IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.O. 2392 of 2022

S S Natural Resources Pvt. Ltd. & Anr.
Vs.
West Bengal Industrial Corporation Ltd & Anr.

For the Petitioners: Mr. Ratnanko Banerji, Sr. Adv.
Ms. Vaibhavi Pandey, Adv.,

For the Respondents: Mr. T.M. Siddiqui, Adv.
Mr. Suddhadev Adak, Adv.,

Hearing Concluded on: 08.02.2024

Date : 29.02.2024

SUVRA GHOSH, J. :-

1. The prayers of the writ petitioners in the present application are as follows:-

> b) Declaration that the petitioners are not liable to pay any transfer fee as demanded in the notices dated April 26, 2022, being Annexure "P-6" hereto, and July 6, 2022, being Annexure "P-8" hereto;
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> c) A writ of or in the nature of mandamus do issue upon the respondents and/or its officers and/or its men and/or its agents and/or its servants to cancel, rescind and revoke the

notices dated April 26, 2022 being Annexure "P-6" hereto, and July 6, 2022, being Annexure "P-8" hereto;

e) A writ of or in the nature of prohibition do issue prohibiting the respondent and/or its officers and/or its men and/or its agents and/or its servants and/or its assignees from giving any effect or further effect or acting in terms of or in furtherance to the notice dated July 6, 2022 being Annexure "P-8" hereof in any manner whatsoever;

f) A writ of or in the nature of prohibition do issue prohibiting the respondents, their men, agents, servants, subordinates and each one of them from in any manner disturbing or interfering with fullest enjoyment of the rights of the sub-lessee under the sublease dated September 3, 2009, being Annexure "P-1" hereto on the basis of the impugned demand;

2. The fact which is not in dispute is elucidated herein below:-

Ramsarup Industrial Limited (Corporate Debtor) (hereinafter referred to as RIL) is a company incorporated on July, 9 1979 and is engaged in the business of manufacturing steel, thermo-mechanically treated bars and steel wires. By virtue of an indenture of sub-lease dated 3rd September, 2009 executed by and between the respondent West Bengal Industrial Corporation Limited (in short WBIDC), being the lessee under the State of West Bengal and Ramsarup Loh Udyog Limited (a unit of RIL), 315 acres of land in Kharagpur was sub-leased in favour of Ramsarup Loh Udyog Limited. By an order passed on January 8, 2018 by the learned National

Company Law Tribunal, Kolkata Bench, (NCLT), the corporate debtor was admitted into insolvency and corporate Insolvency Resolution Process (CIRP) was commenced under the Insolvency and Bankruptcy Code, 2016. The Resolution Plan submitted by a consortium of the petitioners was approved by the Committee of Creditors (CoC) in its 24th meeting held in March, 2019 by a voting share of 74.41%. The first respondent was one of the Financial Creditors of RIL which was part of the CoC which had approved the resolution plan.

3. Learned counsel for the petitioners has submitted that the resolution plan was approved by the NCLT subject to the modification that the resolution plan approved by the CoC shall include the portion of security expenses incurred by the Financial Creditor/WBIDCL which is admitted by the RP in the upfront amount payable by the resolution applicant to the creditors. The order passed by the NCLT was carried in appeal by the petitioners before the National Company Law Appellate Tribunal (NCLAT) which was disposed of by an order passed on March 4, 2019. The said order was challenged before the Hon'ble Supreme Court and disposed of by an order dated May 4. 2019. According to learned counsel, the resolution plan submitted by the petitioners attained finality and was approved by the learned NCLT, learned NCLAT and the Hon'ble Supreme Court and the petitioners, being the successful resolution applicants under the resolution plan acquired the corporate debtor and all its assets on a "going concern" basis.

4. The first petitioner received a letter from the first respondent on April 26, 2022 raising a demand for transfer fee @ 10% of the prevailing market of the Kharagpur land, quantifying such demand @ 6,45,66,626/- despite there being no transfer warranting imposition of such transfer fees. According to the petitioners, the respondents were duty bound to ensure transfer of the sub-lease in favour of the petitioners without payment of any fee, consideration, premium, etc., in terms of clause 15.15.5 of the resolution plan. The land allotment policy introduced by an order dated 26th December, 2012 is prospective in nature and is neither applicable to the existing lease, nor to proceedings under The Insolvency and Bankruptcy Code, 2016. In the deed there is no provision for transfer of the plot by the sub-lessee or charging transfer fees for the same. Ramsarup Loh Udyog having merged with the corporate debtor, the question of transfer of the demised land did not arise since the corporate debtor was the legal entity and Ramsarup Loh Udyog its unit. Mere transfer of share holding of the lessee company under the Code cannot be termed as a transfer of the lease and in any event, the impugned demand and threat of termination/coercive action for non payment thereof are beyond the scope of the approved resolution plan and cannot be demanded by the first respondent. As envisaged in section 31 of the Act of 2016, the approved resolution plan is binding on the corporate debtor and its employees, members, creditors including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as

authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

5. Learned counsel has placed reliance on the authorities in Ghanashyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited reported in (2021) 9 Supreme Court Cases 657, Essar Steel v/s. Satish Gupta & Ors reported in 2019 SCC Online SC 1478, SPS Steels Rolling Mills Limited and Ors v/s. The Asansol Durgapur Development Authority and Another reported in F.M.A.T. 1262 of 2022, M/s. Green Hut Pvt. Ltd & Anr v/s. State of West Bengal & Ors. reported in (2010) 2 CHN 607, M/s. Din Chemicals & Coatings Pvt. Ltd and Anr. v/s. The State of West Bengal & Ors. reported in 2012 SCC OnLine Cal 10950 and State of West Bengal & Ors v/s. Gopi Vallabh Solutions Private Limited & Ors. reported in M.A.T. 869 of 2018 in support of his contention.

6. Challenging the maintainability of the writ petition, learned counsel for the respondents has submitted that the petitioners have not come before this Court with clean hands and have sought to mislead the Court by distorting facts for which the writ petition is liable to be dismissed. Though the petitioners have sought to make out a case that the demand raised by the WBIDC is grossly against the orders passed by the learned NCLT, learned NCLAT and the Hon'ble Supreme Court, fact remains that the petitioners failed to obtain orders in their favour from all the aforesaid judicial forums and have misinterpreted the orders passed by them with a view to obtain an order in their favour in the writ petition. Learned

counsel has taken this Court to clause 15.3 of the Resolution Plan which demonstrates that if the approvals, extinguishments and waivers sought under annexure 3 are not granted, it will not in any way jeopardize the implementation of the Resolution Plan, and the Resolution Applicant shall remain responsible for such implementation of the Resolution Plan. Clause 15.12 says that in the event the reliefs sought under annexure 3 are not granted, the same will not have a bearing on the successful implementation of the Resolution Plan.

7. Clause 15.15.5 of the Resolution Plan was not allowed by the learned NCLT against which the petitioners preferred an appeal before the learned NCLAT. The application filed by the petitioners alongwith other applications were dismissed by the learned NCLAT and appeal preferred against the said order before the Hon'ble Supreme Court was also dismissed.

8. The submission made by the petitioners before the NCLAT has been clothed as observation of the NCLAT in the writ petition. It is crystal clear from the orders passed by the NCLT and the NCLAT that clause 15.15.5 of the Resolution Plan was not accepted by either forum despite which the petitioners have sought to make out a case that the said clause was accepted by all the forums and also that the WBIDC raised demand of transfer fees in gross violation of the orders.

9. In the reply given by the respondent to the petitioners on 6th July, 2022 it is recorded that the NCLT, in its order passed on September 4, 2019, left it to the authorities to consider the request of the Resolution Applicant for

waiver/exemption from payment of any dues/fees/liability. The letter also records that pursuant to the order dated December 26, 2012, WBIDC has framed the terms and conditions of "Allotment of Land/Module" and the same is applicable to all existing lease deeds including the sub-lease deed dated September 3, 2009. Learned counsel has placed reliance on the authorities in K.D. Sharma v/s. Steel Authority of India Limited and Others reported in (2008) 12 Supreme Court Cases 481, Madras Bar Association v/s. Union of India and Another reported in (2015) 8 Supreme Court Cases 583 and Vijay Syal and Another v/s. State of Punjab and Others reported in (2003) 9 Supreme Court Cases 401 in support of his contention.

10. I have considered the rival contention of the parties and material on record as well as the law on the point.

11. At the outset, the issue of maintainability of the writ petition is required to be dealt with. The petitioners have categorically stated in the writ petition that they preferred an appeal before the learned NCLAT in view of apprehension of a belated and illegal demand for purported transfer fees from the first respondent in respect of the Kharagpur land. But the judgment of the learned NCLAT demonstrates that the order of the adjudicating authority/NCLT was challenged only to the extent of not allowing the terms contemplated in clause 15.15.5 of the Resolution Plan, thus making the entire Plan unviable and unfeasible. Secondly, paragraphs 24 and 25 of the judgment have been depicted as observation of the NCLAT whereas the submission made on behalf of the CoC was

recorded by the Tribunal in the said paragraphs. The appellants have incessantly tried to convince this Court that waiver of transfer fee was approved by the NCLT, NCLAT and the Hon'ble Supreme Court whereas the fact is otherwise. The waiver as recorded in clause 15.15.5 of the Resolution Plan was not approved by any of the forums and it was unanimously held that such waiver was left open for determination of appropriate authorities, if applied for. Therefore it is crystal clear that the petitioners have made an attempt to obtain an order in their favour by misleading the Court and misconstruing the contents of the orders passed by the NCLT, NCLAT and the Hon'ble Supreme Court deliberately.

12. The Hon'ble Supreme Court has seriously deprecated such practice time and again. In the words of the Hon'ble Supreme Court in the authority in K. D. Sharma (supra), "The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. .... A prerogative remedy is not a matter of course. While exercising extraordinary power a writ Court would certainly bear in mind the conduct of the party who

invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it." The same principle has been laid down in the authority in Vijay Syal and Another (supra). In view of the above, this Court is inclined to hold that the writ petition deserves dismissal on this score. Nevertheless, I propose to deal with the matter on merits as well.

13. On merits, the petitioners have assailed the notices issued by the WBIDC on April 26, 2022 and July 6, 2022 respectively primarily on the ground that the demand raised therein is in violation of the orders passed by the NCLT, NCLAT as well as the Hon'ble Supreme Court. According to the petitioners, the Resolution Plan including Clause 15.15.5 therein was approved by the adjudicating authority (NCLT) by an order passed on September 4, 2019 and the Resolution Plan submitted by the petitioners, therefore, attained finality. Payment of transfer fees would escalate their expenses beyond Rs. 400 crores and would render the entire plan unviable and unfeasible. The authorities relied upon by the petitioners demonstrate that once a Resolution Plan is duly approved by the adjudicating authority under section 31(1), the claims as provided in the Resolution Plan shall stand frozen and will be binding on the corporate

debtor and its employees and also, all such claims which are not part of the Resolution Plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the Resolution Plan. The Hon'ble Supreme Court as well as this Court has held in various judgments that change in shareholding of a company does not amount to transfer of its lease-hold interest on the plot in question which will call for payment of permission fees. Unless there is express transfer or assignment of a lease in favour of some other party, it cannot be ordinarily said that there is assignment or transfer of the lease merely because there is transfer of shareholding.

14. There is no quarrel with the said proposition of law as laid down by the Hon'ble Courts. It is trite law that no demand which is not part of the approved Resolution Plan can be raised subsequently. Clause 15.15.5 of the Resolution Plan is reproduced herein below for proper appreciation of the matter in issue.

15.15.5. <u>Kharagpur Land</u>

"Upon sanction of the Plan, the lease granted by WBIDC in favour of RamsarupLoh Udyog over approximately 315 acres of land in Kharagpur ("Kharagpur Land") shall stand transferred to the Corporate Debtor from the Effective Date in a manner such that the Corporate Debtor is vested to be in possession and shall have absolute lease interest rights in the Kharagpur Land. Sanction of the Plan by the NCLT shall constitute a

> *direction on WBIDC to expeditiously ensure transfer of the lease in favour of the Corporate Debtor on the same terms and conditions as contained in the existing lease agreement and without the requirement of payment of any fee, consideration or premium. WBIDC shall not be entitled to any penalty, arrear lease rent or any interest on arrears and all such amounts shall stand extinguished/ waived upon approval of the Plan. On and from the date of sanction of the Plan, the Corporate Debtor shall be vested to be in possession and have absolute and good and marketable title, rights, and interest on the Kharagpur Land. Further sanction of the Plan shall also constitute a direction on WBIDC to accord expeditious approval for creation of mortgage over the leasehold interest by the Corporate Debtor in favour of its lenders."*

15. In approving the Resolution Plan the adjudicating authority has placed reliance upon clause 15.3 of the plan besides other clauses. The adjudicating authority/NCLT approved the Resolution Plan by an order passed on September 4, 2019 with the modification that the Resolution Plan shall include the portion of security expenses incurred by the financial creditor/WBIDCL which is admitted by the RP in the upfront amount payable by the resolution applicant to the creditors. The adjudicating authority held that any exemption for payment could be

dealt with by the respective authorities if applied for and refused to approve the waiver as prayed for in the Plan. Such waiver was left to the discretion of the appropriate authorities, if applied for. Therefore clause 15.15.5 of the Resolution Plan was not approved by the adjudicating authority. The order passed by the adjudicating authority was carried in appeal by the petitioners before the NCLAT and by an order passed on March 4, 2021, the NCLAT dismissed the appeal and directed the monitoring agency to start taking steps for implementation of the Resolution Plan immediately and in case the successful resolution applicant failed to implement the approved Resolution Plan, appropriate action was directed to be taken immediately. The petitioners preferred an appeal before the Hon'ble Supreme Court against the said order which was dismissed by an order passed on May 4, 2021.

16. Therefore it is crystal clear that since clause 15.15.5 of the Resolution Plan was not approved by the adjudicating authority and also since clause 15.3 calls for implementation of the Resolution Plan by the resolution applicant despite refusal of the approvals, extinguishments and waivers, the WBIDC has rightly raised demand of transfer fee to the tune of Rs. 6,45,66,626/- by the letter impugned dated 26th April, 2022. In view of the fact that the Resolution Plan in its entirety was not approved by the adjudicating authority or by the appellate forums, the ratio decidendi laid down in the authorities relied upon by the petitioners can be distinguished from that of the present application. It is only upon approval of the Resolution Plan by the adjudicating authority that the

claims laid down therein stand frozen and is binding. In the case in hand, clause 15.15.5 of the Resolution Plan was not approved at all, thereby authorizing the WBIDC to raise the demand impugned. There is nothing on record to suggest that the petitioners approached the respective authorities for exemption of transfer fee prior to issuance of the notice impugned by the authority.

17. In the above conspectus, this Court is inclined to hold that the notices impugned issued by the WBIDC are in conformity with the terms of the Resolution Plan and there is no illegality or irregularity in the notices which calls for interference by this Court.

18. In the result, the writ petition fails.

19. Accordingly, W.P.O. 2392 of 2022 is dismissed

20. There shall however be no order as to costs.

21. Since no affidavit is invited, the allegations contained in the writ petition are deemed not to have been admitted.

22. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)