

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 348 of 2021

IN THE MATTER OF:

Par Formulations Pvt. Ltd.

Appellant

Vs.

Print House (India) Pvt. Ltd. &Ors.
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....Respondents

Present:

**For Appellant: Mr. MukulRohatgi, Sr. Adv. With Mr. Aditya Mukherjee,
Mr. RakshitJha and Mr. Aashish Gupta, Advocates**

**For Respondents :- Mr. Ayush J Rajani, Advocates for Respondent
No. 2**

**Mr. Krishnendu Datta, Sr. Advocate with Mr. Rahul
Gupta, advocates for Successful Resolution Applicant
Mr. Dhrupad Vaghani and Mr. Arpan Behl, Advocates for
Respondent No. 3**

O R D E R

(Virtual Mode)

28.05.2021: Heard Ld. Sr. Counsel for the Appellant on I.A. No. 826 of 2021
an Application for condonation of delay and on the question of admission and an
Application for interim relief (I.A. No. 823 of 2021).

2. Issue Notice.

3. Ld. Counsel for the Respondents accept notice.

4. Ld. Sr. Counsel for the Appellant submitted that the impugned order was
passed on 23.06.2020 a certified copy of the impugned order was not made
available to the Appellant by the Adjudicating Authority. The Appellant was not
even party before the Ld. Adjudicating Authority. The Respondent No. 1 issued a
letter on 26.04.2021 which was received by the Appellant on 27.04.2021 for

termination of license agreement and also calling upon the Appellant to vacate the subject property by 31.05.2021 then the Appellant has immediately filed this Appeal. Hon'ble Supreme Court by way of order dated 08.03.2021 in suo moto Writ Petition (Civil) No. 03 of 2020 has inter alia directed that in computing the period of limitation for any suit, appeal or application or proceedings the period from 15.03.2020 till 14.03.2021 shall stand excluded. It is also directed that where the limitation would have expired during the aforesaid period notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. Thus, the appeal is within limitation.

5. Ld. Sr. Counsel for the Appellant submits that the Appellant has good prima facie case in Appeal.

6. The Appellant has filed the Appeal against the impugned order by which resolution plan has been approved to the extent that the impugned order permits the Respondent No. 1 to unilaterally terminate license agreement dated 16.06.2017 entered into between the Appellant and Respondent No. 1. The license agreement is for a lock-in period of five years which will expire on 23.08.2022 and hence, the license agreement could not have been terminated any time earlier. On 27.04.2021 the Respondent No. 1 has unilaterally terminated the license agreement by way of notice dated 26.04.2021 and called upon the Appellant to exit the facility on or before 31.05.2021.

7. The resolution plan has been approved in contravention of provisions of Section 30(2)(e) r/w section 31 (1) of the IBC. The act of permitting unilaterally

termination of the license agreement is contrary to the provisions of Section 62 of the Indian Contract Act, 1872. The Adjudicating Authority does not have a power to permit unilateral termination of license agreement. For this purpose, he placed reliance on the Judgment of this Appellate Tribunal in the case of K.L Jute Products Pvt. Ltd. Vs. Tirupti Jute Industries Ltd. CA (AT) (Ins) No. 277 of 2019 (Para 61 to 65) and also cited the Judgment of NCLT Mumbai Bench in the case of DBM Geotechnic and Constructions Pvt. Ltd. Vs. Dighi Port Ltd. CP 1382/I&BP/NCLT/MAH/2017 and Standard Chartered Bank and Anr. Vs. Ruchi Soya Industries Ltd. CP (IB) 1371 & 1372 (MB)/2017.

8. It is also submitted that the balance of convenience lies in favour of Appellant. The Appellant is a manufactures and supplies lifesaving drugs and also exports this drugs for sale in the USA. The Appellant maintains stability samples of the drugs at its laboratory facility situated at the subject property. The Appellant cannot simpliciter move its laboratory to another location without seeking an approval from FDA and Food and Drugs Administration, Maharashtra. Given current ongoing Covid-19 situation the Appellant is not in a position to expeditiously finalize, complete construction and shift alternate laboratory location. Resultantly, in the event the Respondent No. 1 is permitted to act pursuant to the termination notice and cause the Appellant to be removed from the subject property, it will have an adverse impact on the business of the Appellant and affect the supply of lifesaving drugs to the beneficiary.

9. It is submitted that if the interim protection is not granted it will cause grave irreparable harm to the Appellant. The Appellant is in lawful possession of the

subject property and if Appellant removed from the subject property illegally, the same would result in irreparable harm and injury to not only the Appellant but also to millions of patients who are depend on the drugs/medicinal products of the Appellant. On the other hand, the Respondents will not suffer any harm or injury if ad-interim relief is granted by this Appellate Tribunal.

10. Ld. Counsel for the Appellant lastly submits that the Appellant assured that after the license period expired 23.08.2022 the Appellant shall handover peaceful possession of the subject property to the Respondent No. 3.

11. In such circumstances, interim protection till pendency of the Appeal may be granted.

12. Ld. Sr. Counsel for the Respondent No. 3 vehemently opposes the prayer and submits that the application is hopelessly barred by limitation impugned order passed on 23.06.2020 whereas this Appeal filed after about a period of 11 months from the date of approval of the resolution plan. The Resolution plan was shared at the time of the approval, however, the Appellant never raised any grievance before the Resolution Professional as well as the Adjudicating Authority. The Appellant has failed to explain the delay and laches on its part. The Appellant was aware about the IBC proceedings. However, they suppressed the material fact. The Respondent No. 2 vide email dated 25.07.2020 and the Respondent No. 3 vide email dated 30.11.2020 informed the Appellant about the approval of Resolution plan and requested to vacate the subject property under the resolution plan. The resolution plan is binding on all stackholders including the Appellant. The Appellant has no locus standi to file the Appeal under Section 31(1) of the

IBC. Section 238 of the IBC makes the code and a plan approved under the code override any other inconsistent legal provision or instrument/contract.

13. It is also submitted that Respondent No. 3 has one of major integrated information communication technology solutions and service provider in India. The Respondent No. 3 is operating in domestic and international market with large infrastructure facilities in Metropolitan Cities. The Respondent No. 3 has already invested INR 70 Crores and is in the process of investing additional INR 200 Crores in the premises of the subject property. The Appellant is a sub-licensee to the subject property and not a financial or operational creditor. Under the resolution plan the sub-license agreement shall stand cancelled and therefore, the existing sub-licensee have to vacate their respective premises. In case any interim relief granted in favour of the Appellant at this critical stage will cause huge impact and loss to Respondent No. 1 and Respondent No. 3 and will defeat the very purpose of IBC. Hence, the Application and Appeal liable to be dismissed.

14. Having heard Ld. Sr. Counsel for the parties, we have considered the submissions.

15. Firstly, we consider the objection in regard to limitation. The impugned order passed on 23.06.2020 the Appellant was not party before the Adjudicating Authority, therefore, copy of the impugned order has not been sent to the Appellant. As per Section 61 of the IBC, the Appeal shall be filed within 30 days before the Appellate Tribunal. It means the Appeal should have been filed till 22.07.2020. Due to the onset of Covid-19 Pandemic Hon'ble Supreme Court took suo motu cognizance of the situation arising from difficulties that might be faced

by the litigants across the country in filing the petition applications suits appeals and other proceedings within a prescribed period of limitation. Therefore, in suo motu Writ Petition (Civil) No. 3 of 2020 on 08.03.2021 Hon'ble Supreme Court issued certain directions.

We have considered the suggestions of the learned Attorney General for India regarding the future course of action. We deem it appropriate to issue the following directions: -

1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply

16. In this case, limitation expired during the period between 15.03.2020 to 14.03.2021. Therefore, pursuant to order of Hon'ble Supreme Court the Appellant shall have a limitation period of 90 days from 15.03.2021. it means the Appellant can file the Appeal till 14.06.2021. The Appeal is filed on 29.04.2021. Thus, we are of the view that the Appeal is within a limitation.

17. In this Appeal, we are of the view that the following legal questions arose for consideration.

(i) Whether under the Resolution plan sub-license agreement can be cancelled unilaterally?

(ii) Whether the cause of action arose in favour of the licensee whenever he came to know that under the resolution plan sub-license agreement is cancelled?

18. In view of these legal questions we are of the view that the Appellant is liable for interim protection. Otherwise, the Appeal render infructuous.

19. We are also conscious about the fact that the Respondent No. 3 has invested huge amount, therefore, this Appeal should have been decided at the earliest. Otherwise, the Respondent Nos. 1 & 3 have to suffer huge loss.

20. Keeping in view, we grant interim protection in favour of the Appellant on furnishing following undertaking:

The Appellant shall furnish an undertaking within three days that shall not seek any adjournment in this appeal on any of the grounds and in case he fails in the Appeal, handover the peaceful possession of the subject property to the Respondent No. 3 without further delay. If Appellant submits aforesaid undertaking within time frame, till next date of hearing, the Appellant shall not be dispossessed from the subject premises.

21. The Respondents may file Reply Affidavit within 10 days. Rejoinder, if any, may be filed one week thereafter.

22. Parties may file Written Submission not more than three pages alongwith relevant citations before next date.

Let the matter be fixed for hearing on **16th June, 2021.**

[Justice Jarat Kumar Jain]
Member (Judicial)

[Dr. Ashok Kumar Mishra]
Member (Technical)

SC/md.