

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

**CORAM: SHRI. RAJEEV BHARDWAJ – HON'BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 04.10.2023, At 11:00 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/456/2022 in CP (IB) No.524/7/HDB/2018
NAME OF THE COMPANY	Minerva Executive Apartment Pvt Ltd
NAME OF THE PETITIONER(S)	Union Bank of India
NAME OF THE RESPONDENT(S)	Minerva Executive Apartment Pvt Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/456/2022

Present: Ld. Counsel for the Petitioner.
Ld. Counsel for the Respondent.

Orders pronounced, recorded vide separate sheets. In the result, this application is declined, and the application is dismissed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

IA No. 456 of 2022 in
CP (IB) No.524/7/HDB/2018

In the matter of
M/s. MINERVA EXECUTIVE APARTMENTS PRIVATE LIMITED
(CORPORATE DEBTOR)

Between :

M/s. Virani Capital Services Private Limited,
Ghanshyam Shewakramani,
Clark House, 2nd Floor,
8th Nathalal Parikh Margh, Colaba,
Mumbai – 400 001.

....Applicant/
Successful Bidder

And

1. M/s. Neelakanta Enterprises Private Limited,
(formerly known as Neelkanta Cold Storage Pvt Ltd.),
Madhugri Road, Madakasira Mandal,
Anantapur District – 515 301.
2. Mr. Kasa Venkata Ramnaiah
Liquidator M/s. Minerva Executive Apartments Pvt. Ltd,
Plot No.258, Road No.18, Jubilee Hills,
Hyderabad – 500 033.

....Respondents

Date of order: 04.10.2023

CORAM:

Hon'ble Sri Rajeev Bhardwaj, Member (Judicial)
Hon'ble Sri Sanjay Puri, Member (Technical)

Counsels present:

For the Applicant : Ms. Mummaneni Vazra Laxmi, Advocate
For the Respondent : Mr. B. Nitish, Advocate
Heard on : 15.09.2023

PER: SANJAY PURI, MEMBER (TECHNICAL)

ORDER

1. This application is filed by the Applicant as a Successful Bidder of the Corporate Debtor (**CD**) M/s. Minerva Executive Apartments Private Limited, seeking for an order or direction that the Applicant is liable to pay the Lease rentals to the Respondent No.1 from the day of reconstitution of the Board and after changing the status of the CD from `Liquidation' to `Active' @ Rs.15.0 lakhs per month and thereafter as per sub-clause 2.1(c) of Clause 2 of the Lease Deed dated 16.04.2008.

Facts of the Case:

2. This Tribunal had passed an order dated 26.11.2019 to liquidate the CD and appointed Respondent No.2 as the Liquidator. Accordingly, the Liquidator issued Sale Notice dated 24.01.2021 for sale of CD as a whole as a going concern with assets including leasehold rights of land and construction on leased land admeasuring 4088 Sq. Meters at Plot No.13, forming part of Sy. No.75 of Sadarmagala (Village) KR Puram, White Fields, Bangalore together with other premises, shed, building, civil works, plant & machinery, equipments, electrical utilities, infrastructure created and intangible assets like brand, trademark, licenses, permissions etc.
3. It is further submitted that against the Sale Notice dated 24.01.2021, the Applicant deposited an Earnest Money Deposit (EMD) of Rs.50,00,000/- and other required documents to the Liquidator on the prescribed date. Accordingly, participated in E-Auction conducted 03.02.2021 and submitted its bid for Rs.9,14,00,000/- and the Liquidator herein declared the Applicant as Successful Bidder on 03.02.2021.

4. It is submitted that the Applicant Successful Bidder had paid the entire sale consideration along with an interest amount of Rs.8,95,035/- for the delay period of 41 days in payment on 20.04.2021 and the Liquidator issued Sale Certificate on 11.05.2021.¹
5. It is submitted that since the sale of the CD was, as a whole as a going concern in liquidation process and the Liquidation Regulations does not contemplate any rights/reliefs on the purchasers in the sale as a going concern, but to run/revive the CD certain consequential reliefs are necessary, the Applicant filed an IA No.107/2021, sought directions for the reconstitution of the Board, change of status of the CD in the Master Data from `Liquidator` to `Active` extinguishment of liabilities etc., and the same was reserved for orders. Eventually, orders were passed on 18.04.2023 in IA No. 107/2021 signifying closure of Liquidation Process.
6. It is submitted that the Applicant had purchased the CD as a going concern and paid the entire sale consideration in the month of April, 2021, till date the Board of CD is not reconstituted and the Applicant is not able to operate any revival works like getting necessary approvals to complete the construction activity, applying for renewal of licenses, tax registrations, opening of bank accounts etc., and the Liquidation Process of the CD is not closed as per Regulation 45(3) of IBBI Liquidation Process Regulations, 2016.
7. It is also submitted that the CD had entered into lease agreement with respect to land admeasuring 4088 Sq. Meters at Plot No. 13, forming part of Sy.No. 75, of Sadarmagala (Village) KR Puram, White Fields Bangalore belonging to the Respondent No.1 Neelakanta Enterprises Private Limited vide registered `Deed of Lease` No. 206/2008 dated 16-04-2008² and the period of lease was for 51 years and 6 months effective from 28-01-2007 and expires on 27-07-2058 which included

¹ Page 13 to 16 of the Application.

² Page 17 to 42 of the Application.

construction period of 18 months and the lease rentals for the said period were agreed as below:

- a) Rs.1000 per month from 28-01-2007 to 27-07-2008
 - b) Rs.15,00,000/- per month from 28-07-2008 to 27-07-2011 and thereafter
 - c) Lease rent at 15% on Rs. 15,00,000/- will be increased for every three years over and above the lease rent paid at the end of every 3 year and continue to pay such lease rent till the end of the lease period.
 - d) Rs.1,50,00,000/- will be paid as non-refundable advance lease rent.
8. It is submitted that initially the CD had leased the premises based on the negotiations with various international hospitality groups for setting up serviced apartment/hotel in the scheduled property. For this purpose, it had also entered into MOU with International Hotel Licensing Company of Singapore, FRASERS Hospitality Pte Ltd., for franchise, trademark license and marketing of the hotel for a period of 10 years under "FRASER" Brand. The construction activity however stopped, as the operating agent FRASERS Hospitality Pte Ltd. withdrew from the project. Later, the CD negotiated with the Marriot group and based on the advice of the Marriot, CD undertook certain modifications to the constructed part to run the service apartments, but the modifications were left unfinished and the building remained incomplete and was lying closed from the year 2010.
9. It is further submitted that the Respondent No. 1 issued an undated Legal Notice³ in the month of March 2022, to the Applicant calling upon to pay the lease rent from 12-05-2021 to 01-03-2022 within 15 days of the receipt of the notice failing which, they will take necessary steps as per clause 2.4 and 2.5 of the lease deed and resolution

³ Page 43 to 45 of the Application.

mechanism through arbitration proceedings as provided in the lease deed. To this, the Applicant replied⁴ stating that the lease rentals will be payable by the successful bidder (the Applicant) from the closure date of the Liquidation Process of CD.

10. It is submitted that the Liquidator had issued the Sale Certificate after the receipt of the entire sale consideration, but the Company was not handed over to the Applicant by following the due procedure contemplated under applicable laws. Even the status of the Company was shown to be in 'Liquidation'. Board of Directors had also not been reconstituted. It was thus submitted that the Liquidation Process was not closed as provided in the Liquidation Process Regulations, as till the date of filing this application, the Liquidator was representing the CD.
11. It was thus claimed that, till the Board of the CD is reconstituted with the new Directors and the status of the company changed from "Liquidation" to "Active" and the Liquidation Process is closed as per Regulation 45 (3) of IBBI Liquidation Process Regulations, the sale was not complete. Therefore, the Applicant was under no obligation to pay the rent from the date of issue of sale certificate. Hence, this Application seeking for necessary directions.

Counter filed by Respondent No.1:

12. The Respondent filed Counter wherein it is submitted that the present application is non maintainable because (a) The prayer sought in the application amounts to rewriting of terms of the lease deed 16.04.2008 and reviewing the conditions of the sale; (b) The sale certificate dated 11.05.2021 has been issued to Applicant and Corporate Debtor sold on 'as is where is' and 'as is whatever there is' and without recourse basis; and (c) The Applicant is in possession of

⁴ Page 46 to 49 of the Application.

the property from the date of the issuance of sale certificate and is enjoying the same without paying lease rents.

13. It is further submitted that that Applicant cannot avoid making the lease payments after buying the Corporate Debtor as per procedure. If all successful bidders are allowed to avoid lease rentals and other obligations stating that sale is [not] done and approval is pending with the Adjudicating Authority, the same would defeat the very purpose and [objective] of the code.
14. It is submitted that the applicant's claim, that the legal notice was issued without considering that the project had not commenced, is false and denied. It is submitted that the legal notice after sale certificate was issued to Applicant solely in consideration of the terms mentioned in the lease agreement and that too for rent for period subsequent to Issuance of sale certificate by the Liquidator.
15. It is submitted that the contention, that the Applicant is only liable to pay the initial amount of Rs. 15,00,000/- per month, and not at increased rate, is also false and denied. The Applicant was aware of the facts and terms of lease agreement while bidding and accepting the bid. Now the Applicant cannot deny the liability stating that the Applicant is not bound by the terms of the lease agreement. It is not out of place to mention that as per increments at 15% as per lease agreement, the present lease rent is coming as Rs.24 Lakhs per month.⁵
16. It is submitted that the Applicant as Successful bidder in the instant application has indirectly prayed before this Tribunal to rewrite the terms of the said lease agreement. According to the Respondent, it is a settled principle that the Court/Tribunal shall only apply the terms of the contract but cannot rewrite the terms of the contract. Case of Shree Ambica, Medical Stores & Ors. Vs. The Surat People's Co-

⁵ Page 94 to 101 of the Counter.

operative Bank Limited & Ors, has been cited where the Hon'ble Supreme Court observed that 'a court cannot rewrite the terms of the contract' and the relevant paragraph is extracted hereunder:

"This Court, while interpreting the contract of insurance must interpret the words of the contract by giving effect to the meaning and intent which emerges from the terms of the agreement. In a Constitution Bench decision of this Court in General Assurance Society Ltd. v. Chandemull Jain, it was observed thus: (AIRp 1649, para 11) In interpreting documents relating to a contract of insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties, because it is not for the court to make a new contract, however reasonable, if the parties have not made it themselves." The court through its interpretative process cannot rewrite or create a new contract between the parties. The court has to simply apply the terms and conditions of the agreement as agreed between the parties.

17. It is submitted that, the sale certificate dated 11.05.2022 issued by the Ld. Liquidator clearly states that the Corporate Debtor has been sold to the Applicant on 'as is where is' and 'as is whatever there is' without recourse basis. Therefore, as per Regulation 32A of IBC 2016 the Applicant cannot escape from the liability stating that the liability shall only start upon completion of the liquidation process. Citing the case of M.S. Viswanathan v. Pixtronic Global Technologies Pvt. Ltd., decided by the Hon'ble Supreme Court, it is presented that when a sale is made on a going concern, it includes all the assets and liabilities which constitute an integral part in the business the corporate debtor. The relevant part is extracted hereunder:

"In so far as Sale as a going concern is concerned, the term "going concern meant all such assets and the liabilities, which constitute an integral business or the Corporate Debtor, that must be transferred together, and the consideration may be for the business or the Corporate Debtor. The buyer of the assets and liabilities should be able to run business without any disruption"

18. It is further submitted that, issuance of sale certificate by Liquidator could have been issued only when sale was absolute. The

Respondents here relied upon the Hon'ble Supreme Court in the matter of B. Arvind Kumar vs Govt. Of India and Others (2007 (5) SCC 745) where it was held that sale certificate is issued only when sale becomes absolute and it is evidence of sale and title and no further deed of transfer from court is contemplated or required.

19. It is then submitted that the regulation 13 in schedule 1 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 clearly explain that on payment of the full amount, the sale shall stand completed and that liquidator shall execute the certificate of sale or sale deed to transfer such assets and assets shall be delivered to buyer/successful bidder in manner specified in the terms of sale.
20. It is thus submitted that once sale certificate is given/issued, the Applicant is liable to pay the rent of leased property from the date of sale certificate and cannot escape the liability, and cannot seek for a declaration it is liable to pay only after this Tribunal approves the change of status of company from liquidation to active. With these submissions, the Respondent 1 has sought dismissal of the Petition.

Written submissions filed by the Petitioner:

21. In written submissions, the Petitioner has mostly reiterated the contents of the application. However, it is further argued⁶ that as per the reliefs granted by this Tribunal in IA 107/2022 at para VII (v),

“The Successful Bidder shall not be responsible for any other claims, liabilities or obligations, under any guarantees etc payable by the Corporate Debtor as on this date to the creditors or any other stakeholders including the Government dues. All the liabilities of the Corporate Debtor as on date stand extinguished, qua the successful bidder” (emphasis supplied)

Based on the above, it is claimed that the Applicant Successful Bidder is not responsible for any past dues etc., as on the date of passing the

⁶ Page 2 of the Written Submissions.

order dated 18.04.2023. With these submissions, once again, the Petitioner has sought allowing of the petition.

Written Submissions of the Respondent

22. In the written submissions filed by the Respondent, the contents of the counter are reiterated.

Decision on the Petition:

23. We have considered the facts pleaded and the relief sought in the Application. The question that has been raised through this application is that, where in liquidation, after CD is sold as going concern and its assets, including leased assets, are handed over to SRA on 'as is where is basis' whether SRA is not to pay lease rent, from the date of sale till liquidation process is formally completed under Regulation 45(3)?
24. The applicant's main argument centers around several points: firstly, that the Company hasn't been formally transferred to them; secondly, the Company's status is indicated as being in liquidation; thirdly, the liquidator continues to represent the Company; and fourthly, the Board of Directors hasn't been reconstituted. Consequently, they assert that the sale cannot be considered complete, as the liquidation process, regulated by 45(3), has not concluded. As a result, the applicant SRA contends that they are not obligated to pay lease rent from the date of the sale certificate.
25. On the contrary, the respondent contends that upon selling the Company as a going concern to the applicant SRA, including the assets and leasehold rights of the land, they took possession of the property. This act was followed by appointing their security guard and carrying out premises cleanup, including dewatering the cellars. Hence, according to the respondent lessor, the applicant is responsible for paying rent for the leased property from the date of the sale certificate. The respondent further argues that the applicant was

well-informed about the facts and terms of the lease agreement during the bidding and acceptance, and therefore cannot disclaim liability under the lease agreement's terms.

26. Within the framework of the Insolvency and Bankruptcy Code (IBC) and its accompanying Regulations concerning Liquidation, the sale of a corporate debtor's (CD) assets—be it on a standalone basis, collectively as a set, in parcels, as a slump sale, or as a going concern—is just one of the critical steps in the comprehensive process leading to the conclusion of the liquidation. This process, as delineated in Form H⁷ to be filed by the liquidator, signifies that the liquidation journey doesn't culminate merely with the sale of the CD as a going concern. Rather, it encompasses a series of crucial actions that persist post-sale, including distributions to creditors, intimations to statutory authorities, and adherence to other essential procedural matters by the liquidator. The model timeline prescribed in Regulation 47 also suggests similarly.
27. If the sale of any asset during the liquidation process, whether as a going concern or otherwise, is stalled due to these procedural matters, the ownership of that asset may linger in a state of uncertainty—an outcome that contradicts the intent of the law.
28. If the applicant's contention is accepted, it would mean that a purchaser of any immovable property during liquidation is exempt from paying electric or other utility bills even after taking possession until the 'Liquidation Process is closed.' Such an interpretation appears unjustifiable. Similarly, the applicant's claim that they are not obliged to pay lease rent for a property, leasing-right of which was their sole acquisition in acquiring CD as a going concern, follows a similar impractical line of reasoning. The leasing-right came with lease-rent obligation under an ongoing agreement, of which the

⁷ Rule 45(3) of IBBI (Liquidation Process) Regulations 2016

Applicant SRA were aware while making bid for the CD as a going concern.

29. In the present case, that CD was sold on 11.05.2021 as a going concern to the Applicant is undisputed. Also undisputed is the fact that the only assets that finds mention in the 'Certificate of Sale' issued by the Liquidator are the premises constructed on the 'Leased land admeasuring 4088 sq metres (on lease for 51 years 6 months ie, from 28/01/2007 to 27/07/2058).....". The fact that Applicant has taken possession of the property and has installed their guards and started some preliminary work has also remained uncontroverted. Under the circumstances, it becomes obligatory on the Applicant SRA that it starts paying lease rent vide lease deed dated 16.04.2008, particularly when there was a specific mention of this lease deed on the 'Certificate of Sale'.
30. In any case, the processes which would enable reconstitution of the Board of Company or its status being changed from 'Liquidation' to 'Active' have nothing to do with the Respondent Lessor, who is concerned with his lease rent which it can legitimately expect from a solvent buyer of the leased asset. Once the CD has been taken over as a going concern, SRA steps into the shoes of CD as owner of that leased asset, but as solvent owner who would have acquired the said asset (i.e. the lease-rights) with its attached liability (i.e. the lease-rent).
31. The Applicant's reliance on the decision of this Tribunal in IA No. 107/2021 dt. 18.04.23 is also misplaced. That order in Para VII(v) directed that "*The Successful Bidder shall not be responsible for any other claims, liabilities or obligations, under any guarantees etc payable by the Corporate Debtor as on this date to the creditors or any other stakeholders including the Government dues*" (emphasis supplied). This did not mean that the liabilities which devolved upon

the successful bidder as a result of winning the bid of acquiring CD as going concern will disappear. All that it means is that the past liabilities of CD will be extinguished, and as a going concern, all assets of CD would go with any attached future liabilities, from the date these are acquired by the successful bidder through the sale certificate issued by the Liquidator.

32. The question thus – where in liquidation, after CD is sold as going concern and its assets, including leased assets, are handed over to the Successful Bidder, whether that successful bidder is not to pay lease rent as per the agreed Deed of Lease, till liquidation process is formally completed under Regulation 45(3)? – is answered in the negative.

The prayer made in the application is declined, and the application is dismissed.

Sd/-

**(SANJAY PURI)
MEMBER (TECHNICAL)**

Sd/-

**(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)**

VL