

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

**I.A. (IB) No. 415/KB/2021**

**in**

**C.P. (IB) No. 184/KB/2018**

In the matter of:

Under section 7 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Sangita Fiscal Services Private Limited and Others

... Financial Creditor

-Versus-

Duncans Industries Limited

... Corporate Debtor

**I.A. (IB) No. 415/KB/2021**

An application under section 25(1), section 25(2)(a) of the Insolvency and Bankruptcy Code, 2016 read with regulation 30 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

**In the matter of:**

**Ram Ratan Modi**

... Applicant

**Versus**

- 1. Merico Agro Industries Private Limited**
- 2. Cha Bagan Trinamool Congress Mazdoor Union**
- 3. Alipurduar-Cooch Behar, Cha Bagan Mazdoor Union**
- 4. Progressive Tea Workers' Union**
- 5. Bhartiya Mazdoor Sangha**

... Respondents

Date of Hearing: 29.04.2022

Date of pronouncing the order: 09.05..2022

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Ram Ratan Modi v. Merico Agro Industries Pvt. Ltd.  
I.A. (IB) No. 415/KB/2021inC.P. (IB) No. 184/KB/2018

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**Coram:**

**Shri Rohit Kapoor, Member (Judicial)**

**Shri Harish Chander Suri, Member (Technical)**

**Appearances (via video conferencing):**

- For the Resolution Professional : 1. Mr. Joy Saha, Senior Advocate  
2. Mr. Dipankar Das, Advocate  
3. Ms. Sajana Nandi, Advocate
- For Respondent No. 1 : 1. Mr. JishnuSaha, Senior Advocate  
2. Mr. Usha Nath Banerjee,  
Advocate  
3. Mr. Avishek Guha, Advocate  
4. Mr. Chitresh Saraogi, Advocate

**ORDER**

**Per :Harish Chander Suri, Member (Technical):**

1. The present I.A. has been filed by the Resolution Professional seeking direction upon Respondent No. 1 to hand over the possession of Birpara Tea Estate (“Tea Estate”) to the Resolution Professional.

***Submissions of the Learned Senior Counsel appearing for the Applicant***

2. The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor *vide* an order of this Adjudicating Authority dated 05.03.2020 and the Applicant herein was appointed as Interim Resolution Professional (IRP) and later confirmed as the Resolution Professional (RP) by the Committee of Creditors (CoC) of the Corporate Debtor.
3. The Tea Estate was leased in favour of the Corporate Debtor by the State of West Bengal for a period of thirty years commencing from June 1978 *vide* an Indenture of Lease in 1978.

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4. On or about 28.01.2016, the Ministry of Commerce and Industry published a notification *inter alia* stating therein that the Central Government was of the opinion that the Tea Board must take control over the management of seven Tea Gardens which were leased to the Corporate Debtor which included the Tea Garden in question.
5. The Corporate Debtor challenge the legality and validity of the notification before the Hon'ble High Court, Calcutta and the Writ Petition was disposed of on 15.03.2016. the Corporate Debtor challenged the order dated 15.03.2016 before the Hon'ble High Court, Calcutta. *Vide* an interim order the Corporate debtor was permitted to manage the seven Tea Gardens with certain conditions.
6. The Applicant *vide* email dated 08.01.2020 informed the Respondent about the CIRP and sought details of the Tea Estate which is under the management of the Respondent No. 1. The Applicant visited the Tea Estate on 11.10.2020 and 13.12.2020 and learnt that there was no Manager in charge of the Tea Estate and that the workers and the Trade Union were managing the Tea Estate.
7. The Respondent Nos. 2 to 5 had filed an application in MAT 562 of 2016 wherein the Respondent Nos. 2 to 5 prayed for handing over the Tea Estate to the to Respondent No. 1.
8. The Committee of Creditors informed the Applicant that in a newspaper publication dated 12.02.2021, it was mentioned that the Tea Estate would resume operations under the Management of the Respondent No. 1 with effect from 16.02.2021. Meeting was held between the Respondent Nos. 2 to 5 wherein it was resolved that the possession, operation and management of the Tea Estate. Such action is clearly in violation of the Code.
9. The Respondent Nos. 2 to 5 have filed another application in MAT 562 of 2016 praying for recording the decision taken in the meeting on 12.02.2021.

10. The Applicant wrote to the District Magistrate, Alipurduar on 05.03.2021 seeking intervention to the situation that had transpired between the Respondent Nos. 1 and 2.

***Submissions of the learned Senior Counsel appearing on behalf of the Respondent No. 1***

11. The learned Senior Counsel submitted that the main issue of the I.A. is whether the Tea Estate is an “asset” of the Corporate Debtor over which the Applicant can seek to exercise any control under Section 18(f) of the Code of 2016.
12. Section 18(1)(f) of the Code provides that the Applicant shall take control and custody of any ‘asset’ over which the Corporate Debtor has “ownership rights” but the ‘Explanation’ to section 18 of the Code, expressly provides that the term ‘assets’ shall not include, *inter alia*, assets owned by a third party in possession of the Corporate Debtor or held under trust or under contractual arrangements including bailment.
13. The Government of West Bengal is the “owner” of all Tea Estates in the State of West Bengal and the Corporate Debtor was provided with fixed term (30 Years) Lease, which was terminated on 26.06.2008 and not renewed as per law. The learned Counsel then led us through section 111(a) of the Transfer of Property Act, 1882, which envisages that a lease of immovable property determines by efflux of the time limited thereby. In such circumstance neither the Corporate Debtor nor the Resolution Professional could claim any legal right, far less any “ownership” rights over any part of the Tea Estate.
14. The Respondent No. 1 has applied for grant of leases of the entire Tea Garden in its favour as per law and such application is under due consideration by the State Authority. The Respondent occupies the said Tea Estates as a “licensee” of the State of West Bengal.
15. The Corporate Debtor abandoned the Tea Garden in the year 2019 and at the invitation of the State Government, and all recognised registered Trade Unions, Political Leaders, the Respondent No. 1 took possession

of the Tea Garden and has been running the Tea Garden since 01.07.2021.

16. The lease of the Tea Garden granted to the Corporate Debtor stood terminated by efflux of time and the Corporate Debtor abandoned the Tea Garden in 2019, long before admission of CIRP against the Corporate Debtor, and expiry of such lease bears no nexus to the insolvency of the Corporate Debtor, hence, this Adjudicating Authority does not have the jurisdiction to determine whether the Corporate Debtor has any residual right under the said lease agreements. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in *Tata Consultancy Services v. Vishal Ghisulal Jain, (2021 SCC OnLine SC 1113)*.
17. in view of the continued sufferings of the workers and their series of representations, the State Government through its Labour Department in a meeting convened by the Assistant Labour Commissioner, Birpara, North Bengal Zone in the office of the Additional Labour Commissioner, North Bengal Zone, Siliguri on 12.02.2021, attended by the Assistant. Director of Tea Development Board representing the "Tea Board", registered Unions representing all the workers and plantation labourers of the Tea Estate, local Political Leaders, both MP and MLA, and the State authorities unanimously invited the Respondent No.1 who is effectively and efficiently running and manging nearby 4 Tea Estates, to the utmost satisfaction of more than 6500 workers and plantation labourers, to take over and resume operation of the 'Birpara Tea Estate' under the State Govt and on and from 16.02.2021 the Respondent No. 1 resumed and reopened the 'Tea Estate' and by investment of more than Rupees 15 Crores revived the "Tea Estate" into workable state and has since paid the dues of the 2015 workers without a single default or any retrenchment and is also making regular timely deposits of Provident Funds and other statutory deposits after around a decade and also paid

the Land Revenue (*Khajna*) and necessary taxes payable to the Authorities and has been provided by the concerned Authorities all required permissions and licenses to run and operate 'Birpara Tea Estate'.

18. The learned Senior Counsel placed reliance on the decision of the Hon'ble Supreme Court in *Embassy Properties Pvt. Ltd. v. State of Karnataka &Ors*, (2020)13 SCC 308, and *Gujrat Urja Vikas Nigam Ltd. v. Amit Gupta &Ors*, (2021) 7 SCC 209, in support of his contention that CD cannot seek to exercise a right which falls out of the purview of the Code, and that for enforcement of such purported right the Resolution Professional cannot attempt to bypass the CIRP process by approaching this Adjudicating Authority.
19. With respect to the issue as to whether Tea Gardens, whereof the lease has expired, constitute assets of a Corporate Debtor and can be possessed by the Resolution Professional have been conclusively decided by this Adjudicating Authority in two successive solemn decisions, firstly on 28.05.2021 passed in IA(IB) No. 1256/KB/2020 concerning the *Hantapara, Garganda, Tulsipara and Dumchipara Tea Estates* and thereafter on 21.04.2022 passed in IA(IB) No. 1111/KB/2021 in respect of *Kilcott&Nagaisuree Tea Estates*. The instant I.A., is as such, barred by the principles of res judicata, constructive res judicata and by issue estoppel.
20. Reliance in this regard is placed on the following decisions: -
  - a. *Bhanu Kumar Jain v. Archana Kumar and Another*, (2005) 1 SCC 787 (paras 29 to 32); *Ishwar Dutt v. Land Acquisition Collector and Anr.*, (2005) 7 SCC 190 (paras 18 to 24), with regard to the issue of estoppel and cause of action;
  - b. *Shiromani Gurudwara Parbandhak Committee v. Mahant Harnam Singh and Others*, (2003) 11 SCC 377 (paras 17, 19); *K.S. Varghese and Others v. Saint Peter's and Saint Paul's*

*Syrian Orthodox Church and Others*, (2017) 15 SCC 333, in respect to Constructive Res Judicata.

21. The Resolution Professional cannot interfere with the management of the said Tea Garden by the Respondent No. 1. The Respondent No. 1 was never handed over nor is in possession or control of any statutory financial records of the Corporate Debtor, the question of the Respondent being required to make over the same to the Applicant also does not arise. The books and records maintained by the Respondent in the course of managing the said Tea Garden are books and records of the Respondent and not of the Corporate Debtor, hence the Respondent is under no obligation to hand over the books and financial statements to the Applicant.

***Analysis and Findings***

22. During the course of hearing it was noticed that, in this application also, the question of law is similar to the one in I.A.(IB) No. 1256/KB/2020 and I.A.(IB) No. 1111/KB/2021. These two applications have already been decided after hearing exhaustive arguments of the learned Senior Counsel. Since the arguments are common and issue involved is conclusively covered by the order passed by this Bench earlier, there is no need to once again give more and more time for hearing the same arguments on behalf of the Resolution Professional and the the Respondent No. 1.

23. We have thus briefly heard the learned Senior Counsel for the Applicant and the learned Senior Counsel for Respondent No. 1 and perused the record.

24. Similar applications have now been filed by the Resolution Professional for possession of Tea Estates. The only concern is that the Corporate Debtor is in financial stress and whether the Resolution Professional would be able to run these Tea Estates.

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25. The lease given to the Corporate Debtor has not been renewed in favour of the Corporate Debtor hence; it is out of question that the Resolution Professional can take possession of the Tea Gardens to which the Corporate Debtor has no ownership.
26. In this view of the matter, the prayers asked for in the present IA cannot be granted. I.A. (IB) No. 415/KB/2021 is, therefore, dismissed, but in the facts of the case, without costs. Liberty to apply is granted if and when the Government of West Bengal takes a decision on the renewal of the lease.
27. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Counsel for information and for taking necessary steps.
28. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**Harish Chander Suri**  
Member (Technical)

**Rohit Kapoor**  
Member (Judicial)

The order is pronounced on the 09<sup>th</sup> day of May, 2022.

*LRA*