



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A (IB) No. 890/KB/2021

In

C.P. (IB) No. 592/KB/2017

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

IN THE MATTER OF:

IDBI BANK LIMITED

... Financial Creditor.

Versus

MANOR FLOATEL LIMITED

... Corporate Debtor.

AND

**BOARD OF TRUSTEES FOR SHYAMA PRASAD MOOKHERJEE PORT,
KOLKATA**

... Applicant.

Versus

BRIGHTER SIDE RENEWABLE ENERGY VENTURES PRIVATE LIMITED

... Respondent.

Date of Pronouncement: August 12, 2024.

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

APPEARANCE:

For the Applicant:

**Mr. Jishnu Saha, Adv.
Mr. Snehashis Sen, Adv.
Mr. Daniyal Ahmed, Adv.**

For the Respondent:

**Mr. Krishnaraj Thaker, Adv.
Mr. Arik Banerjee, Adv.
Mr. Arun Kumar Gupta, PCA**

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The Court congregated through hybrid mode.

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2. Heard the Learned Counsels for both parties.

3. The instant application has been preferred by Board of Trustees for Shyama Prasad Mookherjee Port, Kolkata, herein referred to as the “Applicant”/ “KoPT”, under Section 60(5) of the Insolvency & Bankruptcy Code, 2016, herein referred to as the “I&B Code”, against the Brighter Side Renewal Energy Venture Private Limited, who is the Successful Resolution Applicant (SRA) of the Manor Floatel Limited (Corporate Debtor), hereinafter referred to as “Respondent”, to seek the following reliefs:

a. That order dated 30.10.2018 passed by the (IB) No. 592/KB/2017 be recalled and be modified, protecting the interest of the Applicant.

b. An order for declaration that the Resolution Plan of the Respondent, as approved by the COC vide it's meeting dated 04.10.2018 is not binding upon this applicant.

c. An order be passed granting liberty to the applicant herein to proceed with proceedings bearing No.729 and 729/R of 2005 before the Learned Estate Officer against the Corporate Debtor herein;

d. Stay of operation of the Resolution Plan with regard to the claims of and proceedings initiated by the applicant herein against the Corporate Debtor;

e. An order directing the Corporate Debtor to make payment of occupational charges at Rs. 14,34,954/- per month in terms of the order of the Hon'ble High Court at Calcutta;

f. Ad-interim order in terms of prayer (c), (d) and (e) above;

g. Costs;

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h. Such further orders or directions be passed as this Hon'ble Tribunal may deem fit and proper.

4. FACTS OF THE CASE:

4.1 Manor Floatel Ltd (the Corporate Debtor herein) was a licensee of the applicant **KoPT** in respect of a total area of 2833.29 square meter out of which 1886.42 square meter is land space and 946.87 square meter is water space measuring. The said land space and water space was granted to the Corporate Debtor for setting up of a Floatel.

4.2 Due to default on part of the Corporate Debtor in payment of the license fees and for making unauthorized constructions, in the year 2005, the KoPT had instituted proceedings against the said Manor Floatel Ltd under Sections 5 and 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The said proceedings bearing No. 729 and 729/R of 2005 are still pending final adjudication.

4.3 That, during the pendency of the eviction proceedings before the Learned Estate Officer, the Corporate Debtor had instituted a Writ Petition being WP No. 22911 (w) of 2012 in the Hon'ble High Court at Calcutta therein challenging the demands made by the KoPT by its notices dated 1st July 2012, 1st August 2012, and 1st September 2012, enhancing the occupational charges from Ra 5,61,230/- per month to Rs. 14,35,054/- per month based on a notification issued by the Tariff Authority of Major Port Trust (in short "TAMP").

4.4 The said writ petition was disposed of by an order dated 13rd December 2012, whereby Hon'ble High Court directed the Corporate Debtor to go on

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paying occupation charges of Rs. 14,34,954/- to the Kolkata Port Trust subject to determination to be made by the Estate Office.

4.5 The Corporate Debtor was going on making payment as directed by the Hon'ble Calcutta High Court by its order dated 13th December 2012.

4.6 By way of an order dated 10 January 2018, the Corporate Debtor was admitted to the corporate insolvency resolution process on the basis of an application under Section 7 of the Code filed by the Financial Creditor herein against the Corporate Debtor.

4.7 The resolution plan of one Brighter Side Renewable Energy Ventures Private Limited, the respondent herein was approved by the Adjudicating Authority by its order dated 30th October 2018.

5. Contentions of the Applicant:

5.1 That, the salient features of the said Resolution Plan of the Respondent herein with regard to the claims of the applicant, inter alia, provides as follows:

- a. *"Also currently Manor Floatel Ltd. is paying 3 TIMES lease only on the basis of an interim order no High Court WP No.22911 (w) of 2012, issued by the High Court, dated 13.12.2012 directing the Corporate Debtor to pay three times lease rental as penalty due to dispute between Kolkata Port Trust and the erstwhile management of the Corporate Debtor. Since the operational viability of the hotel is solely based on the lease, we request the Honorable Adjudicating Authority to direct Kolkata Port Trust to revert to the standard rates since this is key to the revival of the corporate debtor. Our task is to merely remove the penalty imposed and continue charging us 1/3rd the current rate/standard rates as per offer of lease by the Kolkata Port Trust and/or the tariff available on the Kolkata Port Trust website whichever is lower. The Hon'ble NCLT is also requested to direct that*

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under no condition can the rental increase beyond the current rental paid by the Corporate Debtor."

- b. *"...as below relating to any period prior to the CIRP Date shall immediately, and unconditionally stand extinguished, waived, revoked, cancelled, dismissed and abated (vis-à-vis Manor Floatel Ltd. or the new management of Manor Floatel Lld.) on the CIRP Date pursuant to the Adjudicating Authority's order and no person shall have further rights or claims against Manor or new management in this regard. Furthermore, it is made clear that since Corporate Debtor was in moratorium during the CIRP period, there would be no account of issues covered by Moratorium".*
- c. *"Any and all local proceedings (including any show cause, notice, adjudication proceedings, assessment proceedings, regulatory orders etc.) initiated before any forum by or on behalf of any Operational Creditors or other creditors or Governmental Authorities, to enforce any rights or claims against Manor Floatel Ltd. shall stand immediately, irrevocable and unconditionally withdrawn, abated, settled and/or extinguished, and the Operational Creditors and other creditors shall take all necessary steps to ensure the same. Except to the extent of the payments to be made to the Operational Creditors and other creditors pursuant to Clause V below, the operational creditors and other creditors of Manor Floatel Ltd. (including Governmental Authorities) shall have no further rights or claims against Manor Floatel Ltd. (including but not limited to, in relation to any past breached by Manor Floatel Ltd.), in respect of the period prior to the Effective Date, and all such claims shall immediately, irrevocable and unconditionally stand extinguished".*
- d. *Proposal for Pending Litigations against the Corporate Debtor.*
- e. *"All litigations or proceedings either civil or criminal by any stakeholder including statutory authorities (including but not limited to Kolkata Port Trust etc.) against the Corporate Debtor shall be withdrawn and necessary assistance/support shall be provided to us as may be required and called for in this regard. We pray for*

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appropriate directions from the Adjudicating Authority for facilitating the same.

- f. *"Since the litigation regarding the Kolkata Port Trust Lease expressly relates to the period prior to CIRP date and was a consequence of the previous managements actions, the same is to be waived and all cases in this regard to be dismissed have made plea to the Adjudicating Authority to pass orders to waive all dues or any dues currently in courts, tribunal any other forum such as taxation...cantonment, courts, electricity company, ESI, PF, municipality. Phonographic Performance Limited, Kolkata Port Trust, as these duties if and when assessed and by the court will be equivalent to operational creditors. We also make plea to the Adjudicating Authority to grant waiver from any future claims to the past period i.e. before the Corporate Debtor entered into corporate insolvency resolution process proceedings."*
- g. *"We similarly request, the Honorable Adjudicating Authority to direct Kolkata Port Trust to waive all litigation and revert the lease amount to normal lease on an AS IS WHERE IS, AS OCCUPIED BASIS for both land and water spaces. We pray that to the Honorable Adjudicating Authority kindly direct Kolkata Port Trust to extend lease agreement in perpetuity on the said land and water 1/3rd the current rate/ standard rates as per offer of lease by the Kolkata Port Trust am the tariff available on the Kolkata Port Trust website whichever is lower on an AS IS WHERE IS AS OCCUPIED BASIS of the quantity of land and water space occupied."*
- h. *"As all proceedings under against the corporate debtor are to be rules on by the Adjudicating Authority, we pray that the Honorable Adjudicating Authority regularize the lease to standard rates available on Kolkata Port Trust website or in the agreement with Kolkata Port Trust from August 2004, instead of the penal rates imposed vide interim order no High Court WP No. 22911(w) of 2012, issued by the High Court, Kolkata dated 13.12.2012".*

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i. *"Treatment of ongoing litigation and new litigation - All pending suites, litigation and legal proceedings that have been initiated against or by Honourable Adjudicating Authority have been set out in Annexure 1 (in terms of Information Memorandum) (Dispute). The information Memorandum provides information in connection with the Disputes. On basis of the information provided in the Information Memorandum with respect to the Disputes, we are not in a position to analyses the nature of cases initiated by/ against MANOR FLOATEL LIMITED and any specific treatment of such cases may be provided once more details are made known to us."*

9. *However, a bare perusal of the Resolution Plan submitted by the Resolution Applicant Brighter Side Renewable Energy Ventures Private Limited will reveal that diverse exceptions and/or waivers have been sought for by the respondent from this Hon'ble Tribunal and the same are as follows:-*

i. *Remove the penalty imposed and continue charging 1/3rd the current rate/standard rates as per offer of lease by the Kolkata Port Trust and/or the tariff available on the Kolkata Port Trust website whichever is lower.*

ii. *To direct that under no condition can the rental increase beyond the current rental paid by the Corporate Debtor.*

iii. *Dues relating to any period prior to the CIR Bata Sa immediately, and unconditionally stand extinguished, waived, revoked, cancelled, dismissed and abated.*

iv. *Any and all local proceedings (including any show cause, notice, adjudication proceedings. assessment proceedings, regulatory orders etc.) initiated before any forum by or on behalf of any Operational Creditors or other creditors or Governmental Authorities, to enforce any rights or claims against Manor Floatel Ltd. shall stand immediately, irrevocable and unconditionally withdrawn, abated, settled and/or extinguished,*

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- v. All litigations or proceedings either civil or criminal by any stakeholder including statutory authorities (including but not limited to Kolkata Port Trust etc.) against the Corporate Debtor shall be withdrawn.*
- v. Honorable Adjudicating Authority to pass orders to waive all dues or any dues currently in courts, tribunal any other forum*
- vi. Waiver from any future claims to the past period i.e. before the Corporate Debtor entered into corporate insolvency resolution process proceedings.*
- vii. Direct Kolkata Port Trust to waive all litigation and revert the lease amount to normal lease on an AS IS WHERE IS, AS OCCUPIED BASIS for both land and water spaces.*
- ix. The Adjudicating Authority direct Kolkata Port Trust to extend lease agreement in perpetuity on the said land and water 1/3rd the current rate/standard rates as per offer of lease by the Kolkata Port Trust and/or the tariff available on the Kolkata Port Trust website whichever is lower on an AS IS WHERE IS, AS OCCUPIED BASIS of the quantity of land and water space occupied.*
- x. Regularize the lease to standard rates available on Kolkata Port Trust website or in the agreement with Kolkata Port Trust from August 2004, instead of the penal rates imposed vide interim order no High Court WP No. 22911 (w) of 2012, issued by the High Court, Kolkata dated 13.12.2012.”*

5.2 It is submitted that the waivers and exemptions sought for in the resolution plan is beyond the jurisdiction of the Adjudicating Authority for the reasons as stated herein below:

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a. Payment of the monthly occupation charges of Rs 14,34,954/- has been directed by the Hon'ble High Court at Calcutta in exercise of its constitutional powers under Article 226 of the Constitution of India and the same cannot be altered and/or modified and/or waived and/or exempted by way of a Resolution Plan or orders passed by this Adjudicating Authority.

b. Any alteration, modification, exemption or waivers of the occupation charges payable in terms of the order of 13 December 2012 could only be granted by the Hon'ble Writ Court or in any appeal preferred from the said order dated 13th December 2012 or in terms of the order passed by the Estate Officer in the proceedings pending before him for recovery of rent and damages.

c. The Hon'ble High Court directed that the occupation charges would be payable till the determination of the issue by the Estate Officer. Any waiver or exemption or modification or change in terms of the requests made in the resolution plan would have the effect of an order passed by the Hon'ble High Court being nullified by this Adjudicating Authority.

d. Proceedings under section 5 & 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 are pending before the Estate Officer in respect of the Corporate Debtor. The above quoted portions of the resolution plan make it clear that the resolution applicant was fully aware of the existence of such proceedings and in spite thereof chose to submit its bid and/or resolution plan for the resolution of the corporate debtor.

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e. A proceeding for eviction and recovery of rent & damages under the Public Premises (Eviction of unauthorized occupants) Act, 1971 cannot be nullified and/or dismissed or discharged way of a Resolution Plan.

f. The provisions of and the waivers and exceptions as sought for in the Resolution Plan with relation to the claims of the applicant and proceedings initiated by it before the Learned Estate Officer, is in contravention to the laws in force and hence, the same could not have been approved by this Adjudicating Authority.

6. Submissions made by the Ld. Counsel on Behalf of the Respondent (SRA):

6.1 That the Adjudicating Authority has no jurisdiction after approval of the plan and has become functus officio and thus cannot pass any order. Reliance to that effect is placed on the judgment of the Hon'ble NCLAT in **Company Appeal (AT) (Ins) no. 513 of 2020- Prasant Properties Private Limited- Versus Vaijay Kumar V. Iyer** and **Company Appeal (AT) (Ins) No. 833 of 2021 - S. M. Milkose Limited v. Onyx Components and Systems Private Limited** wherein the Hon'ble NCLAT has observed that upon approval of the resolution plan, the Adjudicating Authority loses its jurisdiction and becomes *functus officio*.

6.2 That, the applicant by filing this application is seeking modification of the terms of the plan with liberty to continue with the proceedings before the Estate Officer and also with regard to the payment of occupational charges as per the Hon'ble High Court's order. Such clarification and/or modification as sought for if granted will amount to modification of Clause G(vii) of the resolution plan which says that "*All litigations or proceedings either civil or criminal by any stakeholder including statutory authorities (including but not*

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limited to Kolkata Port Trust etc. against the Corporate Debtor shall be withdrawn and necessary assistance/support shall be provided to us as may be required and called for in this regard. We pray for appropriate directions from the Adjudicating Authority for facilitating the same.”

6.3 Further, it is submitted that the corporate debtor cannot be directed to make payment of occupational charges at the rate of Rs. 14,34,954/- as directed by the Hon'ble High Court at Calcutta vide its order dated 13th December 2012. That in a writ petition filed by corporate debtor in 2012, way before the company went into CIRP, as a stop gap arrangement the Hon'ble High Court at Calcutta directed the Estate Officer to decide the issues and in the meantime, the petitioner being the corporate debtor was directed to pay occupational charges at the rate of Rs.14,34,954/- to the Port Trust without prejudice to their rights and contention and subject to determination by the Estate officer. The Hon'ble High Court made in clear that it has not expressed any opinion and all points are kept open. In the meantime, on 10th 2018, the corporate debtor which was supported to pay the lease rentals went into CIRP.

6.4 It is urged that, the applicant KoPT having failed to lodge any claim with the RP, cannot ask for any past dues from the CD or the successful resolution applicant being the respondent, who has revived company pursuant to the order dated 30th October 2018. On the proposition of law that if a creditor does not lodge its claim with the RP once company goes to CIRP, its dues stand waived and the claim gets extinguished, and no further amount can be claimed against successful resolution applicant, reliance was placed on ***Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited*** reported in (2021) 9SCC 657 and ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta*** reported in (2020) 8 SCC 531.

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6.5 It is averred that when there is a specific remedy for appeal under Section 32 of the I&B Code, no application for modification or clarification or even for recalling is maintainable before this forum. Further, it is claimed that Section 61(3) of the I&B Code provides grounds under which a resolution plan can be challenged and pursuant to that, an appeal is to be filed within 30 days with maximum window of another 15 days and not thereafter. The KoPT failed to challenge the resolution plan by filing appeal under Section 32 read with Section 61 of the Code within the timeline statutorily provided. The KoPT being aware that any challenge to the plan would be time barred has resorted to an indirect mechanism to obtain modifications and/ or clarification of the resolution plan which they could not achieve directly.

6.6 It is submitted that the application is barred by principles of *Estoppel* too. That the resolution plan takes note of the Hon'ble High Court's order of 13th December 2012 whereby as a stop gap arrangement on an interim measure the Corporate Debtor was asked to pay Rs. 14,34,954/- as lease rental. This was three times the lease even as per the chart published by KoPT. The KoPT was well aware of the terms of the plan, lease rental to be paid yet accepted the same all along from 2018, till date without any demure or protest. Thus, the applicant by conduct is estopped from challenging any clause of the plan or from ventilating any grievance with regard to the amount of lease premium to be paid to them as they have accepted the lease premium as per the plan till the year 2018. Reference is made to ***B.L. Sreedhar v. Munni Reddy*** reported in **(2003) 2 SCC 355** (Paragraph 13, 15, 18, 19, 30).

6.7 It is contended that the Order of the Hon'ble high Court at Calcutta dated 13th December 2012 cannot be binding upon the successful resolution applicant for the order of 13th December 2012 passed by the Hon'ble High Court at Calcutta was an interim direction for payment of lease rental to Estate

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Officer much before CD went into CIRP on 10th January 2018 and was finally revived by the SRA by virtue of a plan which is binding upon everyone including its employees, creditors, members and the Central Government, State Government and any other local authority. It is argued that Section 238 of the Code declares supremacy of all the provisions of IBC over any other law or any other instrument. Thus, even if the Hon'ble High Court refers to a higher lease amount on an interim measure, since finally it has been reduced in the resolution plan approved by the COP and Adjudicating Authority under the I&B Code, it is binding upon KoPT, the KoPT having failed to raise its claim with the RP, when it legally could, cannot grumble now.

7. We have considered the rival contentions. The issue that requires consideration is twofold:

(i) whether this Tribunal can recall its order passed in 2018 on an application preferred in 2021; and

(ii) whether the corporate debtor is still bound to pay occupational charges amounting to Rs. 14,35,954/- in terms of order of the Hon'ble High Court at Calcutta dated 13.12.2012.

8. Analysis and Finding:

8.1 On the moot point concerning the power of recall or review by the Adjudicating Authority, we find that the Hon'ble NCLAT after examining various judgments on the subject in ***Union Bank of India v. Dinakar T. Vekatasubramanian*** in **I.A. No. 3961 in Company Appeal (AT)(Ins) No. 729 of 2022** has held that:

“20. The above judgments of the Hon'ble Supreme Court clearly lays down that there is a distinction between review and recall.

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The power to review is not conferred upon this Tribunal but power to recall its judgment is inherent in this Tribunal since inherent power of the Tribunal are preserved, powers which are inherent in the Tribunal as has been declared by Rule 11 of the NCLAT Rules, 2016. Power of recall is not power of the Tribunal to rehear the case to find out any apparent error in the judgment which is the scope of a review of a judgment. Power of recall of a judgment can be exercised by this Tribunal when any procedural error is committed in delivering the earlier judgment; for example; necessary party has not been served or necessary party was not before the Tribunal when judgment was delivered adverse to a party. There may be other grounds for recall of a judgment. Well known ground on which a judgment can always be recalled by a Court is ground of fraud played on the Court in obtaining judgment from the Court. We, for the purpose of answering the questions referred to us, need not further elaborate the circumstances where power of recall can be exercised.”

(Emphasis added)

8.2 We find that the Hon’ble Apex Court on 31.07.2023 in **Union Bank of India v. Financial Creditors of M/s. Amtek Auto Ltd**, reported at **(2023) ibclaw. in 85 SC**, has upheld the said judgment in **Dinakar (Supra)** of the Hon’ble NCLAT.

8.3 We would refer to the decision of the Hon’ble Apex Court in **Vishnu Agarwal vs. State of U.P. and Ors.** reported in **MANU/SC/0147/2011**, wherein it was held that:

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“Apart from the above, we are of the opinion that the application filed by the Respondent was an application for recall of the Order dated 2.9.2003 and not for review. In Asit Kumar v. State of West Bengal and Ors. MANU/SC/0062/2009 : 2009 (1) SCR 469, this Court made a distinction between recall and review which is as under:

*There is a distinction between...a review petition and a recall petition. **While in a review petition, the Court considers on merits whether there is an error apparent on the face of the record, in a recall petition the Court does not go into the merits but simply recalls an order which was passed without giving an opportunity of hearing to an affected party.** We are treating this petition under Article 32 as a recall petition because the order passed in the decision in All Bengal Licensees Association v. Raghendra Singh and Ors. MANU/SC/1328/2007 : 2007 (11) SCC 374 cancelling certain licences was passed without giving opportunity of hearing to the persons who had been granted licences.”*

(Emphasis added)

- 8.4** Further, the Coordinate Bench of NCLT, Hyderabad, in ***D. Srinivasa Rao vs. Stressed Assets Stabilization Fund (SASF)*** reported in **MANU/NC/2640/2024** has laid down the criteria to recall an order and observed that:

*“9. Thus, in view of the judgements in Union Bank of India versus **Mr. Dinakar T. Vekatasubramanian & Ors supra, A.R Antulay versus R.S. Nayak supra and Budhia Swain & Ors versus Gopinath***

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Deb & Ors supra, we can summarise some of the instances when order can be recalled:

a) When there is procedural error in delivery of the judgement.

b) Judgement/order obtained by fraud.

c) Misrepresentation made by a party

d) When the Court commits mistake which prejudices a party.

e) When an order has been passed without hearing a party.

f) When an order affects the person who is not impleaded as a party.”

(Emphasis added)

8.5 We note that the resolution plan has been approved way back on 30.10.2018, after examining all the factors which requires to be verified as the I&B Code mandates and the relevant Regulations provides and thus, the instant application filed on 10.08.2021, seeking the recall of the approval of resolution plan by this Adjudicating Authority, long after almost 3 years is not entertainable. The KoPT having failed to lodge its claim in terms of the interim order of the Hon’ble High Court at Calcutta when time was ripe, cannot question the plan or seek its recall.

9. Now, on the issue whether the occupational charges would be payable in terms of the decision on 13.12.2012 of the Hon’ble High Court at Calcutta, that it would be apt to refer the order passed by the Hon’ble High Court that reads as:

“Having heard Mr. Kapoor, learned senior advocate for the petitioners and Mr. Kar, learned advocate for the Port Trust and considering the fact that the issue regarding determination of occupation charges payable by the petitioner to the Port Trust for occupying the property of the latter is pending before the Estate Officer appointed in terms of the provision contained in the Public Premises

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(Eviction and Unauthorised Occupants) Act, 1971, I find no reason to keep the writ petition pending. The Estate Officer shall decide the contentious issues that are raised by the parties in accordance with law. If any order has been passed by the Estate Officer for measurement of the area occupied by the petitioners, he shall ensure that the measurements are taken without unreasonable delay, for, that would only assist him to come to a correct decision in respect of the charge that the petitioners are liable to pay.

Till such time the Estate Officer decides the issue, the petitioners shall be liable to pay occupation charges at Rs.14,34,954/- to the Port Trust without prejudice to the rights and contentions of both the parties and subject to the determination made by the Estate Officer.

Needless to observe, this Court has not expressed any opinion on the merits of the rival claims and all points are left open to be urged before the Estate Officer for a decision by him in accordance with law.

This writ petition is disposed of, without costs.”

10. In terms of the Order of the Hon’ble High Court at Calcutta, the liability to pay the occupational charges would continue till the culmination of a determination by the Estate Officer. Meanwhile, the proceeding under the I&B Code has got triggered and a plan has been approved on 30.10.2018. As the occupational charges had to be claimed before the approval of the resolution plan, nothing remains for determination by the Estate Officer once the assets of the Corporate Debtor have been dealt with in terms of the Resolution Plan.

11. Section 238 of the I&B Code reads as “[t]he provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

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12. It is a well settled proposition that the I&B Code is a complete code on matters relating to insolvency and bankruptcy. The Section 238 of the Code envisages the supremacy of the I&B Code over any other law and that the Code will override anything inconsistent contained in any other enactment. We would rely on the judgment rendered by the Hon'ble Apex Court in ***Principal Commissioner of Income Tax vs. Monnet Ispat and Energy Ltd.*** reported in **(2018) 18 SCC 786**, that:

*“2. Given Section 238 of the Insolvency and Bankruptcy Code, 2016, it is obvious that the Code will override anything inconsistent contained in any other enactment, including the Income Tax Act. We may also refer in this connection to **Dena Bank v. Bhikhabhai Prabhudas Parekh and Co. (2000) 5 SCC 694** and its progeny, making it clear that income tax dues, being in the nature of Crown debts, do not take precedence even over secured creditors, who are private persons.”*

(Emphasis Added)

13. In ***Asset Reconstruction Company (India) Limited vs. Tulip Star Hotels Limited and Ors.*** reported in **MANU/SC/0946/2022**, the Hon'ble Apex Court held that:

“57. IBC has overriding effect over other laws. Section 238 of the IBC provides that the provisions of the IBC shall have effect, notwithstanding anything inconsistent therewith contained in any other law, for the time being in force, or any other instrument, having effect by virtue of such law.

58. Unlike coercive recovery litigation, the Corporate Insolvency Resolution Process

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under the IBC is not adversarial to the interests of the Corporate Debtor, as observed by this Court in Swiss Ribbons Private Limited v. Union of India (supra).

59. On the other hand, the IBC is a beneficial legislation for equal treatment of all creditors of the Corporate Debtor, as also the protection of the livelihoods of its employees/workers, by revival of the Corporate Debtor through the entrepreneurial skills of persons other than those in its management, who failed to clear the dues of the Corporate Debtor to its creditors. It only segregates the interests of the Corporate Debtor from those of its promoters/persons in management.”

(Emphasis Added)

14. Further, in **Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657**, the Hon’ble Apex Court observed that:

“71. As held by this Court in CIT v. Monnet Ispat & Energy Ltd. (2018) 18 SCC 786, in view of the provisions of Section 238 of the I&B Code, the provisions thereof will have an overriding effect, if there is any inconsistency with any of the provisions of the law for the time being in force or any instrument having effect by virtue of any such law. As such, the observations made by NCLAT to the aforesaid effect, if permitted to remain, would frustrate the very purpose for which the I&B Code is enacted.”

(Emphasis Added)

15. Further, In **Innoventive Industries Ltd. vs. ICICI Bank and Ors.** reported in **(2018) 1SCC 407**, the Hon’ble Apex Court laid down that:

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*“61. [...] Undeterred by this, Dr Singhvi, however, argued that since the suspension of the debt took place from July 2015 onwards, the appellant had a vested right which could not be interfered with by the Code. It is precisely for this reason that the **non obstante clause, in the widest terms possible, is contained in Section 238 of the Code, so that any right of the corporate debtor under any other law cannot come in the way of the Code.** For all these reasons, we are of the view that the Tribunal was correct in appreciating that there would be repugnancy between the provisions of the two enactments. The judgment of the Appellate Tribunal is not correct on this score because repugnancy does exist in fact.”*

(Emphasis Added)

16. Another judgment rendered by the Hon’ble Apex Court in ***Embassy Property Developments (P) Ltd. v. State of Karnataka, (2020) 13 SCC 308,*** wherein, it has held that:

*“11. It is beyond any pale of doubt that the IBC, 2016 is a complete code in itself. As observed by this Court in *Innoventive Industries Ltd. v. ICICI Bank* it is an exhaustive code on the subject-matter of insolvency in relation to corporate entities and others. It is also true that the IBC, 2016 is a single Unified Umbrella Code, covering the entire gamut of the law relating to insolvency resolution of corporate persons and others in a time-bound manner. The Code provides a three-tier mechanism, namely, (i) the NCLT, which is the adjudicating authority, (ii) the Nclat, which is the appellate authority, and (iii) this Court as the final authority, for dealing with all issues that may arise in relation to the*

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*reorganisation and insolvency resolution of
corporate persons. [...]*

(Emphasis Added)

17. Hence, we are of the considered opinion that in terms of the provision ingrained in Section 238 of the I&B Code, the Code shall override all other statutory provisions that may tend to affect or impede a corporate insolvency resolution process initiated under the I&B Code including the Public Premises (Eviction of unauthorized occupants) Act, 1971 (“PP Act”, for brevity) and the Resolution Plan being already approved with waivers and concessions, granted under the I&B Code, the occupational charges that was allowed to be levied on an interim measure, until a decision is taken by the Estate Officer under the PP Act, cannot be allowed to be levied any further after approval of the Resolution Plan.

18. We note that contention of the Respondent SRA that the applicant KoPT having failed to lodge its claim with RP, cannot ask for any past dues either from the Corporate Debtor or from the SRA. It is also a trite, axiomatic and well settled law that if a creditor failed to lodge its claim with the RP during the CIRP, once a resolution plan approved by CoC by requisite voting shares and subsequently by the Adjudicating Authority, all the past dues due stand waived, and the claim gets extinguished. The claims, that are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. To fortify our view, we would refer the ratio laid down in ***Ghanashyam Mishra (Supra)*** as under:

“138. In the foregoing paragraphs, we have held that the 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will have a retrospective operation. As such, when the resolution plan is approved by NCLT,

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the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. Since the subject-matter of the petition are the proceedings, which relate to the claims of the respondents prior to the approval of the plan, in the light of the view taken by us, the same cannot be continued. Equally the claims, which are not part of the resolution plan, shall stand extinguished.

(Emphasis Added)

19. Thus, we are of the view that the applicant KoPT, albeit a government authority, having failed to file its claim with the RP during the CIRP has missed the opportunity to seek its remedy under the I&B Code. In absence of any statutory provisions or precedents, this Adjudicating Authority cannot act as a saviour to the applicant by entertaining its claim and directing the SRA to make payment after approval of the plan.

20. Hence, we find no merit in the application and accordingly **dismiss** the same.

21. A certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 12th Day of August 2024.

Bose, R. K. [LRA]
Oindrila, K. [LRA]