

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

I.A. (IB) No. 8/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 Rule, 2016.***

IN THE MATTER OF:

**SANGITA FISCAL SERVICES
PRIVATE LIMITED AND ORS.**

... Financial Creditor.

Versus

DUNCAN INDUSTRIES LIMITED

... Corporate Debtor.

And

IN THE MATTER OF:

**State of West Bengal through
Principal Secretary, Labour
Department, N.S. Building,
Kolkata – 700 001.**

... Applicant.

Versus

**Ram Ratan Modi, Resolution
Professional of Duncan
Industries Limited.**

... Respondent No. 1.

And

**The Committee of Creditor of
Duncan Industries Limited.**

... Respondent No. 2.

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

I.A. (IB) No. 8/KB/2023
In
Company Petition (IB) No. 184/KB/2018

Date of Pronouncement: April 26, 2024.

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

Appearances:

For the Applicant: **Mr. Shaunak Mitra, Adv.**
 Mr. Dripto Mazumdar, Adv.
 Mr. Gobindo Baidya, Adv.

For the RP: **Mr. Joy Saha, Sr. Adv.**
 Ms. Urmila Chakraborty, Adv.
 Ms. Sanjana Nandi, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

- 1.** The Court congregated through a hybrid mode.
- 2.** We have heard the Learned Counsel Mr. Shaunak Mitra, along with the Learned Counsels Mr. Dripto Mazumdar and Mr. Gobindo Baidya, appearing for the applicant and the Learned Senior Counsel Mr. Joy Saha along with Learned Counsels, Ms. Urmila Chakraborty and Ms. Sanjana Nandi, appearing for the respondent.
- 3.** The applicant **State of West Bengal through the Principal Secretary, Labour Department** has preferred this application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code", against Ram

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

I.A. (IB) No. 8/KB/2023

In

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

Ratan Modi, the Resolution Professional of Duncan Industries Limited, to seek the following reliefs: -




- a.** To pass an order directing the Respondent No. 1 to keep the tea estate as morefully mentioned in paragraph 4 of this application form outside the purview of CIRP of the Corporate Debtor or outside the resolution plan submitted by the successful resolution applicant or outside any plan submitted by other resolution applicants.
- b.** To pass an order to restrain the respondent no. 2 from voting in any manner on the asset of the Applicant as more fully mentioned in Paragraph 4 of this application.
- c.** To pass an order to restrain the respondent no.1 or the successful resolution applicant from dealing with the assets of the applicant as more fully mentioned in paragraph 4 hereinabove in any manner whatsoever.
- d.** To pass an ad-interim orders in terms of prayers above.

4. Paragraph 4 of the application mentions as follows:

4. The particulars of the leases for 30 years, in respect of the aforesaid tea estates granted by the applicant to the corporate debtor and its merged companies are set out hereunder:

RESPECTIVE LEASES WITH EXPIRY DATES

Name of Tea Estates	Name of Lessee	Date of Execution	Effective From	Date of Expiry
Garganda	Lankapara Tea Co. Ltd	19.07.1974	20.09.1965	19.09.1995
Dhumchipara	BirparaTea Co Ltd	06.12.1975	13.09.1974	12.09.2004




Joint Labour Commissioner
Government of West Bengal

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

I.A. (IB) No. 8/KB/2023

In

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

21

file by

Huntapara	Duncan Agro Industries Ltd.	25.11.1980	03.12.1974	02.12.2004
Tulsipara	Lankapara Tea Co. Ltd & Duncan Agro Industries Ltd.	26.02.1980	18.04.1974	17.04.2004
Birpara	Birpara Tea Co. Ltd	25.11.1980	27.06.1978	06. 2008
Bagracote I	Bagracote Tea Co Ltd	19.02.1973	22.05.1968	22.05.1998
Bagracote II	Bagracote Tea Co Ltd	11.10.1974	04.08.1970	04.08.2000
Bagracote III & IV	DuncansAgro Industries Ltd	27.02.1980	24.02.1976	24.02.2006
Runglee-Rungliot	Birpara Tea Co. Ltd	24.08.1973	09.02.1970	08.02.2000
Kilcott	Birpara Tea Co. Ltd	22.08.1065	24.08.1965	21.08.1995
Nagaisurec	Birpara Tea Co. Ltd	30.01.1975	31.10.1972	30.10.2002

The applicant craves leave to rely upon the copy of the said lease deeds so executed at the time of hearing, if necessary.

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

I.A. (IB) No. 8/KB/2023

In

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

5. Brief Facts of the Case:

- a) Duncan Industries Limited was put into Corporate Insolvency Resolution Process, for brevity “CIRP” vide order dated 05.03.2020, by this Adjudicating Authority. The Resolution Professional (Respondent herein) conducted CIRP as per the I&B Code read with rules and regulations.
- b) After thorough deliberations and discussions, the Resolution Plan submitted by the consortium led by Uniglobal Paper Private Limited has been approved by the Committee of Creditors (in short “CoC”) by 99.20% voting majority on 24.04.2022 and Uniglobal Paper Private Limited has emerged as the Successful Resolution Applicant, for brevity “SRA”.
- c) The Resolution Professional has preferred an application seeking the approval of the resolution plan submitted by the Successful Resolution Applicant - Uniglobal Papers Private Limited which has duly been approved by the CoC.
- d) In the said approved Resolution Plan, at Page 41 and 42, the following tea gardens/ tea estates that were operated by the Corporate Debtor have been mentioned along with status of such leasehold tea estates. The said table is reproduced hereunder for convenience:

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

I.A. (IB) No. 8/KB/2023

In

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

Assets of the Company

As per the information available the Company owns various Property, Plant & Equipments, Investments in Equity Instruments, Investment in Debentures, Loans & Advances, Deposits, Receivables, Inventories, Cash & Cash Equivalents, Copyrights, Trademarks, Patents, Brands, ISO Certifications & Licenses, etc.

As per the information available in the Information Memorandum the details of the Grant Area of Tea Estates are as follows:

Sl no.	Garden Name	Grant Area (In Hectare)	Ownership Status
1	Birpara	1,529.40	Leasehold
2	Lankapara	1,276.25	Leasehold
3	Dumchipara	1,049.31	Leasehold
4	Hantapara	1,044.09	Leasehold
5	Nagaisuree	941.13	Leasehold
6	Gungaram	928.46	Leasehold
7	Ganganda	764.81	Leasehold

41

8	Tulsipara	758.70	Leasehold
9	Killcotte	636.46	Leasehold
10	Bagracote – III & IV	569.84	Leasehold
11	Runglee	409.94	Leasehold
12	Marybong	395.08	Leasehold
13	Bagracote - I	124.89	Leasehold
14	Bagracote - II	116.32	Leasehold
15	Terai Land	1,486.00	Freehold
16	Madarihat	270.00	Freehold

- e) The Information Memorandum (IM) pursuant to which the resolution plan was submitted explicates the following:

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

I.A. (IB) No. 8/KB/2023

In

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

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

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

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

I.A. (IB) No. 8/KB/2023

In

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

- f)** It is discernible that except three tea estates/ tea gardens i.e., **Ganganda, Killcotte** and **Bagracote-I**, the other tea gardens leases have expired long back and, therefore, it clearly expresses that they are no more leasehold estate of the Corporate Debtor.
- g)** Page 44 of the Resolution Plan approved by the CoC, it clearly mentions that as under:

“ Garganda and Hantapara Tea Estates are being operated by Merico Agro Industries Ltd. Pvt. Ltd. under operation and management agreement executed dated 29th January, 2018 by CD for limited period of 5 years and Tulsipara Tea Estate is being operated by Merico Agro Industries Pvt. Ltd. under operation and management agreement executed on 20th July, 2018 by CD for limited period of 5 years to run and operate the Tea Estates.*

*** Dumchipara Tea Estate is being operated by Merico Agro Industries Ltd. Pvt. Ltd under operation and management agreement executed on 19th August, 2019 by Corporate Debtor for limited period of 10 years to run and operate the Dumchipara Tea Estate.*

**** The Marybong Tea Estates are being operated by Nagrifarm Tea Company Ltd. under the marketing cum management agreement executed on 05th July, 2013 by*

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

I.A. (IB) No. 8/KB/2023

In

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

Corporate Debtor for period of 3 years which has already been expired.”

These tea gardens which are at present managed by Merico Agro Industries and Nagrifarm Tea Company are not in the possession of either the Corporate Debtor or the Resolution Professional of the Corporate Debtor and these facts have been disclosed very clearly in the information memorandum of the Corporate Debtor as well as in the Resolution Plan.

- h)** Under the aforesaid facts and circumstances, we now proceed to deal with the submissions made by the Learned Counsel and the Learned Senior Counsel for the parties to the dispute.

6. Learned Counsel for the Applicant:

6.1. Learned Counsel submits that the list of gardens which have expired long ago as per the table mentioned above have not been renewed and even if the Corporate Debtor is in unlawful possession of the same, after the expiry of lease they cannot form part of the assets of the Corporate Debtor as held by this Adjudicating Authority in five different orders. He also further submits that the asset owned by third party but in possession of the Corporate Debtor under contractual arrangement (i.e., lease) has been specifically kept out of the definition of “assets” under the explanation to Section 18 as held in ***Embassy Property***

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

I.A. (IB) No. 8/KB/2023

In

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

Developments Private Limited vs. State of Karnataka & Ors.
reported at **(2020) 13 SCC 308.**

6.2. The Learned Counsel would submit that the contention of the Resolution Professional of the Corporate Debtor is that even if the lease has expired the Corporate Debtor by being in possession as accrued rights of a tenant in sufferance, is irrelevant as has been held in the said five orders passed by this Bench and particularly in order dated 28.05.2021.

6.3. The Learned Counsel would vociferously submit that the SRA has not questioned the inclusion of tea estates in the plan after knowing very well that the lease agreement with the Applicant herein have expired long back in respect of twelve out of fourteen tea gardens.

6.4. He would further submit that at the time of hearing the resolution plan approval application, the resolution professional made a false and misleading submission that the tea estates are not being included at all with under the Resolution Plan. However, at the time of hearing again to other objections to the Resolution Plan, the Resolution Professional admitted that the Tea Estates form part of the resolution.

7. Learned Senior Counsel for the Respondent:

7.1. The Learned Senior Counsel, Mr. Joy Saha for the respondents would vehemently oppose the stand of the applicant and submit that the Applicant has been authorized by a Joint

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

I.A. (IB) No. 8/KB/2023

In

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

Labour Commissioner, Govt. of West Bengal whereas in the cause title it has been described that the application has been made by the land reforms Department of West Bengal. Therefore, this application is not maintainable on this procedural infraction.

7.2. He would further submit that by order dated 19th September, 2023 this Tribunal directed the State to file a note regarding the status of Tea Gardens within a period of three weeks. None of the Orders dated 8th August, 2023 and 19th September, 2023 have been complied with by the Applicant. In other words, the State Government has not indicated its stand with regard to the renewal of the lease.

7.3. Further that, it has been reliably learnt that the State Government has not granted fresh lease in respect of the twelve tea gardens to any of the party.

7.4. That, the five orders passed by the NCLT Kolkata Bench proceeded on the basis of that lease of tea gardens have expired and consequently, cannot form part of the Corporate Debtor's assets. However, by virtue of Order dated 8th August, 2023 and 19th September, 2023, this Bench has passed an order directing the State Government to spell out its stand on the tea estates renewals, having not done so, the Applicant would not have filed this Application to seek the reliefs as claimed for.

7.5. The Learned Senior Counsel further would assertively argue that not even in a single lease that expired have been expressly

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

I.A. (IB) No. 8/KB/2023

In

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

terminated by the State of West Bengal. Further, the State Government of West Bengal has never demanded back possession of the said leasehold lands till the date of commencement of the CIRP and they have not even proceeded legally for recovery of possession of these leasehold lands, it cannot by way of this application maintain its prayers.

7.6. The learned Senior Counsel would forcefully submit that the Corporate Debtor is a tenant at sufferance and cannot be evicted without due process of law. To substantiate his argument, he would rely on following case laws:

- **(1995) 5 SCC 698, Paragraphs 8 and 13.**
- **2001 (6) SCC 518, Paragraphs 30, 31, 35 and 36.**
- **2020 (9) SCC 393, Paragraphs 29 to 31, 34, 35, 38.**

7.7. It is urged that land records are still in the name of Duncan Industries Limited, reliance on case law rendered by Hon'ble Supreme Court in the case of ***Victory Iron Works vs. Jitendra Lohia*** reported in **2023 (7) SCC 227** where the Corporate Debtor had entered into a Development Agreement in respect of particular property belonging to another company. In the insolvency process of the Corporate Debtor, it was held that the land in respect of which the Corporate Debtor had entered into a Development Agreement would constitute the property of the Corporate Debtor company.

In the present case Duncan Industries Ltd. has been in possession of the said leasehold property for decades and

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

I.A. (IB) No. 8/KB/2023

In

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

consequently the leasehold and/or other processor rights of Duncan Industries Ltd. cannot be terminated or curtailed without any document or letter or legal proceeding.

8. In response, the Learned Counsel for the applicant would assertively submit the argument of respondent that plant and machinery and movables that are lying belong to the Corporate Debtor and the same cannot be taken away merely because of expiry of lease, is baseless as the only issue in this application is whether the expired Tea Estates can be part of the Resolution Plan or not.

9. He would further allege that the Resolution Professional's reliance on the decision in ***Victory Iron Works (Supra)*** is misplaced and the said decision does not address the present issue and consequently, the directions sought for may be granted.

10. Analysis and Findings:

10.1. As extracted supra, we find that at pages 41-42 of the Resolution Plan approved by the CoC of the Corporate Debtor, categorically mentions the current status of the lease of the leasehold Tea Estates. From the table we find that out of fourteen tea estates, lease have expired for eleven tea estates and most of them are occupied by the outsiders.

10.2. Further at page 375 of the application seeking for the approval of the resolution plan approved by the CoC, it has been categorically mentioned that certain tea estates are managed by

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

I.A. (IB) No. 8/KB/2023

In

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

Merico Agro Industries Private Limited (a third party and certain estates are operated by Agro Firm Tea Company which is also third party). Though the Resolution Plan seeks relief that any rights, entitlements, benefits, lease and license including the lease or license granted in favour of the company by the Government of West Bengal of any other authority shall be deemed to continue without disruption for the benefit of the Company and the Resolution Applicant, the plan also concedes that it is not conditional for implementation of the said resolution plan. In other words, even if no direction is issued by this Tribunal to the State of West Bengal for continuing with the lease or grant lease in favour of the SRA, the Successful Resolution Applicant would still agree to implement the plan.

10.3. During the course of hearing the Learned Senior Counsel would very fairly submit that such a relief/ direction from this Adjudicating Authority is not a condition precedent for implementation of the Resolution Plan for the Successful Resolution Applicant would pursue the State of West Bengal and all other relevant parties for appropriate remedies.

10.4. It is evident from the IM that except Ganganda, Killcott and Bagracote - I, the lease in regard to all the tea estates mentioned in the above table have expired. Upon approval of the plan, it would be liability of the purchaser to get the leases renewed.

10.5. Further, we would note that the resolution plan submitted by the Successful Resolution Applicant - Uniglobal Papers Private

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

I.A. (IB) No. 8/KB/2023

In

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

Limited has been approved by the COC by 99.20% majority on 24.02.2022. This application has been preferred on 23.12.2022 which is after a long delay of approval of the plan by the COC.

10.6. 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.

10.7. When admittedly and irrefutably being the case, we would note that the Successful Resolution Applicant is completely aware that the lease of the twelve tea estates out of fourteen have expired and their current status, we find no infirmity with the acts or actions of the Resolution Professional or the Successful Resolution Applicant.

10.8. Further, the resolution plan which has been approved by the CoC with majority voting share and the same is pending before us for consideration and approval.

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

I.A. (IB) No. 8/KB/2023

In

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

11. Under such circumstances when we find that the IM and the resolution plan as well has mentioned the complete details of the tea estates, it is only for the purpose of providing the information to the resolution applicants so that if they want to take a risk/chance of taking over the company with expired leases of twelve tea estates, the resolution Applicant may do so. We find no infirmity with the inclusion of all the tea estates/ tea gardens in the IM or Plan showing their correct present status.

11.1. We further note that in spite of our orders dated 8th August, 2023 and 9th September, 2023, wherein we have directed the State Government to clarify their stand with regard to the expiry of the lease, no response is forth coming.

12. In view above, the application being **I.A. (IB) No. 8/KB/2023** preferred by the State of West Bengal through the Principal Secretary, Labour Department is **dismissed**.

13. A certified copy of this order, if applied for with the Registry, be supplied to the parties, subject to compliance with all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

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

Bose, R. K. [LRA]