



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III (SPECIAL BENCH)**

Item No.04

IA-1208/2023

in

IB – 138/ND/2020

IN THE MATTER OF:

M/s NARMADA CEREAL PVT. LTD.

..... Applicant/Corporate Debtor

AND IN THE MATTER OF:

PRABHAT JAIN

Liquidator of M/s Narmada Cereal Pvt. Ltd.

..... Liquidator/Applicant

VERSUS

MP INDUSTRIAL DEVELOPMENT CORPORATION LIMITED

..... Respondent

SECTION

Under Section 35(1)(n) of the Insolvency and Bankruptcy Code, 2016

Order Pronounced On: 28.04.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL PRASAD BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Saurabh Kalia, Mr. Iswar Mohapatra, Advs.

For the Respondent : Mr. Abhishek Chaudhary, Mr. Aalok Kumar, Advs.

ORDER

Order pronounced in open court vide separate sheets. IA-1208/2023 is **dismissed**.

-SD-

**(RAHUL PRASAD BHATNAGAR)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT-III (SPECIAL BENCH)**

IA-1208/2023

in

IB – 138/ND/2020

Application by the Liquidator seeking Order/Direction of this Tribunal under Section 35(1)(n) of the Insolvency and Bankruptcy Code, 2016 seeking necessary directions to Respondent not to take any action leading to the closure of the unit.

IN THE MATTER OF:

M/s NARMADA CEREAL PVT. LTD.

..... Applicant/Corporate Debtor

AND IN THE MATTER OF:

PRABHAT JAIN

Liquidator of M/s Narmada Cereal Pvt. Ltd.

Reg. No.: IBBI/IPA-001/IP-P01980/2020-2021/13123

E-mail Id: liquidator.narmada@gmail.com

..... Liquidator/Applicant

VERSUS

MP INDUSTRIAL DEVELOPMENT CORPORATION LIMITED

Having Its Regional Office at:

1st Floor, Tawa Complex,

Bittan Market, E-5,

Area Colony, Bhopal,

Madhya Pradesh-462016

..... Respondent

Order Pronounced On: 28.04.2023

Prabhat Jain vs. MP Industrial Development Corporation Limited

IA-1208/2023 IN IB – 138/ND/2020

Date of Order : 28.04.2023



CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

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

APPEARANCES

For the Applicant : Mr. Saurabh Kalia, Mr. Iswar Mohapatra,
Advocates

For the Respondent : Mr. Abhishek Chaudhary, Mr. Aalok
Kumar, Advocates

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This Application has been filed by Mr. PRABHAT JAIN, the Applicant/Liquidator on 23.02.2023, before this Adjudicating Authority, under Section 35(1)(n) of the Insolvency & Bankruptcy Code, 2016 ("IBC" or "Code") against MP INDUSTRIAL DEVELOPMENT CORPORATION LIMITED, the Respondent.
2. The Respondent is a public body that has been incorporated by the Government of Madhya Pradesh in order to facilitate private investment in the industrial sector, *inter alia* by establishing and leasing out industrial areas in various districts of the State and by formulating and enforcing regulations for the management of the said areas.
3. The Respondent had leased to M/s. Narmada Cereal Pvt. Ltd. ("the Corporate Debtor") Plot Nos. D-2 and D-3 in the Mandideep Industrial Estate Area, Phase-II, Madhya Pradesh *vide* Lease Deeds dated 16.05.2007 and 18.06.2009, respectively. The said land was allotted to Corporate Debtor on 99-year lease. The Corporate Debtor set up a Rice Processing Unit on the aforesaid two plots. Each of the aforesaid lease deeds contained a clause that a sub-



lease may be granted by the Corporate Debtor only after obtaining the sanction of the Respondent.

4. This Tribunal initiated Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor *vide* order dated 07.12.2020 & one Mr. Arun Chadha was appointed as Interim Resolution Professional (“IRP”). Subsequently, Committee of Creditors (“CoC”) *vide* resolution dated 07.01.2021 decided to appoint Mr. Vichitra Narayan Pathak as Resolution Professional (“RP”) to carry out CIRP which was approved and taken on record by this Adjudicating Authority on 09.02.2021. Due to the failure of the CoC of the Corporate Debtor to approve any resolution plan, the RP filed an application under section 33(2) of the code, for initiation of Liquidation of the Corporate Debtor under Section 33(1) of the Code. This Adjudicating Authority *vide* order dated 04.01.2022 passed the liquidation order and appointed the applicant as liquidator of the Corporate Debtor. Further, the Applicant approached this Tribunal seeking permission to sell the Corporate Debtor as a going concern under Regulations 32 and 32A of the IBBI (Liquidation Process) Regulation, 2016. This Adjudicating Authority *vide* order dated 23.02.2022 in IA-875/2022 granted permission to the liquidator for the sale of CD as a going concern. Importantly, during the 13 months that the CD underwent CIRP, the Rice Processing Unit at the aforesaid two plots remained non-operational.

5. **Submission of the Applicant:**

- i. The respondent is the lessor of the land at MANDEEP INDUSTRIAL ESTATE, NEAR BHOPAL, MP on which factory of the Corporate Debtor is situated. The same land was allotted to Corporate Debtor on 99 years lease. The respondent during liquidation, issued show cause notice dated 07.02.2023 received on 11.02.2023 directing the liquidator to cancel the temporary lease agreement entered into with “M/s Maa



Yashoda Food Grains” and file reply within 15 days of the date of the notice. The respondent subsequently issued another letter dated 22.02.2023 (even before 15 days time from the date of issue of the show cause notice) threatening to close the operation of the factory forcefully on 24.02.2023 against which the liquidator filed present IA seeking relief.

ii. During the pendency of this application, to keep the Company as a going concern, the Liquidator with the knowledge of sole financial creditor Punjab National Bank, leased out the plant and machinery/Rice Mill for a short period of 11 months to "Maa Yashoda Food Grains" on a monthly rental of Rs.5,00,000/- per month with the condition that all day to day expenses including electricity will be borne by the sub-lessee. The temporary arrangement of the lease of the plant and machinery/Rice Mill is undertaken by the liquidator:

- a) To keep the Company as a going concern;
- b) To preserve the value of the company from depletion;
- c) To meet out the day-to-day expenses which is required for a company;
- d) To give employment to various labourers and other staff;
- e) There will be time gap between NCLT approval/rejection and time taken to handover the assets to prospective applicant and lease agreement covers this aspect.

iii. Action of the Respondent is illegal and liable to be set aside on the ground of overriding effect of Section 238 of the Code which states that ***“The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”*** Thus, the provisions of the Code shall prevail over any other provision or law, contrary or inconsistent with any of its provisions. The Hon’ble Supreme Court also had occasion to consider the importance of section 238 of the Code in the case



of **Innoventive Industries Ltd. Vs. ICICI Bank and Anr.** Civil Appeal Nos. 8337-8338 of 2017 dated 31.08.2017 and in **Pr. Commissioner of Income Tax Vs. Monnet Ispat and Energy Ltd.**, Special Leave to Appeal (Civil) Nos. 6483/2018 dated 13.08.2018, wherein it was held that in view of section 238 of the Code, the provisions in the Code will override anything inconsistent contained in any other enactment. Hence, it can be concluded that the Code is a complete code in itself and the provisions of this code override all other laws. Hence, MPIDC Rules cannot override the provision of IBC.

- iv.** The lease is given on a temporary basis with the condition that the lease will be terminated immediately after the compromise between CD and creditors or finalization of the auction process as clearly stated in the Lease Agreement.

6. Written Submissions of the Respondent dated 13.03.2023:

- i.** On 08.03.2022 and 21.03.2022, e-Auction notice was published by the Applicant. Vide order dated 23.02.2022, this Tribunal granted permission to the Applicant to sell the Corporate Debtor as a going concern. Thereafter, a Scheme of Compromise and Arrangement in terms of Section 230-232 of the Companies Act, 2013 was proposed by the suspended management of the Corporate Debtor. On 20.04.2022, this Tribunal passed the following order:

"The Liquidator, before considering the selling of Corporate Debtor as going concern will firstly see the feasibility of the Scheme submitted by suspended board of Directors as per the provisions of law and if such Scheme does not get approved, then only, the Liquidator will proceed to sell the Corporate Debtor as a going concern in terms of Regulation 32(e) or 32(f) read with 32A of the (Liquidation Process) Regulations, 2016.



Though extension for a period of 3 months has been asked but considering that these proceedings may take more time, we grant 6 months to the Liquidator to complete the proceedings as directed above and file an appropriate Application before this Adjudicating Authority. (emphasis added)".

- ii.** As admitted in Para 14 of the Application, the Scheme of Compromise was rejected by the sole secured creditor of the Corporate Debtor on 10.08.2022. The aforesaid scheme having failed to receive the requisite approval, the Applicant was required by the terms of the order dated 20.04.2022 to proceed to sell the Corporate Debtor as a going concern in accordance with the IBBI (Liquidation Process) Regulations, 2016. This was to be completed within 6 months from the date of the aforesaid order, i.e., before October 20, 2022.
- iii.** There is no inconsistency between the M.P. Rules and the IBC in the present case. This is evident from the fact that the power contained in Section 35(1)(d) of the Code, on which the Application is founded, namely "*to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary*", applies to the assets of the Corporate Debtor and not assets that belong to a third party. Section 35(1)(d) therefore does not apply to the aforesaid two plots, which are properties of the Respondent and over which the Corporate Debtor had no more than leasehold rights.
- iv.** It is further submitted that the contention in the Application that upholding the sub-lease is essential to selling the Corporate Debtor as a going concern and maximising its value is misleading in as much as the unit in question remained non-operational throughout the period of the CIRP and through the first 11 months after the liquidation order was passed. It is submitted that had the engagement of a third party to carry out business operations at the unit been



as vital as is sought to be portrayed in the Application, it would have been pursued by the Resolution Professional upon whom Section 25(1), IBC casts the duty to "preserve and protect the assets of the corporate debtor", or indeed by the Liquidator during the first 11 months of his tenure, or have been directed by the CoC during CIRP. It is further submitted that there is no bar on routine maintenance activity being undertaken by or at the instance of the Liquidator in order to preserve the value of the Rice Processing Unit.

7. **Analysis and Findings**

- i. We have heard the Ld. Counsel for the Applicant and the Ld. Counsel for the Respondent and perused the documents submitted by them.
- ii. It is the contention of the Liquidator that in order to run the company as a going concern, the Liquidator has entered into a sub-lease with the partnership firm called "M/s Maa Yashoda Food Grains" vide Lease Deed dated 04.11.2022 (the term of the sub-lease is to run from 01.12.2022 to 31.10.2023), which according to the Respondent is not in conformity with the Clause 12 of the lease deed dated 18.06.2009. Hence, Clause 12 of the lease deed dated 18.06.2009 is as follows:

"The lessee agrees it shall not sublet, assign or otherwise transfer the said land or any part thereof or any building constructed thereon for any purpose, whatsoever, except as provided in Rule-20 of the M.P. Industries (Allotment of shed, plot and land rule 1974)¹ without the previous sanction in writing of the lessor or any other officer authorized by him."

¹ The M.P. Industries (Allotment of Shed, Plot and Land Allotment) Rules, 1974 referred to in Clause 12 of the Lease Deeds have since been repealed. The provisions of the rules currently in force, namely the M.P. State Industrial Land and Building Management Rules, 2019



It is clear from the records that the Liquidator/Applicant did not obtain the prior permission of the MP Industrial Development Corporation Limited (lessor) for granting sub-lease to the partnership firm called M/s Maa Yashoda Food Grains vide Lease Deed dated 04.11.2022. Hence, the sub-lease falls outside the purview of the lease deed dated 18.06.2009 executed between the Corporate Debtor and Respondent. Moreover, the Applicant has placed nothing on record to suggest that it sought the opinion of either the sole financial creditor, namely Punjab National Bank, or any other stakeholder as specified in Regulation 31 of the IBBI (Liquidation Process) Regulations, 2016 about the necessity of granting a sub-lease.

- iii.** Further, the M.P. State Industrial Land and Building Management Rules, 2019 lay down that a sub-lease can be created on the Respondent's land only with the prior permission of the concerned authority. In particular, Rule 22 of the 2019 Rules, as translated from the original text, states:

"22. Permission for sub-lease of plots:-

Insofar as undeveloped lands are concerned, the Managing Director MPIDC, and insofar as developed lands are concerned, the Executive Director MPIDC shall be entitled, on the basis of evaluation, to grant permission for sub-lease to all types of units.

.....

For this purpose, a tripartite agreement is to be executed between the principal lessee, the lessor and the sub-lessee. The standard terms of sub-lease are provided at Appendix-E of the Rules".

- iv.** It is further submitted by the Respondent that the contention in the Application that upholding the sub-lease is essential to selling the Corporate Debtor as a going concern and maximising its value is misleading in as much as the rice mill unit in question remained non-operational throughout the period of the



CIRP and also during the first 11 months after the liquidation order was passed. It is further submitted by the Respondent that there is no bar on routine maintenance activity being undertaken by or at the instance of the Liquidator in order to preserve the value of the rice mill unit, as there are chances of spoilage of rice due to changes in weather/temperature.

- v. With regard to the inconsistency between the M.P. Rules and the IBC in the present case, we are in a similar view as argued by the Ld. Counsel for the Respondent upon the Judgment passed by the Hon'ble Supreme Court in **Municipal Corporation of Greater Mumbai vs. Abhilash Lal**, (2020) 13 SCC 234, wherein the Hon'ble Supreme Court was confronted with the question of whether Section 238 of the Code would override the ability of a public body to regulate its lands in accordance with relevant statutory provisions. In answering this question in the negative, the Hon'ble Supreme Court held that:

"47. In the opinion of this court, Section 238 cannot be read as overriding the MCGM's right-indeed its public duty-to control and regulate how its properties are to be dealt with. That exists in Sections 92 and 92A of the MMC Act. This court is of opinion that Section 238 could be of importance when the properties and assets are of a debtor and not when a third party like the MCGM is involved. Therefore, in the absence of approval in terms of Section 92 and 92A of the MMC Act, the adjudicating authority could not have overridden MCGM's objections and enabled the creation of a fresh interest in respect of its properties and lands. No doubt, the resolution plans talk of seeking MCGM's approval; they also acknowledge the liabilities of the corporate debtor; equally, however, there are proposals which envision the creation of charge or securities in respect of



MCGM's properties. Nevertheless, the authorities under the Code could not have precluded the control that MCGM undoubtedly has, under law to deal with its properties and the land in question, which undeniably are public properties. The resolution plan therefore, would be a serious impediment to MCGM's independent plans to ensure that public health amenities are developed in the manner it chooses, and for which fresh approval under the MMC Act may be forthcoming for a separate scheme formulated by that corporation (MCGM). (emphasis added)"

We are in agreement with the submissions made by the Ld. Counsel for the Respondent in view of the law as laid down by the Hon'ble Supreme Court in Municipal Corporation of Greater Mumbai (*supra*) regarding the ability of a public body to regulate its lands in accordance with relevant statutory provisions.

- vi.** We have also noticed that Clause 24 of the lease deed dated 18.06.2009 takes care of a situation that on the re-entry of the lessor, the lessee is entitled to the refund by the lessor of the amount paid at the time of execution of the lease deed. The conduct of the Respondent being a lessor is well within the ambit of the lease deed as Clause 24 clearly provides for the right of re-entry over the land/premise. It is pertinent to refer to Clause 12 of the lease deed dated 18.06.2009 which is as follows:

"On the expiry of the lease period or termination of the lease due to breach of the conditions of the lease deed or surrender of land after the execution of lease deed, the lessor shall have the right of re-entry over the land / premises. On such re-entry, the lessor may refund to the lessee the premium/cost of acquisition paid by the lessee at the time of the land was allotted/leased out to the lessee in the following manner:-



(1) Full premium if the surrender of allotted/leased land occurs within one year and three years in respect of small scale industry and large and medium scale industry.

(2) 10% less, if surrender for allotted/leased land occurs after one year but within two years and after three years but within four years in respect of small scale industry and large and medium scale industry.

(3) 20% less, if surrender for allotted, leased out land occurs after two years, but within three years and after four years, but within five years in respect of small scale industry and large and medium scale industry.

(4) No refund of premium shall be permissible to unit not falling under category (1), (2) and (3).”

We come to the finding that there is a breach of the terms and conditions of the lease deed by the liquidator. Hence, we feel it appropriate in the facts and circumstances of the present case to pass a direction to the Respondent to refund the lease amount.

Therefore, we are inclined to **dismiss this application.**

- vii.** Since the Corporate Debtor had taken the lease of property bearing Plot Nos. D-2 and D-3 on 99-years for the running of the rice mill unit and undoubtedly paid the lease amount. Therefore, the lease amount should be refunded to the Corporate Debtor, which will help the Liquidator to complete the process of Liquidation in accordance with the law. The Respondent is directed to refund the money within 15 days from the pronouncement of this order to the Liquidator and further inform the bench accordingly by filing the additional document in the form of an affidavit.
- viii.** From the above analysis, we come to the finding that the Respondent is justified in the action of the right of re-entry over



the land/premise, if any condition is breached by the Corporate Debtor/lessee and the sub-letting of the land/premise without prior permission of the Respondent is considered as the breach of the terms and conditions of the lease deed.

Hence, this **application is dismissed**, in view of the above terms.

No order as to costs.

-SD-

**(RAHUL PRASAD BHATNAGAR)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**