

DIVISION BENCH
COURT - II

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

IA(IB)No. 519/KB/2022
In CP(IB)No. 1684/KB/2018

**CORAM: 1. HON'BLE MEMBER(J), SMT. BIDISHA BANERJEE
2. HON'BLE MEMBER(T), SHRI D. ARVIND**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 25TH APRIL 2024

IN THE MATTER OF	JAYANTA BANERJEE VS INCAB INDUSTRIES LIMITED
UNDER SECTION	SEC. 9 IBC

Appearance (via video conferencing/physically)

Corrigendum

1. It has been observed that there are some inadvertent typographical errors have crept in the said order dated 18.04.2024 and therefore, the same are corrected as under:
 - a. Para 4, at line number 5 written as “if not renewed, will adversely impact on the Resolution of the” will be replaced by “if not renewed, will adversely impact the Resolution of the”.
 - b. Para 8, at line number 2 written as “been a sick company since a very long period of time and he was even” will be replaced by “been a sick company since a very long period of time and **it** was even”.
 - c. Para 12 (f), at line number 2 written as “Company (TSL) comprising of a total 177.08 Acres has expired by” will be replaced by “Company (TSL) comprising of a total 177.08 Acres **have** expired by”.
 - d. Para 18, at line number 7 written as “going concern since 19999” will be replaced by “going concern since **1999**”.
 - e. Para 24, at line number 2 written as “steps or perused the Respondents to renew lease in favour of the Corporate Debtor” will be replaced by “steps or **pursue** the Respondents to renew lease in favour of the Corporate Debtor”.
 - f. Rest of the order dated 18.04.2024 shall remain unchanged.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
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**I.A. (IBC) No. 519/KB/2022
IN
CP (IB) No.1684/KB/2018**

IN THE MATTER OF:

Jayanta Banerjee

..... OPERATIONAL CREDITOR

Versus

Incab Industries Limited

.....CORPORATE DEBTOR

And

AND IN THE MATTER OF:

Pankaj Kumar Tibrewal, Resolution Professional of Incab Industries Limited

.....APPLICANT

Versus

TATA Iron and Steel Company Ltd.

.....RESPONDENT

Date of Pronouncement of order: 18.04.2024

CORAM:

Smt Bidisha Banerjee : Member (Judicial)

Shri D. Arvind : Member (Technical)

Counsel appeared physically / through video Conferencing

Mr. Anirban Ray, Adv.] For Tropical Venture Mr. Prantik Garai, Adv

Mr. Debraj Saha, Adv.] For the Respondent in IA(I.B.C)/763(KB)2021
Mr. Hariram Singh, Adv.

Mr. Kuldeep Mallik, Adv.] For Kamala Mills
Ms. Divya Sharma, Adv.]
Mr. Diptomoy Talukder, Adv.

Mr. Shaunak Mitra, Adv.] For the Resolution Professional
Mr. Siddhartha Makkar, Adv.]
Mr. Pankaj Tibrewal, RP-in-Person

Mr. Jishnu Saha, Sr. Adv.] For the Successful Resolution Applicant
Mr. Orijit Chatterjee, Adv.]
Ms. Swati Dalmia, Adv.]

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Ms. Sarbani Mukherjee, Adv

Mr. Ratnanko Banerji, Sr. Adv.] For tata Steel Ltd. In

IA(I.B.C)/519(KB)2022

Mr. Lokenath Mukhopadhyay, Adv.]

Mr. Joydeb Ghorai, Adv.]

Mr. Suman Chatterjee, Adv.]

Mr. Diptesh Ghorai, Adv

Ms. Aasia Hasan, Adv.] For Pegasus Asset Reconstruction Pvt. Ltd.

Mr. A.K. Shrivastava, Adv.] For Bhagwati Singh Jamshedpur Worker

Mr. Akash Sharma, Adv.

ORDER

Per Bidisha Banerjee, Member (Judicial):

1. The Court convened through hybrid mode.
2. Ld. Counsels were heard at length.
3. The Resolution Professional namely Pankaj Kumar Tibrewal, Resolution Professional of Incab Industries Limited has preferred this Application to seek the following reliefs:
 - a. Allow the present application;
 - b. Pass an order directing the Respondent to renew the portions of land collectively admeasuring 177.08 Acres leased to Corporate Debtor for a further period of 30 years, which were leased by the Respondent to the Corporate Debtor as follows:

Sl. No.	Lease Agreement Date	Area of Land (Acre)	Rate of p.a. (Rs)
1.	28.06.1924	148.31	3,559/-
2.	18.12.1943	10.29	1,235/-
3.	02.11.1964	5.523	663/-
4.	02.11.1964	4.460	535.28/-
5.	07.11.1968	8.847	1,769/-
TOTAL		177.08	-

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4. Ld. Counsel appearing for the Resolution Professional (RP) submits that there was a lease Agreement between the Corporate Debtor and the Respondent which is key to the Resolution of the Corporate Debtor and concerns a portions of land admeasuring 177.08 Acres. That lease if not renewed, will adversely impact on the Resolution of the Corporate Debtor.
5. Ld. Counsel for the Resolution Professional (RP) submits that the Corporate Debtor is having sole ownership of erected structures / residential quarters constructed by it upon the said piece of land of Corporate Debtor for more than 1000 families of its employees / ex-employees are in occupation. Such quarters are receiving uninterrupted supply of all utility services like electricity and water.
6. Ld. Counsel for the RP further submits that this Tribunal vide its order dated 07.08.2019 had initiated CIR Process of the Corporate Debtor herein and Mr. Shashi Agarwal was appointed as the Interim Resolution Process (IRP) of the Corporate Debtor. The Committee of Creditors (CoC) on 05.12.2019 passed a resolution to liquidate the Corporate Debtor and as such vide order dated 07.02.2020 this Tribunal allowed Liquidation of the Corporate Debtor.
7. The Operational Creditor preferred an appeal being Company Appeal (AT) (Ins.) No. 348 of 2020 assailing the order of liquidation dated 07.02.2020 before the Hon'ble NCLAT, New Delhi. The Hon'ble NCLAT, New Delhi vide its order dated 04.06.2021 was pleased to quash and set aside the Liquidation proceedings of the Corporate Debtor and directed for replacement of Mr. Shashi Agarwal with a new IRP/RP, to be appointed by this Adjudicating Authority. Pursuant thereto, this Tribunal appointed Mr. Pankaj Kumar Tibrewal, Insolvency Resolution Professional of the Corporate Debtor / Incab Industries Limited who was latter confirmed as Resolution Professional (RP) on the 6th CoC Meeting.
8. Ld. Counsel for the RP further submits that the Corporate Debtor has been a sick company since a very long period of time and he was even

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referred to a BIFR under the Sick Industrial Companies (Special Provisions) Act, 1985, in the year 1999.

9. It is further submitted that initially an Agreement for Land Acquisition dated 08.10.1919 was executed by the Secretary of State of India in Council ('Lessor') in favour of the Respondent / TATA Iron and Steel Company ('Lessee') leasing portion of land situated at Jamshedpur. On 28.06.1924, the first lease Agreement was executed for a tenure of 99 years in regard to a total area of 148.31 Acres of land at Jamshedpur. Further, time to time subsequent sub-lease Agreement was executed for additional areas of land collectively admeasuring 177.08 Acres which expired on 14.07.2019. Subsequently, Agreement for Land Acquisition dated 18.10.2019 was renewed by the State of India and later by State of Bihar. Finally, on 28.05.2005, a fresh 'Indenture to Lease Agreement' (Parent Lease Agreement) was executed between the State of Jharkhand ('Lessor') and the Respondent, renewing the Lease of Respondent's land for 30 years i.e. from 01.01.1996 to 01.01.2026. That during the period of Sub-Lease, the Corporate Debtor developed its own Township in the said land by constructing factories, plant and industries and residential quarters / bungalows for its employees which was the Erected Structures. That till date the Corporate Debtor is the sole ownership of the said Erected Structures.
10. It is submitted that on 14.07.2019, the Lease of 99 years expired. That 'Parent Lease Agreement' dated 20.08.2005 was executed during the subsistence of the present Sub-Lease Agreement. As per terms of 'Parent Lease Agreement' renewal of leased lands was inclusive of renewal of lease for the portions of land leased to other industrial undertaking including Incab Industries herein which includes other ancillaries its inhabitants etc. Therefore, the denial of renewed lease Agreement by the Respondent is not proper.
11. It is argued that in accordance with provisions of Regulations 7 of the CIRP Regulations, the Respondent has submitted its claim in Form 'B' on 19.08.2019 for a sum of Rs. 77,66,49,726.65 towards supply of

power, municipal charges, water charges and decree amount incurred for Financial Year 2003-04 to 07th August, 2019. The Claim has been admitted by the Applicant. It is also submitted that the Applicant in its 15th Meeting of CoC convened on 23.03.2022, discussed about the concerns raised by Pegasus Assets Reconstruction Private Limited vis-a-vis the renewal of status of 177.08 Acres of Land leased to the Corporate Debtor. First of its impact on the over all Resolution Plan. That the Structures Erected by the Corporate Debtor during the course of 99 years leased, if not renewed, are the assets of the Corporate Debtor and the land admeasuring 177.08 Acres having renewed will adversely impact the Resolution of the Corporate Debtor.

12. Per Contra, the Respondent / TATA Iron and Steel Company (TSL) would contend that the application and the reliefs prayed for in the application are misconceived as under:
- a. The reliefs prayed for in the application are misconceived.
 - b. The present application is not maintainable.
 - c. The Application filed by the RP is without any authority and jurisdiction.
 - d. The RP cannot seek directions on the TATA Iron and Steel Company to execute fresh lease Agreement in favour of the Corporate Debtor.
 - e. The Respondent is not liable to and not willing to execute any lease Agreement in favour of the Corporate Debtor.
 - f. 5 (Five) Lease Agreements, granted by TATA Iron and Steel Company (TSL) comprising of a total 177.08 Acres has expired by efflux of time i.e. on 14.07.2019.
 - g. TATA Iron and Steel Company (TSL) has called upon the Corporate Debtor by its 5 notice dated 15.07.2019 to handover peacefully and vacate possession of the said premises.
 - h. The Corporate Debtor has committed breach of terms and conditions by failing to pay lease rental which were due and outstanding for substantial period. The dues have been depicted by way of table that is reproduced hereunder:

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Sl. No.	Lease Agreement Date	Area of Land (Acre)	Rate p.a.(Rs.)	Corporate Debtor in Possession from	Lease till	Outstanding Amount (Rs.)
1.	28.06.1924	148.31	3,559/-	15.06.1920	14.07.2019	66,862/-
2.	18.12.1943	10.29	1,235/-	01.06.1943		22,637/-
3.	02.11.1964	5.523	663/-	01.08.1952		12,152/-
4.	02.11.1964	4.460	535.28/-	01.08.1952		9499.80/-
5.	07.11.1968	8.847	1,769/-	01.01.1963		32,548.97/-
TOTAL		177.08				

- i. The Lease having expired on 14.07.2019, i.e. prior to initiation of the CIR Process on 07.08.2019, there is no violation of Section 14 moratorium as alleged. The Corporate Debtor is in wrongful possession of the leased premises and should be treated as a trespassers in respect thereto.
- j. An Application, numbered CA 1171/KB/2019 was filed by an alleged Representative of Workers. This Tribunal by its order dated 07.02.2020, dismissed the application seeking addition of Government of Jharkhand in the said proceeding.
13. We have considered the rival contentions and perused the records.
14. The order dated 07.02.2020, as annexed to the Reply Affidavit filed by TATA Iron and Steel Company (TSL), is clear and categorical that through CA(IB)No. 1171/KB/2019, the applicant has prayed that government of Jharkhand be impleaded as a party in the CIRP proceedings.
15. Before we decide the issue on merits for the sake of giving a finality to the issue so that proceedings under Section 9 can be concluded in a timely manner, we consider it appropriate to decide the issue of maintainability of this application at the first instance.
16. The jurisdiction of this Tribunal is limited to proceedings of Insolvency Resolution or in case of failure of CIRP to order liquidation.

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The Hon'ble Supreme Court in the case of Embassy Property (supra), has clearly defined the jurisdiction of NCLT under section 60(5) of IBC, 2016.

17. We have also noticed that the CIRP commenced on 07.08.2019 and the lease Agreement expired on 14.07.2019. The Applicant in his application has emphatically admitted the fact that the Respondent around 20 days prior to the initiation of the CIRP, terminated and refused to further renew the portions of land leased to Corporate Debtor. Hence, the Respondent has not acted in breach of Section 14 of the Code.
18. The assets once which the Corporate Debtor had leasehold right, but where the lease has expired and been terminated expressly or not renewed by the Lessor cannot be the subject matter of an application under Section 60 (5) of IBC. Power of Adjudication on the issue of ownership or nature of agreement between TATA Steel Ltd. and Government is not with us. Further, the Corporate Debtor is not a going concern since 19999.
19. It is also evident that while lease expired on 14.07.2019, the very next date that on 15.07.2019, the Respondent directed the Corporate Debtor to handover 148.31 Acres of land back to the said Respondent. No steps were taken then to set it resolved through a Court of Competent Jurisdiction.
20. We have already noted that the jurisdiction of this Tribunal is extremely limited. The title of the properties which are not clear cannot be declared or adjudicated upon or taken into consideration for the purpose of an appropriate culmination of the Resolution Process.
21. From the above, it is palpable that the allegation that the Respondent acted in Section 14 of the Code having not renewed the lease that expired before the moratorium under Section 14 kicked in with the admission of the main Company Petition, lacks substance and is baseless.
22. In view of such, the prayers are not maintainable.

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23. However, we make it clear that the possession of the leased premises in question, if not yet handed over to the Respondents, and if not subject to any orders obtained by the Respondents from a Court of Competent Jurisdiction, prior to the date of Insolvency, will not be required to be handed over to the Respondents so long moratorium under Section 14 of IBC in this CIR Process remains effective.
24. Nevertheless, RP will not be precluded from taking appropriate steps or perused the Respondents to renew lease in favour of the Corporate Debtor.
25. With the above directions, **I.A. (IBC) No. 519/KB/2022 is accordingly stands disposed of.**
26. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
27. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee,
Member (Judicial)**

Signed on this the 18th day of April, 2024

M. Jana (P.S.)