

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 402/2025

In the matter of :

Mr. M. Bhaskaran
309/310, VGN Laperisience Apartment,
2nd Block 28, Mogappair West,
Nolambur, Tiruvallur, Mogappair,
Chennai – 600 037.

Mr. M. Radhakrishnan
Flat No.802, 8th F Edina House of Hiranandani,
OMR Egattur – Near Siruseri Toll Plaza,
Egattue – Pudur, Kancheepuram – 603 103.
V

... Appellants

Mr. Sandeep Kothari
Interim Resolution Professional of Orion
Water Treatment Private Limited
Prince Plaza, First Floor,
No.73, Pantheon Road,
Egmore, Chennai – 600 008.

... Respondent

Present:

For Appellants : Mr. AS Sathish Kumar, Advocate
For Respondent : Mr. Avinash Krishnan Ravi, Advocate

JUDGMENT
(Hybrid Mode)

[Per : Justice Sharad Kumar Sharma, Member (Judicial)]

The Appellants herein are the opposite parties to the proceedings of IA(IBC)/913(CHE)/2025, as it was preferred in CP(IB)/263(CHE)/2022; before Learned NCLT, Chennai, in which, CIRP Proceedings had been initiated in the

matters of M/s. Orion Water Treatment Private Limited, being the proceedings which were being carried under Section 10 of the I & B Code.

2. In the application, thus preferred by the Respondent herein, i.e., the Interim Resolution Professional (IRP), relief as prayed for was to the effect that, the Respondents to the IA, the Appellant herein may be directed to extend cooperation in managing the affairs of the Corporate Debtor and simultaneously, to vacate and hand over the control and custody of the premises of the Corporate Debtor to the IRP / Applicant or his authorised representative. Besides that, the IRP sought for possession of the inventories valuing about Rs.1,02,56,821/-, and the cash balance of Rs.1,56,382/- as per the financial statement pertaining to FY 2023-2024, and also prayed for handing over of all the assets and the records of the Corporate Debtor. This Application was allowed, and the Appellants were consequently directed to extend cooperation to the IRP and to vacate and hand over the premises and the inventories, the assets and all records, as it was prayed for in the IA preferred by IRP / the Respondent herein. It is this part of the order which is put to challenge contending thereof that, the Appellants may be permitted to hand over the symbolic possession and not the actual possession of the assets of the Corporate Debtor or the assets as it has been mentioned in the relief clause of the IA No.913(CHE)/2025.

3. We called upon the Learned Counsel for the Appellant to elaborate upon as to where, in a proceeding which are being held under Section 10 of the

I & B Code, 2016, does this concept of “symbolic possession”, emerge or where it has been prescribed under law, particularly when the said Section 10 proceedings is a CIRP Proceedings initiated by M/s. Orion Water Treatment Private Limited i.e., Corporate Debtor itself, where the Corporate Debtor has admittedly committed a default, in payment of debt due to the creditors. Section 10 of I & B Code envisages initiation of the CIRP on a voluntary basis on an application to be filed by the Corporate Debtor himself. It is on this application under Section 10 that the CIRP proceedings stood initiated by way of CP(IB)/263(CHE)/2022, and the application was admitted by an order passed on 18.10.2024 marking commencements of CIRP proceedings. Commencement of CIRP will entail appointment of IRP under Section 13(c), imposition of moratorium under Section 13(a) and making of a public announcement under Section 13(b) of the Code. Further, as per Section 17(a) of the Code, the IRP will take over the management of the affairs of the Corporate Debtor and take control and custody of the assets of Corporate Debtor as per Section 18(f) of the Code.

4. The Learned Counsel for the Appellants has pressed for handing over the symbolic possession of the assets of the Corporate Debtor, in the light of the consequences that, were flowing from the CIRP order dated 18.10.2024. But he has not been able to substantiate as to from where the concept of symbolic possession has been derived by him, for the purpose of the proceedings of CIRP, which has commenced under Section 10 of the I & B Code, 2016. No

plausible argument for the said contention has been extended by the Learned Counsel for the Appellants, except for that, he is expected to hand over only the symbolic possession of the assets of the Corporate Debtor to the IRP.

5. The Learned Counsel for the Respondent vehemently opposes the proceedings of this Company Appeal, on the ground that, there is no concept of the assets of the Corporate Debtor of symbolic possession available under I & B Code and that, particularly, when it happens to be a proceeding under Section 10 of the I & B Code, where the Corporate Debtor itself has initiated CIRP, if itself has got no right as such to retain the possession of the assets of the Corporate Debtor, as it would be falling well within the domain of Sub-Section (f) of Section 18 of the I & B Code, 2016, which prescribes for that, the IRP, having been appointed by virtue of an order dated 18.10.2024 was supposed to take control and custody of the assets of the Corporate Debtor over, which the Corporate Debtor has ownership rights as recorded in the balance sheets of the Corporate Debtor, in the records of information utility, depository of securities and any other registry that records the ownership of assets as elaborated under various sub-clauses contained under Sub-Clause (f) of Section 18 of the I & B Code. Since Section 18 is clear in its mandate that, it is rather the responsibility of the IRP to take control over any asset over which the Corporate Debtor has ownership rights, there cannot be any reason as such for handing over of a symbolic possession of such assets as being prayed by the Appellants. Thus, the nature of the relief sought for in the IA i.e., IA(IBC)/913(CHE)/2025 and

consequently in this instant Company Appeal, is alien to the concept of the CIRP Proceedings under Section 10 of the I & B Code which could not have been granted by Learned NCLT and which cannot be granted by this Appellate Tribunal under the I & B Code. Thus, allowing of the application filed by the IRP by the Tribunal on the ground that since the CIRP Process has been ordered, as back as on 18.10.2024 and ever since then, the possession has not been handed over, and consequent issues of directions the Appellants herein to handover the possession of the assets of Corporate Debtor to the RP is not contrary to any of the provisions contained under the I & B Code. Neither it has been pointed out as such by the Appellant's Counsel, who is pleading for a direction to hand over a symbolic possession of the assets of the Corporate Debtor.

6. Even otherwise also, in a proceedings of CIRP under Section 10 of I & B Code, which stood initiated in the instant case, as back as on 18.10.2024, handing over of “symbolic possession”, as expected and prayed for by the Appellants, will deceive the very purpose of initiation of the Corporate Insolvency Resolution Process under Section 10 of the I & B Code, which aim at resolving the insolvency of the applicant Corporate Debtor herein which has committed a default.

7. In that eventuality, the reasons which has been given by the Learned Tribunal do not seem to be suffering from any legal or factual error calling for interference in the exercise of Appellate Jurisdiction. Further, no factual

interpretation is required to be done because there is no dispute with regards to the facts of the case. Owing to the above, the Appeal would stand dismissed. Accordingly, all Interlocutory Applications would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

18/09/2025
VG/MS/RS