

“In the result, I.A. No 2234/2024 in CP (IB) No. 42/Chd/Pb/2019 is hereby allowed and disposed of with the following directions:

- (1) We hereby condoned the delay in filing the claim of Applicant;
- (2) We hereby direct the Respondents No 2 & 3 to accept the claim of Applicant filed on 19/07/2024 and to take all necessary consequential actions;
- (3) Time for compliance of this order is four weeks from the date of receipt of copy of this order.
- (4) No order as to costs.”

4. Learned Counsel for Resolution Professional challenging the order submitted that in the present case, the Corporation was informed by the RP to file claims by emails dated 15/07/2023, 19/07/2023 & 16/08/2023 but no claim was filed. It is submitted that when the Resolution Plan was also approved by the COC on 06/03/2024, no claim could have been admitted by RP. He further submitted that in the Impugned Order, the Adjudication Authority has, on the one hand observed that the dues of the Corporation has to be taken care of by the SRA, and on the other hand has directed for admission of the claim in the CIRP. It is submitted that in view of the observation that SRA to take care of the dues of the Corporation, it was not required to be admitted in CIRP.

5. We have considered the submissions of the Counsel for Appellants and perused the record. In Paragraph 9, 10 and 11, the Adjudicating Authority has made following observations.

“9. It is relevant to point out here that asset in question, Industrial Plot No. 116, is public property allotted on a 99-year leasehold basis. And the Ownership remains vested in the Applicant Corporation in terms of clause as stated supra. Therefore, the Corporate Debtor never had absolute ownership; it held only a leasehold right, which was defective and encumbered by its failure to pay the enhanced compensation-a demand that was first raised in 2015, long before the CIRP. As stated supra, the Applicant was in correspondence with Financial Creditor. When the Property in question was a public lease hold property without absolute rights, it is paramount duty of IRP/RP and SRA to scrutinize it suitably. It is settled position of law that nobody can convey a better title than what one has. And title in this regard cannot be legally transferred to SRA without fulfilling statutory conditions attached with lease of property in question. However, all are failed to amylase the issue in proper perspective.

10. The judgement cited and replied upon by the Applicant Viz SEL Manufacturing Company Limited Vs. Punjab Small Industries & Export Corporation Limited, (supra) is not applicable to the facts and circumstances of the case.

11. The SRA, upon approval of a plan, cannot get a better title than the Corporate Debtor possessed. If the Corporate Debtor's title was defective, the SRA takes it with that defect. Curing the defect (i.e., paying the outstanding dues to PSIEC) is a prerequisite for the SRA to perfect its title. This Tribunal's order in SEL Manufacturing was upheld on appeal by the Hon'ble NCLAT, which further cited Maharashtra Industrial Development Corporation v. Santanu T. Ray & Others to reinforce that the "protective umbrella of IBC" cannot be used to force public authorities to part with their assets without payment of their statutory dues.

6. In the Appeal, the copy of the information memorandum has been brought on the record where in the note with regard to letter sent to Corporation following has been stated :

“ Note: The land of the corporate debtor at 116-117, Leather Complex, Kapurthala Road, Jalandhar is situated in the industrial estate of PSIEC. It is understood that the PSIEC has made claims in respect of enhancement of land rates. However such claims have not be en received by and are not in the knowledge of the RP at the time of the issue of this document. The RP has requested PSIEC, vide emails dated 15.07.2023, 19.07.2023 and 16.08.2023, to submit their claims, if any, immediately. However, no response has been received till this date.

The prospective resolution applicants are advised to make their own inquiries in respect of any claim of PSIEC as described above. The RP shall not be responsible for any consequence in respect of any claim that the PSIEC may have in respect of the corporate debtor.”

7. The information memorandum itself captures that there are dues of the Corporation but in spite of the communication, no claim was filed. The note itself, indicate that prospective resolution applicants are advised to make their own enquiries in respect of claim of PSIEC as described above.

8. Thus the Information Memorandum was a clear indication regarding claim of the Corporation and the Adjudicating Authority, by Impugned Order had directed for admitting the claim which was belatedly filed. The Plan is still under consideration. Adjudicating Authority has issued direction to the Respondent No 2 & 3 to accept the claim filed on 19/07/2024 and to take all

necessary consequential actions. The order of the Adjudicating Authority thus clearly entitles the RP and the SRA to submit an Addendum to the Adjudicating Authority for consideration after admitting the claim.

9. In the facts of the present case, where claims of the Appellant were duly noticed and reflected in the Information Memorandum, admission of the claim by the Adjudicating Authority, although filed belatedly cannot be faulted and that cannot be a ground for this Appellate Tribunal to interfere with the discretion exercised by the Adjudicating Authority in allowing the application filed by the Corporation for accepting this claim.

10. We do not find any ground to interfere in the order. The Appeal is Dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

Prerana/md