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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.10.2021

PRONOUNCED ON : 25.10.2021

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

WRIT PETITION NO.355 OF 2020

AND

WMP NOS.406 AND 405 OF 2020

AND

WMP NO.17785 OF 2021

M/s.Kiran Global Chems Ltd.,
Rep.by Mr.Tharvai Ramachandran Ravichandran
Resolution Professional, (IBBI/IPA/002
/IP-N00241/2017-18/10692)
No.42, New Avadi Road, Kilpauk,
Chennai 600 010
(Cause title Amended vide order dated
18.08.2021 made in WMP No.17783 of 2021
in WP No.355 of 2020 by RMDJ)

...Petitioner

.Vs.

1. Under Secretary to the Government of India,
Ministry of Petroleum and Natural Gas,
Shastri Bhawan , New Delhi.
2. M/s.Gail (India) Ltd.
Rep. by Zonal Deputy General Manager,
5th Floor, "Kuppu Arcade" No.4,
Venkatanarayana Road
T.Nagar, Chennai -17.

..Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records in No.L-16016 /11/2016 - GP II dated 07/05/2018 on the file of the 1st Respondent and consequential termination Notices in GAIL / CZO/ NG/ Mktg / Kiran Silicate /2020 dated 03/01/2020 GAIL / CZO/ NG/ Mktg / Nannilam Silicate /2020 dated 03/01/2020 and GAIL / CZO/ NG/ Mktg /Sunrise Silicates /2020 dated 03/01/2020 on the file of the 2nd respondent and quash the same.



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For Petitioner : Mr.E.OM Prakash
Senior Counsel
for M/s.P. Raja

For Respondents: Mr.K.Ramanamoorthy
Central Government Standing Counsel
for R1
Mr.PVS Gridhar
for R2

ORDER

The subject matter of challenge in the present Writ Petition pertains to the proceedings of the 1st Respondent dated 07.05.2018, and the consequential termination notice dated 03.01.2020, issued by the 2nd Respondent.

2. The case of the Petitioner is that they are running an industry which requires natural gas to aid the manufacturing process. The Petitioner was allotted natural gas in the year 1989 by the 1st Respondent. Thereafter, the Petitioner entered into a contract with the 2nd Respondent and the natural gas was supplied by the 2nd Respondent.

3. The Petitioner took a decision to merge the company with certain other companies and a petition was filed before this Court in C.P. Nos.108 to 122 of 2019 and the amalgamation process was approved by this Court by an order dated 02.09.2010. The Petitioner informed the order of amalgamation passed by this Court to the 2nd Respondent through letter dated 01.02.2011 and the 2nd Respondent was intimated that the amalgamation was approved and the Petitioner has merged with M/s. Kiran Silicate Pvt. Ltd., M/s. Nannilam Silicate Pvt Ltd., and M/s. Sunrise Silicates Pvt Ltd.

4. It is a fact that M/s. Kiran Silicate Pvt. Ltd., M/s. Nannilam Silicate Pvt. Ltd., and M/s. Sunrise Silicates Pvt. Ltd., became the customer of the 2nd Respondent from the year 1994 onwards in line with the allocation given by the 1st Respondent. M/s. Kiran Silicate Pvt. Ltd., M/s. Nannilam Silicate Pvt. Ltd., and M/s. Sunrise Silicates Pvt. Ltd., are located in the same premises in Narimanam, Nagappattinam District.



Insolvency Resolution professional appointed by the NCLT, Chennai bench by an order dated 27.04.2021 and moratorium was also ordered under Section 14 of the Insolvency and Bankruptcy Code, 2016. By virtue of this development, a petition came to be filed before this Court in WMP No.17783 of 2021 and the said application was allowed by an order dated 18.08.2021 and the Petitioner Company was permitted to be represented by the resolution professional. There was yet another development that took place. The original license came to an end on 05.07.2021 and by virtue of the orders passed by the NCLT, Chennai Bench, it was renewed for a further period of six months by the Respondent. By virtue of this development, the natural gas supply was continued by the 2nd Respondent.

10.The 1st Respondent has filed a counter affidavit. A stand has been taken by the 1st Respondent to the effect that the policy guidelines dated 11.03.2010 and 21.02.2012, which deals with the issue of decision regarding the transfer of rights to use the allocated domestic natural gas and also the change of location of usage of allocated natural gas, does not permit the approval pursuant to the amalgamation since the amalgamation has resulted in gas allocation to different entities at different locations. A further stand has been taken to the effect that natural gas is an essential source of energy which is held by the 1st Respondent in trust, for the people of India and the public trust doctrine gives the right to the 1st Respondent to decide on the allocation of natural gas. Therefore the 1st Respondent has averred that there is no illegality in the decision taken by the 1st Respondent.

11. The 2nd Respondent has also filed a counter affidavit. The 2nd Respondent has raised the issue of maintainability of the Writ Petition since the parties are governed by an agreement which also provides for resolution of disputes through arbitration. That apart, the 2nd Respondent has met every ground that has been raised by the Petitioner and has justified the termination of the agreement on the ground that an undertaking was given by the Petitioner in the year 2015 to the effect that the agreement can be cancelled if the amalgamation is not approved by the 1st Respondent.

12. Heard Mr.E.OM Prakash, learned Senior Counsel for the petitioner, Mr.K.Ramanamoorthy, learned Central Government Standing Counsel for the first respondent and Mr.PVS.Giridhar, learned counsel appearing on behalf of the second respondent.



13. When the matter came up for final hearing on 16.09.2021, this Court entertained a doubt as to whether this Court can proceed further to decide the Writ Petition when the proceedings are pending before NCLT, Chennai Bench. This Court directed the counsel appearing on either side to specifically address this issue. Therefore, the learned counsel addressed this issue also apart from arguing the case on merits.

14. Section 14 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred as the "Act") provides for a moratorium which virtually prevents continuation of the pending legal proceedings against the corporate debtor. The question is as to whether it will also include Writ Proceedings under Article 226 of Constitution of India, 1950. To address this issue, the judgment of the Hon'ble Supreme Court in M/s. Embassy Property Developments Pvt. Ltd., v. State of Karnataka & Ors. cited in (2020) 13 SCC 308 was brought to the notice of this Court. The relevant portions in the judgment are extracted hereunder:

10. In the backdrop of the facts narrated and in the light of the rival contentions extracted above, the first question that arises for consideration is as to whether the High Court ought to interfere, Under Article 226/227 of the Constitution, with an order passed by NCLT in a proceeding under the IBC, 2016, despite the availability of a statutory alternative remedy of appeal to NCLAT.

11. It is beyond any pale of doubt that IBC, 2016 is a complete Code in itself. As observed by this Court in M/s. Innoventive Industries Limited v. ICICI Bank MANU/SC/1063/2017: AIR 2017 SC 4084 it is an exhaustive code on the subject matter of insolvency in relation to corporate entities and others. It is also true that IBC, 2016 is a single Unified Umbrella Code, covering the entire gamut of the law relating to insolvency resolution of corporate persons and others in a time bound manner. The code provides a three-tier mechanism namely (1) the NCLT, which is the Adjudicating Authority (i) the NCLAT which is the appellate authority and (ii) this Court as the final authority, for dealing with all issues that may arise in relation to the reorganization and insolvency resolution of corporate persons. In so far as insolvency resolution of corporate debtors and



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personal guarantors are concerned, any order passed by the NCLT is appealable to NCLAT Under Section 61 of the IBC, 2016 and the orders of the NCLAT are amenable to the appellate jurisdiction of this Court Under Section 62. It is in this context that the action of the State of Karnataka in by-passing the remedy of appeal to NCLAT and the act of the High Court in entertaining the writ petition against the order of the NCLT are being questioned.

12. For finding an answer to the question on hand, the scope of the jurisdiction and the nature of the powers exercised by- (1) the High Court Under Article 226 of the Constitution and (ii) the NCLT and NCLAT under the provisions of IBC, 2016 are to be seen.

..

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



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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.

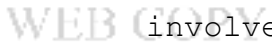
45. Therefore, in fine, our answer to the first question would be that NCLT did not have jurisdiction to entertain an application against the Government of Karnataka for a direction to execute Supplemental Lease Deeds for the extension of the mining lease. Since NCLT chose to exercise a jurisdiction not vested in it in law, the High Court of Karnataka was justified in entertaining the writ petition, on the basis that NCLT was coram non judice.

15. It is clear from the above that in matters of public law involving decisions of statutory or quasi-judicial authorities, which involves judicial review of administrative actions, the High Court can exercise jurisdiction under Article 226 of Constitution of India, 1950.

16. After the above judgment, an amendment was made by adding an explanation under Sec 14 of the Act and the same is extracted hereunder:

14. Moratorium.

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



20. The amalgamation process was approved by this Court in CP Nos. 108 to 122 of 2009 by an order dated 02.09.2010. By virtue of the same, the Petitioner company was merged with M/s. Kiran Silicate Pvt. Ltd., M/s. Nannilam Silicate Pvt.Ltd., and M/s. Sunrise Silicates Pvt. Ltd. At this juncture, it is important to understand the effect of an order of amalgamation. For this purpose, the order passed by this Court must be taken



into consideration. While passing the order, it was made clear that the sanction of amalgamation will be binding on all the creditors and shareholders, members of the concerned companies and on the companies with effect from 01.04.2015. Therefore, the order sanctioning the amalgamation will not bind a third party.

21. It will also be relevant to take note of some of the reported judgments in this regard. The first judgment is of the Bombay High Court in *United Breweries Ltd. v. Commissioner of Excise* cited in MANU/MH/0131/2002 and the relevant portion is extracted hereunder:

7. The law being clear on the point of the effect of amalgamation of two companies and there being clear judicial pronouncement by the Apex Court that the transferor-company ceases to exist with effect from the date the amalgamation is made effective, the contention that amalgamation of Kesarval Breweries in the petitioners' company has not resulted in transfer of ownership cannot be accepted. The Apex Court has made it clear in *Bacha F. Guzdar's case* (supra) that a company is a juristic person entirely distinct from the shareholders and, therefore, merely because the shareholders of the transferor or transferee-companies were the same persons, that would not enable the petitioners to contend that in spite of amalgamation of two companies there is no transfer of ownership. Besides the scheme of amalgamation of Kesarval Breweries with the petitioners clearly discloses the transfer of ownership of the transferor-company in favour of the transferee company pursuant to the amalgamation. The first ground of challenge therefore, is devoid of substance.

22. The second judgment is *Singer India Ltd. v. Chander Mohan Chadha and Ors.* cited in MANU/SC/0626/2004. The relevant portions are extracted hereunder:

8. In *Saraswati Industrial Undertaking v. CIT Haryana*, it has been held that there can be no doubt that when two companies amalgamate and merge into one, the Transferor Company loses its identity as it ceases to have its business. However, their respective rights or liabilities are determined under the scheme of amalgamation,



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but the corporate identity of the Transferor Company ceases to exist with effect from the date the amalgamation is made effective. Therefore, in view of the settled legal position, the original lessee, namely, the American Company ceased to exist with effect from the Appointed Day i.e. 1.1.1982 and thereafter the Indian Company came in possession and is in occupation of the premises in dispute.

9. The effect of parting of possession of the tenanted premises as a result of sanction of scheme of amalgamation of companies under Section 394 of the Companies Act by the High Court has also been considered in two decisions of this Court. In General Radio and Appliances Co. Ltd and Ors. v. M.A. Khader MANU/SC/0543/1986 : [1986]2SCR607, which is a decision by a bench of three learned Judges, the premises had been let out to M/s. General Radio and Appliances Co. Ltd. On account of a scheme of amalgamation sanctioned by the High Court under Sections 391 and 394 of the Companies Act all property, rights and powers of every description including tenancy right held by M/s. General Radio and Appliances Co. Ltd. had been blended with M/s. National Ekco Radio & Engineering Co. Ltd. Thereafter the landlord instituted proceedings for eviction on the ground of unauthorized sub-letting. It was urged on behalf of the original tenant that the amalgamation of M/s. General Radio and Appliances Co. Ltd (appellant No. 1) with M/s. National Ekco Radio & Engineering Co. Ltd. (appellant No. 2) was an involuntary one which had been brought into being on the basis of the order passed by the High Court under Sections 391 and 394 of the Companies Act and that the appellant No. 1 Company had not been wound up and/or liquidated, but had been merely blended with appellant No. 2 on the basis of the order of the Court and consequently there was no sub-letting by appellant No. 1 Company to appellant No. 2 Company. It was also urged that appellant No. 1 Company had not become extinct but had been merged and/or blended with appellant No. 2 Company. It was held that the order of amalgamation was made by the High Court on the basis of the petition filed by the Transferor



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Company in the Company Petition and, therefore, it cannot be said that this is an involuntary transfer effected by the order of the Court, It was further held that appellant No. 1 Company was no longer in existence in the eyes of law and it had effaced itself for all practical purposes. The appellant No. 2 Company i.e., the Transferee Company, was not a tenant in respect of the suit premises and it was appellant No. 1 Company which had transferred possession of the suit premises in favour of the appellant No. 2 Company. The Court further took the view that under the relevant Act, there was no express provision that in case of any involuntary transfer or transfer of the tenancy right by virtue of a scheme of amalgamation sanctioned by the High Court by its order under Sections 391 and 394 of the Companies Act such a transfer will not come within the purview of Section 10 (ii) (a) of Andhra Pradesh Building (Lease, Rent and Eviction) Control Act. On this finding, it was held that the appellant was liable for eviction.

10. Cox & Kings Ltd. and Anr. v. Chander Malhotra MANU/SC/1074/1997 (1997)2SCC687 is also a decision by a bench of three learned Judges and arose out of proceedings for eviction under Section 14(1)(b) of Delhi Rent Control Act. Here, the premises were given on lease to Cox & Kings (AGENTS) Limited, a company incorporated under the United Kingdom Companies Act (for short, "Foreign Company"). A petition for eviction was filed on several grounds and one of the grounds was of sub-letting to Cox & Kings Limited, a company registered under the Indian Companies Act (for short an "Indian Company"). It was contended on behalf of the appellant that in view of Section 29 of FERA, the Foreign Company was required to obtain written permission from the Reserve Bank of India to carry on business. The said permission was sought for but was refused. As a consequence, the Indian Company, namely, Cox & Kings Limited was floated in which the Foreign Company sought to have 100 per cent shares, but on refusal of permission had only 40 per cent of shares in the business to which approval was given by the Reserve Bank of India. Thereafter, the Indian



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Company carried on business in the same premises. It was urged that as the transfer of leasehold interest from the, Foreign Company to the Indian Company was by compulsion, it was an involuntary one and, therefore, it was not a case of sub-letting within the meaning of Section 14(1)(b) of the Act. It was held that under FERA, there was no compulsion that the premises. demised to the Foreign Company should be continued or given to the Indian Company. On the other hand, under the agreement executed between the Foreign Company and the Indian Company, Incidental to the assignment of the business as a growing concern, the Foreign Company also assigned the monthly and other tenancies and all rented premises of the assignor in India to the Indian Company. The the radio Court, accordingly, concluded that though by operation of FERA the Foreign Company had wound up its business, but under the agreement had assigned the leasehold interest in the demised premises to the Indian Company which was carrying on the same business in the tenanted premises without obtaining the written consent of the landlord and, therefore, it clear case of sub-letting. After referring to the earlier was a decisions in Parasram Harnand Rao v. Shanti Prasad Narinder Kumar Jain (supra) and M/s. General Radio and Appliances Co. Ltd. v. M.A. Khader (supra), the Court ruled that it was a case of assignment by the Foreign Company to the Indian Company which amounted to sub-letting within the meaning of Section 14(1)(b) of the Act and the decree for eviction was affirmed.

23.It is clear from the above judgments that once a sanction is given for the scheme of amalgamation of companies under Section 394 of the Companies Act, 1956, the petitioner company ceases to exist and gets merged with the above said three companies. Therefore, automatically the license that was given in favour of the Petitioner also ceases to exist. The license was given to the petitioner company as an independent entity which ceased to exist after the amalgamation order was passed.

24.At the time when the agreement was signed on 22.12.2015, an undertaking was given to the effect that the 2nd Respondent will have the liberty to terminate the agreement and



discontinue the gas supply if the 1st Respondent refuses to transfer the allocation in the name of the above said three companies pursuant to the amalgamation order. Therefore, the parties are bound by such an undertaking and they cannot be allowed to wriggle out of the same.

25. The petitioner's unit is located at Nagore Post, Melavanjore, Karaikal District of Puducherry. Whereas the units belonging to M/s. Kiran Silicate Pvt. Ltd., M/s. Nannilam Silicate Pvt. Ltd., and M/s. Sunrise Silicates Pvt. Ltd., are located at Narimanam, Nagappattinam District. The Petitioner has made a request for allotment of gas in the name of the petitioner by transferring the same from M/s. Kiran Silicate Pvt. Ltd., M/s. Nannilam Silicate Pvt. Ltd., and M/s. Sunrise Silicates Pvt. Ltd. This request was considered by the 1st Respondent in line with the policy guidelines dated 11.03.2010 and 21.02.2012. The 2010 guidelines provide for transfer of rights and change of location. The 2012 guidelines pertain to change in constitution / ownership / location. The 1st Respondent on considering the request made by the Petitioner found that the same cannot be acceded to. While taking the decision, the 1st Respondent also keeping in mind the public trust doctrine which enables the 1st Respondent to take a decision which will be best in the public interest. This Court does not find any illegality or infirmity in the decision taken by the 1st Respondent, since it is upto the 1st Respondent to accept the scheme of amalgamation or refuse to do so. The contention of the learned senior counsel that these policies came into effect only after the amalgamation order was passed, does not hold any water since on the day when the decision was taken by the 1st Respondent, these policies had come into force. In any case, the sanction of the amalgamation scheme does not bind the 1st Respondent.

26. There is yet another important development that has taken place in this case. It is clear from the counter affidavit filed by the 2nd Respondent that the period of agreement itself came to an end on 05.07.2021. The continuation of the agreement cannot be claimed by the Petitioner as a matter of right. It is left to the discretion of the 2nd Respondent to either renew the agreement or decide not to renew the same. This court exercising its jurisdiction under Article 22 of Constitution of India, 1950, cannot direct extension of the license period.

27. Natural gas is an essential and scarce source of energy which has to be put to proper use. It is not necessary



that it has to be supplied just for the purpose of reviving a company. Such a course of action will not yield sufficient revenue to the Respondents and a decision to continue with the supply of natural gas to the Petitioner will go against public interest. It is always left open to the Respondents to utilize the natural gas and make the supply to a prospective consumer from whom they can earn maximum revenue. This will sub-serve the public trust doctrine.

28. The upshot of the above discussion leads to the conclusion that there is no ground to interfere with the decision taken by the 1st Respondent and the consequent termination of the agreements by the 2nd Respondent. In the result, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

Kp/rka

To

1. Under Secretary to the Government of India,
Ministry of Petroleum and Natural Gas,
Shastri Bhawan, New Delhi.
2. Zonal Deputy General Manager,
M/s.Gail (India) Ltd.
5th Floor, "Kuppu Arcade" No.4
Venkatanarayana Road
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+1cc to Mr.S.Sathiyanarayanan, Advocate, S.R.No.54706
+1cc to Mr.PVS Gridhar & Sai, Advocate, S.R.No.54976

WP No.355 of 2020

AKII(CO)
PM/12/11/2021