

27.

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

MA 492/2018, MA 987/2018 & MA 945/2018 in
CP (IB)-298/(MB)/2018

CORAM : Present : SHRI M.K. SHRAWAT
MEMBER (J)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY
LAW TRIBUNAL ON 16.10.2018.

NAME OF THE PARTIES : (i) Chirag Associates Pvt. Ltd. : Applicant / Operational Creditor
(**MA 492 of 2018**);
(ii) Kanhaiya Beverages Pvt. Ltd., Applicant/Operational Creditor
(**MA 945 of 2018**);
(iii) Industrial Associates, Applicant (**MA 987 of 2018**)
Vs.
Aircel Limited : Corporate Debtor

SECTION OF THE COMPANIES ACT: 10 of I&B Code, 2016.

INTERIM ORDER

A) MA 492/2018 : Chirag Associates Pvt. Ltd.

1. This Miscellaneous Application is submitted on 22.05.2018 by Chirag Associates Pvt. Ltd. stated to be an owner of property No.235 (Old No.35), Okhla Industrial Estate, Phase-III, New Delhi part of which rented out to Aircel Limited, Corporate Debtor. Rent was paid for the period 19.05.2017 till 31.12.2017. Since vide an Order u/s.10 of the Insolvency Code dated 12.03.2018 (CP No.298/MB/2018) in the case of Aircel Limited "Moratorium" was pronounced by admitting the Petition and IRP was appointed.

2. The Applicant had provided Electricity connection to the Corporate Debtor, however, vide a Letter dated 14.03.2018 informed the IRP that the Debtor Company had not paid the Electricity Bill of ₹20,79,620/- for the period from 01.02.2018 to 09.03.2018. A show-cause Notice has also been issued by BSES on 30.03.2018 for disconnection. It had come to the knowledge of the Applicant that the IRP had moved an Application to BSES requesting not to disconnect the Electricity connection on account of the fact of "Admission" of a Petition under Insolvency Code due to which "Moratorium" commenced prohibiting such action of disconnection so that the supply of goods and services shall continue.

3. In short, it is stated that the Corporate Debtor is neither paying the rent to the Applicant nor paying to the Electricity Department. Non-payment is an arbitrary act of IRP. The Applicant had also lodged a claim of unpaid Rent but without any result. Side-by-side the Applicant again received a Notice of Demand dated 12.04.2018 from BSES of ₹33,75,870/-. Referring a decision of Hon'ble NCLAT in the case of *Uttarakhand Power Corporation Limited (Appellant), Appeal No. 298 of 2017* it is pleaded that prior to the date of Insolvency the Electricity dues should be paid by the then Management of the Corporate Debtor. Prayers as per the impugned Application are as under :-

- "B. Direct the IRP / RP / Corporate Debtor to make the payment of Electricity Charges to BSES and rent from 1.4.2018 to the applicant herein as supply of services during moratorium period;*
C. Direct IRP / RP to consider the above cost as 'insolvency resolution cost' under IBC, 2016;"

B) MA 987/2018 : Industrial Associates.

This Application is submitted on 03.09.2018 by M/s. Industrial Associates as Owner of Ground, First and Second Floors of Building standing at C-32A, Thiru-Vi-Ka Industrial Estate, Guindy, Chennai: 600032. The reliefs sought are as under:-

- "A. This Hon'ble Tribunal may be pleased to direct the Resolution Professional of Aircel Limited to vacate the premises being the ground floor and second floor of the Premises and hand over peaceful possession of the same to the Applicant within 7 days of this Order.*
- B. This Hon'ble Tribunal may be pleased to direct the Resolution Professional of Aircel Limited to make the necessary arrangements to shift the equipment lying in the first floor of the premises and hand-over peaceful and vacant possession to the Applicant within 15 days of this Order.*
- C. This Hon'ble Tribunal may be pleased to direct the Resolution Professional of Aircel Limited to make payment of a sum of ₹ 22,48,451/- being the pending amounts due and payable to the Applicant upto 31st July 2018 (after deduction of security deposit) and any such further sum due and payable after that date."*

C) MA 945/2018 : Kanhaiya Beverages Pvt. Ltd.

This Application is submitted on 28.08.2018 by M/s. Kanhaiya Beverages Pvt. Ltd. as Lessor of land and building situated at property Plot No. 219, Village Tulsipur (Sheopurwa), Pargana DehatAmanat, Hehsil& District Varanasi U.P. The reliefs sought are as under:-

"a. Direct the Corporate Debtor to pay the arrears of rent starting from the date of moratorium; and

*b. Direct the Corporate Debtor to pay the rent of up coming months on month to month basis or
evict the premises;"*

DIRECTIONS :-

4. Considering the Pleadings of Ld. Representatives of both the sides this Bench is of the view that the Aircel had occupied number of such type of premises all over the country, however, due to business constraints not using all those premises. All such rented premises are not in use for the purpose of the business of Debtor Company i.e. Aircel Limited. It has also been informed during the course of hearing that the Debtor Company had not paid the rent to the owners of the such leased properties. Further, as discussed above, the Debtor Company had also not paid Electricity Bill to the Electricity Department. It is a grave situation that on one hand the Debtor Company is highly under Debt but on the other hand piling up the liability of Lease Rent payment for the properties not in business use. Keeping business interest in mind and also to preserve the finances of the Debtor Company, after having discussion with Ld. Resolution Professional, this Bench is of the view that it is suitable under the circumstances to direct as follows:-

- a) Premises in question shall be vacated by Aircel Limited on or before 15.12.2018 by handing over vacant possession to the Owner of the premises. The Resolution Professional shall make all necessary arrangements to shift the equipments of the Debtor Company lying in the impugned premises. Legal formalities to be completed by Ld. Resolution Professional as required for vacating a Leased premises.
- b) The outstanding Electricity Bill shall be paid by the Debtor Company/ Aircel through Ld. Resolution Professional up to the date of vacating the premises.
- c) Ld. Resolution Professional is expected to arrange the Funds so that the outstanding rent can be paid to the Owner of the leased premises up to the date of vacating the premises. In case of non-availability of Funds a provision is to be made so that in phased manner the outstanding rent shall be paid to

the Owner of the Premises. For the purpose of fulfilment of this direction a separate Deed of Understanding can be executed.

- d) The payment to Electricity Department and the payment of Rent shall be considered as "Insolvency Resolution Process Cost".

5. The Directions issued *supra* are almost in line with a decision taken through e-voting in 9th meeting of Committee of Creditors held on 11.10.2018, minutes placed on record. All these three Miscellaneous Applications are disposed of accordingly.

Sd/-
(M.K. SHRAWAT)
Member (Judicial)

Date : 16.10.2018
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