

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

Company Appeal (AT)(Insolvency) No. 447 of 2018

IN THE MATTER OF:

Chhattisgarh State Industrial Development Corporation Ltd. ...Appellant

Versus

Sanjay Gupta & Anr.

...Respondent

Present:

**For Appellant : Mr. Rishav Banerjee, Ms. Sreenita Ghosh, Mr. Arjun
Asthana, Advocates**

For Respondent 1 : Mr. Akshay Goel, Advocate

O R D E R

28.01.2019 By 'Lease Deed' dated 19.12.2001 the Governor of Chhattisgarh, acting through the Addl. Managing Director for Managing Director, Chhattisgarh State Industrial Development Corporation Ltd., Raipur, leased the land in question for a term of 81 years commencing from 19.12.2001 and ending on 01.06.2083 in favour of M/s. Vindhyavasini Impex (P) Ltd., Uria, Raipur (Corporate Debtor). The Corporate Insolvency Resolution Process was initiated against the Corporate Debtor initially on 23.03.2017. Prior to initiation a notice was issued to Corporate Debtor as to why the lease be not cancelled for the alleged violation after a year of the lease was cancelled on 20.03.2018.

The Resolution Professional filed an Interlocutory Application before the Adjudicating Authority (National Company Law Tribunal), Mumbai bringing to its notice that order of moratorium was passed on 29.08.2018 and subsequent thereof the order of cancellation of Lease Deed was issued by the Appellant.

The Adjudicating Authority by Impugned Order dated 04.06.2018 noticed that order under Section 33 had been passed on 20.03.2018 and taking into consideration the fact that during the period of moratorium the Appellant should not have cancelled the said Lease Deed. The Adjudicating Authority accordingly declared the order of cancellation as illegal and void.

Learned Counsel appearing on behalf of Appellant- Chhattisgarh State Industrial Development Corporation Ltd. submitted that the land belongs to the Appellant, the Corporate Debtor has no claim on such land and, therefore, cancellation of lease was legal and valid.

Learned Counsel appearing on behalf of the Liquidator relied on Section 36 4(a)(iv) of the Insolvency & Bankruptcy Code, 2016 in support of its claim. Learned Counsel appearing on behalf of Liquidator submitted that the order of liquidation was passed and the Appellant cancelled the Lease Deed. The order of liquidation was not published nor communicated upto June, 2018 even after moratorium period the Lease could not have been cancelled.

In the present case, as we find that the order of liquidation was passed with regard to the Corporate Debtor- M/s. Vindhyavasini Impex (P) Ltd., Uria, Raipur (Corporate Debtor), we are not considering the question whether the Lease was rightly cancelled by the Appellant or not but keeping such issue open. Now the Liquidator is required to decide which are the assets of the Corporate Debtor in terms of Section 36 of Insolvency & Bankruptcy Code. While deciding so, it is required to notice sub-section (4) of Section 36 to find out which assets are owned by third party which are in possession of the Corporate Debtor. Once, it is decided, it will be clear about the right of the Appellant and the Appellant may accordingly pass appropriate order in accordance with law.

In the circumstances, we direct the Liquidator to pass appropriate order with regard to land in question in terms of Section 36 of Insolvency & Bankruptcy Code if not yet passed and communicate the decision to the Appellant. Thereafter, it will be open to the Appellant to move before the appropriate Forum, if dissatisfied with the decision of the Liquidator.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

ss/sk/