

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal(AT)(CH)(Ins) No.301/2022 & IA No.626/2022
(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)
(Arising out of the Impugned Order dated 01.06.2022 in
IA/1275/IB/2020 in IBA/1099/2019 along with IA/702(CHE)/2020 in
IA/1275/IB/2020 in IBA/1099/2019 along with IA/738(CHE)/2021 in
IBA/1424/2019 along with IA(IBC)1082(CHE)/2021 in IBA/1424/2019
passed by the ‘Adjudicating Authority’ (National Company Law
Tribunal, Division Bench – II, Chennai)

In the matter of:

Regen Infrastructure and Services Private Limited V Regen Powertech Private Limited & 2 Ors.	... Appellant / Applicant ... Respondents
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Present :

For Appellant	:	Mr. Gaurav Kumar, Practising Company Secretary
For Respondents	:	Mr. Melvyn Fernandes, Advocate For Successful Resolution Applicant

ORDER

(VIRTUAL MODE)

17.08.2022: According to the Appellant / Applicant, the instant Company Appeal (AT)(CH)(Ins) No.301/2022 is filed before this ‘Tribunal’ as an ‘Aggrieved person’, on being dissatisfied, with the ‘impugned order’ of ‘dismissal’, passed by the ‘Adjudicating Authority’ (National Company Law Tribunal, Division Bench – II, Chennai) in IA(IBC)1082(CHE)/2021 in

IBA/1424/2019 dated 01.06.2022, whereunder it was observed that the ‘Adjudicating Authority’ had approved the ‘Resolution Plan’, in respect of ‘Regen Powertech Private Limited on 01.02.2022, in the event of approval of the ‘Resolution Plan’, all the prayers sought are turned ‘infructuous’ and ‘nothing survives’ in the Application and ‘resultantly dismissed’ the IA(IBC)1082(CHE)/2021 in IBA/1424/2019 along with the other Applications as ‘infructuous one’.

It is not in dispute that on 01.02.2022, the ‘Resolution Plan’ was approved and the ‘Reliefs’ sought for in the IA(IBC)1082(CHE)/2021 in IBA/1424/2019 (filed under Section 25(1) r/w 60 (5) of the Insolvency and Bankruptcy Code, 2016) is 1) To direct the ‘Resolution Professional’ of the 1st Respondent not to terminate the ‘Long Term Lease’ and hand over the ‘Demised Properties’ covered in ‘Lease Deeds’ dated 28.03.2017 and 2) in directing the ‘Resolution Professional’ of the 1st Respondent not to terminate the ‘Long Term Lease’ and to hand over the ‘Demised Properties’ covered in ‘Lease Deeds’ dated 05.06.2017 to enable the ‘RISPL’ to continue with its business operations, etc.

Before the ‘Adjudicating Authority’, the 1st Respondent in its ‘Reply’ to IA(IBC)1082(CHE)/2021 in IBA/1424/2019 had averred that the question of any ‘Termination of Lease’ would arise only as per the ‘Terms of Lease’

and there could not be any ‘injunction’ sought, at this stage, as there was nothing ever averred in the Application is that ‘RPPL’ was seeking to ‘Terminate the Lease’.

It cannot be ignored that the ‘RPPL’ had moved before the ‘Tribunal’ by filing a necessary ‘Application’ under Section 45 read with Section 49 of the Insolvency & Bankruptcy Code, 2106 to set aside the ‘Leases’ itself along with substations Assets and admittedly, those Applications are pending before the ‘Adjudicating Authority’ (National Company Law Tribunal, Division Bench – II, Chennai) for consideration.

The other stand taken by the 1st Respondent / Resolution Professional of the Regen Powertech Private Limited before the ‘Adjudicating Authority’ (National Company Law Tribunal, Division Bench – II, Chennai) was that some ‘Leases’ of the ‘Properties’ cannot prevent the owner to deal with the ‘Property’.

The ‘main remedy’ was to be pursued by the RPPL was in terms of the ingredients of Section 45 of the Insolvency & Bankruptcy Code read with Section 49 of the Insolvency & Bankruptcy Code.

It is to be pointed out that the Appellant / Applicant, when it seeks a claim under the ‘Lease Deed’, expected to know the precise amount due to be paid, with a view to avoid consequences for non-payment of the ‘Lease

Rentals’, especially, when a ‘Corporate Insolvency Resolution Process’ (CIRP) had commenced two years before and thereafter. It is not open to the Appellant / Applicant to take a different stand in making an endeavour to seek for the invoices, as regards the payment of ‘Lease Rent’. In any event, a ‘Lessee’ of a property is not entitled in ‘Law’ to prohibit a ‘Owner’ from dealing with the ‘Property’ as he / it likes, so desires.

There is no ‘Power’ or ‘Provision’ conferring upon the ‘Adjudicating Authority’ (National Company Law Tribunal, Division Bench – II, Chennai) to order continuation of ‘Lease’ as both RPPL and RISPL are undergoing Corporate Insolvency Resolution Process (CIRP).

It cannot be again said that the well settled principle in ‘Law’ is that any Management decision on encumbrance of property, during the period of the ‘CIRP’, vests with the ‘Committee of Creditors’ and also that this ‘Tribunal’ upon ‘Hearing’ the Learned Counsel for the Appellant / Applicant in the instant Company Appeal (AT)(CH)(Ins) No.301/2022, comes to an irresistible and inevitable conclusion, that the present Appeal is an ‘otiose’ and premature one, because of the fact that the Resolution Plan got approved, admittedly, then IA(IBC)1082(CHE)/2021 in IBA/1424/2019 requires no adjudication in the considered opinion of this ‘Tribunal’.

Added further, in the Interlocutory Application No.IA(IBC)1082(CHE)/2021 in IBA/1424/2019 before the ‘Adjudicating Authority’ (National Company Law Tribunal, Division Bench – II, Chennai), there was no plea or submissions have been pointed out to the fact that ‘RPPL’ was endeavouring to effect ‘Sale of the Properties’ mentioned in the Application. Looking at from any angle, the instant Company Appeal (AT)(CH)(Ins) No.301/2022 sans merits.

In fine, the Company Appeal (AT)(CH)(Ins) No.301/2022 is **‘dismissed’**. No **Costs**. The connected IA No.626/2022 (‘Stay’ Application) is **‘dismissed’**. No **Costs**.

[Justice M. Venugopal]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

ghk/tm