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**REGISTERED POST WITH A/D.
HAND DELIVERY
AFFIXATION ON PROPERTY**

**ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(erstwhile KOLKATA PORT TRUST)**

(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorized Occupant) Act 1971
OFFICE OF THE ESTATE OFFICER
6, Fairley Place (1st Floor)
KOLKATA - 700 001

Court Room At the 1st Floor
of Kolkata Port Trust's
Fairlie Warehouse
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO. 09 DT 03.03.2021
PROCEEDINGS NO. 1843 OF 2020

**BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-**

**The Liquidator, Bharati Shipyard Ltd (now known as Bharti Defence &
Infrastructure Ltd) (O.P.)**

F O R M - "B"

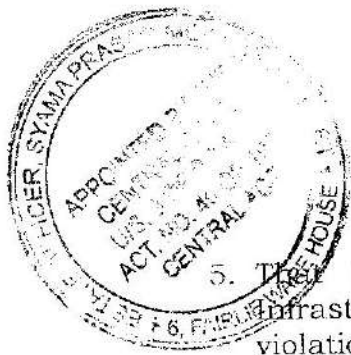
**ORDER UNDER SUB-SECTION (1) OF SECTION 5 OF THE PUBLIC
PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971**

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **the Liquidator, Bharati Shipyard Ltd (now known as Bharati Defence & Infrastructure Ltd) of Unit-9, 1st Floor Chowringhee Court, 55 & 55/1, Chowringhee Road, Kolkata-700071** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear of dues/damages etc. as prayed for on behalf of SMP, Kolkata and the Notice/s issued by this Forum are in conformity with the provisions of the Public Premises (Eviction of Unauthorized Occupant) Act 1971.
2. That proceedings against Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Ltd. is very much maintainable under law and the Liquidator's contention regarding non-maintainability of proceedings in view of the provisions of Insolvency and Bankruptcy Code (IBC) has got no merit for the purpose of deciding the question of "unauthorized occupation" of the Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Ltd.
3. That the ejectment notice dated 30.11.2016 as served upon Bharati Shipyard Ltd. is valid, lawful and binding upon the parties.
4. That Port Authority is well within its jurisdiction to demand for rental dues and/or charges for occupation into the Public Premises in question in terms of Schedule of Rent Charges notified in the Official Gazette in terms of the provisions of the Major Port Authorities Act, 2021.

PLEASE SEE ON REVERSE



:2:

5. The Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Ltd. has failed and neglected to pay rental dues in gross violation to the condition of lease as granted by the Port Authority to Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Ltd.

6. That no case has been made out on behalf of the Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Ltd. as to how its occupation in the Public Premises could be termed as "authorised occupation" after issuance of notice dated 30.11.2016, demanding possession by the Port Authority and occupation of the Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Ltd. has become unauthorized in view of Sec.2(g) of the P.P. Act, 1971
7. That the Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Ltd is liable to pay damages for wrongful use and occupation of the Public Premises upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

A copy of the reasoned order No. 9 dated 03.03.2021 is attached hereto which also forms a part of the reasons.

NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **the Liquidator, Bharati Shipyard Ltd (now known as Bharati Defence & Infrastructure Ltd) of Unit-9,1st Floor Chowringhee Court, 55 & 55/1, Chowringhee Road, Kolkata-700071** and all persons who may be in occupation of the said premises or any part thereof to vacate the said premises within 15 days of the date of publication of this order. In the event of refusal or failure to comply with this order within the period specified above the said **the Liquidator, Bharati Shipyard Ltd (now known as Bharati Defence & Infrastructure Ltd) of Unit-9,1st Floor Chowringhee Court, 55 & 55/1, Chowringhee Road, Kolkata-700071** and all other persons concerned are liable to be evicted from the said premises, in accordance with law.

SCHEDULE

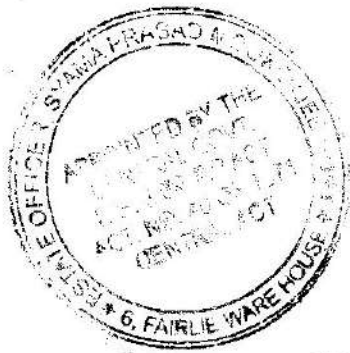
Plate No. HL-625

The said piece or parcel of land altogether measuring about 12429.44 Sq. mts comprising 1242.34 Sq. mts for High Land and 11,187.00 Sq. mts of low land at Timberpond, Howrah, Police Station- Shibpur, District- Howrah. It is bounded on the North partly by Trustees' land occupied by Deputy Conservator of Forest(Depot Division), Andaman Government, Timber DPT & partly SMP's vacant land, on the South by river Hooghly, on the East by Trustees' land occupied by Suraj Udyog Private Limited and on the West by Trustees' spur road no 3.

Trustee's means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Date- 03.03.2021


**Signature & Seal of the
Estate Officer.**



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**ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(erstwhile KOLKATA PORT TRUST)**

(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorized Occupant) Act 1971
OFFICE OF THE ESTATE OFFICER
6, Fairley Place (1st Floor)
KOLKATA - 700 001

Court Room At the 1st Floor
6, Fairlie Place Warehouse

Form "E"

PROCEEDINGS NO.1843/R OF 2020
ORDER NO. 09 DATED: 03.03.2021

Form of order under Sub-section (1) and (2A) of Section 7 of the Public
Premises (Eviction of Unauthorised Occupants) Act, 1971.


To
The Liquidator, Bharti Shipyard Ltd
now known as Bharti Defence & Infrastructure Ltd,
Unit-9, 1st Floor Chowringhee Court,
55 & 55/1, Chowringhee Road,
Kolkata-700071

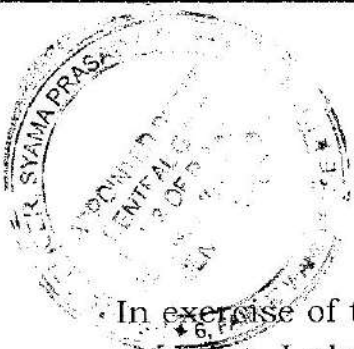
WHEREAS you are in occupation of the public premises described in the
Schedule below.

AND WHEREAS, by written notice dated 19.01.2021 you are called upon
to show cause on/or before 29.01.2021 why an order requiring you to pay
a sum of Rs 42,11,218/- (Rupees Forty Two Lakhs Eleven Thousand Two
hundred Eighteen only) being the rents payable together with compound
interest in respect of the said premises should not be made;

AND WHEREAS, I have considered your objections and/or evidence
produced before this Forum;

NOW, THEREFORE, in exercise of the powers conferred by sub-section
(1) of Section 7 of the Public Premises (Eviction of Unauthorised
Occupants) Act 1971, I hereby require you to pay the sum of Rs
42,11,218/- (Rupees Forty Two Lakhs Eleven Thousand Two hundred
Eighteen only) for the period 08.11.2006 to 30.05.2017 (both days
inclusive) to SMP, Kolkata.


PLEASE SEE ON REVERSE



: 2 :

In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay compound interest @ 6.20 % per annum on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.

In case the said sum is not paid within the said period or in the said manner, it will be recovered in accordance with law.

SCHEDULE

Plate No. HL-625

The said piece or parcel of land altogether measuring about 12429.44 Sq. mts comprising 1242.34 Sq. mts for High Land and 11,187.00 Sq. mts of low land at Timberpond, Howrah, Police Station- Shibpur, District- Howrah. It is bounded on the North partly by Trustees' land occupied by Deputy Conservator of Forest(Depot Division), Andaman Government, Timber DPT & partly SMP's vacant land, on the South by river Hooghly, on the East by Trustees' land occupied by Suraj Udyog Private Limited and on the West by Trustees' spur road no 3.

Trustee's means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Dated: 03.03.2021


**Signature and seal of the
Estate Officer**



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**ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(erstwhile KOLKATA PORT TRUST)**

(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorised Occupants) Act 1971

OFFICE OF THE ESTATE OFFICER
6, Fairlie Place (1st FLOOR) KOLKATA-700001

Court Room At the 1st Floor
of Kolkata Port Trust's
Fairlie Warehouse
6, Fairlie Place, Kolkata- 700 001.

PROCEEDINGS NO.1843/D OF 2020
ORDER NO. 09 DATED : 03.03.2021

Form- G

Form of order under Sub-section (2) and (2A) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971

To
The Liquidator, Bharti Shipyard Ltd
(now known as Bharti Defence & Infrastructure Ltd),
Unit-9, 1st Floor Chowringhee Court,
55 & 55/1, Chowringhee Road,
Kolkata-700071.

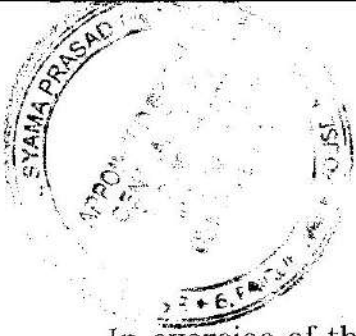
WHEREAS, I, the undersigned, am satisfied that you are in unauthorised occupation of the public premises mentioned in the Schedule below:

AND WHEREAS, by written notice dated 19.01.2021 you are called upon to show cause on/or before 29.01.2021 why an order requiring you to pay damages of Rs.2,02,26,389/- (Rupees Two Crores Two Lakhs Twenty Six Thousand Three Hundred Eighty Nine only) together with [compound interest] for unauthorised use and occupation of the said premises, should not be made.

AND WHEREAS, I have considered your objections and/or evidence produced before this Forum.

NOW, THEREFORE, in exercise of the powers conferred on me by Sub-section (2) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby order you to pay the sum of Rs. 2,02,26,389/- (Rupees Two Crores Two Lakhs Twenty Six Thousand Three Hundred Eighty Nine only) assessed by me as damages on account of your unauthorised occupation of the premises for the period from 31.05.2017 to 31.12.2020 (both days inclusive) to SMP, Kolkata.


PLEASE SEE ON REVERSE



: 2 :

In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay compound interest @ 6.20 % per annum on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.

In the event of your refusal or failure to pay the damages within the said period or in the manner aforesaid, the amount will be recovered in accordance with law.

SCHEDULE

Plate No. HL-625

The said piece or parcel of land altogether measuring about 12429.44 Sq. mts comprising 1242.34 Sq. mts for High Land and 11,187.00 Sq. mts of low land at Timberpond, Howrah, Police Station- Shibpur, District- Howrah. It is bounded on the North partly by Trustees' land occupied by Deputy Conservator of Forest(Depot Division), Andaman Government, Timber DPT & partly SMP's vacant land, on the South by river Hooghly, on the East by Trustees' land occupied by Suraj Udyog Private Limited and on the West by Trustees' spur road no 3.

Trustee's means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata).

Date:03.03.2021

**Signature & Seal of the
Estate Officer.**



Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

Proceeding No. 1843, 1843/R, 1843/D of 2020 Order Sheet No. 20

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator Bharati Shipyard Limited now known as Bharati Defence & Infrastructure Limited (Plate no. H1625) **VS**

09
03.03.2021

FINAL ORDER

The instant proceedings No. 1843, 1843/R and 1843/D of 2020 arises out of the application bearing No. Lnd.5317/20/2722 dated 07.12.2020 filed by **Syama Prasad Mookerjee Port, Kolkata** [erstwhile Kolkata Port Trust, hereinafter referred to as 'SMP, Kolkata'], the applicant herein, under the provisions of the **Public Premises (Eviction of Unauthorised Occupants) Act, 1971** (hereinafter referred to as 'the Act') praying for an order of eviction and recovery of rental dues, compensation/damages and other charges etc. along with accrued interest in respect of the Public Premises as defined under Schedule- 'A' of said application, against the **Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Limited** (hereinafter referred to as the Liquidator, Bharati Shipyard Ltd., Opposite party or O.P.).

It is the case of SMP, Kolkata that Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Limited came into occupation of the SMP, Kolkata's property as a long term lessee for a period of 14 years and 6 months with effect from 08.11.2006. It is the case of SMP, Kolkata that Bharati Shipyard Ltd. has defaulted in making payment of SMP, Kolkata's rent, compensation charges/mesne profits/damage, taxes etc. in clear violation of the terms and conditions of the lease in question. It is seen that a copy of the Deed of Lease was filed under the cover of SMP, Kolkata's original application dated 07.12.2020. It is the further the case of SMP, Kolkata that a notice to quit was issued upon Bharati Shipyard Ltd on 30.11.2016. As a result the tenancy with the Bharati Shipyard Ltd. was determined w.e.f. 31.05.2017 in terms of the said notice to quit dated 30.11.2016. It is submitted by SMP, Kolkata that Bharati Shipyard Ltd failed and neglected to vacate/ hand

f.s.d.
04.03.2021

ESTATE OFFICER
KOLKATA PORT TRUST

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Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1843, 1843/R, 1843/D Of 2020 Order Sheet No. 21

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator Bharati Shipyard Limited now known as
VS
Bharati Defence & Infrastructure Limited (Plate no HL 625)

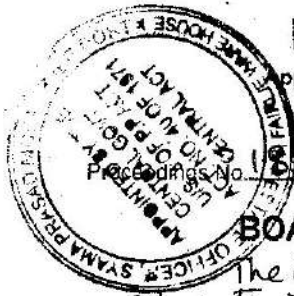
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03.03.2021

over the possession of the premises after service of the said notice to quit. It is further submitted by SMP, Kolkata that Bharati Shipyard Ltd. has not denied default in payment on their part, nor disputed the termination of the lease in question. SMP, Kolkata has made out a case that Bharati Shipyard Ltd. has no right to occupy the premises after the termination of the lease in question upon service of a quit notice dated 30.11.2016 and was required to hand over the possession of the property in question to SMP, Kolkata on 31.05.2017.

It appears that in the meantime a petition was filed under the Insolvency and Bankruptcy Code (IBC) against Bharati Defence & Infrastructure Limited (erstwhile Bharati Shipyard Ltd.) before The Hon'ble National Company Law Tribunal (NCLT), Mumbai Bench, under Corporate Insolvency Resolution Process (CIRP) vide company petition no 292/ I/& BP/ NCLT/ MAH/ 2017, wherein one Shri Dhinal Shah was appointed as Interim Resolution Professional (IRP) vide order dated 06.06.2017 and the period of moratorium was declared, whereby institution of recovery proceedings were prohibited till the disposal of the CIRP proceeding before the Hon'ble NCLT. It is stated by SMP, Kolkata the Hon'ble NCLT, Mumbai Bench vide order dated 14.01.2019 had rejected the proposed resolution plan put forth by IRP and disposed of the CIRP proceeding and thereby initiating the liquidation proceeding. It is further stated by SMP, Kolkata with the said order the period of moratorium which was earlier declared also ceases to be in effect. SMP, Kolkata has submitted that vide the said Order, the Hon'ble NCLT, Mumbai Bench was pleased to, inter alia, direct that the Corporate Debtor to be liquidated as per the provisions of Resolution 32(b) of the IBBI (Liquidation Process) Regulations, 2016, which provides for assets in a slump sale, the corporate debtor as a going concern in the

f.s.De
04.03.2021

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Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1843, 1843/R, 1843/D of 2020 Order Sheet No. 22

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator Bharati Shipyard Limited now known as Bharati Defence & Infrastructure Limited (Plate no. H1625)

09
03.03.2021

manner as laid down in Chapter III under the Part II of IBC, 2016 and was further pleased to appoint one Shri Vijay Kumar V Iyer as the liquidator of Bharati Defence and Infrastructure Limited.

My attention is drawn with a strong argument that the cause of action arises upon failure on the part of the Bharati Shipyard Ltd. to hand over possession in terms of the notice to quit dated 30.11.2016 as duly served upon Bharati Shipyard Ltd., and is well within the jurisdiction of the Office of the Estate Officer in terms of the provisions of the Act of 1971.

During the course of formation of my opinion as to whether the Notice to Show Cause could be issued against the Liquidator, Bharati Shipyard Ltd under section 4 & 7 of the Public Premises Act, 1971, the provisions under Section 33(5) of the Insolvency and Bankruptcy Code, 2016 was perused which speaks for not instituting any proceeding without prior approval of the adjudicating authority. The said provision is re-produced below:

"Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority"

Further, it is also found that vide Order dated 14.01.2019 the Hon'ble NCLT, Mumbai Bench was pleased to record the following:

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04.03.2021



Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

Proceeding No. 1843, 1843/R, 1843/P Of 2020 Order Sheet No. 23

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator Bharati Shipyard Limited now known as
Bharati Defence & Infrastructure Limited (Plate no. HL 625)

09

03.03.2021

"... Since this liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor without prior approval of this Adjudicating Authority save and except as mentioned in subsection 6 of Section 33 of IBC"

Be that as it may, there is also a specific legislation under Section 15 of the Public Premises Act, 1971, which provides for a bar of jurisdiction of any other Court to entertain any suit or proceeding in respect of eviction of any person who is in unauthorised occupation of any public premises and the arrears of rent payable under sub-section (1) of section 7 or damages payable under sub-section (2), and interest payable under sub-section (2A), of that section etc. It is argued by SMP, Kolkata that the Bharati Shipyard Ltd. is in wrongful occupation on and from 31.05.2017 and accordingly claim should be registered against the Liquidator, Bharati Shipyard Ltd. now known as Bharati Defence & infrastructure Ltd. for recovery of the possession of the subject premises as well as outstanding rents, compensation charges/mesne profits/ damages alongwith the accrued interest thereon for the unauthorized use and occupation of the Port property in question of Bharati Shipyard Ltd. My attention was drawn to the Schedule 'B', 'C' and 'D' of SMP, Kolkata's application dated 07.12.2020 in this regard.

Considering all the above, this Forum of Law formed its opinion to proceed against the Liquidator, Bharati Shipyard Ltd. under the Public Premises Act, 1971 and issued show cause notices under Section 4 of the Act (for adjudication of the prayer for issuance of Order of Eviction etc.) and two Show Cause Notices under 7 of the Act (for adjudication of the prayer for recovery of rental dues, mesne profit/compensation/ damages etc) all dated 19.01.2021

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04.03.2021

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Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises
(Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1843, 1843/R, 1843/D of 2020 Order Sheet No. 24

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator *Bharati Shipyard Limited* now known as
Bharati Defence & Infrastructure Limited (Plate no HL625)

09
03.03.2021

(vide Order No 04 dated 19.01.2021) as per the Rules made under the Act.

On the day of fixed (on 29.01.2021) for filing of the reply to the Show Cause Notice, the matter was taken up for hearing, when one Shri Sahoo appeared before this Forum and files his letter of authorization dated 29.01.2021 executed by the Liquidator for Bharati Shipyard Ltd. Shri Sahoo also filed an application dated 29.01.2021 written by the Liquidator to the office of the undersigned. Upon perusal of the said application dated 29.01.2021, it appeared that the Liquidator had requested to postpone the date of hearing for evaluation of the details mentioned in the Notices to Show Cause issued by this Forum. It appeared that in the said application, the Liquidator also mentioned about Section 33(5) and Section 238 of IBC and the bar contained therein. However, following the principles of natural justice the prayer for adjournment was allowed. The Liquidator was requested to take up all the points in a composite way and file the reply to the Show Cause Notice at the earliest. However, all the points were left open for discussions on merits of the case on the basis of the Show Cause notices issued under Secs.4 and 7 of the Act. The next date was fixed for filing of reply by the Liquidator, consideration etc. on 11.02.2021. On the said date the matter was taken up for hearing, when Shri Sahoo has filed reply dated 10.02.2021 (Ref No: in anchor/234) written by the Liquidator for Bharati Defence & Infrastructure Limited, with a copy to SMP, Kolkata. It appeared that vide the said reply the Liquidator, inter alia, agitated the following points:

- a) In terms of the Order dated 14.01.2019 passed by the Hon'ble NCLT (Mumbai Bench), liquidation process has been initiated against the Corporate Debtor. In pursuance to the liquidation Order and

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04.03.2021

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Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises
(Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1843, 1843/R, 1843/D of 2020 Order Sheet No. 25

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator Bharati Shipyard Limited now known as
Bharati Defence & Infrastructure Limited (Plate no H2625)

09
03-03-2021

in accordance with Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the Liquidator has issued a public announcement on 19.01.2019 in 'Business Standard' inviting claims as on liquidation commencement date from various stakeholders. No claim has been submitted by SMP, Kolkata within the timelines mentioned in the Code.

- b) The Hon'ble NCLAT, vide Order dated 14.05.2019 has directed compromise or arrangements with the creditors or class of creditors or members or class of members in terms of Section 230 of the Companies Act, 2013 and on failure, the liquidator is required to take step to sell the business of the 'corporate debtor' as going concern in its totality alongwith the employees.
- c) The Hon'ble NCLT vide Order dated 18.12.2020 has allowed the application filed by the liquidator to proceed with the sale of the assets of Bhar in accordance with the provisions of the Code and the Liquidation Regulation.
- d) The land leased is in occupation of the Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Limited and has been used for the purpose of 'Ship/ Barge/ Boat Construction/ Repairing, which is critical for conduct of operations at the Kolkata Yard of BDIL, to ensure going concern of the business.
- e) The dues payable to SMP, Kolkata prior to the liquidation commencement date and admitted in

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04-03-2021

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Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises
(Eviction of Unauthorised Occupants) Act 1971



1843, 1843/R, 1843/D of 2020 Order Sheet No. 26

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator Bharati Shipyard Limited now known as
Bharati Defence & Infrastructure Limited (Plate no. 1625)

09
03.03.2021

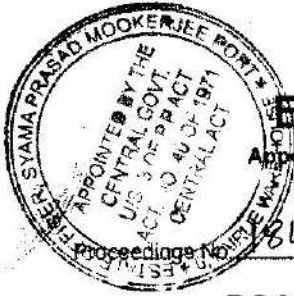
favour of SMP, Kolkata will be treated in terms of Section 53 of the Code. Attempts will be made to define the amount arisen in favour of SMP, Kolkata post commencement of the liquidation proceedings as the liquidation cost for the purpose of IBC, 2016.

- f) Upon the sale of the business of the Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Limited, the successful bidder will enter into appropriate arrangements with SMP, Kolkata for continuance of the lease and payment of lease rentals.

In view of such submissions, SMP Kolkata was directed to file their comments on each and every issue raised by the Liquidator vide the said reply dated 10.02.2021, by the next date fixed in the matter. On the next date of hearing (on 19.02.2021) SMP, Kolkata filed their comments (vide application bearing no. Lnd 5317/21/623 dated 19.02.2021) to the reply filed by the Liquidator, Bharati Shipyard Ltd. dated 11.02.2021. On a perusal of such comments of SMP, Kolkata it appears that SMP, Kolkata has made elaboration of certain provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 [such as Sections 2(g), 4, 15, 7 etc.] and pressed strongly for an order of eviction as well as recovery of dues of SMP, Kolkata against the Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Limited. It was mentioned by SMP, Kolkata that as soon as SMP, Kolkata became aware of initiation of the liquidation process, SMP, Kolkata has lodged their claim before the Liquidator for BDIL /O.P. vide communications dated 27.02.2019 as 'proof of claim by Operational Creditors

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04.03.2021

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Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1843, 1843/R, 1843/P of 2020 Order Sheet No. 27

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator *Bharati Shipyard Limited* now known as *Bharati Defence & Infrastructure Limited* (Plate no HL 625)

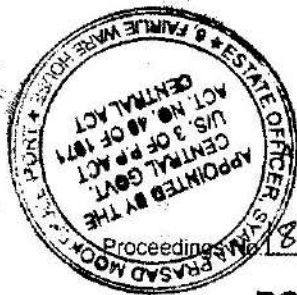
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except workmen and employees' under Regulation 17 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations (Schedule II, FORM C). It is further mentioned that the claim of SMP, Kolkata has been received, verified and admitted by the Liquidator for BDIL, vide communication dated 22.03.2019. I find that the copies of the communications dated 27.02.2019 and 22.03.2019 has been enclosed under the cover of the application of SMP, Kolkata dated 19.02.2021. Opportunity was provided to the Liquidator for BDIL to file their comments on the said application of SMP, Kolkata bearing no. Lnd 5317/21/623 dated 19.02.2021, by the next date. Further, keeping in view of the 'summary procedure' laid down by the P.P. Act, 1971, which provides a speedy machinery for eviction of unauthorized occupants from the public premises and recovery of arrear rental dues etc., the matter was fixed for final hearing, arguments by both the parties on 25.02.2021. Taking note of the apprehension of defeat of the very spirit embodying in the Public Premises Act, 1971 for speedy and summary disposal of cases by not prolonging the matter unnecessarily, after leading fair hearing to all concerned parties, this Forum concluded the hearing of the case and reserved the case for passing the Final Order. However, liberty was given to the parties to file Written Notes of Arguments, if any, by 26.02.2021 noon. It appears that the Liquidator, Bharati Shipyard Ltd has filed his written notes of arguments on 26.02.2021. I find that a case has been cited by the liquidator, BDIL relating to the Income Tax Department, which filed belated claims with the liquidator and when the liquidator sought directions from the Hon'ble NCLT regarding admission of such belated claim, the Hon'ble NCLT rejected the same holding that it is for the aggrieved creditor to approach the Hon'ble Court and not the liquidator on behalf of such creditor. It is also mentioned in the written notes that as per section 42 of the

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Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

Proceeding No. 1843, 1843/R, 1843/D of 2020 Order Sheet No. 28

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator Bharati Shipyard Limited now known as
Bharati Defence & Infrastructure Limited (Plate no HL625)

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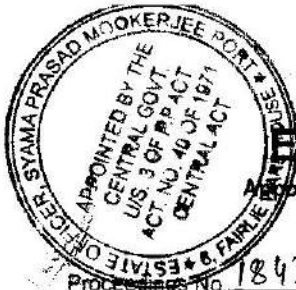
Code, the liberty to appeal before Hon'ble NCLT is with the creditor against the decision of the liquidator accepting or rejecting such claims. Cases have been cited in the written notes in support of the contention of a bar on institution of suits in terms of Section 33(5) of the Code. The provisions contained in Section 238 of IBC have also been cited.

Now while passing this Order, I have carefully gone through the submissions advanced by the parties and the documents/ materials/ papers on record. After due consideration of all relevant papers/documents as brought before me in course of hearing, I find that following issues have come up for my adjudication:-

1. Whether the present proceeding u/s 5 of the Public Premises Act against the Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Limited is maintainable in the eye of law or not.
2. Whether the provisions of the Insolvency and Bankruptcy Code (IBC) overrides the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 with regard to eviction of any person who is in unauthorised occupation of any public premises or not.
3. Whether the contention of the Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Limited regarding non-maintainability of the Proceedings has got any merit or not.
4. Whether the Bharati Shipyard Ltd. was in default of payment of rent and the accrued interest thereon at the time of issuance of the notice to quit dated 30.11.2016, or not;

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Estate Officer, Kolkata Port Trust

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Proceedings No. 1843, 1843/R, 1843/D of 2020 Order Sheet No. 29

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator Bharati Shipyard Limited now known as Bharati Defence & Infrastructure Limited (Plateno H-2625)

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5. Whether the notice to quit as issued by the Port Authority to Bharati Shipyard Ltd. dated 30.11.2016 is valid and lawful in the present facts and circumstances of the case or not.
6. Whether the present proceeding u/s 7 of the Public Premises Act against the Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Limited is maintainable in the eye of law or not.
7. Whether Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence is liable to pay any rent/ damages/ accrued interest thereon for wrongful use and enjoyment of the Port property or not.
8. Whether SMP, Kolkata's claim on account of rent, compensation, interest charges on the basis of Notifications published in Calcutta Gazette have any force of law in determining the quantum of dues/charges as payable by the Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Limited to SMP, Kolkata or not.
9. Whether O.P is liable to pay arrears of rent and the damages/ mesne profit for wrongful use and enjoyment of the Port property or not.

Issues no.1, 2 and 3 are taken up together for the sake of convenient discussion as the issues are basically related with maintainability of Proceeding u/s 5 of the Public Premises Act for eviction of unauthorized occupants from the Public Premises in question. The properties owned and controlled by the Port Authority has been declared as "public premises" by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and Section-15 of the Act puts a complete bar on any other Court's jurisdiction to entertain any matter relating

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Estate Officer, Kolkata Port Trust

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Proceeding No. 1843, 1843/R, 1843/D of 2020 Order Sheet No. 30

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

*The Liquidator Bharati Shipyard Limited now known as
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to eviction of unauthorized occupants from the public premises and recovery of rental dues and/or damages, etc. SMP, Kolkata has come up with an application for declaration of the Liquidator, Bharati Shipyard Ltd. (now known as Bharati Defence and Infrastructure Limited) status as unauthorized occupant in to the public premises with the prayer for order of eviction, recovery of rental dues and damages against the Liquidator, Bharati Shipyard Ltd. (now known as Bharati Defence and Infrastructure Limited) on the ground of issuance of Notice demanding possession from Bharati Shipyard Ltd. in respect of the premises in question. So long the property of the Port Authority is coming under the purview of "public premises" as defined under the Act, adjudication process by serving Show Cause Notice/s u/s 4 & 7 of the Act is very much maintainable and there cannot be any question about the maintainability of proceedings before this Forum of Law. In fact, proceedings before this Forum of Law is not statutorily barred, even if a bar appears to be in force in any other enactment, so far as it regards to eviction and recovery of dues of the Public Premises are concerned. To take this view, I am fortified by an unreported judgment of the Hon'ble High Court, Calcutta delivered by Hon'ble Mr. Justice Jyotirmay Bhattacharya on 11.03.2010 in Civil Revisional Jurisdiction (Appellate Side) being C.O. No. 3690 of 2009 (M/s Reform Flour Mills Pvt. Ltd. -Vs- Board of Trustees' of the Port of Calcutta) wherein it has been observed specifically that the Estate Officer shall have jurisdiction to proceed with the matter on merit even there is an interim order of status quo of any nature in respect of possession of any public premises in favour of anybody by the Writ Court. Relevant portion of the said order is reproduced below:

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Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator Bharati Shipyard Limited now known as
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"In essence the jurisdiction of the Estate Officer in initiating the said proceedings and/or continuance thereof is under challenge. **In fact, the jurisdiction of the Estate Officer either to initiate such proceedings or to continue the same is not statutorily barred.** As such, the proceedings cannot be held to be vitiated due to inherent lack of jurisdiction of the Estate Officer.

The bar of jurisdiction, in fact, was questioned because of the interim order of injunction passed in the aforesaid proceedings".

Hon'ble Division Bench of Calcutta High Court had the occasion to decide the jurisdiction of the Estate Officer under P.P. Act in Civil Appellate Jurisdiction being MAT No.2847 of 2007 (The Board of Trustees of the Port of Kolkata and Anr -vs- Vijay Kumar Arya & Ors.) reported in Calcutta Weekly Note 2009 CWN (Vol.113)-P188 The relevant portion of the judgment (Para-24) reads as follows:-

"The legal issue that has arisen is as to the extent of Estate Officer's authority under the said Act of 1971. While it is an attractive argument that it is only upon an occupier at any public premises being found as an unauthorized occupant would he be subject to the Estate Officer's jurisdiction for the purpose of eviction, the intent and purport of the said Act and the weight of legal authority that already bears on the subject would require such argument to be repelled. Though the state in any capacity cannot be arbitrary and its decisions have always to be tested against Article 14 of the Constitution, it is generally subjected to substantive law in the same manner as a private party would be in a similar circumstances. That is to say, just because the state is a Landlord or the state is a creditor, it is not burdened with

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Estate Officer, Kolkata Port Trust

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Proceeding No. 1843, 1843/R, 1843/D of 2020 Order Sheet No. 32

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator Bharati Shipyard Limited now known as
Bharati Defence Infrastructure Limited (Plate no. H1625)

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any onerous covenants unless the Constitution or a particular statute so ordains"

I find that the claim raised by SMP, Kolkata is the subject matter of consideration of this Forum of Law and SMP, Kolkata has made out a strong case to proceed against the Liquidator, Bharati Shipyard Ltd. under relevant provisions of The Public Premises Act, 1971 and Rules made thereunder. It is also the position that the Official Liquidator is deemed to have the custody and control of all the properties, effects and actionable claims of or against the Company in liquidation (Bharati Shipyard Ltd.). Be that as it may, the properties owned and controlled by the Port Authority has been declared as "public premises" by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and Section-15 of the Act puts a complete bar on any other Court's jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of rental dues and/or damages, etc. So long the property of the Port Authority is coming under the purview of "public premises" as defined under the Act, I find that adjudication process by this Forum is very much maintainable.

It appears that there is an admitted position with regard to the ownership of the subject Public Premises, as the ownership of the premises rests with the SMP, Kolkata. It is noted that no claim has been lodged before the Hon'ble NCLT challenging the ownership of the Public Premises in question. As per the settled proposition of law, it is the landlords (in this case, the SMP, Kolkata) prerogative to decide to whom the possession of the premises would be given under lease/ license/ any other arrangements, as per the extant land policy guidelines of SMP, Kolkata. In other words, the Liquidator cannot dictate the terms to SMP,

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator Bharati Shipyard Limited now known as
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Kolkata to recognise any "successful bidder" who would enter into the premises by virtue of any arrangements made by the Liquidator. Hence the submission made by the Liquidator as mentioned in the application dated 12.02.2021 regarding the coming into the occupation of a "successful bidder" has no basis in the eye of law. Here, I find that the SMP, Kolkata authorities has time and again made its intention clear, to obtain vacant possession of the public premises at once.

Therefore, I am firm in holding that this Forum established under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is the only adjudicating authority empowered by the Act to decide the present case for eviction of unauthorised occupants from the Public Premises in question and no other Forum, Court is empowered to deal or decide with the same in terms of the specific bar of Section 15 of the Public Premises Act. I am also firm in holding that there is no provision in the Insolvency and Bankruptcy Code (IBC) which overrides the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 with regard to the eviction of any unauthorised person who is in occupation of any public premises.

In view of the above, I have no hesitation in my mind to decide that the proceedings before this Forum of Law within the four corners of P.P. Act is very much maintainable. In view of the discussions above, the issues are decided clearly in favour of SMP, Kolkata.

On **issue no. 4 and 5**, it is very much evident that it is an admitted position between the parties that Bharati Shipyard Ltd. was inducted as a lessee into the subject premises by SMP, Kolkata. Subsequently, notice to quit dated

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Estate Officer, Kolkata Port Trust

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Proceedings No. 1843, 1843/R, 1843/D of 2020 Order Sheet No. 34

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

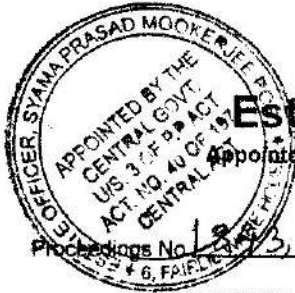
*The Liquidator Bharati Shipyard Limited now known as
Bharati Defence & Infrastructure Limited (Plate no H1625)*

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30.11.2016 came to be issued by SMP, Kolkata, for the Bharati Shipyard Ltd.'s default in payment of the rental dues and the accrued interest thereon terminating the said lease in question. I have gone through the letter dated 25.05.2015 issued by SMP, Kolkata whereby SMP, Kolkata had sent a Final Notice to the Bharati Shipyard Ltd. for non-payment of rental dues, duly communicating that in case of non compliance of the breach of non-payment, within a period of fortnight from the date of receipt of the letter, appropriate legal action would be taken under the provisions of the P.P. Act. It appears that a computerized statement of accounts has been submitted by SMP, Kolkata in support of their contention and the same indicates non-payment of dues, on the part of the Bharati Shipyard Ltd., before issuance of such Notice to Quit. Hence, I find that there was substantial ground for issuance the Notice to Quit dated 30.11.2016. It is also seen that the said notice was received by one Shri Bhaskar Das Gupta, Sr. Manager, Bharati Shipyard Ltd., under acknowledgement on 20.12.2016. This takes me to the question whether a lessee like Bharati Shipyard Ltd. can continue in occupation when the lease has been terminated vide a Notice to Quit. As per Transfer of Property Act, 1882, a lessee is under legal obligation to hand over the possession of the property to its landlord/lessor in its original condition after expiration of the period mentioned in the Notice to Quit. The tenancy of the Bharati Shipyard Ltd. automatically stands terminated upon expiry of period mentioned in the notice to Quit. During the course of entire proceedings, the Liquidator, Bharati Shipyard Ltd. failed to justify how he is entitled to enjoy the public premises after expiry of the period mentioned in the notice to quit dated 30.11.2016. No reason could be found, whatsoever, by this Forum of Law about any consent granted on the part of SMP, Kolkata in occupying the public premises after expiry of the said Notice

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Estate Officer, Kolkata Port Trust

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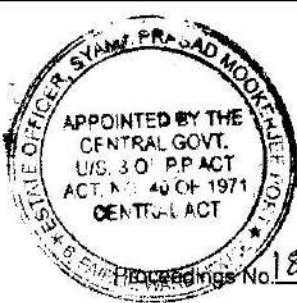
Proceedings No. 1843/R, 1843/D of 2020 Order Sheet No. 35

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator *Bharati Shipyard Limited* now known as *Bharati Defence & Infrastructure Limited* (Plate no HLB 25) **VS**

period. I take conscious note of the fact that SMP, Kolkata never recognized Bharati Shipyard Ltd. as a lawful user/tenant in respect of the property in question after expiry of the period mentioned in the notice to quit and in fact, initiation of the instant proceedings, vide original application dated 07.12.2020 of SMP, Kolkata was a logical culmination of SMP, Kolkata's intent to obtain vacant possession of the public premises in question. It is a settled question of law that the Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Limited cannot claim any legal right to hold the property after expiry of the period mentioned in the Notice to Quit, without any valid grant or allotment from the landlord SMP, Kolkata's side. The instant proceedings continued for a fairly long period of time and no intention was ever found on the part of SMP, Kolkata to consider new entity, if any, who might step into the shoes of Bharati Shipyard Ltd. as the lessee in place of the erstwhile lessee Bharati Shipyard Ltd. It is a settled question of law as per the provisions of the Transfer of Property Act that a lessee like Bharati Shipyard Ltd. cannot claim any legal right to hold the property after expiry of the period as mentioned in the notice of ejection. Further, as per Section 2 (g) of the P. P. Act, the "unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. The tenancy granted to Bharati Shipyard Ltd. was undoubtedly determined by the Port Authority by due service of notice to quit.

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(Eviction of Unauthorised Occupants) Act 1971

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator *Bharati Shipyard Limited now known as*
Bharati Defence & Infrastructure Limited (Plate no H625)

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Moreso, I find a specific provision in the Insolvency and Bankruptcy Code (IBC), 2016 under Section 14, which reads as follows:

"Section 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 of the following, namely:—

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

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

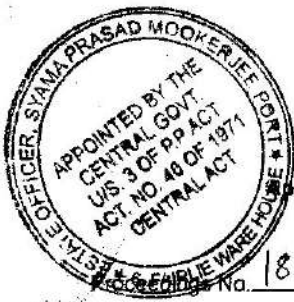
(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Explanation.—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force,

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator Bharati Shipyard Limited now known as
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shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;"

The Explanation to the Section as quoted above clearly brings about the intention of the legislature, that a defaulter like the O.P. cannot enjoy the benefit of Moratorium. It appears to me that the intention of the lawmakers is to protect the genuine occupants who continue to make payment of the current dues in respect of their use or continuation of the license or lease as the case may be. Here in the instant case, the O.P. is clearly in default of its obligations and the declared Moratorium period is also over. As such, it is my firm understanding that there is no bar in proceeding against the O.P. even for the sake of natural justice.

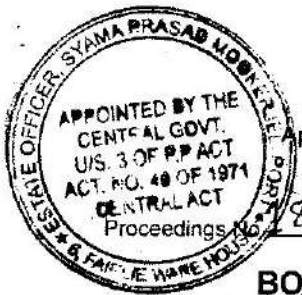
In view of the above, I have no hesitation to observe that the ejection notice, demanding possession from Bharati Shipyard Ltd. as stated above has been validly served upon Bharati Shipyard Ltd. in the facts and circumstances of the case and such notice is valid, lawful and binding upon the parties. In view of the discussions above, the issues are decided clearly in favour of SMP, Kolkata.

Issues no.6,7,8 and 9 are taken up together for the sake of convenient discussions as the issues are basically related with maintainability of Proceeding u/s 7 of the Public Premises Act for recovery of rent, compensation charges as claimed by SMP, Kolkata alongwith the accrued interest from the unauthorized occupants of the Public Premises in question. In this connection it appears from the records that SMP, Kolkata has lodged their claim before the

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator Bharati Shipyard Limited now known as
Bharati Defence & Infrastructure Limited (Plate no HT625)

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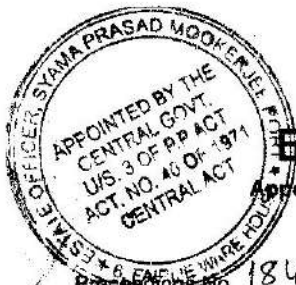
Liquidator for BDIL /O.P. vide communications dated 27.02.2019 as 'proof of claim by Operational Creditors except workmen and employees' under Regulation 17 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations (Schedule II, FORM C). It is also apparent from the documents as well as from the submissions of the Liquidator that SMP, Kolkata has a legitimate claim in respect of the property in question. In fact the Liquidator has admitted vide letter dated 22.03.2019, the claim of SMP, Kolkata in accordance with the provisions of the Insolvency and Bankruptcy Code (IBC), 2016. It is also apparent that the Liquidator for BDIL /O.P. never denied or even disputed the claim of SMP, Kolkata on any ground whatsoever.

It is the admitted position in the case that the Port Authority has a definite legitimate claim to get its revenue involved into this matter as per the SMP, Kolkata's Schedule of Rent Charges for the relevant period.

In course of hearing, it is submitted on behalf of SMP, Kolkata that the charges claimed on account of damages is on the basis of the SMP, Kolkata's Schedule of Rent Charges as applicable for all the tenants/occupiers of the premises in a similarly placed situation and such Schedule of Rent Charges is notified rates of charges under provisions of the Major Port Trusts Act 1963. Recently the Act of 1963 has been replaced by the Major Port Authorities Act, 2021 as it received the assent of the President of India on 17.02.2021. As per the earlier Act of 1963, the Tariff Authority for Major Ports (TAMP) fixes the scale of rates for assets and services available at ports. Under the new law, the Board or committees appointed by the Board will determine these scale of rates for the usage of the port assets etc. As per Section 54 of the Act of 2021 the Central

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator Bharati Shipyard Limited now known as
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Government shall, by notification, constitute, with effect from such date as may be specified therein, a Board to be known as the Adjudicatory Board to exercise the jurisdiction, powers and authority conferred on such Adjudicatory Board by or under this Act, provided that until the constitution of the Adjudicatory Board, the Tariff Authority for Major Ports constituted under section 47A of the Major Port Trusts Act, 1963 shall discharge the functions of the Adjudicatory Board under this Act and shall cease to exist immediately after the constitution of the Adjudicatory Board under this Act: Provided further that on and from the date of constitution of the Adjudicatory Board— (a) all the assets and liabilities of the Tariff Authority for Major Ports shall stand transferred to, and vested in, the Adjudicatory Board. In view of the above, I have no hesitation in mind that the Schedule of Rent Charges of the Tariff Authority for Major Ports (TAMP) has statutory force of law at present.

In terms of Section 7 of the Public Premises Act, this Forum is the only adjudicating authority empowered by the legislature, to adjudicate the rent, compensation and the accrued interest payable by unauthorised occupants into the public premises in question. It appears that the claim of SMP, Kolkata is huge and if any steps are not taken it may affect the revenue of the public authority, SMP, Kolkata which has a huge bearing upon the public exchequer. It is evident that though the Liquidator has admitted the claim of SMP, Kolkata but is yet to take any definite steps for liquidation of such claim on the plea that the claim has been lodged by SMP, Kolkata after a mere delay of only two weeks.

In such a situation, being empowered under the provisions of the Public Premises Act, the adjudication rests only with

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Procedure No. 1843, 1843/R, 1843/D of 2020 Order Sheet No. 40

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator Bharati Shipyard Limited now known as
Bharati Defence & Infrastructure Limited (Plate no. 1625)

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03.03.2021

this Forum for recovery of SMP, Kolkata's dues on account of rent and compensation charges which is public money.

In my view, such claim of charges for damages by SMP, Kolkata is based on sound reasoning and should be acceptable by this Forum of Law. As per law, when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract to be likely to result from the breach of it.

"Damages" are like "mesne profit" that is to say the profit arising out of wrongful use and occupation of the property in question. I have no hesitation in mind to say that after expiry of the period as mentioned in the said notice to quit dated 30.11.2016, the Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Limited has lost its authority to occupy the public premises, on the evaluation of factual aspect involved into this matter and the Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Limited is liable to pay damages for such unauthorized use and occupation.

To come into such conclusion, I am fortified by the decision/observation of the Hon'ble Supreme Court in **Civil Appeal No.7988 of 2004**, decided on 10th December 2004, reported **(2005)1 SCC 705**, para-11 of the said judgment reads as follows.

Para:11-" where the tenancy is governed only by the provisions of the Transfer of Property Act 1882, once the tenancy comes to an end by determination of lease u/s.111

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Proceedings No. 1843, 1843/R, 1843/D of 2020 Order Sheet No. 41

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator Bharati Shipyard Limited now known as
Bharati Defence & Infrastructure Limited (Plateno H1625)

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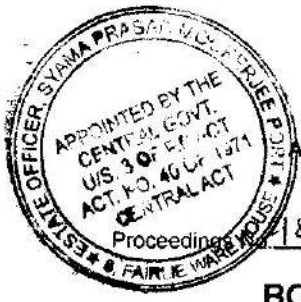
of the Transfer of Property Act, the right of the tenant to continue in possession of the premises comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes he becomes liable to pay damages for use and occupation at the rate at which the landlord would have let out the premises on being vacated by the tenant.
.....
....."

Undoubtedly, the tenancy under lease is governed by the Transfer of Property Act and there is no scope for denial of the same.

In course of hearing, the representative of SMP, Kolkata states and submits that Port Authority never consented in continuing O.P's occupation into the public premises and never expressed any intention to accept O.P as tenant. It is contended that SMP, Kolkata's intention to get back possession is evident from the conduct of the Port Authority. The lease was doubtlessly determined by the landlord/SMP, Kolkata by notice, whose validity for the purpose of deciding the question of law cannot be questioned by the Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Limited. Therefore, there cannot be any doubt that the Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Limited was in unauthorized occupation of the premises, once the tenancy was duly determined by due service of ejectment notice 30.11.2016.

I have no hesitation to observe that the Liquidator's act in continuing occupation is unauthorized and the Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Limited. is liable to pay damages for

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Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

Proceeding No. 1843, 1843/R, 1843/D Of 2020 Order Sheet No. 42

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator Bharati Shipyard Limited now known as
Bharati Defence & Infrastructure Limited (Plate no HL 625)

09
03.03.2021

unauthorized use and occupation of the Port property in question upto the date of delivering vacant, unencumbered and peaceful possession to SMP, Kolkata.

With this observation, I must reiterate that the ejection notice, demanding possession from Bharati Shipyard Ltd. as stated above has been validly served upon Bharati Shipyard Ltd. in the facts and circumstances of the case and such notice is valid, lawful and binding upon the parties.

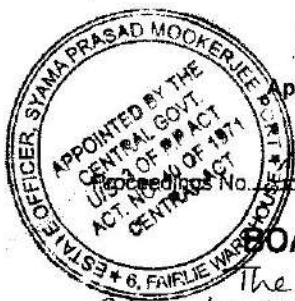
NOW THEREFORE, in view of the above, I am left with no other alternative but to issue order of eviction u/s 5 of the Act against the Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Limited for the following reasons/grounds :

1. That this Forum of Law is well within its jurisdiction to adjudicate upon the matters relating to eviction and recovery of arrear of dues/damages etc. as prayed for on behalf of SMP, Kolkata and the Notice/s issued by this Forum are in conformity with the provisions of the Public Premises (Eviction of Unauthorised Occupant) Act 1971.
2. That proceedings against Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Ltd. is very much maintainable under law and the Liquidator's contention regarding non-maintainability of proceedings in view of the provisions of Insolvency and Bankruptcy Code (IBC) has got no merit for the purpose of deciding the question of "unauthorized occupation" of the Liquidator, Bharati Shipyard

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Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1843, 1843/B, 1843/B₁ 2020 Order Sheet No. 43

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator ~~Bharati Shipyard Limited~~ now known as
Bharati Defence & Infrastructure Limited (Plateno. #1625)

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03.03.2021

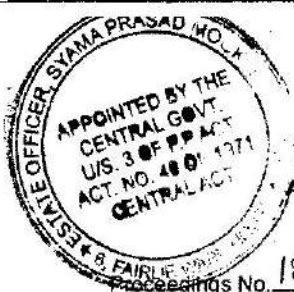
Ltd., now known as Bharati Defence and Infrastructure Ltd.

3. That the ejection notice dated 30.11.2016 as served upon Bharati Shipyard Ltd. is valid, lawful and binding upon the parties.
4. That Port Authority is well within its jurisdiction to demand for rental dues and/or charges for occupation into the Public Premises in question in terms of Schedule of Rent Charges notified in the Official Gazette in terms of the provisions of the Major Port Authorities Act, 2021.
5. That Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Ltd. has failed and neglected to pay rental dues in gross violation to the condition of lease as granted by the Port Authority to Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Ltd.
6. That no case has been made out on behalf of the Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Ltd. as to how its occupation in the Public Premises could be termed as "authorised occupation" after issuance of notice dated 30.11.2016, demanding possession by the Port Authority and occupation of the Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Ltd. has become unauthorized in view of Sec.2(g) of the P.P. Act, 1971
7. That the Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Ltd is liable to pay damages for wrongful use and

By Order of:

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04.03.2021

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Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1843, 1843/R, 1843/D of 2020 Order Sheet No. 44

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator Bharati Shipyard Limited now known as
Bharati Defence & Infrastructure Limited (Plate no HL 625)

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occupation of the Public Premises upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

Accordingly, I sign the formal order of eviction under Sec. 5 of the Act. However, I make it clear that SMP, Kolkata is entitled to recover the possession of the premises in accordance with law.

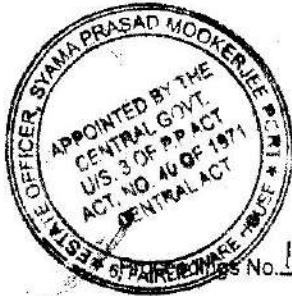
I sign the formal order of eviction under Sec. 5 of the Act as per Rules made thereunder, giving 15 days time to the Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Limited to vacate the premises. However, I make it clear that SMP, Kolkata is entitled to recover the possession of the premises in accordance with law as the Liquidator is directed to relinquish physical possession by this Order.

With regard to the adjudication by this Forum under section 7 of the Public Premises Act, 1971, that an amount of Rs 2,76,30,472.85 (Rs. 42,11,218/- as the arrear rental dues plus Rs 2,02,26,389/- as the as the arrear compensation/ mesne profit dues plus interest dues Rs 31,92,865.85) has been claimed by SMP, Kolkata upto 31.12.2020.

Hence, it is my considered view that a sum of Rs. 42,11,218/- (Rupees Forty Two Lakhs Eleven Thousand Two Hundred and Eighteen Only) for Plate No. Plate-HL 625 for the period from 08.11.2006 to 30.05.2017 (both days inclusive) is due and recoverable from the Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Limited, by the Port authority on account of arrear rent fees. Such dues attracts Compound interest @ 6.20 % per annum, which is the current rate of interest as

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04.03.2021



Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

No. 1843, 1843/R, 1843/D of 2020 Order Sheet No. 45.

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator Bharati Shipyard Limited now known as
Bharati Defence & Infrastructure Limited (Plate no HL625)

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03.03.2021

per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) from the date of incurrence of liability, till the liquidation of the same, as per the adjustment of payments, if any made so far by Bharati Shipyard Ltd., in terms of SMP, Kolkata's books of accounts. I sign the formal order as per Rule, u/s 7 of the Act.

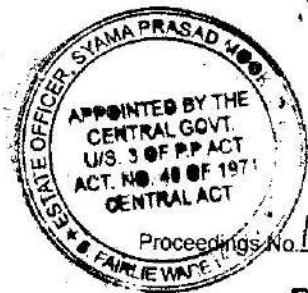
It is also my considered view that a sum of Rs 2,02,26,389/- (Rupees Two Crores Two Lakhs Twenty Six Thousand Three Hundred Eighty Nine *only*.) for the period 31.05.2017 to 31.12.2020 is due and recoverable from the Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Limited, by the Port authority on account of damages/compensation/ mesne profit. Such dues attracts Compound interest @ 6.20 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) from the date of incurrence of liability, till the liquidation of the same, as per the adjustment of payments, if any made so far by Bharati Shipyard Ltd., in terms of SMP, Kolkata's books of accounts. I make it clear that SMP, Kolkata is entitled to claim damages against the Liquidator, Bharati Shipyard Ltd., now known as Bharati Defence and Infrastructure Limited for unauthorized use and occupation of the public premises right upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law. The formal order u/s 7 of the Act is signed accordingly.

Department is directed to draw up formal order as per Rule u/s 7 of the Act.

I make it clear that in the event of failure on the part of the Liquidator, BDIL to comply with this Order, Port

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Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1843, 1843/R, 1843/D of 2020 Order Sheet No. 46.

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

The Liquidator Bharati Shipyard Limited now known as Bharati Defence & Infrastructure Limited (Plate no H1625)

09
03.03.2021

Authority is entitled to proceed further for recovery of its dues in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL


(S. Sinha)
ESTATE OFFICER

*** ALL EXHIBITS AND DOCUMENTS
ARE REQUIRED TO BE TAKEN BACK
WITHIN ONE MONTH FROM THE DATE
OF PASSING OF THIS ORDER ***

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04.03.2021