

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH - I
KOLKATA**

**I.A. (IB) No.164 of 2021
in
C.P. (IB) No.61/KB/2018**

In the matter of:

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Jayanta Kumar Panja

... Operational Creditor

Versus

Fort Gloster Industries Limited [CIN:U17232WB1890PLC000627] having its registered office at 21, Strand Road, Kolkata 700001, West Bengal.

... Corporate Debtor

And

In the matter of:

Orbit Udyog Private Limited [CIN:U24231WB1990PTC093607] having its registered office at 707 Central Plaza, 2/6, Sarat Bose Road, P.S Ballygunge, Kolkata – 700020, West Bengal.

...Applicant

Versus

1. **Fort Gloster Industries Limited** [CIN: U17232WB1890PLC000627] having its registered office at 21, Strand Road, Kolkata 700001, West Bengal;
2. **Mr. Bijay Murmuria, Resolutional Professional** of the Corporate Debtor having its office at Sumedha Fiscal Services Limited, 8B, Middleton Street, 6A, Geetanjali, Kolkata – 700071;
3. **Committee of Creditors through Stressed Assets Stabilization Fund**, having its office at 3rd Floor, IDBI Tower, WTC Complex, Cuffee Parade, Mumbai – 400005.

...Respondents

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH – I

I.A. (IB) No.164 of 2021 in C.P. (IB) No.61/KB/2018
Orbit Udyog Private Limited v. Fort Gloster Industries Limited & Ors

Coram:

Shri Rajasekhar V.K. : **Member (Judicial)**
Shri Balraj Joshi : **Member (Technical)**

Appearances (via video conferencing):

For applicant in I.A. No.164 of 2021 : Ms. Urmila Chakraborty, Advocate
: Mr. B.N. Joshi, Advocate
For Respondent No.1 : Mr. Shaunak Mitra, Advocate

Date of hearing: 31 January, 2022

Order pronounced on: 10 February, 2022

ORDER

Per Rajasekhar V.K., Member (Judicial)

1. This court convened *via* video conferencing.
2. This is an Interlocutory Application filed under section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) by Orbit Udyog Private Limited (*'Applicant'*), having its registered office at 707 Central Plaza, 2/6, Sarat Bose Road, P.S Ballygunge, Kolkata – 700020, West Bengal., against Fort Gloster Industries Limited (*'Corporate Debtor'*) [CIN: U17232WB1890PLC000627] having its registered office at 21, Strand Road, Kolkata 700001, West Bengal praying for as follows:
 - a. Direction on the Resolution Professional of the Corporate Debtor to deliver the machineries to the Applicant as described in paragraph IV (1) of the Application;

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH – I**

*I.A. (IB) No.164 of 2021 in C.P. (IB) No.61/KB/2018
Orbit Udyog Private Limited v. Fort Gloster Industries Limited & Ors*

- b. Direction on the Resolution Professional of the Corporate Debtor to allow lift/sell the machineries of the Applicant as described in paragraph IV (1) of the Application;
- c. Declaring that the machineries as described in paragraph IV (1) of the Application does not get hit by moratorium.

The Ld. Counsel appearing on behalf of the Applicant submits as follows:

- 3. In 1995, the Corporate Debtor had taken machineries on lease finance from NICCO UCO Alliance Credit Limited ('*NICCO*'). Subsequently, in 2003 the ownership of the same machineries was transferred to the Applicant at residual value¹. The details of the machines are as follows:
 - i. Mail Armouring Line and Wire Drawing Machine.
 - ii. One No. Sioplas Line for manufacturing cross linked polythene covered cable along with welding machine.
- 4. After the payment of the consideration amount to NICCO, the Applicant became the sole owner of the said machineries. On 23 December, 2003 the Applicant received a letter from NICCO stating to take delivery of the said machineries from Corporate Debtor². Since the lease has expired long ago, the Corporate Debtor was under obligation to hand over the actual and physical possession of the machineries to the Applicant.
- 5. Thereafter, the Applicant in its letter dated 17 April, 2014 requested the Corporate Debtor to hand over the possession of such machineries to the Applicant. The machineries have been lying at the factory premise of the Corporate Debtor since 2003 and its value is diminishing with passage of time³.

¹Bill No. NUACL/426/03 and NUACL/427/03 dated 18 December, 2003, Pages 20 -21 of the Petition.

²Annexure – B, Page 23 of the Petition

³Annexure – C, Page 24 of the Petition

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH – I

I.A. (IB) No.164 of 2021 in C.P. (IB) No.61/KB/2018
Orbit Udyog Private Limited v. Fort Gloster Industries Limited & Ors

6. The Applicant issued several letters dated 10 January 2017, 25 August, 2017 and 20 July 2018 to the Corporate Debtor and the same were duly received by the Corporate Debtor. No steps were taken by the Corporate Debtor to deliver the machineries to the Applicant even after several requests.
7. In September, 2018, the Applicant came to know that the Corporate Debtor has gone under Corporate Insolvency Resolution Plan (**'CIRP'**) and is under the management of the Interim Resolution Professional (**'IRP'**). Thereafter, the Applicant issued a letter dated 10 September, 2018 to the IRP requesting to deliver the said machines but no action was taken by the IRP.
8. On 16 October, 2019 the Applicant again issued the notice to the Resolution Applicant (**'RP'**) requesting to allow the Applicant to lift/sell the machines lying at the premises of the Corporate Debtor. In pursuance of such notice, the RP replied to the Applicant *vide* e-mail dated 14 November, 2019 stating that the RP is going through the details, records and physical inventory of the Corporate Debtor. Further, as the implementation of the Resolution Plan is in progress the RP would revert back to the Applicant shortly.
9. On receipt of the purported e-mail, the Applicant *vide* letter dated 16 November, 2019 replied to the RP informing him about the purchase of the machines from the erstwhile lessor, NICCO *vide* Bill Nos. NUACL/426/03 and NUACL/427/03 dated 18 December, 2003.
10. On 24 December, 2019, the RP through his letter intimated the Applicant about the approval of the Resolution Plan by this Adjudicating Authority. The RP also stated that no proper claim has been lodged by the Applicant towards any lease rent outstanding.
11. The Applicant submits that till the Financial Year 2014 -2015 the Applicant at its own cost has paid the insurances for the machineries⁴.

⁴Annexure – H, Pages 34 - 71 of the Petition.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH – I

I.A. (IB) No.164 of 2021 in C.P. (IB) No.61/KB/2018
Orbit Udyog Private Limited v. Fort Gloster Industries Limited & Ors

12. The Applicant is the exclusive owner of the said machines and the Corporate Debtor is illegally and wrongfully retaining the possession of the machineries. The values of the machineries are diminishing with time and by the time Applicant gets back the possession of the machineries; it will be reduced to scrap value.
13. As per Section 18(1) of the Code the IRP shall take control and custody of any asset over which the Corporate Debtor has ownership rights as recorded in the balance sheet or information utility or the depository of securities or any registry that records ownerships. The said machineries are not the assets of the Corporate Debtor and is being wrongly held by the RP.

The Ld. Counsel appearing on behalf of the Respondent No. 1 submits as follows:

14. The Financial Statement clearly provides that the Applicant was an Associate Company of the Corporate Debtor during the year 2017-2018 and was in a position to exercise significant influence upon the Corporate Debtor. Further, as per the Financial Statement for the year 2001-2002 the Applicant is the related party of the Corporate Debtor.
15. Mr. Shree Kuman Bangur and his relatives and associates (***'S K Bangur Group'***) were the erstwhile promoters of the Corporate Debtor and they hold majority of shares in the Applicant Company. Further, Mr. Shree Ram Poddar and Mr. Prakash Chand Maloo were part of the suspended Board of Directors of the Corporate Debtors and are also the directors of the Applicant Company. Mr. Shree Ram Poddar was also the Key Managerial Personnel of the Corporate Debtor at the material time, i.e., for the Financial Year 2017-2018.
16. This Adjudicating Authority has approved the Resolution Plan submitted by Gloster Limited, the Successful Resolution Applicant on 27 September, 2019.
17. The Corporate Debtor had sought to purchase the machineries on lease finance which is similar to hire purchase. The Respondent No. 1 also submits that in

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH – I**

*I.A. (IB) No.164 of 2021 in C.P. (IB) No.61/KB/2018
Orbit Udyog Private Limited v. Fort Gloster Industries Limited & Ors*

case of lease finance, the purchase price along with interest on deferred payment of the machinery is bifurcated into a number of lease Instalments and a nominal residuary instalment and the purchaser who is described as the lessee has a right to purchase the machinery upon payment of nominal residuary instalment. It is significant that the Corporate Debtor had made payments of all the lease instalments, that is to say, almost the entire price of the machinery. Further, S K Bangur group, the erstwhile promoters of the Corporate Debtor instead of causing payment of the nominal residuary instalment by the Corporate Debtor, fraudulently caused the applicant to pay the nominal residuary instalment in an attempt to obtain unjust enrichment.

18. The Corporate Debtor was declared as a sick industrial company in the year 2001 and the erstwhile promoters of the Corporate Debtor in an attempt to obtain unjust enrichment fraudulently caused the applicant to make payment of the last instalment and thereby sought to defraud the Corporate Debtor.
19. With respect to the letter dated 17 December, 2003 it appears that the erstwhile promoters of the Corporate Debtor, acting on behalf of the Corporate Debtor, nominated the Applicant to obtain delivery of the machineries and instructed the financier to raise the invoice upon the Applicant. The said letter clearly shows that the applicant had sought to purchase the said Machinery as a nominee of the Corporate Debtor. Hence, the Applicant purchased and/or acquired the machineries merely as a nominee of the Corporate Debtor and held the legal title to the machineries for the benefit of the Corporate Debtor.
20. The Respondent No.1 also submits that the Applicant had paid only an aggregate of Rs.3,00,000/- (Rupees Three Lakh only) to the financier for purchasing the machineries and the said sum forms a very small part of the actual value of the machineries and is much less than the scrap value.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH – I**

*I.A. (IB) No.164 of 2021 in C.P. (IB) No.61/KB/2018
Orbit Udyog Private Limited v. Fort Gloster Industries Limited & Ors*

21. On 27 September 2019, this Adjudicating Authority has approved the Resolution Plan submitted by Gloster Limited for revival of the Corporate Debtor. Clause 32 Section VI of the Resolution Plan envisages that all contracts between the Corporate Debtor and its related parties shall stand terminated with immediate effect without any further act, deed or instrument and all liabilities and obligations of the Corporate Debtor to such related parties shall be discharged and permanently extinguished. Hence, the claim of the Applicant against the Corporate Debtor stands extinguished. The Applicant has no lawful and legitimate claim against the Corporate Debtor.

Analysis and Findings

22. Lease finance is a branch of Lease where the lessor buys the assets for the lessee and rents it to them for an agreed time period. Whereas, according to the Hire Purchase Act, 1972, hire-purchase is a vehicle of instalment credit, where an owner lets goods out on hire and further agrees that the hirer (purchaser) may either return the goods and terminate the hiring or elect to purchase the goods upon the payment of agreed periodic instalments but in lease finance the lessor (financer) provide the funds, acquires the title to the equipment and allows the lessee to use for an agreed period. The concept of lease finance and hire-purchase falls under the umbrella of Assets Finance Services but arises from two separate transactions having different checkboxes. Hence, the contention by the Respondent No.1 that the lease finance is similar to hire purchase does not hold water.
23. Further, Section 60 (5) of the Code enables filing of (a) an application by or against the Corporate Debtor; (b) claim made by or against the Corporate Debtor, including claim by or against its subsidiaries, if any, situated in India; and (c) any question of law or fact or priorities arising with regard to insolvency resolution or liquidation of the Corporate Debtor under the Code, before this Adjudicating Authority.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH – I**

*I.A. (IB) No.164 of 2021 in C.P. (IB) No.61/KB/2018
Orbit Udyog Private Limited v. Fort Gloster Industries Limited & Ors*

24. Before delving further into the contentions put forth by the parties, it is pertinent to note that the Applicant did not take any necessary steps to get the possession of the machineries, irrespective of gaining the title of ownership of the machineries back in 2003. Further, as per the record there was neither any continual pursuit by the Applicant for the possession of the machineries nor has the Applicant taken any recourse under the existing laws. Even during the CIRP the Applicant did not take satisfactory steps to take possession of the machineries except sending letters to the IRP and RP, to which the RP had duly replied on 24 December, 2019, stating that no claim had been lodged by the Applicant during the CIRP. In any case, to a specific query from the Bench, there has been no explanation for not preferring the present application even during the CIRP, in case the Applicant was aggrieved by the inaction as the part of the RP. Hence, the Application is barred by limitation.
25. In the lights of the above *I.A. (IB) No.164 of 2021 in C.P. (IB) No.61/KB/2018 is dismissed*. The Petitioner is, however, at liberty to pursue other available remedies under the law.
26. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

The order is pronounced on February 10, 2022.

Safura A., LRA