju Bhattacharjee had informed Liquidator that they need some time to talk to Mr. Praveen Saraf, owner of the Duplex Bungalow.

8. It is submitted that on June 27, 2020, the Liquidator has received an email from one Mr. Niraj Khaitan claiming that he is a bonafide and lawful tenant in respect of the said premises since 2012 and he is not liable to be vacate, and is governed under the West Bengal Premises Tenancy Act only. A copy of the email dated June 27, 2020 of Mr. Niraj Khaitan is annexed as Annexure-E, to the application.

9. It is submitted that the Liquidator has sent email on June 28, 2020 asking Mr. Niraj Khaitan to submit the following documents in support of his claim:-

1. Registered tenancy agreement.
2. Proof of payment of rent for last 12 months.
3. KYC documents of Mr. Niraj Khaitan like Aadhar and PAN Card.
4. Purpose of occupation since the property is inside a holiday resort.
5. Any pending case before any court of law.

10. It is submitted that as no reply was received by the Liquidator, another email dated 24th July, 2020 was sent requesting Mr. Niraj Khaitan to submit the documents and thereafter, another email dated August 6, 2020 was sent. It is submitted that on August 10, 2020, Mr. Niraj Khaitan informed that due to C+ cases in his office, he was not able to move and as such could not send the required details and also informed that the same would be sent as soon as possible. A copies of the said email dated 28, 2020, July 24, 2020, August 6 and August 10, 2020 are annexed as Annexure-F.(Colly.)to the petition.

11. It is submitted that the Liquidator again reminded Mr. Khaitan through email on September 2, 2020 and also on November 16, 2020, but with no response. The Liquidator also informed Mr. Niraj Khaitan that from the records, there is no amount received towards rent from the said property.

12. It is submitted that as required under Regulation 35(2) of IBBI (Liquidation

Process), Regulations, 2016, the property of the Corporate Debtor is to be valued by two Registered valuers, the Liquidator sent a letter on September 11, 2020 through email on September 11, 2020 requesting the Vedic Village Real Estate authority to co-operate with the Registered Valuer to complete the job of physical verification. A copy of the letter dated September 11, 2020 through email on September 11, 2020 is annexed as Annexure-H.

13. It is further submitted that Regulations 44 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, provides the Liquidator to liquidate the Corporate Debtor within a period of one year from the Liquidation Commencement date. Therefore, it is necessary to take possession of the Liquidation Estate and also sell or liquidate the moveable and immovable property and actionable claims of the Corporate Debtor in liquidation by public auction or private contract, subject to section 52 and then distribute the amount so received to the Creditors.

14. It is also submitted that while visiting the Duplex Bungalow AD-02, Vedic Village Real Estate, the Liquidator observed that the same had been kept under lock and key and Mr. Khaitan who is claiming to be the tenant of this Duplex Bungalow is not submitting any proof or documentary evidence in support of his claim. Under the situation explained above, the Liquidator is not able to take possession of the Duplex Bungalow.

15. It is submitted that the Liquidator is duty bound to act as per the powers under the Code and to hold and form the liquidation estate in a fiduciary capacity for the benefit, of all the Creditors. This application under section 35(1)(b) of the Code is stated to have been filed after exhausting all modes of communications and enough time given to hand over the Duplex Bungalow, the excerpts from which is produced herein under the after exhausting all modes of communications and enough time given to handover the Duplex Bungalow, the excerpt from which is produced herein under:

" ..Section 35(1) ...Subject to the direction of the Adjudicating Authority, the Liquidator shall have the following powers and duties, namely:

(b) To take into his custody or control all the assets, property, effects and actionable claims of the Corporate Debtor"

" Section 35(1) (n).... To apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the Corporate Debtor and to report the progress of the liquidation process in a manner as may be specified by the Board".

16. In view of the facts and circumstances stated above no ownership right has been created in favour of the Respondent. The Respondent does not have any legal right to illegally possess a property in respect of which it is not the owner. As the Liquidator as of now is in legal possession of the property and its assets and by virtue of the order of the Tribunal, he is responsible for beneficial

liquidation of the Corporate Debtor and repayment of the dues of the Creditors of the Corporate Debtor.

17. The applicant submits that the property is to be made encumbrance free by directing Mr. Niraj Khaitan to vacate the property and hand over the vacant possession of the same in favour of the Liquidator. The Duplex Dwelling Unit of Super Build Area of 2300 Sq. Ft. and Built Area of 1496 Sq.ft. consists of 3 Bed Room, Living Room, Toilet, Kitchen and other structures i.e. Varandah. The current market value of which is more than Rs.1.50 Crore and it may fetch much higher price if such property is sold by public auction. Fetching such higher price is only possible if such properties are made encumbrance free by directing Mr. Niraj Khaitan, who is the illegal, possession of the office property claiming to be the tenant of the property and handover peaceful possession of the same in favour of the Liquidator.

18. It has been prayed by the applicant that Mr. Niraj Khaitan is urgently required to be evicted by way of passing necessary orders, as the Liquidator wants to sell the Property by way of public auction upon necessary public advertisement so that this property fetches the best price which can be utilized for payment of the dues of the Creditors of the Corporate Debtor.

19. It is submitted that in the event the Liquidator faces any resistance from taking vacant possession of the office property Mr. Niraj Khaitan, the Respondent, the Liquidator may be provided necessary Police help from the local Police station for taking vacant and peaceful possession of the said Duplex Dwelling Unit along.

20. In reply to the petition, Mr.Niraj Khatian- Respondent has filed his reply. It is submitted that Respondent is a bonafide tenant of Skyrise Overseas Private Limited (erstwhile Saraf Impex Private Limited) in respect of a cottage lying and situated at premises No. AD-02, Vedic Village, Rajarhat, Kolkata-700135 and is lying within the District of North 24 Parganas at a monthly rent of Rs.2,000/-

21. It is submitted by the Ld. Counsel for the Respondent that the tenancy started from 1st November, 2012 and continued for 5 years, i.e., till 31st October, 2017. Under same terms and conditions of the tenancy agreement, it was extended for another period of 5 years with effect from 05.11.2017, i.e. till October,2022.

22. It submitted by the Ld. Counsel for the Respondent that Respondent has paid the monthly rent all along without any default from any corner in accordance with the agreement since inception of the tenancy and rent is paid upto date.

23. It is submitted that Respondent came to know that the liquidator, Sri Sanjit Kumar Nayak has been appointed by this Adjudicating Authority wherein Respondent's tenanted property had been mortgaged by the Landlord Company. It is submitted that Respondent's bona fide tenancy is covered in accordance with the provisions of the West Bengal Premises Tenancy Act, 1997 along with its

Rules as amended upto date. It is also stated that Respondent in no way, connected with the loan, if any, whatsoever and Respondent is only a monthly tenant under said tenancy agreement.

24. It is submitted that on 26.09.2020, the Insolvency Professional and Liquidator of Skyrise Overseas Private Limited, Mr. Sanjit Nayak, came to Respondent's tenanted premises along with 2-3 other persons and in absence of Respondent started threatening and abusing caretaker and tried to snatch the keys from him by force in order to enter the premises forcibly. It is submitted that Respondent informed Mr.Sanjit Nayak about his lawful tenancy and not being responsible for any dispute with the owner of the property. In spite of that, they warned caretaker that they will come back again and will forcibly remove Respondent and Respondent's family.

25. It is submitted that on 27.06.2020, Respondent communicated with the liquidator Mr. Sanjit Nayak through email and clearly mentioned Respondent's locus standi and right and interest in the property which is completely governed by West Bengal Premises Tenancy Act,1997 along with its Regulations as amended till date and Respondent is in no way connected to the liquidation process and borrower.

26. It is submitted that liquidator is trying to curb Respondent's legal tenancy right under the curb garb of Insolvency and Bankruptcy Code which is completely illegal and mala fide and void, and that a tenant under Tenancy Act cannot be evicted by liquidator and there is no provision in the Insolvency and Bankruptcy Code which can oust the legal rights as enshrined under the West Bengal Tenancy Act, 1997. The Liquidator does not have any power under Insolvency and Bankruptcy Code to extinguish Respondent's right which is protected by the West Bengal Tenancy Act, 1997,and thus the liquidator be restrained from disturbing Respondent peaceful possession of the property.

27. In the Rejoinder to the Reply affidavit, the Liquidator reiterated the statements in the application and denied the averments made in the reply affidavit. It is further submitted that Respondent is bound to vacate the property and hand over the possession of the same to the liquidator, as the purported tenancy agreement and extension thereof are unregistered and unstamped documents and thus have no legal validity and the respondent cannot rely on the same. It is submitted that authenticity of the rent receipts is doubtful and there is no proof of actual transfer of funds. It is submitted that no such rent agreements or rent receipts were found in the records of the Corporate Debtor and even if the rent was paid, the same shall not entitle the Respondent to remain in possession. Even if the respondent is a tenant, he has to vacate the possession immediately.

28. It is submitted that representative of Vedic Village Authority namely Mr. Raju Bhattacharjee informed the Applicant that the said property is used as the guest house by the owner. It is submitted that representative shared an email dated

August 17, 2019 with the Applicant, wherein Mr. Praveen Sararf, who claims to be the resigned director of the Corporate Debtor, has confirmed the stay of some guests in the said property.

29. It is denied and disputed that in this case the provisions of West Bengal Premises Tenancy Act, 1997 would apply in any way. It is submitted that the tenancy theory was an after-thought. It is denied that the Respondent is well protected by the provisions of West Bengal Premises Tenancy Act, 1997 and its Rules as alleged or at all. It is denied that the Respondent is residing legally or validly at the property. It is denied that possessory right over the property lies in favour of the Respondent or such alleged right should be protected under law. The Respondent is not entitled to be in possession of the property.

30. It is denied that the Liquidator does not have power under IBC to extinguish purported tenancy rights or any rights purportedly protected by the West Bengal Tenancy Act, as alleged or at all. The purported General Diary at page 16 of the affidavit in opposition filed earlier by the Respondent is a malafide and false complaint lodged with the ulterior motive. The liquidator denied the allegations made in paragraph 9 to 15 of the reply affidavit and denied that the tenant under the Tenancy Act cannot be evicted by the Liquidator. The Respondent is misconstruing the scope of IBC, which has overriding effect.

31. We have heard Ld. Counsel for the parties at length and gone through the record. After going through all the documents placed on record by the parties, particularly unregistered agreement on the Letterhead of the Corporate Debtor before change of its name i.e. Saraf Impex Private Limited and the two receipts of Rs.30,000/- towards the rent, we are surprised to note that whereas in the rent agreement monthly rental is mentioned as Rs.2000/-but the receipts dated 6th January, 2020 and 18th January, 2019 specifically mentioned as follows:-

"Dt. 06.01.2020

MONEY RECEIPT

Received from Mr. Niraj Khaitan S/o R.K.Khaitan a sum of Rs. 30,000.00 (INR THIRTY THOUSAND ONLY) as Rent for AD-02, Vedic Village, Rajarhat For the year 2000".

" Dt. 18.01.2019

Received from Mr. Niraj Khaitan S/o R.K.Khaitan a sum of Rs. 30,000/- (Rs. Thirty Thousand Only) as Rent for AD-02, Vedic Village, Rajarhat For the year 2019".

32. If we calculate the amount @ 2000/- per month, it should be 24,000/-and not 30,000/- and it is also not understood as to why the rent of Rs.30,000/- was paid in advance instead of Rs.24,000/- or Rs.2000/- every month. There is no explanation given in the pleadings or by the counsel for the respondent during the course of arguments. We specifically asked Ld. Counsel for the Respondent to

show us or bring on record any document relating to any Government Authority to indicate that the plea taken by the Respondent is genuine but the Respondent could not place before us anything to convince this Bench. If a tenant has been living in a property for the last more than 10 years as a tenant, he would positively have something or the other to show his possession in the premises but in this case apart from the unregistered document along with two receipts of payment, there is nothing placed on record. We are not at all convinced with the arguments of the Ld. Counsel for the Respondent and we, therefore, direct the tenant to vacate the premises within one month from the date of this order and hand over the vacant physical possession of the premises to the Liquidator.

33. Accordingly, I.A.(IB) No. 1326/KB/2020, is dismissed.

34. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.