

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
24-06-2024 AT 10:30 AM**

CP(IB) No. 199/7/HDB/2019

AND

IA (IBC) 732/2022 & IA (IBC) 1246/2024 in CP(IB) No. 199/7/HDB/2019

u/s. 7 of IBC, 2016

IN THE MATTER OF:

IDBI Bank Ltd

...Financial Creditor

AND

Aster Pvt Ltd

...Corporate Debtor

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)

SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

ORDER

IA (IBC) 732/2022

Orders pronounced. In the result, **this application is dismissed. No costs.**

IA (IBC) 1246/2024

Learned Counsel Ms Akanksha Nehra, for applicant present through Video Conference.

Issue Notice to the respondent by registered/ speed post with acknowledgment due and through e-mail, to be taken up within 3 days' time. Meanwhile, counter if any to be filed by the respondent within 10 days' time. Posted to 09.07.2024 for filing proof of service and for counter.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL, BENCH-1,
HYDERABAD**

IA (IBC)/732/2022

In CP (IB) No.199/7/HDB/2019

Application under Section 60(5) read with 35(1) (e) of the Insolvency and
Bankruptcy Code, 2016

Between

M/s Aster Private Ltd. (CD)

Represented by:

Shri Naren Sheth

IA Applicationer

Liquidator

Regd. Office at Plot no. 140&141/1, IDA Phase-II, Cherlapally,

Hyderabad- 500051 Hyderabad, Telangana 500081

(I.R.P. I.D. no.IP/P-00133-IBBI/IPA-001/IP-P00133/2017-18/10275)

And

1. Gujarat Industrial Development Corporation Ltd....Respondent

GIDC (Represented by its Chairman and M.D.)

Address Block 3,4,5, Udyog

Bhawan, Sector-11, Gandhi

Nagar, Gujarat-382011.

2. Aster Building Solutions ...Proforma Respondent

Through its RP, Monitoring Committee,

Flat No.301, Vishnu Residency, Gandhi Nagar,

Hyderabad.

Date of order: 24.06.2024.

Coram

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)

Shri Charan Singh, Hon'ble Member (Technical)

Parties/ Counsels present:

For the Applicant : Ms. JVL Bharati, Counsel.

Liquidator : Mr. Naren Sheth.

PER: BENCH

1. This is an Application filed by the Applicant under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 Read with 35(1)(e) of NCLT Rules, 2016 seeking recall lease cancellation/termination letter issued by GIDC dt. 11.04.2022 and direct GIDC to file claim before liquidator and to allow the liquidator to exercise his responsibilities without any hinderance, since the asset is a part and parcel of the liquidation estate, and allow liquidator to complete the liquidation process.

2. Gist of the application:

- a. It is averred that Gujarat Industrial Development Corporation (GIDC) allotted a plot/shed of land no. 2 to 7/1 area admeasuring 145175.98 sq. meters in Savli Industrial Area to M/s Aster Pvt.Ltd.(applicant/ CD) vide license agreement or Hire Purchase system dt.05.9.2008 Possession of the same was handed over to the applicant / CD on 12.3.2009. As per the lease deed between GIDC and applicant Aster Private Ltd. dt. 9.1.2013, the lease deed is valid for a 99-year period

computing from 02.8.2008 (License agreement enclosed as Annexure-2) and still 86 years left.

- b. Thereafter the land was subleased to M/s. Aster Building Solution Pvt.Ltd vide sublease agreement dated 12.04.2012 by corporate debtor/Applicant which is its sister concern and the land was in possession of M/s.Aster Builing Solutions Pvt Ltd., which has been taken loans from IDBI Bank and Axis Bank based on the sublease agreement and also set up a plant and machinery in the said plot.
- c. It is averred that M/s.Aster Builing Solutions Pvt Ltd, has undergone CIRP and the Resolution plan submitted by the M/s.Triumph Global India Pvt.Ltd. It is averred that resolution plan also includes the leasehold rights of the said plot allotted by GIDC which is being contested by the Applicant.
- d. While this is so, this Tribunal passed liquidation order of Applicant vide order dated 22.09.2021. It is averred that at this stage letter has been received from GIDC dated 11.04.2022 regarding terminating the lease of the land(plot/shed of land no. 2

to 7/1 area admeasuring 145175.98 sq. meters in Savli Industrial Area).

- e. It is averred that the Termination letter issued by GIDC based on the liquidation order, which is against the provisions of the Code and will affect the interest of the Secured financial creditors.
 - f. Liquidator sent reply to GIDC stating that the asset is part of the liquidation estate and requested the GIDC not to take action and the assets will be governed by the Rules and Regulations of IBC.
 - g. It is averred that since the liquidator has no other remedy to resolve the issue, thus filed the present Application for certain directions from this Tribunal.
3. Written submissions filed by the Applicant by reiterating the same facts mentioned in the Application.
 4. On careful perusal of the Application and other documents filed by the Applicant, the point that emerges for our consideration is:
Whether the termination letter issued by GIDC to the corporate debtor can be recalled under the facts and circumstances as pleaded by the Applicant?

5. We have heard learned counsel Ms.JVL Bharti, for liquidator Mr.Naren Sheth.
6. This application is filed by the liquidator of the corporate debtor to recall lease cancellation/termination issued by the GIDC dated 11.04.2022 and direct GIDC to file a claim before liquidator if they have any dues against the corporate debtor.
7. Respondent/GIDC has not contested the case and did not file any written submissions to the issues raised by the liquidator.
8. Applicant submits that GIDC has issued a termination letter on 11.04.200 after the corporate debtor was put under liquidation on 22.09.2021 and no suit or other proceedings shall be instituted against the corporate debtor after passing of the liquidation order in terms of Section 52 of IBC, 2016.
9. Learned Counsel further submits that the said plot allotted by the GIDC to the corporate debtor was given on sub-lease to one of the subsidiary of corporate debtor i.e M/s.Aster Building Solutions Pvt Ltd., which is also undergoing CIRP process and resolution plan has been approved.
10. The resolution plan of the said subsidiary also includes the lease hold rights of the said plot allotted by GIDC, to corporate debtor which is part of the liquidation estate of the corporate debtor. The learned counsel further prayed for the cancellation of termination letter and the property be considered as part of liquidation estate.

OUR OBSERVATIONS AND FINDINGS:

11. We have perused the termination letter issued by the GIDC and find that GIDC has terminated the lease deed agreement as per Clause 5(E)(2) of the license agreement wherein the utilization period for the plot was only 3 years and which was expired.
12. Having perused the lease deed agreement filed by the Applicant in the application we found that lease deed agreement filed by the applicant is not complete as in the lease deed agreement point 5&6 are missing, which contains Clause 5(E) 2 as referred by GIDC in their termination letter.
13. This application was posted for orders on 11.09.2023 but this Tribunal re-opened the case to hear again on Clause 5(E) 2 of the license agreement under which GIDC terminated lease on 11.04.2022, the said order of this Tribunal is reproduced here under:

“Ld. Counsel Ms. JVL Bharati for the Applicant present.

Brief facts of the case are that Gujarat Industrial Development Corporation (GIDC) allotted a Plot of land on 12.03.2009 on lease of 99 years to the CD. Remaining period of lease is 86 years. CD subleased the plot to its subsidiary, Aster Building Solutions Pvt. Ltd. on 12.04.2012 which took loan from IDBI and Axis Bank on the basis of this sublease agreement and ultimately CIRP was initiated and Company was taken over by Triumph India Pvt. Ltd (SRA) on 04.06.2019 and its resolution plan includes lease hold rights of said plot which CD is contesting. As per liquidator possession of the said plot is with liquidator. Liquidation order of CD was passed on 22.09.2021. In the meanwhile, GIDC terminated lease on 11.04.2022 referring to clause 5(E)(2) of the license agreement. The document containing this clause is not filed with the application.

Therefore, we reopen the case to hear again on this particular clause. Call on 20.10.2023”.

The case was adjourned again but applicant did not submit the said documents in full to the Tribunal and another order in this respect was again passed on 10.01.2024 which is also reproduced here under:

10.01.2024

“Learned Counsel Smt. JVL Bharati, for applicant present physically and Learned Counsel Mr. Kush Bavishi for Adv Anal Shah for Respondent present through Video Conference. Matter passed over.

Matter called again. Proof of service filed as per the same the notice by way of speed post on 07.11.2023 was delivered on 11.12.2023 on the GIDC. Learned Counsel also enclosed an e-mail communication to the respondent whereby it has been mentioned that the matter was listed today for notice. Respondent called absent. Service held sufficient and set ex-parte.

Meanwhile, let the liquidator file an affidavit as to what steps taken for realization of rent from the sub lessee, Aster Building Solutions and how much rent is due and payable by them as per the lease, the Applicationer herein entered with Aster Building Solutions.

Let the Applicationer file a copy containing all the clauses and pages of the lease agreement between the Applicationer and GIDC well before next hearing date, as the copy filed along with the application did not contain all the pages. Only as the applicant selectively filed a few pages of the lease agreement. Let liquidator appear on the next hearing date without fail. Matter adjourned to 13.02.2024.

14. While it was so, Learned counsel for the applicant in her oral submission also reiterated that lease deed document has already filed with complete documents containing all the Clauses.
15. We perused the lease agreement filed with written submissions and find that it is copy of the same lease agreement filed with the Application and does not contain relevant clauses for deciding this Application.

16. In the above backdrop, since the entire case of the liquidator is rested on lease agreement, the complete copy of which especially pages containing Clause 5(E) 2 relied on by the liquidator are not filed. Hence, we are prevented from examining these Clauses and from giving our findings. Therefore, under these circumstances, the Application deserves to be dismissed.
17. Accordingly, this Application is dismissed, no costs.

SD

SD

Charan Singh

Dr. Venkata Ramakrishna Badarinath Nandula

Member Technical

Member Judicial

Pavani