

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

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

APO 49 of 2024

With

WPO 2392 of 2022

IA No. GA/1/2024

S.S. Natural Resources Pvt Ltd and Anr.

-Vs-

**West Bengal Industrial Development Corporation Limited
and Anr.**

For the Appellants : Mr. Ratnanko Banerji, Sr. Adv.
Ms. Vaibhavi Pandey, Adv.
Ms. Akshita Bohra, Adv.

For the WBIDC : Md. T.M. Siddique, Sr. Adv.
Mr. T. Chakraborty, Adv.
Mr. S. Adak, Adv.
Mr. S. Sanyal, Adv.

Judgment on : December 8, 2025.

Madhuresh Prasad, J.:

1. The present appellants were the writ petitioners in the writ proceeding. The writ petition was filed challenging the demand for transfer fee raised by the West Bengal Industrial Development Corporation Limited (hereinafter referred to as "WBIDC" for short) vide notice dated 26.04.2022 and 06.07.2022. The writ

petitioner also sought a consequential relief being a direction upon the respondents to forbear from giving effect to the notice dated 06.07.2022 and to forbear from in any manner disturbing or interfering with the writ petitioner's enjoyment of the leasehold property being 315.42 (approx.) acres land. The leasehold land was demised for industrial/ factory purposes by a sub lease dated 03.09.2009 by WBIDC to one Ram Swarup Industries Limited ("RIL" for short) which was engaged in manufacturing of steel, thermo-mechanically treated bars and steel wires. The learned Single Judge dismissed the writ petition bearing WPO NO. 2392 of 2022, by a judgment dated 29.02.2024, which is the subject matter of the present appeal.

2. Briefly stating, the writ petition was filed in view of the fact/s that RIL was admitted into insolvency. The writ petitioner submitted a resolution plan. For effective take over by the writ petitioner WBIDC was required to transfer the lease for the Industrial land in favour of the writ petitioner. WBIDC was also one of the financial creditors of the Corporate Debtor RIL, and part of the Committee of Creditors (COC) which voted and approved the resolution plan submitted by the writ petitioners. Therefore, the writ petitioner was of the view that the leasehold land should be transferred in their favour without any charges whatsoever and WBIDC should ensure such transfer on the same terms and conditions as existed with RIL. The writ petitioner had incorporated such clause in the Resolution Plan submitted by them, which became contentious.
3. The relevant contentious clause in the resolution plan namely Clause 15.15.5 reads:

"15.15.5. Kharagpur Land

"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."

4. This clause in the resolution plan was considered by the adjudicating authority/ NCLT. While approving the resolution plan by order dated 04.09.2019, the NCLT in its order held:

"67. ... Except certain wavier clause like, procedural requirement under the companies Act, waiver of any fee payable to any stock exchange, statutory liabilities other than operational debt specified in the information memorandum, Stamp duty and ROC fees in case of increase in the authorised capital etc., claimed as per the plan which according to us cannot be approved for the reason that those statutory fees, and taxes claimed in the case in hand are liable to be paid by the resolution applicant in accordance with applicable law. Any exemption for payment would be dealt with by the respective authorities if applied for. With the above observations, we are not inclined to approve the waiver as prayed for in the plan. It is left open for determination by the appropriate authorities if applied for the wavier/exemption as prayed for in the Plan."

5. The writ petitioner/ appellants were of the view that non-approval of Clause 15.15.5 of the resolution plan would have the consequence of making the appellants incur additional sums towards transfer charges as well as lease rents,

penalties and interests which may render the resolution plan unviable and unfeasible. In such circumstances, they preferred an appeal against the order of the NCLT approving the resolution plan. The appeal was preferred before the NCLAT and numbered as Company Appeal (AT) (Insolvency) No. 995 of 2019, and dismissed by NCLAT by an order dated 04.03.2021.

6. After dismissal of the appeal by the NCLAT the WBIDC raised the demand for transfer fee calculated at 10% of the prevailing market rate for the Kharagpur land, quantified at Rs. 6,45,66,626/- (Rupees six crore forty five lakhs sixty six thousand six hundred and twenty six). The appellants raised an objection before the WBIDC that the demand raised by it was unjustified for the following reasons:

“i) By reason of the approval of the Resolution Plan and the contention of the COC before the Learned NCLAT there was no question of any transfer fee as the Corporate Debtor was the lessee holding the lease in the name of one of its units Ramsarup Loh Udyog;

ii) The transfer of shareholding of a lessee company cannot be termed as a transfer of the lease;

iii) The Corporate Debtor Ramsarup Industries Limited continued to exist and will remain the lessee under the lease deed. It exists with all its rights prior to commencement of CIRP and since the Resolution Process was for the purpose of a clean slate no further dues could be imposed on the Resolution Applicants or the Corporate Debtor by reason of the approval of the Resolution Plan.”

7. The WBIDC, however, did not accede to the claims made by the appellants and by a communication dated 06.07.2022 held the appellants liable to pay transfer fee of Rs. 6,45,66,626/-. By this communication the WBIDC made it clear that in case of failure to make payment of the transfer fee within a period of 30 days from the date of service of the letter, the WBIDC would be compelled to take steps for

termination and/or determination of deed of sub-lease dated 03.09.2009 and to initiate proceeding before a forum of competent jurisdiction, as also lodging of complaints before appropriate authority at the risk and cost of the appellants.

8. The issue was carried by the petitioner in Appeal before the Apex Court. The Hon'ble Supreme Court in Civil Appeal No. 1142 of 2021 filed by the present appellants noted the operative directions contained in order dated 04.09.2019 passed by the NCLT as affirmed by the NCLAT, and dismissed the appeal filed by the present appellant in the following terms:

"1. The National Company Law Tribunal¹, in the operative directions contained in its order dated 4 September 2019, has, inter alia, observed as follows:

"i) The Resolution Plan of Ramsarup Industries Ltd., which is approved by the CoC with 74.41% voting share, is hereby approved under provisions of sub-section(1) of Section 31 of the Insolvency and Bankruptcy Code, 2016, which shall be binding on the Corporate Debtor, M/s. Ramsarup industries Limited, its employees, members, creditors, guarantors, the Central Government, any State Government or any local authority and other stakeholders involved in the Resolution Plan subject to the below mentioned modification.

ii) The Resolution Plan approved by the CoC shall include the portion of security expenses incurred by the Financial Creditor/West Bengal Industrial Development Corporation "NCLT"² Limited(WBIDCL) which is admitted by the RP in the upfront amount payable by the Resolution Applicant to the Creditors.

iii) The Resolution Plan, shall come into force from the date of pronouncement of this order."

2. The above order of the NCLT has been affirmed by the National Company Law Appellate Tribunal.

3. The resolution plan was approved by the Committee of Creditors in their commercial wisdom. The resolution plan has been approved by the NCLT in terms of the above directions (save and except for a minor aspect pertaining to the security expenses of West Bengal Industrial Development

Corporation, on which there is no cavil or contest on either side). No substantial question of law has been raised by the appellant.

4. The appeal is accordingly dismissed.

5. Pending applications stand disposed of."

9. The writ petitioner in the above factual background filed the writ petition claiming substantial relief in the form of a declaration by the writ Court that the petitioners are not liable to pay any transfer fee in terms of the notices dated 26.04.2022 and 06.07.2022. They sought quashing of the two letters/ notices and consequential direction restraining the respondent from in any manner interfering with the peaceful possession and their enjoyment of the leased lands. The learned Single Judge has dismissed the writ petition.

10. The learned Single Judge was of the view that the writ petitioners have not approached the writ Court with clean hands. The exercise of writ jurisdiction is founded on equity. The petitioners, however, have approached the writ Court misrepresenting submissions made on their behalf in the NCLT, NCLAT and before the Hon'ble Supreme Court of India, as being observations of the NCLAT. The resolution applicant/ writ petitioner in clause 15.15.5 of the resolution plan sought waiver of the requirement of making payment of any fee, consideration or premium for ensuring expeditious transfer of lease in respect of the leasehold lands in their favour. They sought approval of this clause to the effect that the WBIDC would not be entitled to any penalty arrears lease rent or any interest on arrears and that such amounts shall stand extinguished/ waived, upon approval of the plan and that from the date of sanction of the plan the writ petitioner be vested with possession and have good and marketable right, title and interest of the leasehold khas land.

11. This clause was not approved. However, the writ petitioner made submissions before the learned Single Judge relying on paragraph 24 and 25 of the judgment of the NCLAT to contend that these paragraphs contained observations of the NCLAT, whereas they were mere submissions of the writ petitioners before the NCLAT. The learned Single Judge has, therefore, concluded that the writ petitioner made an attempt to obtain an order in their favour by misleading the Court, and on this ground alone the writ petition was liable to be dismissed.
12. The learned Single Judge also recorded a finding that since clause 15.15.5 was not approved, there was no basis for the writ petitioner to assert that the WBIDC's claim for a transfer fee would stand frozen in terms of Section 31 of the Insolvency and Bankruptcy Code, 2016 ("IBC" for short). The Hon'ble Single Judge has further taken note of the fact that the adjudicating authority/ NCLT approved the resolution plan on 04.09.2019 holding that any exemption from payment, as sought for by the present writ petitioner, were to be dealt with by the respective authorities. The learned Single Judge thus, found no reason to interfere with the notices impugned in the writ petition and the demand raised by WBIDC.
13. Mr. Ratnanko Banerji, learned Senior Advocate appearing for the writ petitioner/appellant submitted that findings of the learned Single Judge regarding misrepresentation or suppression by the writ petitioner are unsustainable. The petitioner did not approach the writ Court by resorting to any suppression or misrepresentation. The submission advanced on behalf of the writ petitioner, referring to para 15.15.5 were founded on the writ petitioner's perception based on a *bona fide* misinterpretation of the NCLAT order. Learned

Senior Advocate submitted that even if the submissions founded on para 15.15.5 were found to be unsustainable, the remaining grounds urged by the writ petitioner were required to be considered and adjudicated by the writ Court. The Hon'ble Single Judge, however, has not considered and decided the other points raised on behalf of the writ petitioner that:

- a. Change in the shareholding on acquisition by the writ petitioner does not amount to a transfer of the assets. Therefore, there is no occasion for the WBIDC to demand any transfer fee. In support of this submission reliance is placed on ***M/s. Green Hut Pvt. Ltd & Anr. Vs. State of West Bengal & Ors.*** Reported in ***(2010) 2 CHN 607, M/s. Din Chemicals & Coatings Pvt. Ltd. & Anr. vs. State of West Bengal and Ors.*** reported in ***2012 SCC OnLine CAL 10950*** and ***State of West Bengal & Ors. vs. Gopi Vallabh Solutions Private Limited & Ors.*** Copy of the order dated 05.02.2019 passed in this case in ***MAT 869 of 2018*** by a Division Bench of this Court has been submitted for our consideration.
- b. The terms and conditions of allotment of land/ modules policy were brought into effect by an order dated 26.12.2012. Therefore, terms and conditions contained in such policy cannot have a retrospective effect on the lease deed in question, which was executed much earlier on 03.09.2009.
- c. The WBIDC being part of the COC resisted the writ petitioner's claim for waiver of the fee before the NCLAT by submitting that such demand had not been raised and, therefore, the claim for waiver was premature. By

doing so WBIDC has gained an advantage in the process of approval of the resolution plan. Having derived such benefit as a financial creditor, they were estopped from shifting their stand.

- d. Relying on Section 31 of the IBC it was submitted that approval of the resolution plan under sub-Section 1 of Section 31 has a consequence that the resolution applicant is allowed to start on "*clean slate*". All claims, provided for in the resolution plan stand frozen and, therefore, there was no occasion for the WBIDC to now raise a demand in support of transfer fee.
- e. The learned Senior Advocate for the respondent Mr. Md. T.M. Siddique submitted that the writ petitioners being the resolution applicant, sought the self-same relief for waiver of transfer fee for transfer of the leasehold land at Kharagpur in their resolution plan. Such relief was incorporated in paragraph 15.15.5 of the resolution plan which was not approved by the adjudicating authority. The adjudicating authority considering the Resolution Plan had held in its order dated 04.09.2019, that "*Any exemption for payment would be dealt with by the respective authorities if applied for. With the above observations, we are not inclined to approve the waiver as prayed for in the plan. It is left open for determination by the appropriate authorities if applied for the wavier/exemption as prayed for in the Plan.*" The claim was specifically rejected by the adjudicating authority, in the above noted terms, which received an approval from the appellate authority (NCLAT). Even the Supreme Court of India in Civil Appeal No. 1142 of 2021 did not interfere with order of the NCLT dated

04.09.2019, extracted above. Therefore, the petitioner's claim is barred by the principle of issue estoppel as per decision of the Apex Court in the case of ***Ishwar Dutt vs. Land Acquisition Collector and Another*** Reported in ***(2005) 7 SCC 190***.

14. The writ petitioner, however, has reagitated the same issue in the writ proceedings, but by resorting to a willful and deliberate misrepresentation of their submissions recorded in the proceedings before the NCLAT as being observations of the NCLAT. The findings in this regard are recorded by the Hon'ble Single Judge in the order passed in the writ proceeding. Such findings are based on the averments made in the writ petition, as also submissions advanced in support of the writ petition. He has drawn attention of the Court towards paragraphs 9 to 12 of the writ petition to submit that a plain reading of these averments makes it clear that the writ petitioner in the writ petition had relied on misrepresentation and suppression to submit that the issue of transfer fee had been waived. The facts, however, were otherwise. The NCLAT had in clear and specific terms rejected the writ petitioner's claim for waiver of transfer fee, but left it open to be raised and considered by the WBIDC. Thus, a twofold submission is advanced.

- a. Firstly that if the resolution plan was approved with a clause that the claim of WBIDC for transfer fee is an afterthought and barred by estoppel, waiver and acquiescence, and that it is a subsequent claim which cannot be raised after approval of the resolution plan on the principle of "*clean slate*", as claimed by the writ petitioner then the writ petitioner was required to invoke appropriate relief either under Section 425 of the

Companies Act or for contempt of the order of the Apex Court under Article 129 of the Constitution of India.

- b. The Second submission is that the premise on which the relief has been claimed is founded on suppression and misrepresentation of relief and material facts. The conduct of the writ petitioner, therefore, disentitles the writ petitioner to seek any relief in a writ jurisdiction under Article 226 of the Constitution of India.

15. The learned Senior Advocate appearing on behalf of the respondents has relied upon decision/s of the Apex Court in the case of ***Vijay Syal And Another vs. State of Punjab and Others*** reported in ***(2003) 9 SCC 401***, ***K.D. Sharma vs. Steel Authority of India Limited and Others*** reported in ***(2008) 12 SCC 481*** and ***Ishwar Dutt vs. Land Acquisition Collector and Another*** reported in ***(2005) 7 SCC 190***.

16. After giving our anxious thought to the submissions advanced on behalf of the parties and on a perusal of the record/s we find that the requirement of approaching the writ Court exercising extraordinary equitable discretionary jurisdiction under Article 226 of the Constitution of India, with clean hands cannot be over emphasized. The law in this regard is settled by a catena of judgments. Once it is found that a party has approached the extraordinary discretionary equitable writ jurisdiction by resorting to willful and deliberate suppression and misrepresentation of material facts, such party would not be entitled to any relief by the writ Court, and a writ petition is liable to be dismissed on this ground alone. We take note of the fact that the learned Single

Judge has recorded a specific finding relying on submissions advanced on behalf of the petitioner that the writ petitioner misrepresented its submissions before the NCLAT, as being observations of the NCLAT. Relying on such misrepresentation a relief was sought from the writ Court that in view of such observations of NCLAT, the WBIDC could not raise a demand for transfer fee. We find from a bare perusal of paragraphs 9 to 12 of the writ petition that there is force in the submissions advanced by the learned Counsel for the respondent that the writ petitioner has distorted the facts regarding order passed by the NCLAT with a view to misrepresent the same, to make out a case that NCLAT had found the demand for transfer fee raised by the WBIDC to be unsustainable. In paragraphs 9 to 12, the writ petitioner has stated:

"9. The operative part of the said order of the NCLT is as under:-

"ORDERS

i) The resolution plan of Ramsarup Industries Ltd., which is approved by the CoC with 74.41% voting share, is hereby approved under the provisions of subsection (1) of Section 31 of the Insolvency and Bankruptcy Code, 2016, which shall be binding on the Corporate Debtor, M/s Ramsarup Industries Limited, its employees, members, creditors, guarantors, the central Government, any State Government or any local authority and other stakeholders involved in the Resolution Plan subject to the below mentioned modification.

ii) The Resolution Plan approved by the CoC shall include the portion of security expenses incurred by the Financial Creditor/ West Bengal Industrial Development Corporation Limited (WBIDCL) which is admitted by the RP in the upfront amount payable by the Resolution Applicant to the creditors"

10. Apart from the above, no variation was made in the plan by the Adjudicating Authority.

11. The Petitioners thereafter preferred an appeal before the Learned National Company Law Appellate Tribunal ("NCLAT") inter-alia in view of apprehension of a belated and illegal demand for purported transfer fees

from the Respondent No. 1 in respect of the Kharagpur Land, which, if compelled to be paid, would escalate the costs and expenses of the Petitioners beyond the amount of Rs.400 crores, on the basis of which the Petitioners had agreed to the resolution plan/process. The NCLAT while adjudicating the appeal being Civil Appeal (AT) (Ins.) No. 995 of 2019 preferred by the Petitioner No.1 was pleased to observe as follows: (emphasis ours)

"24. It is pertinent to mention that the above-mentioned claims from 'WBIDC' are an afterthought as the same was raised after the Appellant apprehended transfer fees payable to be the tune of Rs. 40 crores. It is also important to mention that 'WBIDC', being a Financial Creditor, has not raised any of the claims mentioned above before the Resolution Professional or the Adjudicating Authority. In fact, 'WBIDC' voted in favour of the Resolution Plan without any comment about such claims as stated hereinabove. The same is an afterthought, quantified and submitted only in its Written Submission dated 29 July 2020, and these were never placed before the Resolution Professional. Further, 'WBIDC' had only placed its claim before the 'CoC' regarding security charge, which has been approved. Considering the above, it is clear that WBIDC's claim is an afterthought and barred by estoppel, waiver and are to be acquiescence. No subsequent claims considered after the Adjudicating Authority has approved the Resolution Plan....."

25. The Insolvency and Bankruptcy Code, 2016 has been enacted to facilitate the reorganization based on an entirely different premise. It is enacted to facilitate the reorganization and Resolution Process of a company in distress. It empowers creditors, represented by a 'CoC', to rescue a company through resolution when the company experiences a serious threat to its continuity. For this purpose, the 'CoC', in its Commercial wisdom, can accept any payment against its outstanding liability to ensure resolution of the Corporate Debtor in accordance with the judgement of the Hon'ble Supreme Court in case of Committee of Creditors of Essar Steel India Ltd v Satish Kumar Gupta 2019 SCC Online SC 1478. Further, after it received the approval of the 'CoC' and the Adjudicating Authority, the entire process of Resolution Plan is to offer a fresh slate, on which the restructuring of the Corporate Debtor can be carried out. Reliance in this regard is placed on the Judgement of this Tribunal in case of State of Haryana versus Uttam Strips Ltd in Company Appeal (AT) (Insolvency) No. 319 of 2020 wherein it is observed that the Successful Resolution Applicant is not to be burdened with undecided claims at the stage of implementation of the Resolution Plan. Further, it is observed that:

"A successful Resolution Applicant is to be provided by the company free from past liabilities. It has been rightly understood that Resolution Applicant cannot be saddled with past liabilities indefinitely. Such an Act will make it impossible for the successful Resolution Applicant to run the business of the Corporate Debtor effectively. In fact saddling a Resolution Applicant with past claims will defeat the entire purpose and mechanism set out under the Code."

36. Regarding the Objection of the Appellant in context with a transfer fee of Kharagpur Land, it is important to mention the Ramsarup Loh Udyog is merged with the Corporate Debtor on the appointed date, i. e. 01 April 2007. The Lease over the Kharagpur land has been granted in favour of the Corporate Debtor vide indenture of sub-lease, which was executed on 13 September 2009, after the merger. Therefore, when providing the lease, the Corporate Debtor was the legal entity, and Ramsarup Loh Udyog was merely its unit.

A copy of the said judgment and order dated March 4, 2021, passed by the Learned Appellate Tribunal is annexed hereto and marked as Annexure "P-4".

12. The said order of the NCLAT was confirmed by the Hon'ble Supreme Court in a Civil Appeal being Civil Appeal no. 1142 of 2021 by an order of May 4, 2021.

A copy of the said order passed by the Hon'ble Supreme Court of India is annexed hereto and marked as Annexure "P-5".

17. From a bare reading of these averments in the writ petition it is apparent that the writ petitioner tried to make out a case in the writ petition that there was no variation in the Resolution Plan as submitted by the writ petitioner apart from that which is stated in paragraph 9(ii) the writ petitioner has represented in paragraph 11 that paragraphs 24, 25 and 36 of the order passed by the NCLAT were observations of the NCLAT. Whereas the fact is that the paragraphs mentioned therein were actually submissions made on behalf of the writ petitioner before the NCLAT and not observations. The writ petitioner has gone one step further by making a statement in paragraph 12 of the writ petition that

the misrepresented order of NCLAT in paragraph 11 was confirmed by the Hon'ble Supreme Court in Civil Appeal No. 1142 of 2021. We, therefore, approve the conclusion of the learned Single judge in the order under appeal that the writ petition was liable to be dismissed for willful misrepresentation and deliberate suppression of material and relevant facts. The order of the NCLAT has been quoted in such a manner by the writ petitioner, so as to suppress the fact that the NCLAT had recorded submissions therein; and has explicitly been quoted to misrepresent the same as being observations of the NCLAT.

18. It is clear from a bare reading of the writ petition, as also submissions in support thereof recorded in the order of the Hon'ble Single Judge that the writ petitioner did not approach the writ Court with clean hands. Therefore, we are in agreement with the conclusions of the Hon'ble Single Judge relying on decisions of the Apex Court in the case of ***K.D. Sharma vs. Steel Authority of India Limited and Others*** reported in ***(2008) 12 SCC 481***, ***Madras Bar Association vs. Union of India and Another*** reported in ***(2015) 8 SCC 583*** and ***Vijay Syal and Another vs. State of Punjab and Others*** reported in ***(2003) 9 SCC 401*** that the writ petitioner would not be entitled to any relief under the extraordinary discretionary equitable writ jurisdiction of this Court under Article 226 of the Constitution of India.

19. We have also given our anxious consideration to the other submissions advanced on behalf of the writ petitioner. The first submission that change in shareholding does not amount to transfer, in our opinion is unsustainable. Insofar as the decision relied upon by the writ petitioner we observe that two of the decisions in the case of ***M/s. Green Hut Pvt. Ltd & Anr.*** (Supra) and ***M/s. Din Chemicals &***

Coatings Pvt. Ltd. & Anr. (Supra) are judgments rendered by an Hon'ble Single Judge and, therefore, does not constitute a binding precedent on this Court. However, we have ventured to consider the judgments. In **M/s. Green Hut Pvt. Ltd & Anr.** (Supra) wherein the Hon'ble Single Judge took notice of the facts arising for consideration in that case, which are distinct from the facts in the present case. In the case of **M/s. Green Hut Pvt. Ltd & Anr.** (Supra) a demand was raised for transfer fee merely because shares of the company were transferred from the present shareholders to someone else. The Hon'ble Single Judge therefore held the demand for transfer fee to be unsustainable since transfer of shares does not involve transfer of interest in the property of the company. Such transfer of shares at best entitles the new shareholding to participate in the profits of the company as and when so declared.

20. In the present case the resolution plan submitted by the writ petitioner before the NCLT was approved under Section 31 IBC. The same in clear and unambiguous terms stated in clause 15.15.5, speaks of transfer of the lease in respect of the leasehold lands in Kharagpur in favour of the resolution applicants.

21. As noted above, the said clause has been approved by the NCLT in its order dated 04.09.2019. But the claim for exemption for payment incorporated in clause 15.15.5 of the resolution plan has not been approved and it has been "*left open for determination by the appropriate authorities if applied for the waiver/ exemption as prayed for in the plan*". Such liberty was granted by the NCLT in paragraph 67 of the order dated 04.09.2019 which was affirmed by the NCLAT. Even the Apex Court did not interfere with the decision of the NCLT in this

regard. The writ petitioner itself has sought a transfer of the leasehold land in favour of the corporate debtor and, therefore, it does not lie in the mouth of the writ petitioner to submit that in the present case no transfer of leasehold rights is involved. The other decision of the Hon'ble Single Judge in the case of **M/s. Din Chemicals & Coatings Pvt. Ltd. & Anr.** (Supra) is on the same lines and in the same factual matrix wherein there was transfer of shares and no transfer of leasehold rights was involved. These two judgments therefore, have no application in the facts and circumstances of the present case. We are, therefore, not persuaded by these two judgments to accept the submissions advanced by the learned Senior Advocate, since the present case does not involve only a change in shareholding; and involves transfer of leasehold interest.

22. The third decision relied of a co-ordinate Bench also emanates from facts wherein there was an issue of transfer of shareholding and there was no factual issue regarding transfer of the leasehold land, as arises for consideration in the present case. Therefore, the third judgment in the case of **Gopi Vallabh Solutions Private Limited & Ors.** (Supra) also has no application to the facts and circumstances of the present case.

23. Insofar as the submission (b) that the Government's policy dated 26.12.2012 cannot have retrospective effect, we find that paragraph 3 of the policy reads:

"3. Now, the Governor, after careful consideration of the matter, is pleased hereby to make the following Land Allotment Policy which will be applicable to land owned or held by any Department of the State Government or agency funded by the State Government in any manner..."

24. It is apparent from a plain reading of the order that the policy is applicable to lands owned or held by any department of the State Government or agency

funded by the State Government in any manner. There is no dispute regarding the fact that the leasehold land in question are held by WBIDC which is an agency of the State Government. As noticed by us and recorded above the Resolution Plan submitted by the writ petitioner contemplates transfer of leasehold rights in respect of the lands in question. Therefore, there can be no two opinions regarding the fact that the policy dated 16.12.2012 would apply to the transfer of the leasehold lands in terms of the resolution plan which was submitted and accepted by the NCLT on 04.09.2019, i.e. much after coming into force of the policy dated 16.12.2012.

25. Insofar as the third submission regarding WBIDC being a member of the CoC and submissions allegedly made by it in the resolution proceeding we find no substance in such submissions since the rights and obligations of the writ petitioner have crystalized in the resolution plan as approved by the NCLT on 04.09.2019. The rights and liabilities have to be considered with reference to the order of the NCLT and not with reference to any submissions advanced during pendency of the proceedings. In the approval, as noted above the adjudicating authority found that waiver of fee for transfer of leasehold land was an issue to be raised by the writ petitioner before the authority (WBIDC) which was to consider the same. No right or obligation can be claimed, merely on the basis of submissions advanced in the process as is sought to be done by the writ petitioners.

26. Insofar as the principle of "*clean slate*" based on Section 31 of IBC, we find no forces in such submission also. There is no question of the demand for transfer fee to be considered frozen, since the resolution plan as approved by the

adjudicating authority did not approve any clause regarding the demand for transfer fee raised by WBIDC. In fact, this issue was specifically left open by the NCLT to be raised by the writ petitioner before the WBIDC. The judgments, therefore, relied upon in this regard by the learned Senior Advocate for the writ petitioner in the case of ***Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.*** reported in ***2019 SCC OnLine SC 1478, Ghanashyam Mishra and Sons Private Limited Through the Authorised Signatory Vs. Edelweiss Asset Reconstruction Company Limited Through The Directors & Others*** reported in ***(2021) 9 SCC 657***. Decision of this Court in ***FMAT 1262 of 2022*** in the case of ***SPS Steels Rolling Mills Limited and Ors. Vs. Asansol Durgapur Development Authority and Anr.*** have no application to the facts and circumstances of the present case. In the present case the resolution plans itself contemplated such demand being raised before the authorities. We therefore, find force in submission of the learned Senior Advocate representing the respondent that the issue regarding transfer fee attained finality in the proceedings under IBC, up to the Apex Court. The issue, therefore, was not available to the writ petitioner to be agitated by way of a writ petition raising a plea that the demand was frozen.

27. The writ petitioners, therefore, were conscious that such demand was likely to be raised. Insofar as the transfer fee of leasehold land is concerned a specific provision was incorporated in the resolution plan (Clause 15.15.5), which claim, as noticed above, the adjudicating authority (NCLT), the appellate authority (NCLAT), as well as the Apex Court left to be raised and considered before the authorities. Therefore, in the facts of the present case there is no scope for the

petitioner to submit that such claim was frozen or such claim may amount to a hydra head popping up so as to throw into uncertainty amounts payable by him for taking over business of the corporate debtor. The above noted three decisions in our considered opinion have no applications to the facts and circumstances of the present case. Having considered the submissions above we are of the considered opinion that order of the Hon'ble Single Judge dismissing the writ petition requires no interference.

28. The present appeal is dismissed.

29. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)

Later

Prayer for stay has been made. The same is considered and rejected.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)

A.D.