

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 2119 of 2024
&
IA No. 7882 of 2024

**[Arising out of the Order dated 30.08.2024, passed by the
'Adjudicating Authority' (National Company Law Tribunal,
Division Bench, Court-II, Kolkata), in Company Application No.
1763 of 2019 in Company Petition IB 446/KB/2017]**

IN THE MATTER OF:

1. **West Bengal Housing Infrastructure
Development Corporation Ltd.**

A Govt. of West Bengal Company and a
Company incorporated under the Companies
Act, 1956

(Through its Authorised Representative)

Having its registered office at:

HIDCO Bhaban, Premises No. 35-1111,
Biswa Bangla Sarani, 3rd Rotary, New Town,
Kolkata-700156

Email:gm.law@wbhidco.in

...Appellant

Versus

1. **Kshitiz Chhawchharia
(Liquidator of M/s Concast Steel and
Power Ltd.)**

Having its office at:

B Chhawchharia & Co., 8A and 8B, Satyam
Towers, 3 Alipore Road, Kolkata, West
Bengal- 700027

IBBI Registration No.: IBBI/IPA-001/IP-
P00358/2017-2018/10616

Email:kshitiz@bcccoindia.com

...Respondent

Present:

For Appellant : Mr. Palash S. Singhai, Mr. Harshal Sareen, Mr.
Manish Srivastava and Ms. Kamakshi S. Rao,
Advocates.

For Respondent : Mr. Soorjya Ganguli, Ms. Kiran Sharma, Mr.
Anand Amit and Ms. Pooja Chakraborti,
Advocates.

J U D G M E N T
(Hybrid Mode)

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

Instant appeal has been filed by the appellant West Bengal Housing Infrastructure Development Corporation Limited under section 61 of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the National Company Law Appellate Tribunal Rules 2016 against the impugned order of date 30.08.2024 passed by the National Company Law Tribunal Court No. II Kolkata Bench, in CA number 1763 (KB) 2019 in CP IB number 446 KB of 2017 where by the IA No. 1763 of 2019 moved by the appellant has been rejected.

2. Necessary facts required for disposal of the instant appeal are that the appellant is Government of West Bengal company and a Planning Authority appointed by the state government with a mandate to provide larger supply of developed land for development of New Town, Kolkata. The state government after acquiring a large chunk of land came into the ownership and possession of the said and with the object of creating New Town Kolkata and had developed the said land.

3. It is stated that the lease of a piece of land measuring about 3608.87 square metre situated at premise number 7/775 at street number 775 in Newt Rajarhat Town Kolkata under Maouza Noupura District North 24 Parganas under Rajarhat Gopalpur, was granted to Concast Ispat Ltd. for a period of 99 years on a premium of Rs 6,69,02,836/- along with payment of annual lease rent, by lease deed dated September 17, 2012 duly registered at the office of Registrar of Assurances II, Kolkata, with the clear stipulation

that the lessee will use the land exclusively for establishing corporate house of CIL for the use of business and for no other purpose. It was also stipulated that lessee shall not assign, alienate or transfer the said land or any part there of or the structure erected their on to anyone.

4. It is further stated that the appellant was informed in the year 2015 that the lessee (CIL) has amalgamated/merged with Concast Steel and Power Limited, here in after referred to as CSPL, on 26th November 2015. An application to rectify an error occurred in the above order with regard to the inclusion of the subject land as a leasehold property was rejected by Ld. NCLT Kolkata and on an appeal filed before this Appellate Tribunal the matter was remitted back to the NCLT vide order of this Appellate Tribunal dated July 14, 2017 and in pursuance of the same a new petition was filed by the CSPL before the NCLT Kolkata and vide order dated September 14 2018 passed by it the error occurred in the merger scheme was rectified and the subject land was included in part 1 of schedule B of the amalgamation order.

5. It is further stated that the appellant did not grant any approval for the transfer of the subject land from CIL to CSPL and the same has been transferred without its consent, in violation of the specific terms and conditions of the lease deed and in fact the subject land was never got transferred to the corporate debtor (CD) and could not be the subject matter of liquidation estate of the corporate Debtor in liquidation proceedings.

6. It is further stated that the appellant by writing many letters clarified to the CD in liquidation that lease hold rights of the subject land has not

been passed in favour of the CD and also that the subject land never became the asset of the CD.

7. It is further stated that the respondent vide its letter dated December 17, 2018 called upon the appellant to transfer the lease in favour of the CD and on being asked the liquidator vide its letter dated January 11, 2019 forwarded the order dated September 26, 2018 where by the liquidation of the corporate debtor was directed by the Tribunal.

8. It is also stated that the appellant was shocked and surprised to note publication of an advertisement in The Economic Times, Kolkata edition of December 26, 2018 issued by the respondent liquidator whereby the subject land was advertised for sale along with other properties of the corporate debtor and immediately a notice was issued by the appellant to the respondent on May 30, 2019, a reply of which was given by the respondent on June 18, 2019 stating that in pursuance of many letters written by the appellant an implied consent may be assumed.

9. It is also stated that subject land is part and parcel of the land required by the State Government for New Town project and belongs to the government of West Bengal and the respondent herein has illegally and arbitrarily claiming the same to belong to the CD in liquidation and have also issued a public advertisement with regard to its sale which could not be done in the background of the fact that no right has been transferred to the CD by an illegal merger scheme.

10. It is further stated that an application bearing IA No.1763 of 2019 for the purpose of seeking necessary directions were moved before the NCLT Kolkata which has been rejected by passing the impugned order

and learned Tribunal has committed manifest illegality in rejecting the same. It is prayed that as the lease could not be assigned to the CD by the CIL, no rights in the impugned land has been transferred in favour of CD and this land could not be the part of liquidation assets and the impugned order is liable to be set aside.

11. The liquidator respondent has filed its reply by stating that the original lessee CIL was amalgamated with CSPL and such amalgamation was confirmed by the order of the Hon'ble Calcutta High Court dated November 26, 2015 and by such amalgamation all the assets of CIL including the lease hold interest in the said land is vested in the corporate debtor.

12. It is further stated that the appellant was duly informed about the amalgamation vide letter dated July 15, 2016 and on receipt of the same appellant has also written a letter dated January 25, 2017 where by it is noted that in the schedule of the amalgamation order dated November 26, 2015 the said land is not shown and thereafter the appellant requested the CD to file a duly rectified order of the amalgamation with reference to the subject land and thereafter a rectification application was moved which was initially rejected by the NCLT Kolkata, however on the matter being remanded by this Appellate Tribunal the rectification order was ultimately passed by the NCLT Kolkata.

13. It is further stated that much correspondence was exchanged between the appellant and the CD pertaining to supply of rectified amalgamation order and the appellant has always recognised the corporate debtor as the lawful lessee of the subject land, however vide letter dated

May 30, 2019 for the first time the appellant claimed that the said land has not vested in favour of the corporate debtor.

14. It is also stated that the lease granted in favour of the original lessee which was vested in the corporate debtor by virtue of the amalgamation order was never determined as per requirement of section 111 (g) of the Transfer of Property Act, 1882 and in absence of such determination the lease hold rights vested in the corporate debtor may not be challenged specially before the NCLT.

15. It is also stated that no material illegality has been committed by the NCLT in rejecting the application moved by the appellant and the appeal is liable to be dismissed.

16. We have heard learned counsels for the appellant as well as for the liquidator and have also perused the written arguments submitted by them.

17. Learned counsel for the appellant submits that the tribunal has committed Manifest illegality in rejecting the application moved by the appellant and has not considered the fact that lease hold rights could not be transferred to CSPL in violations of terms of the lease deed and without the consent of the appellant and this fact has been Ignored by the tribunal and has not been considered in right perspective.

18. He further submits that the amalgamation of the CIL and the corporate debtor CSPL without seeking consent of the appellant is in violation of the specific terms and conditions of the lease deed and therefore the merger/amalgamation scheme is not having any legal force. Elaborating further it is submitted that the amalgamation deed or any order secured on

the basis of such illegal amalgamation deed cannot override the terms and conditions of the lease deed.

19. It is further submitted that learned tribunal failed to understand that any action under section 111 of the Transfer of Property Act (TPA) could only be initiated against the original lessee which in this case was CIL and not the corporate debtor (SPL) and once the original lessee has ceased to exist and the amalgamation has been carried out without the consent of the appellant the lease of the land automatically stood determined by operation of law.

20. It is further submitted that the lease was rendered void upon amalgamation undertaken in violation of its terms, and with the dissolution of CIL, all leasehold rights, including possession of the land, automatically reverted to the appellant and the corporate debtor never became a lessee in the eyes of the Law.

21. It is further submitted that section 36(3) of the IBC defines liquidation estate as comprising assets owned by the corporate debtor. However, the lease hold rights in the demised land never vested in the corporate debtor the subject land could not be treated as part of its liquidation estate and learned tribunal has committed an illegality in not considering this issue in right perspective.

22. It is also submitted that learned tribunal has committed an error by presuming that the lease hold rights automatically vested in the corporate debtor upon amalgamation overlooking the express statutory bar and absence of appellant's consent. It is submitted that the respondent has no

claim over the subject land as the leased land never became part of the corporate debtor's estate.

23. It is also submitted that appellant at least is a secured creditor and this aspect has also not been considered by Ld. Tribunal.

24. Learned counsel for the appellant has relied on the following cases in support of his submissions;

(i) Embassy Property Developments Private Limited vs State of Karnataka and others, (2020)13 SCC 308

(ii) Rajasthan State Industrial Development and Investment Corporation and Another Vs Diamond and Gem Development Corporation Limited and Another, (2013)5 Supreme Court cases 470

(iii) Indian Shaving Products Limited vs Delhi Development Authority and other, 2001 SCC Online Delhi 1123

(iv) Greater Noida Industrial Development Authority vs Prabhjeet Singh Soni and Another, (2024)6 supreme Court cases 767

25. Learned counsel for the respondent liquidator submits that though the lease deed was granted in favour of the Concast Ispat Limited CIL for a period of 99 years, however, with the amalgamation of the CIL with corporate debtor CSPL, all assets of CIL, including the subject land with residuary period of the lease stood vested in CSPL.

26. It is further submitted that due to an inadvertent error in the order of the amalgamation, the schedule of properties forming part of the order dated 26 November 2015 did not mention the demised land as lease, however, this was rectified by the tribunal by an order dated September 14, 2018. Moreover, in the correspondence made by the appellant, the appellant

recognised CSPL as the lessee, in this regard, Ld. counsel has drawn the attention of this tribunal on various communications held between the parties in order to show that the appellant had recognised CSPL to be its lessee.

27. It is further submitted that on noticing that the name of the CSPL had not been reflected as the allottee of the land, the respondent has issued a letter dated 27 May 2019 requesting the appellant to record the name of the CSPL in the list of allottees and it is in response to this letter the appellant for the very first time by its letter dated May 30, 2019 stated that the lease land has not vested in CSPL and the same stood determined with effect from the date of order of amalgamation of CIL with CSPL and this averment was made despite the fact that the order of amalgamation dated November 26, 2015 was rectified by the order of learned adjudicating authority of September 14,, 2018, which upon being communicated to the appellant was neither questioned nor challenged, and this in itself is a clear evidence of the fact that the letter dated May 30, 2019, was written by the appellant without any basis and is an afterthought.

28. It is also submitted that the relief sought by the appellant in any event could not be granted by this appellate tribunal as the application before the adjudicating authority could not be filed without challenging the order of amalgamation and its rectification. It is reiterated that by virtue of amalgamation, the subject land has vested in the corporate debtor, and there is no question, the appellant may seek its recovery without lawfully terminating the lease and no steps, so far have been taken by the appellant to determine or terminate the lease.

29. It is also submitted that the relief prayed for by the appellant is in the nature of equitable relief, and no such relief could be granted under section 60(5) of the IBC, reliance in this regard has been placed on following case laws: -

- (i) Ranjit Singh vs Karan Motors Pvt Ltd, 2021 SCC ONLINE NCLAT 4257.
- (ii) Gujarat Urja Vikas Nigam Limited vs Mr. Amit Gupta and others, (2021) 7 SCC 209
- (iii) Embassy Property Development Private Limited vs State of Karnataka, 2019 SCC Online SC1542
- (iv) Tata Consultancy Services vs Vishal Ghisulal Jain (2022) 2 SCC 583
- (v) Jai Narayan Dass and Ors vs Zubeida Khatoon, 1972 SCC online Allahabad 300
- (vi) Mukund Limited vs Devi Dayala Limited 2017 SCC online Bombay 3041.

30. It is also emphasised that in the grounds of appeal, the appellant has not taken the plea of being a secured creditor and it is only during the final arguments made before this appellate criminal, the appellant has for the very first time attempted to make out a case that it has been denied of its right as a secured creditor by the liquidator. It is urged by him that it is established law that the parties as well as the courts cannot travel beyond the pleadings to grant any relief. In this regard, reliance has been placed on Arikala Natasha Reddygari vs Venkat Ram Reddy Gari, (2014) 5 SCC 312.

31. It is also highlighted that as per the provisions of IBBI liquidation process regulations 2016, a claimant has to file a claim within a period of 30 days from the liquidation commencement date and in the instant case, the said liquidation commencement date is September 26, 2018, and as such

the last date for submission of claim would be October 26, 2018, but no claim has been filed by the appellant.

32. It is also submitted that in Czarnikov Group Limited vs Commissioner of Customs Preventive petition number 29614 of 2022 Hon'ble Madras High Court has held that the right of any creditor, whether a financial creditor, operational creditor, secured or unsecured creditor would arise only in the event and upon the condition that claim has been made by the creditor. It is submitted that the appeal as such is liable to be dismissed.

33. We have heard Ld. Counsel for the parties and have perused the record as well as the written submissions submitted by Ld. Counsels for the parties.

34. It is reflected that the lease of the demised land was granted by the appellant in favour of the Concast Ispat Ltd. (CIL) for a period of 99 years upon payment of total lease premium of Rs. 6,69,02,836/- and subject to other conditions mentioned in the lease deed, admeasuring about 3608.67 sq. metres (0.891 acres) vide lease deed dated 17.09.2012 which was duly registered, for establishing the group Corporate House of Concast Ispat Ltd. (CIL). A copy of this lease deed has been made available by the appellant on the appeal paper book and no objection with regard to the authenticity of this copy of the lease deed has been raised by the Respondent liquidator.

35. A perusal of this lease deed would reveal that various terms and conditions have been placed therein under which the lease of the land in favour of the Concast Ispat Ltd. (CIL) has been granted. Those terms and conditions of the lease deed which are relevant for our discussion are being reproduced as under:

“And Whereas after due consideration of the said request in 56th meeting of the Board of Directors held on 23.11.2010 followed by 67th meeting of the Board of Directors of this Corporation held on 30.07.2012 the Lessor by its letter of offer of allotment being No. M-5067/HIDCO/ADMN-1429/2010 dt. 24.08.2012 read with letter No. M-5140/HIDCO/ADMN-1429/2010 dated 27.08.2012 intimated the Lessee its offer for allotment of land measuring 0.90 acre at New Town, Kolkata on Leasehold Basis for 99 years (ninety-nine years) for the purpose of establishing the Group’s Corporate House of Concast Ispat Ltd. at a total lease premium of Rs. 6,75,18,000/- (Rupees Six Crores Seventy-Five Lakhs Eighteen Thousands) only at the rate of Rs. 12,40,000/- (Rupees Twelve Lakhs Forty Thousand) only per cotta subject to fulfilment of the Terms and Conditions stipulated in the said offer letter of allotment dated 24.08.2012.

(iii) the Lessee shall use the said demised land exclusively for the purpose of constructing building thereon at the cost of the Lessee in conformity with the Building Rules & Regulations as applicable in New Town, Kolkata and other Rules and Regulations as prescribed or might be framed out from time to time for the New Town, Kolkata and more specifically according to plans, specifications, elevations designs and sections sanctioned by the Planning Authority and with the condition as the Lessor may decide and shall use the said demised land and the structure thereon exclusively and wholly for establishing the Group’s Corporate House of Concast Ispat Ltd. under the principal use “Business” and no part of such building or land shall be used for any other purpose.

(iv) Taking Over physical possession of the allotted plot of land and shall complete the project within 5 (Five) years in compliance of the Building, Rules and Regulations as applicable in New Town, Kolkata failing which the Lessor shall have the liberty to cancel the offer/Lease Agreement/Lease Deed and Lessor shall be entitled to re-enter into or upon the said land on refund of the payment of original premium made by the Lessee and resume possession thereof and the same shall thereafter vest with Lessor as in their former estate.

(xi) The Lessee shall not sub-divide or sublet or sub-lease the demised land/building constructed thereon/or any part thereof or the structure constructed thereon.

(xii) The Lessee shall obtain necessary prior approval from appropriate authorities for establishing the intended

project as required under Law for the time being in force and shall also go on complying with all the terms and conditions of such clearances throughout the period or lease.

(xiii) the Lessee shall not assign, alienate or transfer the demised land or any part thereof and/or the structure erected thereon. However, in case of Lessees inability to continue the lease for the unexpired time period of the lease, the Lessor shall have the right of pre-emption and upon the exercise of this right the building constructed by the Lessee on the land shall be taken over by the Lessor at a valuation of the building made by the Lessor on the basis of the cost of construction of the building less depreciation at the usual rate or the market value thereof, whichever is less. The value of the land will be the amount of the premium paid by the lessee. The land shall, however, have to be surrendered by the lessee to the lessor.

(xxi) If any of the aforesaid terms and conditions is violated or any act is done in contravention of the aforesaid terms and conditions covenanted herein by the Lessee or any of its members, the Lessor shall have the right to revoke the lease and to re-enter into possession of the demised plot of land and resume the same including the structure thereon, if any, even after the handing over of possession to the Lessee on such determination of lease.

(xxvi) The Lessee may however mortgage the leasehold land and/or structure constructed thereon for obtaining loans and/or financial assistance from any RBI recognized bank/Institution on prior written consent of the Lessor and of course without prejudice to WBHIDCO Ltd's claims and interest as the owner of the land, if any, being treated as the first-charge and also all rights whatsoever as spelt out in this Deed of Lease".

(Emphasis Ours)

36. It is further reflected that vide order dated 26.11.2015, of Hon'ble High Court of Calcutta the CIL was merged/amalgamated with Concast Steel and Power Ltd. (herein after referred to as 'CSPL') and it is claimed by the appellant that the said merger/amalgamation was without its approval and was in violation of specific terms of the lease deed. The claim of the

liquidator Respondent however is that appellant was duly informed of this merger and it is further claimed that vide letters written in July, 2015 and 2016 the appellant was informed of such merger whereby all the properties and assets of the CIL was transferred to the CSPL, (the another group Company of the same group).

37. It is also claimed by the liquidator in his reply that a letter dated 25.01.2017 was written by appellant noticing that amalgamation of the order dated 26.11.2015 did not include the leased land. A copy of this letter had also been brought on record with reply of the Respondent liquidator as its Annexure-C. Perusal of this letter would transpire that after noticing absence of leased property in the schedule of assets of the amalgamation order, which stood transferred to the CSPL, vide amalgamation order dated 26.11.2015, the matter was discussed in a meeting held between the Counsels of the appellant corporation with Mr. Chetan Jain, Senior Vice President of the Project of the CD and in this meeting Mr. Jain was advised to arrange for a rectification of the amalgamation order and it is thereafter the amendment/rectification application appears to have been moved by the CSPL before NCLT, Kolkata, which was rejected on 06.04.2017 apparently for want of jurisdiction. However, an appeal being CA (AT) (Ins) No. 186 of 2017 was preferred against this order and this Appellate Tribunal vide order dated 14.07.2017 disposed of the same by remanding the matter back to the NCLT and it is thereafter another application appears to have been moved by the CSPL before NCLT which was ultimately allowed vide order dated 14.09.2018 and in this way the order dated 26.11.2015 approving the merger scheme was rectified/corrected and impugned land was included in

Part-I of Schedule B of the amalgamation order under the short description of the lease hold properties. Aforesaid letter of date 25.01.2017 mentioned by liquidator in his reply precisely in para no. 5 (d) has not been specifically denied by the appellant in his rejoinder affidavit.

38. It is also reflected that the liquidator in his reply at para 5 (h) stated that several correspondences were addressed by the appellant requesting the CSPL to provide the rectified copy of the amalgamation order and appellant was served with duly rectified order of the NCLT by letter dated 17.12.2018. This letter along with the copy of letter dated 11.07.2018 and 20.08.2018 have also been placed as Annexure-G to the reply of the Respondent liquidator and in its rejoinder the appellant has not denied these facts and has only stated that these facts are matter of record. Significantly, vide letter dated 17.12.2018 request was made by the CSPL to transfer lease of the demised land in its favour, in compliance of the rectification order passed by NCLT, Kolkata.

39. Thus it is transpired that the fact of merger of CIL with CSPL was very much in the knowledge of the appellant and when they were informed by the CSPL about this merger, a meeting was held between the Counsels of the appellant and Senior Vice President of the CSPL and in this meeting it was advised by none other than, but the Counsels for the appellant to get the amalgamation order dated 26.11.2015 corrected, so as to include the impugned lease land in the properties which were intended to be transferred to the CSPL in lieu of the amalgamation/merger scheme and it is thereafter an appropriate application was moved by the CSPL which was ultimately allowed by NCLT, Calcutta on 14.09.2018. Thus it is crystal clear that

though no express permission was taken for amalgamation of this property with CSPL by the CIL but there was an implied consent of the appellant for transferring of this lease hold land in favour of the CSPL. Thus it could not be said that the leasehold land was transferred to the CSPL (CD) without the consent of the appellant, may be implied.

40. It is also significant that the appellant in its letter dated 20.08.2018 has stated that as the rectified copy of the order has not been supplied to them, the matter of transfer of lease in favour of CSPL could not be taken for consideration by the Corporation. Thus, the appellant was very much aware of the order dated 26.11.2015 and also the intended proceedings of its correction which appears to have been undertaken on the advice given by the Counsels of the Appellant Corporation in a meeting held between the Counsels of the Corporation and Senior Vice President of the CSPL and at no stage any objection to the inclusion of this lease property in the amalgamation order has been raised by the appellant. So now it cannot be claimed by the appellant that the lease property has not been transferred to the CD/CSPL with its consent. Thus it is crystal clear that the consent of the appellant to include the lease property in the list of the properties of amalgamation order, which were transferred to the CSPL, was not express but was implied and it could not be said that the leasehold property has been transferred, without the consent of the appellant.

41. Ld. Counsel for the Respondent has submitted that the Tribunal is not having any jurisdiction to adjudicate so far as the validity of the amalgamation order/merger scheme is concerned, while Ld. Counsel for the Appellant has submitted that NCLT as well as this Appellate Tribunal is

having jurisdiction to adjudicate on the legality and propriety of the amalgamation order as the lease property could not have been transferred by any amalgamation order without the express consent of the appellant.

42. It is to be recalled that the order of amalgamation was passed by the Hon'ble High Court of Kolkata on 26.11.2015 and it was only a rectification application moved by the CSPL which was ultimately allowed on 14.09.2018 by the NCLT, Kolkata apparently on account of coming in force of the Insolvency and Bankruptcy Code, 2016 which has ceased the jurisdiction of the Hon'ble High Court of Calcutta in the matter pertaining to the merger/amalgamation of the companies. Thus in our considered opinion, the rectification order passed by the NCLT, Kolkata of date 14.09.2018 relates back to the date of the original order i.e. 26.11.2015. The appellant despite having knowledge of the order dated 26.11.2015 did not do anything to challenge the same but as the correspondence exchanged between the parties would show that the appellant in fact was facilitating the filing of the rectification application and was in fact waiting for the passing of the rectification order. Thus not raising any objection at the time of the rectification proceedings, whereby the leasehold property was included in the correct schedule of properties of the amalgamation scheme earlier approved by the Hon'ble Calcutta High Court, is sufficient indication that appellant was not having any objection with regard to the merger/amalgamation scheme and has in fact acknowledged this merger scheme, so now it cannot raise any objection with regard to the authenticity of the merger scheme specially in IBC proceedings.

43. Ld. Counsel for the **Respondent** in support of his submissions has relied on **Embassy Property Developments Pvt. Ltd. Vs State of Karnataka 2019 SCC Online SC 1542, Gujarat Urja Vikas Nigam Limited Vs. Mr. Amit Gupta & Ors. (2021) Vol 7 SCC 209 and Tata Consultancy Services vs Vishal Ghisulal Jain, (2022) Vol 2 SCC 583**, in order to show that the tribunal or this Appellate tribunal could not go into the validity of the merger scheme as the same is not related with the resolution of the CD and also that without challenging the order of the Hon'ble Calcutta High Court the appeal could not be entertained for want of jurisdiction.

Hon'ble Supreme Court of India in **Miheer H. Mafatlal Vs. Mafatlal Industries Ltd., MANU/SC/2143/1996**, while considering a scheme of merger/ Amalgamation held as under: -

"28-A. However further question remains whether the Court has jurisdiction like an appellate authority to minutely scrutinizes the scheme and to arrive at an independent conclusion whether the scheme should be permitted to go through or not when the majority of the creditors or members or their respective classes have approved the scheme as required by Section 391 Sub-section (2). On this aspect the nature of compromise or arrangement between the company and the creditors and members has to be kept in view.

It is the commercial wisdom of the parties to the scheme who have taken and informed decision about the usefulness and propriety of the scheme by supporting it by the requisite majority vote that has to be kept in view by the Court. The Court certainly would not act as a court of appeal and sit in judgment over the informed view of the concerned parties to the compromise as the same would be in the realm of corporate and commercial wisdom of the concerned parties. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the Scheme by the requisite majority. Consequently, the Company Court's jurisdiction to that extent is peripheral and supervisory and not appellate. The Court acts like an umpire in a game of cricket who has to see that both the teams play their game according to the

rules and do not overstep the limits. But subject to that how best the game is to be played is left to the players and not to the umpire.

The Court cannot, therefore, undertake the exercise of scrutinising the scheme place for its sanction which a view to finding out whether a better scheme could have been adopted by the parties. This exercise remains only for the parties and is in the realm of commercial democracy permeating the activities of the concerned creditors and members of the company who in their best commercial and economic interest by majority agree to give green single to such a compromise or arrangement. "

44. Thus in view of the law placed above we are of the considered opinion that the Ld. Tribunal has rightly did not enter into the area of adjudicating the correctness or illegality of the Amalgamation/ Merger scheme as firstly the appellant has given an implied consent by not raising any objection, for inclusion of demised leased property in the list of properties which was being transferred by CIL to CSPL (under the short description of leasehold property) at the time of correction proceedings and secondly the lease granted in favour of CIL was never revoked and when the lease property was transferred to the CD, suddenly the termination of lease appears to have been made by the appellant vide notice dated 30.05.2019, when the moratorium was already declared under Section 14 of the Code.

45. Ld. Counsel for the appellant submits that the property in question should not be included in the Liquidation Estate of the CD while Ld. counsel for the respondent submits that Adjudicating Authority and this Appellate Tribunal is not having any jurisdiction, on the pretext that the relief sought by the appellant in any event could not be granted by this appellate tribunal as the application before the adjudicating authority could not be filed without challenging the order of amalgamation and its rectification.

46. In **Victory Iron Works Ltd. Vs. Jitendra Lohia and Ors., MANU/SC/0229/2023** and after considering all above decisions it is opined that "38. *The main ground of attack of the Appellants to the impugned orders of the NCLT and NCLAT is that by virtue of the Explanation Under Section 18 of the Code and also by virtue of the judicial pronouncements, the disputes between the Corporate Debtor and the third-party lessee/licensee are not amenable to the jurisdiction of the authorities under the Code.*

39. But as rightly pointed out by the learned Counsel for the Resolution Professional, the Explanation Under Section 18 begins with a caveat namely "for the purposes of this Section". Therefore, the exclusion of assets owned by a third-party, but in the possession of the Corporate Debtor held under contractual arrangements, from the definition of the expression "assets", is limited to Section 18. In other words, the Explanation Under Section 18 does not extend to Section 25.

40. It must be mentioned here that the Explanation was originally limited to "the Sub-section" but by Act 26 of 2018, the word "Sub-section" was substituted by the word "section". Therefore, the Explanation Under Section 18 will not provide an escape route for the Appellants. In any case, the bundle of rights and interests created in favour of the Corporate Debtor may even tantamount to creation of an implied agency under Chapter-X of the Indian Contract Act, 1872 and such agency may not even be amenable to termination in view of Section 202 of the said Act, since the creation of the same in favour of the Corporate Debtor was coupled with flow of consideration.

41. Having dealt with the objections raised on the strength of statutory provisions, let us now see the decisions on which heavy reliance is placed by the Appellants.

42. Embassy Property Developments Private Limited (supra) arose out of a case where, under the guise of preserving and protecting the interests of the Corporate Debtor, NCLT issued a direction to the Government of Karnataka to grant renewal of a mining lease, in terms of the deeming provision in Section 8A (6) of the Mines and Minerals (Development and Regulation) Act, 1957. Raising the question of jurisdiction of the NCLT to issue such a direction, the Government of Karnataka approached the

High Court by way of a writ petition, instead of filing a statutory appeal to NCLAT. The jurisdiction of the High Court to entertain the said writ petition and also grant interim stay, was what was questioned before this Court in the said decision. The right to have a mining lease granted by the Government, was neither a statutory right nor a contractual right. A person applying for a mining lease may at the most be entitled to have his application considered along with the applications of others and to a fair treatment. Once a mining lease is granted, the terms and conditions of such grant may be subject to the covenants contained in the grant as well as the statutory provisions. Therefore, the ratio laid down in *Embassy Property Developments Private Limited (supra)* may not go to the rescue of the Appellants in a case of this nature where Energy Properties became the owner only on account of the money paid by the Corporate Debtor and a bundle of very valuable rights and interests in immovable property was created thereafter in favour of the Corporate Debtor.

43. The decision of this Court in *Gujarat Urja Vikas Nigam Limited (supra)* may not also go to the rescue of the Appellants, since the same arose out of a termination of Power Purchase Agreement. In fact, this Court made a distinction in the said case, between (i) a dispute that arose out of the termination of PPA solely on account of insolvency on the one hand; and (ii) the other disputes relating to the PPA on the other hand.

44. The decision in *Tata Consultancy*, rather than helping the Appellants, actually supports the case of the Corporate Debtor. In fact, the decision in *Gujarat Urja Vikas Nigam Limited* was distinguished in *Tata Consultancy* (by the very same author), on the ground that if the termination was on an ipso facto Clause i.e., the fact of insolvency itself, then NCLT will have jurisdiction, but that there was no residuary jurisdiction for NCLT, if the termination of a contract is based on grounds unrelated to the insolvency.

45. Thus, none of the decisions relied upon by the Appellants revolve around the rights and interests that a Corporate Debtor has in an immovable property.

46. As a matter of fact, the only decision of this Court which may probably come close to the facts of the present case, is the one in *Rajendra K. Bhutta v. Maharashtra Housing and Area Development Authority and Anr.* MANU/SC/0226/2020: (2020) 13 SCC 208. In the said case, there was a tripartite joint development agreement

entered into between (i) a Society representing a large number of persons occupying 672 tenements in the property; (ii) Maharashtra Housing and Area Development Authority¹⁰, which was the owner of the land; and (iii) the corporate debtor. After initiation of CIRP against the corporate debtor, MHADA issued a notice for the termination of the joint development agreement. NCLAT refused to treat the property as the asset of the corporate debtor. But this Court reversed the said decision, by holding that Section 14(1)(d) stood attracted in the facts and circumstances of the said case and that even a reference to Sections 18 and 25 may not be necessary. Though the said case arose out of a fact situation where the termination of the joint development agreement was hit by Section 14, the said decision clinches the issue on what constitute a property and the distinction between occupation and possession of a property."

47. Thus we do not find any illegality in the approach of the Tribunal in not entering into the correctness or validity of the merger scheme. However, it is also clarified at this stage that by virtue of the amalgamation deed or merger scheme it were only the leasehold rights in the land which were transferred to the CSPL by the CIL and since the leasehold rights were connected with the beneficial enjoyment of the land that land was also transferred to the CSPL only for the purpose of enjoying the leasehold rights of the land, while the ownership of the land remains with the appellants. In fact, the CSPL (CD) has stepped into the shoes of CIL only for the beneficial enjoyment of the leasehold rights (As a Lessee) and no ownership rights were transferred to CSPL(CD).

48. The issue as to whether the leasehold rights in a land could be transferred is also now no more *res integra* and has been put to rest by this Appellate Tribunal and Hon'ble Supreme Court in catena of judgments.

49. This tribunal in **Company Appeal (AT) (Insolvency) No. 71 of 2024, Shristi Infrastructure Development Corporation Ltd. vs. Avishek Gupta, Resolution Professional [Sarga Hotel Pvt. Ltd.] & Anr., decided on 4th April, 2024** held as under:

"17. The submission of the Appellant is that as per explanation (a), assets shall not include assets owned by a third party in possession of the Corporate Debtor held under trust or under contractual arrangements. The expression 'asset' has not been defined in the IBC. However, IBC defines expression 'property' in Section 3(27) in following manner: -

"3. Definition. (27) "property" includes money, goods, actionable claims, land and every description of property situated in India or outside India and every description of interest including present or future or vested or contingent interest arising out of, or incidental to, property;"

18. Corporate Debtor claims leasehold rights by virtue of Registered Lease Deed dated 31.03.2007. Expression 'lease' has been defined in Section 105 of the Transfer of Property Act, 1882, which is as follows: -

"105. Lease defined. — A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms."

19. As per the above definition, lease of the immoveable property is a transfer of a right to enjoy such property, made for a certain express or implied, or in perpetuity, in consideration of a price paid or promised. The present is a case where on payment of monthly rent as reserved in the lease deed, Corporate Debtor has given possession and right to erect building of the land. Thus, by lease, Appellant has acquired a right to enjoy the property. Leasehold rights which has been granted to the Corporate Debtor is property within the meaning of Section 3(27) and has to be treated as an asset for the purposes of Section 18(1)(f). Much reliance has been placed by the Appellant on explanation (a) and what is sought to be contended is that

the land under the lease is owned by the Appellant, hence, the possession of the said land ought not to have been taken by the Resolution Professional. The expression 'assets' occurring in explanation (a) has wide meaning which meaning encompasses itself the immoveable land as well as leasehold rights.

20. The leasehold rights which are owned by the Corporate Debtor consists of right to enjoy the immoveable property by virtue of Registered Lease Deed dated 31.03.2007. Explanation (a) does not come into way of the Corporate Debtor in enjoying the leasehold rights i.e. enjoyment of the property by virtue of Registered Lease Deed. We, thus, do not find any substance in the submission of the Appellant that the leasehold rights should be excluded from the assets of the corporate debtor”.

50. After considering **“Victory Iron Works Ltd V. Jitendra Lohia & Anr.- Civil Appeal No.1743 of 2021”** this tribunal in the above case further held as under;

"22. We, thus, have no hesitation to hold that the leasehold rights which was granted to the Corporate Debtor by virtue of Registered Lease Deed dated 31.03.2007 is right to enjoy the property and erect building of the land is a right which is an 'asset' within the meaning of Section 18(1)(f) and the said asset is owned by the corporate debtor by virtue of Registered Lease Deed”.

51. In **New Okhla Industrial Development Authority vs Mr. Nilesh Sharma Resolution Professional of Dream Procon Pvt., COMPANY APPEAL (AT) (INSOLVENCY) No. 288 of 2021 decided on 08th March, 2022**, wherein prior approval from the lessor has not been taken before subleasing portion of the land to the 'Corporate Debtor' for development of the Housing Project by the lessee, this tribunal while upholding the sublease held as under: -

"24. Keeping in view the decision of the Hon'ble Supreme Court in 'Rajendra K. Bhutta' (Supra), we are of the view

that 'development rights' construe 'Property' of the 'Corporate Debtor' and hence we hold that the Resolution Professional has duly performed his duties as per Section 18(1)(a)(iii) and has taken control and custody of the assets of the 'Corporate Debtor' mentioned in the Balance Sheet in compliance of the provisions of Section 18(1)(f) and resultantly we do not find any deficiency of service on behalf of the RP."

52. This Appellate Tribunal in **New Okhla Industrial Development Authority vs Mr. Amit Agarwal Resolution Professional of Boulevard Projects Pvt. Ltd. decided on 21 st October, 2022**, relying on the law laid down **Hon'ble Supreme Court in 'New Okhla Industrial Development Authority' Vs. 'Anand Sonbhadra'** in while considering leasehold rights concluded as under: -

"20. We are of the view that the 'Leasehold Rights' is an 'Asset' under 'Intangible Assets' falling within the ambit of Section 18(f)(iv). It is the consistent stand of the Respondent that 'the said Plot is not owned by the 'Corporate Debtor', but it has only Leasehold Rights over it'. We are of the considered view that the Leasehold Rights accrued to the 'Corporate Debtor' vide the Lease Deed, is a right vested with the 'Corporate Debtor' and is an 'Intangible Assets' and the ownership is only to the extent of these Leasehold Rights based on which the 'Corporate Debtor' can be continued as 'a Going Concern'. It is also significant to mention that the Appellant has never initiated any proceedings or chosen to exercise their rights to invoke any of the Clauses of the Lease Deed for cancellation of the subject Deed."

53. In **Victory Iron Works Ltd. Vs. Jitendra Lohia and Ors., MANU/SC/0229/2023** Hon'ble Supreme Court while considering the nature of leasehold rights opined as under: -

"19. Section 3(27) of the IBC defines the word "property" as follows: 3. Definitions. --In this Code, unless the context otherwise requires, -- xxx xxx xxx (27) "property" includes money, goods, actionable claims, land and every description of property situated in India or outside India

and every description of interest including present or future or vested or contingent interest arising out of, or incidental to, property. But the word "asset" is not defined either in Section 3 or in Section 5 or in Section 79 of the Code, though Section 79(14) defines the expression "excluded assets".

22. It may be noticed from Sections 18 and 25 that the word "asset" and not the word "property" is what is used in these provisions, though the word "property" is defined in Section 3(27). But the said word "asset" used in Sections 18 and 25 is not defined in the IBC. We have seen from Section 3(37) that it makes a reference to seven different enactments, to which one can take recourse, for finding the definition of words and expressions used but not defined in the Code. Therefore, let us find out whether those seven enactments will be of any assistance to find out the meaning of the word "asset" used, but not defined in IBC.

26. As we have pointed out earlier, the word "asset" is not defined, either in IBC or in any of the seven enactments referred to in Section 3(37) of the Code. But the word "asset" is defined in Section 102(2) of the Income Tax Act, 1961 to include "property or right of any kind". Though Section 102 applies as such to Chapter X-A of the Income Tax Act, the definition throws light on the fact that property or right of any kind is considered to be an asset."

54. Thereafter Hon'ble Supreme Court after considering the factual matrix of that case came to a conclusion that by executing lease of land in favour of Corporate Debtor a bundle of rights and interests were created in favour of the Corporate Debtor, over the immovable property in question and goes on to held as under: -

" 35. From the sequence of events narrated above and the terms and conditions contained in the Agreements entered into by the parties, it is more clear than a crystal that a bundle of rights and interests were created in favour of the Corporate Debtor, over the immovable property in question. The creation of these bundle of rights and interests was actually for a valid consideration. But for the payment of such consideration, Energy Properties would not even have become the owner of the property in dispute. Therefore, the development rights created in favour of the Corporate Debtor constitute "property" within the meaning of the expression Under Section 3(27) of IBC. At the cost of repetition, it must be recapitulated that the definition of the

expression "property" Under Section 3(27) includes "every description of interest, including present or future or vested or contingent interest arising out of or incidental to property". Since the expression "asset in common parlance denotes "property of any kind", the bundle of rights that the Corporate Debtor has over the property in question would constitute "asset" within the meaning of Section 18(f) and Section 25(2)(a) of IBC.

36. In Sushil Kumar Agarwal (supra), this Court brought out the distinction between different types of Development Agreements, with particular reference to Section 14(3)(c) of the Specific Relief Act, 1963. After summarizing the different types of Development Agreements in paragraph 17 of the decision, this Court held in paragraph 19 as follows:

19. ...An essential incident of ownership of land is the right to exploit the development potential to construct and to deal with the constructed area. In some situations, under a development agreement, an owner may part with such rights to a developer. This in essence is a parting of some of the incidents of ownership of the immovable property...

37. Therefore, it is not very difficult to conclude, that a bundle of rights and interests were created in favour of the Corporate Debtor, by a series of documents such as (i) the MoU dated 24.01.2008; (ii) the shareholders agreement dated 24.01.2008; (iii) the flow of the consideration from the Corporate Debtor to the UCO Bank and to Energy Properties; (iv) the Development Agreement dated 16.06.2008; (v) the Memorandum Recording Possession dated 02.03.2010 executed by the original shareholders of Energy Properties; (vi) the Memorandum Recording Possession dated 24.06.2010 executed by Energy Properties in favour of the Corporate Debtor; and (vii) the Leave and License Agreement primarily executed by the Corporate Debtor in favour of Victory, which was merely confirmed by Energy Properties as a confirming party. Some of these bundle of rights and interests, partake the character and shade of ownership rights. Therefore, these rights and interests in the immovable property are definitely liable to be included by the Resolution Professional in the Information Memorandum and the Resolution Professional is duty bound Under Section 25(2)(a) to take custody and control of the same."

55. This Tribunal in **Company Appeals (AT) (Insolvency) No. 1116 of 2024 and 1117 of 2024, K.H. Khan & Anr. Vs Art Constructions Pvt.**

Ltd. & Ors. decided on 14th November, 2024 wherein the land was owned by other party and Corporate debtor was only possessing the development rights held as under: -

"22. Whether an asset is required to be reflected in the Information Memorandum or the asset belong to the Corporate Debtor are the question which arise out of or in relation to the insolvency resolution process. The present is a case where the Corporate Debtor has claimed development rights in the land. It is no more res-integra that the development rights are property within the meaning of Section 3(27) of the IBC. We may refer to the judgment of the Hon'ble Supreme Court in "Victory Iron Works Ltd. vs. Jitendra Lohia & Anr.- (2023) 7 SCC 227" where the Hon'ble Supreme Court had held that the development rights created in favour of the corporate debtor constitute "property" within the meaning of Section 3(27) of the IBC. In paragraph 38 of the judgment, following was laid down: -

"38. From the sequence of events narrated above and the terms and conditions contained in the agreements entered into by the parties, it is more clear than a crystal that a bundle of rights and interests were created in favour of the corporate debtor, over the immovable property in question. The creation of these bundle of rights and interests was actually for a valid consideration. But for the payment of such consideration, Energy Properties would not even have become the owner of the property in dispute. Therefore, the development rights created in favour of the corporate debtor constitute "property" within the meaning of the expression under Section 3(27) IBC. At the cost of repetition, it must be recapitulated that the definition of the expression "property" under Section 3(27) includes "every description of interest, including present or future or vested or contingent interest arising out of or incidental to property". Since the expression "asset" in common parlance denotes "property of any kind", the bundle of rights that the corporate debtor has over the property in question would constitute "asset" within the meaning of Section 18(1)(f) and Section 25(2)(a) IBC.

24. The Hon'ble Supreme Court while considering Issue No.2 noticed the ground of attack of the appellants to the impugned orders. In paragraph 41, following was stated: -

“Issue 2 41. The main ground of attack of the appellants to the impugned orders of the NCLT and NCLAT is that by virtue of the Explanation under Section 18 of the Code and also by virtue of the judicial pronouncements, the disputes between the corporate debtor and the third party lessee/licensee are not amenable to the jurisdiction of the authorities under the Code.”

25. After considering the submissions of the parties in paragraph 53, the Hon’ble Supreme Court upheld the decision of the NCLT and NCLAT regarding exercise of jurisdiction for protection of the property of the corporate debtor. The above judgment clearly laid down that insofar as the protection of assets of the corporate debtor is concerned, the NCLT and NCLAT does not lack jurisdiction. Following was observed in paragraph 53:-

“53. Therefore, NCLT as well as NCLAT were right in holding that the possession of the corporate debtor, of the property needs to be protected. This is why a direction under Regulation 30 had been issued to the local district administration.”

29. The question as to whether the assets which are included in the Information Memorandum are the assets of the corporate debtor is foundation of entire CIRP process. When the inclusion of the said asset is questioned before the NCLT by the Appellant, Adjudicating Authority does not lack jurisdiction in entering into question and deciding as to whether assets are part of the CIRP or it should be excluded. We, thus, are of the view that the above question could be determined by the Adjudicating Authority and parties need not have to be relegated to the Civil Court having jurisdiction, the view of the NCLT to the contrary cannot be approved. Judgment of the Hon’ble Supreme Court in Victory Iron, as noticed above, clearly has held that the NCLT and NCLAT can exercise jurisdiction in the above facts. We, thus, answer Question No.(I) in following manner:

The Adjudicating Authority had jurisdiction to enter into as to whether the subject land is asset of the corporate debtor and for decision of the question, the parties were not required to be relegated to the Competent Civil Court having jurisdiction.”

56. Thus it is clear from the precedents noted above that the lease hold rights created in favour of the CIL which were transferred to the CSPL by a

merger scheme duly approved by the Order of the Hon'ble High Court of Calcutta as rectified by the Tribunal are the assets of the CD and the question, as to whether the assets which are included in the Information Memorandum or liquidation estate are the assets of the corporate debtor, goes to the core of the CIRP process and when the inclusion of the said asset is questioned before the Ld. NCLT by the Appellant, Adjudicating Authority or this Appellate Tribunal does not lack jurisdiction in entering into the question and deciding as to whether the leasehold assets are part of the Liquidation Estate of the CD or should be excluded therefrom.

Thus keeping in view the above precedents we do not find much force in the submissions of Ld. Counsel for the appellant as well as of respondent and in our considered opinion the leasehold rights in the land which were assigned in favour of the CD by a merger deed is owned by the CD while land is owned by the Appellant and these rights could be transferred and validly held to be the part of the Liquidation Estate of the CD and this issue may validly be considered and adjudicated by the Adjudicating Authority as well as by this Appellate Tribunal.

57. At this juncture Ld. Counsel for the appellant submits that as the lease land is owned by the appellant the same could not be included in the liquidation estate of the CD by virtue of bar contained under Section 36(4) (a) (iv) of the code and secondly, it is impressed upon that it could not be sold in pursuance of the auction advertisement advertised by the liquidator as the Respondent is not having any right or authority over the lease land. Reliance in this regard has been placed on ***Indian Shaving Products Ltd. vs. Delhi Development Authority & Anr. 2001 SCC Online Delhi, 1123***

passed by the Hon'ble Delhi High Court. The case relied on by the Appellant is not applicable to the factual matrix of this case as in the case relied on by the Ld. Counsel for the appellant the ownership of the property was transferred by way of amalgamation, while in the instant case only leasehold rights are transferred as is evident from the perusal of the amalgamation order and rectification order whereby the impugned property was included in part (i) of schedule B of the amalgamation order under the heading of "short description of leasehold properties of Concast Ispat Ltd." Thus by amalgamation order and by its subsequent correction, only the leasehold rights in the impugned property were transferred/amalgamated in the CD and not the ownership of the property. We have already concluded herein before that the leasehold rights with regard to the leased property are also the assets of the Company in favour of which these lease hold rights have been created by the owner or transferred and these rights could very well be enjoyed and may also be transferred and has been validly transferred to the CSPL/CD by the CIL by virtue of duly approved merger/amalgamation scheme.

58. Now the question arises as to whether these lease hold rights may be included in the liquidation estate of the CD having regard to the bar contained under Section 36 (4) (a) (iv) and could be sold in auction?

There is no dispute with regard to the fact that only leasehold rights in the impugned land were transferred by the appellant in favour of the CIL and the same lease hold rights were transferred to the CD/CSPL by merger scheme which was approved by the Hon'ble Calcutta High Court vide order

dated 26.11.2015 as rectified by the Tribunal vide order dated 14.09.2018. It also appears to be an admitted position that in the lease deed executed between the appellant and CIL there was a provision in clause (xii) that the lessee (CIL) is not entitled to sub-divide or sub-let or sub-lease the demised land and it was also provided in clause no. (xiii) of the lease deed that the lessee shall not assign, alienate or transfer the demised land or any part thereof or the structure which may be erected thereon to anyone , however, it was also provided that in case of inability of the lessee to continue the lease for unexpired time of the lease, the lesser shall have a right of pre-emption and in case this right is exercised, the building constructed by the lessee on the land shall be taken over at a valuation of the building made by the lessor on the basis of the cost of the construction of the building minus depreciation at the usual rate or the market value, whichever is less. It was also stipulated that the value of the land will be the amount paid by the lessee.

59. Perusal of the impugned order would reveal that the IA filed by the appellant was not found favour of the Tribunal on the score that no notice under Section 111(G) of the transfer of property act has been given and the lease has not been determined and secondly, that the appellant was aware of the amalgamation order including its rectification order of 14.09.2018, having regard to the correspondence exchanged between the parties and the appellant has chosen not to challenge such amalgamation at an appropriate forum.

60. We in this judgment herein before have already held that though no express consent was given by the appellant for the merger of impugned

leasehold land from CIL to CSPL (CD) however, keeping in view the conduct of the appellant, implied consent is evident and it is not a case wherein the demised lease property has been merged in the CSPL(CD) without any consent of the appellant. We have also held herein before that the Leasehold Rights of the CD in demised property is an Asset under Intangible Assets of the CD. It is the consistent stand of the Respondent that 'the said Plot is not owned by the Corporate Debtor, but it has only Leasehold Rights over it'. We are of the considered view that the Leasehold Rights accrued to the Corporate Debtor vide the Lease Deed in favour of CIL and transferred to CSPL vide merger deed are rights vested in and owned by the Corporate Debtor and is its Intangible Asset and this ownership is to the extent of these Leasehold Rights only. It is also significant to mention that the Appellant has never initiated any proceedings or chosen to exercise their rights to invoke any of the Clauses of the Lease Deed mentioned above, for cancellation of the subject Lease Deed before the initiation of the CIRP against the CD. In these facts and circumstances the Liquidator, in our view, was legally empowered under the Code to take control and custody of the Asset over which the 'Corporate Debtor' has the 'Ownership Right'. At the cost of repetition, we clarify that the 'Asset' in the instant case are only the 'Leasehold Rights' and not the 'land' per se and the advertisement issued by the Liquidator dated 26.12.2018 would also reveal that it has been clearly mentioned therein that the land in question is a leased land. Therefore, the ownership of lease hold rights is clearly in favour of the CD and could not be said to be owned by any third party and therefore in our considered view the bar contained under section 36(4) (a) (iv) of the Code will

not attract in the background of peculiar factual matrix of this case. Thus we don't find any force in this submission of the Ld. counsel for the appellant.

61. We have also noticed that at a belated stage of this appeal i.e. during the course of arguments and in written submissions, the appellant has taken plea that it is a secured creditor. However, this plea has been rebutted by respondent on the ground that this plea was never taken before the tribunal or even in the grounds of appeal before this Tribunal and could not be raised for the very first time before this appellate tribunal at such a belated stage. It is also submitted that no claim of any nature has been filed by the appellant within the stipulated period before the Liquidator or Tribunal. We find force in these submissions and choose not to adjudicate this issue in this appeal as at first the same was not raised before the Tribunal and would also require consideration of many issues including issue of limitation. Thus we refrain from making any observations on this debatable issue and leave it open to the appellant to raise this issue before the Liquidator or Tribunal as the case may be and if such an issue is raised by the appellant either before the liquidator or the Tribunal, as the case may be, the same shall be considered on its own merits strictly in accordance with law.

62. Thus keeping in view all the facts and circumstances, of the case and the law discussed herein before we are of the firm view that the liquidator has not committed any illegality in including the demised leased land in the Liquidation Estate of the CD and consequently the Tribunal has also not

committed any error in dismissing the IA No. 1763 of 2019 moved by the appellant.

63. Resultantly the Appeal lacks merits and is **dismissed** as such.

64. Keeping in view the peculiar facts and circumstances of this case the parties shall bear their own costs. Pending IA's, if any, are also closed.

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
28.10.2025.

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