

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH [SPECIAL], COURT NO. II
KOLKATA**

I.A (IB) No. 378/KB/2023

In

Company Petition (IB) No. 184/KB/2018

*An Application under section 60 (5) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of the National
Company Law Tribunal Rules, 2016*

IN THE MATTER OF:

Sangita Fiscal Services Pvt. Ltd & Ors

... Financial Creditor/ Applicant.

Versus

Duncans Industries Ltd

... Corporate Debtor/ Respondent.

And

IN THE MATTER OF:

Trinamool Cha Bagan Sramik Union

... Applicant

Versus

Ram Ratan Modi, Resolution Professional

... Respondent

Date of Pronouncement: 26.04. 2024.

CORAM:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

SHRI. BALRAJ JOSHI, MEMBER (TECHNICAL)

Appearance:

For Applicant: Mr. Swatarup Banerjee, Adv.; Mr. Sourojit Dasgupta, Adv.; Mr. Rajib Mullick, Adv. and Mr. Bishwaroop Ghosh, Adv.

For Resolution Professional: Mr. Joy Saha, Sr. Adv.; Ms. Sanjana Nandi, Adv. and Mr. Ram Ratan Modi, RP in person.

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ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The Court congregated through a hybrid mode.
2. We have heard the Ld. Counsels for both the parties.
3. This application has been preferred by the Trinomool Chabagan Sramik Union, hereinafter referred to as Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code" seeking the following reliefs:
 - a. *The Application filed for approval of the Resolution Plan being I.A (I.B.C)/237(KB) of 2022 be stayed till the disposal of the Complaint filed by the Applicant against the Respondent with the IBBI dated 24th January 2023 (Annexure "B" of the instant Application).*
 - b. *Ad-interim orders in terms of prayers above;*
 - c. *Such further or other order or orders be passed and/or direction or directions be given as this Hon'ble Tribunal may deem fit and proper.*

4. *Submission of the Applicant:*

- 4.1 The Learned Counsel for the applicant contended that the UniGlobal Papers Private Limited is the Successful Resolution Applicant ("SRA") in respect of the Corporate Debtor. However, the Resolution Plan of the SRA is pending approval of this Adjudicating Authority. As such, there is no finality on the said Resolution Plan submitted by the SRA.

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- 4.2** Further it is submitted that the Resolution Professional/ Respondent has given a free way to the SRA to treat the tea gardens including “Gangaram tea estate” as an asset of the corporate debtor and enter into various agreements and receive consideration based on such Resolution plan.
- 4.3** The Resolution Professional is hand in gloves with the SRA, and in continuously acting with mala fide motive and in violation of the provisions of the Insolvency and Bankruptcy Code 2016 and the Rules made thereunder.
- 4.4** It is alleged that on 22nd August 2022, the Resolution Professional applied before the Tea Board with a Demand Draft dated 19th August 2022, for issuance of a duplicate registration certificate in respect of “Gangaram Tea Estate”. The said demand draft dated 19th August 2022 was returned by the Tea Board under of a letter dated 12th December 2022. The Demand Draft dated 19th August 2022 which was submitted by the Resolution Professional categorically reflects the name of one Jitendra Agarwal, who is one of the directors cum CEO and authorized representatives of the SRA.
- 4.5** It is submitted that on 21st June 2023, the Resolution Professional has allowed the SRA to enter into and execute a Memorandum of Understanding with one Green Haven Villa Private Limited, for development and

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conversion of the “Gangaram Tea Estate” into a building complex, for a hefty consideration of Rs. 231 Crore. In the said Memorandum of Understanding dated 21st June 2023, the SRA has itself stated that this Adjudicating Authority would approve the Resolution Plan and has therefore transferred the purported rights in respect of the said Gangaram Tea Estate to the said third Party.

- 4.6** In view of such clear and unholy nexus between the Resolution professional and SRA and in view of the acts of the SRA based on the representations of the Resolution Professional, the Resolution Professional deserves to be removed and must be subjected to such further penalty and punishment as applicable in law.

5. *Per contra Resolution Professional would submit:*

- 5.1** That the Corporate Debtor, Duncan Industries Ltd, had leasehold rights of a total number of 14 Tea Estate and forceful possession of 12 Tea Gardens has been obtained by outsiders.
- 5.2** That the Gangaram Tea Estate, whose lease has been duly renewed by the state of West Bengal and which is valid till 06.08.2038, is the only tea estate of the corporate debtor which is presently under the possession and control of the Resolution Professional.
- 5.3** That the successful resolution applicant was desirous of obtaining a certificate from the relevant authority

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being the Tea Board to the effect that the lease of the said garden had been duly renewed.

- 5.4** That the duplicate registration certificate was requested by the successful resolution applicant for its own purpose and in order to complete its own diligence, the Resolution Professional directed the payment and/or fees to be made for obtaining such certificate to be deposited by the Successful resolution applicant.
- 5.5** It is claimed that the resolution plan or the conduct of the Resolution Professional or the CIRP cannot be sought to be challenged and/or disrupted by a fake union who is manifestly acting against the interest of the workmen and at the behest and instances of the ex-promoters.

Analysis and Findings

- 6.** We have duly considered the contentions placed by both the parties.
- 7.** It is the case of the applicant that all the tenures of the leasehold interests granted by the Government of West Bengal in favour of the Duncans the Corporate Debtor, were terminated prior to the commencement of the CIRP, i.e., on 05.03.2022. It is claimed that the lease hold interest has not been thereafter renewed.
- 8.** However, we find the following depiction in the Information Memorandum (**IM**).

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Status of Leasehold Tea Estates :-

Tea Estates	Valid upto
Birpara	26.06.2008
Lankapara	21.06.2006
Dumchipara	12.09.2004
Hantapara	02.12.2004
Nagaisuree	30.10.2002
Gungaram	06.08.2008**
Ganganda	18.09.2026
Tulsipara	17.04.2004
Killcott	23.08.2025*
Bagracote - III & IV	31.03.2011
Runglee	08.02.2000
Marybong	08.02.2000
Bagracote - I	22.05.2028
Bagracote - II	03.08.2000

50-A True Copy

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9. It is evident from the IM that except Ganganda, Killcott and Bagracote - I, the leasehold right in regard to all the tea estates

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mentioned in the above table have expired. Upon approval of the plan, it would be liability of the purchaser to get the leases renewed.

- 10.** Further, we would note that the resolution plan submitted by the Successful Resolution Applicant - Uniglobal Papers Private Limited has been approved by the COC by 99.20% majority on 24.02.2022. This application has been preferred on 09.02.2023 which is after a long delay of almost a year from the date of approval of the plan by the COC.
- 11.** The Resolution Applicants, being already notified vide Information Memorandum about the status of lease would express their interest to acquire the Debtor Company, and with their eyes wide open would either bid or refrain from bidding having noticed that the company's lease has already expired. If the present successful Resolution Applicant has given its offer to acquire the Corporate Debtor with its assets as mentioned in the IM, we find no reason to interfere. Moreover, we are of the view that the applicant herein has no locus standi to seek stay of final approval of the resolution plan on the ground of expiry of leasehold interest of the corporate debtor.
- 12.** We are of the view that the present application preferred by the Trinamool Cha Bagan Sramik Union (Applicant herein) is only to put a spanner in the wheel to derail the entire resolution process.
- 13.** Hence, we are of the considered opinion that this application is not maintainable and accordingly we **dismiss** this same.

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- 14.** Urgent certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

**Balraj Joshi
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on the 26th Day of April, 2024.

Bose, R. K. [LRA]/ Tiwari, V. [LRA]