

**IN THE NATIONAL COMPANY LAW TRIBUNAL : NEW DELHI  
SPECIAL BENCH**

**(IB)- 23 (PB)/2017**

**IN THE MATTER OF:**

**Hotel Gaudavan Private Limited**

**.....PETITIONER**

**Vs.**

**Alchemist Asset Reconstruction (P) Limited**

**.... RESPONDENT**

**SECTION :**

**Under Section 7 of (IBC)**

**Order delivered on 25.7.2017**

**Coram :**

**R. VARADHARAJAN,  
Hon'ble Member (Judicial)**

**DEEPA KRISHAN,  
Hon'ble member (Technical)  
For the Petitioner  
For the Res./Corporate Debtor**

**:-**

**: Mr. Abhishek Singh, Advocate  
Mr. Swadeep Singh, Advocate  
Mr. ASM Tripathi, Advocate  
Mr. Siddharth Chaudhary, Advocate**

**ORDER**

The intransigence shown on the part of the Corporate Debtor and the persons who were in the management of the company, it is seen is leading the Insolvency



Resolution Professional to file application after applications seeking directions from this Tribunal with a view to make them cooperate in the resolution process. Due to the inexorable march of law which has led to the Insolvency & Bankruptcy Code, 2016 being enacted for avowed objects stated therein clearly shows that the promoters and management of a Corporate Debtor cannot live in the past and are required to understand and face the present realities. However, that seems to be not the case here as it is seen that despite the Hon'ble High Court of Rajasthan and then the Hon'ble Supreme Court refusing to interfere with the Insolvency Resolution Process commenced as ordered by this Tribunal, the Corporate Debtor allegedly represented by the erstwhile management have been forum shopping with a view to delay the smooth conduct of the process rather than cooperate with IRP for speedier implementation of the process for the benefit of all. The above attitude of the persons who were in the management of the Corporate Debtor is strongly deprecated.

Be that as it may. Coming to the instant application it is seen that the Learned IRP has filed the instant application wherein the Learned Insolvency Resolution Professional (IRP) has detailed the non-cooperation of the Corporate Debtor and other respondents impleaded therein ever since the date of initiation



of the Corporate Insolvency Resolution Process (CIRP) by this Tribunal vide order dated. 31.3.2017 and subsequently followed vide order dated 13.04.2017 in application bearing CA No. 78 (PB)/2017. Despite the above orders, passed by this Tribunal, it is contended by the Learned IRP that the statutory record, Books of accounts of the company as well as assets which are in the custody of the persons who were in the erstwhile Management of the company have not been handed over and that too despite repeated e-mail requests to hand over the same.

It is also averred by the Ld. IRP that in the Registered office of the Corporate Debtor, on inspection, it was seen that only one register was available and that too incomplete and on enquiry from one Mr. Gobind Singh Rathore, who was present, it was represented that all the statutory records are in the custody of Mr. Lokendra Singh Rathore. On further enquiry, it was confirmed by Mr. Lokendra Singh Rathore according to IRP that all the information would be sent through e-mail and the same would be made available on 09.6.2017. The Ld. IRP also represents that on inspecting the records as available at the registered office of the Corporate Debtor, it was noticed that two Toyota Fortuner vehicles and one Toyota INOVA vehicle are in the custody of erstwhile management of the Company and contrary to this, Mr. Lokendra Singh Rathore vide e-mail dated



16.6.2017 informed the Ld. IRP that all the statutory records have already been provided and in relation to the custody of the vehicles, inspite of the specific enquiry, nothing was disclosed.

It is further averred by the Ld. IRP in the said application that as the registered office of the company is located in two rooms within the residential premises of the erstwhile management of the Corporate Debtor, it is becoming impossible for the Ld. IRP to exercise complete control over the registered office and it is also brought to the notice of the Tribunal that a sum of Rs.40,000/- is also being paid to the erstwhile management as rent for the registered office which can be avoided if the registered office is shifted elsewhere.

Thus, taking into consideration the order passed by this Tribunal on 31.3.2017 & 13.4.2017 and in the circumstances of the case, the following prayer has been sought by Learned IRP vide said application :

- " a) Allow the instant application,  
b) Direct the Respondents to deliver all records/statutory records/registers/financial records etc. to the Applicant.  
c) Direct ROC to change the Registered office of HGPL from C-21-22, Vaishali Nagar, Jaipur to Fort Rajwada, No.1, Hotel Complex, Jodhpur Barmer Link Road, Jaisalmer-345001, Rajasthan so that applicant may have a complete control*



over it.

d) Direct the Respondent to deliver the vehicles Two (2) Toyota Fortuner and One (1) Toyota Innova) to Hotel Fort Rajwada, Jaisalmer immediately.

e) Initiate action against the Respondents under Section 68, 70 and 71 of the IBC for contravention of the provisions of the IBC and orders dated 31.3.2017 and 13.4.2017.

f) Pass an ex-parte order in terms of prayer (b) and (d) above,

g) such other/further and other reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

Respondents were directed to file their reply wherein it has been stated that due to fire incident which broke in the registered office of the Company in the year 2016, records are not available and whatever records were available, same has been produced to the Ld. IRP who is well aware of the same. Further, it is also contended by the respondents impleaded in the application that the Ld. IRP vide e-mail dated 06.5.2017 sought for only six registers whereas in the e-mail dated 23.6.2017, Ld. IRP is seeking 49 registers which clearly demonstrates that Ld. IRP is rather acting vindictively.

It is further submitted in relation to three vehicles that the same are matter of record and the Ld. IRP cannot claim as if something new has cropped up, as disclosure has been made of the 3 vehicles even in the Audited Financial Statements of the Corporate Debtor.

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In relation to the payment of rent of Rs.40,000/- for the premises in which the registered office is situated, it is contended by the respondents that no payment towards the rent has been made recently. It is also contended that the premises where the registered office is located, is not being used for the purposes of residence of the erstwhile management of the Corporate Debtor and taking into consideration all the above facts, it is contended that this application deserves to be dismissed.

The Ld. IRP in his rejoinder has reiterated what has been stated in the application and that as per the provisions of IBC,2016 all the assets are required to be brought within the control and custody of the IRP with a view to carry out the mandate under IBC,2016. Further for effective functioning and management of the affairs of the Corporate Debtor it becomes incumbent that the registered office is shifted from the existing one as prayed for in the application.

There seems to be credence in the plea of the IRP as under the Code (i.e. IBC,2016) the onus is placed on him to manage the affairs of the Corporate Debtor. Hence, the plea for shifting the registered office of the Company as well



as seeking for the custody of assets and books and accounts which are required to be taken in to custody of the Corporate Debtor in order to effectuate the resolution process, as may be framed by the Creditor or by Corporate Debtor or for that matter any person interested in the resolution process. Hence, once the resolution process is initiated, custody of the assets and books and accounts and records should be taken by the IRP and also required to be handed over as per the provisions of IBC, 2016 by persons who are in possession of the same.

In the circumstances, we do not find any merit in the objections raised by the Corporate Debtor nor by the persons who were in management of the Company and in whose possession assets are found to be and we direct them to immediately hand over possession of these vehicles and the IRP to take into his custody the 3 vehicles, the details of which have been given in the application. It is also ordered that if the Insolvency Resolution Professional is not in a position to discharge from the registered office of the Company, then he is at liberty to change the location and carry out operations in relation to Corporate Debtor, subject however to all compliances as may be applicable under prevalent laws in this regard.



We would, for the benefit of the Corporate Debtor and persons who were in its management extract the provisions of Section 68 as well as Section 70 to 72 of the IBC, of the Insolvency and Bankruptcy Code, 2016, as reproduced hereunder:

- 68.** Where any officer of the corporate debtor has,—
- (i) within the twelve months immediately preceding the insolvency commencement date,—
    - (a) wilfully concealed any property or part of such property of the corporate debtor or concealed any debt due to, or from, the corporate debtor, of the value of ten thousand rupees or more; or
    - (b) fraudulently removed any part of the property of the corporate debtor of the value of ten thousand rupees or more; or
    - (c) wilfully concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the property of the corporate debtor or its affairs, or
    - (d) wilfully made any false entry in any book or paper affecting or relating to the property of the corporate debtor or its affairs; or
    - (e) fraudulently parted with, altered or made any omission in any document affecting or relating to the property of the corporate debtor or its affairs; or
    - (f) wilfully created any security interest over, transferred or disposed of any property of the corporate debtor which has been obtained on credit and has not been paid for unless such creation, transfer or disposal was in the ordinary course of the business of the corporate debtor; or
    - (g) wilfully concealed the knowledge of the doing by others of any of the acts mentioned in clauses (c), (d) or clause (e); or
  - (ii) at any time after the insolvency commencement date, committed any of the acts mentioned in sub-clause (a) to (f) of clause (i) or has the knowledge of the doing by others of any of the things mentioned in sub-clauses (c) to (e) of clause (i); or
  - (iii) at any time after the insolvency commencement date, taken in pawn or pledge, or otherwise received the property





knowing it to be so secured, transferred or disposed, such officer shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both: Provided that nothing in this section shall render a person liable to any punishment under this section if he proves that he had no intent to defraud or to conceal the state of affairs of the corporate debtor.

**70.** (1) On or after the insolvency commencement date, where an officer of the corporate debtor—

(a) does not disclose to the resolution professional all the details of property of the corporate debtor, and details of transactions thereof, or any such other information as the resolution professional may require; or

(b) does not deliver to the resolution professional all or part of the property of the corporate debtor in his control or custody and which he is required to deliver; or

(c) does not deliver to the resolution professional all books and papers in his control or custody belonging to the corporate debtor and which he is required to deliver; or

(d) fails to inform the resolution professional the information in his knowledge that a debt has been falsely proved by any person during the corporate insolvency resolution process; or

(e) prevents the production of any book or paper affecting or relating to the property or affairs of the corporate debtor; or

(f) accounts for any part of the property of the corporate debtor by fictitious losses or expenses, or if he has so attempted at any meeting of the creditors of the corporate debtor within the twelve months immediately preceding the insolvency commencement date, he shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both: Provided that nothing in this section shall render a person liable to any punishment under this section if he proves that he had no intent to do so in relation to the state of affairs of the corporate debtor.

(2) If an insolvency professional deliberately contravenes the provisions of this Part he shall be punishable with imprisonment for a term which may extend to six months, or with fine which shall not be less than one lakh rupees, but may extend to five lakhs rupees, or with both.



**71.** On and after the insolvency commencement date, where any person destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is in the knowledge of making of any false or fraudulent entry in any register, books of account or document belonging to the corporate debtor with intent to defraud or deceive any person, he shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

**72.** Where an officer of the corporate debtor makes any material and wilful omission in any statement relating to the affairs of the corporate debtor, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

Any deviation on the part of the Corporate Debtor or its erstwhile management, of the above provisions will invite stringent action on the part of this Tribunal.

On the above terms, the Application is allowed.

Sd/-

**(DEEPA KRISHAN)**  
**Member (Technical)**

Sd/-

**(R. VARADHARAJAN)**  
**Member (Judicial)**