

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1009 of 2023

[Arising out of Order dated 08.06.2023 passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Court I, Kolkata) in I.A.(IB) No. 1335/KB/2022 in CP(IB) No. 565 (KB) 2020]

IN THE MATTER OF:

**BOARD OF TRUSTEES FOR SYAMA PRASAD
MOOKERJEE PORT, KOLKATA**

15, Strand Road Kolkata- 700001

...Appellant

Versus

**1. Sanjai Kumar Gupta (Erstwhile Resolution
Professional of Stone India Limited)**

A6 Charulata, BE 8, Rabindra Pally, Kolkata, West
Bengal, 700101 E-mail:casanjaigupta@gmail.com
rp.stoneindia@gmail.com

...Respondent

No. 1

**2. Jupiter Wagons Limited (Successful Resolution
Applicant)**

Corporate Office 4/2. Middleton Street, Kolkata –
700071 Phone: 033-40111777 E-mail:
corporate@jupiterwagons.com
abhishekdas@jupiterwagons.com

...Respondent

No. 2

For Appellant: Mr. Sanjiv Sen, Sr. Advocate with Mr. Siddhant Jaiswal, Ms. Anjali Singh, Ms. Radha Gupta, Advocates.

For Respondents: Mr. Rishav Banerjee, Mr. Shambo Nandy, Mr. Rajarshi Banerjee, Advocates for R1.
Mr. Raghvendra Mohan Bajaj, Mr. Saikat Sarkar,
Mr. Kumar Karan, Advocates for R2.

J U D G M E N T

ASHOK BHUSHAN, J.

1. This Appeal by an Operational Creditor of the Corporate Debtor has been filed challenging the Order dated 08.06.2023 passed by the National

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Company Law Tribunal, Kolkata Bench, Court-I, Kolkata (hereinafter referred to as “The Adjudicating Authority”) by which the Adjudicating Authority has allowed the Application filed by the Resolution Professional being I.A. No. 1335/KB/2022 for approval of the Resolution Plan.

2. Appellant who has filed its claim as Operational Creditor in the Corporate Insolvency Resolution Process (CIRP in short) of the Corporate Debtor aggrieved by the Order has come up in this Appeal.

3. Brief background facts giving rise to this Appeal are:-

- i. Appellant has granted lease of its land in favour of Magnolia Dairy Products Limited on 27.11.1947 for a period of 30 years which was subsequently assigned to in favour of Britannia Company Limited. The said lease was with regard to Plate A. Land of Plate B was leased to one Diamond Projects Limited on 04.03.1948. Lease of Plate C was licensed to Stone India Ltd the Corporate Debtor on 01.07.1987. Diamond Products Limited assigned lease of Plate B for the unexpired term in favour of Stone India Ltd Corporate Debtor on 20.06.1950. Britannia Biscuits Company Ltd. also assigned the residuary interest on 18.03.1957 to the Stone India Ltd. The Corporate Debtor as assignee of the lease held interest on the land leased out by the Appellant continuing in possession. There has been dispute between the Appellant and the Corporate Debtor with regard to rate of rent payable by the Stone India Limited. Appellant also took steps to evict the Stone India Limited from the premises. Writ Petitions were filed in the Calcutta High Court by the Stone India Limited. Matter traveled up to the Hon’ble

Supreme Court. Hon'ble Supreme Court vide its order dated 07.12.2009 passed in C.A. No. 5158 of 2005 remanded the matter back to the single judge of the Calcutta high Court deciding the writ petition on merits. Hon'ble Supreme Court also noticed that eviction proceedings have been initiated by the Appellant. Hon'ble Supreme Court further directed the Corporate Debtor to pay at least Rupees two lakhs per month during the pendency of the proceedings before the Hon'ble High Court subject to further revision that may be made by the Hon'ble High Court. After the Order of the Hon'ble Supreme Court dated 07.12.2009, Hon'ble High Court passed an Order on 11.12.2009 in Writ Petition No. 9386 of 2009 granting interim order in favour of Stone India Ltd restraining the Appellant authorities from taking any steps or further steps for evicting the Stone India Ltd. from area in question being Plate A and B until further orders. The Corporate Debtor continued to be in possession in pursuance of the Interim Order passed by the Calcutta High Court, Calcutta High Court by a subsequent order dated 19th July, 2013 revised the rate of interest as Rs. 11,97,144/- per month in respect of two Plates with effect from 20th July, 2013 pending disposal of the writ petition.

- ii. Corporate Insolvency Resolution Process commenced against the Corporate Debtor by order dated 09.11.2021 of the Adjudicating Authority. In the CIRP of the Corporate Debtor, Appellant filed its claim as occupational charges payable by Corporate Debtor since 1977 total amounting of Rs. 98,39,70,929.51/- payable as on 16th

February, 2022. The Resolution Professional admitted the claim to the tune of Rs. 12,86,73,543.20/-. The Appellant filed an I.A. No. 348/KB/2022 praying for direction to RP to hand over the possession of two plates to the Appellant since the Corporate Debtor was unlawful occupation of the same. Another I.A. No. 1586/KB/2022 was filed by the Appellant in December, 2022 challenging the action of the RP not allowing the Appellant to participate in the CoC meeting and declaration that COC proceeding are initiated.

- iii. The Adjudicating Authority directed the RP to file Reply in I.A. No. 1586/KB/2022 on 15.03.2023. In the CIRP, RP received various Resolution Plan. Resolution Plan submitted by Jupiter Wagons Limited was approved by the Committee of Creditor with 100% Vote Share. CoC consisted of three Financial Creditors namely Indian Overseas Bank, ICICI Bank and State Bank of India. After approval of the plan by the COC, an I.A. No. 1335/KB/2022 was filed by the RP before the Adjudicating Authority. By the Impugned Order, the Adjudicating Authority has allowed the Application filed by the Resolution Professional and approved the Resolution Plan. The Adjudicating Authority returned a finding that Resolution Plan is in accordance with the provisions of Section 30(2) of the Code. In the Resolution Plan, Appellant has been proposed an Amount of Rs. 42 Lakhs. Aggrieved by the Impugned Order, this Appeal has been filed.

4. We have heard Mr. Sanjiv Sen, Sr. Advocate appearing for the Appellant, Mr. Rishav Banerjee, Advocate for Resolution Professional and Mr. Raghvendra Mohan Bajaj, Advocate for Successful Resolution Applicant.

5. Mr. Sanjiv Sen, Learned Sr. Counsel for the Appellant submits that Corporate Debtor is unauthorizedly occupying the very valuable land of the Appellant. It is submitted that assignment of the lease in favour of the Corporate Debtor came to an end and lease was never renewed by the Appellant. The Corporate Debtor is continuing in unauthorized possession of the land of Plate A and Plate B. It is submitted that huge amount of rent is overdue. It is submitted that Appellant filed a claim of Rs. 98,39,70,929.51/- whereas in the Resolution Plan meagre amount of Rs. 42,37,569/- have been proposed to the Appellant. It is submitted that I.A. No. 348/KB/2021 praying for direction for handing over possession of the two Plates as well as I.A. No. 1586/KB/2022 challenging the actions of the RP remained pending and were not decided by the Adjudicating Authority whereas the Adjudicating Authority on 08th June, 2023 has approved the Resolution Plan. It is submitted that assignment of land in favour of Corporate Debtor was never assented by the Appellant and corporate debtor is continuing in unauthorized possession who was not entitled to continue in possession. The Appellant being owner of the land, IRP could not have taken possession of the land as per Section 18(1)(f) of the Code. The assets that is land in question do not belong to the Corporate Debtor and has been wrongly included in the CIRP Process.

6. Learned Counsel for the Resolution Professional refuting the submission of the Appellant submits that Corporate Debtor has lease hold right in the land in question and interim injunction order has already been passed by the Calcutta High Court in writ petition filed by the Corporate Debtor on 11.12.2009 which interim order is still continuing. The Stone India Ltd. continued in possession by virtue of Interim Order passed by the Calcutta High Court which was never vacated. It is submitted that the assets which was in possession of the Corporate Debtor could not have been taken in possession by the Appellant after initiation of CIRP Process and enforcement of moratorium under Section 14 of the Code. It is submitted that Appellant filed its claim in the CIRP Process and partly admitted the claim to the tune of Rs. 12,86,73,543.20/-. It is submitted that Appellant as per the Resolution Plan is entitled to receive an amount of Rs. 42,37,569/- for which amount cheque has been issued on 31st July, 2023. It is further submitted that with regard to occupational charges cheque amounting to Rs. 2,04,71,162/- has also been sent for occupational charges payable by the Corporate Debtor to the Appellant during CIRP Period i.e. 09.11.2021 to 08th June, 2023. It is submitted that no grounds have been made out in the Appeal on which order of the Adjudicating Authority approving the Resolution Plan can be interfered with. It is submitted that in the Resolution Plan only lease hold right of the Corporate Debtor have been included and the relief and concession has not been granted by the Adjudicating Authority as was prayed in the Resolution Plan. It is further submitted that Calcutta High Court by a subsequent order dated 19th

July, 2013 in the writ petition has fixed a rate of rent at Rs. 11,97,144/- per month in respect of two Plates with effect from July, 2013 and the rent has been calculated by the RP according to the rate fixed by the Calcutta High Court. It is submitted that fixation of rent by the Order dated 19th July, 2013 has not been varied by the High Court as on date.

7. Learned Counsel for the SRA has also adopted the submissions of Learned Counsel for the RP and submits that the Resolution Plan was approved with 100% Vote Share of the Corporate Debtor and the Appellant who has filed claim in the CIRP has already been allocated amount of Rs. 42,37,569/- which amount has already been forwarded by the RP to the Appellant. It is submitted further that occupational charges during CIRP Process has also been forwarded to the Appellant. It is submitted that there is no ground made out in the Appeal to interfere with the Impugned Order.

8. We have considered the submissions of Learned Counsel for the parties and have perused the record.

9. There is no dispute that land of Plate A and Plate B is owned by the Appellant and they were leased out to Magnolia Dairy Products Limited and Diamond Product Limited in the year 1947 for 30 years. Magnolia Dairy Products Limited and Diamond Products Limited has assigned the lease land to the Stone India Limited on 18.03.1957. The Corporate Debtor has been continuing in the possession of the land assigned to it. Writ Petition were filed in Calcutta High Court with regard to rate of rent and challenging the newly added clause permitting 25% increase in rent every ten years. Against the Order passed by the Calcutta High Court,

Civil Appeal No. 5158 of 2005 was filed by the Corporate Debtor in Hon'ble Supreme Court and Hon'ble Supreme Court vide its order dated 07/12/2009 remanded back the matter to the Learned Single Judge for deciding the writ petition on merits. Hon'ble Supreme Court has also directed to make the payment of rent at the rate of Rs. 2 lakhs per month during the pendency of the proceedings before the High Court. In paragraph 15 to 17 of the Order, following was directed:

"15. Upon consideration of the entire matter, we are of the opinion that issues which were not agitated before the High Court either before the learned Single Judge or before the Division Bench are sought to be agitated in this Court for the first time. In the peculiar facts and circumstances of this case, it would be in the interest of justice to remand the matter back to the learned Single Judge of the High Court to re-determine the controversy between the parties after giving due opportunity to the parties to place on record any further material in support of their respective submissions. In view of the above the appeal is allowed. The judgments of the learned Single Judge dated 30.8.2000 and Division Bench dated 5.2.2004 are set aside. The matter is remanded back to the learned Single Judge of the High Court for a fresh decision on merits.

16. At this stage we are informed by Mr. Bhaskar Gupta that the respondents have started eviction proceedings against the appellants due to the expiry of lease and non-payment of the enhanced rent. In our opinion, it would be inappropriate to

grant any stay in those proceedings. However, the appellants are at liberty to make necessary application before the appropriate court for appropriate relief in the second writ petition. The application if any made, shall be decided on merit. We may also notice here that as an interim measure by the order dated 5.8.2005 this Court had directed that pending disposal of the appeal, the appellants will pay to the respondents a sum of Rs.50,000/- and deposit a sum of Rs.50,000/- per month towards the rent without prejudice to the contentions of either party. The aforesaid amount has been deposited regularly with the Registry of this Court. We permit the respondents to withdraw the aforesaid amount. The respondents have also been in receipt of Rs.50,000/- per month which was directed to be paid by the appellant during the pendency of the appeal. However, in view of the remand and in view of the huge amount in arrears (though according to Mr. Gupta, there are no arrears) we direct that the appellants shall pay at least a sum of Rs. 2 lakhs per month during the pendency of the proceedings before the High Court subject to any further revision that may be made by the High Court, in any future orders.

17. With the aforesaid observations, the matter is remanded back to the learned Single Judge for deciding the writ petition on merits. We request the learned Single Judge of the High Court to decide the writ petition finally within a period of six months from the date of receipt of a copy of this order.”

10. Subsequent to the Order of the Hon'ble Supreme Court, an order was passed by the Calcutta High Court on 11.12.2009 in the Writ Petition in which following interim order was passed:-

"In the meantime, let there also be an interim order restraining the respondent authorities from taking any step or further steps for evicting the petitions. From the area in question until further order."

11. The Corporate Debtor by virtue of the Interim Order claims to continue in possession. Calcutta High Court by subsequent order passed on 19th July, 2023 has redetermined the rate of rent as 11,97,144/- per month with effect from July, 2013. When the CIRP Process was initiated, Corporate Debtor was in possession by virtue of Interim Order passed by the Calcutta High Court. In the CIRP Process of the Corporate Debtor, Appellant has filed a claim for amount of Rs. 98,39,70,929.51/-. Resolution Professional after verification partly admitted the claim of Rs. 12,86,73,543.20/-. In the CIRP Process, Resolution Plan submitted by Respondent No. 2 was approved with 100% Vote Share which came to be approved by the Adjudicating Authority by the Impugned Order. In the Resolution Plan, Appellant has been allocated an amount of Rs. 42,37,569/- only.

12. We now proceed to consider the challenge raised by the Appellant with regard to meagre amount allocated to the Appellant as against the claim of Rs. 100 Crores. Appellant in the CIRP Process of the Corporate Debtor was only an Operational Creditor and against the submitted claim of Rs. 98,39,70,929.51/-, claim of Rs. 12,86,73,543.20 was admitted as has been submitted by the RP in the Reply filed in this Appeal.

13. Resolution Professional has also given the amount which has been allocated in the Resolution Plan to the Appellant i.e. 42,37,569/- which according to the Resolution Professional has also been forwarded to the Appellant.

14. Hon'ble Supreme Court in (2020) 8 SCC 531, "**Committee of Creditors of Essar Steel India Limited Through Authorised Signatory Vs. Satish Kumar Gupta & Ors.**" has laid down that there cannot be equality in the amount of payment to the different category of creditors. As per Section 30(2) of the Code, Operational Creditor is entitled to receive not less than the liquidation value payable to the such Operational Creditor in event the Corporate Debtor is liquidated. There is no case of the Appellant that amount which has been allocated to the Appellant in the Resolution Plan is less than the amount which is payable to the Appellant as per the Liquidation Value. It is well settled that what amount is to be paid to different stakeholders it is in the domain of the Committee of Creditors and commercial wisdom of CoC unless it is found to be violating any statutory provisions of the IBC cannot be interfered by the Adjudicating Authority or the Appellate Tribunal in exercise of its jurisdiction. We thus are of the view that on the ground that Appellant Operational Creditor has only been allocated amount of Rs. 42,37,569/- against those admitted claim cannot furnish any ground within the meaning of Section 61 of the Code to interfere with the order approving the Resolution Plan.

15. It is also relevant to notice that Resolution Applicant in the Resolution Plan has prayed for various reliefs and concessions in clause 11 which is as follows:

Sl No.	Relief and/or Concessions and Approvals Sought
	<p><i>a) Should not charge any amount in the form of transfer charge, penalty, premium or in any other form accruing, if any, due to change in management;</i></p> <p><i>b) Should not terminate or cancel the lease arrangement for any reason whatsoever;</i></p> <p><i>c) Should not re-vest the land from CD to their own names.</i></p> <p><i>The RA / CD, if required, shall make necessary applications with respective land owners for registering change in control of the Corporate Debtor from the erstwhile shareholders / management / promoter. No transfer charge / transfer premium will be charged by Lessors on account of such change in control.</i></p>

16. The Adjudicating Authority did not grant relief and concessions as prayed by Resolution Applicant and has held that waivers and concessions that are directly in relation to the Code and Companies Act, 2013 to which the Adjudicating Authority has power to grant and these are granted keeping in mind the object and spirit of the Code and reliefs, waivers and concessions that fall within the domain of other government

department/authorities are not granted. Para 45 of the Judgment is as follows:

“45. We have perused the reliefs, waivers and concessions as sought and as given in Section XIII at Pages 64-71 and Section XVI at Pages 76-83 of the Resolution Plan. While some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the purview of the Code while many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has power to grant reliefs, waivers and concessions only with respect to the reliefs, waivers and concessions that are directly in relation to the Code and the Companies Act 2013 (within the powers of the NCLT), and these are granted keeping in mind the object & spirit of the Code. No reliefs, waivers and concessions that fall within the domain of other government department/authorities are granted. The reliefs, waivers and concessions that pertain to other governmental authorities/departments shall be dealt with the respective competent authorities/forums/offices, Government or Semi Government of the State or Central Government with regard to the respective reliefs, waivers and concessions. The competent authorities including the Appellate authorities may consider grant such reliefs, waivers and concessions keeping in view the spirit of the Code.”

17. In the CIRP Process, the SRA shall take only those rights of the Corporate Debtor which it possess on the land which was assigned to the

Corporate Debtor. As noted above, various issues pertaining to rate of rent of land payable by the Corporate Debtor and proceeding of eviction of the Appellant are pending consideration in different forums. In the CIRP Process those issues neither can be gone into nor can be decided. Approval of the Resolution Plan only entitles the SRA to take over those rights which are possessed by the Corporate Debtor. Determination of said rights are pending consideration in different forums and have not been decided in the CIRP Process. We make it clear that approval of the Resolution Plan shall have no effect in determination of the rights of the parties which are pending before the Hon'ble Calcutta High Court and other forums and that parties with regard to determination of their rights subject land shall abide by the decision taken in the proceedings. In so far as claim of the Appellant which was filed in Resolution Process, the said claim has become final on payment of the amount which has been allocated in the Resolution Plan. In so far as the non-decision of the Applications filed by the Appellant being I.A. No. 348/KB/2022 for handing over the possession of the land in question to the Appellant, the said application has become infructuous after approval of the Resolution Plan and no order can be passed now on the said application. As far as I.A. No. 1586/KB/2022 filed by the Appellant, after approval of the plan, the said application also does not survive to be considered and decided.

18. In view of the foregoing discussions and our conclusions, we are of the view that no grounds have been made out within the meaning of Section 61 of the IBC to interfere with the Order passed by the Adjudicating Authority approving the Resolution Plan of the Corporate

Debtor. We only observe that Resolution Applicant has taken in subject land only those rights which were possessed by the Corporate Debtor, various issues regarding the rights of the parties which are pending consideration before the Calcutta High Court and other forums shall proceed and determine in accordance with law unhindered by approval of the Resolution Plan. Approval of the Resolution Plan shall have no effect on proceedings which are still going on with regard to determination of the rights of the parties since determination of the rights of the parties qua the subject land were not subject matter of the determination in the CIRP Process.

Subject to observations as above, the Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI
08th February, 2024

Basant

Company Appeal (AT) (Insolvency) No. 1009 of 2023