

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH,
KOLKATA**

I.A. No. /2020
 in
C.P. No.182 of 2017

In the matter of:

M/s. Gujarat NRE Coke Limited (in Liquidation) represented by the Liquidator Mr. Sumit Binani, IBBI / IPA – 001/IP-N00005/2016-17/10025 having his office at 4th Floor, Room No. 6, Commerce House, 2A, Ganesh Chandra Avenue, Kolkata – 700013.

..... **Corporate Debtor**

AND

In the matter of:

Mr. Sumit Binani, Liquidator having registration No. IBBI/IPA-001/IP-N00005/ 2016-17/10025 having his office at 4th Floor, Room No. 6, Commerce House, 2A, Ganesh Chandra Avenue, Kolkata- 700013.

... **Petitioner/Liquidator**

Versus

M/s. Surajbari Traders Private Limited & Ors

.... **Respondents**

Coram: Shri Jinan K.R., Hon'ble Member (Judicial)
Shri Harish Chander Suri, Hon'ble Member (Technical)

Counsel on Record :

- | | |
|--|-----------------------------|
| 1. Mr. Sumit Binani |] Liquidator |
| 2. Ms. Ujjaini Chatterjee, Advocate |] For Petitioner/Liquidator |
| | |
| 1. Mr. Sandeep Bajaj, Advocate |] For Respondent Nos. 2 & 3 |
| | |
| 1. Mr. Moti Sagar Tiwari, Advocate |] |
| 2. Mr. Sailendra Kumar Tiwari, Advocate |] For Respondent No. 1 |

Date of hearing : 14/08/2020

Order delivered on : 14/08/2020

ORDER

Per Shri Harish Chander Suri, Member (Technical):

1. Mr. Sumit Binani, the Applicant Liquidator along with his counsel appeared through video conference and mentioned that this application filed under Section 19(2) is to be heard urgently. Urgency for an early disposal of the application being satisfactorily explained and since the work of the Tribunal is disrupted due to Covid-19 pandemic and consequential lockdown and lockdown is extended till 31st August, 2020, this application was heard on today as requested by the Ld. Counsel of the Applicant.

2. Mr. Sumit Binani, the Liquidator appointed in this matter submitted that there is complete non-cooperation from the officials and employees of the corporate debtor. The keys have not as yet been handed over for the past 5 months in spite of 29 emails having been sent during the last 14-15 days. It is further submitted that there is willful act of not obeying the directions passed by this Tribunal in its specific orders passed on 17th July, 2020, with mala fide intent. They have been imposing one after the other conditions. It is stated that there is enough evidence to the effect that they are frustrating the entire process. Mr. Binani further submitted that during last three years nothing has been permitted by the respondent to happen and it is not likely to happen without the stern directions of this Adjudicating Authority to the respondents. Mr. Binani further submitted that he has filed another application regarding unrest at plant which also might be taken up for hearing on the next date of hearing. Liquidator has requested that he be given uninterrupted access to the registered office of the Company. He further submitted that there are two offices in the same premises and in both the offices, the Company's employees were working and records are lying. It is submitted that the Company employees are sitting in both the wings, accounts in one, the CEO and other in another, and that the Liquidator was earlier having access to both offices.

3. Mr. Sandeep Bajaj, counsel appearing for R-2 & 3, however, denied the allegations and submitted that the keys are with them, (which is quite contradictory to their earlier stand). It is also submitted that there is no willful disobedience. It is submitted that they shall abide by the order. He further submitted that these respondents had sent a letter to the NCLT seeking clarification of the order on 21.07.20. It is also submitted that this premises is used by 20 other group companies and their valuable record is lying in the said premises, as their offices and their records are being maintained therein. The learned counsel further submitted that they are ready to comply with the directions of this Tribunal, provided some safeguard is provided for the safety of the record of the other group companies. It is submitted that the Liquidator

can enter the office and continue to enjoy the privileges as they were doing before the lock down during office hours.

4. The Liquidator submitted that he would require status quo as was prevailing during the CIRP. He wants to function from both the premises as the Employees work at both the offices. He, however, candidly admitted that he does not have problem with other companies working from that office..

5. Learned counsel Mr. Tiwari, appearing for the suspended directors/respondent no.1 submitted that they were not made party in the petition and only the employees were made party, and that since they were neither supplied with the copy in the petition, nor were they heard before the orders dated 17th July, 2020 was passed, they cannot be held responsible for any act of disobedience or the contempt, if any. It is submitted that their name should be struck off from this application or in the alternative they might be allowed to file their reply affidavit and be heard before any further action in this application is taken.

6. We have heard all the parties present today. It has been observed from the pleadings and the orders passed in this matter that the respondents 2 and 3 have been very reluctant in providing keys of the registered office to the Liquidator to have him an independent access to the premises. The Liquidator has quote a number of incidents when there has been non co-operation on the part of the respondents.

7. Having considered all the points of arguments advanced on all the sides, we are of the considered view that the Liquidator is entitled to have an uninterrupted access to both the wings of the registered office of the company under liquidation. The Liquidator is bound to take control of the assets, including the registered office of the company under liquidation. It should be under the possession of the Liquidator. Liquidator cannot be at the mercy of the promoters / owner.

8. In the aforesaid circumstances, therefore, we pass the following orders:-

(i) The respondents shall hand over a complete set of keys to the Liquidator to enable him to have an access to the registered office premises of the company any time, without any interruption or interference by the respondents or any one else at their behest;

(ii) The respondents, however, shall have an access to that part of the premises which are being occupied or used by the other group companies;

(iii) The respondents shall make their own arrangements for safeguarding and preservation of all their papers and the records of other group companies, at their own costs and responsibility, either by employing a dedicated employee/security guard for that purpose. They shall not be entitled to raise any allegation in that regard against the Liquidator or any of the persons employed or deployed by the Liquidator.

(iv) In case the set of keys are not handed over to the Liquidator, the Liquidator is free to approach the Superintendent of Police of the area concerned, where the registered office of the company is located, who shall provide all necessary help and protection to the Liquidator in having the Lock (s) broken and replaced with new locks, without any delay;

In addition to the above directions, the respondents are issued a Show cause notice, as to why Rule Nisi be not issued against them returnable on 09.09.2020. All other applications filed by the parties to be heard on merit. Parties are directed to file reply affidavit by way of e-filing by serving copy to other sides within one week. Rejoinder if any to be filed before the date of hearing.

List all the applications on 09.09.2020.

Mentioning application for urgent hearing stands disposed off.

The Registry is directed to communicate the order to the Applicant and Respondents through e-mail.

**Harish Chander Suri,
Member (T)**

**(Jinan K.R.)
Member (J)**

Signed on this, the 14th day of August, 2020

vc