

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI**

Company Appeal (AT) (Ins.) No. 622 of 2022

IN THE MATTER OF:

SUNIL KUMAR AGRAWAL

RP, GSS Procon Pvt. Ltd.
(IB/IPA-002/IP-N00081/2017-18/10222
Registered Office At:
E-205, Greater Kailash – II,
New Delhi 110048

Also Available At:
904, GF, Sector – 7C,
Faridabad – 121006, Haryana
Email: irpgssprocon2019@gmail.com

...Appellant

Versus

NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY

Office At:
Main Administrative Building
Sector – 6, NOIDA – 201301, UP

...Respondent

Present:

For Appellant: Mr. Rakesh Kumar, Mr. Ankit Sharma, Mr. Dhruv Gupta &
Mr. Lav Dhawan, Advocates

For Respondent: Mr. Rachit Mittal, Mr. Parish Mishra, Mr. Adarsh
Srivastava, Mr. Pooja Kapur, Advocates for R1
Mr. Kumar Mihir, Adv. for Applicant in I.A. No. 2920 of
2022

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This appeal is directed against the order dated 12.04.2022 by which an application bearing (IB) 1896 (ND)/2019, filed under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') & Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 (in short 'Regulations') read with Rule 11 of the NCLT Rules, 2016 by New Okhla Industrial Development Authority (in short

‘Authority’) for a direction to the Resolution Professional (RP) (Appellant) to make the payment of the amount due and payable towards the outstanding dues which have become due during the CIRP or pass any order in view of the facts and circumstances of the case, has been allowed.

2. Shorn of unnecessary details, the Authority entered into a lease deed dated 19.08.2011 with M/s GSS Procon Pvt. Ltd. (CD) in respect of Plot No. GH-01/C Sector – 143B Noida (Sub divided plot of plot no. GH-01 Sector – 143B) for the purpose of constructing residential flats according to the set backs and building plan approved by the lessor. The lessee was to pay the lease premium of Rs. 24,29,66,779.00 out of which 10% i.e. Rs. 2,42,96,677.90 was paid by the lessee to the lessor with a moratorium of 24 months from the date of allotment and only the interest @ 11% per annum compounded half yearly accrued during the moratorium period, was payable in equal half yearly instalments. After the expiry of moratorium period, the balance 90% premium i.e. Rs. 21,86,70,101.10 of the plot alongwith interest was to be paid in 16 half yearly instalments in the manner provided in clause II of the lease deed.

3. Besides that, the lessee was to pay the lease rent of Rs. 24,29,667.79 being 1% of the plot premium for the first year of lease period which could be enhanced by 50% after every 10 years i.e. 1.5 times of the prevailing lease rent. This was the broad arrangement made in the lease deed as per which the payment was to be made of the premium from 26.02.2014 to 27.07.2021. It is pertinent to mention that the lease deed was executed for a period of 90 years and the premium was to be paid from 26.02.2014 to 27.07.2021. The

application, filed under Section 7 of the Code, was admitted on 10.10.2019. The Authority put up its claim of Rs. 32,96,19,803/- assessed on 10.10.2019 to the RP on 31.12.2019. It is an admitted case of the parties that the resolution plan submitted by the consortium of home buyers association, namely, Crossroad Welfare Society was submitted by the RP to the CoC which was approved in 10th CoC meeting held on 04.12.2020 by voting share 93.43%. Thereafter, the RP filed an application, in terms of Section 31 of the Code, before the Adjudicating Authority seeking its approval. The said application is stated to be pending.

4. The Authority submitted a letter dated 04.06.2021 to the RP highlighting its dues towards lease premium calculated from 11.10.2019 to 30.06.2021 of a sum of Rs. 15,54,52,427/- and lease rent of the year 2020-21 and 2021-22 of Rs. 60,74,170/-. The Authority had requested the RP to make the payment of the dues which comes to Rs. 16,15,26,597/- within a period of 15 days and since the said dues were not paid within the stipulated period, therefore, the Authority presumed that the RP has declined the same and filed the application before the Adjudicating Authority on 27.09.2021. The Appellant filed the reply to the application and contested the same. The Adjudicating Authority allowed the application by the impugned order recording its finding in paras 16 & 17, which are reproduced as under for a ready reference:-

“16. At this juncture, we would also like to refer to Section 14(1)(d) which restrain the owner or lessor from recovery of any property where such property is occupied or is in possession of the Corporate Debtor. But as per explanation of Section 14(1) of the IBC, this provision is subject to the condition that there is no default in payment of current dues arising for the use or

continuation of the license, permit, registration, quota, concession, clearance or a similar grant or right during the moratorium period.

17. Admittedly, to enjoy the lease granted by NOIDA Authority to the Corporate Debtor, lease premium and lease rent are to be paid for during the period 11.10.2019 to 30.06.2021 as per the letter dated 04.06.2021, sent by the Applicant to the Resolution Professional. Therefore, even if we accept the contention of the Resolution Professional that the lease rent does not fall under the categories of supplies to the essential goods and services, but in terms of explanation of Section 14(1) of the IBC 2016 added w.e.f. 28.12.2019, the applicant is entitled to get lease premium amount as well as lease rent arising for the use or continuation of the lease during the moratorium period, failing which the moratorium will not apply for the suspension or termination of lease. In view of the above, as the Resolution Professional has failed to pay the lease premium and lease rent due to the NOIDA Authority, therefore, the respondent is directed to make the payment of the current amount, which is due and payable within 6 months or include the said amount as Insolvency Resolution Process Cost under Regulation 31 of the IBBI (Insolvency Resolution Process of Corporate Person).”

5. Counsel for the Appellant has submitted that the Adjudicating Authority has erred in applying explanation of Section 14(1)(d) of the Code for the purpose of allowing the application of Respondent because the said explanation is not applicable at all. In this regard, it is submitted that Section 14(1)(d) provides that after the declaration 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 but the explanation appended with Section 14(d) clarifies that a license, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Govt., State Govt., 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 but it shall continue if there is no default in payment of the dues of the said license, permit, registration, quota, concession, clearance or a similar grant or right during the moratorium

period. It is sought to be argued that the lease rent and the premium are conspicuous by its absence in the said explanation and cannot be read into it.

6. On the other hand, Counsel for Respondent has vehemently argued that lease and premium shall fall within the words “similar grant or right” and thus, there is no error in the impugned order, passed by the Adjudicating Authority.

7. We have heard Counsel for the parties and perused the record with their able assistance.

8. The only issue in this case is as to whether the Adjudicating Authority has rightly applied the explanation under Section 14(1)(d) of the Code for the purpose of directing the Appellant to pay the lease premium amount and the lease rent to the Respondent?

9. In order to appreciate the rival contentions, it would be relevant to refer to Section 14 of the Code, which is as under:

“Section 14: Moratorium.

*14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

[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 license, permit, registration, quota, concession, clearances 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 the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

[(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of

moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]

[(3) The provisions of sub-section (1) shall not apply to —

[(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;]

(b) a surety in a contract of guarantee to a corporate debtor.]

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of [section 31](#) or passes an order for liquidation of corporate debtor under [section 33](#), the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

10. Section 14 of the Code deals with the moratorium and Section 14(1)(d) of the Code says that there would be a prohibition from the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor. However, explanation appended to Section 14(1) (d) says that with the prohibition of recovery of any property by an owner or lessor, a license, permit, registration, quota, concession, clearance or a similar grant or right either given by the Central Govt., State Govt. 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 but there would be a condition for

its continuation if there is no default in payment of the dues of such license, permit, registration, quota, concession, clearance or a similar grant or right during the moratorium period. The similar grant or right has to be read in respect of the licence, permit, registration, quota, concession, clearance but it cannot be read as the premium amount or lease rent which has been so ordered by the Adjudicating Authority to be paid by the Appellant to the Respondent.

11. Thus, in view of the aforesaid facts and circumstances, in our considered opinion, the impugned order is patently illegal and deserves to be set aside. Consequently, the appeal is allowed and the impugned order is set aside though without any order as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

New Delhi

12th January, 2023.

Sheetal