

(2024) 02 NCLT CK 0018

In the National Company Law Tribunal

Case No : IA No.666/2021 In C.P. (IB) No. 1184/MB/2017

Manoj Gangwal, Liquidator Vs MP Industrial Development Corporation Ltd ?

Date of Decision : 07-02-2024

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 33, 36(4)(a), 36(4)(a)(iv), 53, 60(5)

Citation : (2024) 02 NCLT CK 0018

Hon'ble Judges : Kuldip Kumar Kareer, Member (J); Anil Raj Chellan, Member (T)

Bench : Division Bench

Advocate : Madhur Rai, Eshann Saroop, Sahil Sharma

Final Decision : Disposed Of

Judgement

Kuldip Kumar Kareer, (Member Judicial)

1. The present Interlocutory Application has been filed by the Liquidator seeking following prayers:-

(a). directing MP Industrial Development Corporation Ltd. to transfer the leasehold rights in respect of the said Suit Premises in favour of Shree Param Minerals Private Limited (Successful Bidder) with further direction to give effect to the said transfer of lease for the balance period of lease (i.e. upto 26.08.2044) in terms of the lease agreement dated December 06, 2014 and on the same terms and conditions as stated therein;

(b). State Environment Impact Assessment Authority, Madhya Pradesh (Government of India, Ministry of Environment and Forests) be allowed to transfer the Environment Clearance approval in respect of the said Suit Premises in favour of Shree Param Minerals Private Limited (Successful Bidder) subject to the compliance to the terms and conditions as stated therein;

(c). For such further and other orders / directions as the facts and circumstances of the case may warrant

(d). Costs.

Facts of the case:-

2. That the captioned Liquidator had filed an application u/s 33 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "IBC" for sake of brevity), to seek initiation of liquidation process with respect to the Corporate Debtor, H.P. Ore Processors Private Limited.

3. That this Hon'ble Adjudicating Authority (AA) had allowed the said application vide its order dated May 17, 2018 and further pleased to appoint Mr. Manoj Gangwal as the Liquidator.

4. The Corporate Debtor in lieu of availing the credit facility, had mortgaged the leasehold rights in respect of the immovable property situated at Plot No. 2 to 5, Mouza-Hargarh, MPAKVN Industrial area, Sihora, Jabalpur (hereinafter referred to as "Suit Property") as also hypothecated the plant and machine situated therein in favour of only one financial creditor i.e. Bank of Baroda (formerly known as Dena Bank).

5. In the process of liquidation, with the consultation of the said financial creditor i.e. Bank of Baroda (formerly known as Dena Bank), the Liquidator had published the e-auction notice in the newspapers for e-auctioning the remaining period (ie. from 27/08/2014 to 26/08/2044) of leasehold rights (owned / possessed by the Corporate Debtor) in various dates viz. July 11, 2018, August 10, 2019 and January 22, 2020 for bid amount of Rs. 3,00,00,000/- (Rupees Three Crores only), Rs. 2,40,00,000 (Rupees Two Crores Forty Lakhs only) and Rs. 2,00,00,000/- (Rupees Two Crores only), respectively, however since on the aforesaid e-auction dates, no formal Expression of Interest (EOI) was received by the liquidator. Therefore, e-auction failed on aforesaid dates.

6. Subsequently, on January 29, 2021, in consultation with the financial creditor, the Liquidator once again published in newspaper, the e-auction notice for e-auctioning the said balance leasehold rights in respect of the Suit Property along with plants and machine for the bid amount of Rs. 2,00,00,000 (Rupees Two Crores only). The said e-auction was duly conducted and the bid for the amount of Rs. 2,00,00,000 (Rupees Two Crores only) was successfully placed by one bidder, M/S. Shree Param Minerals Private Limited.

7. Applicant/Liquidator in terms of the said e-auction has auctioned the leasehold rights in respect of the Suit Property for the remaining period of lease till 26/08/2044 (i.e. Original period 27/08/2014 to 26/08/2044 in terms of lease agreement dated December 06, 2014) along with plant and machine to Shree Param Minerals Private Limited at e-auction, held on January 29, 2021 for the amount of Rs. 2,00,00,000/- (Rupees Two Crores only). The said successful bidder has paid the full consideration amount.

8. Since the said Suit Property was initially allotted by MP Industrial Development Corporation Ltd. (MPIDC) (Formerly M.P. Audyogik Kendra Vikas Nigam (Jabalpur) Limited (Govt. of Madhya Undertaking) to the Corporate Debtor for a

total lease term of 30 years till 26/08/2044 with certain terms and conditions vide lease agreement dated December 06, 2014, the lease for balance period is required to be transferred in favour of the Successful Bidder. The Successful Bidder shall be paying the required transfer premium charges as per the terms of the lease deed.

9. MPIDC has filed its claim with the Applicant for a claim of Rs. 35,92,275/-vide Form B (Operational Creditor) dated March 19, 2019. The claim was essentially in the nature of penalty towards cancellation of Rebate of 75% provided and interest thereon totalling Rs. 31,89,331/-. The balance amount of Rs. 4,02,945/- was towards the outstanding annual maintenance and lease rent. It is pertinent to mention that the MPAKVN has collected Security Deposit of Rs. 3,64,851/- in the nature of advance Annual Lease Rent and Maintenance, at the time of allotment of lease, which is still lying with the MPIDC.

10. The reason given by the MPIDC for cancellation of the rebate provided was that the Corporate Debtor, as per the aforesaid Lease Agreement and the policies applicable, had not invested the minimum amount of Rs. 7 Cr (i.e. 25% of the project cost of Rs. 28 Cr.) in the project. However, it is also pertinent to note that as per Report of the Chartered Accountant M/S Ladhani and Chopra dated May 14, 2018, the Corporate Debtor had assets of Rs. 11.27 Crore as at March 31, 2018. This amount is much more than that of the minimum Rs. 7 Crore investment as sought to be raised by the MPIDC.

11. Though the claim submitted by MPIDC was received by the Applicant, after the last date fixed for submission of claim i.e. June 16, 2018, the Applicant/ liquidator will consider the aforesaid claim of M.P. Audyogik Kendra Vikas Nigam (Jabalpur) Limited (Govt. of Madhya Pradesh Undertaking) (MPIDC) pertaining to the outstanding lease rent and maintenance charges, after adjustment of the Security Deposit, as essential Services for period beginning from the date of the CIRP order dated May 17, 2018, till date in accordance with the provisions of the IBC. The same shall be treated at CIRP Cost and paid in priority.

12. Moreover, Shree Param Minerals Private Limited (the Successful Bidder) have undertaken to pay the premium, if any, to M.P. Audyogik Kendra Vikas Nigam (Jabalpur) Limited (Govt. of Madhya Pradesh Undertaking) upon transfer of lease in their favour. Therefore, in view thereof M.P. Audyogik Kendra Vikas Nigam (Jabalpur) Limited (Govt. of Madhya Pradesh Undertaking) ought to take a lenient view in transferring of the lease hold rights for the balance period (ie. Upto 2608.2044) in favour of the Successful Bidder and assist in revival of the unit in their state which shall generate employment and revenue for the State Government.

13. The Applicant has since obtained in question the approval of department of State Environment Impact Assessment Authority, Madhya Pradesh (Government of India, Ministry of Environment and Forests) in respect of the premises in question. The approval is now also required to be transferred along with the unit

in favour of the Successful Bidder.

14. The Liquidator, therefore, in view of the above seeks direction of this Hon'ble Adjudicating Authority to direct the MP Industrial Development Corporation Ltd. (formerly M.P. Audyogik Kendra Vikas Nigam (Jabalpur) Limited (Govt. of Madhya Pradesh Undertaking) to transfer the leasehold rights in respect of the said Suit Premises (for the balance period of lease ie. upto 26.08.2044) in favour of the successful bidder. Further, the Liquidator also seeks to have a direction of this Hon'ble Adjudicating Authority to direct the State Environment Impact Assessment Authority, Madhya Pradesh (Government of India, Ministry of Environment and Forests) to transfer the approval in name of the Successful Bidder, subject to compliance to the terms and conditions stated therein. Hence the application.

Reply filed on behalf of the Respondent No. 1:-

15. It is submitted that the present Applicant/Liquidator is seeking transfer of leasehold rights in respect of Plot Nos. 2 to 5, Mouza-Hazagarh, MPAKVN Industrial Area, Sihora, Jabalpur (Suit Property) in favour of Shree Param Minerals Private Limited for the balance period i.e. up to 26.08.2044 in terms of lease Deed dated 06-12.2014.

16. It is further submitted that the Lease Deed dated 06.12.2014 ("Lease Deed") was executed between the Corporate Debtor and Respondent No. 1.

17. It is submitted that as per Clause 10 of the Lease Deed, the Corporate Debtor was bound to utilise the allotted land within a period of 5 years from the date of starting business, failing which the Respondent No. 1 would terminate the lease Deed.

18. It is submitted that as per Clause 27 of the Lease Deed, the said Deed shall be deemed to be terminated if the Corporate Debtor goes into liquidation or becomes insolvent.

19. It is submitted that in lieu of the lease deed, Applicant had no locus and/or authority to auction the allotted land to a third person without prior approval/consent of the Respondent No. 1. Respondent No. 1 had filed its claim of Rs 35,92,275.00 (Calculated at that time i.e upto March 19) in the prescribed form with the Applicant. Upon initiation of CIRP/liquidation, the Lease Deed is deemed to be terminated and, therefore, the auction of the allotted land by the Applicant is ultra vires the Lease Deed. The said claim now stands increased to Rs. 47,35,233/- plus GST as applicable as on 31 st July 2021.

20. It is submitted that the present application is totally misconceived and has been filed with a malafide intention to usurp the allotted land of the Respondent No. 1. The Applicant upon auctioning the allotted land has further realized a sum of Rs. 2,00,00,000/- (Rupees Two Crores only) towards liquidation estate and to distribute the same among the creditors of the Corporate Debtor and meeting the liquidation cost.

21. It is submitted that no consent/ approval was obtained from the Respondent No. 1 before auctioning the allotted land. The applicant vide email dated 26/2/2019 and letter dated 19/3/2019 was conveyed the procedure / rules to be followed by the prospective buyer. However, no reply was given by the Applicant.

22. It is submitted that there is no provision in the Lease Deed to transfer the balance period of lease to a successful bidder. The Applicant is put to strict proof to place on record the conditions of the Lease Deed based on which the Applicant is seeking to transfer the lease in favour of the successful bidder as claimed by the Applicant. It is further contended that Respondent No. 1 has filed its claim in the prescribed form and the same has been acknowledged by the Applicant. The advance / deposit received from the Corporate Debtor are adjustable by the Respondent No. 1 at the time of settlement of dues after due verification of liabilities, if any.

23. It is stated that the land admeasuring 17815 Sq mts situated in Industrial Area Hargarh, Teh. Sihora, Distt. Jabalpur (MP) was allotted to M/S H P Ore Processors Pvt. Ltd i.e. the Corporate Debtor at the rate of Rs 154/per Sq Mtr (Total value of Rs 27,43,510.00) and an amount of Rs 6,85,878.00 being 25% of the Premium was paid at the time of Allotment. The balance amount of Rs 20,57,632.00 being 75% of Premium was allowed as Rebate under MEGA PROJECT to Corporate Debtor. The said rebate was subject to certain norms and conditions mentioned in BOND executed by Corporate Debtor. The conditions of the said Bond were to be complied with/ fulfilled by the Corporate Debtor in order to avail Rebate / benefit of Mega Project within 3 years from the date of Allotment, in which the Corporate Debtor completely failed.

24. It is submitted that the said land was allotted to Corporate Debtor to establish their unit with investment of Rs 28.00 Crores in Fixed Assets and minimum 25% of Rs 28.00 Crores. i.e. Rs 7.00 Crores was to be invested in Fixed Assets within 3 years from the date of land allotment under Rule 18(b) of Madhya Pradesh Rajya Audyogik Bhumi Evam Bhawan Prabandhan Niyam 2015. However, the same has not been fulfilled. Further, in order to verify the purported claim of the Applicant that the Corporate Debtor has invested about Rs. 11.27 crores, the Respondent No. 1 vide letter dated 4/4/2019 requested the Applicant to provide the item/ head wise investment with supporting documents which will be physically verified by the staff of Respondent No. 1 at site of land allotted to the Unit and the applicability of transfer of land to prospective entrepreneur will be decided thereon. However, despite various requests, the Applicant has not replied to the requests of the Respondent No. 1. It is further submitted that the Respondent No. 1 vide its letter dated 14-05-2021, in response to the letter of Applicant dated 30th April, 2021, informed the Applicant that they are seeking the relevant information since 2019. However, no information has been provided by the Applicant till date. It is stated that in absence of the information required to be provided by the Applicant, the request of the Applicant to transfer the said allotted Land cannot be considered /

sanctioned/ allowed. From the fact that the Applicant has accepted bid of only Rs 2.00 Crores from Successful bidder, it is absolutely clear that Corporate Debtor has not invested the required minimum amount of Rs 7.00 Crores on the allotted land as claimed by the Applicant. The claim of the investment of Rs. 11.27 Crores is not supported by any documentary evidence and appears to be inappropriate looking to the accepted bid of only Rs. 2 crores.

25. It is further submitted that after being issued Notice by Respondent No 1 vide Letter No 2260-62 dtd. 25.05.2018 for fulfilment of terms & conditions of Land Allotment, the Corporate Debtor informed about Liquidation Order of NCLT dt 17.05.2018 vide their letter Dt 18.06.2018 stating that they are unable to comply with the terms and conditions. Thus, the Corporate Debtor has accepted the claim of Respondent No. 1 which now stands admitted and legitimate.

26. It is further submitted that in view of Para 29 of the Lease Deed the claim/ dues of the Respondent no. 1 are required to be paid/ cleared before any transfer/ disposal or otherwise the structure/ machinery/ building created on allotted land the present dues of the Respondent No. 1 are as under:

Principal Amount Rs. 20,57,632.00

(75% Rebate Amount)

Interest @ 12% p.a) for 83 Months from the date of allotment ie.27.08.2014 Rs. 17,07,835.00 (GST Extra) Annual Lease Rent &

Maintenance Charges Rs. 9,69,766.00 (GST Extra)

Upto 31st July, 2021

Total Amount Rs. 47,35,233/- plus SGT as applicable on Rs.

17,07,835/- and Rs. 9,69,766/-

27. It is further submitted that after approaching Hon'ble NCLT, the IP/Liquidator/ Applicant has approached Managing Director of the Respondent No 1 vide their Email Dt 30.04.2021 to grant the approval for transfer of land and this act of the Applicant is against the procedure of law when matter is pending in the Court/ Tribunal. In the end, a prayer for dismissal of the application has also been made.

28. In the rejoinder, the Applicant has reiterated the averments made by him in the application and controverted those made by the Respondent in its reply.

Analysis and Findings:-

29. We have heard the Counsel for the parties and gone through the record.

30. It has been contended by the Counsel for the Applicant/Liquidator that the Application deserves to be allowed and the Respondent is liable to be directed to transfer the lease hold rights in favour of the successful bidder for the remaining period of lease which is upto 26.08.2044 in terms of agreement dated

06.12.2014 executed with the Corporate Debtor. The counsel for the liquidator has further pointed out that the Respondent No. 2 will also be directed to grant necessary environment clearance approval to the successful bidder.

31. According to the Counsel for the Liquidator, the Respondent had raised only two objections. The first objection was that the Corporate Debtor had not invested the requisite 25% of the total investment in the project over the leased land and the second objection was that the CIRP of the Corporate Debtor has not come to an end and, therefore, no transfer can be effected. In this regard, the Counsel for the Liquidator has argued that as per record, the Corporate Debtor had invested more than Rs. 11.25 crores as is evident from the balance sheet of the Corporate Debtor for the period ending March 31st 2018, which is annexed with the IA, and, therefore, there is no violation of the conditions of lease agreement. The CIRP period has already ended as the Corporate Debtor is currently in liquidation. Therefore, there should not be any impediment in transferring the lease rights to the successful bidder qua the remaining period of the lease.

32. On the other hand, Counsel for the Respondent has argued that the property belongs to the Government of Madhya Pradesh and as per the terms and conditions of the lease deed originally executed with the Corporate Debtor, the lease rights are not transferable nor any further transfer is permissible in terms of Clause 9,10,22,23 and 27 of lease deed dated 06.12.2014. Accordingly, the Counsel for the Respondents have argued that the application cannot be allowed nor the lease rights can be transferred, especially when prior permission of Respondent No. 1 was not sought by the Liquidator before going ahead with the sale/auction of the lease property.

33. We have weighed the contentions raised by the Counsel for the parties and have carefully gone through the record.

34. As per Clause 9 of the lease agreement, the lessee had agreed that he would implement the project for the business and would start the production and commence the operations within the stipulated period failing which action for cancellation for allotment order and termination of lease deed can be initiated by the lessor. Clause 10 of the lease deed further provides that the land shall be utilized within a period of 5 years from the date of starting the business. So far as the conditions incorporated in Clauses 9 and 10 of the lease deed are concerned, the same are stated to have been complied with by the Corporate Debtor which is evident from the balance sheet and profit and loss account for the period ending 31.03.2018 which shows that the Corporate Debtor was in operation and the total asset value of the Corporate Debtor is shown to be of more than 11 crores which indicates that the Corporate Debtor had not only commenced the business and had also invested sufficient money in the project though it is another matter that it could not generate enough profits to meet its liabilities with the result that it was pushed into insolvency. Therefore, in our considered view, prima facie the lease is not liable to be cancelled on account of

Clauses 9 and 10 of the lease deed.

35. So far as Clauses 22, 23 are concerned which state that lessee shall not sublet or will not change the constitution of unit without permission of lessor are concerned, in our considered view, the same are not attracted in the given situation. The lessee has not sublet or transferred the premises in any manner. As a matter of fact, the land in question has been sold by the liquidator under the provision of IB Code, 2016, the primary object of which is maximization of value of a distressed unit is as well as to sustain the business as far as it is possible. Therefore, the auction/sale in the liquidation proceeding is only in furtherance of the objects of the IB Code, 2016 which should not be in conflict with Clause 22 and 23.

36. So far as the violation of Clause 27 of the lease deed is concerned, which deals with the non-payment by the lessee, it is worth pointing out that as per the provision of the Code, Respondent No. 1 has already submitted his claim on account of penalty interest and the outstanding annual maintenance and lease rental which will be dealt with by the Liquidator in accordance with the provisions of the Code more particularly, Section 53 as well as the Liquidation Regulations and on this ground, Respondent No. 1 is not entitled to refuse the proposed transfer in favour of the auction purchaser. So far as, the other charges or any terms and conditions which are required to be adhered to and paid in the event of the transfer of the lease right in favour of the auction purchaser are concerned, the auction purchaser shall be under an obligation to fulfill all the conditions and also to pay the necessary charges, if any, required to be paid for the transfer of the lease rights for the remaining period of the lease.

37. It has been contended on behalf of the Respondents that as per Section 36(4) (a)(iv) of the Code, the assets owned by a third party which are in possession of Corporate Debtor, do not form part of the liquidation estate and, therefore, the same cannot be sold by the Liquidator. Accordingly, it has been argued by the Ld. Counsel for the Respondents that the Liquidator has no right to transfer the lease hold rights of the property in question. We have considered this contention and are of the view that the lease holds right granted to the Corporate Debtor cannot be equated with simple possess any rights envisaged under Section 36 (4) (a) of the Code. The lease hold rights granted to the Corporate Debtor under a lease agreement are valuable rights for a definite period which in the event of insolvency of the lessee can definitely be acquired/sold for value maximization which is one of the primary objects of the Code. Therefore, the contention raised on behalf of the Respondents does not seem to be tenable.

38. As a result of the foregoing discussion, we are of the considered view that Respondent Nos. 1 and 2 can be directed to transfer the lease hold rights of the premises in question in favour of the successful bidder namely Shree Param Minerals Private Limited for the balance period of the lease subject to fulfillment of the terms and conditions which may be imposed by the Respondent No. 1 and also by the Respondent No. 2. IA No. 666/2021 is accordingly allowed and

disposed of to the extent indicated above.