

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.1103 of 2024 &
I.A. No.3974 of 2024

(Arising out of Order dated 08.04.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad, Court-2 in IA/461(AHM)2022 in CP(IB) 157 of 2018)

IN THE MATTER OF:

Divyesh Desai
RP of GPT Steel Industries Ltd. ...Appellant

Versus

Gujarat Industrial Development
Corporation Bhuj ...Respondent

Present:

For Appellants : Mr. Abhijeet Sinha Sr. Advocate with Mr. Tishampati Sen, Ms. Riddhi Sancheti, Mr. Ashish Parwani, Mr. Rajeev Nair, Mr. Anurag Anand, Ms. Gitika Makhija and Mr. Mukul Kulhari, Advocates.

For Respondent : Dr. Charu Mathur, Advocate for GIDC.

With

Company Appeal (AT) (Insolvency) No.1084 of 2024

(Arising out of Order dated 08.04.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad, Court-2 in IA 159/NCLT/AHM/2020 in CP(IB) 157 of 2018)

IN THE MATTER OF:

Asset Reconstruction Company (India) Limited,
The Authorised Representative of the
Committee of Creditors of
GPT Steel Industries Ltd. ...Appellant

Versus

Divyesh Desai,
RP of GPT Steel Industries Ltd. & Anr. ...Respondent

Present:

For Appellant : Mr. Deep Roy, Mr. Dhaval Savla & Mr. Piyush Swami. Advocates.

For Respondents : Mr. Tishampati Sen, Ms. Riddhi Sancheti, Mr. Ashish Parwani, Mr. Rajeev Nair, Mr. Anurag

Anand, Ms. Gitika Makhija and Mr. Mukul Kulhari, Advocates for R-1.

Dr. Charu Mathur, Advocate for GIDC.

J U D G M E N T

ASHOK BHUSHAN, J.

These two Appeal(s) arises out of Corporate Insolvency Resolution Process (“**CIRP**”) of the Corporate Debtor (“**CD**”) GPT Steel Industries Limited. In Company Appeal (AT) (Ins.) No.1103 of 2024 order passed by National Company Law Tribunal, Ahmedabad, Court-2 dated 08.04.2024 in IA No.461 (AHM)/2022 has been challenged. Whereas in Company Appeal (AT) (Ins.) No.1084 of 2024 order passed by National Company Law Tribunal, Ahmedabad, Court-2 dated 08.04.2024 in IA No.159/NCLT/AHM/2020 has been challenged.

2. Brief background facts giving rise to this Appeal(s) need to be noted:

- (i) The CIRP against the CD commenced on an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**”) by an order dated 02.05.2019.
- (ii) The Resolution Professional (“**RP**”) issued publication inviting the claim from creditors. In pursuance of public announcement, claim in Form-C dated 30.07.2019 submitted by Gujarat Industrial Development Corporation (“**GIDC**”), Bhuj for an amount of Rs.3,96,92,490, which was partially admitted

to the extent of Rs.1,54,35,313. The RP intimated the same to the GIDC vide letter dated 27.08.2019.

- (iii) In the CIRP of the CD, Resolution Plans were invited and Resolution Plan submitted by GP Global Energy Pvt. Ltd. (now known as Nivaya Resources Pvt. Ltd.) was approved by the Committee of Creditors ("**CoC**") with 82.41% voting on 18.02.2020. The RP filed an IA No.159 of 2020 before the Adjudicating Authority for approval of the Resolution Plan.
- (iv) The GIDC had granted 99 years lease to the CD vide License Agreement dated 22.04.2004 and Lease Deed dated 06.10.2004 with respect to Plot No.301, on which CD was functioning. The CD entered into another Agreement vide allotment letter dated 20.12.2005 with respect to adjacent Plot No.338 to 341.
- (v) On 07.04.2022, a Show Cause Notice was issued by GIDC under Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972 with respect to Plot No.301 and Plot No.338 to 341 for non-payment of rent/instalment/ revenue charged totaling to Rs.1,22,86,283/-. The RP was asked to appear and show cause on 28.04.2022. By another letter of the same date, dated 07.04.2022, GIDC issued a termination order and terminated the lease.
- (vi) The RP after issuance of Show Cause Notice dated 07.04.2022 and termination of lease by order of the same date, filed an IA No.461 of 2022, praying for setting aside the Show Cause

Notice/ termination order dated 07.04.2022. Notices were issued in the Applications and GIDC filed its reply.

- (vii) The Adjudicating Authority heard the parties and by order dated 08.04.2024 disposed of the IA No.461 of 2022, directing the RP to approach the Appellate Authority of GIDC for quashing the Notices. The Adjudicating Authority, however, in the meantime restrained the GIDC from taking any coercive action during moratorium period and status qua granted on 31.05.2022 was extended till the Appeal is filed before this Tribunal.
- (viii) By another order of the same date, i.e. 08.04.2024 in IA No.159/AHM/2020, the application was considered and Adjudicating Authority by order dated 08.04.2024 remitted the Resolution Plan back to the CoC for reconsideration. In the order dated 08.04.2024, remitting the Resolution Plan, the Adjudicating Authority noticed its directions issued in the order of the same date in IA No.461 of 2022. The Adjudicating Authority also observed in the order that RP/ Financial Creditors have to pay the dues of the GIDC.
- (ix) Aggrieved by the aforesaid orders dated 08.04.2024, these two Appeal(s) have been filed. Company Appeal (AT) (Ins.) No.1103 of 2024 has been filed by RP, whereas Company Appeal (AT) (Ins.) No.1084 of 2024 has been filed by the Asset Reconstruction Company (India) Ltd., largest Financial Creditor having largest shareholding in the CoC of the CD.

Company Appeal (AT) (Ins.) No.1103 of 2024

3. Learned Counsel for the Appellant challenging order dated 08.04.2024 passed by the Adjudicating Authority contended that Adjudicating Authority committed error in disposing of the applying directing the RP to approach the Appellate Authority of GIDC, whereas the order dated 07.04.2022 terminating the lease granted by GIDC in favour of the CD as well as the Show Cause Notice dated 07.04.2022, were issued during moratorium, which was imposed on admission of Section 7 Application filed against the CD. The action taken by the GIDC in issuing the Show Cause Notice and order terminating the lease, is hit by Section 14 of the IBC and the Adjudicating Authority committed error in not setting aside the aforesaid orders. It is submitted that in view of the moratorium imposed under Section 14, GIDC could not have taken any action terminating the Lease Deed. It is further submitted that GIDC has already submitted its claim of Rs.3,96,92,490/-, out of which claim an amount of Rs.1,54,35,313/- has already been admitted and in the Resolution Plan, the operational creditor are proposed a payment of Rs.67 lakhs with regard to its pre-CIRP dues. Hence, the termination of lease was not permissible in law. Lease hold rights are the assets of the CD, which were in possession of the CD, hence, the order passed by GIDC was in violation of Section 14 of the IBC and deserve to be set aside.

4. Learned Counsel appearing for GIDC refuting the submissions of learned Counsel for the Appellant submits that Section 14 of the IBC is not applicable, since it is the GIDC, who is the owner of the land. It is

submitted that CD having only lease hold rights, cannot claim any rights in the land, hence, GIDC was fully entitled to cancel the Lease Deed. It is submitted that Section 14, does not override inherent consideration and statutory right of the lessor. Lease termination remains valid and independent of payment under the Resolution Plan. The Adjudicating Authority had no jurisdiction to entertain the application filed by the RP. The order dated 08.04.2024 passed by Adjudicating Authority needs no interference.

Company Appeal (AT) (Ins.) No.1084 of 2024

5. Learned Counsel for the Appellant submits that the Resolution Plan has been approved by the CoC with regard to which application was filed by the RP for approval of the Resolution Plan. The lease hold rights are the assets of the CD, dealt in the Resolution Plan. In the Resolution Plan, payments to GIDC were already contemplated. There is no violation of Section 30, sub-section (2) and the Adjudicating Authority could not have directed the Resolution Plan to be returned back to the CoC for reconsideration. No findings have been returned by the Adjudicating Authority with regard to any violation of Section 30, sub-section (2). It is submitted that the RP and Successful Resolution Applicant (“**SRA**”) has also taken steps for settling the dues of GIDC, after passing of the order of Adjudicating Authority dated 08.04.2024. Returning back the Resolution Plan to the CoC deserve to be set-aside.

6. Learned Counsel for the RP supported the submission of the Appellant and submits that Resolution Plan was compliant of Section 30

sub-section (2) and the lease hold rights were assets of the CD and the SRA was to get only those rights, which the CD has in the land, i.e., lease hold rights. There was no ground made out to send back the Resolution Plan to the CoC.

7. We have considered the submissions of learned Counsel for the parties and have perused the records.

8. From the facts noticed above, there is no dispute between the parties that Resolution Plan came to be approved by the CoC with requisite majority in 17th CoC Meeting held on 10.02.2020 and Letter of Intent was issued to SRA, who has also submitted Performance Bank Guarantee. An IA was filed by the RP for approval of Resolution Plan being IA No.159 of 2020 immediately after approval of the Resolution Plan, which remained pending.

9. The Resolution Plan could not be considered at an earlier point of time on account of certain litigations with respect to eligibility of SRA. The Adjudicating Authority has also extended the time for completion of CIRP. In IA No.461 of 2022 filed by the RP challenging the order dated 07.04.2022 issued by GIDC, by which lease was terminated and further Show Cause Notice was issued for eviction of the CD. Both these orders were challenged in IA No. 461 of 2022. There is no dispute between the parties that moratorium which commenced on admission of Section 7 Application in the year 2019, continued to operate. The Resolution Plan, which was approved, for which IA No.159 of 2020 was filed, remained pending before

the Adjudicating Authority. Thus, order dated 07.04.2022 was passed during continuance of the moratorium.

10. The submission, which has been pressed by learned Counsel for the RP is that in view of the moratorium imposed, the GIDC has no jurisdiction to pass any order, cancelling the Lease Deed or proceeding to vacate the CD. Reliance has been placed on the judgment of the Hon'ble Supreme Court in **(2020) 13 SCC 208 – Rajendra K. Bhutta vs. Maharashtra Housing and Area Development Authority and Anr.** In the above case also the Maharashtra Housing and Area Development Authority has passed an order for recovery of the possession after moratorium was imposed. The Hon'ble Supreme Court in the above context had occasion to consider the scope and ambit of Section 14 of the IBC. Relevant facts have been noticed by Hon'ble Supreme Court in paragraphs 1.7, 1.9 and 1.11. The NCLT dismissed the Application filed by the RP seeking a direction to restrain MHADA from taking over possession. The Appeal to NCLAT also was dismissed, against which order, the RP filed the Appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court after considering the submissions, in paragraph 25, laid down following:

“25. There is no doubt whatsoever that important functions relating to repairs and reconstruction of dilapidated buildings are given to MHADA. Equally, there is no doubt that in a given set of circumstances, the Board may, on such terms and conditions as may be agreed upon, and with the previous approval of the Authority, hand over execution of any housing scheme under its own supervision. However, when it comes to any clash between MHADA Act and the Insolvency Code, on the plain terms of Section 238 of the Insolvency Code, the Code must prevail. This is

for the very good reason that when a moratorium is spoken of by Section 14 of the Code, the idea is that, to alleviate corporate sickness, a statutory status quo is pronounced under Section 14 the moment a petition is admitted under Section 7 of the Code, so that the insolvency resolution process may proceed unhindered by any of the obstacles that would otherwise be caused and that are dealt with by Section 14. The statutory freeze that has thus been made is, unlike its predecessor in the SICA, 1985 only a limited one, which is expressly limited by Section 31(3) of the Code, to the date of admission of an insolvency petition up to the date that the adjudicating authority either allows a resolution plan to come into effect or states that the corporate debtor must go into the liquidation. For this temporary period, at least, all the things referred to under Section 14 must be strictly observed so that the corporate debtor may finally be put back on its feet *albeit* with a new management.”

11. The Hon’ble Supreme Court allowed the Appeal and set-aside the order passed by NCLAT and directed the NCLT to dispose of the RP’s application. In paragraph 29, following was directed:

“**29.** Regard being had to the above, we allow the appeal and set aside the impugned order of Nclat. Considering that this matter has been pending for some time, we direct NCLT to dispose of the resolution professional's application (IA No. 21433 of 2018) within a period of six weeks from today.”

12. The above judgment fully supports the submission of the Appellant.

13. Learned Counsel for the GIDC has placed much reliance on the judgment of the Hon’ble Supreme Court in **(2020) 13 SCC 308 – Embassy Property Developments Pvt. Ltd. vs. State of Karnataka and Ors.** The facts of the above case has been noticed by the Hon’ble Supreme Court in paragraph-3. In the above case, the CD had a mining lease, which expired

on 25.05.2018. The RP has addressed a letter to the Chairman of the Monitoring Committee as well as the Director of Mines & Geology seeking the benefit of deemed extension of the lease beyond 25.05.2018 in terms of Section 8-A(6) of the Mines and Minerals (Development and Regulation) Act, 1957. A Writ Petition was also filed by the IRP before the High Court of Karnataka seeking a declaration. During the pendency of the litigation the Government of Karnataka passed an order rejecting the proposal for deemed extension. Initially against the said order, the IRP filed Writ Petition, which he withdrew with liberty to file a fresh petition. However, instead of filing fresh petition, the RP filed an application before the NCLT praying for setting aside the order of Government of Karnataka. The NCLT on 11.12.2018 allowed the IA and directed the Government of Karnataka to execute supplement lease deeds in favour of the CD. Aggrieved by the order, Government of Karnataka filed a Writ Petition before the High Court. The High Court set-aside the order of NCLT and directed the parties to appear before NCLT for fresh consideration. The NCLT thereafter passed an order allowing the application, against which Government of Karnataka filed a Writ Petition before the High Court, in which interim order was passed on 12.09.2019. Against the said interim order an Appeal was filed and in reference to the said, the Hon'ble Supreme Court had occasion to consider the jurisdiction of the NCLT. It is useful to notice facts as noted in paragraphs 3.9 to 3.15, which are as follows:

“3.9. By an order dated 11-12-2018, NCLT, Chennai allowed the miscellaneous application setting aside the order of the Government of Karnataka on the ground that the same was in violation of the

moratorium declared on 12-3-2018 in terms of Section 14(1) of the IBC, 2016. Consequently the Tribunal directed the Government of Karnataka to execute supplement lease deeds in favour of the corporate debtor for the period up to 31-3-2020.

3.10. Aggrieved by the order of the NCLT, Chennai, the Government of Karnataka moved a writ petition in WP No. 5002 of 2019, before the High Court of Karnataka. When the writ petition came up for hearing, it was conceded by the resolution professional before the High Court of Karnataka that the order of the NCLT could be set aside and the matter relegated to the Tribunal, for a decision on merits, after giving an opportunity to the State to respond to the reliefs sought in the miscellaneous application. It is relevant to note here that the order of the NCLT dated 11-12-2018, was passed ex parte, on the ground that the State did not choose to appear despite service of notice.

3.11. Therefore, by an order dated 22-3-2019 , the High Court of Karnataka set aside the order of the NCLT and remanded the matter back to NCLT for a fresh consideration of Miscellaneous Application No. 632 of 2018.

3.12. Thereafter, the State of Karnataka filed a statement of objections before the NCLT, primarily raising two objections, one relating to the jurisdiction of the NCLT to adjudicate upon disputes arising out of the grant of mining leases under the MMDR Act, 1957, between the State lessor and the lessee and another relating to the fraudulent and collusive manner in which the entire resolution process was initiated by the related parties of the corporate debtor themselves, solely with a view to corner the benefits of the mining lease.

3.13. Overruling the objections of the State, the NCLT, Chennai passed an order dated 3-5-2019 [Vasudevan v. State of Karnataka, 2019 SCC OnLine NCLT 681] allowing the miscellaneous application, setting aside the order of rejection and directing the Government of Karnataka to execute supplemental lease deeds.

3.14. Challenging the order [Vasudevan v. State of Karnataka, 2019 SCC OnLine NCLT 681] of the NCLT, Chennai, the Government of Karnataka moved a writ petition in WP No. 41029 of 2019 before the High Court of Karnataka. When the writ petition came up for orders as to admission, the corporate debtor represented by the resolution professional appeared through counsel and took notice and sought time to get instructions. Therefore, the High Court, by an order dated 12-9-2019 [State of Karnataka v. Tiffins Barytes Asbestos & Paints Ltd., 2019 SCC OnLine Kar 2463] adjourned the matter to 23-9-2019 and granted a stay of operation of the direction contained in the impugned order [Vasudevan v. State of Karnataka, 2019 SCC OnLine NCLT 681] of the Tribunal. Interim stay was necessitated in view of a contempt application moved by the resolution professional before the NCLT against the Government of Karnataka for their failure to execute supplement lease deeds.

3.15. It is against the said ad interim order [State of Karnataka v. Tiffins Barytes Asbestos & Paints Ltd., 2019 SCC OnLine Kar 2463] granted by the High Court that the resolution applicant, the resolution professional and the Committee of Creditors have come up with the present appeals.”

14. The Hon’ble Supreme Court in the above reference examined the jurisdiction and power of the NCLT. The Hon’ble Supreme Court after noticing the provision of Sections 18 and 15 of the IBC, made following observation in paragraphs 41 to 44:

“41. 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.

42. In fact the resolution professional in this case appears to have understood this legal position correctly, in the initial stages. This is

why when the Government of Karnataka did not grant the benefit of deemed extension, even after the expiry of the lease on 25-5-2018, the resolution professional moved the High Court by way of a writ petition in WP No. 23075 of 2018. The prayer made in WP No. 23075 of 2018 was for a declaration that the mining lease should be deemed to be valid up to 31-3-2020. If NCLT was omnipotent, the resolution professional would have moved the NCLT itself for such a declaration. But he did not, as he understood the legal position correctly.

43. After the filing of the first writ petition (WP No. 23075 of 2018), the Government of Karnataka passed an order dated 26-9-2018 rejecting the claim. Therefore the resolution professional, representing the corporate debtor filed a memo before the High Court seeking withdrawal of the writ petition “with liberty to file a fresh writ petition”. However the High Court, while dismissing the writ petition by order dated 28-9-2018 [Tiffins Barytes Asbestos & Paints Ltd. v. State of Karnataka, 2018 SCC OnLine Kar 3786] was little considerate and it disposed of the writ petition as withdrawn with liberty to take recourse to appropriate remedies in accordance with law. Perhaps taking advantage of this liberty, the resolution applicant moved the NCLT against the order of rejection passed by the Government of Karnataka. If NCLT was not considered by the resolution professional, in the first instance, to be empowered to issue a declaration of deemed extension of lease, we fail to understand how NCLT could be considered to have the power of judicial review over the order of rejection.

44. The fact that the Government of Karnataka agreed in the second writ petition, WP No. 5002 of 2019 to go back to the NCLT and contest the miscellaneous application filed by the resolution professional, would not tantamount to conceding the jurisdiction of NCLT. In any case a tribunal which is the creature of a statute cannot be clothed with a jurisdiction, by any concession made by a party.

15. Section 14(1)(d) was also pressed before the Hon'ble Supreme Court, which argument was rejected. The following was observed by the Hon'ble Supreme Court in paragraph 45:

“45. A lot of stress was made on the effect of Section 14 of the IBC, 2016 on the deemed extension of lease. But we do not think that the moratorium provided for in Section 14 could have any impact upon the right of the Government to refuse the extension of lease. The purpose of moratorium is only to preserve the status quo and not to create a new right. Therefore nothing turns on Section 14 of the IBC, 2016. Even Section 14(1)(d) of the IBC, 2016, which prohibits, during the period of moratorium, the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor, will not go to the rescue of the corporate debtor, since what is prohibited therein, is only the right not to be dispossessed, but not the right to have renewal of the lease of such property. In fact the right not to be dispossessed, found in Section 14(1)(d), will have nothing to do with the rights conferred by a mining lease especially on a government land. What is granted under the deed of mining lease in ML 2293 dated 4-1-2001, by the Government of Karnataka, to the corporate debtor, was the right to mine, excavate and recover iron ore and red oxide for a specified period of time. The deed of lease contains a schedule divided into several parts. Part I of the Schedule describes the location and area of the lease. Part II indicates the liberties and privileges of the lessee. The restrictions and conditions subject to which the grant can be enjoyed are found in Part III of the Schedule. The liberties, powers and privileges reserved to the Government, despite the grant, are indicated in Part IV. This Part IV entitles the Government to work on other minerals (other than iron ore and red oxide) on the same land, even during the subsistence of the lease. Therefore, what was granted to the corporate debtor was not an exclusive possession of the area in question, so as to enable the resolution professional to invoke Section 14(1)(d). Section 14(1)(d) may have no application to situations of this nature.”

16. The Hon'ble Supreme Court in paragraph 46 recorded its conclusion that NCLT did not have jurisdiction to entertain an application against the Government of Karnataka for a direction to execute supplemental lease deeds for the extension of the mining lease. Paragraph 46 of the judgment is as follows:

“46. Therefore, in fine, our answer to the first question would be that NCLT did not have jurisdiction to entertain an application against the Government of Karnataka for a direction to execute supplemental lease deeds for the extension of the mining lease. Since NCLT chose to exercise a jurisdiction not vested in it in law, the High Court of Karnataka was justified in entertaining the writ petition, on the basis that NCLT was *coram non judice*.

17. It was held by the Hon'ble Supreme Court in paragraph 46 as noticed above that NCLT had no jurisdiction to issue direction to Government of Karnataka to execute supplemental lease deed for the extension of the mining lease. In the above case, the issue was with regard to deemed extension, which was denied by Government of Karnataka and the application was filed by the RP seeking declaration of deemed extension and execution of supplemental lease. In the above background, this Court held that NCLT had no jurisdiction. Argument on Section 14(1) was also noticed and distinguish in the facts and terms and conditions of the lease as noticed in paragraph 45 by the Hon'ble Supreme Court. Thus, the above judgement in the present case, does not come to any aid to the GIDC to give it jurisdiction to cancel the lease and issue notice for eviction of the CD during the moratorium as noted above. The GIDC has already filed its claim, which was partially admitted to the extent of Rs.1.54 crores, which

has also been dealt in the Resolution Plan, as noticed above. The application for approval of Resolution Plan was pending consideration during which period GIDC had issued an order, terminating the lease and issuing Show Cause Notice for eviction of the CD. We are of the view that action of the GIDC by issuing Show Cause Notice of terminating the lease dated 07.04.2022 was clearly hit by Section 14 of the IBC and the Adjudicating Authority committed error in not allowing the IA, which was filed by the RP being IA No.461 of 2022. Although, interim order was passed by Adjudicating Authority for maintaining the status quo, but Adjudicating Authority directed the RP to approach the Appellate Authority of GIDC. When order passed by GIDC is clearly hit by Section 14(1), it was well within the jurisdiction of NCLT within the meaning of Section 60, sub-section (5) (c) of the IBC to entertain the application. We are not persuaded to accept the submission of GIDC that Adjudicating Authority had no jurisdiction to entertain the application filed by RP, since the leasehold rights of the CD were dealt in the Resolution Plan and the Application – IA No.461 of 2022 relates to insolvency process of CD, in which process GIDC has passed an order terminating the lease to take away the leasehold rights of CD out of insolvency process.

18. In result, we are of the view that application IA No.461(AHM)/2022 filed by the RP deserve to be allowed.

Company Appeal (AT) (Ins.) No.1084 of 2024

19. The order under challenge is order of the Adjudicating Authority remanding the Resolution Plan to the CoC. The entire consideration of the application is contained in paragraphs 15, 16 and 17 of the judgment of the NCLT, which are as follows:

“15. It is observed that the RP has not 'amended the Information Memorandum, but rightly included the nature of the asset leased which exhibits certain risks. We are not aware of the fact that the unadmitted claim was brought to the Resolution Applicant. In view of the leased ownership, if the claim is admissible for which necessary documents were not provided, it has to be paid either from the liquid funds of the Corporate Debtor by the RP who has to appear before the GIDC in person and appeal against the order and the Secured Creditors who have charge on the land leased by the GIDC are directed to pay the dues payable in case there are no sufficient funds to meet the liability and the penalty if any levied and retrieve the lease agreement before the Resolution Plan is reconsidered for submission to this Tribunal. The Resolution Applicant thus would get the possession only after the same is complied with even if the approval of the plan has been accorded by COC which is pending adjudication before this Tribunal.

16. In the judgement of the Hon'ble NCLAT in M/s. Sel Manufacturing Company Limited Vs. Punjab Small Industries & Export in CA (AT) No. 881 of 2022 passed on 20 March, 2024 wherein the Hon.'ble NCLAT held that "What rights and liability Corporate Debtor had to the land, in question, the same at best can be transferred to the Resolution Applicant in event any Resolution Plan is approved ." and in the judgement of the Hon'ble Supreme Court in Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni and Anr. in Civil Appeal Nos. 7590-7591 of 2023 wherein it was held that the "Adjudicating Authority can always take notice of any shortcoming in the resolution plan in terms of the parameters specified in sub-section (2) of Section 30 of the IBC coupled with Regulations 37 and 38 of the CIRP Regulations 2016. If any such

shortcoming appears in the resolution plan, it may send the resolution plan back to the COC for re-submission after satisfying the parameters so laid down.

17. Further, in the judgment of the Hon'ble Supreme Court in *K. Sashidhar Vs. Indian Overseas Bank and Ors.* (2019) ibclaw.in SC, wherein the Hon'ble Supreme Court held that the law is well settled that the Adjudicating Authority has ample power to remit the Resolution Plan for reconsideration by the CoC when there is a violation of Section 30(2) of the IB Code, 2016.”

20. When we look into observation of Adjudicating Authority in paragraph 15, it is clear that Adjudicating Authority has relied on its earlier order dated 08.04.2024 passed in IA No.461(AHM)/2022, where RP has been directed to appear before the GIDC. Due to the above reason, the Adjudicating Authority has remitted the Resolution Plan back to the CoC for reconsideration. Learned Counsel for the Financial Creditor is correct in its submission that Adjudicating Authority has not returned any finding that Resolution Plan submitted by SRA was not in compliance of sub-section (2) of Section 30. No such shortcomings in the Resolution Plan has been pointed out, due to which the Resolution Plan suffers from any infirmity as required by Section 30, sub-section (2). The law is well settled, the Adjudicating Authority in paragraph-17 has already noticed the judgment of the Hon'ble Supreme Court ***K. Sashidhar vs. Indian Overseas Bank and Ors.***, where it was observed that Adjudicating Authority has ample power to remit the Resolution Plan for reconsideration by the CoC when there is violation of Section 30, sub-section (2) of the IBC. There can be no quarrel to the above proposition that Resolution Plan can be sent back for reconsideration of the CoC, if there is violation of Section

30, sub-section (2). Any violation of Section 30, sub-section (2) gives ample jurisdiction to NCLT to interfere with the decision of CoC approving the Resolution Plan or remit the Plan for making it compliant with Section 30, sub-section (2). But in the present case, there is no finding by the Adjudicating Authority with regard to non-complaint of Resolution Plan as per Section 30, sub-section (2). Without recording a finding of non-compliance of Section 30, sub-section (2), the Resolution Plan could not have been returned back to the CoC for reconsideration. Hence, we are of the view that order passed by Adjudicating Authority on 08.04.2024 in IA 159 of 2020 is also influenced by its earlier order passed by the Adjudicating Authority on 08.04.2024 in IA No.461 of 2022. We have already taken the view that order passed by Adjudicating Authority in IA No.461(AHM)/2022 is unsustainable. We, thus, are of the view that order passed by NCLT in IA No. 159/NCLT/AHM/2020 is also unsustainable.

21. In result, both the Appeal(s) are allowed in following manner:

- (1) Company Appeal (AT) (Ins.) No.1103 of 2024 is allowed.
 - Order dated 08.04.2024 in IA No.461(AHM)2022 is modified by allowing IA No.461(AHM)2022 and quashing the termination order issued by GIDC as well as Show Cause Notice dated 07.04.2022.
- (2) Company Appeal (AT) (Ins.) No.1084 of 2024 is allowed.
 - Order dated 08.04.2024 passed by the Adjudicating Authority in IA No.159/NCLT/AHM/2020 is set-aside.

- IA No.159/NCLT/AHM/2020 is revived before the Adjudicating Authority for fresh consideration in accordance with law. The application being pending for more than four years, the Adjudicating Authority shall endeavour to dispose of the application – IA No.159/NCLT/AHM/2020 at an early date.

Pending IAs, if any, are also disposed of. Parties shall bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

NEW DELHI

21st March, 2025