

**SUPREME COURT OF INDIA****Bench: Justices Sanjiv Khanna and Dipankar Datta****Date of Decision: 17th May 2024**

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. \_\_\_\_\_ OF 2024

(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NOS. 7315-7316 OF 2021)

WITH

CIVIL APPEAL NOS. \_\_\_\_\_ OF 2024

(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NOS. \_\_\_\_\_ OF 2024 ARISING OUT OF DIARY NO. 1109 OF 2024)

**CHIEF SECRETARY, GOVERNMENT OF ODISHA ...APPELLANT****VERSUS****BHARAT PROCESS & MECHANICAL ENGINEERS LIMITED (IN LIQUIDATION) AND OTHERS ...RESPONDENTS****Legislation:**

Sections 3, 7 of the Bird and Company Limited (Acquisition and Transfer of Undertaking and Other Properties) Act, 1980

Section 4A(4), Rule 23 of the Mines and Minerals (Development and Regulation) Act, 1957 and Rules, 2016

Sections 446(2)(d), 457(1)(b) of the Companies Act, 1956

Mineral Concession Rules, 1960, Mineral (Other than Atomic and Hydrocarbons Energy Minerals) Concession (Fourth Amendment) Rules, 2021

**Subject:** Civil appeals concerning the renewal of mining leases granted to Bird and Company Limited and the involvement of its successor entities, including Bharat Process & Mechanical Engineers Limited (in liquidation), Odisha Mineral Development Company Ltd (OMDC), and the role of TGP Equity Management Private Limited as an assignee of UCO Bank's claims.**Headnotes:**

Corporate Law - Renewal of Mining Leases - Civil appeals against High Court orders regarding the renewal of mining leases originally granted to Bird and

Company Limited, subsequently vested in Bharat Process & Mechanical Engineers Limited (BPMEL), now in liquidation - Central Government and State of Odisha opposed the renewal of leases - High Court at Calcutta directed the formation of a High-Powered Committee to decide on renewal, which was challenged by the Government of Odisha and TGP Equity Management Private Limited.

Corporate Liquidation - Role of Official Liquidator and Creditor Rights - Analysis - Held - No practical or feasible benefit in renewing leases for a defunct company with substantial liabilities - Power of attorney given to OMDC terminated upon liquidation of BPMEL - TGP, as an assignee of UCO Bank, entitled to pursue claims in accordance with the Companies Act, 1956 - Workers' dues to be settled per statutory provisions. [Paras 31-37]

Decision - Appeals by State of Odisha allowed, and High Court's order for a High-Powered Committee set aside - TGP's appeals dismissed - Applications for renewal of mining leases treated as rejected or dismissed - Proceedings to continue in Company Court for settlement of dues as per law. [Paras 38-39]

#### **Referred Cases:**

- Ravindra Ishwardas Sethna v. Official Liquidator (1983) 4 SCC 269
- Assistant Commissioner, Ernakulam v. Hindustan Urban Infrastructure (2007) 8 SCC 66
- Common Cause v. Union of India (2017) 9 SCC 499
- Mineral Area Development Authority v. Steel Authority of India (2011) 4 SCC 450
- Tata Iron & Steel Co. Ltd. v. Union of India (1996) 9 SCC 709

#### **J U D G M E N T**

**SANJIV KHANNA, J.**

Permission to file the special leave petition by TPG Equity Management Private Limited, impugning the orders dated 09.03.2023 and 13.10.2023 passed by the Division Bench of the High Court of Orissa at Cuttack, is granted. Delay in filing of the appeals is condoned.

2. Leave granted.
3. The appellant – the Government of Odisha, has approached this Court against the judgment dated 03.03.2020 by the Division Bench of the High Court at Calcutta, which upholds the directions given by the Company Judge, that the Central Government in consultation with the Government of Odisha and the Odisha Mineral Development Company Ltd<sup>1</sup> shall form a High Powered committee of not more than three members representing the interests of the three stakeholders to take a decision by a reasoned order with regard to the renewal of mining leases, viz. Kolha-Roida Iron and Manganese Ore Block<sup>2</sup>, Thakurani Iron & Manganese Ore Block<sup>3</sup> and Dalki Manganese Ore Block<sup>4</sup>, within three months. It is also directed that TGP Equity Management Private Ltd<sup>5</sup> will be heard. The decision will be submitted to the Company Court in the form of a report.
4. This judgment will also decide the appeal preferred by TGP challenging the judgment dated 09.03.2023 of the High Court of Orissa at Cuttack, whereby Writ Petition No. 1852 of 2010 filed by the State of Odisha has been allowed setting aside the order of the revisional authority dated 02.02.2009. This judgment relates to one of the mining leases, namely, Kolha-Roida. TGP has also impugned the order dated 13.10.2023 by which its application for the review of the order dated 09.03.2023 was dismissed on the grounds of delay, and on the grounds of review not being made out.
5. The case has a long and chequered history. However, in view of the judgment that we are pronouncing, we shall only refer to the relevant facts.

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<sup>1</sup> For short, 'OMDC'.

<sup>2</sup> For short, 'Kolha-Roida'.

<sup>3</sup> For short, 'Thakurani'.

<sup>4</sup> For short, 'Dalki'.

<sup>5</sup> For short, 'TGP'.

6. Bird and Company Limited<sup>6</sup> was granted three mining leases, namely, KolhaRoida, Thakurani and Dalki, for 30 years on 15.08.1926, 10.10.1924, and 10.10.1924 respectively, by the Raja of Keonjhar. The three leases were
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- granted first renewal for a period of 20, 30, and 20 years with effect from 18.08.1956 to 18.08.1976, 01.10.1954 to 30.09.1984, and 01.10.1954 to 30.09.1974 respectively. The Kolha-Roida lease was thereafter renewed for the second time for 20 years from 15.08.1976 to 14.08.1996. The Thakurani lease was renewed for the second time from 01.10.1984 to 30.09.2004 for 20 years. The Dalki lease was renewed for 20 years from 01.10.1974 to 30.09.1994.
7. Bird and Co., however, had never undertaken winning and mining activities. It is an accepted case that the beneficiary of the said lease was OMDC, a subsidiary of Bird and Co.
8. Bird and Co. was nationalised by an Act of Parliament called the Bird and Company Limited (Acquisition and Transfer of Undertaking and Other Properties) Act, 1980.
9. As per Section 3<sup>7</sup> of the 1980 Act, the undertakings of Bird and Co. and the right, title and interest relating to the undertakings stood transferred and vested with the Central Government, that is, the Union of India.
10. Under Section 7<sup>8</sup> of the 1980 Act, the Central Government, on vesting of the said undertakings, had the right to vest the undertakings from the date

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<sup>6</sup> For short, 'Bird & Co.'.

<sup>7</sup> "3. On the appointed day, the undertakings of the company and the right, title and interest of the Company in relating to its undertakings shall, by virtue of this Act, stand transferred to, and vest in, the Central Government."

<sup>8</sup> "7. (1) Notwithstanding anything contained in section 3, the Central Government may, if it is satisfied that a Government company is willing to comply with such terms and conditions as that Government may think fit to impose, direct, by notification, that the undertakings of the Company and the right, title and interest of the Company in relation to its undertakings which have vested in the Central Government under section 3, shall, instead of continuing to vest in the Central Government, vest in the Government company either on the date of publication of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification.

(2) Where the right, title and interest of the Company in relation to its undertakings, vest under sub-

specified in favour of a government company willing to comply with such terms and conditions that the Central Government would deem fit to impose.

11. *Vide* a gazette notification dated 25.10.1980, the Government of India, in the exercise of power under Section 7 of the 1980 Act, transferred the undertaking of Bird and Co., along with right, title and interest, on or from the said date, to Bharat Process & Mechanical Engineers Limited.<sup>9</sup>
12. OMDC, as a subsidiary of Bird and Co., had continued with the winning and mining activities. On 26.08.1983, BPMEL executed a power of attorney in favour of OMDC to do the mining and to comply with the applicable rules.
13. BPMEL subsequently became a subsidiary company of another government company Bharat Bhari Udyog Nigam Limited, which has since been renamed Braithwaite Burn and Jessop Construction Company Limited.
14. BPMEL became a sick company during the course of its business and was referred to the Board of Industrial and Financial Reconstruction<sup>10</sup> under the Sick Industrial Companies (Special Provisions) Act, 1985. *Vide* order dated 27.07.2004, BPMEL was directed to be wound up since the attempts to revive it were unsuccessful. The High Court at Calcutta appointed an Official Liquidator *vide* order dated 27.02.2004. section (1), in a Government company that Government company shall, on and from the date of such vesting, be deemed to have become the owner in relation to such undertakings, and all the rights and liabilities of the Central Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of that Government company.”
15. UCO Bank had loaned and given financial assistance to BPMEL. Due to defaults and non-payments, UCO Bank filed a suit for recovery in 1991 which was transferred to the Debts Recovery Tribunal.<sup>11</sup> The DRT, *vide* order dated 04.11.2003 ordered a recovery of a sum of Rs 1,92,12,957/- against BPMEL, and Rs. 2,16,13,312.35p. against both BPMEL and the Union of India. UCO Bank was entitled to realise interest at the rate of 19.5% on the certified amount from 08.05.1991 till realisation.

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<sup>9</sup> For short, 'BPMEL.'

<sup>10</sup> For short, 'BIFR.'

<sup>11</sup> For short, 'DRT.'

16. On 16.08.2006, the Union of India/ Central Government paid Rs 2,50,00,000/- to UCO bank against the total claim of UCO bank of Rs 25,00,00,00/-. The letter had advised the bank to recover the balance amount through the liquidation of BPMEL.
17. On 17.11.2009, UCO bank entered into an assignment agreement with TGP for a consideration of Rs. 55,00,000/-. This agreement is neither stamped nor registered. Issues and questions have been raised regarding the validity of the said assignment but we shall not delve into it for the purposes of the present case.
18. *Vide an ex parte* order dated 15.06.2010, the DRT allowed the impleadment of TGP in the place of UCO Bank, in response to UCO Bank's application.
19. Despite the order passed by the BIFR for winding up and liquidation of BPMEL in the year 1996, the liquidation proceedings have remained pending.  
  
The final order for winding up BPMEL has not been passed.
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*Vide* communication dated 18.08.2011, the Official Liquidator informed TGP that their claim against BPMEL had been allowed at the sum of Rs.48,18,87,859/- as ordinary/preferential pay being outstanding on winding up, and the balance amount of Rs.1,27,96,66,859/- as an unsecured preferential creditor in terms of Rules 154, 156 and 179 of the Company (Cal) Rules, 1959.
21. The Official Liquidator in September 2011 paid Rs.2,99,12,461/- to the TGP against the certified debt of Rs.1,92,12,957.92p and against the certified debt of Rs 4,08,26,270/-, both TGP and UCO Bank have recovered an amount of Rs 5,49,00,000 /-

22. Having dealt with the history of the case briefly, we now move on to the question central to the present appeal preferred against the impugned judgment dated 03.03.2020 passed by the High Court at Calcutta.
23. The issue that arises for consideration is the renewal of the three mining leases that were granted to Bird and Co., as noted above. The lease of Kolha-Roida came to an end on 14.08.1996, while that of Thakurani and Dalki ended on 30.09.2004 and 30.09.1994 respectively.
24. TGP contends that BPMEL had applied for renewal of Kolha-Roida lease on 14.07.1995 for 20 years. *Vide* order dated 16.11.2006, the application was rejected by the State of Odisha. BPMEL, which had already been directed to be wound up by the BIFR on 22.07.1996, did not file a revision. OMDC filed a revision application which was allowed by an order of remand passed by the revisional authority dated 02.02.2009. In effect, the order of rejection dated 16.11.2006 was set aside and the status quo was restored. Resultantly, the application filed by BPMEL was to be reconsidered. The order dated 02.02.2009 was challenged by the State of Odisha in Writ Petition No. 1852 of 2010, which was allowed by the High Court of Orissa at Cuttack, *vide* order dated 09.03.2023. TGP, as noted above, has filed an appeal challenging this order as well as the order dismissing the review petition.
25. As far as the lease of Thakurani is concerned, TGP claims that the renewal application was filed on 27.09.2003 and is pending. It is unclear who had filed the said application. Though TGP claims that the application was filed by BPMEL, it appears to be implausible for the reason that BPMEL was directed to be wound up by BIFR *vide* order dated 22.07.1996. The Official Liquidator was appointed by the High Court at Calcutta on 27.02.2004.
26. The Dalki lease came to an end by effluxion of time on 30.09.1994. TGP submits that the application for renewal of Dalki was filed by BPMEL on 13.09.1993. However, the application was rejected by the Government of Odisha on 24.08.2006. OMDC filed a revision application before the revisional authority. *Vide* order dated 14.05.2010, the revisional authority set aside the order passed by the State Government.
27. In the context of the renewal of the lease, the key issue to consider is whether the High Court at Calcutta was justified in directing the formation of a High-



Powered Committee comprising no more than three members, representing the Union of India, State of Odisha, and OMDC. This committee was tasked with making a reasoned decision on the renewal of the three leases within three months, after hearing TGP. The reason provided by the Company Judge, upheld by the Division Bench of the High Court at Calcutta, is rooted in the potential repercussions of non-renewal. Failure to renew the three leases in favour of OMDC, linked to the company under liquidation (BPMEL), could lead to adverse consequences. This includes the nonpayment of amounts owed to creditors, including TGP and the workmen. The Company Judge's order observes that the renewal of the lease in favour of the Official Liquidator, facilitated by OMDC or TGP, could lead to optimal mine utilisation and subsequent income, which could be utilised wholly or partially for the settlement of the company's outstanding debts. Additionally, the order emphasises that the Central Government cannot evade accountability for the claims of BPMEL's creditor.

28. The Union of India/ Central Government has taken a categorical stand that it does not want to renew the leases. The State of Odisha has the same stance. However, it is essential that we address the submissions made on behalf of TGP.
29. The arguments raised by TGP can be summarised as:
  - BPMEL, being a government company, is entitled to an automatic extension of leases under Rule 72<sup>12</sup> of the Mineral (Other than Atomic) <sup>12</sup> “(1) All mining leases for minerals granted to a Government company or corporation before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 (IO of 2015), namely, the 12<sup>th</sup> January, 2015, shall be deemed to have been granted for a period of fifty years.
  - (2) The State Government, upon an application made to it in this behalf by the Government company or corporation at least three months prior to the expiry of the mining lease, shall, extend the period of the mining lease for further periods of twenty years at a time: Provided that the State government may condone the delay in making of such application.
  - (3) Subject to sub-rule (1), all applications made by a Government company or corporation for renewal of mining leases and which were pending as on the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 (10 of 2015) shall be deemed to be



applications for extension of the period of the mining lease and shall be disposed of in accordance with the provisions of sub-rule (2).

- (4) If an application for extension of a mining lease made within the time referred to in sub-rule (2), including any application for extension of mining lease submitted before the commencement of the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession (Fourth Amendment) and Hydrocarbon Energy) Concessional Rules, 2016<sup>12</sup> as amended by modification dated 02.11.2021, on satisfaction of four conditions. First, the beneficiary must be a government company. Second, the renewal of mining lease (RML) application should have been made at least three months before expiry. Third, the renewal applications were pending and were not rejected as of 12.01.2015, the commencement date of the Mines and Minerals (Development and Regulation) Amendment, 2015 Act. Fourth, the leases did not suffer a lapse. It is submitted that these four conditions are satisfied.
- TGP relies on Section 4A(4)<sup>13</sup> of the Mines and Minerals (Development and Regulation), Act 1957, as there is no express order by the State Government declaring that the subject leases have lapsed. For the same, reliance is placed on the judgment of this Court in **Common Cause v. Union of India**<sup>14</sup>. Thus, the submission is that, though the leases have been non-operational for nearly three decades, they have not lapsed. Rules, 2021, is not disposed of by the State Government before the date of expiry of the mining lease which may take place before or after the commencement of the said Rules, the period of that lease shall be deemed to have been extended by a further period till the State Government grants extension of mining lease and the Government company or corporation may continue mining operations, production and dispatch from such mining lease.”

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<sup>12</sup> For short, ‘2016 Rules’.

<sup>13</sup> “4A(4), Where the holder of a mining lease fails to undertake production and dispatch for a period of two years after the date of execution of the dispatch, has continued the same for a period of two years, the lease shall lapse on the expiry of the period of two years from the date of execution of the lease or, as the case may be, discontinuance of the production and dispatch.

Provided that the State Government may, on an application made by the holder of such lease before it lapses and on being satisfied that it shall not be possible for the holder of the lease to undertake production and dispatch or to continue such production and dispatch for reasons beyond his control, make an order, within a period of three months from the date of receipt of such application, to extend the period of two years by a further period not exceeding one year and such extension shall not be granted for more than once during the entire period of lease:

Provided further that such lease shall lapse on failure to undertake production and dispatch or having commenced the production and dispatch fails to continue the same before the end of such extended period.”

<sup>14</sup> (2016) 11 SCC 455.



- Rule 23 of the 2016 Rules permits the transfer of a mining lease or composite licence. The conditions of the said lease are satisfied as OMDC and BPMEL had filed affidavits required as per the Mineral Concession Rules, 1960 from BPMEL to OMDC.
  - Relying on Section 446(2)(d) of the Companies Act, 1956, which is applicable to winding up proceedings not transferred under the Companies Act, 2013, it is submitted that the court can entertain and dispose of any question whether of law or fact that relates to or arises in the course of winding up of the company.
  - In terms of Section 457(1)(b) and 457(2)(5)(2) of the Companies Act, 1956, the liquidator on sanction by the Court can carry on the business of the company so far as may be necessary for the beneficial winding up of the company. The liquidator has the power to appoint an agent to do business if the liquidator is unable to do business himself. Reliance is placed upon decisions of this Court in **Ravindra Ishwardas Sethna v. Official Liquidator**<sup>15</sup>, **Assistant Commissioner, Ernakulam v. Hindustan Urban Infrastructure**<sup>16</sup> and on a few other cases.
  - On the winding up of the company, it is the creditors whose interest must weigh paramount. The objections raised by the Union of India/ Central Government who is a shareholder, and does not want to renew the leases, should be rejected.
30. We are not inclined to examine the aforesaid contentions in great depth and detail for several reasons, including the apparent incongruity in the submissions. On the one hand, it is pleaded that the leases should be renewed in favour of BPMEL. Contradictorily, reliance is also placed on Rule 23(1)<sup>17</sup> and Rule 23(3)<sup>18</sup> of the 2016 Rules for the transfer of composite licence in favour of OMDC.

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<sup>15</sup> (1983) 4 SCC 269.

<sup>16</sup> (2015) 3 SCC 745.

<sup>17</sup> “23. Transfer of Mining Lease or composite licence

(1) Where a prospecting licence-cum-mining lease or a mining lease has been granted through auction, the holder of such concession (the transferor) may transfer such concession in the manner specified in this rule.

<sup>18</sup> (3) The transferor and the transferee shall, prior to the transfer, jointly submit an application to the State Government in the format specified in Schedule IX, namely the “transfer application”, which shall also contain details of the consideration payable by the transferee for the transfer, including the consideration in respect of the prospecting operations already undertaken and the reports and data generated during the operations.” <sup>20</sup> “201. Termination of agency.—

An agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.”

31. As noted above, OMDC has been operating the mining leases throughout. The undertakings with respect to the mining leases were vested with BPMEL, which had executed a power of attorney in favour of OMDC to continue the mining activities. BPMEL itself never undertook any winning or mining activities from the three mines. On liquidation of the holding company, BPMEL, the power of attorney stood terminated, per Section 201<sup>20</sup> of the Indian Contract Act, 1872. Moreover, OMDC, a subsidiary of BPMEL, is a separate juristic entity. The plea that the juristic entity should be ignored has not been raised or argued.
32. It is also an accepted and admitted position that pursuant to several decisions of this Court, penalties of approximately Rs.800,00,00,000/- (Rs. 800 crores) has been levied on OMDC in respect of the mines. OMDC's straitened circumstances do not permit it to pay the penalty. Unless it can raise the amount from third parties, it would be impossible for OMDC to continue the mining activities. Furthermore, TGP cannot compel OMDC, a separate juristic entity, to undertake the said exercise. BPMEL is not in a position to pay any amount. In these circumstances, the question of renewal of the three leases does not arise.
33. BPMEL was directed to be wound up by the BIFR in 1996 as the rehabilitation scheme was not financially viable. It took nearly eight years before the Official Liquidator was appointed in 2004. Notably, BPMEL has been non-operational for the last thirty years. However, as recorded above, the final winding-up order is still to be passed. The three leases, namely, Kolha-Roida, Thakurani and Dalki, had expired by effluxion of time in 1996, 2004 and 1994 respectively. At this distant point in time, when BPMEL has been non-operational and undergoing winding-up proceedings, we do not see any reason to even remotely consider the exercise of power under Section 457(1)(b) of the Companies Act, 1956 to sanction the Official Liquidator to carry on business of the company so far as necessary for winding up, or for that matter the Official Liquidator to appoint OMDC as agent to conduct business in the place of BPMEL.
34. As recorded above, TGP is an assignee in terms of the assignment agreement dated 17.09.2009 with UCO Bank. They paid a consideration of Rs.55,00,000/-. TGP accepts that they had received payment of more than Rs. 2,99,12,461/-. However, this is not to state that TGP is not entitled to

amounts as certified by the Official Liquidator in his letter of acceptance dated 18.08.2011 admitting their claim of Rs.48,18,87,859/- as ordinary/preferential and Rs. 127,96,66,859/- as an unsecured preferential creditor. Payment to TGP, the assignee, who has acquired rights post the liquidation of BPMEL, will be paid as per law, in accordance with the Companies Act, 1956.

35. We are also conscious that the workers' dues are pending. During the course of the hearing, an appearance was made on behalf of 57 workers and it is stated that they have received payment of Rs.99,00,000/- of the admitted amount of Rs.3,00,00,000/-. The workers are also entitled to interest on the unpaid amount.
36. However, non-payment of the workers' dues in the aforesaid factual background, does not merit an order of the nature as sought by TGP. The workers will be paid in terms of the Companies Act, 1956.
37. Having considered all aspects of the matter, it is evident to us that entertaining any notion of lease renewal would be an exercise in futility, devoid of any practical or tangible benefit. The sheer magnitude of the liabilities involved renders the prospect of renewal implausible. Besides, the proposition advanced doesn't have any discernible plan or vision for the requisite financial, technical, and managerial support. BPMEL went into liquidation in 1996 and has been defunct for nearly three decades. OMDC is also barely operational. As such, it cannot be considered a viable option to undertake mining activities. In light of these facts, it is imperative to bring this dispute to an end. Prolonging it any further, sans a feasible resolution in sight, would be otiose.
38. Thus, we allow the appeals filed by the State of Odisha and set aside the judgment dated 03.03.2020 passed by the High Court at Calcutta upholding the order of the Company Judge. The direction to constitute a High Powered Committee is set aside. The question of renewal of lease, would not be examined by the Company Court. For the same reasons, we dismiss the appeals filed by TGP against the order dated 09.03.2023 of the High Court of Orissa at Cuttack, whereby Writ Petition No. 1852 of 2010 filed by the State of Odisha was allowed setting aside the order passed by the revisional authority dated 02.02.2009. Put simply, the order of the State of Odisha rejecting the request for renewal of Kolha-Roida lease is upheld. We clarify

that applications filed for renewal of Thakurani and Dalki leases will be treated as rejected or dismissed.

39. The proceedings will continue before the Company Court of the High Court at Calcutta in accordance with the law. The workmen and TGP will be entitled to raise all pleas and contentions as are available in terms of the Companies Act, 1956 for payment and enforcement of their dues, as alleged, in accordance with law.
40. In the facts of the case, there will be no order as to costs.

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