

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. III)**

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016)

**IA-4490/2021
IN
IB-432(ND)/2019**

IN THE MATTER OF:-

Mr. Arun Kumar Sinha

... Applicant/Financial Creditor

Versus

M/s. Three C Homes Pvt. Ltd.

... Respondent/Corporate Debtor

AND IN THE MATTER OF:

Mr. Gaurav Katiyar, Resolution Professional

... Applicant

Versus

Yamuna Expressway Industrial Development Authority

...Respondent

Pronounced on: 12.01.2023

CORAM:-

**SHRI BACHU VENKAT BALARAM DAS
Hon'ble MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA
HON'BLE MEMBER (TECHNICAL)**

Parties / Counsels present

For Applicant :Sr. Adv. Gopal Jain, Adv. Abir Roy, Adv. Vivek Pandey,
Adv. Suvarna, Adv. Soham Goswani for Resolution
Applicant in IA-4490/2021

For the YEIDA : Sr. Adv. Krishnendu Datta, Adv. Pranav Tanwar,
Adv. Md. Aman Sheikh, Adv. Rajat Sinha

ORDER

PER:SH. BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

This application has been filed by Resolution Professional under 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking to set aside the order dated 12.01.2021 passed by the Yamuna Expressway Industrial Development Authority (YEIDA) wherein the lease of plot situated at Ts-01, Sector -22A, Yamuna Express Industrial Development Area, Gautam Buddh Nagar, U.P., under scheme code YEA-RT-02/2010 allotted to the corporate debtor is cancelled.

Brief Background of the Case:-

2. The Company Petition No. IB-432/ND/2019 in the matter of Arun Kumar Sinha Vs. Three C Homes Pvt Ltd., was admitted and CIRP was initiated by this Tribunal vide order dated 06.09.2019 and one Mr. Gaurav Katiyar, Insolvency Professional having IBBI registration no. IBBI/IPA-001/IP-P00209/2017-18/10409 was appointed as the Interim Resolution Professional ("IRP") of the Corporate Debtor.
3. The Corporate Debtor is a Real Estate Company and is the allottee of leasehold land situated at the plot No. TS-1, Sector 22A, Yamuna Expressway Development Authority, Gautam Buddh Nagar, Uttar Pradesh admeasuring about 100 Acre.
4. The YEIDA is constituted under the provisions of Section 3 of the U.P. Industrial Area Development Act, 1976. The Committee of Creditors in its 5th CoC meeting held on 10.08.2020 approved the Resolution Plan
5. The Resolution Professional filed an I.A. No-3385/2020 u/s 30(6) of the IB Code, 2016 seeking approval of Resolution Plan before this Adjudicating

Authority. A C.A. No-3840/2020 was filed by few Allottees of objecting the approval of Resolution Plan.

6. The I.A. No-3385/2020 and C.A. No-3840/2020 came for hearing before this Adjudicating authority from time to time and the I.A. No-3385/2020 filed by the Resolution Professional seeking the approval of Resolution Plan as approved by the CoC was rejected by this Adjudicating Authority vide order dated 08.02.2021 and certain objections taken by the allottees in C.A. No-3840 of 2020 were allowed. Being aggrieved from the aforesaid order, the Lotus City Plot Buyers Welfare Association filed the appeal bearing Company Appeal (AT) (Ins.) No. 151 of 2021 against the said order before the Hon'ble Appellate Tribunal, the Resolution Professional also filed the Company Appeal (AT) (Ins.) No. 193-194 of 2021 against the said order, the Resolution Applicant also filed the Company Appeal (AT) (Ins.) 205 of 2021 against the said order. Therefore, all the three Company Appeal (AT) (Ins.) No. 151, 193-194 and 205 of 2021 were clubbed together for hearing purpose.
7. It is submitted that Company Appeal (AT) (Ins.) 151, 193-194 and 205 of 2021 were allowed with remand back the matter to this Hon'ble Tribunal with certain other directions such as: -
 - a) To reconcile the benefits of homebuyers in the approved resolution plan i.e., realization value of plots vis-à-vis the liquidation value plots;
 - b) To check the compliance of CIRP Regulations (4th Amendment) 2020 and
 - c) To implead the Yamuna Expressway Industrial Development Authority to determine the status of dispute with the farmers.
8. That this Hon'ble Tribunal vide order dated 03.08.2021 passed in I.A. No-3385 of 2020 was pleased to direct the Applicant herein/Resolution Professional to implead the Yamuna Expressway Industrial Development Authority as necessary and proper party and serve the YEIDA with copy of I.A. No-3385 of 2020. Further, in compliance of said order dated 03.08.2021, the Applicant herein/Resolution Professional impleaded the YEIDA as Respondent No-1 and filed the amended memo of parties in I.A. No-3385 of 2020.

9. The YEIDA filed their objection to the Resolution Plan by way of reply to IA No. 3385/2020 wherein they have stated that the lease of plot no. Ts-01, Sector -22A, Yamuna Express Industrial Development Area, Gautam Buddh Nagar, U.P., under scheme code YEA-RT-02/2010 has been cancelled vide order dated 12.01.2021. It is stated that the Corporate Debtor was allotted the land in question vide allotment letter dated 17.02.2011 and the total sale consideration according to the said allotment letter was Rs. 183,48,15,950/- only. It is submitted that the said allotment letter did not transfer any property in favour of the Corporate Debtor as the said allotment letter is not an allotment within the meaning of Section 7 of the U.P. Industrial Area Development Act, 1976.
10. It is further submitted that the Corporate Debtor entered into a lease deed with the YEIDA for the demise of aforesaid leasehold land. The said lease deed was for a period of 90 years commencing from 10.06.2011. The relevant clauses of said lease deed are reproduced below:

The lessor doth hereby demise and lease to the lessee, all that plot of land numbered as Plot No-TS-01, Sector-22A, allotted under the scheme code-lessor-RT-02, situated in Yamuna Expressway Industrial Development Area, District Gautam Budhh Nagar, (U.P.) contained by admeasurements 4,00,000 Sq. mt (as per lease plan 392474 sq mt,) be the same, a little more of less and bounded: -

XXX XXX XXX

and which said plot is more clearly delineated and shown in the attached plan and there in marked red.

TO HOLD the said plot (hereinafter referred to as "the demised premises") with their appurtenances unto the lessee for a term of 90 (Ninety) years commencing from 10th June, 2011 (date of execution of lease deed) except and always reserving to the lessor on the term and conditions mentioned below:-"

11. It is submitted that subsequently a correction deed dated 04.02.2013 was executed between YEIDA and the Corporate Debtor by which the area was increased by 12,386.60 sq mtrs., bringing the total net area of land to

4,04,860.60 sq mtrs. Further, the Corporate Debtor was obligated to pay the lease rental @ 1% of the lease premium.

12. It is submitted that the YEIDA for the first time in the reply filed to IA No. 3385/2020 stated about the cancellation of the said lease deed vide order dated 12.01.2021 without serving any notice to the Resolution Professional and more so because the said cancellation order was passed during the moratorium period under the provisions of IB Code, 2016.
13. The Applicant/RP has questioned the validity of the order dated 12.01.2021 passed by YEIDA cancelling the lease deed of the plot of land in question. One of the impugned grounds on which the said impugned cancellation order dated 12.01.2021 has been challenged is that the said cancellation order was passed in contravention of the moratorium imposed under Section 14 of IBC, 2016 specific the prohibited under Section 14(1)(a) IBC.
14. It is submitted that the said cancellation order is quasi-judicial in nature and has the effect of determining the rights of the Corporate Debtor vis-a-vis YEIDA relating to forfeiture etc., and rights of allottees of the Corporate Debtor vis-a-vis Corporate Debtor. Therefore, the impugned order dated 12.01.2021 and other notices issued by the YEIDA are proceedings within the meaning of Section 14(1)(a) of the IB Code 2016 and therefore could not have been passed.
15. It is also submitted that in terms of Section 14(1)(d) of IBC an owner/lessor cannot recover its property occupied by the Corporate Debtor. The Applicant has relied upon an order passed by **Hon'ble NCLAT in the case of Maharashtra Industrial Development Corporation Limited v. Santanu T. Ray [2022] 139 taxmann.com 396 (NCLAT-New Delhi)** in support of his contention. It is therefore prayed that the impugned cancellation order is void-ab-initio and liable to set aside by this Tribunal. It has been further contended that the RP is in physical possession of plot of vacant land, the YEIDA has not initiated any ejection proceedings.
16. The Respondent/YEIDA has filed a reply affidavit to the present interlocutory application. It is contended that after commencement of CIRP on 06.09.2019.

The Respondent/YEIDA informed the Applicant/Resolution Professional vide his letter dated 15.06.2020 that total outstanding amount until April 30, 2020 was Rs. 20.05 crore and payable on account of lease rent, including the current dues regarding the lease rent after the commencement of CIRP. It is submitted that the pending current dues of the Corporate Debtor towards lease rent along with interest for the period between initiation of CIRP i.e., 06.09.2019 till cancellation of the lease deed i.e., 12.01.2021 was Rs. 3,26,50,724.12/-.

17. The cancellation order was passed on account of default of payment of lease rent (including the lease rent for the period after commencement of CIRP and current dues in terms of explanation to Section 14(1)(d) of IBC, 2016 and other defaults.

ISSUE

18. We have heard Mr. Rishabh Jain, Ld. Counsel appearing for the Applicant/Resolution Professional and Mr. Krishnendu Dutta, Ld. Sr. Advocate appearing for YEIDA.
19. The sole issue which is to be determined by this Tribunal on the basis of the facts and averments made in the application and the reply affidavit filed by the Respondent and after hearing the arguments of both the sides, is as to ***whether the action of YEIDA of issuing the order dated 12.01.2021 whereby the lease with respect to the plot in question was cancelled is hit by the provisions of Section 14 of IBC?***

ARGUMENTS ADVANCED BY THE PARTIES

20. Mr. Rishabh Jain, Ld. Counsel appearing for the Applicant/RP submitted that the impugned order by which the lease was cancelled is issued in contravention of the moratorium imposed under Section 14 of IBC and is specifically prohibited under Section 14(1)(a) IBC as the act of passing of cancellation order is passed by YEIDA would squarely fall within the meaning of terms proceedings.

21. In support of his contention, Mr. Rishabh Jain relied upon the judgment of Hon'ble NCLAT in the case of **Maharashtra Industrial Development Corporation Limited (supra)** wherein it has been held that *“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. 11-3-2019 due to currency of Moratorium, the Appellant could not have taken possession of the leased property by virtue of restrain 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.”*
22. Mr. Rishabh Jain, Ld. Counsel further submitted that in terms of Section 14(1)(d) of IBC an owner/lessor cannot recover its property occupied by the Corporate Debtor. In support of said contention he relied upon the order passed by Hon'ble NCLAT in the case of **Maharashtra Industrial Development Corporation Limited v. Santanu T. Ray [2022] 139 taxmann.com 396 (NCLAT-New Delhi)** wherein *the Hon'ble NCLAT has held that termination of lease agreement and taking over possession of the property on the ground that the Corporate Debtor violated the conditions of the lease agreement during the currency of CIRP and declaration of moratorium was hit by Section 14(1)(d) of IBC.*
23. On the contrary, Mr. K. Dutta, Ld. Sr. Advocate argued that the Corporate Debtor entered into a lease deed with the YEIDA for development of the plot and since the Corporate Debtor breached the terms and condition of the lease deed and failed to make timely payments of the premium and lease rent (current dues), for which default notices were issued by the Authority, the lease was rightly cancelled.
24. He submitted that the lease deed is governed by the provisions of Uttar Pradesh Industrial Area Development Act 1976 (hereinafter the act) Section 14 of the said Act gives powers to the Authority to forfeit such land in case of

breach of terms of the allotment. The cancellation order passed by the Authority was in exercise of its statutory powers under Section 14 of the Act and therefore this Adjudicating Authority cannot look into the correctness of the said cancellation order.

25. In this regard, Mr. K. Dutta relied upon the judgment of the **Hon'ble Supreme Court in Embassy Property Developments Pvt. Ltd. v. State of Karnataka, (2020) 13 SCC 308** wherein while dealing with the scope of interference with issues pertaining to public law, It was held that- "*the decision of the Government of Karnataka to refuse the benefit of deemed extension of lease, is in the public law domain and hence the correctness of the said decision can be called into question only in a superior court which is vested with the power of judicial review over administrative action.*"
26. Mr. Rishabh Jain also submitted that the Corporate Debtor was obligated to pay lease rent as part of reciprocal promise of lease deed. However, the YEIDA before initiation of CIRP has failed to give peaceful possession of the leased land and since 2013 the Corporate Debtor is having issues with the authority for not giving the possession. He also submitted that the lease deed which forms the entire substratum of Corporate Debtor having more than 512 Homebuyers and other stakeholders, having fair value 600.87 Crores and Liquidation Value of Rs. 480.70 Crores cannot be terminated by the YEIDA for recovery of a sum of Rs. 3.26 Crores under the head of "Current Dues". Therefore, the lease deed cancelled by the YEIDA is liable to be restored. He also submitted that the Resolution Applicant is willing to pay the current dues of YEIDA.
27. Mr. K. Dutta further submitted that the cancellation of the lease deed done in exercise of statutory powers under Section 14 of the Act with regard to the public property is in the realm of public law and correctness of the said decision cannot be called into question by this Adjudicating Authority. Mr. K. Dutta further submitted that the power to terminate the lease deed available to the Authority under Section 14 of the Act is not inconsistent with any of the provisions of IBC and such power is not over-ridden by Section 238 of

IBC. In support of this contention, Mr. K. Dutta relied upon a judgment passed by the Hon'ble Supreme Court in the **case of Municipal Corporation of Greater Mumbai (MCGM) v. Abhilash Lal reported in (2020) 13 SCC 234** and contended that in view of the Principal laid down in the above said judgment Section 238 of IB cannot be read as overriding the Authorities right since it is the public duty to control and regulate how its properties are to be dealt with. He submitted that Section 238 of IBC could be of importance when the property in question dealings to the Corporate Debtor and not when a third party like the authorities is involved.

28. Mr. K. Dutta further submitted that the YEIDA is protected under the explanation to Section 14(1)(d) of IBC to cancel the lease deed irrespective of the commencement of the moratorium. For the sake of convenience explanation to Section 14(1)(d) is reproduced below:

"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;"

ANALYSIS AND FINDINGS

29. We have analyzed the submissions made by Ld. Counsel appearing for both the parties and the provisions of IBC as well as the case laws relied upon by them. The main contention of Mr. K. Dutta, Ld. Sr. Advocate appearing for YEIDA is that the YEIDA is protected under the explanation to Section 14 (1)(d) of IBC to cancel the lease deed irrespective of commencement of the moratorium.

30. On a perusal of the said provision, we find that nowhere in the said provision the expression “lease” has been mentioned, rather explanation to Section 14(1)(d) uses the expression “licence”. We are therefore of the considered opinion that YEIDA will not get any protection from the said provision that is explanation to Section 14(1)(d).
31. With respect to the arguments as to whether Section 238 of IBC will have overriding effect over the provisions of UP industrial Area Development Act 1976, we find force for the argument advanced by Mr. Rishabh Jain who relying upon the **judgment of Hon'ble Supreme Court in the case of Municipal Corporation of Greater Mumbai Vs. Abhilash Lal (2020) 13SCC 234** wherein it has been held that the provisions of Section 238 IBC will have overriding effect over the provisions of Maharashtra Housing and Area Development Authority.
32. As regards the judgements relied upon by the Ld. Sr. Counsel for the Respondent our observations are as hereunder:

(A) **In Embassy Property judgement itself, Hon'ble Supreme Court** have interpreted S. 14(1)(d) to say that it confers the right to not to get dispossessed, though it does not confer any right to have a new right of possession:

“44. 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. What is granted under the deed of mining lease in ML 2293 dated 04.01.2001, by the Government of Karnataka, to the Corporate Debtor, was the right to mine, excavate and recover iron ore

and red oxide for a specified period of time. The Deed of Lease contains a Schedule divided into several parts. Part I of the Schedule describes the location and area of the lease. Part II indicates the liberties and privileges of the lessee. The restrictions and conditions subject to which the grant can be enjoyed are found in Part III of the Schedule. The liberties, powers and privileges reserved to the Government, despite the grant, are indicated in Part IV. This Part IV entitles the Government to work on other minerals (other than iron ore and red oxide) on the same land, even during the subsistence of the lease. Therefore, what was granted to the Corporate Debtor was not an exclusive possession of the area in question, so as to enable the Resolution Professional to invoke [Section 14 \(1\) \(d\)](#). [Section 14 \(1\) \(d\)](#) may have no application to situations of this nature.”

(B) Secondly, the judgement in **MCGM case is also relating to creating fresh interest in the property of the MCGM** and not about continued possession by the CD in terms of moratorium u/s 14 of the Code:

“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).”

33. Therefore, the objection to the plan as raised by YEIDA cannot be sustained particularly in view of the fact that an unilateral, *ex parte* order of cancellation of lease for dispossessing the Corporate Debtor of the leased land during the period

of moratorium is to be treated as ab initio void in terms of provisions of S.14(1)(d) read with Section 238 of the I B Code, 2016.

34. The RP has is directed that the lease rentals accrued during the CIRP period shall be payable as part of CIRP Cost in the Resolution Plan. Further, the claims with respect to Pre-CIRP period, if any is submitted by YEIDA as an Operational Creditor and admitted by RP as per the provisions of Code, 2016 and the regulations made thereunder. The same shall be dealt with in terms of Section 30(2) of the Code.
35. For the forgoing reasons, we are of the view that the present application i.e., IA-4490/2021 filed by the Resolution Professional ought to be **allowed**.
36. Accordingly, the present application i.e., **IA-4490/2021 stands allowed**.

Sd/-

(DR. BINOD KUMAR SINHA)
HON'BLE MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
HON'BLE MEMBER (JUDICIAL)