

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (Court-V)**

**I.A. (IB) No. 185 of 2020**  
**IN**  
**C.P. (IB) No. 1731 of 2019**

**IN THE MATTER OF:**

**Mayoga Investment Limited**

**... Financial Creditor**

**Versus**

**MK Overseas Private Ltd.**

**... Corporate Debtor**

**AND IN THE MATTER OF**

**Suresh Kumar Jain** (Resolution Professional)

Res Address: 3775/3, Kanhaiya Nagar, New Delhi- 110035

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**...Resolution Professional/ Applicant**

**Versus**

**M/s M K Overseas Export Pvt Ltd.**

(Earlier Prime Natural Frozen Foods Export Pvt. Ltd.)

**... Respondent**

**Order Pronounced on: 27.04.2023**

**CORAM :**

**SHRI. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)**

**SHRI. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

FOR THE RP (Suresh Kumar Jain) : Mr. Anoop Prakash Awasthi, Adv.

For MK Overseas Export Pvt. Ltd : Mr. Kumar Mihir, Adv.

## **ORDER**

**PER SHRI P.S.N. Prasad, Member (J)**

### **In I.A. (IB) No. 185 of 2020**

1. This is an application filed on behalf of the resolution professional under section 25 read with section 60(5) of the insolvency and bankruptcy code, 2016 further read with section 14 & 238 thereof seeking appropriate directions for cancellation of lease deed dated 18.10.2018 entered between corporate debtor and respondent and also prayed for taking over control and possession of Dera Bassi property belonging to corporate debtor M/s M K Overseas Private Ltd., also for restraining and declaring that proceedings initiated by the respondent herein (in matter of MK Overseas Exports Pvt. Limited vs Suresh Kumar Jain) before the court of Ld. Civil judge, Jr. Division Dera Bassi as illegal and non-est.
  
2. The brief fact related to the case is that vide a Company Petition bearing no. C.P. IB/1731/2019 under Section 7 of the Code was filed for initiation of CIRP against the Corporate Debtor. The Adjudicating Authority *vide* order dated 19.09.2019, initiated Corporate Insolvency Resolution Process (*CIRP*) against the Corporate Debtor and appointed Mr. Suresh Kumar Jain as the Interim Resolution Professional. The IRP was confirmed as RP on 30.10.2019 in the 2<sup>nd</sup> CoC meeting.
  
3. It is submitted by the applicant that as duty-bound in terms of section 25 of the Code, the Applicant had taken steps for taking immediate custody and control of the assets of the Corporate Debtor and in the said course it came to the knowledge of the applicant that property of the Corporate Debtor at Dera Bassi, Punjab being the land, plant and machinery

situated at Village Samgoli, Tehsil Dera Bassi, District SAS Nagar, Mohali, Punjab was given on lease by the Corporate Debtor to the Respondent via registered lease agreement dated 18.10.2018 effective from 1st November 2018 for next two years and eleven months ending on 30th September 2021.

4. Further it is submitted that lease agreement was a sham agreement and same was done by the M/s M K Overseas Pvt. Ltd. with an ill intention to defeat the legal recourses anticipated after its account was declared Non Performing Asset by the Bank of Baroda, one of the secured creditors to the M/s M K Overseas Pvt. Ltd. now Corporate Debtor, It is submitted that the said registered lease dated 18.10.2018 between the Corporate Debtor M/s M K Overseas Pvt. Ltd. and M K Overseas Export Pvt Ltd, (Earlier Prime Natural Frozen Foods Export Pvt. Ltd.) is a nullity and accordingly cancellation of the same is sought for in the subject application.
5. Also, applicant submitted that the transfer through registered deed was executed on 18.10.2018 whereas the account of the corporate debtor was declared as NPA (Non-Performing Asset) on 08.09.2018 and action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act 2002 was already initiated on 08.10.2018 by Bank of Baroda by issuing a notice under 13 (2) of the SARFAESI Act, 2002. Section 13 (13) of the (SARFAESI) Act, 2002 says that "No borrower shall, after receipt of notice referred to in sub- section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.
6. The facts of CIR Proceedings pertaining to corporate debtor are that Mayoga Investment private limited a financial creditor had filed a

Company Petition bearing no. C.P. IB/1731/2019 under Section 7 of the Code for initiation of CIRP of the Corporate Debtor. The Adjudicating Authority *vide* order dated **19.09.2019**, initiated Corporate Insolvency Resolution Process (*CIRP*) against the Corporate Debtor and appointed Mr. Suresh Kumar Jain as the Interim Resolution Professional. The IRP was confirmed as RP on 23.10.2019 in the 2<sup>nd</sup> CoC meeting.

7. **Section 25** of the Insolvency and bankruptcy Code 2016 clearly states **Duties** of resolution professional:

*(1) It shall be the duty of the resolution **professional to preserve and protect the assets of the corporate debtor, including the continued business operations** of the corporate debtor.*

*(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: -*

*(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;*

8. Adjudication/ Intervention in regard to any conflict that stems from **continued business operations** of Corporate Debtor by Adjudicating Authority has been distinctly mentioned in the Code.

9. Reliance is being placed on the decision of The Hon'ble Supreme Court in the matter of **Embassy Property Developments Pvt. Ltd vs State of Karnataka and Ors.** 2019 SCC Online SC 1542 where the court had the opportunity to consider the sweeping scope of section 60(5), IBC in the following terms:

*"39. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(f)(vi) would not have made the task of the interim resolution professional in*

*taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority. In fact, an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term "assets" under the Explanation to Section 18. This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word "assets", while Section 20(1) uses the word "property" together with the word "value". Sections 18 and 25 do not use the expression "property". Another important aspect is that Under Section 25(2)(6) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in Judicial, Quasi-judicial and Arbitration proceedings....*

*40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the Enforcement of such a right."*

10. Hence to determine the sanctity and validity of Lease Deed dated 18.10.2018 are outside the scope of this Adjudicatory Authority vide this application as they were prior to initiation of Corporate Insolvency Resolution Process of Corporate Debtor and appointment of Resolution Professional.
11. Though this has been made abundantly clear that after the initiation of

Insolvency Proceedings, A Moratorium shields the corporate debtor under **Section 14** which reads as:

(1) *Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for **prohibiting** all of the following, namely: -*

*(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree, or order in any court of law, tribunal, arbitration panel or other authority;*

*(b) transferring, encumbering, alienating, or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

*(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

*(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

12. Therefore, continuation of the Civil Suit filed and commenced after initiation of the CIRP is prohibited and the proceedings before Ld. Civil Judge Jr. Division, Dera Bassi are therefore **Non-Est Law**.

13. As per the written submissions made by applicant, it is to be made clear that in **I.A. No. 3175/2020** where in this Adjudicating Authority vide order dated 04.10.2021 cancelled the registered agreement cum transfer of lease cum sale etc. of the Panvel property of the Corporate Debtor was with regard to **Undervalued Transaction and Preferential Transaction** and therefore was well within the jurisdiction of this Adjudicating Authority. Hon'ble **Appellate Tribunal in Company Appeal AT (INS)1057 of 2021** vide judgement dated **16.03.2022** also

upheld the same decision with the reasons stated in by Hon'ble Tribunal.

14. This Adjudicating Authority is of the view that since the registered lease, now stands lapsed by efflux of time as it expired on **30.09.2021** and that since further proceedings in the matter under SARFAESI Act and according to provisions of IB Code, is prohibited on account of moratorium having been declared. There is no impediment for the Resolution Professional to take custody and control of the said property of the corporate debtor as the proceedings before Ld. Civil Judge (Jr. Div.) are **Non-Est Law**. We therefore direct the Resolution Professional to take control and possession of the property from the respondent.
15. The I.A. (IB) No. 185 of 2020 stands **disposed off** in terms of the above.

**Sd/-**  
**(RAHUL BHATNAGAR)**  
**MEMBER (T)**

**Sd/-**  
**(P.S.N PRASAD)**  
**MEMBER(J)**