

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT-III**

IA-1074/2024, IA-6041/2023 & IA-6050/2023

In

(IB)-761(ND)/2022

IN THE MATTER OF (IB)-761(ND)/2022:

State Bank of India

..... Financial Creditor

Versus

M/s. Kotsons Private Limited

..... Corporate Debtor

AND IN THE MATTER OF IA-1074/2024:

M/s. KPLA Power Private Limited

..... Applicant

Versus

Mr. Alok Kaushik & 3 Ors.

..... Respondents

AND IN THE MATTER OF IA-6041/2023:

M/s. KPLA Power Private Limited

..... Applicant

Versus

Mr. Alok Kaushik & Ors.

..... Respondents

AND IN THE MATTER OF IA-6050/2023:

M/s. KPLA Power Private Limited

..... Applicant

Versus

Mr. Alok Kaushik & Ors.

..... Respondents

Pronounced On: 09.04.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Gaurav Mitra, Mr. Gaurav H. Sethi, Mr. Deeptanshu Chandra, Mr. Rahul Pawar, Advocates.

For the RP : Mr. Abhishek Anand, Ms. Palak Kalra, Advocates and Mr. Alok Kaushik, RP in person.

For the Respondent : Mr. Siddharth Sangal, Ms. Richa Mishra, Ms. Ishita Singh, Advocates.

COMMON ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. In view of the similarity in the facts and issues involved in the IA-1074/2024, IA-6041/2023 & IA-6050/2023, they were heard together and are being adjudicated by this Common Order.

2. IA-1074/2024

The present Application has been filed by M/s. KPLA Power Private Limited, the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016. The Applicant seeks the following reliefs:

- “i Pass an order restraining the Respondents from taking any unilateral actions towards restraining Applicant from continuing its operations on the subject premises and/or directing the Applicant to vacate the subject premises during the pendency of IA-6041/2023 and IA-6050/2023 filed by the Applicant;*
- ii Pass such other and further orders as this Hon’ble Tribunal deems fit.”*

3. IA-6041/2023

The present Application has been filed by M/s. KPLA Power Private Limited, the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016. The Applicant seeks the following reliefs:

- “i. Direct the Respondents to continue to abide by the terms of the Lease Agreement dated 05.04.2023;*
- ii. Declare the actions of Respondents towards terminating Lease Agreement dated 05.04.2023 as non-est, null and void;*
- iii. Pass such other and further orders as the Hon'ble Tribunal deems fit.”*

4. IA-6050/2023

The present Application has been filed by M/s. KPLA Power Private Limited, the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016. The Applicant seeks the following reliefs:

- “i. The Applicant may kindly be allowed to utilize the leased premises situated at 217A, 218, 219, 220 and 230/A, MIA, Alwar-301030, in terms of the Lease Agreement dated 05.04.2023, for the purposes detailed in the Lease Agreement without any obstruction from the Respondents.*
- ii. Pass such other and further orders as the Hon'ble Tribunal may deem fit.”*

5. The facts that are relevant for the determination of the issues involved in these applications are stated as under:

- a.** An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Financial Creditor i.e. State Bank of India against the Corporate Debtor i.e. M/s. Kotsons Private Limited and the said application was admitted by this Adjudicating Authority vide order dated 09.06.2023 and a moratorium was declared including appointment of Mr. Alok Kaushik as an Interim Resolution Professional. Subsequently, the present Respondent namely Mr. Alok Kaushik was confirmed as Resolution Professional.
- b.** The Applicant entered into a Lease Agreement dated 05.04.2023 with the Corporate Debtor to take on lease the subject premises in question along with Plant, Equipment, factory setup, etc. for a term of 11 months from 01.04.2023 to 01.03.2024 at the monthly lease rental of Rs. 4,00,000/-.
- c.** The Resolution Professional issued a termination order dated 01.09.2023, giving three months time to the Applicant to vacate the premises on the ground that the Rent for the months of

April, May and June, 2023 has been paid only on 18.08.2023. Further, the part wages travelling expenses, etc. are still to be paid to the Corporate Debtor since, the date of commencement of the Lease Agreement.

- d.** The Applicant filed IA-6041/2023 and IA-6050/2023 seeking the directions restraining the Respondents from terminating the Lease Agreement with respect to one of the manufacturing units of the Corporate Debtor at 217A, 218, 219, 220 and 230/A, Matsya Industrial Area, Alwar, Rajasthan – 301030.
- 6.** It is submitted by the Applicant that IA-6041/2023 and IA-6050/2023 were heard and orders were reserved on 23.01.2024 and the final orders are yet to be pronounced.
- 7.** It is submitted that on 30.11.2023, this Adjudicating Authority passed an order in IA-6041/2023 directing the termination order dated 01.09.2023 to be kept in abeyance till the disposal of the present application.
- 8.** Mr. Gaurav Mitra, Learned Counsel appearing for the Applicant has submitted that the Applicant wrote an email on 17.02.2024 to Respondent No. 1 seeking to grant an extension of time for taking necessary action for vacating the premises, including the decommissioning and installation of the heavy machinery from the premises. However, the Respondent No. 1 vide email dated 27.02.2024, informed the Applicant that the email dated 17.02.2024 written by the Applicant was placed before the Committee of Creditors (CoC) of the Corporate Debtor and CoC has refused to grant any extension. Further, the CoC is willing to grant a grace period of ten days from 28.02.2024 till 10.03.2024. Mr. Mitra, Learned Counsel prayed that necessary restraint orders be passed against the Respondents till the pronouncement of orders in IA-6041/2023 and IA-6050/2023. Mr. Abhishek Anand, Learned Counsel appearing for the Resolution Professional vehemently opposed the application and submitted that the lease deed in question has lived its life and therefore, the

applications has become infructuous. Mr. Mitra, Learned Counsel for the Applicant has made an alternative prayer seeking indulgence of this Adjudicating Authority for granting two months time for removing the machinery, etc. and to vacate the premises in question.

9. We have heard the submissions made by the Learned Counsel appearing for the parties in IA-1074/2024, IA-6041/2023 & IA-6050/2023. It is an admitted position that the Lease Agreement dated 05.04.2023 which was executed for a term of 11 months from 01.04.2023 to 01.03.2024 has already lapsed. Therefore, it would be futile to determine the issue with regard to the correctness of the termination order dated 01.09.2023 issued by the Resolution Professional which is the subject matter of IA-6041/2023 and IA-6050/2023, at this stage, since, the Lease Agreement has already expired.
 10. Having regard to the facts and circumstances of the case and to mitigate the grievance of the Applicant and to meet the ends of justice, we deem it appropriate to grant two months time to the Applicant to remove all the machinery and vacate the premises and hand over possession of the premises to the Resolution Professional.
 11. We expect the Resolution Professional and the Corporate Debtor to extend all possible cooperation to meet the ends of justice and for proper implementation of the Code.
 12. IA-1074/2024, IA-6041/2023 & IA-6050/2023 filed by the Applicant are **disposed of** in view of the above terms.
 13. The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
- No order as to costs.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)