

**IN THE NATIONAL COMPANY LAW TRIBUNAL,**

**KOLKATA BENCH, KOLKATA**

**CA(IB)No.1635/KB/2019**

**And**

**CA(IB)No.1270/KB/2019**

**And**

**CA(IB)No.1697/KB/2019**

**And**

**CA(IB)No.1617/KB/2019**

**And**

**CA(IB)No.1402/KB/2019**

**IN**

**CP(IB)No.803/KB/2018**

**In the matter of:**

(An application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016);

And

**In the Matter of:**

Mangtaram Noranglal, having its Registered office at Chawani Bazar, P.O. Jhunjhunu Rajasthan-333001.

... Applicant/Operational Creditor

And

**In the Matter of:**

Amrit Hatcheries Private Limited, having its Registered Office at 158, Lenin Sarani, 3<sup>rd</sup> Floor, Kolkata- 700013, West Bengal.

... Respondent/Corporate Debtor

**In the matter of**

An application under Sections 60(5) of the Insolvency and Bankruptcy Code, 2016 read with relevant Regulations of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons Regulations, 2016

And

**In the matter of**

Arun Kumar Gupta, Resolution Professional, appointed under section 22(3)(b) of the Insolvency and Bankruptcy Code, 2016, son of Mr. S. M.Gupta, carrying on profession form P-15, Bentinck Street, Kolkata-700001.

... Applicant/Resolution Professional





Vs.

1. Punjab National Bank, a body formed and constituted under the Banking Companies (Acquisition and Transfer of undertakings) Act, 1971, inter alia, carrying on business from ARMB Branch, Brabourne Road, Kolkata-700001.
2. Haldiram Incorporation Private Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at P2, CIT Road, Scheme VIIM, Kolkata-700054.
3. Skylark Feeds Private Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at Village Khera Khemawati, Tahsil, Safidon, District Jind, Haryana-126112,
4. Sri Harish Baghla, Member of Suspended Board of Directorate Directors of Corporate Debtor as well as the promoter of the Corporate Debtor, son of Sri Gouri Prasad Baghla, residing at 6, Ashoka Road, Alipore, Jaisalmir Jaisalmer Building, Kolkata-700027.

... Respondents

**In the matter of**

An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016

And

**In the matter of**

1. Sri Harish Bagla,
2. Smt. Archana Bagla,

... Applicants

Vs.

1. Ketan Mukhia, Interim Resolution Professional

... Interim Resolution Professional of Amrit Hatcheris Pvt. Ltd.

2. Vinita Shroff being the proprietors of Shekhawati,

.... Operational Creditors/Respondents

**In the matter of**

Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016

And

**In the matter of**

Ronak Trading Co., a proprietorship firm, having its registered office at Chawni Bazar, P.O.- Jhunjhunu (Rajasthan) Pin-333001.

... Applicant /Operational Creditor

**In the matter of**

Amrit Hatcheris Private Limited, having its Registered Office at 158, Lenin Sarani, 3<sup>rd</sup> Floor, Kolkata- 700013, West Bengal.

... Respondent/Corporate Debtor

And

*Sd/-*

*Sd/-*



In the matter of

Arun Kumar Gupta, Resolution Professional of M/s Amrit Hatcheries Private Limited, having IBBI Registration Number IBBI/IPA-001/IP-P00013/2016-2017/10037, having his office at P-15, Bentinck Street, 3<sup>rd</sup> Floor, Kolkata-700001.

.... Respondent /Resolution Professional

**In the matter of**

An application under sections 19 and 17 of the Insolvency and Bankruptcy Code, 2016 read with relevant Regulations of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

And

In the matter of

Arun Kumar Gupta, Resolution Professional, appointed under section 22(3)(b) of the Insolvency and Bankruptcy Code, 2016, son of Mr. S. N.Gupta, carrying on profession from P-15, Bentinck Street, Kolkata-700001.

... Applicant/ Resolution Professional

Vs.

1. Sri Harish Bagla, Member of Suspended Board of Directors of Corporate Debtor as well as the promoter of the Corporate Debtor, son of Sri Gouri Prasad Bagla, residing at 6, Ashoka Road, Alipore, Jaisalmer Building, Kolkata-700027
2. Archana Bagla, wife of Harish Bagla, Member of suspended Board of Directors of Corporate Debtor, residing at 6, Ashoka Road, Alipore, Jaisalmer Building, Kolkata-700027;

... Respondents

**In the matter of**

An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016;

And

In the matter of

Sri Harish Bagla, son of Sri Gouri Prasad Bagla, residing at 6, Ashoka Road, Alipore, Jaisalmer Building, Kolkata-700027

... Applicant

Vs.

1. Ketan Mukhija, son of Father's name not known, working for gain at J-6A, Kailash Colony, New Delhi- 110048.  
... Erstwhile Interim Resolution Professional of Amrit Hatcheries Pvt. Ltd.
2. Arun Kumar Gupta, son of Mr. S. N.Gupta, working for gain at 158 Lenin Sarani, Kolkata-700013.

... Resolution Professional of Applicant

Date of Hearing 20<sup>th</sup> February, 2020

Order Delivered on 25<sup>th</sup> February, 2020

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

For Resolution Professional : 1. Mr.Arun Gupta, R.P.  
 2. Mr.Jishnu Choudhoury, Adv.  
 3. Mr. Avishek Guha,Adv.  
 4. Mr. Atul Surekha, Adv.  
 5. Miss T. Joarder, Adv.

For Suspended Board : 1. Mr. Joy Saha, Sr. Adv.  
 2. Mr. Ajay Choudhary, Adv.  
 3. Mr.D.N.Sharma, Adv.  
 4. Mr. S.Nigam, Adv.  
 5. Mr. S Ahmed, Adv.

For R-3 : 1. Mr. Jishnu Saha, Adv  
 CA(IB) No.1635/KB/2019 : 2. Mr. Ishaan Saha, Adv.  
 3. Mr. A.K.Awasthi, Adv.

Punjab National Bank : Mr. A.Rao, Adv.

For Haldiram Incorporation: 1. Mr. P. Gandhi, Adv.

Private Limited : 2. Mr. B.Mukherjee, Adv.

For I.A. 1697/KB/2019 : Mr. Rohit Sharma, PCS

For Operational Creditor : Ms. Ankita Dutta, PCS  
 CA (IB)No.1697/KB/2019

For Ketan Mukhija (IRP) : Mr. S. Mukherjee, Adv.

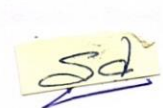
**ORDER****Per Shri Jinan K.R., Member (Judicial)**

1. All the Interim applications i.e CA(IB) 1270/KB/2019, CA (IB)No.1402/KB/2019, CA(IB) No.1617/KB/2019, CA(IB) No. 1635/KB/2019 & CA(IB) No. 1697/KB/2019, are heard together with the CP.(IB) No. 803/KB/2018 and all the applications are considered together along with the CP for avoiding the repetition of facts and for



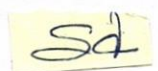
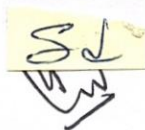
convenience.

2. Mangturam Noranglal-Operational Creditor filed the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short IB Code) read with Rule 6 of the Insolvency and Bankruptcy Code ( Application to Adjudicating Authority) Rules, 2016 for initiation of corporate insolvency resolution process as against the corporate debtor/ Amrit Hatcheries Private Limited. The said application was admitted vide order dated 20<sup>th</sup> August, 2019, wherein Mr. Khetan Mukhija was appointed as Insolvency Resolution Professional. Subsequently the Interim Resolution Professional was replaced by the CoC Mr. Arun Kumar Gupta. Mr. Arun Kumar Gupta, the learned R.P continued the process. The erstwhile Interim Resolution Professional had constituted the Committee of Creditors as on 6/9/2019 and filed a report before the Hon'ble Tribunal on 6.9.2019. The IRP was in receipt of two claims from two financial creditors. One claim from Punjab National Bank. Its admitted claim come to Rs. 77, 23, 99,218.17-99.83% share of vote and second claim was from HDFC Bank Ltd. Its admitted claim is Rs.13,11,622 and held 67-0.17% voting share.
3. The RP has convened altogether 8 meetings of CoC. The 8<sup>th</sup> meeting of the CoC was held on 14.02.2020. The last day for receiving resolution plan from the prospective resolution applicant was on 07.02.2020.
4. Only one prospective resolution applicant came forward but no resolution plan was submitted till 6.00 p.m on the last day fixed for



submission of the resolution plan. In the said situation, the Committee of Creditors informed the RP that they had to take necessary approvals from their appropriate authorities for voting on the item for approving extensions of CIRP period.

5. The Coc discussed the matter and agreed that the meeting on 7/2/2020 should be adjourned. The financial creditors would inform the RP after obtaining necessary approvals so that the meeting could be reconvened at the earliest next week. The RP as per the email dated 10/2/2020, had requested the Financial Creditors to advise as to when the adjourned meeting could be reconvened. Pending any response from the Financial Creditors, the RP reconvened the adjourned meeting on 14/02/2020 by sending a notice on 10/02/2020 by E-mail as the 180 days period allowed for completion of CIRP process was to expire on 15/02/2020. The RP prepared draft minutes of the meeting held on 7/02/2020 and circulated the same with the notice to reconvene the adjourned meeting on 14/02/2020.
6. The RP, in the meeting held on 14/2/2020, placed the resolution for voting by the CoC for filing an application with the Adjudicating Authority (AA) under Section 12(2) of the Code for extension of period of CIRP by another 90 days by passing a resolution with a majority vote of not less than 66%. However the members of the CoC informed the RP that they did not have any mandate or approval as yet from their appropriate authorities on how to vote on this resolution.
7. It is submitted that both the CoC members were unable to vote





and finally no voting could take place on any item placed for voting during the meeting. According to the Ld. RP since he did not receive any approval from the CoC regarding extension of CIRP period, he is not filing any such application for consideration by the Hon'ble Adjudicating Authority under section 12(2) of the IBC, 2016. He further would submit that the CoC agreed that the RP could not file an application for extension of CIRP period under Section 12(2) of IBC, 2016. He also would submit that CoC also informed that in this case when the resolution for approving the extension of CIRP period is not voted upon/ approved by the CoC, then the corporate debtor would likely be liquidated in terms of Section 33(1)(a) of IBC, 2016 by the Adjudicating Authority.

8. The Ld. RP submits that he had informed the CoC that it was required to deliberate on issues as required under Regulations 38B, 39C and 39D of the CIRP Regulations (amendment inserted from 25/06/2019) however, as there was no decision on extension by the CoC, he is praying for passing an order for liquidation.
9. The Ld. RP also submitted that before passing an order of liquidation CA(IB)No.1635/KB/2019 and CA(IB) No. 1402/KB/ 2019 are to be disposed of as these applications raise question as to the transfer of possession of two properties mortgaged by the corporate debtor in favour of the Punjab national Bank who is R-1 in CA(IB) No. 1635/ KB/2019. This CA was filed by the RP praying for the following relief:-

- a) Directions contained in the order dated 29<sup>th</sup> October, 2019 as more fully stated in paragraph 10 hereof be kept in

abeyance until decision in C.A.(IB) No. 1402/KB/2019

b) The Applicant be allowed access to both the subject properties to conduct the exercise to determine valuation of the Corporate debtor as required under the Code.

c) Ad interim orders in terms of prayers above;

d) Such further and/or other order or orders be passed, direction or directions be given as Your Lordships may deem fit and proper.

The order dated 29<sup>th</sup> October 2019 is extracted here under.

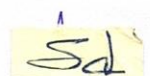
### O R D E R

“ Ld. Counsel for the Operational Creditor appears. Ld. Counsel for the Corporate Debtor appears.

**CA (IB) No.1402/KB/2019** is an application filed by one of the Director of the suspended Board of Directors of the Corporate Debtor as against the RP as well as the Financial Creditor, wherein service on the respondents are complete. It is submitted that affidavit of service will be filed during the course of the day. It is recorded.

None other than the RP appears. Ld. RP submits that as per his information possession of the disputed assets of the applicant in this application is with the buyer as per a proceeding before the Debts Recovery Tribunal filed by the Punjab National Bank (PNB), one of the Financial Creditor in the CoC. Copy has been served upon the erstwhile IRP. However, no copy has been served to the present RP. RP prays time to file reply. In the meantime, RP is to take immediate steps so as to get back possession if it was not sold prior to the declaration of moratorium in this case. He is directed to do the needful to safeguard the property of the Corporate Debtor and take appropriate steps in SA No. 152 of 2019 before the Debts Recovery Tribunal-I, Kolkata and file its report whether the







property was disposed of by the PNB during moratorium or not.

Directed to repeat notice upon the remaining respondent and filed affidavit of service”.

10. CA(IB)No.1402/KB/2019 was filed by one of the members of the suspended Board of Corporate Debtor objecting to granting of relief as prayed for in CA(IB) No. 1635/ KB/2019 and prayed for allowing following relief:-
- (a) Interim injunction restraining the Resolution Professional and /or the Punjab National Bank and/or the Committee of Creditors from confirming and/or issuing any sale certificate and/or from executing any deed of conveyance in respect of the said Howrah property more fully and particularly described in paragraph 6 hereof in favour of the Respondent No.4 and /or any other person or entity whatsoever.
  - (b) Any confirmation and /or issuance of sale certificate and/or conveyance done by the Interim Resolution Professional and/or the Punjab National Bank and/or the Committee of Creditors in respect of Howrah property more fully and particularly described in paragraph 6 above be set aside and /or canceled.
  - (c) The Resolution Professional be directed to forthwith take back the possession of the said Howrah property more fully and particularly described in paragraph 6 above from the Respondent No.4.
  - (d) Status quo ante in respect of the said Howrah property more fully and particularly described in paragraph 6 above as on 5<sup>th</sup> July 2019 and 16<sup>th</sup> August 2019 be restored.
  - (e) Ad-interim orders in terms of prayers above.
  - (f) Such further or other order and/or orders be made and/or direction and/or directions be given as to which this Learned Tribunal may deem fit and proper.
11. Before going into the controversy regarding the transfer of possession of the properties of corporate debtor by the Punjab national

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Bank (hereinafter referred to as R1), let us examine the background behind the transfer of possession of the disputed property in the case in hand. The Corporate Debtor availed loan facilities by mortgaging two plots of land inclusive of plant & machinery as described in sale confirmation notice dated 9.08.2019 situated in Howrah district ( This property is hereafter to be referred as **Howrah property**) and one another land situated in Bankura district as described in sale confirmation notice dated 19.08.2019 [This property is to be referred as **Bankura property**] (pages 26 &30 in CA1635 of 2019). It is submitted that R1 Bank had taken possession of the said secured assets in terms of the order passed by the **Hon'ble Calcutta High Court in its Writ jurisdiction** and the Bank had initiated action against the secured assets under the SARFAESI Act on 19/07/2017 and properties were put up for sale on 17/03/2019 and lastly on 06/07/2019 in respect of Respondent No.2 **Haldiram Incorporation Private Limited** and in respect of Respondent No.3 **Skylark Feeds Private Limited**. The property was put for sale on 17/03/2019 and lastly on 17/08/2019. The letters of confirmation in respect of R2 was issued on 09/07/2019, a copy of which has been produced by the Resolution Professional in the CP at page 30, a letter of confirmation in regards to the R3 was issued on 19/08/2019, a letter of confirmation was produced by the Resolution Professional at page 26 in the said application.

12. Placing reliance on the above said notice of confirmation of sale and issuance of sale certificate Ld. Counsel for R1 would submit that it clearly proves that the sale was confirmed before admission of the application under Section 9 of the I & B Code. Ld. Counsel for R1





further submitted that the possession also has been handed over to the purchaser in terms of the sale of the said properties. In view of the above said, the application filed by the RP is not tenable and none of the applicants challenge in regards handing over possession to the purchaser respectively by the Bank are unsustainable in the eye of law and Respondent No.4 objection in this regard is devoid of any merits.

13. The Ld. Sr. Counsel appearing for the suspended Board of Director submits that Resolution Professional failed to take steps to take possession of the valuable assets of the Corporate Debtor and failed in discharging his duties Under Sections 17, 18, 20 and 25 of the Code. It is alleged that the Resolution Professional in collusion with Respondent No.1/ the Punjab National Bank had not taken possession of the Howrah and Bankura properties of the Corporate Debtor and enabled the Punjab National Bank to hand over possession of the property to the auction purchasers illegally in violation of the moratorium declared in this CP and that R1 in violation of Moratorium declared in this case and in disobedience of the order of Hon'ble DRT in SA 152 of 2019, completed the sale confirmation and handed over possession of the said properties to the buyers respectively and therefore those properties are to be ordered to be taken back and to be included in the liquidation assets. He argued.
14. According to the Ld. Sr. Counsel for the members of the suspended board of corporate debtor (R4 in CA 1635 of 2019) an order of injunction was in force as against R1, the PNB and that the PNB could not have issued sale certificate while the said order was in force and could not have handed over possession of the properties subsequent to

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the declaration of moratorium. He relied upon the order of Hon'ble Debt Recovery Tribunal-III, Calcutta dated 05/07/2019 in IA 636 of 2019 in S.A. No. 152/2019. The said order is extracted here under:-

**Case**  
**No.SA/152**  
**/2019**  
**Date of**  
**order**

Amrit Hatcheries (P) Ltd-Vs-Punjab National Bank

**Order with Signature**

Office action  
with date and  
dated signature  
of parties when  
necessary

Order  
No.12  
Dt.05.07.19  
SL.No.82

Ld. Counsel Ms. S. Roy appears for the Applicant. Ld. counsel Ms. A. Rao appears for the defendant. Ld. Counsel for the applicant has filed I.A. 636/2019 arose out of S.A. 152/19. Being aggrieved by the sale notice dated 15/6/19 and the sale date of 6<sup>th</sup> July,19. A copy has been served upon the Respondent and as such no notice is required to be issued.

Ld. Counsel for the Bank submits that the bid has been received in respect of the sale to be held tomorrow.(6/7/19)

Respondent is directed to file opposition to the instant I.A. within a period of two weeks with a copy to the applicant who may file response within a further period of two weeks with a copy to the respondent.

Listed on 7/819 as already fixed.

Ld. Counsel for the Respondent submits that the outstanding dues is to tune of Rs. 70 crores and a proposal was submitted to the applicant for a sum of Rs. 30 crores without up front money and respondent has advised to deposit 10% up front money alongwith OTS offer but they have not paid.

Applicant pleads that the present sale notice is bad in law since it includes the plant and machinery which is not the subject matter of offered security and was not created by the SARFAESI Applicant.

It is clarified that the fate of the sale will be determined subject to the outcome of the S.A.

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Respondent in reply will include the details of the successful bidders.

(A.K.Chaturvedi)  
Presiding Officer  
DRT-3,Kolkata

15. The said SA was come up again for the consideration on 16.08.2019 before the Hon'ble DRT. On that day the Hon'ble DRT recorded the submission of R1's Ld. Counsel read as "**Ld. Counsel for the respondents candidly submitted that sale process is subject to outcome of the SA**" and adjourned the case to 11.09.2019 with a direction to complete the pleadings. This SA was again come up for consideration before the DRT on 26.11.2019. On that day the SA was dismissed mainly for want of non prosecution. The said order of dismissal is worth reading. It read as follows:-

*Present:-*

*For Applicant : None*

*For Respondents: Ms. A. Rao, Ld Counsel*

*Respondent has filed the supplementary affidavit and bring on record status of proceedings pending before NCLT. No one is present for the SARFAESI Applicant. In view of the affidavit filed by the Respondent nothing will survive so far SARFAESI action is concerned. In view of the RP appointment. S.A. No. 152 of 2019 is dismissed for want of prosecution since no one is present for the Applicant without considering any merit or demerit of the case.*

(A.K.Chaturvedi)  
Presiding Officer  
DRT-III, Kolkata

16. So the SA was dismissed not only for want of prosecution by the

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applicant (the Corporate Debtor) but also due to appointment of the RP brought to the notice of the Hon'ble DRT. Relying upon the above said orders of DRT, the Ld. Sr. Counsel for the R4 submits that R1 as well as RP have committed grave errors and issued sale certificate by R1 in violation of the undertaking and handed over possession of the properties in violation of the undertaking as well as the moratorium declared in this case on 20.08.2019. He further would submit that vide order dated 29.10.2019 the RP was directed to take back possession of the properties and also directed to take necessary steps to prosecute the case before the DRT, but failed to take back possession and to prosecute the case and thereby SA was dismissed for want of prosecution.

17. Ld. counsel for R1 attempted to convince us that there is nothing illegal or irregular or violation of moratorium in continuing the process for sale initiated by the R1 as the sale proceedings were not stayed by the DRT and that sale was concluded before the date of declaration of moratorium and therefore both the said properties are outside the purview of the assets of the Corporate Debtor as on 20.08.2019. According to her, the Punjab National Bank (R1) has declared the account of the Corporate Debtor as NPA and proceeded to enforce its security interest against its two properties, one at Howrah and another at Bankura under section 13(4) SARFAESI Act,2002 and took possession of the said properties and proceeded with the sale of the properties. She further would submit that sale was confirmed in respect of Howrah property in favour of R2 on 06.07.2019 and sale of Bankura property was confirmed on 16.08.2019 i.e before the date of declaration

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of moratorium and hence the said properties are at present the properties of R2 and R3 (auction purchasers) and hence cannot be included under the purview of liquidation assets.

18. In support of the above submission on the side of R1 learned Counsel for the RP submits that the Punjab National Bank having taken possession of the secured assets and completed the sale proceedings before the declaration of the moratorium and transferred possession of the said properties to the auction purchasers the then IRP or by the present RP has not taken possession of the disputed property in the case in hand. However no valid explanation is forthcoming as to the non-compliance of the directions issued by this AA by order dated 29<sup>th</sup> October, 2019. According to the Ld. Counsel for the RP, CA(IB) No 1635 /KB/ 2019 was filed for clarification of the above said directions.

19. R2 the auction purchaser of Howrah property, however has not chosen to file any reply affidavit, but objected to both these applications through its Counsel. Ld. Counsel submits that before the date of declaration of moratorium R2 has obtained absolute ownership over Howrah property by way of sale certificate issued on 19.08.2019 and, therefore, this property is to be excluded from the liquidation assets.

20. R3 is the auction purchaser of the Bankura property. R3 objected to both these applications. According to the Ld. Sr. Counsel for the R3, the SA No. 152/2019 had been filed by the Corporate Debtor and got an order in IA No. 636/2019 not in respect of the Bankura property purchased by the R3 and the Corporate Debtor in CA (IB)1402/KB 2019 challenged the sale proceedings as against Howrah property sold in

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favour of the Respondent No.2 and that the Respondent No.3 is the bonafide purchaser for value without notice of the then impending corporate insolvency resolution proceedings.

21. It is further submitted that Respondent No.4 has not challenged the concluded sale of the Bankura property in favour of the Respondent No.3 and also concerns itself with the sale of the Howrah property in favour of the Respondent No.2 herein. The Bankura property which was purchased by Respondent No.3 was sold prior to the declaration of moratorium in IA No. 636/2019 and S.A. No. 152/2019 make it abundantly clear that there were no directions on the Resolution Professional to take steps to take possession of the Bankura property, which was conclusively sold to Respondent No.3 herein, who is bona fide purchaser for value without notice of the then impending corporate insolvency resolution process.

22. According to him the sale of the Bankura property was confirmed in favour of the Respondent No.3 by letter dated 19<sup>th</sup> August, 2019 before the admission of corporate insolvency resolution process against the corporate debtor company by the order of the Tribunal dated 20<sup>th</sup> August, 2019. The sale certificate in respect of the Bankura property having been issued on 3<sup>rd</sup> September, 2019 does not and cannot bring into question, the concluded sale of the Bankura property of Respondent No.3. The Respondent No.3 became the absolute owner of the Bankura property and that pursuant to the valid concluded, and unimpeachable sale of the said property in favour of Respondent No.3 as per provisions of the SARFAESI Act, 2002, Respondent No. 1 has duly made over possession of the property to Respondent No.3 on 12<sup>th</sup>

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September, 2019. Therefore, there is no question of Bankura property being included in the liquidation estate of the corporate debtor or of the Resolution Professional proceeding to obtain a valuation of Bankura property sold to Respondent No.3.

23. Ld. Sr. Counsel appearing for Respondent No.3 relied upon the under mentioned provisions of SARFAESI Act, 2002 for stressing an argument that R1 has followed the procedure to be followed for the sale of the secured assets and issued the sale certificate as per Rule 9 of **Security Interest (Enforcement ) Rules,2002** transferring the ownership in favour of R3 and therefore the said property shall in no way become the assets of the Corporate Debtor as on the date of declaration of the moratorium.

24. According to him in terms of Section 13(4) (a), Secured Creditor has the right to take possession of secured assets of the borrower and recovered the debt by sale of the secured assets.

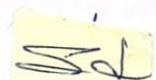
25. Section 13(6) provides that any transfer of secured asset after taking possession thereof by the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset had been made by the owner of the secured asset. Rule 8 of Enforcement Rules permits the authorised officer to take or cause to be taken possession of the secured asset by delivering a possession notice as nearly as possible in Appendix IV to the rules to the borrower and by affixture on the outer door or at such conspicuous place of the property. Rule 8(2) Provides for publication of possession notice as referred to in sub-rule (1). Rule 8(3) indicates that if the possession is actually taken by the authorised

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officer, such property shall be kept in his own custody. Rule 9(2) of the Enforcement Rules indicates that the sale shall be confirmed by the authorised officer in favour of the purchaser who has offered the highest sale price in his bid, tender, quotation or offer and the same shall be subject to confirmation by the secured creditor. Rule 9(6) provides that when the secured creditor has confirmed the sale and if the terms of payment have been complied with, the authorised officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the form given in Appendix V to the Rules. Rule 9(9) further indicates that the authorised officer delivers the property to the purchaser free from encumbrances known to the secured creditor on deposit of any amount as specified in sub-rule(7). Sub-rule (7) is attracted when the immovable property is sold subject to any encumbrances. In such instances, the authorised officer may allow the purchaser to deposit the money required to discharge the encumbrances and interest due thereon and additional amount if any to meet the necessary expenses. Certificate of sale issued under Rule 9(6) shall specifically mention whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not.

26. Analyzing the above said Rules, the Ld. Sr. Counsel for R3 attempted to convince us that notice of confirmation of sale itself amounts to transfer of title/ownership. To stress his said argument, he also relied upon judgments of the **Hon'ble Supreme Court reported in (2007) 5 SCC 755 in the case of U.P. Power Corporation Ltd. & Another Vs. Bijli Mazdoor Sangh and others; Shakeena and Another Vs Bank of**





**India and others reported in 2019 SCC OnLine SC1059 and Municipal Corporation of Delhi Vs Pramod Kumat Gupta reported in (1991) 1 SCC 633 and one judgment of Hon'ble High Court of Madras in K. Chidambara Manickam Vs. Shakeena, passed by the ( Madurai Bench) reported in 2008 (1) CTC 660.**

27. The above said argument was countered by the Ld. Sr. Counsel for R4. According to him the above said citations related to an issue relating to whether registration is compulsory to complete the sale proceedings under the SARFAESI Act. The Hon'ble Supreme court as Well as Madras High Court have held that to complete the sale as per the provisions of the special enactment is not compulsory. He further submits that the facts in the said case are not at all similar to the facts in the instant case and that application of the moratorium which would be applicable in the sale proceedings in the case in hand does not at all go into in the said decision as it was dealt with before the commencement of the Code and reliance has been placed on Section 14(1) (a) of the I&B Code relates to Moratorium and read as follows:-

**“ 14. Moratorium**

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all the following, namely:-

(a) *the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*

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- (b) *transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- (c) *any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
- (d) *the property of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor”.*

28. He also placed reliance on section 238 of the Code and submits that provisions of the Code will have overriding effect on the provisions of the SARFAESI Act and that as per section 14(1) (a) continuation of sale proceedings including issuing sale certificate and handing over possession of both the properties is prohibited and therefore both properties are to be restored to the original status as on the date of declaration and thus the property would fall in the liquidation estate as the Corporate Debtor is ordered to be liquidated. To stress his said argument, he relied upon one decisions of **National Company Law Tribunal, Mumbai Bench in the case of State Bank of India Vs Calyx Chemicals & Pharmaceuticals Ltd. in I.A. No. 33 , C.P. (IB) No. 1554(MB)/2017 dated October 11,2018;** and one decision of **NCLT, Chennai Bench in the case of G.Gunasekaran RP v. Thiagarajan Murugesan dated July 17, 2019;** and one case of **Hon'ble NCLAT, New Delhi in the Case of Encore Asset Reconstruction Company (P)Ltd. V. Ms. Charu Sandeep Desai in CA(AT) (Insolvency)No.719 of 2018 dated May 14,2019.**

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29. Referring to **Encore Asset Reconstruction Company (P)Ltd.** referred above the Ld. Sr. Counsel for the R4 submits that taking possession by the bank before the declaration of moratorium also does not confer title or ownership over the secured assets mortgaged by the Corporate Debtor as per Section 13 (2) of the SARFAESI Act and taken us to paras 4,6,10 &16 read as under:-

*“4. The loan had become “Bad” hence declared as “Non-Performing Asset” on 1<sup>st</sup> December, 2013. As a consequence, ‘Dena Bank’ initiated proceedings under the “Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002” (SARFAESI Act, 2002” for short) to take physical possession under section 13(4) of the SARFAESI Act, 2002’, It is informed that the procedure for obtaining physical possession was duly completed by issuing a Notice under Section 13(2) of ‘SARFAESI Act, 2002’ and on lapse of 60 days, a notice under section 13(4) of the said Act for taking over the possession. Physical possession was taken over on 13<sup>th</sup> September, 2017 is an undisputed fact.*

*6. The ‘Moratorium’ had commenced on admission of the case u.e.f. 6<sup>th</sup> February, 2018 pursuant to an application moved by the ‘State Bank of India’ under Section 7 of the I&B Code’. It was in this background, it was pleaded by ‘Dena Bank’ that physical possession was taken over before the date of commencement of ‘Moratorium’. Therefore, the ‘Resolution Professional’ should not have demanded for taking over the possession of the said property.*

*10. We have heard learned counsel for the parties and perused the record.*

*16. In the aforesaid background, we hold that Section 238 of the ‘I & B Code’ will prevail over any of the provisions of the ‘SARFAESI Act, 2002’ and the ‘Dena Bank’ cannot retain the possession of the property in question of which the ‘Corporate Debtor’ is the owner.*

30. We heard the Ld. Counsel for the R1, R2 and Ld. Sr. Counsel for the R3 & R4 and the Ld. RP and his counsel. On a careful analysis of the citations relied upon on the side of R3 and R4 and relying upon the provisions of SARFAESI Act and Enforcement Rules, we find some

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merits in the submission of the Ld. Sr. Counsel for R4. The undisputed facts regarding the proceedings for sale initiated by the R1 in respect of both the disputed properties are summerised below:-

**PROPERTY IN HOWRAH SOLD TO R2**

S.No.	Particulars	Date	Page No.
1.	Date of Sale Notice	15.6.2019	31(C.A.No.1402 of 2019)
2.	Date of DRT Interim Order	5.7.2019	31(C.A.No.1402 of 2019)
3.	Date of Sale	6.7.2019	31(C.A.No.1402 of 2019)
4.	Payment of Haldiram		
	i. 1 <sup>st</sup> Tranche	26.6.2019	16-19 (Reply filed by R-2 in C.A.No.1402 of 2019)
	ii. 2 <sup>nd</sup> Tranche	8.7.2019	
	iii. 3 <sup>rd</sup> Tranche	20.7.2019	
	iv. 4 <sup>th</sup> Tranche	25.7.2019	
	v. 5 <sup>th</sup> Tranche	29.7.2019	
	vi. 6 <sup>th</sup> Tranche	6.8.2019	
	vii. 7 <sup>th</sup> Tranche	16.8.2019	
5.	Date of Sale Certificate	19.8.2019	8 (Reply filed by R-4 in C.A. No.1402 of 2019)
6.	Date of CIRP commencement	20.8.2019	
7.	Date of 1 <sup>st</sup> CoC meeting	17.9.2019	27( Reply filed in CA No.1635 of 2019)
8.	Date of handing over possession of Howrah Property by RP	26.9.2019	19 (Reply filed in CA No. 1635 of 2019)
9.	Date of 2 <sup>nd</sup> CoC meeting	16.10.2019	17(Reply filed in CA No.1635 of 2019)
10.	Date of filing C.A. No. 1402 of 2019	21.10.2019	
11.	Date of NCLT Order directing RP to defend DRT proceedings	29.10.2019	
12.	Date of dismissal of DRT proceedings	26.11.2019	24 (Reply filed by R-2 in C.A. No. 1402 of 2019)

**PROPERTY IN BANKURA SOLD TO R3**

S.No.	Particulars	Date	Page No.
1.	Date of Sale Notice	20.7.2019	26 (C.A.No.1635 of 2019)

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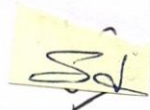
2.	Date of DRT Interim Order	16.8.2019	72(Reply filed C.A.No.1635 of 2019)
3.	Date of confirmation of Sale	16.8.2019	26 ( C.A.No.1635 of 2019)
4.	Payment of Skylark		
	i. 1 <sup>st</sup> Tranche	16.8.2019	27-29
	ii. 2 <sup>nd</sup> Tranche	19.8.2019	(C.A.No.1635 of 2019)
	iii.3 <sup>rd</sup> Tranche	3.9.2019	
5.	Date of Sale Certificate	Not Known	
6.	Date of CIRP commencement	20.8.2019	
7.	Date of 1 <sup>st</sup> CoC meeting	17.9.2019	27( Reply filed in CA No.1635 of 2019
8.	Date of 1 <sup>st</sup> CoC meeting	16.10.2019	17 (Reply filed in CA No. 1635 of 2019)
9.	Date of filing C.A. No. 1402 of 2019	21.10.2019	
10.	Date of NCLT Order directing RP to defend DRT proceedings	29.10.2019	
11.	Date of dismissal of DRT proceedings	26.11.2019	73 (Reply filed in C.A. No. 1635 of 2019)

31. The above said data demonstrate that proceedings for sale were completed by R1 in respect of Howrah property on 19.09.2019 i.e one day prior to the date of declaration under section 14 of the Code. The entire sale consideration also seen received by the R1 on and before 16.08.2019 in respect of Howrah property from R2. However, it is significant to note here that sale proceedings in respect of Bankura property seen continued by the R1 even after the declaration of moratorium. The last installment of consideration for the sale was received by R1 from R3 only on 3.09.2019 and on that day itself issued sale confirmation certificate. The possession of Bankura property was allegedly transferred to R3 by R1 on 03.09.2019. So no doubt the title to the Bankura property was not at all transferred to R3 due to

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- prohibition of moratorium. We are not convinced that R3 has got absolute title free from encumbrances as stated in the sale confirmation certificate dated 03.09.2019 (Annexure-B in the reply filed by R3).
32. As far as the R1 Bank is concerned, the sale of property is effected when sale certificate is issued in favour of the purchaser. But, as far as the transferee is concerned (R2 & R3), vesting of all rights of the owner of the secured asset comes into effect only when there is a transfer of secured asset after taking possession of the property. A reading of the statutory provisions under the SARFAESI Act referred to above clearly indicates the above said.
33. R3 has a case that possession had been taken on 03.09.2019 in continuation of confirmation of sale and therefore, the sale is complete. There cannot be dispute about the proposition that sale certificate itself amounts to a transfer of title provided possession is given in favour of the purchaser. Here in this case admittedly handing over of possession in respect of Bankura property was subsequent to the date of declaration of the moratorium.
34. At this juncture Ld. Sr. Counsel appearing for R4 submits that both sale certificates are inadmissible for want of engrossing it on stamp paper. Truly both sale certificates are copies on plain paper and no supporting evidence also led in to prove that the Howrah property was handed over on 19.08.2019 itself as attempted to establish on the side of R1.
35. Having heard at length on both sides the only aspect therefore that remains is that possession has not been handed over in favour of R3





prior to the date of declaration of moratorium in order to complete the transfer. That apart, the sale certificate has not so far been engrossed in a stamp paper. In such circumstances, R 3 cannot claim legal title or ownership over the Bankura property. In the said circumstances, we have no hesitation to hold that the Bankura property is the property of the Corporate Debtor as on the date of declaration of moratorium i.e as on 20.08.2019 and R3 has no right to retain possession of the said property.

36. In respect of Howrah property, since the R1 was obliged not to conclude the sale as per the undertaking dated 16.08.2019 before the DRT, the issuance of sale certificate and alleged handing over of possession of the Howrah property to R2 become illegal because as on the date of declaration of the moratorium the said undertaking was in force. More-over, the said sale certificate also was not engrossed on stamp paper and no evidence was led in to prove that the Howrah property was handed over to R2 as attempted to prove on the side of R1. Taking into account the overall factual scenario, and the fact that the possession of the property has not been granted in favour of R3 before the date of declaration of moratorium and since no evidence was led in other than sale certificate to prove that possession was handed over to the R2 and that issuance of sale certificate in favour of R2 being found illegal and issuance of sale certificate in favour of R3 was subsequent to the date of declaration of moratorium, we are of the view that Bankura property as well as Howrah property are the assets of the CD and that R2 and R3 has not obtained any legal ownership or title as claimed by them. In short, R2 and R3 have no right to retain the properties and

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the property belongs to the Corporate Debtor.

37. Coming to the relief prayed for in CA(IB) No.1635/KB/2019, it appears to us that RP was not due diligent enough in implementing the provisions of the Code and Regulations. Instead of obeying the directions what the RP asked for is to keep the order of this AA dated 29<sup>th</sup> October, 2019 until the CA(IB) No.1402/KB/2019 is disposed of. RP filed this CA on 28.11.2019. CA(IB) No.1402/KB/2019 was filed by the R4 on 14.10.2019 alleging collusion of RP with R1 aiding handing over possession of the properties in dispute in favour of the auction purchasers. It is in the said CA the directions were issued on 29<sup>th</sup> October,2019 to the RP explaining in detail what action was expected from him. He was specifically asked to take steps to safeguard the properties of Corporate Debtor by approaching the DRT. The RP having stepped in the shoes of Corporate Debtor, he would have prosecuted the case before the DRT. But unfortunately, none on the sides of the Corporate Debtor/Applicant in SA appears when the said case was taken up on 26.11.2019 before the DRT and Ld. DRT dismissed the SA for want of prosecution. Similarly, as regards the Bankura Property, it was in the possession of the R1 as on the date of declaration of moratorium. That property ought not to have been permitted to be transferred to the purchaser. So RP himself who was duty bound to safeguard the property did not take as much care as was expected at least from a prudent man. However, we are not going deep into the circumstances behind the handing over possession of the disputed property by R1, in the case in hand. The application is liable to be allowed by directing the RP to recover possession back from the auction

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purchasers and to be listed as liquidation assets and to have valuation of the properties in accordance with provisions of Code, and Regulations.

38. CA(IB)No.1270/KB/2019 is an application filed by two of the members of the suspended board of directors of the Corporate Debtor, under section 60(5) challenging the inclusion of an operational creditor's claim and its representative in the CoC constituted by the RP. When this application was taken up for hearing, the Ld. Sr. Counsel for the applicant did not press it for hearing. Moreover, the CIRP period of 180 days have already expired. The prayer also has become infructuous. Hence the same is liable to be dismissed.

39. CA (IB) No.1617/KB/2019 is an application filed by the RP under section 19 and 70 of the Code alleging non-cooperation from the directors of the suspended board of Corporate Debtor. Since the CIRP period expired on 15.02.2020 has not been extended and RP prays for passing an order of Liquidation for want of resolution plan, we are closing the CA without entering into merits of the allegations leveled by the RP as against the directors. This application also requires no further consideration. Accordingly it is liable to be dismissed.

40. CA (IB) No.1697/KB/2019 is an application by one Operational Creditor/ Ronak Trading Co. praying for condoning the delay in filing its claim with the RP. Since the Corporate Debtor is to be ordered to be liquidated and since CIRP period has already expired this application is liable to be disposed of with a liberty to the applicant to prefer its claim again with the liquidator in accordance with the provisions of the Code

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and Regulations.

41. In view of the above said legal position of law and circumstances and that no resolution plan was obtained by the RP within the period of 180 days, and the CoC has not decided for extension of CIRP period, we have no other alternative than to pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in Chapter III of the Code.

42. The Ld. RP showed his unwillingness to continue as the Liquidator. CoC also has not proposed any insolvency professional as liquidator. However at the time of hearing Ld. Counsel for PNB one among the members of CoC proposed an Insolvency professional's name. It has come out in evidence that R1(PNB) despite declaration of the moratorium handed over possession of the Bankura property to the auction purchaser and misguided IRP regarding the sale of the properties. The said fact is evidenced from the minutes of 2<sup>nd</sup> CoC meeting held on 16.10.2019. As per the said minutes the then IRP was informed by the PNB that entire sale consideration of properties which were not taken possession by him was allegedly received by the PNB prior to 20.08.2019. On the other hand the balance consideration in full regarding the Bankura property was received by the PNB only on 03.09.2019. In the said peculiar circumstance brought out in the case in hand it appears to us that it is fair and just to appoint an independent insolvency professional other than proposed by the PNB. Accordingly the CP as well as the CAs are disposed of as under:-

- a. The Corporate Debtor namely, Amrit Hatcheries Private Limited is ordered to be liquidated.

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- b. Mr. Bijay Murmura, Registration No. IBBI/IPA-001/IP-N00007/2016-2017/10026, email bijay\_murmura@sumedhamanagement.com Mobile No. 9830039390 is appointed as the liquidator.
  - c. Liquidator is directed to issue a public announcement stating that the Corporate Debtor is in liquidation, in one of the leading English newspaper as well as in one vernacular newspaper having wide circulation in the place where the registered office of the Corporate Debtor is situated as per section 33 (1)(b)(ii) of the Code read with Reg. 12 (1) of IBBI (Liquidation Process) Regulations, 2016;
  - d. The registry is directed to communicate this order to the Registrar of Companies, West Bengal and to Insolvency and Bankruptcy Board of India (IBBI), New Delhi;
  - e. The order of moratorium passed under section 14 of the Code shall cease to have effect and a fresh moratorium under section 33 (5) shall commence;
  - f. This order is deemed to be a notice of discharge of the officers, employees and the workmen of the Corporate Debtor as per section 33 (7) of the Code.
  - g. The liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of the Code.
  - h. Upon proceeding with the liquidation the liquidator shall file a preliminary report as per regulation 5 read with regulation 13 of the IBBI (Liquidation Process) Regulations, 2016 at the registry within 75 days from the liquidation commencement date and continue to file progress reports as per regulation 15 (1) within 15 days after the end of the quarter in which he is appointed;
  - i. The fee payable by the liquidator shall form part of the liquidation cost as provided under regulation 4 (1) of the IBBI (Liquidation Process) Regulations, 2016;
43. The application bearing **C.A. (IB) No. 1635/KB/2019** is hereby allowed by directing the Liquidator to take possession of Howrah

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property from R2 and Bankura property from R3 and include the same in the liquidation assets. The liquidator is at liberty to appoint valuers for valuing the said properties in accordance with the provisions of the Code and Regulations. Consequently CA (IB) 1402/KB/2019 is disposed of.

44. R1 (PNB) is hereby directed to refund the bid amount to the R2 and R3 within 15 days from the receipt of this order.
45. **C.A. (IB) No. 1270/KB/2019** is disposed of as the prayer becomes infructuous.
46. **C.A. (IB) No. 1617/KB/2019** is dismissed. No order as to cost.
47. **C.A. (IB) No. 1697/KB/2019** is disposed of with a liberty to file claim, if any, with the Liquidator and consequently, the Company Petition bearing **C.P. No. 803/KB/2018** is disposed of.
48. Copy of this order is to be sent to the Liquidator, RP, R1 to R4 by speed post as well as by email for information and for taking necessary steps.
49. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.



**(Harish Chander Suri)**  
**Hon'ble Member (T)**



**(Jinan K.R.)**  
**Hon'ble Member (J)**

Signed on 25<sup>th</sup> February, 2020

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