IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT – 2

ITEM No.303
IA/387(AHM)2022 in CP(IB) 342 of 2018

Proceedings under Section 60(5) IBC r.w Rule 11 of NCLT Rules, 2016

IN THE MATTER OF:

Gulabchand Jain Director of The Suspended Board of Vijay Timber Industries Pvt Ltd ....**Applicant**

V/s

Ramchandra D Choudhary RP of Vijay Timbers Industries Pvt ltd ....**Respondent**

Order delivered on: 13/07/2026

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

This case is fixed for pronouncement of order

The order is pronounced in open court vide separate sheet.

-SD-
DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-SD-
CHITRA HANKARE
MEMBER (JUDICIAL)

AD/AP

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)

IA No. 387 of 2022
In
CP (IB) No. 342/AHM/2018

(An Application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 11 of NCLT Rules of IBC 2016)

IN THE MATTER OF:

Gulabchand Jain
Promotor & Director of the suspended Board of Corporate Debtor,
M/s Vijay Timber Industries Private Limited,
Ground Floor, OSLO Circle,
Gandhidham Gujarat

...Applicant

Versus

1. **Shri Ramchandra Dallaram Choudhary,**
   Liquidator of Vijay Timber Industries Prvate Limited,
   Having office at 9-B, Vardan Tower,
   Near Vimal House, Lakhudi Circle,
   Navrangpura, Ahmedabad-380014, Gujarat

2. **District Magistrate,**
   Jilla Sevasadan, College Road,
   Bhuj-Kutchchh, Gujarat

3. **Mamlatdar & Executive Magistrate,**
   Sector No. 1/A,
   Kutchchh Kala Road,
   Gandhidham-Kutchchh, Gujarat

.... Respondents

Sd/- -SD-

Order pronounced on 13.07.2026

Coram:
MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

Present:

For the Applicant	: Mr. Sunil Bhavsar, Adv.
For the Respondent 1	: Mr. Atul Sharma, Adv. and Mr. Arjun Padhiyar, Adv.

JUDGEMENT

1. The Applicant submits that the present application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 11 of NCLT Rules of IBC 2016, *inter alia* seeking following reliefs;

   a. *to restrain the Respondent Nos. 2 and 3 in initiating any measures against the properties in question of the Corporate Debtor (In Liquidation) and the properties, i.e., Vijay Timber Industries Pvt. Ltd. (In Liquidation), viz., Plot No., 17,18 19, GIDC Industrial Area Estate, Gandhidham and the constructed E-Type Shed, Plot No. 1,2,3, Revenue Survey No.*

Sd/- —SD—

259/1 Paiki, MithiRohar, Ta. Gandhidham, and Revenue Survey No. 515/1, Mithirohar, Tal. Gandhidham,

b. to permanently restrain the Respondent Nos. 2 and 3 from initiating any further measures against the properties in question,

2. It is submitted that Respondent No. 3 has issued a notice dated 08.04.2022 under the SARFAESI Act seeking actual and physical possession of the assets/properties of the Corporate Debtor, which is under liquidation. It is submitted that the Corporate Debtor is presently under liquidation and, therefore, the assets of the Corporate Debtor are under the control of the Liquidator and the jurisdiction of this Adjudicating Authority. It is contended that the Respondents cannot proceed independently under the SARFAESI Act against the assets forming part of the liquidation estate.
3. Applicant further submitted that the order admitting the Corporate Debtor into CIRP in CP (IB) No. 342 of 2018 filed by the Punjab National Bank under section 7 of IBC, 2016 was challenged before the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 416 of 2020, which came to be dismissed, and the said order is under challenge before the Hon'ble Supreme

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Court in Diary No. 11740 of 2022. It is also submitted that the liquidation order passed in IA No. 783 of 2020 dated 31.12.2020 has been challenged before the Hon'ble Appellate Tribunal and the appeal is pending.

4. It is further submitted that several litigations concerning the subject properties are pending before various forums. Despite the pendency of such proceedings, Respondent No. 3 has proceeded to issue the impugned possession notice, though it had earlier refrained from taking possession and had sought the opinion of the Learned Government Pleader of High Court of Gujarat in respect of the properties.

5. Applicant places reliance upon the Hon'ble NCLAT judgment i.e. Encore Asset Reconstruction. Company Pvt. Ltd vs. Ms. Charu Sandeep Desal & Ors. bearing Company Appeal (AT) (Insolvency) No. 719 of 2018 and the Hon'ble Supreme Court Transcore judgment to contend that Section 18 of the Insolvency and Bankruptcy Code overrides the provisions of the SARFAESI Act, that the assets of the Corporate Debtor remain under the control of the Resolution Professional/Liquidator, and that the secured creditor cannot enforce its security dehors the mechanism prescribed under the Code. It is contended that

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the impugned action of Respondent Nos. 2 and 3 is arbitrary, illegal and contrary to the provisions of the Insolvency and Bankruptcy Code and would seriously prejudice the liquidation proceedings and the assets of the Corporate Debtor. The applicant further submitted that in terms of Section 238 of the IBC, it provides that the IBC prevails over any inconsistent provision of the SARFAESI Act.

6. The Respondent No. 1 filed reply and submitted that this application is wholly misconceived, not maintainable and has been filed by the suspended management with the sole object of obstructing and delaying the liquidation process. It is contended that the applicant has suppressed material facts and approached this Tribunal without clean hands.

7. It is submitted that the suspended management have consistently failed to cooperate during the CIRP as well as liquidation proceedings and, in order to frustrate the recovery proceedings initiated by the secured creditor, created third-party rights over the mortgaged properties through alleged lease arrangements. The Liquidator has already filed separate applications being IA No. 701, 702 and 704 of 2020 seeking

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peaceful possession of the properties, which are pending before this Tribunal.

8. The respondent raises a preliminary objection to the maintainability of the present application on the ground that the impugned notice dated 08.04.2022 has been issued under the provisions of the SARFAESI Act, and any challenge thereto lies exclusively before the Debts Recovery Tribunal. It is further submitted that the subject properties were mortgaged in favour of Punjab National Bank. Upon the Corporate Debtor being declared NPA on 30.06.2009, recovery proceedings culminated in issuance of a Recovery Certificate by the Debts Recovery Tribunal, and the applicant has deliberately concealed these material facts.

9. The Respondent submitted that the alleged lease deeds relied upon by the applicant and the occupants have already been examined and disbelieved in earlier recovery proceedings, wherein The Hon'ble Debts Recovery Tribunal vide order dated 15.04.2019 held that the alleged lease deeds entered into between the corporate debtor and the said alleged tenants are not legally valid in the eyes of law as the same were not registered, no proper stamp duty was paid, no evidence in

-SD- -SDrelation to proof of payment of regular rent and lack of physical possessions. Despite rejection of their objections, the occupants have continued to retain possession and have not cooperated with the Liquidator.

10. It is submitted that during liquidation, the Liquidator conducted the e-auction of the assets and successful bidders have already been issued sale certificates dated 19.03.2022 and 28.04.2022 after payment of the entire sale consideration. The respondent further submitted that Punjab National Bank has relinquished its security interest in favour of the Liquidator and thus, is entitled to recover its dues as per Section 53 of the Insolvency and Bankruptcy Code. Therefore, any possession obtained pursuant to the SARFAESI proceedings would ultimately facilitate completion of the liquidation process and maximise value for the stakeholders.

11. It is further stated that the respondent has suppressed the material facts that order dated 19.09.2013 and 23.10.2013 passed by the Respondent No. 2 came to be challenged by the corporate debtor through suspended board of director before the Hon'ble High Court and the Appellate Court in respect of the SARFAESI proceedings have already been dismissed. It is

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contended that the applicant has indulged in repeated litigation and forum shopping since the account was declared NPA, with the intention of frustrating recovery as well as liquidation proceedings. It is submitted that the application also suffers from non-joinder of necessary parties, as neither Punjab National Bank nor the alleged occupants/tenants in possession of the properties have been impleaded. It is submitted that the entire act of the applicant in approaching this Hon'ble Tribunal challenging the SARFAESI action itself is against the position of law and is with an ulterior motive to hamper and delay the liquidation process by raising one or other vague/mischievous/ false grounds

12. The Applicant filed rejoinder and submitted that the present application is maintainable under Section 60(5) of the IBC as the properties form part of the liquidation estate and, by virtue of Section 238 of the IBC, the provisions of the IBC override any inconsistent provisions of the SARFAESI Act. It was contended that the alleged tenants are in lawful possession under lease deeds executed prior to creation of the mortgage and are protected by civil court decrees. It was submitted that the properties continue to constitute assets of the Corporate

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Debtor and, therefore, were required to be dealt with by the IRP/Liquidator in accordance with the provisions of the IBC, 2016.

13. Both parties have filed written submissions

14. Heard the counsel for the applicant as well as the respondents. Perused the material available on record.

15. Observations:

a. Before examining the reliefs sought, it is necessary to consider whether the present application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 is maintainable in the facts of the present case. The jurisdiction under Section 60(5) cannot be invoked to reopen issues arising out of proceedings initiated under the SARFAESI Act, particularly when the legality of such proceedings has already been examined by the competent forums constituted under the SARFAESI Act.

b. In the present case, the Applicant seeks to restrain Respondent Nos. 2 and 3 from acting pursuant to the notice dated 08.04.2022 issued under the SARFAESI Act on the ground that the properties form part of the liquidation estate. However, the record reveals that the Corporate

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Debtor had earlier challenged the SARFAESI proceedings before the competent forums, including the Hon'ble High Court, and the challenges came to be rejected. The High Court has also observed that persons claiming tenancy rights have an independent statutory remedy before the Debts Recovery Tribunal under Section 17(4A) of the SARFAESI Act and that repeated challenges cannot be permitted to defeat the object of the SARFAESI Act.

c. It is further noticed that the Liquidator has already conducted the e-auction of the assets during liquidation and sale certificates have been issued to the successful auction purchasers after receipt of the entire sale consideration. The secured creditor has also relinquished its security interest in favour of the Liquidator under the provisions of the Code. In such circumstances, the relief sought by the Applicant restraining further action in respect of the subject properties would directly impede the liquidation process and prejudice the rights already created in favour of the successful auction purchasers.

d. The Applicant has also relied upon the pendency of appeals before the Hon'ble NCLAT and the Hon'ble Supreme Court.

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Mere pendency of such proceedings, in the absence of any order staying the CIRP or liquidation proceedings, does not render the liquidation proceedings inoperative nor does it justify grant of the relief sought in the present application.

e. We further observe that the present application suffers from suppression of material facts inasmuch as the earlier adjudications relating to the SARFAESI proceedings and the issuance of sale certificates have not been fairly disclosed. The Applicant has also failed to implead necessary parties, including Punjab National Bank and the successful auction purchasers/occupants whose rights would be directly affected by the relief sought.

f. In view of the above, we are of the considered opinion that the present application is devoid of merit. The Applicant has failed to establish any legal basis for invoking the jurisdiction of this Tribunal under Section 60(5) of the Code to restrain proceedings arising under the SARFAESI Act or to interfere with the liquidation process, which has substantially progressed. The application appears to be another attempt to delay and obstruct the completion of

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liquidation proceedings and, therefore, deserves to be rejected.

16. In view of the above, we order as follows:

ORDER

IA No. 387 of 2022 in CP(IB) 342 of 2018 is rejected and disposed of.

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DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

CHITRA HANKARE
MEMBER (JUDICIAL)

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