

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.302

IA/461(AHM)2022 in CP(IB) 157 of 2018

Order under Section 14 r.w 60(5) IBC r.w Rule 11 of NCLT Rules, 2016

IN THE MATTER OF:

Divyesh Desai Resolution Professional of GPT Steel
Industries Limited

.....Applicant

V/s

.....Respondent

Gujarat Industrial Development Corporation

Order delivered on: 08/04/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

**IN THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT NO.2**

IA 461/NCLT/AHM/2022
in
CP (IB) 157/NCLT/AHM/2018

(Application under Section 14 read with 60(5) (c) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of NCLT Rules, 2016)

IN THE MATTER OF:

Mr. Divyesh Desai
Resolution Professional
GPT Steel Industries Limited
Having Office at B2, 402, Marathon Innova
Off. Ganpatrao Kadam Marg
Opp. Peninsula Corporate Park
Lower Parel (West), Mumbai

.... Applicant

Versus

Gujarat Industrial Development Corporation
DIC Building, 1st floor
Opp. G K. General Hospital
Hospital Road
Bhuj, Gujarat-370 001

..... Respondent

Order pronounced on 08.04.2024

**Coram: Mrs. Chitra Hankare, Member (J)
Dr. Velamur G Venkata Chalapathy, Member (T)**

Appearance:

For the Applicant : Mr. Monaal Davawala, Advocate

For GIDC : Mr. Pavan Godiawala, Advocate.

RP in person

Mr. Divyesh Desai

JUDGMENT

1. This IA is filed by Mr. Divyesh Desai, Resolution Professional (RP) under Section 14 read with Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of the NCLT Rules, 2016 for quashing and setting aside the show cause notices/termination order dated 07.04.2022 passed by the respondent / GIDC.
2. The applicant has submitted the entire correspondence with the respondent who has leased the property on which the Corporate Debtor had built its plant and machinery and was functioning when the CIRP was initiated and admitted. The facts of the case are given below:
 - a) The GIDC issued a letter in Form F on 30.07.2019 for an amount of Rs.3,96,92,490 due and payable. A detailed explanation was given to the queries of the RP raised by email on 19.07.2019. In Vide letter dated 06.08.2019 the Resolution Professional had paid the claim partially amounting to Rs.1,01,65,984 and further stated that there was no provision for payment of interest in the lease agreement. The GIDC vide their letter dated 22.08.2019 has stated that in the lease deed executed on

6th October 2004 in clause 1(c) it is mentioned that "the lessee will have to pay the interest, additional compensation, overheads, margin etc. as may be demanded or by the borne in connection of the Government land. If the payment is received late from the lessee, the interest at the rate of 17% will be charged on that amount. It further states that an amount of principal of Rs. 78,12,480 is due on Plot No.301 and interest is calculated from the period from 01.05.2005 to 31.08.2019 total amounting to Rs.1,94,88,820. RP vide his email dated 27.08.2019 after reckoning the date of CIRP commencement date on 03.05.2019, revised the interest figure to Rs.52,69,329 and considered the total amount of claim to be paid at Rs.1,54,35,313. As regards the interest in power substation infrastructure usage, he did not consider any interest since there is no provision of interest on the same in the lease agreement.

- b) The GIDC had vide their reply dated 11.09.2019 clarified while accepting the payment of Rs.1,54,35,313 offered but quoted clause 2(b), 2(b)(i) & 2(b) (iii) of the lease deed executed with the company on 06.10.2004 whereby there was a provision to claim such charges and company was

liable to pay the interest at 15% on power supply cost and demanded payment from 01.01.2005 till resolution process is finalised. Thereby it may have a claim further of Rs.1,72,92,336. The Resolution Professional vide his letter dated 26.09.2019 sought certain details from the GIDC which include a demand letter or invoices or any other document(s) of such nature where GIDC has raised a demand or claim about the interest on power supply cost from the Corporate Debtor. This was reiterated by the RP in his letter dated 25.10.2019 which stated that in the absence of such details or specific mention in the lease deed, the claim cannot be considered. A copy of the lease deed signed on 06.10.2004 was produced. There was no reply to this letter from the respondent in the records produced by the applicant.

- c) Further, GIDC vides their letter dated 07.04.2022 issued a show cause notice under Sec 4(1) of the GPP Act in respect of property in Plot No. 301 issued in the name of the Corporate Debtor for recovering an amount of Rs.69,82,644 along with certain other breach of conditions of terms and stated that by an order of eviction the Corporate Debtor would have to vacate the

said premises on the grounds mentioned in the letter. A date of hearing was fixed on 28.04.2022 between 11:00 and 5:00 PM. Further vide letter dated 07.04.2022 a termination of lease deed agreement was issued to the Corporate Debtor at the registered office address in Vadodara, Mumbai and at the Company's Factory address in Gandhidham and a copy marked to the RP without stating any further reasons.

- d) A copy of the matter taken upon receipt of claims received from the respondent who has leased the land for industrial development wherein a factory has been established and including the other plots allotted are freehold lands allotted to the Corporate Debtor. As of the date of the CIRP order, there were no disputes and no documentary evidence produced and the Resolution Professional acquired the assets to conduct the CIRP process.
- e) The respondent in his reply affidavit dated 09.12.2022 has stated that the lessor(respondent) in case of default on the part of the lessee(applicant) for any of the reasons as envisaged in the terms and conditions, has a right to terminate the same proceedings are undertaken under

the GPP Act (a copy enclosed). Further, he has stated that the respondent has a right to file an appeal under Section 7 of the said GPP Act and hence this application is not maintainable and the act of the respondent is not in violation of the IB Code as their powers are to be read in harmony with the IB Code. He further stated that from Section 18 of the IBC code, it is inferred that the RP does not own the assets which are owned by a third party and are held under trust or contractual arrangement including bailment. Further, Section 36 of the IBC more particularly Sec 36(4)(a)(iv) defines the assets which are not owned shall not be used for recovery in the liquidation. Even if a mortgage was created over the leasehold rights, the same are bound by the terms of the lease deed and carry the risk that in case of violation by the lessee, the lease can be terminated. The leased property as per the respondent should not have been included in the Information Memorandum which is a misinformation under Regulation 36 of IBC and further states that there is no agreement for transfer of title.

- f) As regards the submission by the Resolution Professional that no opportunity was given before the termination

notice by the respondent(issued show cause notice and on the same date, the respondent had terminated the agreement), the Adjudicating Authority lacks jurisdiction to adjudicate and determine whether the license/lease was correctly terminated or not as the property in question was not an asset of the Corporate Debtor and there is no violation of Section 14 of the IB Code, 2016 under which this application is preferred.

3. Heard both the applicant and the respondent and perused the document on record.
4. This Tribunal had on the admission of the application wherein interim protection was prayed, directed the respondent to maintain the status quo and not to take any coercive steps concerning both the properties mentioned in the application. The respondent by terminating the lease agreement violated Section 14 of the IBC and further the order 07.04.2022 passed by the respondent (GIDC) which was stayed by this Tribunal on the application of the RP till disposal of this application vide orders passed by this Tribunal on 31.05.2022.
5. The Respondent issued notices demanding amount as well as terminating lease agreement during moratorium period.

Whether the demand and termination notices are illegal. RP has to move to the Appellate Authority of the Respondent. Admittedly lease hold lands are owned by the Respondents and are not absolute properties of the Corporate Debtor. The rights of the respondent of the assets owned by them cannot be overridden by the provisions of IBC. Any transfers to the SRA has to be in accordance with the terms and conditions of the lease agreement. In the judgment of M/S Sel Manufacturing Company Limited vs Punjab Small Industries & Export in Company Appeal (AT) No. 881 of 2022 passed by Hon'ble NCLAT, New Delhi on 20.03.2024, wherein it was held that, "the protective umbrella of IBC, 2016 for CIRP cannot be extended to an extent that public authorities are asked to part with their assets without full payment of their dues or without compliance to terms and conditions of the sale or lease deed or their transfer policy."

6. In view of the above said discussion, the RP to move Appellate Authority of respondent for quashing the notices. In the meantime, it is necessary to restrict respondent from taking any coercive action during moratorium period. Hence, the status quo granted on 31.05.2022 is extended till the appeal is filed before Appellate Authority of respondent or the settlement

of dues between the parties. In view of the same, the application i.e. IA 461 of 2022 is disposed of.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)