

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

**APO/85/2024
WITH CS/16/2007
THE ASSAM COMPANY INDIA LIMITED
VS
NUMAZAR DORAB MEHTA AND ORS.**

BEFORE:
HON'BLE JUSTICE **DEBANGSU BASAK**
-A N D-
HON'BLE JUSTICE **MD. SHABBAR RASHIDI**
DATE: DECEMBER 08, 2025.

For the Appellant : *Mr. Jishnu Choudhury, Sr. Adv.*
Mr. Ajay Gaggar, Adv.
Mr. U. Mallick, Adv.
Mr. Abhidipto Tarafder, Adv.
Mr. Sayan Banerjee, Adv

For the Respondent: *Mr. Snehasis Sen, Adv.*

HEARD ON : 08.12.2025
DELIVERED ON : 08.12.2025

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of a defendant and directed against an order dated December 13, 2023 passed in IA GA No. 9 of 2019 and IA GA No. 10 of 2019.

2. Learned Senior Advocate appearing for the appellant submits that, the appellant suffered a decree for eviction. Appellant made over possession of suit premises. Proceedings for adjudication of mesne profits were pending.

3. During the pendency of the suit for the adjudication of the mesne profit appellant underwent a corporate insolvency restructuring process

before the National Company Law Tribunal (NCLT), Guwahati, under the provisions of the Insolvency & Bankruptcy Code, 2016. He submits that, a resolution plan (RP) was approved by the NCLT, Guwahati by an order dated September 20, 2018.

4. Learned Senior Advocate for the appellant refers to the various clauses of the Resolution Plan approved (RP) in respect of the appellant. He draws the attention of the Court to the annexure to the approved RP. He submits that RP as sanctioned by NCLT Guwahati, permitted the mesne profit to be quantified and if so quantified then the same is to be recoverable from the management existing prior to the approval of the RP. Suit cannot be continued with against the appellant and the claim cannot be realized from the present management of the appellant.

5. Learned Senior Advocate appearing for the appellant submits that, the suit as it stands today cannot proceed as against the appellant, through the present management, by virtue of the RP sanctioned by the NCLT Guwahati on September 20, 2018. In support of his contention he relies upon 2025 (7) SCC 773 (*Electrosteel Steel Ltd. V. Ispat Carrier Pvt. Ltd.*).

6. Learned Advocate appearing for the respondent/plaintiffs draws the attention of the Court to the impugned order. He also draws the attention of the Court to the various clauses of the RP. According to him, mesne profit was allowed to be quantified. The learned Single Judge did not err, according to him by directing the mesne profits to be quantified and dismissing the application under Order 7 R. 11 of the Code of Civil Procedure, 1908 filed by the appellant. He submits that, once the mesne

profits are quantified the same is recoverable from the “existing management”.

7. Two applications were disposed of by the learned Single Judge through the impugned order. One application was IA GA 9 of 2019 which was filed by the respondent/plaintiffs herein seeking extension of time for completion of the reference for mesne profits. The other application was IA GA No. 10 of 2023 filed by the appellant before the learned Single Judge praying for dismissal of the suit under Order 7 Rule 11 of the Code of Civil Procedure, 1908.

8. Respondents herein, as plaintiffs filed CS 16 of 2007 in January 2007 praying for a decree for possession and mesne profits. So far as the possession is concerned the suit was decreed under Chapter XIII A of the Original Side Rules on July 22, 2011. A special Referee was appointed for the purpose of calculation of the mesne profit.

9. Appellant before us, made over possession of the immovable property concerned to the respondents/plaintiffs herein on May 12, 2019. However, the quantification of the mesne profit is still pending.

10. During the pendency of the suit the appellant suffered a proceeding under Section 7 of the Insolvency & Bankruptcy Code, 2016 before the NCLT, Guwahati. By the order dated October 26, 2017 NCLT Guwahati initiated the Corporate Insolvency Resolution Process as against the appellant. By the order dated October 26, 2017, NCLT, Guwahati declared a moratorium in terms of Section 14 of the Code of 2016. Such moratorium continued till September 20, 2018, when the RP of the appellant was approved by NCLT, Guwahati.

11. The order dated September 20, 2018 by which the RP was sanctioned by NCLT, Guwahati made provisions for all stakeholders of the appellant. RP contains provisions for operational creditors such as the respondents/plaintiffs before us. In particular, there is a reference to the respondents/plaintiffs in the RP and the annexures to the RP. In the annexure to the RP an appeal and the suit pending before High Court are noted. So far as appeals pending at that time being APO 102 of 2016 and APO 103 of 2016 are concerned the following is recorded in the RP which was ultimately sanctioned :-

“i) To be decided and settled as per the final outcome of the case. In case any financial recovery to be made against the Company, the same should be recovered from existing management.

So far as the pending suit that is, C. S. No. 16 of 2007 is concerned, RP makes the following provisions:-

ii) No claim against the ACIL or new Management. In case any financial recovery to be made against the ACIL the same should be recovered from existing management as stated in Chapter XII.”

12. Respondents as plaintiffs approached the NCLT, Guwahati for reliefs with regard to the claim for mesne profits subsequent to the R P being sanctioned. Such application was disposed of by NCLT, Guwahati on November 29, 2018 by holding that, respondents/plaintiffs, if so advised may proceed with the proceeding before the Special Referee. The provisions in the sanctioned R P were not altered.

13. Order dated September 29, 2018 passed by NCLT, Guwahati should not be read in isolation. It is to be read in the context of the order sanctioning the RP dated September 20, 2018.

14. ***Electrosteel Steel Limited*** (supra) is of the view that, claims of operational creditors not being part of the resolution process, are not to be entertained subsequent to the approval of the RP. It is of the view that once a RP is duly approved under Section 31(1) of the Code of 2016, claims which are not part of the RP shall stand extinguished and no person will be entitled to initiate or continue any proceeding in respect of a claim which is not part of the RP.

15. In the facts and circumstances of the present case, the claim of the respondents/plaintiffs as against the appellant was noted in the RP. RP as approved specifies that there cannot be any claim against the appellant or the new Management of the appellant. RP did not allow continuance of the suit as against the appellant or the present management. RP provided that if there was any monetary liability, then the same should be realized from the “existing management”.

16. We gave our anxious consideration to the term “existing management” as appearing in the RP. We find from the RP that, the RP postulated change of management of the appellant from a particular date, on certain events taking place. It is nobody’s case before us that the events postulated in the RP for change of management did not occur or that the management of the appellant did not change under the RP. Therefore, there was a change of management as contemplated under the RP.

17. Consequently, in the facts and circumstances of the present case, “existing management” as used in the RP will mean the management of the appellant immediately prior to the present management taking over charge. RP allowed the suit to continue, subject to the monetary liability being met by the erstwhile management of the appellant, if there was any monetary liability found in such proceedings.

18. In our view, therefore, the suit so far as quantification of mesne profit can continue as against the erstwhile management of the appellant. In the event there is any monetary liability found, the same is to be realized from the erstwhile management of the appellant.

19. It is trite law, that once a resolution plan is duly approved by the adjudicating authority under Section 31(1) of the Code of 2016, the claims as provided in the RP shall stand frozen. It will be binding on all stake holders. On the date of approval of the RP all claims which are not part of the RP shall stand extinguished. No persons will be entitled to initiate or continue with any proceedings in respect to a claim which is not part of the RP. Stakeholders of the corporate entity in respect of which a RP stands approved is governed and bound by the approved RP.

20. In the facts and circumstances of the present case, so far as the appellant and the new management is concerned no claim against the appellant or the new management was allowed by the approved RP. No other claim, in the suit was allowed to be continued with and to be recovered from the erstwhile management of the appellant by the approved RP.

21. Respondents/plaintiffs sought clarifications from the NCLT, Guwahati as to the approved RP and the continuance of the suit as against the appellant. The clarification application was disposed of by NCLT, Guwahati by the order dated November 29, 2018. NCLT, Guwahati did not modify the RP so far as the suit is concerned.

22. In such circumstance, CS 16 of 2007 as it stands as against the appellant cannot proceed by reason of the sanctioned R P. In the event, the respondents/plaintiffs seek to continue to claim any financial relief in relation to the affairs of the appellant at the hands of the erstwhile management, the same may be recovered from the erstwhile management in terms of the RP. Respondents/plaintiffs may take appropriate steps in this regard in CS 16 of 2007 within a fortnight from date. In default of the plaintiffs/respondents not taking appropriate steps in CS 16 of 2007 within a fortnight from date, department will treat CS 16 of 2007 as disposed of. If steps are taken, CS 16 of 2007 will proceed in accordance with law as against the erstwhile management. In either of the two situations, CS 16 of 2007 is dismissed as against the appellant.

23. APO/85/2024 is disposed of accordingly, without any order as to costs.

(DEBANGSU BASAK, J.)

24. I agree.

(MD. SHABBAR RASHIDI, J.)