

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**I.A. No. 966 of 2021**

**IN**

**Company Appeal (AT) (Insolvency) No. 1496 of 2019**

**IN THE MATTER OF:**

**State Bank of India**  
**Stressed Assets Management Branch,**  
**11 & 13, Shakespeare Sarani,**  
**Kolkata – 700071.**

**..... Applicant.**

**AND**

**IN THE MATTER OF:**

- 1 (a) Smt. Sangita Agarwal,**  
**Village- Kanduah, Post Office- Kanduah,**  
**Police Station –Sankrail,**  
**District- Howrah, Pin- 711302.**
- 1 (b) Ankur Agarwal,**  
**Village- Kanduah, Post Office- Kanduah,**  
**Police Station –Sankrail,**  
**District- Howrah, Pin- 711302.**
- 1 (c) Harsh Agarwal,**  
**Village- Kanduah, Post Office- Kanduah,**  
**Police Station –Sankrail,**  
**District- Howrah, Pin- 711302.**
- 2. Biswanath Mondal**  
**1 Hossain Lane**  
**P.S. Barabazar, P.O. Chinsurah**  
**Pin: 712101**

**...Appellants**  
**(Corporate Debtor)**

**Versus**

- 1. Limtex Tea & Industries Limited & Anr.**

**5A, Shakespeare Sarani, 2<sup>nd</sup> Floor**

**P.S.: Park Street,**

**Kolkata-700017**

**2. Manish Jain, IRP**

**C/o Manish Mahavir & Co.**

**Bajrang Bhawan**

**3<sup>rd</sup> Floor, Room No. 303**

**2B Grant Lane**

**Kolkata-700012.**

**..... Respondents  
(Financial Creditor)**

**For Appellant: Mr. Abhijeet Sinha, CS Suhita Mukhopadhyay,  
Mr. Avirup Chatterjee and Mr. Saikat Sarkar, Advocates.**

**For Respondent: Mr. Shantanu Parashar, Advocate for R-1.**

**Mr. Abhishek Sharma, Advocate for R-2.**

**ORDER  
(Virtual Mode)**

I.A. No. 966 of 2021 in Company Appeal (AT) (Insolvency) No. 1496 of 2019 has been filed on 27.05.2021 by the Applicant- 'State Bank of India'.

2. Company Appeal (AT) (Insolvency) No. 1496 of 2019 initially filed by one Durga Prasad Agarwal (Appellant No. 1). By order dated 15.12.2020 an I.A. No. 2910 of 2020 preferred by Legal Heirs of the Late Durga Prasad Agarwal (Appellant No. 1) intimating this Appellate Tribunal that during the pendency of this Appeal the Appellant No. 1 expired on 14.11.2020 and his Legal Heirs namely Smt. Sangita Agarwal, Ankur Agarwal and Harsh Agarwal were allowed to substitute and they have pursued the Appeal and the Respondents

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have no objection for the said Legal Heirs of Appellant No. 1 - Late Durga Prasad Agarwal brought on record.

3. After hearing the parties Judgment was pronounced on 03.03.2021 passed the following order;

- “For the reason(s) aforesaid, we set-aside the impugned order dated 21.11.2019 in CP (IB) No. 535/KB/2018 passed by Ld. Adjudicating Authority, National Company Law Tribunal, Kolkata Bench, Kolkata and dismiss the Application under Section 7 of the IBC filed by the ‘Limtex Tea & Industries Limited / Financial Creditor’.
- In the result, ‘Corporate Debtor’ is released from the rigor of the ‘Corporate Insolvency Resolution Process’. All actions taken by the ‘Interim Resolution Professional / Resolution Professional’ and ‘Committee of Creditors’, if any, are declared illegal and set-aside. The ‘Interim Resolution Professional / Resolution Professional’ is directed to handover the records and assets of the ‘Corporate Debtor’ to the Director of the ‘Corporate Debtor’ immediately.
- The matter is remitted to the Ld. Adjudicating Authority to decide only fees and costs of ‘CIRP’ payable to IRP/RP, which shall be borne by the Financial Creditor / Respondent No. 1.
- The Appeal is allowed with the aforesaid observations and directions. No costs.
- Let the Registry to communicate the Judgment to the Ld. Adjudicating Authority, National Company Law Tribunal, Kolkata Bench, Kolkata.”

4. The instant I.A. No. 966 of 2021 filed by Applicant – ‘State Bank of India’ under Rule 11 read with Rule 31 of the National Company Law Appellate Tribunal Rules, 2016 in which following prayers is as under;

“25. In view of the facts and circumstances as mentioned hereinabove, the Applicant humbly prays as below:

(i) The Hon’ble Appellate Tribunal may be pleased to pass an order clarifying that the property defined in para-7 (Land) of the Application is not covered by the direction mentioned in the judgment dated 03.03.2021 regarding handing over;

(ii) The Hon’ble Appellate Tribunal may be pleased to pass an order directing the Resolution Professional to hand over the possession of the property (Land) described in para 7 of the Application to the Applicant Bank;

(iii) The Hon’ble Appellate Tribunal may be pleased to pass an order directing the Resolution Professional to maintain ‘Status Quo’ with regard to the property described in para 2 of the Application till the disposal of the present Application.

(iv) Ad-interim orders in terms of the prayer (iii) above.

(v) The Hon’ble Appellate Tribunal may be pleased to pass any such further or other order(s) as this Hon’ble Appellate Tribunal may deem fit and proper in the facts and circumstances of the case to grant justice to the Applicant.”

5. Heard Learned Counsel for the Applicant on I.A. No. 966 of 2021. Learned Counsel for the Applicant made the following submissions which read as hereunder.

i) The repayment under the above-mentioned facilities is secured by the Deed of Guarantee executed by Late Mr. Durga Prasad Agarwal and Sangita Agarwal. Further, to secure the repayment Late Mr. Durga Prasad Agarwal and his wife, Smt. Sangita Agarwal created equitable mortgages in the land described herein below, by way of depositing the title deeds with the Applicant. The Deed of Guarantee along with the Supplementary Deed of Guarantee is Executed by Late Mr. Durga Prasad Agarwal and Smt. Sangita Agarwal.

ii) Out of Various mortgaged properties, the present application is concerned with the land described as:

(a) The pieces and parcels of land measuring a total area of 94 Satak, be the same a little more or less situated at Mouza Baniara, JL No. 26, RS Khatian Nos. 794, 185, 1054, 1160, LR Dag No. 1152, 1156, under Police Station Domjur in the District of Howrah.

(b) The pieces and parcels of land measuring a total area of 98 Satak, be the same a little more or less situated at Mouza Baniara, JL No. 26, RS Khatian Nos. 944, 1086, 1113, 637 and 337, RS Dag No. 1134, 1121, 1123, 1124, 1125, LR Khatian No. 844, 1086, 1113, LR Dag No. 1152, under Police Station Domjur in the District of Howrah.

iii) The above-mentioned Land was leased for a period of 5 years to the Corporate Debtor by way of the Lease Deed dated 31.03.2010 executed by Late Mr. Durga Prasad Agarwal and Smt. Sangita Agarwal.

iv) In between, various defaults were committed by the Corporate Debtor in repayment of financial facilities availed from the Applicant Bank. Considering the defaults committed by the Corporate Debtor in its repayment

obligation, the applicant bank invoked the securities provided by the Corporate Debtor and its promoters. After invocation of securities, the Applicant Bank took actions under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and took symbolic possession of the Land in question along with Bank of Baroda on 22.09.2015 in accordance with Section 13(4) of the Act read with Rule 9 of the Security Interest (Enforcement) Rules, 2002.

v) Thereafter, in the year 2018, a Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 was filed by Lintex Tea and Industries Limited against the Corporate Debtor. The said petition came to be admitted on 21.11.2019.

vi) After the admission order dated 21.11.2019, the Interim Resolution Professional (IRP), who later was appointed as Resolution Professional (RP), took charge of the assets including the Land in question and affairs of the Company and invited claims from the Public. Accordingly, the Applicant Bank being a Financial Creditor, filed its claims before the IRP in form C on 02.12.2019 to an extent of Rs. 96,67,40,673.31 as on 20.11.2019. The said claim was admitted by the IRP/RP in full and SBI became a member of the Committee of Creditors with 72.71% voting rights.

vii) When the resolution process was undergoing, the ex-directors/ Promoters of Corporate Debtor preferred an appeal before the Hon'ble NCLAT against the order dated 21.11.2019 bearing Company Appeal (AT) (Insolvency) No. 1496/2019. That said appeal was allowed by the Hon'ble NCLAT on 03.03.2021. While allowing the Appeal, NCLAT *inter-alia* directed the RP to

hand over the assets and properties of the Corporate Debtor to the Director of the Corporate Debtor.

viii) The above order of NCLAT dated 03.03.2021 was brought to the notice of COC on 15.03.2021. Thereafter, the RP took steps to communicate with the directors of Corporate Debtor in order to complete the handing over process. However, the RP was able to establish connection with the directors of Corporate Debtor only on 16.04.2021 was fixed for the handing over of the properties and assets of the Corporate Debtor. The Report of RP informing the Adjudicating Authority about the steps taken till 16.04.2021 is annexed herewith and marked as Annexure A-5.

ix) In between, when the RP brought the order dated 03.03.2021 to the knowledge of members of COC, SBI initiated a communication channel with the RP and informed him that ;(i) the Land is owned by Late Mr. Durga Prasad Agarwal (now it is owned by his legal heirs) and Mrs. Sangeeta Agarwal; (ii) the lease deed by which the Land was leased to the Corporate Debtor came to an end on 31.03.2015 in terms of the lease deed dated 31.03.2010; (iii) symbolic possession of the Land has already taken by the bank in terms of SARFAESI Act, 2002. In terms of these facts, a clarification was also sought from RP regarding any fresh lease deed between the Corporate Debtor and the owners of the Land. RP has verified that there is no fresh lease deed between the Corporate Debtor and landowners for lease of Land after 31.03.2021.

x) After this verification, it became absolutely clear to the Applicant Bank that the Corporate Debtor has no right over the said Land anymore and hence the said Land does not fall under the category of 'assets of the Corporate

Debtor'. Accordingly, the Applicant Bank requested the RP to hand over the Land to the Applicant Bank and not to the Corporate Debtor. RP was contemplating over the issue and finally it was communicated to the Applicant Bank by the RP on 16.04.2021 that he is bound by the directions of NCLAT and hence he would be handing over all the properties, which were taken over from the Corporate Debtor by the RP pursuant to the order dated 21.11.2019 including the Land on 24.04.2021, unless a direction is sought from the Hon'ble NCLAT in this regard. The stand of the RP mandated the filing of the present Application.

xi) Accordingly, the Applicant has decided to file the application seeking clarification of the Judgment dated 03.03.2021 in respect to the Land in question. Hence, the Applicant is filing the present application. There is urgency in the matter, as the RP is due to handover the Land to Corporate Debtor on 24.04.2021, who have no right and title over the property.

xii) It is humbly submitted that the Applicant has already taken symbolic possession of the Land on 22.09.2015 in accordance with the SARFAESI Act, 2002. Further, the Lease Deed dated 31.03.2010, by virtue of which the Corporate Debtor was enjoying the Land in question has already expired on 31.03.2015.

xiii) Further, it has been verified by the RP that there is no fresh lease deed on record of the Corporate debtor, which give it any right to enjoy the property as Lessee. Hence, the Corporate Debtor has no right or title over the Property, accordingly the Land does not form part of the assets and properties of the Corporate Debtor.

xiv) In light of the facts mentioned herein above, it is clear that the land does not form part of the Assets of the Corporate Debtor, and hence it is not liable to be returned to the Corporate debtor. On the Contrary, the Land was mortgaged to the Applicant and the symbolic possession of the Land has already been taken by the Bank since 22.09.2015. Accordingly, the Land ought to be handed over to the Applicant and not to the Corporate Debtor.

xv) It is further submitted that a clarification is required on the Judgment dated 03.03.2021 passed by this Tribunal to the extent that the said Land does not form part of the assets and properties of the Corporate Debtor and hence the Resolution Professional (RP) is not required to hand over the said Land to the Corporate Debtor. Rather he shall handover the Land to the Applicant, as the Land is in symbolic possession of the Applicant since 22.09.2015.

6. From the perusal of the record and judgment delivered by this Tribunal admittedly, the Applicant is neither the party in CP (IB) No. 535/KB/2018 filed before the NCLT, Kolkata Bench wherein “M/s Limtex Tea & Industries Limited (Financial Creditor / Applicant) V/s M/s Shri Bihariji Cold Rollers (P) Limited- (Corporate Debtor)” and this Tribunal also the Applicant – ‘State Bank of India’ was not party in the proceedings. The Appellants are suspended Board of Director who preferred this Appeal i.e. Company Appeal (AT) (Insolvency) No. 1496 of 2019 being aggrieved by order dated 21.11.2019 passed by NCLT, Kolkata Bench, Kolkata.

7. The applicant neither filed the intervention application before the NCLT, Kolkata Bench nor this Tribunal in the aforesaid proceedings. For the first

time Applicant has filed the I.A. No. 966 of 2021 and brought new facts before this Tribunal through I.A. which cannot be permitted.

8. The Appeal was decided after hearing the parties, facts pleaded and argued between the parties. Therefore, I.A. No. 966 of 2021 under Rule 11 is not maintainable. In the facts and circumstances of the case, I.A. No. 966 of 2021 is dismissed as not maintainable accordingly.

**[Justice Anant Bijay Singh]  
Member (Judicial)**

**[Ms. Shreesha Merla]  
Member (Technical)**

**10<sup>th</sup> JUNE, 2021.  
NEW DELHI**

*R. N./ Kam./*