

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.927 of 2024

(Arising out of Order dated 24.04.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-IV in IA-5769 (MB) 2023 in C.P.(IB)/912(MB)2022)

IN THE MATTER OF:

Wockhardt Ltd. & Anr.

...Appellants

Versus

Rajeev Mannadiar (RP of
EuroLife Healthcare Pvt. Ltd.) & Anr.

...Respondents

Present:

For Appellant : Mr. Arun Kathpalia, Sr. Advocate with Ms. Saman Ahsan, Mr. Aayush Jain and Mr. Arjit Oswal, Advocates.

For Respondents : Mr. Krishnendu Datta Sr. Advocate with Mr. Anish Agarwal, Mr. Tejas Agarwal, Mr. Prateek Chakma and Ms. Niharika Sharma, Advocates.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed challenging the order dated 24.04.2024 passed by National Company Law Tribunal, Mumbai Bench, Court-IV in IA No. 5769(MB)2023 in C.P.(IB)921(MB) 2022. By the impugned order IA No.5769 of 2023 filed by the Appellant has been rejected by the Adjudicating Authority. Aggrieved by which order, this Appeal has been filed.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:

- (i) Maharashtra Industrial Development Corporation (referred to as the “**MIDC**”) executed a Lease Deed on 08.09.1998 with

respect to Plot No.B – 15/2 in Waluj Industrial Area situated outside the limits of Aurangabad Municipal Corporation admeasuring 64,925 sq. mts. for a period of 95 years with effect from 01.07.1987 in favour of Appellant No.2 (Formerly known as Wockhardt Life Sciences Limited). The Lease Deed was registered on 08.10.1998.

- (ii) A Business Transfer Agreement was executed on 06.03.2002 between Wockhardt Life Sciences Limited and Baxter (India) Pvt. Ltd. for transfer of the business. On 17.07.2002, a Deed of Assignment was executed by Wockhardt Life Sciences Ltd. in favour of Baxter (India) Pvt. Ltd. (**“Baxter”**) assigning plot of land bearing B-15/2 admeasuring 64,925 sq. mts. In the Waluj Industrial Area. The above assignment was made subsequent to consent order issued by MIDC dated 13.03.2002, granting consent to the assignor to assign its leasehold rights. The assignment was together with all dwelling houses, out houses, massages, edifices buildings, yards, compounds, sewers, etc.
- (iii) On 17.07.2002, a Sub-Letting Agreement was executed by Baxter with Appellants to continue the operations of the Cephalosporin Facility and a super depot (including a regrind building), so as to enable Wockhardt Ltd. to continue its operation of the Facilities on the premises, which Facility was located in area admeasuring approximately 13,000 sq. ft.

Sub-Letting Agreement was subject to Wockhardt Ltd. obtaining necessary approval of the MIDC.

- (iv) On 13.10.2016, Baxter executed a Business Transfer Agreement with Eurolife Healthcare Pvt. Ltd. (“**Corporate Debtor**”). On 25.11.2016, a Memorandum of Understanding (“**MoU**”), between Appellants, Baxter, Eurolife Healthcare Pvt. Ltd. and Carol Info Services Ltd. (erstwhile Wockhardt Life Sciences Limited) was entered. The MoU referred to Business Transfer Agreement dated March 6, 2002. It also mentioned that Baxter sub-leased an area being 12,699 sq. mtrs. to Wockhardt by and under a Sub-Letting Agreement dated July 17, 2002. The MoU contained an agreement that after the Eurolife-Assignment, Eurolife shall assign its leasehold rights to the Sub Leased Land to Wockhardt such that Wockhardt becomes the direct lessee of Sub Leased Land with MIDC as the lessor, subject to conditions mentioned in paragraph 3, (a), (b), (c) and (d).
- (v) On 27.03.2018, Baxter executed a Deed of Assignment in favour of Corporate Debtor assigning leasehold rights of all the piece and parcel of land known as Plot No. B-15/2 admeasuring 64,925 sq. mtrs. in the Waluj Industrial Area. The MIDC vide letter dated 09.03.2017 has granted consent to Baxter to assign its leasehold rights to M/s Eurolife

Healthcare Pvt. Ltd. The Assignment Deed dated 27.03.2018 also referred to Sub-Lease Agreement dated July 17,2002.

- (vi) Corporate Insolvency Resolution Process (“**CIRP**”) against Eurolife Healthcare Pvt. Ltd. commenced by order dated 09.05.2023 passed by NCLT and Respondent No.1 was appointed as an Interim Resolution Professional (“**IRP**”) to take over the affairs of the Corporate Debtor (“**CD**”).
- (vii) On 13.07.2023, the Appellants received a letter from the RP, requesting the Appellants to forward copy of the registered Sub-Letting Agreement with respect to 12,699 sq. mtrs area. The Appellant vide letter dated 17.07.2023 replied to the letter of RP. In the reply, it was mentioned that Sub-Letting Agreement dated 29.09.2017 with respect to area admeasuring 12,699 sq. mtrs executed with the Appellant, the Appellant has agreed to pay sub-letting charges to MIDC. Reply further stated that payment towards sub-letting charges for the year 2017 till 2023 is pending and Eurolife did not timely update the Appellant on MIDC’s demand towards sub-letting charges. Copy of the Sub-Letting Agreement dated 29.09.2017 was also forwarded with the letter to the RP.
- (viii) A Demand Notice dated 31.08.2023 was sent by MIDC to Eurolife Healthcare Pvt. Ltd. Informing that a request for transfer vide letter dated 18.11.2023 has been received,

which proposal has been forwarded to the Headquarter. The letter also mentioned that there being unauthorized sub-tenant on the said plot, vide letter dated 20.05.2022, an amount of Rs.1,65,14,808/- was demanded towards sub-letting charges and delayed fees. Copy of letter dated 20.05.2023 was also forwarded. The RP vide letter dated 14.09.2023 informed the MIDC that M/s Eurolife Healthcare Pvt. Ltd. is making payment of Rs.1,65,14,808/- being the sub-letting charges for the period from 01.03.2017 to 28.02.2023. Request was also made to waive off the penalty amount of Rs.29,32,865/-.

- (ix) The Appellant filed IA No.5769 of 2023 before the NCLT, Mumbai Bench, praying for a direction to exclude the premises of approximately 13,000 sq. ft. of the larger property along with structures standing thereon being the “Wockhardt’s Cephalosporin Facility” and a super depot (including a regrind building) in the Waluj Facility from the present liquidation proceedings ongoing in respect of the Corporate Debtor. The Liquidator prayed for time to file reply to the Application, which was allowed by the Adjudicating Authority vide order dated 13.01.2024. An affidavit in reply was filed by the Liquidator to the IA.
- (x) The Adjudicating Authority heard the parties and by the impugned order dated 24.04.2024, dismissed the IA No.5769

of 2023. Aggrieved by which order, this Appeal has been filed.

3. We have heard Shri Arun Kathpalia, learned Senior Counsel appearing for the Appellants and Shri Krishnendu Datta, learned Senior Counsel appearing for the Respondents.

4. Learned Senior Counsel for the Appellants submits that part of area of Plot B-15/2 over which Wockhardt's Cephalosporin Facility is situated was not part of the Corporate Debtor after execution of Lease Deed dated 08.09.1998 and by Sub-Letting Agreement dated 17.07.2002 Baxter has sub-leased the said facility to Wockhardt, so as to enable the Wockhardt to continue its operation on the facility. After Baxter executed a Business Transfer Agreement with the CD – Eurolife Healthcare Pvt. Ltd. on 13.10.2016, an MoU was entered on 25.11.2016 and the Appellant by Sub-Letting Agreement dated 29.09.2017, under which the CD agreed to sub-let the facility area on which the Cephalosporin Facility is situated to the Wockhardt. Hence, the area of 13,000 sq. ft. was never part of the assets of the CD. It is submitted the Appellant has also paid sub-letting charges to the MIDC and MIDC has also approved the sub-division of Plot No.B-15/2 to the Appellant. The CD does not have any lease hold rights in 13,000 sq. ft area on which Cephalosporin Facility is situated, hence the Appellant has prayed to the Adjudicating Authority to exclude the said area from the liquidation estate of the CD, which has been wrongly rejected. It is submitted that in the Application filed by the Appellant, all necessary details and pleadings were mentioned with regard to claim of

the Appellant that area under Cephalosporin Facility belongs to Wockhardt, whereas the Adjudicating Authority did not consider the documents and Facility area and by an unreasoned order has rejected the Application. It is submitted that paragraph 8 of the order, by which the Application has been rejected, does not give any reason. It is submitted that the order passed by Adjudicating Authority, which is unreasoned, is in violation of principles of natural justice and deserve to be set aside on this ground alone. Neither the pleas raised by the Appellant in the Application was considered, nor reasons have been given for rejecting the Application.

5. Shri Krishnendu Datta, learned Senior Counsel appearing for the Respondents submits that Corporate Debtor having been assigned the entire area of Plot No.B-15/2 of 64,925 sq. mtrs, the Corporate Debtor has leasehold rights on the entire area. The Sub-Letting Agreement dated 29.09.2017 as well as MoU dated 25.11.2016 are all unregistered and insufficiently stamped documents, which cannot be relied by the Appellant for any rights. The Assignment Deed executed by Baxter in favour of the CD on 27.03.2018 is registered document by which leasehold rights were assigned to the CD. It is submitted that consent of MIDC was obtained for assignment in favour of the CD, which consent was granted by the MIDC by letter dated 09.03.2017. The MIDC has never granted any consent for sub-letting of 13,000 sq. ft. area, on which the Wockhardt Cephalosporin Facility is situated. The Lessor was prohibited from making any assignment of any part of the leased land

without obtaining prior approval of the MIDC. There having no approval of the MIDC, no sub-letting was permissible and claim of sub-letting by the Appellant is contrary to the law. The payments made by the Appellant in pursuance of Notice dated 20.05.2023 issued by MIDC was payment for unauthorized sub-letting charges and payment of unauthorized sub-letting charges, cannot mean that MIDC has granted consent for sub-letting the part of larger facility. It is submitted that it is the CD, who holds leasehold rights on the entire area of 64,925 sq. mtrs., which leasehold rights have never been parted with by the CD to the Appellant in accordance with law. The Adjudicating Authority rightly rejected the Application filed by the Appellant praying for excluding the Wockhardt's Cephalosporin Facility out of the liquidation estate of the CD. It is submitted that the Appellant was given due opportunity by the Adjudicating Authority before deciding the Application. Reply to the Application was also filed by the Liquidator, on which time was taken by the Appellant to verify, but no rejoinder was filed by the Appellant. The Adjudicating Authority passed the order after hearing counsel for both the parties. Sufficient reasons have been given by the Adjudicating Authority for passing an order, rejecting the IA. It is the CD, who hold leasehold rights of entire area of 64,925 sq. mtrs. and no part of 64,925 sq. mtrs. can be excluded from the liquidation estate. There is no consent of the MIDC for sub-letting in favour of the Appellant of 13,000 sq. ft. area. The alleged sub-letting is only unauthorized and does not confer any right and entitlement to the Appellant.

6. We have considered the submissions of learned Counsel for the parties and have perused the records.

7. IA No.5769 of 2023 was filed by the Appellant, where following prayers have been made in paragraph 60 of the Application, which prayers are as follows:

- “(a) This Hon'ble Tribunal be pleased to pass an Order and exclude the Premises a portion of approximately 13,000 sq. ft. of the Larger Property along with the structures standing thereon being the "Wockhardt's Cephalosporin Facility" and a super depot (including a regrind building) i.e. the Waluj Facility from the present liquidation proceedings ongoing in respect of the Corporate Debtor;
- (b) This Hon'ble Tribunal be pleased to pass an order of permanent injunction and restrain the Resolution Professional from taking any steps in respect of the Premises a portion of approximately 13,000 sq. ft. of the Larger Property along with the structures standing thereon being the "Wockhardt's Cephalosporin Facility" and a super depot (including a regrind building) i. e. Waluj facility against the interests of the Applicant;
- (c) Pending the hearing and disposal of the present Application, this Hon'ble Tribunal be pleased to pass an order and restrain the Resolution Professional from taking any steps in respect of the Premises a portion of approximately 13,000 sq. ft. of the Larger Property along with the structures standing thereon being the "Wockhardt's Cephalosporin Facility" and a super depot (including a regrind building) i.e. Waluj Facility against the interests of the Applicant;
- (d) Costs of the present Application;
- (e) Such other and further reliefs as this Hon'ble Tribunal may deem fit in the facts of the present matter.”

8. Before we enter into the respective submissions of learned Counsel for the parties, we need to notice certain relevant clauses of Lease Deed executed by MIDC in favour of M/s Wockhardt Ltd. dated 08.09.1998. The lease was executed for a consideration of Rs.16,23,300/- only of piece of land known as Plot No.B-15/2 in the Waluj Industrial Area admeasuring 64925 sq. mtrs. for a period of 95 years with effect from 01.07.1987. Lease Deed contained various covenants by lessee and Clause 2(u) contains the covenant, not to assign. Clause 2(u) and 2(v) of the Lease Deed provides as follows:

“2(u) Not to assign underlet or part with the possession of the demised premises or any part thereof or any Interest therein without the previous written consent of the Chief Executive Officer and the Chief Executive Officer may in his absolute discretion refuse such consent or grant the same subject to such conditions as he may think fit including the condition for payment of premium and in any event not to assign underlet or transfer the Lessee’s interest therein so as to cause any division by metes and bounds or otherwise to alter the nature of this present demise. Not to assign

(v) In pursuance of such-clause (u) hereinabove if the Lessee shall sell, assign or part with the demised premises for the then residue of the said term to deliver at the Lessee's expense within twenty days after every such assignment or assurance shall have been duly registered under the Indian Registration Act or other amending statute notice of such assignment or assurance to the Lessor such delivery to be made to the Chief Executive officer or to such Officer or person on behalf of the Lessor as the Lessor shall from time to time require.”

9. As noted above, the Lease Deed was registered on 08.09.1998. Clause (v) as noted above provides that if the Lessee shall sell, assign or

part with the demised premises for the then residue of the said term, such assignment shall have to be registered under the Indian Registration Act or other amending statute. Clause (u) contemplates that Lessee shall not assign, underlet or part with the possession of the demised premises or any part thereof without the previous written consent of the Chief Executive Officer. A Business Transfer Agreement was entered between Wockhardt Lifesciences Ltd. and Baxter (India) Pvt. Ltd., where Agreement for Sale was entered. Clause 2.1 of the Business Transfer Agreement provides as follows:

“21 Purchased Assets. The Vendor shall sell, assign, convey and transfer, free from Encumbrances and in consideration . of the representations, Warranties, covenants and statements of the Vendor contained in this Agreement the Purchaser shall purchase, at the Closing Date, the Business on a going concern, as is where is basis.”

10. Clause 6.3 deals with ‘Closing Agreements’. The said clause contemplates execution of separate Lease Deed and sub-division of real estate. Clause 6.3 (b) is as follows:

“6.3 (b) A sub-division of the real estate situated at the Waluj Facility and execution of separate lease deeds, or such other documents as may be required by MIDC by both the Vendor and the Purchaser in respect to the relevant sub-division OR a deed of assignment by the Vendor in favour of the Purchaser for the transfer by the Vendor to the Purchaser in the form and content as set out in Exhibit H, of the real estate situated at the Waluj Facility and a sub-lease agreement between the Vendor and the Purchaser, in the form and content as set out in Exhibit D, for the sub-lease by the Purchaser to the Vendor on and from the Closing Dale the

real estate situated at tile Waluj Facility for the operation by the Vendor of the Wockhardt Limited's Cephalosporin Facility;”

11. A Deed of Assignment was executed by Wockhardt in favour of Baxter on 17.07.2002. The Deed of Assignment was for entire area of 64,925 sq. mtrs., which also mentioned about the consent granted by the MIDC dated 13.03.2002 for assignment of the area. Clause A, B, C and D of the Assignment Deed are as follows:

- “A. By virtue of the Lease Deed dated September 8, 1996 executed between the Assignor and the Maharashtra Industrial Development Corporation (the “MIDC”) (the ‘Agreement of Lease”), the Assignor with effect from July 1, 1987 became well and sufficiently entitled to the leasehold rights, title and interest in the plot of land bearing no. B-15/2 admeasuring approximately 64,925 sq. m. in the Waluj Industrial area within the village limit of Kamalpur and outside the limits of Aurangabad Municipal Corporation in rural area taluka and registration sub district Gangapur and registration district Aurangabad in the State of Maharashtra more particularly described in the Schedule hereunder written for the period and on the terms and conditions herein contained together with the buildings and structures standing thereon (the “lease Property”);
- B. Under the terms and conditions of the Business Transfer Agreement dated March 6, 2002 executed between the Assignor and the Assignee (the “Business Transfer Agreement”), the Assignor has agreed to transfer unto the Assignee forever the Lease Property forming part of the Business (as defined in the Business Transfer Agreement) transferred by the Assignor to the Assignee on a

going concern basis for the consideration set out in the Business Transfer Agreement;

- C. The Assignor confirms having received the consideration in respect of the Lease Property forming part of the Business transferred by the Assignor to the Assignee on a going concern basis in terms of the Business Transfer Agreement.
- D. The MIDC, Aurangabad has by its Order No.MIDC/DESK-II/171 dated March 13, 2002 granted consent to the Assignor to assign its leasehold rights, title and interest in or to the Lease Property to the Assignee for the period and on the terms and conditions contained in the Agreement of Lease together with the buildings and structures standing thereon. The Assignee shall upon execution of this Deed of Assignment contain final MIDC consent. The date on which such MIDC consent is received shall be referred to as the “Effective Date”.

12. As noted above, the assignment was made in favour of the CD by Baxter by Deed of Assignment dated 27.03.2018. Deed of Assignment dated 27.03.2018 in favour of CD by Baxter (India) Pvt. Ltd. also refers to consent dated 09.03.2017 issued by MIDC for the value of the Lease Deed. Clauses A, B, C and D of the Assignment Deed are as follows:

- “A. Wockhardt Lifesciences Limited and the Assignor herein entered into a business transfer agreement dated March 06, 2002. In furtherance to the said business transfer agreement, Wockhardt Lifesciences Limited Assigned the following lease deed to the

Assignor by an under a Deed of Assignment dated July 17, 2002;

The Lease deed dated October 8, 1998 executed by the Maharashtra Industrial Development Corporation ("MIDC") in favor of Wockhardt Limited to grant lease hold rights on all the peace and parcel of land known as Plot No. B15/2 admeasuring 64925 square meter (approximately) in the Waluj Industrial Area, within the village limit of Kamlapur and outside limit of Aurangabad Municipal Corporation, in rural area, taluka and registration sub district Gangapur, district and registration district Aurangabad, Maharashtra ("Waluj Property"), which deed is registered as document no. 3141/1998 on October 8, 1998 with the jurisdictional sub-registrar ("Waluj Lease Deed"). The Waluj Property is more particularly described in schedule -1 hereto.

- B. Out of the Waluj Property, the Assignor has sub leased, an area being 12699 square meters to Wockhardt Lifesciences Limited by and under the subletting Agreement dated July 17, 2002, which has been amended by an amendment to Sub Letting agreement dated July 17, 2003 (Collectively the "Sub Letting Agreements"). The land sub leased under the Sub Letting Agreement is more particularly demarcated in Schedule - 2.
- C. The Assignor and Assignee have entered into a Business Transfer agreement ("BTA") dated October 13, 2016, pursuant to which, the Assignor has agreed to sell to Assignee, certain business as a going concern comprising of various assets as listed in the BTA and in accordance with the terms thereof. As per the provision of the BTA, the Assignor has agreed to assign the Waluj Deed of the Assignee on "as is where is" basis.

D. MIDC has granted a consent to assign the Waluj Lease deed to the Assignee vide letter MIDC/RO(null)/ WLJ/LMS-120/1369 dated March 9, 2017.”

13. The Appellant has referred to Sub-Letting Agreement dated 29.07.2017 executed by CD in favour of Wockhardt Ltd., which Sub-Letting Agreement has been filed as Annexure A-8. The Sub-Letting Agreement refers to Lease Deed dated 08.10.1998 executed in favour of Lessor and the Lessee and the Sub-Letting Agreement dated 17.07.2002 also.

14. The question, which has come before us is, as to whether the Wockhardt Cephalosporin Facility, which was situated in area of 13,000 sq. ft. of the larger property is not the asset of the CD and need to be excluded from the liquidation estate of the CD. The IA No.5769 of 2023 was filed by the Appellant praying for exclusion of the said asset from the liquidation estate of the CD, which Application was rejected by the Adjudicating Authority by the impugned order.

15. The first submission of learned Counsel for the Appellant is that order impugned does not contain any reason, hence, the order deserve to be set aside on this ground alone. Learned Counsel for the Appellant placed reliance on the judgment of Hon’ble Supreme Court in **(2010) 4 SCC 785 – Assistant Commissioner, Commercial Department, Works Contract and Leasing Kota vs. Shukla and Brothers**, where Hon’ble Supreme Court had deliberated on concept of reasoned order and requirement of giving reasons with higher degree of satisfaction. The

Hon'ble Supreme Court held that recording of reason is an essential feature of dispensation of justice. In paragraphs 12, and 13, the Hon'ble Supreme Court held as follows:

“12. In exercise of the power of judicial review, the concept of reasoned orders/actions has been enforced equally by the foreign courts as by the courts in India. The administrative authority and tribunals are obliged to give reasons, absence whereof could render the order liable to judicial chastisement. Thus, it will not be far from an absolute principle of law that the courts should record reasons for their conclusions to enable the appellate or higher courts to exercise their jurisdiction appropriately and in accordance with law. It is the reasoning alone, that can enable a higher or an appellate court to appreciate the controversy in issue in its correct perspective and to hold whether the reasoning recorded by the court whose order is impugned, is sustainable in law and whether it has adopted the correct legal approach. To subserve the purpose of justice delivery system, therefore, it is essential that the courts should record reasons for their conclusions, whether disposing of the case at admission stage or after regular hearing.

13. At the cost of repetition, we may notice, that this Court has consistently taken the view that recording of reasons is an essential feature of dispensation of justice. A litigant who approaches the court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to

judicial pronouncements. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighed with the court in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher court in the event of challenge to that judgment. Now, we may refer to certain judgments of this Court as well as of the High Courts which have taken this view.

16. Further, in paragraphs 26 and 27, the Hon'ble Supreme Court laid down following:

“26. Our procedural law and the established practice, in fact, imposes unqualified obligation upon the courts to record reasons. There is hardly any statutory provision under the Income Tax Act or under the Constitution itself requiring recording of reasons in the judgments but it is no more res integra and stands unequivocally settled by different judgments of this Court holding that the courts and tribunals are required to pass reasoned judgments/orders. In fact, Order 14 Rule 2 read with Order 20 Rule 1 of the Code of Civil Procedure requires that, the court should record findings on each issue and such findings which obviously should be reasoned would form part of the judgment, which in turn would be the basis for writing a decree of the court.

27. By practice adopted in all courts and by virtue of judge-made law, the concept of reasoned judgment has become an indispensable part of basic rule of law and, in fact, is a mandatory requirement of the procedural law. Clarity of thoughts leads to clarity of vision and proper reasoning is the foundation of a just and fair decision. In *Alexander Machinery (Dudley) Ltd.* [1974 ICR 120 (NIRC)] there are apt observations in this regard to say “failure to give reasons amounts to denial of justice”. Reasons are the real

live links to the administration of justice. With respect we will contribute to this view. There is a rationale, logic and purpose behind a reasoned judgment. A reasoned judgment is primarily written to clarify own thoughts; communicate the reasons for the decision to the concerned and to provide and ensure that such reasons can be appropriately considered by the appellate/higher court. Absence of reasons thus would lead to frustrate the very object stated hereinabove.

17. There can be no two opinions about the proposition laid down by the Hon'ble Supreme Court in the above case. Recording of reason is *sine qua non* for exercise of judicial power by a Court or Tribunal. The question to be answered in the present case is as to whether in the impugned order the Adjudicating Authority did not record any reason? The Adjudicating Authority in paragraphs 3 has noted the submissions of Counsel for the Applicant. In paragraphs 4 and 5, the submissions of Liquidator have been noticed. In paragraph 7, the Adjudicating Authority has extracted Clauses of the Deed of Assignment dated 27.03.2018. It is useful to extract paragraph 7 of the impugned order, which is as follows:

“7. This Bench takes note of the Deed of Assignment dated 27.03.2018 between Baxter (assignor) and Eurolife Healthcare Private Limited (assignee) which states as under:

“A. Wockhardt Lifesciences Limited and the Assignor herein entered into a business transfer agreement dated March 06, 2002. In furtherance to the said business transfer agreement, Wockhardt Lifesciences Limited Assigned the following lease deed to the Assignor by an under a Deed of Assignment dated July 17, 2002;

The Lease deed dated October 8, 1998 executed by the Maharashtra Industrial Development Corporate (“MIDC”)

in favour of Wokhardt Limited to grant lease hold rights on all the peace and parcel of land known as Plot No.B15/2 admeasuring 64925 square meter (approximately) in the Waluj Industrial Area.....

D. MIDC has granted a consent to assign the Waluj Lease deed to the Assignee vide letter MIDC/RO (null)/WLJ/LMS-120/1369 dated March, 9 2017.....

Now Therefore this Deed of Assignment witnesseth as under:

1.Assignment

1.1The Assignor hereby assigning the Waluj Lease Deed to the Assignee

1.2Under the BTA, the Assignee has agreed to acquire from the Assignor, certain business including asset on 'as is where is basis, for a lump sum consideration without value being assigned to individual asset and liabilities.

1.3The parties have allocated Rs.14,27,39,763/- to this deed of assignment as value of the Waluj property, solely for calculation and payment of stamp duty, registration charges and other similar taxes and fee, which amount has been paid by the Assignee to the Assignor as part of the lump sum consideration under the BTA.”

18. The Adjudicating Authority relying on the Deed of Assignment has come to the conclusion that the entire area of Plot B-15/2 admeasuring 64,925 sq. mtrs. has been assigned to Assignee for which consent dated 09.03.2017 has been issued. The Adjudicating Authority, thus, recorded its conclusion that Assignment Agreement clearly establishes the absolute right of the CD over the said property, hence, it is part of the liquidation

estate. In paragraph 8 of the order, following has been held by the Adjudicating Authority:

“8. The Bench is of the considered view that the above-mentioned clauses of the assignment deed dated 27.03.2018 clearly establishes the absolute right of the Corporate Debtor over the said property and therefore it is part of the liquidation estate. The prayer sought by the Applicants to exclude area of 13000 sq. ft. from the liquidation estate is without merits in view of the assignment deed transferring the entire land of 64925 sq. mtr. to the assignee i.e. the Corporate Debtor in this case. As the Applicants have failed to establish their right over the said property, the prayer sought for by the Applicant cannot be granted. Accordingly, IA-5769(MB)2023 is devoid on merits and dismissed.

19. From the impugned order of the Adjudicating Authority, it does appear that reasons have been given by the Adjudicating Authority for holding that CD has absolute right over the property and area of 13,000 sq. ft., cannot be excluded from the liquidation estate. It is true that only brief reasons have been given by the Adjudicating Authority for rejecting the Application of the Appellant and the order also notices the submission of the Appellant and the Liquidator to rely on Assignment Deed dated 27.03.2018 and the conclusion was recorded by the Adjudicating Authority. We, thus, are of the view that order impugned cannot be set aside on the ground that it does not record any reason. Reasons have been recorded, though, briefly in the impugned order. We, however, proceed to consider elaborate submissions advanced by learned Counsel for the parties in the present Appeal.

20. Learned Counsel for the Appellant has relied on Sub-Letting Agreement, which was executed by Baxter with Wockhardt on 17.07.2002. After Deed of Assignment dated 17.07.2002 in favour of Wockhardt by Baxter, the Sub-Letting Agreement dated 17.07.2002, was entered, which was executed between Baxter (India) Pvt. Ltd., Wockhardt Ltd. and Wockhardt Lifesciences Ltd. In the said Sub-Letting Agreement in Clause (E), following was stated:

“(E) At the request of Wockhardt and WLS, Baxter has agreed to sub-let to Wockhardt the Premises to enable Wockhardt to continue its operations of the Facility on the Premises. This Agreement is however subject to Wockhardt/ WLS obtaining the necessary approval of the MIDC for such sub-letting of Premises by Baxter to Wockhardt; “

21. The said Clause clearly mentions that *“This Agreement is however subject to Wockhardt/ WLS obtaining the necessary approval of the MIDC for sub-letting of Premises by Baxter to Wockhardt”*. The submission of the learned Counsel for the Respondent is that no approval for sub-letting was ever obtained from MIDC by the Appellant. We notice that neither any consent by MIDC for sub-letting 13,000 sq. ft area referred as Wockhardt Cephalosporin Facility has been pleaded or brought on record by the Appellant. We have also noticed Clause (u) of the original Lease Deed executed by MIDC in favour of the Wockhardt Ltd., which provided a prior consent by MIDC for assignment or sub-letting or parting the possession of premises in written from the Chief Executive Officer of MIDC. Thus, any sub-letting without the consent of MIDC shall have no

legal effect. The assignment in favour of the Baxter dated 17.07.2002 was for the entire area of 64,925 sq. mtrs., which assignment was pursuant to consent letter dated 13.03.2002, which we have already extracted in Clause (D) of the Assignment Agreement dated 17.07.2002, which refers to the consent letter dated 13.03.2002. Thus, consent of entire area of 64,925 sq. mtrs. In favour of Baxter was there. However, no consent for any sub-letting in favour of Wockhardt has been pleaded or brought on the record.

22. The assignment by Baxter in favour of the CD dated 27.03.2018 is also part of the record and has been filed by the Appellant as Annexure A-9 and Clause (D) of the Assignment Agreement also refers to consent of MIDC by letter dated 09.03.2017. Letter dated 09.03.2017 has been brought on the record by the Liquidator in its reply filed in this Appeal. The letter dated 09.03.2017 of MIDC refers to Lease Deed dated 08.10.1998; Transfer No.1 Order Date: 25-JAN-2001 (Change in Company Name) M/s Wockhardt Life Sciences Ltd.; and Transfer No.2 in favour of M/s Baxter (India) Pvt. Ltd., which was made with consent of MIDC, as noted above. Further transfer in the name of M/s Eurolife Healthcare Pvt. Ltd. referred to as Transfer No.3. It is also relevant to notice that for grant of transfer of sub-letting, a letter of Wockhardt Ltd. dated 29.11.2016 – ‘to continue the grant of sub-letting for the period commencing from 01.12.2016 to 30.11.2017’ was not considered by the MIDC, observing that ‘Tranferee can apply for fresh sub-letting proposed’. Clause (e) of the said letter is as follows:

“e) The Transferee shall obtain & produce MPCB’s Consent.

Please note that the letter of M/s Wockhardt Ltd. Dated 29/11/2016 to continue the grant of sub-letting for the period commencing from 01/12/2016 to 30/11/2017 cannot be considered. Transferee can apply for fresh sub-letting proposed. Please note.”

23. It is, thus, clear that consent letter dated 09.03.2017 was consent letter for transfer of Plot No.B-15/2 admeasuring 64,925 sq. mtrs. was in favour of CD for which consent was granted by MIDC. Thus, consent letter dated 09.03.2017 read with Assignment Agreement dated 27.03.2018 in favour of CD was assignment of entire area of 64,925 sq. mtrs. Hence, the CD acquired the leasehold rights of the entire area of Plot No.B-15/2 admeasuring 64,925 sq. mtrs. and the letter dated 09.03.2017 clearly mentions that there is no consent, rather prayer to continue sub-letting was not granted and Transferee was asked to apply for fresh sub-letting and Transferee clearly meant CD, i.e. M/s Euro Healthcare Pvt. Ltd. There is nothing on record to indicate that CD after assignment in its favour, obtained any consent for sub-letting in favour of Wockhardt Ltd., nor there is anything on record to indicate that sub-letting consent was ever granted by MIDC for Wockhardt Cephalosporin Facility area.

24. Learned Counsel for the Appellant has also pleaded that Appellant has made the payment of an amount of Rs.1,65,14,808/- to MIDC, which was for sub-letting charges. In this context, we need to refer to the letter of MIDC dated 31.08.2023, which has been brought on record by the

Appellant. Letter dated 31.08.2023 also refers to letter dated 20.05.2022, by which letter amount of Rs.1,65,14,808/- was demanded towards sub-letting charges and the letter further mentions that there is unauthorized sub-letting on the said plot. Letter dated 20.05.2022, which was addressed to CD regarding Plot in question, reads as follows:

“MAHARASHTRA INDUSTRIAL DEVELOPMENT
CORPORATION (A Government of Maharashtra
Undertaking)

Telephone No. (0240) 331013, 331172

Regional Office,
Aurangabad MIDC Industrial Area,
Near Un authorized Sublet on plot Railway Station,
Aurangabad 431 005

Email:- Roaurangabad(a MIDCINDIA.Org

By Regd.Post A.D.
Letter No. MIDC/RO/ABDWLJ/B 70064

Dated : 20th May, 2022

To,
M/s Eurolife Health Care Pvt. Ltd.
Plot No. B-15/2
MIDC Waluj,
District Aurangabad

Subject :WLUJ Industrial Area Plot No.B-15/2
Un authorized Sublet on plot
Read: Your application dated 15.4.2022

Sir,

This is to inform you that you have to pay the Unauthorized Sub-letting charges of plot No.B-15/2 is Rs.1,65,14,808/- (Rupees One Crore Sixty Five Lack Fourteen Thousand Eight Hundred Eight only) being the unauthorized sub-letting charges, within fifteen days.

You are requested to make the payment as (a) above by way of Demand Draft drawn in favour of Joint Chief

Accounts Officer, MIDC within 15 days from the date of receipt of this letter, failing which appropriate action will be initiated against you as per MID Act.”

25. In the subsequent letter dated 31.08.2023, which is also part of the record, wherein letter dated 20.05.2022 has been referred to in following words:

“There is unauthorized sub-tenant on the said plot and therefore vide letter dated 20.5.2022 amount of Rs. 1,65,14,808/- towards sub let charges and delay fees thereon as per the Circular of the MIDC dated 9.5. for a period of one year delay 15.5% interest has been fixed which comes to Rs.24,85,478/-+ 18% GST Rs.4,47,387/- and Rs.29,32,865/- thus total Rs.1,94,47,673/-shall be deposited immediately.”

26. Thus, amount which was demanded by MIDC was due to there being unauthorised sub-tenant and the said letter in no manner can be read as granting of consent for sub-tenant by the MIDC. The Lessee was prohibited to part with any portion of the leased land without prior consent of MIDC and there being no consent by MIDC for sub-letting, the claim of the Appellant that it is entitled to area of Wockhardt Cephalosporin Facility, which would be excluded from the assets of the CD, cannot be accepted. The payment made by the Appellant in pursuance of letter issued by RP, asking to make payment of unauthorised sub-letting charges, cannot be read as any valid sub-letting in favour of the Appellant of the 13,000 sq. ft. area, as claimed by the Appellant. In the reply, which was filed by the Liquidator before the Adjudicating Authority, it was categorically pleaded that Sub-Letting

Agreement was an un-registered Agreement and sub-letting of leased land could have been done only by registered agreement. Detailed reply was filed by the Liquidator in the IA No.5769 of 2023 (which was filed by the Appellant), giving all relevant facts. Copy of the reply of the Liquidator is on record and filed as Annexure A-28. Thus, relevant pleadings with regard to entitlement of the CD of the entire piece of land of 64,925 sq. mtrs. was already on the record and the Appellant cannot be held to have any leasehold rights in any part of Plot of land at B-15/2 area of 64,925 sq. mtrs. We, thus, are satisfied no error has been committed by the Adjudicating Authority in rejecting IA No.5769 of 2023 filed by the Appellant.

27. There is no merit in the Appeal. The Appeal is dismissed. Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

7th January, 2025

Ashwani