

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,

NEW DELHI

Company Appeal (AT) (Ins.) No. 779 of 2022

IN THE MATTER OF:

M/S ELICA HOSPITALITY LLP

Through Partner

Having its Registered Address At:

104, 1st Floor,

Goldmine Jewel Complex,

Beside D-Mart, Sector – 26,

Gandhinagar Gujarat – 382 028

Mob: +91 9991168994

Email: jaitegan.law@gmail.com

...Appellant

Versus

**RAJASTHAN STATE INDUSTRIAL DEVELOPMENT
AND INVESTMENT CORPORATION LTD.**

Through Managing Director

Having Its Registered Address At:

Udyog Bhawan, Tilak Marg, Jaipur,

Rajasthan – 302 005,

Email: riico@riico.co.in

...Respondent No. 1

MR. AMIT JAIN

Resolution Professional of M/s Neesa Leisure Limited

08th Floor, Building No. 10, Tower-C, DLF Cyber City,

Phase – 2, Gurugram, Haryana – 122 002.

Email: rpneesa@kpmg.com

...Respondent No. 2

Present:

For Appellant: Mr. Udian Sharma, Ms. Vanshita Gupta, Advocates

For Respondent: Mr. Sumant Batra, Ms. Apoorva Choudhury, Adv. for R2

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This appeal is directed against the order dated 31.03.2022 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad, Court No. II) by which an application bearing I.A. No. 676/AHM/2021 filed by the Appellant in CP (IB) 127/AHM/2017 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (In short 'Code') seeking certain reliefs against the Rajasthan State Industrial and Investment Corporation (RIICO) has been dismissed.

2. Briefly stated, RIICO allotted institutional land admeasuring 5,740 square meters situated on plot no. CC-11, Industrial Area Neemrana, Alwar to Neesa Leisure Ltd. vide allotment letter dated 11.07.2007 and executed a lease deed on 21.06.2008. The RIICO also issued no objection certificate (NOC) to the Neesa Leisure Ltd. (Corporate Debtor) on 19.07.2008 for creation of equitable mortgage over the land to avail financial assistance.

3. The Neesa Leisure Ltd. (Corporate Debtor) availed various loan facilities from various Banks and developed a hotel under the name and style of 'Cambay Sapphire' over the land under the lease.

4. RIICO vide its letter dated 01.12.2015, cancelled the lease deed. The Corporate Debtor challenged the said order by way of an appeal provided under Rule 24(2) of the RIICO Disposal of Land Rules, 1979 before the Managing Director of RIICO which was dismissed on 19.05.2017.

5. A second appeal filed by the Corporate Debtor against the order dated 19.05.2017 before the Chairman of RIICO was also dismissed on 16.03.2018.

6. The account of the Corporate Debtor in the meantime was declared as Non-performing Asset (NPA) and proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) were initiated. Symbolic possession was taken by the secured creditors on 09.03.2017. Axis Bank executed an assignment agreement in favour of Asset Care & Reconstruction Enterprises Ltd. (ACRE) on 27.03.2017 who sent a letter on 08.06.2018 to the unit head of RIICO for restoration of allotment, cancelled on 01.12.2015. The said letter was rejected on 27.06.2018 and ACRE challenged that order dated 27.06.2018 by way of an appeal before the Managing Director, RIICO which was dismissed on 03.06.2019.

7. The second appeal filed by ACRE against the order dated 03.06.2019 before the Chairman, RIICO which was dismissed on 30.07.2021.

8. ACRE filed an application under Section 7 of the Code before the Adjudicating Authority against the Corporate Debtor which was admitted on 26.04.2019. R.D. Chaudhary was appointed as IRP. However, in the second meeting of the Committee of Creditors (CoC) held on 24.10.2019. R.D. Chaudhary was replaced by Mr. Amit Jain who was appointed as the RP and was confirmed by the Adjudicating Authority on 17.12.2019. Various resolution plans were submitted by the prospective resolution applicants which were discussed and negotiated in the 12th, 13th and 14th CoC meetings but in the 14th CoC meeting, held on 19.10.2020, the CoC approved the final

revised resolution plan submitted by Express Resorts and Hotels Limited (Express) on 24.10.2020 by a majority of 67.85%. The RP has allegedly filed an application bearing I.A. No. 851 of 2020 before the Adjudicating Authority under Section 30(6) of the Code for approval of the Resolution Plan submitted by Express Resorts which is pending adjudication. The RP has allegedly received a notice dated 11.08.2021 on 17.08.2021 issued by the RIICO to handover the premises of hotel within 30 days which was challenged by way of Writ Petition (C) No. 9955 of 2021 before the High Court of Rajasthan, Jaipur and also filed I.A. No. 646 of 2021 under Section 60(5) of the Code. The writ petition was disposed of by the High Court on 18.09.2021 giving liberty to the RP to approach the Adjudicating Authority to protect the property in question.

9. It is pertinent to mention that the application bearing I.A. No. 646/AHM/2021, filed by the RP in which various prayers were made and Section 14(1)(d) of the Code was invoked. The said application was dismissed by the same impugned order dated 31.03.2022 against which the RP filed an appeal bearing CA (AT) (Ins) No. 510 of 2022 which was heard and reserved earlier than the present appeal.

10. In the present appeal, which has arisen from the dismissal of an application bearing I.A. No. 676/AHM/2021 filed by the present Appellant. The Appellant has submitted that it had entered into a Management Contract Agreement/Lease Agreement dated 01.04.2017 with the Corporate Debtor as per which the possession of the hotel handed over to it for its operation for a period of seven years commencing from 01.04.2017 to 31.03.2024. It is

alleged that RIICO had taken over the possession of the property in question on 20.09.2021. As a matter of fact, the Appellant has prayed for repossession.

11. On the other hand, RIICO has taken a stand that the Appellant has no locus standi to file application because RIICO has never entered into an agreement with the Appellant and that the action taken by RIICO was against the Corporate Debtor for the breach of terms and conditions of the lease deed and if the Appellant was aggrieved of loss caused then it may register its claim with the RP but cannot claim its damages from a third party i.e. from RIICO for the breach of contract by the Corporate Debtor and that under the lease deed, Corporate Debtor was given right of possession of the demise premises who had never approached RIICO for taking permission for creating third party rights. The application was dismissed by the impugned order in which it has been observed that the agreement was entered into by the Corporate Debtor with the Appellant after more than a year from the date of cancellation of allotment on 01.12.2015. It has been held that the act of the Appellant, entering into such an agreement and allegedly investing huge amount without any due diligence with regard to status of the property cannot be accepted as defence and that the Appellant might have a grievance against the Corporate Debtor but cannot seek repossession of the demise premises which has been taken into possession lawfully after termination of lease long back on 01.12.2015.

12. Although, Counsel for the Appellant has vehemently reiterated that the stand taken by the Appellant before the Adjudicating Authority but the fact remains that on 01.12.2015, after the cancellation of the lease deed, the

Corporate Debtor had no right or interest in the demised premises much less for the purpose of creating a third-party interest by entering into an agreement of management with the Appellant on 01.04.2017. As a matter of fact, the Appellant is to sink or swim with the Corporate Debtor. Since, the Corporate Debtor, in its appeal, has not been found entitled to the protection of Section 14(1)(d) of the Code, therefore, there is no merit in the present appeal as well.

13. Hence, in view of the aforesaid discussion, we do not find any reason to interfere in the well-considered order passed by the Adjudicating Authority, therefore, the present appeal is dismissed. No costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Kanthi Narahari]
Member (Technical)

New Delhi

08th December, 2022.

Sheetal