IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

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

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

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IA No. 384/JPR/2023
In CP No. (IB)- 03/9/JPR/2018

IN THE MATTER OF:

M/S UVA ENGINEERS PRIVATE LIMITED

...... Operational Creditor

VERSUS

M/S MAHA ASSOCIATED HOTELS PVT. LTD.

......Corporate Debtor

IN THE MATTER OF:
IA No. 384/JPR/2023:

MEMO OF PARTIES

MR. TARA CHAND MEENIA, RP OF
M/s Maha Associated Hotels Pvt. Ltd.
Resident of: Flat No. 206, GH- 3, Sector 24, Panchkula, Haryana

.... Applicant

VERSUS

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RAJASTHAN STATE INDUSTRIAL DEVELOPMENT & INVESTMENT CORPORATE LIMITED (RIICO)
Office at: Udyog Bhawan, Tilak Marg,
Jaipur- 302005 (Rajasthan)

.........Respondent

For the Applicant	:	Tara Chand Meenia, RP Prakul Khurana, Adv. Ankit Sareen, Adv. Gourav Asati, Adv.
For the Respondent	:	Ankit Totuka, Adv.

Order Pronounced On: 28.03.2024

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The instant application bearing *I.A. No. 384/JPR/2023* has been filed by *Mr. Tara Chand Meenia* ('Applicant'/ 'Resolution Professional'), the Resolution Professional of *M/s Maha Associated Hotels Pvt. Ltd.* ('Corporate Debtor'), under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') read with Rule 11 of NCLT Rules, 2016 challenging the cancellation of the lease deed of the industrial land belonging to the Corporate Debtor bearing *Plot No. HTL-10, situated at New Industrial Complex, Majrakath,*

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Neemrana, Rajasthan ('Subject Land') by *Rajasthan State Industrial Development & Investment Corporate Limited* ('RIICO'/ 'Respondent').

2. This Adjudicating Authority vide its order dated 20.09.2018 commenced the Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor under section 9 of the Code and appointed *Mr. Brij Kishore Sharma* as the Interim Resolution Professional ('IRP'). The IRP constituted the Committee of Creditors ('CoC') as per the Code. The CoC appointed *Mr. Naresh Kumar Munjal* as the Resolution Professional and the same was approved by the Adjudicating Authority vide order dated 30.11.2018. Later, *Mr. Naresh Kumar Munjal* was replaced and *Mr. Tara Chand Meenia* was appointed as the Resolution Professional vide order dated 21.03.2023.

3. The Applicant has moved the present Application on the following set of facts:-

   3.1. The Respondent vide its allotment letter dated 15.11.2011 allotted the Subject Land to the Corporate Debtor for the construction of a 3-Star hotel in the name and style of *Hilton* (a brand of Hampton). The Corporate Debtor and the Respondent entered into a lease agreement dated 04.01.2012 which was executed on 23.02.2012, and the possession of the subject land was handed over to the Corporate Debtor.

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3.2. As per the terms of the Lease Agreement, the Corporate Debtor was required to obtain necessary environmental clearances from the *Rajasthan State Pollution Control Board* ('RSPCB') before proceeding with the construction on the Subject Land. Consequently, the Corporate Debtor made timely representations before RSPCB for the requisite environmental clearances, however, despite the completion of all the paperwork, RSPCB abstained from granting the necessary permissions which were required for the construction.

3.3. Despite strenuous efforts being made by the Corporate Debtor to get the environmental clearance for the project, the Respondent vide its letter dated 27.10.2017 arbitrarily cancelled the allotment of the Subject Land stating that the minimum Floor Area Ratio i.e., 20% ('FAR') was not constructed by the Corporate Debtor as stipulated under the allotment letter dated 15.11.2011.

3.4. The Corporate Debtor preferred an appeal before the Managing Director of Respondent under the provisions of RIICO Disposal of Land Rules, 1979 ('RIICO Rules') against the cancellation of the lease deed. The Managing Director of the Respondent vide its Order dated 19.02.2018 set aside the cancellation of the lease deed and observed that the

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Corporate Debtor has already constructed more than the minimum FAR required for the hotel in terms of the allotment letter as per RIICO Rules. The Managing Director of the Respondent in its order dated 19.02.2018 took notice of the delay that was caused due to the non-action of RSPCB concerning requisite environmental clearance for the construction. Further, the Managing Director of Respondent directed the Corporate Debtor to file an application seeking an extension of time as may be required for the completion of hotel construction.

3.5. In compliance with the order dated 19.02.2018, the Respondent while restoring the allotment of land demanded payment of restoration charges, and the same was intimated to the Corporate Debtor vide letter dated 27.02.2018. In its letter, the Respondent levied hefty restoration charges to the tune of Rs. 1,99,74,173/- (Rupees One Crore Ninety-Nine Lakhs Seventy-Four Thousand One Hundred and Seventy-Three Only) without rendering any basis and explanation towards computation of the charges.

3.6. The Corporate Debtor vide its letter dated 28.03.2018 requested the Respondent to provide a detailed explanation and bifurcation of the restoration charges and revise the same in terms of the applicable rules. The Respondent failed to respond to the letter. On the contrary, the

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Respondent issued another letter dated 15.05.2018 wherein it was stated that since the window of 45 days for depositing the restoration charges had expired, the Order dated 19.02.2018 passed by the Managing Director of the Respondent stands withdrawn. The Corporate Debtor was further directed to hand over the possession of Subject Land.

3.7. It was submitted that the restoration charges as imposed by the Respondent vide letter dated 27.02.2018 were in contravention to Rule 3(A)(ii) of the RIICO Rules, which provides for extension of time without levy of restoration charges in certain circumstances. The relevant extract of Rule 3(A)(ii) is reproduced here:

> *"3. Special Time Extensions: (A) – Managing Director shall have power for considering time extension without retention charges in favour of the allotees (other than rule 3 (W) allotments) as per merit of the case in the following situations: (ii) Delay in obtaining Environment Clearance by the Corporation for the industrial area concerned or delay in obtaining Environment Clearance by the allottee subject to condition that the allottee having fulfilled all requirements for obtaining Environment Clearance."*

3.8. Being aggrieved by the letter dated 15.05.2018 the Corporate Debtor filed a fresh appeal under Section 24(2)(b) of RIICO Rules before the Managing Director of the Respondent. Without deliberating upon the appeal filed by the Corporate Debtor, the Respondent arbitrarily issued a

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show cause notice dated 06.08.2018 under Section 4 of the Rajasthan Public Premises (Eviction of Unauthorized Occupants) Act, 1964 ('RPP Act') to the Corporate Debtor.

3.9. The Corporate Debtor challenged the show cause notice dated 06.08.2018 in a Writ petition before the Hon'ble Rajasthan High Court and sought a stay over operation of the show cause notice dated 06.08.2018. The Hon'ble High Court vide its order dated 04.09.2018 granted the stay and restrained the Respondent from proceeding further with the RPP Act. Thus, the possession of the subject Land remained with the Corporate Debtor.

3.10. The Corporate Debtor submitted that the pendency of the Writ Petition before the Hon'ble High Court will not curtail the jurisdiction of this Adjudicating Authority. The Writ Petition was filed with the limited prayer of restricting the Respondent from proceeding under the RPP Act during the pendency of the appeal of the Corporate Debtor against the order dated 15.08.2018, whereas the instant Application is filed seeking adjudication of the dispute between the Corporate Debtor and the Respondent qua the subject land which is central to the CIRP of the Corporate Debtor.

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3.11. The Subject Land being the sole asset of the Corporate Debtor is central to the success of CIRP and cancellation of its allotment would confirm the corporate death of the Corporate Debtor. If the Corporate Debtor is left with no assets, the Prospective Resolution Applicants ('PRA') would be discouraged from filing their expression of interest thereby negatively affecting the CIRP. Moreover, the cancellation of allotment cannot be done during the Moratorium.

3.12. It was submitted that this Adjudicating Authority is empowered to adjudicate upon the alleged cancellation of allotment in terms of Section 60(5)(c) of the Code read with Rule 11 of the NCLT Rules. Further, as per Section 238 of the Code, the provisions of the Code shall have an overriding effect on any other law for the time being in force.

3.13. In support of the contentions, the Applicant has placed reliance upon the following judgments:

I. *Gujarat Urja Vikas Nigam Limited vs. Mr. Amit Gupta & Ors. (2021) 7 SCC 209*

II. *Sandeep Kumar Bhatt (Liquidator) Vs. Rajasthan State Industrial Development and Investment Corporation Limited (RIICO), CP IB No. 1075/ND/2018*

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III. *TATA Consultancy Services Limited Vs. Vishal Ghisulal Jain, Resolution Professional, SK Wheels Pvt. Ltd. 2020 SCC OnLine 1254*

IV. *Sangam (India) Ltd. Vs. Aarti Suitings pvt. Ltd. IA No. 333/JPR/2021 in CP (IB) No. 02/9/JPR/2021*

4. The Respondent has filed its reply vide diary No. 2151/2023 dated 01.09.2023 and Written Submissions vide diary No. 265/2024 dated 30.01.2024. Both the reply and the Written Submissions are considered jointly as under:

4.1. The Applicant had no locus to file the present Application as the allotment of the subject land was cancelled way back on 27.10.2017 i.e. well before the initiation of CIRP proceedings against the Corporate Debtor. The allotment was cancelled in terms of Clause 3(a) of the Lease Deed dated 04.01.2012. The aforesaid clause provides that in case of breach of any of the conditions of the lease deed, the lessor (RIICO) shall have the right to re-enter the premises without taking recourse to a court of law. Thus, RIICO had rightly cancelled the allotment of the subject land.

4.2. It is stated that the Corporate Debtor was allotted a plot for setting up a hotel. A lease deed for the same was executed on 04.01.2012 and the possession of the subject land was also handed over to the Corporate

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Debtor. As per condition No. 4(c) of the said Allotment Letter, the Corporate Debtor was required to start the construction within 6 months, complete it within 18 months, and start the business activities within 24 months from the date of execution of the lease agreement or from the date of possession whichever is earlier. The due date for the commencement of hotel activity was 03.01.2014. Since the Corporate Debtor failed to start construction within the prescribed time, notices were issued to the Corporate Debtor on various occasions such as on 01.01.2013, 22.08.2013, 16.04.2014, and 25.04.2014 for cancellation of allotment on account of violation of the terms and conditions.

4.3. The Corporate Debtor applied for an extension of time from 03.01.2014 to 01.01.2015 which was allowed by the Respondent on payment of retention charges however the Corporate Debtor failed to commence the construction for which Final Show cause notice was issued to the Corporate Debtor on 29.06.2015. The Corporate Debtor again requested for an extension of time up to 01.01.2016, the request was withdrawn by the Unit Office due to non-payment of retention charges. Thereafter, the allotment of the plot was cancelled vide order dated 27.10.2017 as per RIICO Rules.

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4.4. The Corporate Debtor filed an appeal before the Managing Director, RIICO which came to be partly allowed vide order dated 19.02.2018. The said order provided for payment of the dues (retention and other charges) of the Respondent within 45 days from the date of receipt of the demand letter i.e., letter dated 27.02.2018. On failure of the Corporate Debtor to deposit the dues within the stipulated time, the Respondent vide its letter dated 15.05.2018 informed the Corporate Debtor that the order of the Managing Director dated 19.02.2018 stands withdrawn and the allotment stands cancelled.

4.5. It was submitted that the retention charges amounting to Rs. 1,99,74,173/- (Rupees One Crore Ninety-Nine Lakh Seventy-Four Thousand One Hundred Seventy-Three Only) were well explained in the calculation sheet enclosed with the letter dated 27.02.2018. Still, the retention charges were not paid by the Corporate Debtor within the stipulated time of 45 days.

4.6. The Respondent placed reliance upon the case of *NEESA Leisure Limited vs. RIICO 2022 SCC OnLine 4697* to contend that since the subject land ceased to be a property of the Corporate Debtor much before the initiation

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4.7. Further, the Respondent vide its letter dated 30.05.2017 intimated the Secured Creditor of the Corporate Debtor i.e., *Punjab and Sindh Bank* about the non-compliance of the terms of the lease deed. In pursuance of the letter, it was incumbent upon the Secured Creditor to remedy the breach within 90 days from the date of service of such notice. Non-action on the part of the Secured Creditor will entitle the Respondent to re-enter the premises and terminate the lease deed. In the present case, no such remedial action had been taken by the Secured Creditor, hence, the Respondent had rightly terminated the lease deed and initiated the eviction proceedings under the RPP Act. A notice dated 06.08.2018 for eviction of the property was issued to the Corporate Debtor as the Corporate Debtor has become an unauthorized occupant after the termination of the lease.

4.8. The Respondent submitted that the Applicant has concealed the fact that the Corporate Debtor was issued 'Consent to Establish' vide letter dated 31.10.2012 by the RSPCB. Thus, it was wrongly stated that the construction could not commence due to non-issuance of environmental

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clearance by the RSPCB. The Corporate Debtor had consciously concealed the said fact to misguide the Adjudicating Authority.

5. The Applicant has filed its rejoinder vide diary No. 2381/2023 dated 03.10.2023. In the rejoinder, the Applicant denied the contentions raised by the Respondent, and additionally raised some contentions which are as follows:

5.1. A bare perusal of Section 25(1) read with Section 60(5)(c) of the Code would reveal that the Applicant being the Resolution Professional of the Corporate Debtor has the locus to file the instant application. Further, in terms of Section 60(5)(c) of the Code, this Hon'ble Tribunal has a residuary jurisdiction for adjudication of any question of priorities or any question of law or facts arising out of or in relation to the insolvency resolution or liquidation proceedings of the Corporate Debtor or Corporate Person under this Code. Hence, this Adjudicating Authority is vested with the requisite jurisdiction to decide the instant Application.

5.2. The Respondent has wrongly stated that the allotment of land was cancelled way back on 27.10.2017. It is submitted that the order dated 27.10.2017 was set aside by the Managing Director of RIICO in the appeal vide its order dated 19.02.2018. Further, the Respondent denied the allegation qua unauthorized occupancy and contended that the

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Hon'ble High Court vide its order dated 04.09.2018 has restricted the Respondent from taking adverse action against the Corporate Debtor. Thus, the Corporate Debtor has always been under the lawful control and possession of the subject land, and the said land forms part of the assets of the Corporate Debtor under CIRP.

5.3. The Respondent has wrongly contended that the Corporate Debtor failed to start the construction. The Managing Director of RIICO in its Order dated 19.02.2018 had made a categorical observation that the minimum FAR of 20% was duly constructed by the Corporate Debtor with electricity and water connection.

6. We have heard the Learned Counsels for the parties and perused the averments made in the Applications, Reply, Rejoinder, Written Submissions, and the documents enclosed therein.

7. It will be apposite to refer to Section 60 (5) of the Code for adjudicating the issue at hand, the said section reads as follows:

"Section 60 (5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of-

(a) any application or proceeding by or against the corporate debtor or Corporate Persons;

(b) any claim made by or against the corporate debtor or corporate person

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(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this code."

8. The applicability of the aforementioned Section to contractual disputes was considered by the Hon'ble Apex Court in the case of ***Gujarat Urja Vikas Nigam Limited vs. Amit Gupta and Ors. (2021) 7 SCC 209***. In the said case, the Hon'ble Supreme Court has observed that:

> *"72. Therefore, we hold that the RP can approach the NCLT for adjudication of disputes that are related to the insolvency resolution process. However, for adjudication of disputes that arise dehors the insolvency of the Corporate Debtor, the RP must approach the relevant competent authority. For instance, if the dispute in the present matter related to the non-supply of electricity, the RP would not have been entitled to invoke the jurisdiction of the NCLT under the IBC. However, since the dispute in the present case has arisen solely on the ground of the insolvency of the Corporate Debtor, NCLT is empowered to adjudicate the dispute under Section 60(5)(c) of the IBC.*
> *164. In this case, the PPA has been terminated solely on the ground of insolvency, which gives the NCLT jurisdiction under Section 60(5)(c) to adjudicate this matter and invalidate the termination of the PPA as it is the forum vested with the responsibility of ensuring the continuation of the insolvency resolution process, which requires preservation of the Corporate Debtor as a going concern."*

9. The Hon'ble Supreme Court in the case of ***Tata Consultancy Service v/s Vishal Ghisulal Jain 2020 SCC OnLine SC 1254*** took note of its earlier judgment in the case of ***Gujarat Urja*** (supra) and held that:

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> *"26. In Gujara Urja (supra), the contract in question was terminated by a third party based on an ipso facto clause, i.e., the fact of insolvency itself constituted an event of default. It was in that context, this Court held that the contractual dispute between the parties arose in relation to the insolvency of the corporate debtor and it was amenable to the jurisdiction of the NCLT under Section 60(5)(c). This Court observed that "....NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the corporate debtor... The nexus with insolvency of the corporate debtor must exist" (Para 69). Thus, the residuary jurisdiction of the NCLT cannot be invoked if the termination of a contract is based on grounds unrelated to the insolvency of the Corporate Debtor."*

10. In the instant Application, it is an admitted position that the lease deed for the subject land dated 04.01.2012 was first terminated by the Respondent for non-compliance with the terms and conditions vide its cancellation order dated 27.10.2017. The cancellation order dated 27.10.2017 was set aside by the Managing Director, RIICO, in the appeal preferred by the Corporate Debtor vide its order dated 19.02.2018. Thereafter, due to non-payment of the retention charges as demanded by the Respondent, the order of the Managing Director dated 19.02.2018 was withdrawn by the Respondent vide letter dated 15.05.2018, and the Corporate Debtor was asked to hand over the possession of the Subject Land to the Respondent. The Respondent also initiated proceedings under the Rajasthan Public Premises Eviction Act, 2005 for

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evicting the Corporate Debtor from the subject land and a notice dated 06.08.2018 under Section 4 of the said act was issued to the Corporate Debtor.

11. The Corporate Debtor preferred a Writ Petition bearing no. *S.B.C.W. No. 19669/2018* against the eviction notice before the Hon'ble Rajasthan High Court. In the said Writ Petition, the Hon'ble High Court vide its order dated 04.09.2018 has restrained the Respondents from taking any further action. Further, the Corporate Debtor has also preferred an Appeal to the Managing Director, RIICO against the order dated 15.05.2018 wherein the earlier order of the Managing Order dated 19.02.2018 was withdrawn by the Respondent.

12. It will be pertinent to mention here that the CIRP of the Corporate Debtor was initiated under Section 9 of the Code by this Adjudicating Authority vide its order dated 20.09.2018. Thus, it becomes clear that all the aforementioned proceedings qua the cancellation of the lease deed occurred prior to the commencement of the CIRP. Further, it will be pertinent to mention that the lease deed was cancelled by the Respondents due to alleged non-payment of the retention charges and the same has also been challenged before the Appropriate Authorities by the Corporate Debtor.

13. In view of the Judicial pronouncement referred to above we are of the view that since the issue of cancellation of the lease deed transpired prior to initiation of

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the CIRP and the said dispute has not arisen or in any way affected by the insolvency of the Corporate Debtor, the present application is not a fit case for exercising the powers contained under Section 60(5)(c) of the Code. In light of the foregoing, this Interlocutory Application bearing I.A. No. 384/JPR/2023 is rejected and thereby disposed of accordingly.

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DEEP CHANDRA JOSHI,
JUDICIAL MEMBER

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RAJEEV MEHROTRA,
TECHNICAL MEMBER