



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI ATUL CHATURVEDI,
HON'BLE TECHNICAL MEMBER**

IA (IBC) No. 233/JPR/2023
In CP No. (IB)- 155/PB/2018

IN THE MATTER OF:

M/S ASSET RECONSTRUCTION COMPANY (INDIA) LTD.

...Operational Creditor/Applicant

Versus

M/S PARASRAMPURIA SYNTHETICS LTD.

...Corporate Debtor/Respondent

IA (IBC) No. 233/JPR/2023:

MEMO OF PARTIES

PARASRAMPURIA SYNTHETICS LTD.

Through Authorized Representative

Dalip Kumar S/o Rajender Kumar

R/o 826, Kayasthwara, Rewari, Haryana- 123401

...Applicant

VERSUS

MADHYA PRADESH INDUSTRIAL DEVELOPMENT CORP.

Erstwhile *Madhya Pradesh Audyogik Kendriya Vikas Nigam*

101, First Floor, Atyulya IT Park, Near Crystal

IT Park, Khandwa Road, Indore- 452001

(Madhya Pradesh)

...Respondent No. 1

MR. RAJESH JHUNJHUNWALA, ERSTWHILE RP
A/51, Aashit Apartment, HB Gawde Marg,
Juhu, Koliwada, Mumbai- 400049
(Maharashtra)

...Respondent No. 2

For the Applicant : Karan Pratap Singh, Adv.

For the Respondent : Rohit Lohia, Adv.
Amol Vyas, Adv.

Order Pronounced On: -16.06.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The present Application has been filed under Section 60 (5) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 seeking following reliefs:

- a) *The Respondent No. 1 be directed to grant NO DUES in favour of the Applicant.*
- b) *Any other order that this Adjudicating Authority deems fit and proper to be passed in favour of the Applicant.*

2. The Adjudicating Authority *vide* Order dated 17.05.2018 commenced the CIRP of *M/s Parasrampuriah Synthetics Limited* ('Applicant/Corporate Debtor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code'/ 'IBC'). Thereafter, due to non-approval of the Resolution Plan by the Committee of Creditor ('CoC'), this Adjudicating Authority *vide* order dated 15.02.2019 initiated Liquidation proceedings against the Applicant herein. The order for Liquidation was challenged and the Hon'ble NCLAT dismissed the appeal with directions to the Liquidator.



3. Pursuant to the directions, the Liquidator scheduled the sale of the Liquidation estate by way of an auction but no bids were received. Thereafter, the Liquidator issued a Letter of Intent ('LOI') for the sale of the Corporate Debtor as a going concern. This Authority *vide* order dated 23.05.2022, unequivocally, declared *M/s Kautilya Industries Private Limited* ('KIPL') as the successful purchaser of the Applicant as a going concern. Consequently, the Corporate Debtor became an associate Company of KIPL.
4. The present Application has been filed by the Corporate Debtor seeking the abovesaid prayer on the following grounds:
 - 4.1 This Adjudicating Authority *vide* order dated 23.05.2022, unequivocally, declared *M/s Kautilya Industries Private Limited* ('KIPL') as the successful purchaser of the Applicant as a going concern. Consequently, by virtue of the order dated 23.05.2022, the Applicant stood revived and became an associate company of KIPL.
 - 4.2 The erstwhile Liquidator ('Respondent No. 2'), Chairman of the Monitoring Committee was overseeing the implementation of the buyout plan of the Applicant and the same has been validated by this Adjudicating Authority *vide* order dated 23.05.2022. Copy of the order dated 23.05.2022 is annexed as Annexure-A/1 of the present Application. The KIPL submitted its proposal to Respondent No.1 to buy out the Applicant as a going concern and the aforesaid proposal



was approved by 66% of the stakeholders thereafter the same has been approved by this Adjudicating Authority.

4.3 As per the said buy-out proposal the land dues or any other operational dues/ claim of land development authorities of the requisite states shall stand settled fully whether the claim has been lodged by the concerned land authorities or not. Copy of the buyout proposal dated 01.09.2020 annexed as Annexure-A/2 of the Application.

4.4 Bare perusal of clause 14(a) of the buyout proposal notes that any approvals that may be required from Government/semi-government Authorities (including tax authorities) in connection with the implementation of the takeover proposal including on account of change in ownership/ control of PSL shall be deemed to have been granted on the Effective Date. The land dues or any other operational dues/claim of any Land Development Authority of all leasehold lands like RIICO Ltd. (lessor of the land) in Rajasthan and similar authorities of other concerned States till the date of handover of possession of these properties to Applicant, shall stand settled fully whether claim lodged or not lodged by the concerned Authorities.

4.5 Further clause 14(h) of the said buyout proposal also states that all the claims of the Government/Semi government bodies, including the claim of Respondent No.1 relating to the period prior to the effective date of the buyout plan i.e., 23.05.2022 stands fully and finally settled.



- 4.6 In pursuance to the above the Applicant sent a letter dated 06.09.2022 to the Managing Director of Madhya Pradesh Industrial Development Corporation ('Respondent No. 1'/'MPIDC') and stated that the Applicant stands revived under the provisions of IBC, 2016 *vide* order dated 23.05.2022. Copy of the letter dated 06.09.2022 annexed as Annexure-A/3 of the Application. Despite the intimation through the aforesaid letter, Respondent No. 1 neither replied nor issued a No Objection Certificate ('NOC') to the Applicant. Hence, the present Application has been filed seeking the necessary directions.
5. Respondent No. 1 has filed its reply *vide* Dairy No. 1154/2023 dated 08.05.2023 submitting as below:
- 5.1 The Applicant is seeking directions from this Adjudicating Authority to direct Respondent No. 1 to issue a NOC with regard to the Industrial leased land located at *Plot No. 423-432, 831-846, 854-861, Sector-III, Bagdoon, Pithampur, District Dhar, Madhya Pradesh.*
- 5.2 Respondent No.1 submits that the present Application is not maintainable in view of *M/s Embassy Property Developments Pvt. Ltd. Versus State of Karnataka & Ors., (2020) 13 SCC 308.* It is stated that this court is not even a civil court that has jurisdiction attributable to Section 9 of the Code of Civil Procedure, 1908 to adjudicate upon a suit of civil nature except for that pertaining to the process of law.



5.3 Further, it is stated that the Applicant cannot bypass the due process of law to bring a claim before this Adjudicating Authority under Section 60(5) of the IBC, 2016 as the present matter does not involve the issue related to insolvency proceedings. The Applicant is deliberately not making any payments towards maintenance, interest, GST, etc. of the said premises from May 2022-April 2023.

5.4 The said land of the Applicant was leased on 10.08.1994. Thereafter, the Corporate Debtor under CIRP became non-operational. Clause 26 of the Lease Deed dated 10.08.1994 states as below:

26. If the rent hereby reserved or any part thereof shall at any time be in arrears and unpaid for six calendar months in the case of land and two months in the case of premises next after the date wherein the same shall have become due, whether the same shall have been lawfully demanded or not or if the Lessee becomes Insolvent and/or goes into liquidation, voluntarily or otherwise, or if there be any attachment of the said premises or part thereof, or there is a breach or non-observance by the Lessee of any of the conditions and covenants, herein contained and the Lessee fails to remedy the breach within 60 days of notice in writing given by the Lessor or becomes insolvent or enters into an agreement with his creditors for composition of the industry, this lease will be deemed to have been terminated by the Lessor may, notwithstanding the waiver of any previous cause, have right of re-entry and without prejudice to any right or remedy of the Lessor for recovery of rent remaining due under the lease, enter upon the said land/premises and repossess the same as if this premise had not been made.



6. The Applicant preferred the written submissions *vide* Dairy no. 1255/2023 dated 18.05.2023 and submitted the following:

6.1 There is no authorization/Power of attorney attached to the reply of Respondent No.1 and this Adjudicating Authority has ample jurisdiction to entertain and adjudicate upon the present Application under section 60(5)(c) of the IBC, 2016.

6.2 The Applicant relied on the Judgment of the Hon'ble Supreme Court in *Gujarat Urja Vikas Nigam Ltd. Vs Amit Gupta [(2021] 7 SCC 209]* wherein wide and expansive interpretation to the words “arising out of” and “in relation to” have been given while interpreting Section 60(5)(c) and its applicability. In *Gujarat Urja (supra)*, it was held that the residuary jurisdiction of the NCLT under section 60(5)(c) of the IBC provides it a wide discretion to adjudicate questions of law or fact arising out from original relation to the insolvency resolution proceedings.

6.3 The Applicant submitted that Judgment of *M/s Embassy Property Developers Pvt. Ltd. Vs State of Karnataka & Ors. (2020) 13SCC308* relied upon by Respondent No. 1 has been referred in *Gujarat Urja (Supra)* holding that in the matters arising out of insolvency, only this Adjudicating Authority has sole jurisdiction.

6.4 Further it is mentioned that Respondent No. 1 is an Operational Creditor under section 5(20) of the IBC, 2016 and the claim of the



Respondent No. 1 is an operational debt defined under section 5(21) of the Code. Moreover, Respondent No. 1 had filed its claim before the erstwhile resolution professional in requisite form. Henceforth, the Respondent No. 1 has subjugated itself to the realm of IBC.

6.5 The Applicant also quoted the settled principle that once a resolution/purchase plan has been approved by this Adjudicating Authority, it is binding upon all the parties such as the Corporate Debtor, all creditors, stakeholders, employees, and claimants under section 31(1) of the IBC, 2016. Further it is stated under section 32A(2) of the IBC, 2016 that no action shall be taken against the property of the Corporate Debtor, where such property is covered under approved resolution plan or sale of asset under liquidation. The Applicant relied on the judgment of *COC of Essar Steel India Vs Satish Kumar Gupta & Ors. [(2020)] 8 SCC 531* and *Ghanshyam Mishra & Sons Pvt. Ltd. Vs Edelweiss ARC & Ors. [(2021)] 9 SCC 657*. Based on these judgments, the Hon'ble Supreme Court propounded the 'clean slate' theory solidifying the legal position that once a Resolution Plan has been approved which did not form part of the same stand extinguished and the new management cannot be saddled with the undecided/ surprised dues.

6.6 Hence, as per Clause 14(a) & 14(h) of the Buyout Plan the land dues of the Respondent No. 1 and other concerned authorities relating to the



period prior to the effective date stand fully and finally discharged and settled. The Applicant also relied on the following cases to further its claim:

6.7.1 *Haryana State Industrial and Infrastructure Developments Corporation Ltd. Vs AAR AAR Technoplast Pvt. Ltd. & Anr. CA(AT) (Insolvency) No. 606 of 2021 dated 06.09.2022*

6.7.2 *Bhadrashree Steel & power Ltd. & ors. Vs Maharashtra State Electricity Distribution Company & Ors. IA No. 1444/2020 in CP(IB) 1704/MB/2017 dated 10.05.2021*

7. Before we delve into the matter at hand, it is important to refer to the judgment of the Hon'ble Supreme Court in *Gujarat Urja Vikas Nigam Limited v/s Amit Gupta & Ors. (supra)* whereby it has been held that the jurisdiction exercised under Section 60(5)(c) of IBC, 2016 is wide and vests the Authority with the power to consider questions of law or fact "arising out of" or "in relation to" the Insolvency Resolution proceedings. Relevant excerpts of the case are being reproduced below:

"87. The residuary jurisdiction of the NCLT under Section 60(5)(c) of the IBC provides it a wide discretion to adjudicate questions of law or fact arising from or in relation to the insolvency resolution proceedings. If the jurisdiction of the NCLT were to be confined to actions prohibited by Section 14 of the IBC, there would have been no requirement for the legislature to enact Section 60(5)(c) of the IBC. Section 60(5)(c) would be rendered otiose if Section 14 is held to be the exhaustive of the grounds of judicial intervention contemplated under the IBC in matters of preserving the value of the corporate debtor and its status as a 'going concern'. We hasten



to add that our finding on the validity of the exercise of residuary power by the NCLT is premised on the facts of this case. We are not laying down a general principle on the contours of the exercise of residuary power by the NCLT. However, it is pertinent to mention that the NCLT cannot exercise its jurisdiction over matters dehors the insolvency proceedings since such matters would fall outside the realm of IBC.”

8. The Respondent No. 1 relied on the judgment of the Hon’ble Supreme Court in *Embassy Property (supra)* wherein it was held that the NCLT and NCLAT did not have jurisdiction over a dispute arising under the Mines and Minerals (Development and Regulation) Act, 1957, in relation to the refusal of the State of Karnataka to extend a mining lease.
9. Therefore, in view of Section 60(5) of the Code and the judgment passed by the Hon’ble Supreme Court in *Gujarat Urja Vikas Nigam Limited v/s Amit Gupta & Ors. (supra)*, it is evident that this Authority has the appropriate jurisdiction to adjudicate the present matter.
10. In the instant case at hand, CIRP was initiated against the Applicant *vide* Order dated 17.05.2018. Pursuant to the conclusion of the CIRP period, this Adjudicating Authority *vide* Order dated 15.02.2019 ordered the Liquidation of the Corporate Debtor and appointed the Liquidator to carry the necessary proceedings. The Liquidator was directed by the Hon’ble NCLAT to ensure that the Corporate Debtor remains an ongoing concern during the exploration of the compromise scheme and if in case no scheme is approved then the Corporate Debtor be sold as an ongoing concern. Consequently, the



Liquidator issued a Letter of Intent ('LOI') dated 07.09.2020 with regard to the sale of the Corporate Debtor as a going concern and the same has been validated by this tribunal *vide* order dated 23.05.2022.

11. The Respondent No.1 had an opportunity to file its valid claim during Corporate Insolvency Resolution Process of the Corporate Debtor. The Applicant has submitted in its written submissions that the Respondent No. 1 had filed its claim before the erstwhile Resolution Professional. However, during the CIRP period, no Resolution plan came to be approved. Subsequently, the order of liquidation was passed by virtue of which Respondent No. 1 had the opportunity to bring its claim forward by filing the same before the Liquidator. Therefore, it is safe to assume that Respondent No. 1 had various opportunities to file its claim and inform the Corporate Debtor regarding the pending dues, as claimed.
12. It is important to refer to clause 14 of the proposal/buyout plan dated 01.09.2020, which reads as below:

“14(a) Any approvals that may be required from Government/ semi government Authorities (including tax authorities) in connection with the implementation of the takeover proposal including on account of change in ownership/ control of PSL shall be deemed to have been granted on the Effective Date. The land dues or any other operational dues/claim of any Land Development Authority of all lease hold lands like RIICO Ltd. (lessor of the land) in Rajasthan and similar authorities of other concerned States till the date of handover of possession of these properties to applicant, shall stand settled fully whether claim lodged or not lodged by the concerned Authorities. NOC to mortgage of concerned lease hold properties in favour of the

required loaning bank for seeking loan by the applicant will be issued by RIICO Ltd./ MPAKVN/ other similar Land Development Authorities to facilitate the applicant for getting bank loan required for his further course of business.

(h) In accordance with the forgoing, all claims (whether final or contingent, whether disputed or undisputed and whether or not notified to or claimed against PSL) of all Government, Semi Government & Local Authorities etc. including Excise, VAT/GST, provident fund etc. in relation to Taxes, land dues of lessor of the land i.e. RIICO Ltd. in Rajasthan, MPAKVN in Madhya Pradesh or similar concerned authority of other State Governments and all other dues and statutory payments to any Government or Semi Government Authority; relating to the period prior to the Effective Date, shall stand fully and finally discharged and settled.”

13. As per the said clauses any approval that may be required from Government/ Semi-Government authorities (including tax authorities) in connection with the implementation of the takeover proposal, including on account of change in ownership/ control of PSL, shall be deemed to have been granted on the effective date. The land dues or any other operational dues/ claim of any Land Development Authorities of all leasehold lands like RIICO limited (lessor of the land) in Rajasthan and similar authorities of other concerned states, till the date of handover of possession of these properties to the Applicant, shall stand settled fully irrespective of the claim lodged or forfeited by the concerned Authorities.
14. However, in contrast to the above, Respondent No. 1 has placed reliance on the clause no. 26 of the Lease Deed dated 10.08.1994 which states that the Applicant had to abide by the terms and conditions of the Lease Deed and



breaching the terms and conditions of the lease agreement by altering the constitution of ownership of the leased property without the permission of the Respondent No.1 constitutes a violation of lease agreement and thereby automatically terminates the lease deed.

15. As earlier observed, Respondent No.1 had ample amount of opportunities to bring forth its claim. The contention of the Respondent No. 1 that change in constitution of ownership of the leased property shall be violative of the lease agreement does not hold ground as the Corporate Debtor has not altered the ownership of the leased property. Moreover, the Applicant had *vide* letter dated 06.09.2022, informed Respondent No. 1 that the Corporate Debtor has been revived under the provisions of the Code. Therefore, the said contention of the Respondent No. 1 is not tenable in law.
16. In the matter of *Haryana State Industrial and Infrastructure Developments Corporation Ltd. Vs AAR AAR Technoplast Pvt. Ltd. & Anr. (supra)* it was held:

“16. We are of the considered view that once the Liquidation sale has been completed and the Certificate of Sale has been executed followed by handing over possession to the Auction Purchaser, any claim relating to such property for dues prior to the Auction cannot be raised against the Auction Purchaser specifically when the Company is in Liquidation and the dues were already claimed by the said party as an Operational Creditor, during the CIRP process as the Company was in Liquidation and the Appellant had already approached the Liquidator by filing a Form-B and the Liquidator has intimated to the Appellant that there is no amount left for the payment to any Operational Creditor, we are of the earnest view



that the Auction Purchaser cannot be made liable for any dues arising on the property before the purchase of the said property in this case.”

17. Further in the matter of *Edelweiss Asset Reconstruction Company Ltd. Vs Tecpro Systems Ltd. NCLT Delhi in IA 6235/2022 in (IB) 197(PB) 2017*, the co-ordinate bench at New Delhi ordered the Haryana State & Industrial Development Corporation (‘HSIDC’) to issue the necessary no objection certificate, provisional transfer letter regarding the transfer/sale of the alleged property to the applicant within two weeks. It is seen that similarly in *Edelweiss Asset (supra)* also, the plots situated in Haryana were scheduled to be auctioned by the Liquidator and the HSIDC was not inclined to issue the necessary certificates.
18. In the instant case, this Authority *vide* order dated 23.05.2022 has granted approval to the proposal of purchase of the Corporate Debtor as a going concern. Since the issue raised in the present scenario revolves around the Buy-out plan which was approved *vide* Order dated 23.05.2022, this Adjudicating Authority is the appropriate forum to adjudicate upon the matter in accordance with Section 60(5) of the Code and judicial pronouncements as enumerated above. It is also seen that in similar situations the Adjudicating Authority has issued a no-objection certificate for the continuance of the process.



19. It is pertinent to note that the Applicant herein has undertaken to pay the legitimate dues to the Madhya Pradesh Industrial Development Corporation from 23.05.2022 to April 2023.
20. After considering the judicial pronouncements laid down along with the provisions laid down under the Code, we are of the view that the contentions of the Applicant hold ground. Therefore, in view of the foregoing, this Authority after consideration of the entire picture directs as below:

- I. The Madhya Pradesh Industrial Development Corporation is directed to inform the amount of legitimate dues against the Applicant from 23.05.2022 till the date of passing of this order. The same shall be informed to the Applicant within 10 days from the date of this order.
- II. The Applicant shall clear the dues raised within 15 days from the date of receipt of information by Madhya Pradesh Industrial Development Corporation.
- III. After the dues raised, if any, have been cleared by the Applicant, the Madhya Pradesh Industrial Development Corporation shall issue a No Objection Certificate as mentioned in the Proposal to Buy, within 7 days from the date of payment of the dues.
- IV. Failure to inform the dues to the Applicant shall be considered as the Corporation has no pending dues against the Applicant from 23.05.2022 till present. In such scenario, the Madhya Pradesh



Industrial Development Corporation shall issue the No Objection Certificate within 30 days from the date of this Order.

-Sd-
DEEP CHANDRA JOSHI
(JUDICIAL MEMBER)

-Sd-
ATUL CHATURVEDI
(TECHNICAL MEMBER)