

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Comp. App. (AT) (Ins.) No. 1004 of 2021**

[Arising out of Order dated 12.04.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court No.I in M.A. No. 3691 of 2019]

In the matter of:

Maharashtra Industrial Development Corporation **....Appellant**

Vs.

Santanu T. Ray, Resolution Professional & Anr. **...Respondents**

For Appellant: Mr. Chetan Kapadia, Mr. Rohan Agrawal and Bhavana Dubepati, Advocates.

For Respondents: Mr. Udit Gupta, Mr. Rohit Gupta and Rubina Khan, Advocates for R-1 Advocate Usha Singh and Advocate Shahrukh Inam, for R-2.
Mr. Bishwajit Dubey, Ms. Srideepa Bhattacharyya, Ms. Neha Shivhare, Advocates for Intervenor – CoC.

JUDGMENT

(4th May, 2022)

Ashok Bhushan, J.

1. This Appeal has been filed against the order dated 12.04.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court No. I in M.A No. 3691 of 2019. Brief facts of the case giving rise to this Appeal are:-

The Appellant- 'Maharashtra Industrial Development Corporation' allotted Plot No. B-11 to the Corporate Debtor on 23.12.2014. A Lease Agreement was executed between the Appellant and the Corporate Debtor on

20.01.2015 whereunder license was granted in respect of the plot for two years subject to condition that it must complete 20% construction within two years i.e. from 20.01.2015 till 19.01.2017. Tri-partite Agreement was executed between the Corporate Debtor, the Appellant and DHFL, whereunder the Plot was mortgaged to DHFL and loan amount of Rs.7,22,80,214/- was disbursed to the Corporate Debtor. A Notice dated 01.11.2018 was issued by the Appellant to the Corporate Debtor asking it to show cause as to why action as provided in Clause 5(b) (i) of the Agreement to lease should not be taken against it since the Corporate Debtor has not completed the construction work of the factory building. By order dated 11.03.2019, Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor on an Application filed by 'Kay Bee Foundry Services Private Limited'- (Operational Creditor). On 29.01.2019, the Appellant had issued a letter to DHFL informing that the Corporate Debtor had committed the breach and the Appellant would be taking possession of the plot. The Respondent No.2- 'Asset Reconstruction Company (India) Limited' assignee of the DHFL filed Writ Petition No. 2470 of 2019 challenging the letter dated 29.01.2019 in the Bombay High Court which petition was dismissed on 04.11.2019 holding that lease was liable to be revoked if the Corporate Debtor had committed default in complying with the terms of the lease. On 08.11.2019, the Appellant issued a Notice to the Corporate Debtor cancelling the Lease Agreement dated 20.01.2015 directing the license holder to vacate the plot. Notice communicated that Authorised Officer will visit the plot on 14.11.2019 to take possession. The Resolution Professional filed an M.A No. 3691 of 2019 before the Adjudicating Authority praying for following reliefs:-

- “a. To quash and set aside the notice dated 8.11.2019 issued by the Respondent as null and void and to restrain the Respondent from taking any steps in further of the said notice dated 8.11.2019;*
- b. To direct the Respondent to restrain from terminating the lease agreement dated 21.1.2015 till the completion of the corporate insolvency resolution process or to take any further step in this respect;*
- c. To direct the Respondent to extend their co-operation in concluding the corporate insolvency resolution process in terms of the Insolvency and Bankruptcy Code, 2016;*
- d. Till the disposal of this MA, to pass an order directing and injuncting the Respondent from taking possession of the said leasehold land till such time this MA is disposed of.*
- e. For interim and ad interim orders in terms of prayers (1) to (3) above.”*

2. The Adjudicating Authority heard the parties on MA 3691 of 2019 and by impugned order, allowed the prayer (a) in the Application. Following is the operative portion of the order in paragraph 13:-

“13. In view of the above discussion the Application is accordingly allowed. Prayer (a) is allowed. As far as prayer (b) to (d) are concerned, R1 shall not take any coercive steps till the Application for approval of the Resolution Plan (MA No. 3960 of 2019) is heard by this Bench. List MA No. 3960 of 2019 forthwith for hearing.”

3. The Appellant aggrieved by the impugned order has come up in this Appeal.

4. Learned Counsel for the Appellant submits that the Corporate Debtor having violated the terms and conditions of Lease Agreement had every right to cancel the Lease Agreement. A Notice dated 08.11.2019 cancelling the lease was well within the power of the Appellant. It is submitted that the Notice was already issued by the Appellant on 01.11.2018 asking the Appellant to show cause as to why action should not be taken to repossess the plot. It is submitted that the proceeding for cancellation of the lease was initiated prior to the commencement of the CIRP. It is submitted that the Adjudicating Authority has no jurisdiction to set aside the Notice dated 08.11.2019 cancelling the Lease Agreement. The cancellation of the lease by the Appellant is not on account of initiation of CIRP but on the ground of breach of terms and conditions by the Corporate Debtor which cannot be subject matter of an Application before the Adjudicating Authority. The decision to terminate the lease of the Corporate Debtor fell outside the purview of the Code and was a question within the public law domain. The Resolution Professional could not implicate the plot of the Appellant in the Resolution Plan without the consent of the Appellant. The Adjudicating Authority committed error in holding that the Appellant despite being owner of the plot could not take possession even though conditions of lease have been violated by the Corporate Debtor.

5. Learned Counsel appearing for the Resolution Professional refuting the submission of the Counsel for the Appellant contends that after initiation of the CIRP on 11.03.2019, 'Moratorium' was kicked in which prohibited the

Appellant from taking possession of the plot which was in the possession of the Corporate Debtor by virtue of lease granted by the Appellant. During period of 'Moratorium', Appellant could not have initiated or continued any proceeding regarding cancellation of the lease. The order of the Adjudicating Authority quashing the Notice dated 08.11.2019 is in accordance with Section 14 of the Code. The Resolution Professional was entitled to protect the possession of the Corporate Debtor on the plot, in question, for which the Application has rightly been allowed by the Adjudicating Authority by the impugned order. It is submitted that the Resolution Plan has already been approved by the Committee of Creditors (CoC) and is pending consideration before the Adjudicating Authority.

6. We have heard learned counsel for the parties and perused the record.

7. Learned Counsel for the parties has relied on various judgments of the Hon'ble Supreme Court in support of their respective submissions which shall be referred to while considering the submission in detail.

8. From the submissions of the Counsel for the parties, following questions arise for consideration in this Appeal are:-

- (i) Whether after initiation of CIRP and enforcement of 'Moratorium' under Section 14, the Appellant could have cancelled the lease which was earlier granted in favour of the Corporate Debtor and take possession of the plot in question during CIRP?

- (ii) Whether the Adjudicating Authority had no jurisdiction to entertain MA No.3691 of 2019 praying for quashing the Notice dated 08.11.2019?
- (iii) Relief, if any, to which the Appellant is entitled in this Appeal?

9. The question (i) and (ii) being inter-related are taken together. One of the questions to be answered in this Appeal is as to whether after enforcement of 'Moratorium' under Section 14 of the Code by initiation of the CIRP on 11.03.2019, the Appellant had any right to cancel the lease of the Corporate Debtor and take possession of the plot in question.

10. Section 14 of the Code is as follows:-

“14. Moratorium. -

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force,

a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;]

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;]

(b) a surety in a contract of guarantee to a corporate debtor.]

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

11. The present is a case where effects and consequences of Section 14(1)

(a) and (d) are to be considered. What is the effect of ‘Moratorium’ came to be

considered before the Hon'ble Supreme Court in several cases? We may notice the judgment of the Hon'ble Supreme Court in **“Rajendra K. Bhutta vs. Maharashtra Housing and Area Development Authority and Another- (2020) 13 SCC 208”**. In the above case, the CIRP against the Corporate Debtor was initiated on 24.07.2017. After imposition of the Moratorium under Section 14, a termination notice to the Corporate Debtor stating that upon expiry of 30 days from the date of receipt of the notice, the joint development agreement would stand terminated issued by Maharashtra Housing and Area Development Authority (MHADA). An Application was filed before the NCLT to restrain MHADA from taking over possession of the land till completion of the CIRP which was dismissed by the NCLT. The relevant facts have been noticed in the judgment in paragraphs 1.7 and 1.9:

“1.7. On 12.01.2018 - after the imposition of the moratorium period under Section 14 of the Code - MHADA issued a termination notice to the Corporate Debtor stating that upon expiry of 30 days from the date of receipt of the notice, the Joint Development Agreement as modified would stand terminated. It was further stated that the Corporate Debtor would have to handover possession to MHADA, which would then enter upon the plot and take possession of the land including all structures thereon.

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1.9. On 01.02.2018, the Appellant filed M.A. No. 96 of 2018, seeking a direction from the NCLT to restrain MHADA from taking over possession of the land till completion of the CIRP, contending that such a recovery of possession was in derogation of the

moratorium imposed under Section 14 of the Code. The NCLT, by order dated 02.04.2018, dismissed the aforesaid application, stating that Section 14(1)(d) of the Code does not cover licenses to enter upon land in pursuance of Joint Development Agreements, stating that such licenses would only be ‘personal’ and not interests created in property. An appeal against this order was preferred to the NCLAT.”

12. After noticing the provisions of the Code, in paragraph 14, the Hon’ble Supreme Court laid down following:-

“14. A bare reading of Section 14(1)(d) of the Code would make it clear that it does not deal with any of the assets or legal right or beneficial interest in such assets of the corporate debtor. For this reason, any reference to Sections 18 and 36, as was made by the NCLT, becomes wholly unnecessary in deciding the scope of Section 14(1)(d), which stands on a separate footing. Under Section 14(1)(d) what is referred to is the “recovery of any property”. The ‘property’ in this case consists of land, ad-measuring 47 acres, together with structures thereon that had to be demolished. ‘Recovery’ would necessarily go with what was parted by the corporate debtor, and for this one has to go to the next expression contained in the said sub-section.”

13. The Hon’ble Supreme Court in the above case held that after imposition of ‘Moratorium’ there is statutory freeze limited by Section 31(3) of the Code i.e. till the period, 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. In paragraph 25, following was laid down:-

“25. There is no doubt whatsoever that important functions relating to repairs and re-construction 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, handover execution of any housing scheme under its own supervision. However, when it comes to any clash between the 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.”

14. The Hon'ble Supreme Court ultimately allowed the Appeal and set aside the judgment of the NCLAT.

15. Learned Counsel for the Respondents has placed reliance on the judgment of the Hon'ble Supreme Court in **“Municipal Corporation of Greater Mumbai (MCGM) vs. Abhilash and Others- (2020) 13 SCC 234”**. In the above case, the ‘Municipal Corporation of Greater Mumbai’ (MCGM) owns inter alia, Plots in Village Marol, Andheri (East) Mumbai, which under a contract the Corporate Debtor agreed to develop these lands which were to be leased out to the Corporate Debtor for 30 years. A show-cause notice was given by MCGM and before the period could end, the Insolvency Process was initiated. A Resolution Plan was also approved and MCGM had filed an Application before the Adjudicating Authority claiming that it be declared as Financial Creditor. It was contended by the Appellant that the provisions of Section 14(1) (d) could not prevent MCGM from terminating the Agreement. NCLT approved the Resolution Plan against which Appeal was filed. In the Appeal before the Hon'ble Supreme Court, the provisions of ‘Municipal Corporation of Greater Mumbai Act, 1888’ as well as the relevant provisions of the Code came under consideration. The Hon'ble Supreme Court held in the above judgment that Section 238 of the Code cannot be read as overriding MCGM's right to control and regulate its properties. In paragraph 47, following was laid down:-

“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)."

16. No issue had arisen regarding Section 14 of the Code. It was held by the Hon'ble Supreme Court that MCGM was entitled to deal with its properties in accordance with MCGM Act, 1888.

17. The next judgment of the Hon'ble Supreme Court which has been relied by the Counsel for the Respondents is **"Embassy Property Developments**

Private Limited vs. State of Karnataka and Others- (2020) 13 SCC 308

where the issue pertaining to jurisdiction of NCLT in relation to a matter covered by ‘Mines and Minerals (Development and Regulation) Act, 1957’ (MMDR Act, 1957) was under consideration. In paragraphs 37 and 40, following was laid down:-

“37. From a combined reading of Subsection (4) and Sub section (2) of Section 60 with Section 179, it is clear that none of them hold the key to the question as to whether NCLT would have jurisdiction over a decision taken by the government under the provisions of MMDR Act, 1957 and the Rules issued thereunder. The only provision which can probably throw light on this question would be Subsection (5) of Section 60, as it speaks about the jurisdiction of the NCLT. Clause (c) of Subsection (5) of Section 60 is very broad in its sweep, in that it speaks about any question of law or fact, arising out of or in relation to insolvency resolution. But a decision taken by the government or a statutory authority in relation to a matter which is in the realm of public law, cannot, by any stretch of imagination, be brought within the fold of the phrase “arising out of or in relation to the insolvency resolution” appearing in Clause (c) of Subsection (5). Let us take for instance a case where a corporate debtor had suffered an order at the hands of the Income Tax Appellate Tribunal, at the time of initiation of CIRP. If Section 60(5)(c) of IBC is interpreted to include all questions of law or facts under the sky, an Interim Resolution Professional/Resolution Professional will then claim a right to challenge the

order of the Income Tax Appellate Tribunal before the NCLT, instead of moving a statutory appeal under Section 260A of the Income Tax Act, 1961. Therefore the jurisdiction of the NCLT delineated in Section 60(5) cannot be stretched so far as to bring absurd results. (It will be a different matter, if proceedings under statutes like Income Tax Act had attained finality, fastening a liability upon the corporate debtor, since, in such cases, the dues payable to the Government would come within the meaning of the expression “operational debt” under Section 5(21), making the Government an “operational creditor” in terms of Section 5(20). The moment the dues to the Government are crystalised and what remains is only payment, the claim of the Government will have to be adjudicated and paid only in a manner prescribed in the resolution plan as approved by the Adjudicating Authority, namely the NCLT.

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40. *If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority. In fact an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term “assets” under the Explanation to Section 18. This assumes significance*

in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word “assets”, while Section 20(1) uses the word “property” together with the word “value”. Sections 18 and 25 do not use the expression “property”. Another important aspect is that under Section 25 (2) (b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

“25. Duties of resolution professional – (1) *It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.*

(2) For the purposes of subsection (1), the resolution professional shall undertake the following actions:

(a).....

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings.”

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings,

the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).”

18. In paragraph 45, following observations were made by the Hon’ble Supreme Court:-

“45. A lot of stress was made on the effect of Section 14 of 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 IBC, 2016. Even Section 14 (1) (d), of 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.....”

19. In paragraph 46, the Hon’ble Supreme Court laid down further:-

“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.”

20. In the above case, the NCLT has directed the Government of Karnataka to execute supplemental lease deeds for the extension of the mining lease which was held by the Hon’ble Supreme Court was not within the jurisdiction of the NCLT.

21. The next judgment which need to be noticed is the judgment of the Hon’ble Supreme Court in **“Gujarat Urja Vikas Nigam Limited vs. Amit Gupta and Ors.- (2021) 7 SCC 209”**. In paragraph 43, two issues which arose for consideration before the Hon’ble Supreme Court has been noted as follows:-

“43. *The following two issues arise for determination:*

43.1. *(i) Whether the NCLT/NCLAT can exercise jurisdiction under the IBC over disputes arising from contracts such as the PPA; and*

43.2. *(ii) Whether the appellant’s right to terminate the PPA in terms of Article 9.2.1(e) read with 9.3.1 is regulated by the IBC.”*

22. In paragraphs 74, 75 and 91, following has been laid down:-

74. *Therefore, we hold that the RP can approach the NCLT for adjudication of disputes that are related to the insolvency resolution process. However, for adjudication of disputes that arise dehors the insolvency of the Corporate Debtor, the RP must approach the relevant competent authority. For instance, if the dispute in the present matter related to the non-supply of electricity, the RP would not have been entitled to invoke the jurisdiction of the NCLT under the IBC. However, since the dispute in the present case has arisen solely on the ground of the insolvency of the Corporate Debtor, NCLT is empowered to adjudicate this dispute under Section 60(5)(c) of the IBC.*

75. *It has been urged on behalf of the appellant that in terms of Article 10.4 of the PPA, GERC is entitled to entertain the disputes relating to the PPA.*

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91. *The residuary jurisdiction of the NCLT under Section 60(5)(c) of the IBC provides it a wide discretion to adjudicate questions of law or fact arising from or in relation to the insolvency resolution proceedings. If the jurisdiction of the NCLT were to be confined to actions prohibited by Section 14 of the IBC, there would have been no requirement for the legislature to enact Section 60(5)(c) of the IBC. Section 60(5)(c) would be rendered otiose if Section 14 is held to be the exhaustive of the grounds of judicial intervention contemplated under the IBC in matters of preserving the value of the corporate debtor and its status as a going concern'. We hasten to add that our finding on*

the validity of the exercise of residuary power by the NCLT is premised on the facts of this case. We are not laying down a general principle on the contours of the exercise of residuary power by the NCLT. However, it is pertinent to mention that the NCLT cannot exercise its jurisdiction over matters dehors the insolvency proceedings since such matters would fall outside the realm of IBC. Any other interpretation of Section 60(5)(c) would be in contradiction of the holding of this Court in Satish Kumar Gupta.”

23. In the above case, the Hon’ble Supreme Court held that the Application before the NCLT is maintainable since the dispute solely arose out of and related to the Insolvency of the Corporate Debtor.

24. The last judgment of the Hon’ble Supreme Court relied by the Counsel for the Respondent is **“Tata Consultancy Services Limited vs. SK Wheels Private Limited, Resolution Professional, Vishal Ghisulal Jain- (2022) 2 SCC 583”**. In the above case, the Appellant had issued termination notice to the Corporate Debtor under a facility agreement, Corporate Debtor was obliged to provide its premises with certain specifications and facilities to the Appellant. The Hon’ble Supreme Court had held that Section 14 is not applicable to the facts of that case. In paragraph 26, following has been observed:-

“26. Admittedly, the appellant is neither supplying any goods or services to corporate debtor in terms of Section 14 (2) nor is it recovering any property that is

in possession or occupation of corporate debtor as the owner or lessor of such property as envisioned under Section 14(1)(d). It is availing of the services of corporate debtor and is using the property that has been leased to it by corporate debtor. Thus, Section 14 is indeed not applicable to the present case.”

25. The proceedings initiated before the NCLAT to challenge the termination notice issued by the Appellant was set aside.

26. The present is a case where CIRP was initiated on 11.03.2019 and the Notice dated 08.11.2019 terminating the lease agreement and Notice for taking possession was issued on 08.11.2019 i.e. after the imposition of Moratorium.

27. The purpose and object of Moratorium is to temporarily freeze all actions as contemplated under Section 14 to enable the Corporate Debtor to resolve its Insolvency and to revive it. Prohibition on action against the Corporate Debtor is only to preserve the status quo as it exists on the date of initiation of CIRP so that all claims against the Corporate Debtor on the date of initiation of CIRP be collated and dealt with to take steps to revive by approving appropriate Resolution Plan, if any, to bring it back. All the institution of suits or continuation of pending suits and proceedings against the Corporate Debtor are prohibited under Section 14(1)(a) of the Code with the object that status quo regarding Corporate Debtor be maintained and further proceedings against the Corporate Debtor be not permitted during the continuance of the CIRP to preserve the Corporate Debtor from any financial assault or other proceeding to stop off its current situation for purpose of

Resolution. Similarly, under Section 14(1)(d), recovery of any property by any owner or lessor which is occupied by the Corporate Debtor is prohibited.

28. From the law of the Hon'ble Supreme Court as laid down in "**Embassy Property Developments Private Limited**" and "**Tata Consultancy Services Limited**" (supra), the Adjudicating Authority has no jurisdiction to judicial review of any action taken by the Government or Statutory Authority in relation to matters which is in the realm of public law. Thus, in the facts of the present case, the Appellant who had granted a lease to the Corporate Debtor is well within its jurisdiction to take appropriate action on account of breach of conditions by the Corporate Debtor but limited question for consideration is as to whether it has to stay its hand from taking such action during currency of CIRP.

29. After considering the facts on the record and arguments of the parties, we are of the considered opinion that in view of the fact that Moratorium has kicked in w.e.f. 11.03.2019 due to currency of Moratorium, the Appellant could not have taken possession of the leased property by virtue of restraint under Section 14(1)(d). Further continuation or initiation of any other proceeding under Section 14(1)(a) which also prohibited the Appellant to cancel the lease during currency of the Moratorium. Although after CIRP is over, there is no fetter on the right of the Appellant to take proceeding for breach of terms of the lease by the Corporate Debtor.

30. We have noticed that the Adjudicating Authority by its impugned order has allowed the prayer (a) i.e. quash the Notice dated 08.11.2019. The order

having passed during the currency of the Moratorium, no exception can be taken to the order passed by the Adjudicating Authority. We however, hasten to add that the quashing of the Notice dated 08.11.2019 does not create any fetter on the rights of the Appellant to pass appropriate order for breach of terms of lease after CIRP is over. The Adjudicating Authority with regard to prayers (b) to (d) has directed the Appellant not to take any coercive action till the Application for approval of the Resolution Plan is heard by the Adjudicating Authority. The above direction was also to protect the status quo which was existing on the date of initiation of CIRP. We, however, make it clear that as soon as the CIRP is over, the Appellant shall have all powers to take appropriate action.

31. Learned Counsel for the Appellant has expressed its apprehension that in event the plot, in question, which is the subject matter of the lease by the Appellant is dealt in Resolution Plan and is handed over to the Successful Resolution Applicant, the rights of the Appellant shall be fettered. We find that the said apprehension is without any basis. What rights and liability Corporate Debtor had to the plot, in question, the same at best can be transferred to the Resolution Applicant in event any Resolution Plan is approved. The Resolution Applicant cannot acquire better right nor can wash out its liability under the lease deed merely on the ground that Resolution Plan has been approved.

32. We, thus, are of the view that in this Appeal, we need to issue certain clarifications for protecting the rights and interests of the Appellant. We, thus, dispose of the Appeal with following directions:-

(i) We uphold the direction issued in paragraph 13 by the Adjudicating Authority which order has been issued only in reference to Section 14 of the Code.

(ii) After CIRP is over, it shall be open for the Appellant to deal with the lease land which was leased to the Corporate Debtor in accordance with its rights as envisaged by the Lease Deed dated 20.01.2015.

(iii) In event, the plot, in question, is included in the Resolution Plan, the Resolution Applicant shall not acquire any better right to the rights which were held by the Corporate Debtor in the lease land along with liabilities attached therein. After CIRP is over, there is no fetter in the rights of the Appellant to take appropriate action in accordance with law with regard to lease land.

33. The Appeal is disposed of with aforesaid directions.

[Justice Ashok Bhushan]
Chairperson

[Dr. Alok Srivastava]
Member (Technical)

[Shreasha Merla]
Member (Technical)

New Delhi
Anjali