IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT – 2

ITEM No.301
IA/932(AHM) 2024
in
CP(IB)/96(AHM)2021

Proceedings under Section 60(5) r/w Rule 11 of NCLT Rules 2016

IN THE MATTER OF:

Jaydeep Maheshwari Successful Resolution Applicant of Safeco Hygiene Films Private Limited — **.....Applicant**

V/s

Gujarat Industrial Development Corporation Through Regional Manager Unique Trade Centre — **.....Respondent**

Order delivered on: 07/05/2026

Coram:
Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court, vide separate sheet.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

AD/SJ

BEFORE THE ADJUDICATING AUTHORITY
IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT - II
I.A. No. 932 of 2024
IN
CP NO. (IB) 96/AHM/2021

(Application under Section 60(5) of IBC, 2016 r/w Rule 11 of The National Company Law Tribunal Rules, 2016)

In The Matter Of: -

AYODHYA ORCHARDS LLP

... FINANCIAL CREDITOR

VERSUS

SAFECO HYGIENE FILMS PVT. LTD ... CORPORATE DEBTOR

AND IN THE MATTER OF:
JAYDEEP MAHESHWARI
SUCCESSFUL RESOLUTION APPLICANT
OF SAFECO HYGIENE FILMS PRIVATE LIMTED

... APPLICANT

VERSUS

GUJARAT INDUSTRIAL DEVELOPMENT CORPORATION

... RESPONDENT

Order pronounced on : 07/05/2026

Coram:
MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

Sd/-

Sd/-

Present:

For the Applicant : Mr. Nakul Mohta, Adv.
: Mr. Ayush Kashyap, Adv.
For the GIDC : Mr. Aman A Mir, Adv.

JUDGEMENT

1. This application is filed under Sec 60(5) of IBC 2016 read with Rule 11 of the NCLT Rules 2016, by the Successful Resolution Applicant, inter alia seeking setting aside of the respondents two letters dated 20.05.2024 and other consequential reliefs in the matter. The CD was admitted to CIRP vide order dated 1.08.2022. It is submitted that the respondent GIDC issued these letters in respect of Plot Nos.705 and 708 of the Savli Industrial Estate, Vadodara from where the CD was operating which is presently being operated by the applicant, on approval of the resolution plan vide order dated 31.07.2023. The applicant has pleaded that the respondent has sought claims for past dues which are raised subsequently to approval of the plan in highly arbitrary and unreasonable manner towards water and drainage charges on 16.04.2024 as well as towards service charges on 23.05.2024. It is further submitted that

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the resolution plan is fully implemented and recorded by this tribunal vide order dated 12.12.2023.

2. It is further submitted that the applicant on approval and implementation of plan collated the necessary documents in respect of Plot Nos.705 and 708 when he noted that the allotment letters in the name of the erstwhile CD and their Directors need to be changed in its name(SRA) and approached the respondent. This was declined and further orally informed by respondent to applicant that this tantamount to transfer and charges would be levied upon, even though lease hold interest was still there and cannot be a transfer of interest. In order to raise funds for its activity the applicant had approached the respondent to transfer the lease hold property in its name of the mentioned plots in the application, pleading vide letter dated 25.09.2023 that even though there was an order of the tribunal, the same should not be construed as liquidation as those charges were very high. There were various correspondences in this regard but since no reply was received, he applicant was informed by the respondent that in terms of its circular dated 22.06.2022 the policy of

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transfer of lease ownership was necessitated, but the applicant submits that the change of name is an involuntary transfer, triggered not by lessee but by its creditors and hence the circular does not apply. Once this tribunal approves the resolution plan, the applicant should not be saddled with such liabilities as it defeats the purpose of the code. It is further submitted that even though the resolution professional had during CIRP placed an advertisement to invite claims, no claims were submitted by respondent within stipulated time. Even if the transfer policy applies, this case is an informal transfer and out not to be charged as the policy itself has two types of transfers envisaged, which are formal and informal.

3. The applicant further submits that vide its letter dated 25.11.2023, it requested for the transfer fee to be charged based on usage of the plots for both the plots, enumerated at rate of 10& in respect of plot No.1 and 5% in respect of Plot No.708. However, the respondent has charged as conveyed vide letter dated 20.05.2024, 9 months after a request for an informal transfer, an amount @ 25% of the prevailing allotment fee which is applicable only during

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liquidation. The respondent did not abide by its own policy which states: "Whereas in other cases of NCLT transfer fee has to be charged based on the usage of the property". It is further submitted that respondent has levied the fee twice in respect of plot No.705 even after charging at 25% (further 15%). It is submitted that the respondent has vide the impugned letters dated 20.05.2024 charged additional times for transgressions of the erstwhile CD for non-utilisation penalty in respect Plot 705 owing to the reason that the erstwhile CD did not undertake operations and the second reason being that the CD was undergoing change in shareholding pattern after the transfer of plot to it and much before the CIRP. Further, bills of engineering and service charges dues were claimed on 16.04.2024. From the same, it is observed that the last paid dues were on 23.06.2021.

4. The respondent in his reply affidavit dated 27.08.2024 submitted that as per the settled legal proposition, a policy decision made by an autonomous body and or statutory body may not be interfered with by this Tribunal, hence the application filed under Sec 60(5) of the IBC 2016 is is

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untenable as it has interpreted the provisions of the circular No.GIDC/Policy/Post Allotment/09 dated 22.06.2022 passed by the respondent. Hence this tribunal does not have any authority. There were non compliance and defaults by the applicant. The respondent in his reply traces back the original allotment and transfers affected in both the plots No.705 and No.708 in 2013. The respondent admits that the CD was admitted in to CIRP on 01.08.2022 and an informal transfer application was filed on 24.08.2023 in the name of one Mr Abhay Maheswari for the transfer of the said two plots in the name of the CD – M/s Safeco Hygiene Films Pvt Ltd with change in shareholding consisting of M/s Ayodhya Orchards LLP and Mr Jaydeep Bisani as new shareholders. The applicant had urged for the fees to be charged at the rate of 10% as per his misrepresentation of circular No.GDIC/Policy/Post allotment/09 dated 22.06.2022 of the respondent. The respondent submits to have issued a provisional transfer order dated 20.05.2024 in order to bring the new shareholding of the allottee CD for both the plots. It is further submitted that the respondent has not issued a fresh allotment and only a transfer of the

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leasehold/license rights, the transfer fee is levied at the prevailing allotment rate. The two kinds of policy of transfer being formal and informal are when the blood related family member, such transfer is considered formal and all other cases it is informal. This case is an informal transfer. The applicant has provided various clarifications sought by the respondent and on production of various documents, The share holding patter prior to CIRP and after the approval of resolution plan are mentioned by the respondent being 98% held by M/s Ayodhya Orchards LLP and Mr Jaydeep Bisani at 2%. Hence on approval of the resolution plan this tantamount to a transfer as per circular of the department dated 22.06.2022. A deed of assignment was registered on 22.11.2023 as executed between Charudatt Pandrinath Marathe, RP and Mr Abhay Maheswari, Director of Safeco Hygiene Pvt Ltd (SRA), therefore the transfer fees at the rate of 25% of the prevailing allotment price was levied in the provisional transfer order dated 20.05.2024. It is further submitted that calculation of transfer fees on the basis of utilisation of the plot is application if there is no adjudicating authority or government institution involved in

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the transfer of the property and hence the inclusiveness of the circular is to be taken note of. Further, on the one hand the applicant has preferred the informal transfer applications dated 24.08.2023 and on the other hand paid all the required dues and fees demanded by respondent except the interest on the transfer fees which establishes his tacit acquiescence to the impugned letters dated 20.04.2024 issued by respondent. The respondent has further revealed certain audit certificate of the shareholding of the CD prior to the CIRP and thereby levied 15% as transfer fee and that the CD has failed to disclose these changes in the shareholding at the relevant point of time to the respondent. Further, on approval of the resolution plan, the respondent contends that the shareholding of the applicant was reduced to 2% and M/s Ayodhya Orchards LLP entered with the acquisition of 98% of the shareholding. Further, the applicant has to clear the dues on the property before the transfer took place for the purpose of issue of no due certificate in order to transfer the property in its favour. Further, it is submitted that the applicant had paid all the pending dues on 21.06.2024 for both plots and full payment

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certificate was issued thereafter. The decision making powers in case of NCLT is vested in the Vice Chairman and Administrative Manager.

5. This applicant who is to run the CD as a going concern on approval of resolution plan is bound to comply with terms of the lease deed. This is supported in judgment passed by NCLAT, New Delhi in SEL Manufacturing Company Ltd Vs Punjab Small Industries & Export Corporation Ltd., CA (Insolvency) No.881/2022 wherein it has been held that the protective umbrella of IBC 2016 for CIRP cannot be extended that public authorities are asked to part with their assets without full payment of their dues or without compliance to terms and conditions of the sale or lease deed or transfer policy. Further, clean slate principle will not apply to a case where there was prior demand from public sector land authority which was also not disclosed during CIRP to IRP or the COC. In this case the applicant has on its own paid the required fees, charges and dues demanded by the respondent exfept interest on the transfer fees which establishes their tacit acquiescence to the impugned letters dated 20.05.2024 issued by the respondent and the

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respondent's bill charges dated 16.04.2024 and 23.05.2024, hence the captioned application has been rendered infructuous by the very acts of the applicant entailing no indulgence of this tribunal. Respondent submits that they stand absolutely justified by law in claiming the amount based on their circular.

6. Observations:

a) The applicant is the Successful Resolution Applicant and is entitled to certain benefits of having submitted a resolution plan approved by COC and this adjudicating authority. The order approving the resolution plan dated 02.08.2023 clearly specifies that the applicant may apply to the respective authorities for necessary reliefs which the relevant authorities may decide the matter as per applicable provisions of law for effective implementation of the Resolution Plan.

b) We observe that the applicant has voluntarily given his proposal for consideration, even though he has acquired the CD on a going concern basis on approval of the resolution plan and has not acquired the CD but has got the rights conferred on approval of the resolution plan.

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The respondent should have differentiated and considered the merits of the case in stead of interpreting on the circular guidelines, which are not law as Sec 238 of IBC 2016 clearly empowers the IBC as overriding provisions. As clearly enunciated in the order of approval of resolution plan, all past dues of the CD stands extinguished as mentioned in Para 7 (x) (ii) as there were no claims regarding non payment of dues. As regards the interpretation of transfer fee, even though the applicant has not effected a transfer arrangement, the stated agreement between the RP and the applicant is only a handing over the possession and the SRA is not legally also a new entity as he merely steps in to the shoes of the CD for having discharged its liability payable to the creditors.

c) In view of the above, the petition can be allowed directing the respondent to grant the necessary concessions in transfer fee including water connectivity as the provisions of Sec 238 of IBC 2016 prevails over any other act including circular/s issued by the respondent as it is not a general transfer between both the parties.

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d) We observe that the respondent has not taken appropriate consideration in allowing the merits of the applicants requirement for change of name by an informal transfer clause and also levied past charged/including non operational fee which cannot be a due payable after the approval of resolution plan.

e) The applicant has acquired the CD on a "Clean Slate Principle" which is ignored by the respondent, and frivolous reason that the circular implementation is by certain authority is not convincible as no authority can exercise its right over and above Sec 238 of IBC 2016. The Circular guidelines may be implementable only on regular transfers of existing companies and not of the SRA.

f) The rights of the lessor and lessee cannot be exercised arbitrarily through a circular for the purpose of a transfer of name of the informal party seeking necessary relief/s and seeking appropriate fee, for consideration of respondent. The respondent has tried to point out that they observed certain irregularities by the past management of CD which is not admissible in case of

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resolution plan approved. A circular is not law but derived under its act for the purpose of following a procedure which is set for the purpose of giving an appropriate treatment to the lessee (who acquires his rights through a resolution plan approved under IBC 2016). As we observe Sec 238 of IBC 2016 prevails over others which is affirmed by Honble Supreme Court. Hence we pass following order:

ORDER

1 IA No. 932 of 2024 in CP(IB) No. 96 of 2021 is allowed.

2 Demand Letter dated 20.05.2024, 16.04.2024 & 23.05.2024 are set aside.

3 The Respondent to resume water supply to the Applicant in respect of Plot Nos. 705 & 708 immediately.

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DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

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CHITRA HANKARE
MEMBER (JUDICIAL)