NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1889 of 2024

[Arising out of the Impugned Order dated 27.08.2024 passed by the Adjudicating Authority, National Company Law Tribunal, Jaipur Bench in I.A. (IB) No. 1175/KB/2020 in CP (IB) No. 182/KB/2017]

In the matter of:

Kavita Jagatramka
1, Clyde Row, Hastings,
Kolkata- 700022

...Appellant

Versus

Mr. Sumit Binani
Room No.6, 4th Floor,
Commerce House, 2A,
Ganesh Chandra Avenue,
Kolkata- 700013

...Respondent

Present:

For Appellant	**: Mr. Debal Banerjee Sr. Advocate with Mr. Bharat Sood, Advocates.**
For Respondent	**: Mr. Arjun Asthana, Ms. Shalini Basu and Ms. Shubhangi Gupta, Advocates.**

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) by the Appellant arises out of the Order dated 27.08.2024 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Jaipur Bench) in I.A. (IB) No. 1175/KB/2020 in CP (IB) No. 182/KB/2017. By the impugned order, the Adjudicating Authority has dismissed I.A. No. 1175 of 2020 filed by the Appellant and turned down the prayer of the Appellant for initiating perjury proceedings against the liquidator-Respondent for having affirmed a false affidavit in the contempt petition filed vide IA No. 694 of 2020. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

2. Outlining in brief the factual background of the matter, Shri Debal Banerjee, Ld. Senior Counsel for the Appellant submitted that the Corporate Debtor-Gujarat NRE Coke Ltd. had been admitted into liquidation on 11.01.2018 and the present Respondent-Mr. Sumit Binani was appointed as the liquidator. The liquidator sought to have access to the office premises of the Corporate Debtor and for this purpose had sent a communication on 08.06.2020 to the father of the Appellant-Ms. Kavita Jagatramka seeking access to the office of the Corporate Debtor under liquidation following which request, the office premises was opened by the Appellant on 10.06.2020. However, on 01.07.2020, the liquidator filed Section 19(2) application under IBC seeking directions of the Adjudicating Authority for the impleaded parties to extend co-operation in allowing access to the liquidator to the office premises of the Corporate Debtor. The Adjudicating Authority, on 17.07.2020, after considering the Section 19 application filed by the liquidator directed the impleaded parties and/or the owner of the premises, whosoever was in the possession of the keys of the office premises to handover the keys to the Liquidator. Since the order of the Adjudicating Authority on the Section 19 application dated 17.07.2020 was without the knowledge of the Appellant as she was not arrayed as a party, the Appellant filed an IA seeking clarification/modification of the said order since it was not clear as to whether the Adjudicating Authority had directed the handing over exclusive possession of the entire office premises to the liquidator or only that portion of the office premises from where the registered office of the Corporate Debtor was running. Obtaining this clarification was essential because this office premises was shared by other companies whose valuable records were also lying in the same premises and the Corporate Debtor was in occupation of only a small portion of the office premises. Before the application for clarification/modification could be heard, the Respondent- Liquidator on 31.07.2020 proceeded to file a contempt petition vide IA No. 694 of 2020 against the Appellant for violating the order dated 17.07.2020. The Adjudicating Authority on 14.08.2020 had directed the Appellant to show cause as to why Rule should not be issued against the Appellant. Elucidating further, it was submitted that the Appellant thereafter filed Company Appeal No. 724-725 of 2020 before this Tribunal on 16.08.2020 against the orders of the Adjudicating Authority dated 17.07.2020 and 14.08.2020. This Tribunal after hearing the matter had set aside the impugned orders of 17.07.2020 and 14.08.2020 as erroneous and unsustainable on 02.02.2021. Yet, the Liquidator-Respondent continued to press for hearing of the contempt petition. In the contempt petition, the Appellant filed their reply-affidavit on 08.09.2020 to which the Respondent filed their rejoinder.

3. It was vehemently contended by the Ld. Senior Counsel for the Appellant that the liquidator in their rejoinder to the reply-affidavit filed by the Appellant has affirmed a false affidavit. The Respondent by giving false evidence in judicial proceedings had committed an offence of perjury which fell within the purview of Section 193 of the IPC and therefore liable to be punished as it attracted provisions of Section 340 of the Code of Criminal Procedure (CrPC), 1973. Hence, the Appellant filed IA No. 1175 of 2020 before the Adjudicating Authority claiming the following reliefs as reproduced below:-

> ***a)*** *A preliminary inquiry may be conducted in the matter in accordance with law.*
> ***b)*** *To record the finding to that effect.*
> ***c)*** *A complaint be made in writing through a competent officer of this Adjudicating Authority and the same be sent to the Learned Chief Metropolitan Magistrate, Calcutta for taking cognizance of the said offence and to proceed with in accordance with law.*
> ***d)*** *A reference be made to the IBBI for initiating necessary disciplinary proceedings against the respondent in accordance with law.*
> ***e)*** *Appropriate order as to the cost of and incidental to this application.*

4. Submission was pressed by the Ld. Sr. Counsel for the Appellant that the liquidator being an officer appointed by the Adjudicating Authority was bound to state the truth. However, by making false statements in their reply affidavit, the liquidator had committed an offence punishable under the IPC. It was stoutly asserted that the Respondent had made these false statements in a blatant manner with the dishonest intention to injure the interests of the Appellant. Coming to the deliberate false statements made by the liquidator, it was pointed out that despite being fully aware that the ownership of the registered office premises of the Corporate Debtor vested on the Appellant-Kavita Jagatramka, the liquidator in the rejoinder affidavit made a false statement of being unaware of the purported involvement or interest that the Appellant had in the office premises. The liquidator had also played down the fact that he had written to the father of the Appellant on 08.06.2020 for seeking access to the registered office premises of the Corporate Debtor and that temporary access had been allowed on 11.06.2020. It was also added that the liquidator had not only made false statements in their rejoinder to the reply affidavit in the contempt petition but had continued in the same vein in their reply-affidavit to IA No. 1175 of 2020. The liquidator has continued to make false and misleading statements to justify the earlier false statements. It was submitted that inspite of such glaring acts of perjury, the Adjudicating Authority in the impugned order abstained from returning its findings on the fact as to whether the liquidator had pressed false and misleading statements before it. Further, assailing the impugned order, it was pointed out that the Adjudicating Authority had taken a misplaced view that it was "not tempted" to have the matter referred for initiating proceedings for perjury under Rule 11 of the NCLT Rules, 2016 read with Sections 340, 195(1)(b) of the CrPC read with Sections 191, 193, 199, 209 and 211 of IPC.

5. Making rival submission, Shri Arjun Asthana, Ld. Counsel for the Respondent submitted that the Adjudicating Authority did not have jurisdiction to adjudicate on the allegation of perjury and had therefore taken the correct decision of not entertaining the prayer of the Appellant to entertain the changes of perjury against the liquidator. The Ld. Counsel for the Respondent stated that the application under Section 19 was instituted as the liquidator was not allowed free access to the office space of the Corporate Debtor on one pretext or the other. It was only upon ease of restrictions after the first wave of Covid pandemic, that the liquidator had sent a mail on 18.05.2020 to the CFO of the Appellant enquiring as to who was in possession of the keys of the office of the Corporate Debtor. The CFO had categorically informed on 19.05.2020 that the keys of the office were in the custody of two office boys. In subsequent emails, it was further clarified by the employees of the Appellant that the boys in whose custody the keys were lying were not able to come to the office because of prevailing COVID pandemic and consequential closure of train services. The liquidator therefore tried to reach out to the two office-boys who were in possession of the keys according to the information shared by the Key Managerial Personnel (“**KMP”** in short) of the Appellant. In support of their contention, attention was adverted to a series of emails dated 18.05.2020 to 03.06.2020 that were exchanged between the Liquidator and the KMP employees as placed on record at pages 9-22 of the reply-affidavit filed on behalf of the Respondent in the present appeal. The Ld. Counsel of the Respondent contended that collective reading of these emails will show that the Liquidator was all along making genuine endeavours to gain access to the premises of the Corporate Debtor. At no stage did the office-boys or the KMP of the Appellant indicate or suggest that the office premises was owned by the Appellant. Hence, it is misconceived on the part of the Appellant to contend that the liquidator was aware about the ownership status of office premises of the Corporate Debtor. Later, the KMPs changed their stance on 03.06.2020 and mentioned that the keys are with the owners, without disclosing the identity of the said owners. It was only on 23.07.2020, that Mr. Arun Kumar Jagatramka, without disclosing the details of the owner of the office premises of the Corporate Debtor communicated that one Surajbari Traders Private Limited has exclusive tenancy rights over the office premises. Thus, it was the Appellant along with the KMPs, officials, employees and suspended board of management who acted in a manner preventing the Liquidator from accessing the office space of the Corporate Debtor.

6. We have duly considered the arguments advanced by the Ld. Counsel for both the parties and perused the records carefully.

7. It is the contention of the Appellant that at the time of filing of Section 19 application, the liquidator was fully alive and conscious of the fact that the Appellant was in possession of the keys of the office premises and yet chose not to make the Appellant a party in the Section 19 application. The liquidator thus unfairly obtained orders behind the back of the Appellant. It was also contended that while the Appellant was not made a party to the Section 19 application, the converse happened when the contempt application was filed by the Respondent-liquidator. In the contempt application, the employees of the Appellant were excluded though they were impleaded as the main parties to the Section 19 application. On the other hand, in the contempt application only the Appellant was made a party. Viewed from the angle of fairness and transparency, it was argued that this duality in impleadment of parties by the Liquidator in the Section 19 application and contempt petition puts a serious question mark on the conduct of the liquidator. Moreover, it is the case of the Appellant that in the contempt petition, certain false statements have been deliberately made by the liquidator to justify their wrongful conduct.

8. When we see the material on record, as brought to our notice by the Appellant, we find that the Respondent-liquidator in their Section 19 application dated 01.07.2020 in the main body of the said application and synopsis thereto admitted that the keys of the office premises were lying with the Appellant. For reasons of clarity, we would like to reproduce the relevant excerpts from the synopsis (dates and events) as well as the main application which clearly indicate that the liquidator had admitted of being aware of the fact that Kavita Jagatramka-Appellant was having the keys of the office premises being the owner of the office premises of the Corporate Debtor as below:

Synopsis (page 98 of Appeal Paper Book)

05.06.2020 *At* *2:13 p.m.*	*….the Liquidator was shocked on becoming aware that the office boys of the Corporate Debtor never had the office keys. When the Liquidator finally got the contact numbers of the office the office boys did not have any keys and that the keys of the office were handed over to Ms. Kavita Jagatramka before the lockdown. The Liquidator, in anguish, issued an email and apprised the Respondents about their false statement and again requested the Respondents to urgently open the office.*

Main body of the application (page 112-113 of Appeal Paper Book)

G. It is further imperative to mention here that vide their emails and numerous communications, the Respondents informed the Liquidator that the office keys are with office boys who were not able to travel amidst the lockdown. However, when the Liquidator finally got the contact numbers of the office boys and contacted them, it was apprised to the Liquidator that the office boys did not have any keys and that the keys of the office were handed over to Ms. Kavita Jagatramka, the owner of the office premises of the Corporate Debtor before the lockdown.

(Emphasis supplied)

9. It was also pointed out by the Appellant that the liquidator took a contra position in their rejoinder in the contempt petition. The liquidator has made a statement denying his being aware of the interests of the present Appellant in the office space of the Corporate Debtor which has been contended by the

Appellant to be a case of deliberate misrepresentation of facts and records. In support of their contention, attention was adverted by the Appellant to the averments made by the liquidator in their rejoinder to the contempt petition as placed at page 235-237 of Appeal Paper Book (**"APB"** in short) wherein knowledge of the interest of the Appellant in the office premises of the Corporate Debtor has purportedly been falsely denied by the liquidator relevant excerpts of which are as reproduced below:

> *"13. With reference to the allegations contained in paragraph 3(i), I say that <u>I did not have the contact details of the respondent no.2 and I was not aware of the purported involvement of the respondent no.2 in the said office spaces</u> in any manner whatsoever. I deny that I called up the respondent no.1 to seek access to the office premises around 8th June, 2020 or on any other date during the lockdown period as alleged or at all. <u>I say that the office was organised to be opened for a very short period on 11th June, 2020 by the CFO of the Corporate Debtor,</u> I reiterate that I am not aware of any involvement of the respondent no.2 in the opening or closing of the office and deny all allegations of the respondent no.2 in this regard. I deny that I have any malicious motive as alleged or at all.....*
>
> *I reiterate that <u>I was not aware of any purported connection or interest of the respondent nos.2 and 3 in the office spaces of the Corporate Debtor</u> and indeed, the respondent no.3 has not disclosed any document before this Hon'ble Tribunal in support of it's purported claim with regard to the office spaces of the Corporate Debtor....*
>
> *I say that I did not communicate with the respondent nos.2 and 3 as I was not aware of their purported interest in the office space of the Corporate Debtor....*
>
> *I deny that I have suppressed any fact or have filed any false pleading. <u>I deny that the order dated 17th July, 2020 has been availed with any malicious intent or any planned manner as alleged or at all.</u> I deny that I have cooked up any story against the respondents."*
>
> (Emphasis supplied)

10. The short question for our consideration is whether in the attendant facts and circumstances, there is sufficient credibility in the allegation of the Appellant that the liquidator was brazen about manipulating and misrepresenting facts and records before the Adjudicating Authority in the contempt petition which tantamount to committing of perjury.

11. At this juncture, it would be useful to look at the impugned order to find out how the Adjudicating Authority has viewed the allegations cast by the Appellant on the conduct of the liquidator. We find that the Adjudicating Authority has acknowledged that an "*error*" was committed by the liquidator in "*securing an order under Section 19(2) of the IBC*" for not impleading the Appellant but held that it is not tempted to initiate perjury against the liquidator for the contents sworn on affidavit by the liquidator in their reply rejoinder to the contempt petition. The relevant excerpts from the impugned order are as reproduced below:

> *"20. We find that liquidator in course of discharge of his duties has been trying to get keys of the office premises of the corporate debtor which were in the possession of the personnel of the Corporate Debtor, and in the process may have committed an error by securing an Order under Section 19(2) of the IBC from this Adjudicating authority without impleading the petitioner and the respondent No. 1 the father of the petitioner as parties to the proceedings initiated under Section 19(2) of the IBC.*
>
> *24. From the exchange of correspondences placed on record, we find that liquidator has made umpteen attempts in conducting and completing the liquidation proceedings and therefore, we do not find sufficient grounds for referring the matter to IBBI as sought by the petitioner. In course of discharge of his duties, the liquidator made statements in the application preferred under Section 19(2) of the Code, only to secure keys of the office which he finally had secured*

from the men and agents of the petitioners. However, the statements made on oath by the liquidator are not such which would tempt us to get the matter referred to for initiating proceedings for perjury under Rule 11 of the National Company Law Tribunal Rules, 2016 read with Sections 340, 195(1)(b) of the Code of Criminal Procedure, 1973 read with Sections 191, 193, 199, 209 and 211 of the Indian Penal Code, 1860."

12. The main contention raised by the Appellant is that the liquidator made false and misleading statements in the rejoinder reply to the contempt petition that they were not aware of the interest of the Appellant in the office premises of the Corporate Debtor. When we look at the sequence of events, we notice that the liquidator got access to the office premises of the Corporate Debtor on 11.06.2020 for an extremely brief period. However, thereafter when the liquidator again wanted continued access to the said premises, he was not able to secure the same. The requirement to have continued and prolonged access to the said office premises is justifiable as it was a necessary prerequisite to progress the liquidation process of the Corporate Debtor which was already initiated. As it was incumbent upon the liquidator to pursue the timely conclusion of the liquidation process, we cannot question the motive and intent of the liquidator to make the efforts he undertook in securing the keys of the office premises of the Corporate Debtor. It is also an indisputable fact that the liquidation process was underway while covid pandemic was raging which could have come in the way of the efforts undertaken by the liquidator to identify the holder of the keys and secure the keys to the office premises of the Corporate Debtor. We also cannot overlook the fact that the liquidator made a lot of effort by sending correspondences to the KMPs of the Corporate Debtor to identify the custodians of the keys and the whereabouts of the owner of the office premises of the Corporate Debtor. Inspite of these endeavours, the liquidator did not succeed in laying his hands on the keys or in getting correct information about the owner of the office premises of the Corporate Debtor. This stalemate compelled the liquidator to file a Section 19 application before the Adjudicating Authority. Since the liquidator only had knowledge about the KMPs of the Corporate Debtor but did not have credible and authentic information about the actual owner, it was logical on their part not to have arrayed the Appellant as a party in the Section 19 application. In the given circumstances, to read or impute motives behind the reason for omission in including the Appellant as a party in the Section 19 application may not be fair. In our considered opinion, therefore, the Adjudicating Authority did not err in giving the benefit of doubt to the liquidator in having made the aforesaid omission. We are also persuaded to believe that no cogent grounds have been brought out which give foundation to the exclusion of the Appellant from the Section 19 application by the liquidator as having been triggered by dubious, suspect or malafide motives. It would also not be correct to hold that the liquidator had fool-proof information about the interest of the Appellant with regard to ownership of the office premises of the Corporate Debtor at the time of filing the contempt application. Moreover, the inclusion of the Appellant in the contempt application done by the liquidator was because the Adjudicating Authority had passed orders in the Section 19 application directing that the owner of the premises or whosoever is in possession of the keys of the office premises shall handover the keys to the liquidator immediately. In the given facts and circumstances, we find that the manner in which the liquidator had placed facts before the Adjudicating Authority in the Section 19 application and the statements made while pursuing the contempt petition are not such that he wilfully and deliberately acted with any malfide intent to cause prejudice to the interests of the Appellant. We therefore do not find any error having been committed by the Adjudicating Authority in not initiating proceedings for perjury.

13. In the given backdrop, we are of the considered view that the impugned order does not warrant any interference by this Tribunal in the exercise of its appellate jurisdiction. The Appeal lacks merit and is dismissed. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Place: New Delhi
Date: 20.12.2024

Harleen/Abdul