

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI**

Contempt Case (AT) No. 03 of 2020

in

Company Appeal (AT) (Insolvency) No. 104 of 2019

IN THE MATTER OF:

PRERNA SINGH,

w/o Sh. Rohit Bansal
R-9/221, Raj Nagar, Ghaziabad,
Uttar Pradesh

...Applicant

Vs.

COMMITTEE OF CREDITORS

M/s Xalta Food and Beverages Pvt. Ltd.
RZ-37A, Naya Bazaar,
Ratiram Park, Najafgarh,
New Delhi - 110043

ALSO AT:

Committee of Creditors

M/s Xalta Food and Beverages Pvt. Ltd.

Through, Sh. Naveen Kumar Jain (Resolution Professional)

C/O N K & Partners Law Offices,

F-1, Ram Chandra Gehlot Marg,

Milap Nagar, Uttam Nagar,

New Delhi 110059

...Respondent/Contemnor No. 1

SH. NAVEEN KUMAR JAIN (RESOLUTION PROFESSIONAL)

M/s Xalta Food and Beverages Pvt. Ltd.

C/O N K & Partners Law Offices,

F-1, Ram Chandra Gehlot Marg,

Milap Nagar, Uttam Nagar,

New Delhi 110059

...Respondent/Contemnor No. 2

KIAN ING & COMPANY,

(Member of Committee of Creditors)

802, West Bay Road,

PO Box 2428, The Grand Pavillion

Commercial Centre, Grand Cayman,

KYI-1105, Cayman Island.

Email: wesley@ascapia.com

...Respondent/Contemnor No. 3

INDIAN BANK,

(Member of Committee of Creditors)

3, Navyug Market, Ghaziabad-201001

Uttar Pradesh.

Email: ghaziabad@indianbank.co.in **...Respondent/Contemnor No. 4**

UNITED BANK OF INDIA,

(Member of Committee of Creditors)

Corporate Finance Branch,

106-109, Ansal Tower, 38,

Nehru Place, New Delhi-110019

Email: bmzcd@unitedbank.co.in

...Respondent/Contemnor No. 5

OASIS BEVERAGES PVT. LTD.,

(Member of Committee of Creditors)

9, Friends Colony (West),

New Delhi-110065

Email: jaywantj@gmail.com

...Respondent/Contemnor No. 6

VIJAYA BANK

(now Bank of Baroda)

(Member of Committee of Creditors)

Corporate Banking Branch-1,

Ground Floor, 17, Vijaya Building,

Barakhamba Road, New Delhi-110001

Email: vb6082@vijayabank.co.in ...Respondent/Contemnor No. 7

TAMILNAD MERCANTILE BANK LTD.,

(Member of Committee of Creditors)

384-390, First Floor, Loke Nath Building,

(Opposite Fatehpuri Post Office,)

Chandni Chowk, New Delhi-110006

Email: delhi@tmbank.in ...Respondent/Contemnor No. 8

KARUR VYSYA BANK LTD.,

(Member of Committee of Creditors)

Corporate Business Unit, MRJ Tower, 2nd Floor,

Faiz Road, Karol Bagh,

New Delhi-110005.

Email: delhicbu@kvbmail.com ...Respondent/Contemnor No. 9

SIEMENS FINANCIAL SERVICE PVT. LTD.,

(Member of Committee of Creditors)

Birla Aurora Tower, Level-21,

Plot No. 1080,

Dr. Annie Besant Road, Worli,

Mumbai-400030.

Email: sidharth.vidhyarathi@siemens.com

...Respondent/Contemnor No. 10

HERO FINCORP LTD.,

(Member of Committee of Creditors)

34. Community Centre,

Basant Lok, Vasant Vihar,

New Delhi-110057

Email: litigation@herofincorp.com ...Respondent/Contemnor No. 11

THE DELHI SAFE DEPOSIT COMPANY LTD.,

(Member of Committee of Creditors)

86, Janpath, New Delhi-110001.

Email: delsafe@dsgroup.co.in

...Respondent/Contemnor No. 12

RELIANCE CAPITAL LTD.

(Now Reliance Commercial Finance Ltd.),

(Member of Committee of Creditors)

Manager-Legal Collections, 260-261,

Dev House, Tribhuvan Complex,

Ishwar Nagar, New Friends Colony,

New Delhi-110065.

Email: bishwaroop.tiwari@relianceada.com

...Respondent/Contemnor No. 13

TATA CAPITAL FINANCIAL SERVICES

(Member of Committee of Creditors)

11th Floor, Peninsula Business Park,

Ganpatrao Kadam Marg, Lower

Parel, Mumbai-400013

Email: shrinivas.kodiyal@tatacapital.com

...Respondent/Contemnor No. 14

JAIN SONS FINLEASE LTD. (INTELLGROW),

(Member of Committee of Creditors)

128, 3rd Floor, Techniplex-II,

IT Park, Off Veer Savarkar Flyover,

Goregaon (West), Mumbai-400062.

Email: chirag.desai@intellegrow.com **...Respondent/Contemnor No. 15**

RAINBOW DIGITAL SERVICES PVT. LTD.

(Member of Committee of Creditors)

E-18, 3rd Floor, South Extension, Part-II,

New Delhi-110049.

Email: pnv@loansaathi.in**...Respondent/Contemnor No. 16****HDFC BANK LTD.,**

(Member of Committee of Creditors).

Retail Asset Collections Legal,

2nd Floor, Express Building,

9-10, Bahadur Shah Zafar Marg,

New Delhi-110002

Email: tarun.bhatt@hdfcbank.com **...Respondent/Contemnor No. 17****For Applicant: Mr. Kshitij Sharda, Advocate.****For Contemnors/****Respondents:****Mr. Namit Suri and Ms. Seema Jangid,
Advocates (R4-11, 13, 14, 16 & 17)****Mr. Akshay Kapoor, Advocate (R-9 & 10)****Mr. Vivek Bhagat, Advocate (R-12)****Mr. Varun, Liquidator Mr. Naveen Kumar
(Liquidator, R2)****Kamalkant Chhabra (for Tamilnadu Mercantile
Bank)****J U D G M E N T****Jarat Kumar Jain: J.**

The Applicant “Mrs. Prerna Singh” has filed the Application seeking initiation of Contempt proceedings against the Members of Committee of Creditor (CoC) and Resolution Professional (RP) of M/s Xalta Food and Beverages Pvt. Ltd. for wilful and deliberate disobedience of the order dated 31.01.2019 passed by this Appellate Tribunal in CA (AT) (Ins) No. 104 of 2019 for recovery of arrears of rent due.

2. Brief facts of this case are that the Corporate Insolvency Resolution Process (CIRP) was initiated on 25.07.2018 against the Corporate Debtor “M/s Xalta Food and Beverages Pvt. Ltd.” The Corporate Debtor was running

*Contempt Case (AT) No. 03 of 2020
in
Company Appeal (AT) (Insolvency) No. 104 of 2019*

a business of production of beverages and allied products, was functioning from two warehouses leased to it by the Applicant. The current rate of these two warehouses is Rs. 35,73,270/- including GST. After initiation of CIRP the Corporate Debtor under the management of CoC and RP, continued to occupy the lease premises but ceased paying rent thereof.

3. Ld. Adjudicating Authority allowed the Applicant's Application vide order dated 21.12.2018 and directed the CoC to pay the rent w.e.f. 01.12.2018 or making suitable arrangements in the alternative. The said order was impugned in CA (AT) (Ins) No. 104 of 2019 before this Appellate Tribunal by the CoC. This Appellate Tribunal vide order dated 31.01.2019 upheld the order of the Adjudicating Authority directed the CoC to pay the rent w.e.f. 01.12.2018 and onwards i.e. up to the date of moratorium. Also directed that the rent of December, 2018 and January, 2019 be paid by 15.02.2019 and 28.02.2019 respectively. Thereafter, the rent of each month should be paid by 15th of next month. The Appeal is disposed of with the aforesaid modification.

4. The Applicant has filed a Contempt Application No. 133 of 2019 against the Respondents before the Adjudicating Authority. However, on 18.02.2020 the Applicant withdrew the Application on the ground that he is pressing relief prayed for in the present application before NCLAT. Thus, vide order dated 18.02.2020, CA No. 133 of 2019 is dismissed as withdrawn by the Adjudicating Authority.

5. This Appellate Tribunal vide its order dated 11.12.2019 passed in CA (AT) (Ins) No. 1428 of 2019 filed by the Applicant seeking modification of order dated 22.10.2019 passed by the Adjudicating Authority has directed that in case any party was not complying with order dated 31.01.2019 passed by this Appellate Tribunal, it would be open for the Applicant herein to move an appropriate application for appropriate relief before this Appellate Tribunal.

6. Pursuant to the said order, the present Application is filed by the Applicant in the month of January, 2020 stating that the Applicant is lessor of two warehouses, where plant machinery and production facilities of the Corporate Debtor are stored. The monthly rent for the leased premises w.e.f October, 2019 inclusive GST is Rs. 35,73,270/-. This Appellate Tribunal vide its order dated 31.01.2019 uphold the direction dated 21.12.2018 given by the Adjudicating Authority directed the CoC to pay rent w.e.f 01.12.2018 till moratorium. However, despite these directions as on date of application only Rs. 1,07,37,260/- has been paid to the Applicant as against the total dues of Rs. 4,49,32,020/- leaving an outstanding of Rs. 3,41,94,733/- in terms of the said directions. The amount paid to the Applicant barely covers the GST paid by her i.e. Rs. 95,02,038/- from the date of commencement of CIRP. Including the period w.e.f. date of commencement of CIRP, the total outstanding as on date is Rs. 4,75,26,547/-. None of the members of the CoC of the Corporate Debtor have made complete up to date payment of rent and continuing to defy the orders passed by this Appellate Tribunal.

7. The Applicant has taken loans to the tune of Rs. 27,30,00,000/- for construction of leased premises, which were secured against the rent receivable. The Applicant has to meet her liability to pay the EMIs amounting to Rs. 34,46,376/- for loans availed by her and also has to remit GST of Rs.5,24,193/- on the rent receivable each month since this liability accrues irrespective of actual payment of rent. The Applicant has been compelled to meet the said liabilities through other sources putting her in a debt trap for no fault of her. As now it is become impossible for the Applicant to continue to meet her liabilities.

8. The Contemnors in terms of order dated 31.01.2019 passed by this Appellate Tribunal was required to pay the entire arrears of rent by 28.02.2019 and thereafter for each subsequent months by 15th of the next month. However, the Contemnors have wilfully and deliberately flouted the aforesaid directions and have failed to comply with the same. With the aforesaid facts, the Applicant prays for the relief to initiate the Contempt proceedings against the members of CoC and RP of the Corporate Debtor for wilful and deliberate disobedience of the order dated 31.01.2019 passed by this Appellate Tribunal.

9. The Respondent No. 2, Liquidator, member of CoC and Respondent No. 12 have filed the reply of the Application.

10. Ld. Counsel for the Applicant submitted that a moratorium exists both at the stage of Insolvency Resolution Process and also upon passing of liquidation order as per Section 33(5) of the Code. Thus, moratorium

continuance till date. The argument of the Respondents that they are not liable to pay rent beyond 31.05.2019 as CIRP period automatically ended on 31.05.2019, is untenable. The Respondents having continued to utilise the leased premises till date on the condition of payment of lease rent cannot now seek to disclaim liability. The matter of resolution of the Corporate Debtor remained pending for consideration and even liquidation proceedings were kept in abeyance by the Adjudicating Authority. The Respondents never challenged these directions and clearly were desirous of resolution of the Corporate Debtor. The Respondent No. 2 also continued to act as Resolution Professional and continued to acknowledge and accept the liability of payment of rent as Insolvency Resolution Costs. The burden of Insolvency Resolution liquidation of the Corporate Debtor cannot be cast upon the Applicant. The Applicant is unable to take possession of the leased premises due to the proceedings under the Code against the Corporate Debtor and the Respondents are also unwilling to handover possession. The Respondents are thus, liable to pay the rent for the same. This is also the intent purpose and spirit of the order dated 31.01.2019. The liability to payment beyond 31.05.2019 was formally acknowledged and accepted by the Respondents. The Applicant is already under extreme financial distress. Non-payment of rent will result in Bankruptcy of the Applicant. Thus, the Respondents have committed wilful and deliberate disobedience of the order dated 31.01.2019.

11. Per Contra, Ld. Counsel representing the Respondent No. 2 (Liquidator erstwhile RP) submitted that the Applicant has wrongly invoked

Contempt Case (AT) No. 03 of 2020
in
Company Appeal (AT) (Insolvency) No. 104 of 2019

the jurisdiction of this Appellate Tribunal under Rule 11 of National Company Law Appellate Tribunal, Rules, 2016. This Appellate Tribunal in the case of Gireesh Kumar Sanghi Vs. Mr. Ravi Sanghi & Ors. CA (AT) (Ins) No. 156 of 2019 held that Section 425 of the Companies Act empowers the Tribunal and Appellate Tribunal to punish for contempt of its own order. Thus, the Application under Section 11 is not maintainable and deserves to be dismissed in limine. It is also submitted that vide order dated 14.06.2019 the Adjudicating Authority directed for initiation of Liquidation of the Corporate Debtor and the Respondent No. 2 is currently acting as its liquidator under Section 34(1) of the IBC. The same order dated 14.06.2019 has been further clarified vide order dated 11.06.2021. Once liquidation is initiated, creditors have to submit their claims in terms of Regulation 16 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. The Respondent No. 2 has issued a public announcement on 14.06.2021 and has also sent an email dated 03.07.2021 to the Applicant. Pursuant to which the liquidator has also received the claim from the Applicant. The payment of any outstanding rental dues which occurred during the CIRP period being an Insolvency Resolution Process costs would be payable in accordance with Section 53 of the IBC. It is submitted that the order dated 31.01.2019 has been passed by this Appellate Tribunal and CoC is directed to pay the rent w.e.f 01.12.2018 and onwards i.e. up to date of moratorium. However, no directions were issued against the Respondent No. 2. The Respondent No. 2 performed all its duties which could have facilitated compliance of orders and no reason for non-payment of rent can

be attributed to the Respondent No. 2. Thus, it is prayed that the Application be dismissed against the Respondent No. 2.

12. Ld. Counsel representing the lender banks (Respondent No. 4 to 11, 13, 14, 16 and 17) submitted that as per the order dated 31.01.2019 lender banks were directed to pay lease rent w.e.f. 01.12.2018 onwards up to date of moratorium. Ld. Adjudicating Authority vide order dated 14.06.2019 initiated the liquidation for the Corporate Debtor. Thus, the moratorium came to end on 31.05.2019. It is also pointed out that IBBI has issued a circular No. IBBI/IP/013/2018 dated 12.06.2018 categorically stated that the costs incurred after completion of CIRP shall not form part of IRP Costs. No Application was filed by the RP for extension of CIRP and the Application bearing CA No. 731 of 2019 was filed by the RP for liquidation of the Corporate Debtor which was allowed by the Adjudicating Authority vide an order dated 14.06.2019 and was only pending for the appointment of liquidator which was confirmed by the Adjudicating Authority on 11.06.2021. The lender banks were only liable to pay lease rental as CIRP costs for six months i.e. from 01.12.2018 to 31.05.2019 @ Rs. 33,81,384/- per month inclusive of GST. Cumulatively, the total liability towards the lease rental as CIRP costs for the period of six months' amounts to Rs. 2,02,88,088/- the said amount for the period of six months was duly paid by the lender banks as CIRP costs in compliance of the aforesaid orders. The lender banks were only liable to pay the lease rental as CIRP costs up to the date of completion of CIRP in terms of Section 5(13) of the IBC r/w Regulation 31 of the Insolvency and Bankruptcy Board of India (Insolvency

Resolution Process for Corporate Persons) Regulations, 2016 further clause 8(c) of the Circular No. IBBI/IP/013/2018 dated 12.06.2018. It is also submitted that so far as the CIRP came to end on 31.05.2019 whereby the CoC ceased to the moratorium to ended on 31.05.2019. The lender banks were not liable to pay any rent as CIRP costs for any period thereafter. Thus, the Application is liable to be dismissed.

13. Ld. Counsel for the Respondent No. 12 representing “M/s Delhi Safe Despite Company Ltd.” submitted that the rent is a direct costs and as such rent is the amount of default like any other Operational Debt. Thus, the Applicant become Operational Creditor. The Hon’ble Supreme Court had observed in the Judgment of Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353 that the lessor is an Operational Creditor, here the Applicant is pursuing the pressure tactics by initiating Contempt proceedings instead of filing claim as Operational Creditor. It is further submitted that the CoC Member should not be burden with additional expenses towards the rent. The CoC members are already struggling to recover the money from the Corporate Debtor. The Applicant should file his claim before the Liquidator. Respondent No. 12 is not liable to pay the rent to the Applicant, as CIRP Regulations 31 to 34 do not provide rent to be included in the Insolvency Resolution Process costs. It is submitted that the Respondent No. 12 has no intention to show any disrespect or dishonour to this Appellate Tribunal. It is further submitted that the Respondent No. 12 is willing to withdraw its claim before the RP as the Respondent No. 12 is not able to bear any CIRP costs/rent costs. The

Contempt Case (AT) No. 03 of 2020
in
Company Appeal (AT) (Insolvency) No. 104 of 2019

Respondent No. 12 has not disobeyed the order and has not committed any Contempt. Hence, the Contempt proceedings is liable to be dismissed.

14. After hearing Ld. Counsels for the parties, we have gone through the record.

15. The Respondent No. 2 Liquidator (erstwhile RP) raised a preliminary objection that the Applicant has wrongly filed the Application under Rule 11 of NCLAT Rules, 2016. Such Application should have been filed under Section 425 of the Companies Act, 2013 as held by this Appellate Tribunal in the case of Gireesh Kr. Sanghi Vs. Mr. Ravi Sanghi and Ors. (CA (AT) (Ins) No. 156 of 2019).

16. We have considered this objection, it is not disputed that this Appellate Tribunal does not have power to punish for contempt of its own order. The objection is only about the invoking of inherent powers under Rule 11 of NCLAT Rules, 2016. Mere mentioning a wrong provision in the Application will not affect the merits of the case and therefore, we find no substance in this preliminary objection.

17. The Respondent No. 12 M/s Delhi Safe Deposit Company Ltd. raised a plea that the rent does not come within the definition of essential supplies. Thus, the rent cannot be part of CIRP costs under Regulation 31 and 32 of CIRP Regulations.

18. In the Contempt Application, it is not required to advert into the issue whether the rent of the premises comes within the purview of CIRP costs or not. No such objection was raised when the order dated 31.01.2019 was

Contempt Case (AT) No. 03 of 2020
in
Company Appeal (AT) (Insolvency) No. 104 of 2019

passed. However, we have considered this issue. CIRP costs is defined in Section 5(13) which is as under:-

“Section 5(13) insolvency resolution process costs means—

- (a) the amount of any interim finance and the costs incurred in raising such finance;
- (b) the fees payable to any person acting as a resolution professional;
- (c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;
- (d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and
- (e) any other costs as may be specified by the Board;

19. Section 14(1) (d) provides that during the moratorium period the lessor or an owner of the property cannot recover the possession of the property from the Corporate Debtor. Regulation 31 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 is as under:-

31. Insolvency resolution process costs.
“Insolvency resolution process costs” under Section 5(13)(e) shall mean-

- (a) amounts due to suppliers of essential goods and services under Regulation 32;
- (b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);
- (c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33;
- (d) expenses incurred on or by the resolution professional fixed under Regulation 34; and
- (e) other costs directly relating to the corporate insolvency resolution process and approved by the committee.

20 As per Regulation 31 Insolvency Resolution Process costs under Section 5(13) (e) mean defined in clause (a) to (e). for the present case, Regulation 31 (b) is relevant which provides that amounts due to a person

whose rights are prejudicially affected on account of the moratorium imposed under Section 14(1) (d). Due to moratorium period the lessor could not recover the possession of the property from the Corporate Debtor. Thus, the right of lessor to recover rent are affected on account of moratorium. Therefore, the lessor is entitled to recover the rent and which shall include in CIRP costs.

21. Thus, we find no substance in the argument that the rent cannot be included in the CIRP costs.

22. Now, the issue for consideration before us is whether the Respondents have wilfully disobeyed the order passed by this Appellate Tribunal on 31.01.2019?

23. The Adjudicating Authority vide order dated 21.12.2018 directed the CoC to pay the rent w.e.f. 01.12.2018 to the Applicant against that order CoC has filed CA (AT) (Ins) No. 104 of 2019 before this Appellate Tribunal. The Appeal is disposed of vide order dated 31.01.2019 with the direction that the CoC to pay the rent w.e.f. 01.12.2018 onwards i.e. up to date of moratorium.

24. We have considered whether the CoC has paid the rent to the Applicant since 01.12.2018 up to the moratorium period.

25. According to the Applicant the moratorium period shall come to end when the liquidation is completed. Whereas, as per the Respondents the moratorium period shall come to end when the Adjudicating Authority approves the resolution plan or passed an order for liquidation of the

Corporate Debtor. The Adjudicating Authority vide order dated 14.06.2019 order for liquidation. The Respondents have already paid rent since 01.12.2018 upto the moratorium period.

26. Now, we have considered the period of moratorium. Section 5(12) defines the Insolvency commencement date means the date of admission of an application for initiating CIRP by the Adjudicating Authority under Section 7, 9 or 10 as the case may be. Section 13 provides that the Adjudicating Authority, after admission of the application under Section 7, 9 or 10 shall declare a moratorium for the purposes referred to in Section 14.

Section 14 of the IBC reads as under:-

“Section 14: Moratorium.

14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: —

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Explanation.—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or

Contempt Case (AT) No. 03 of 2020

in

Company Appeal (AT) (Insolvency) No. 104 of 2019

terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to —

(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;]

(b) a surety in a contract of guarantee to a corporate debtor.]

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

27. As per Section 5(12) CIRP commenced when the Application under Section 7, 9 or 10 is admitted. Section 13(1) provides that after admission of such Application a moratorium for the purposes referred to in Section 14 shall be declared and Section 14(4) provides that order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process, provided that where at any time during the

corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

28. Ld. Counsel for the Applicant has advanced the argument that as per the Section 33(5) of the Code, the moratorium exists both at the stage of Insolvency Resolution Process and also upon passing of liquidation order as per Section 33 (5) of the Code. Thus, moratorium continues till date.

29. Section 14(4) is quite clear and there is no ambiguity that from the date of initiation of the liquidation order under Section 33, the moratorium shall cease to have effect, so far as the Section 33(5) is concerned, it provides that subject to Section 52 when a liquidation order has been passed no suit or other legal proceedings shall be instituted by or against the Corporate Debtor, provided that suit or other legal proceedings may be instituted by the Liquidator on behalf of the Corporate Debtor with the prior approval of the Adjudicating Authority. It means after initiation of liquidation order no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. However, during the liquidation period the lessor can file its claim before the Liquidator. The Applicant has already filed his claim before the Liquidator. Therefore, we find no substance in the argument of Ld. Counsel for the Applicant.

30. In the present case, the CIRP commenced on 25.07.2019 when the Application under Section 9 was admitted and moratorium under Section 13(1) has declared. Subsequently, the RP has filed the Application for liquidation. The Ld. Adjudicating Authority vide order dated 14.06.2019 allowed the Application and liquidation of the Corporate Debtor was initiated and the assets of the Corporate Debtor were put for liquidation. Thus, as per the order dated 31.01.2019 the CoC is required to pay rent since 01.12.2018 till 13.06.2019 i.e. just before initiation of liquidation of the Corporate Debtor.

31. It is true that the Adjudicating Authority vide order dated 14.06.2019 allowed the Application of RP and passed an order of liquidation of Corporate Debtor as no resolution plan has been received and 270 days are over. The Liquidation order is passed on 14.06.2019 this fact is again reiterated by the Adjudicating Authority in its order dated 11.06.2021.

32. Pursuant to the order of liquidation dated 14.06.2019 the RP who subsequently appointed as liquidator has issued a public announcement on 14.06.2021 and has also sent an email dated 03.07.2021 to the Applicant. Pursuant to which he has also received the claim from the Applicant.

33. Now we have considered whether the CoC has paid the rent since 01.12.2018 to 13.06.2020 i.e. up to moratorium period?

34. We have directed the Respondent No. 2 (Liquidator erstwhile RP) to file the affidavit in regard to what rent of the Applicant has been paid during the CIRP specifying the period. In compliance the Liquidator (Respondent No. 2)

has filed the additional affidavit Diary No. 45851 dated 21.08.2021. In this affidavit it is stated that since 26.06.2019 till 11.10.2019 the rent paid by the RP is total Rs. 52,35,309/- subsequently as per the direction of the Adjudicating Authority the members of CoC have directly made payment to the Applicant since 11.12.2019. In the affidavit, in a chart, the name of Financial Creditor date and amount is shown the total amount paid to the Applicant comes to Rs. 2,49,76,152/-. Thus, the total amount of Rs. 3,02,11,464/- has been paid to the Applicant. The Applicant has not filed any affidavit disputing the facts and the amount stated in additional affidavit of the liquidator (Respondent No. 2). Thus, it is proved that the Applicant has received total amount of Rs. 3,02,11,464/- after passing of the order dated 31.01.2019.

35. As per the Applicant the current rate of two warehouses is Rs. 35,73,270/- including GST. As per the order of this Appellate Tribunal the Applicant is entitled rent 01.12.2018 up to moratorium period i.e. 13.06.2019 just before initiation of liquidation. It comes to Rs. 2,29,88,037 for 6 months 13 days. The Applicant has already received the amount of Rs. 3,02,11,464/- as shown in the Affidavit of the Respondent No. 2. Thus, the Applicant has already received the rent as per the order of this Appellate Tribunal.

36. It is not out of context to refer that during the course of argument. It is informed that the suspended board of directors of the Corporate Debtor have assailed the order dated 11.06.2021 passed by the Adjudicating Authority in CA (AT) (Ins) No. 438 of 2021 before this Appellate Tribunal and

Contempt Case (AT) No. 03 of 2020
in
Company Appeal (AT) (Insolvency) No. 104 of 2019

in this Appeal the Judgment is reserved. In the present matter, we have reserved the Judgment on 25.11.2021. Subsequently, the Coordinate Bench of this Appellate Tribunal has pronounced the Judgment in CA (AT) (Ins) No. 438 of 2021 on 29.11.2021. The operative portion of the Judgment i.e. Para Nos. 42 to 45 are as under:-

42. In fact, on 19.05.2021, IA No.2034/2021 was heard by the 'Adjudicating Authority' and that the orders were reserved. The Respondent in May, 2021 filed IA No.2946/2021 praying inter alia to review the orders dated 14.06.2019 and 04.07.2019 passed by the 'Adjudicating Authority' and on 09.06.2021 the Respondent had prayed for the withdrawal of IA No.2946/2021, since the 'Adjudicating Authority' had observed that it has 'no power to review' its own order.

43 In the instant case, on going through the impugned order dated 11.06.2021 in IA No.2034/2021 in (IB) 702(ND)/2018 this Tribunal finds that the 'Adjudicating Authority' at para 12 had observed that it has no power to review its own order but traversed beyond its purview and reviewed the order dated 04.07.2019 in CA No.827/2019 by concluding that once a liquidation order was passed there is no scope to recall, which is contrary to the order passed by it on 04.07.2019 where it observed that the pending application will be disposed and then liquidation be directed.

44. Moreover, it cannot be forgotten that CA No.731/2019 filed by the Respondent (liquidation application) is pending before the 'Adjudicating Authority' as seen from the order dated 04.07.2019 wherein notice was issued to the Appellant and till date the said application is pending for determination. Apart from that, it is to be borne in mind that the Respondent, before the 'Adjudicating Authority' had not made any request to review the order dated 04.07.2019. When that be the factual scenario, the impugned order passed by the 'Adjudicating Authority' in IA No.2034/2021 in (IB) 702(ND)/2018 by the 'Adjudicating Authority' dated 11.06.2021 bristles with legal infirmity and the same is held by this Tribunal as one without jurisdiction in the eye of Law. Therefore, this 'Tribunal' in furtherance of 'Substantial Cause of Justice' interferes with the aforesaid 'impugned order' and sets aside the same. Consequently the Appeal succeeds.

CONCLUSION

45. In fine, the Comp App (AT)(Ins) 438/2021 is allowed. No costs. The 'Adjudicating Authority' (National Company Law Tribunal, New Delhi II) is directed to restore the IA No.2034/2021 in

CP(IB)No.702(ND)/2018 to its file and to pass fresh orders on merits, in accordance with law, of course, after providing adequate opportunity of hearing to both sides, by permitting them to raise all factual and legal pleas as expeditiously as possible.

37. In the aforesaid Judgment it is directed that the Adjudicating Authority to again consider the application for liquidation. However, this Judgment shall not affect the merits of this contempt case because on the date of filing of this Application the order of liquidation dated 14.06.2019 and 11.06.2021 are in existence, therefore, in the light of these orders, we have examined this contempt case and we hold that in the light of these orders the moratorium is ceased on 13.06.2019 and the Respondents have paid the rent as per the order of this Appellate Tribunal till order of moratorium.

38. We are thus satisfied that no case has been made out to punish the Respondents for Contempt. Thus, the Contempt Application is disposed of. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Justice Jarat Kumar Jain]
Member (Judicial)**

**[Dr. Alok Srivastava]
Member (Technical)**

**New Delhi
17th December, 2021**

SC

*Contempt Case (AT) No. 03 of 2020
in
Company Appeal (AT) (Insolvency) No. 104 of 2019*