IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH
IA No.199/2020, CA No. 57/2020 and CA No.58/2020
In
CP No.(IB) 223/ALD/2019

IN THE MATTER OF :
SRI SUPRIYO KUMAR CHAUDHURI
(LIQUIDATOR OF JVL AGRO INDSTRIES LTD)

............................APPLICANT

VS
JHUN JHUNWALA OILS MILLS LIMITED & OTHERS

.........................RESPONDENTS

IN THE MATTER OF :

STANDARD CHARTERED BANK **............FINANCIAL CREDITOR**

VS

JVL AGRO INDUSTRIES LTD. **.................CORPORATE DEBTOR**

ORDER DELIVERED ON:06.08.2021

CORAM:
HON'BLE MR. JUSTICE (RETD.) RAJESH DAYAL KHARE, MEMBER, JUDICIAL

Counsel for the Liquidator of JVL Agro: Mr.Yash Tondon Advocate
Councel for JOML: Mr. Gautam Singh, Advocate along with
Mr. Uday Chandani, Adv

PER SE: MR. JUSTICE (RETD.) RAJESH DAYAL KHARE, MEMBER (JUDICIAL)

Order

1. Since in all the applications (IA No.199/2020, CA No. 57/2020, CA No.58/2020 in CP No. (IB) 223/ALD/2018) the issues involved are common and the same question of law is to be decided, therefore, all the three applications are taken up together and are being decided by the common order.

2. The CA No. 57 of 2019 and CA No.58/2019 in CP No.(IB) 223/ALD/2018 has been filed by Jhunjhunwala Oil Mills Ltd with the prayer to direct the RP of JVL Agro to pay the rent to the applicant alongwith interest and also to vacate the premises of the Applicant and IA No.99/2020 has been filed by the liquidator with the prayer to direct

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respondent No. 1 to 5 to open the padlocks inserted at the entry gate of the office premises of the Corporate debtor situated at village Tilmapur, Gazhipur Road, Ashapur Varanasi, Uttar Pradesh and further to restore the physical possession of the said office premises to the Applicant, it representative and employees of the Corporate Debtor and further to refrain them from taking any coercive steps and respecting access to the office premises.

3. It has been contended on behalf of the liquidator (Applicant in IA NO. 199/2020) that the registered office of the Corporate Debtor was shifted to Tilmapur, Gazhipur Road, Ashapur Varanasi, Uttar Pradesh when the suspended board of directors were in operation of management and control of the corporate debtor since 2007 and the corporate debtor has continued to hold possession of the said premises prior to the commencement of CIRP. Jhunjhunwala Oil Mills Ltd is a group company of the corporate debtor and is operated, managed and controlled by Mr. S.N Jhunjhunwala Group of family members. The shifting of the registered office of the corporate debtor during February,2018 was an inter se arrangement between the family group companies and there is no rent agreement between the corporate debtor and the respondent No. 1 till the date of commencement of CIRP on 25th July, 2018 which is evident as there is no mention of any rent in the resolution passed by the Corporate Debtor on 14.02.2018, which was signed by Mr. Satya Narayan Jhunjhunwala and further there is no mention of rent in the no objection certificate also issued by the Respondent permitting the Corporate Debtor to establish its registered office at the concern premises. It is also contended that the Corporate Debtor was using the concerned premises as an office much prior to even February, 2018 without paying any rent and without any rent agreement existing between the Applicant and Respondent No. 1 i.e. JOML.

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4. It is further contended that the Respondent No. 1 to 5 have till date unable to produce any rent receipt or documentary evidence establishing that there was any agreement for payment of rent or that the rent was paid in respect of the concerned premises at any time prior to the commencement of the CIRP by the Corporate Debtor and the Corporate Debtor has not made any provision in its books of account and audited financial statement for payment of rent to Respondent No. 1 at any material point of time as being alleged as payable by Respondent No. 1 to 5.

5. Further submitted by the counsel for the Liquidator that the Respondent No. 1 to 5 were at all material times informed that the existing arrangement with JOML with regard to use of registered office would continue under the provisions of IBC and the Respondent No. 1 to 5 were all made aware that any rent that was being demanded would have to be proved as due and payable under an agreement facility executed in accordance with law. The demand for rent has been made at the instance of the suspended Board of Directors with the intention of making unlawful gain.

6. It is further stated that regarding the one time settlement of SBI, the Memorandum of Understanding with Rudra Realtech Pvt. Ltd. and market liability and obligation of JOML are completely irrelevant to the issue of dispute relating to payment of rent and use of the concerned premises by the Corporate Debtor as the Corporate Debtor is not a party to any agreement which the JOML had entered with SBI of Rudra Realtech Pvt. Ltd. Thus, they cannot be permitted to settle its liabilities with creditors by making any substantiate and illegal demand upon the Corporate Debtor.

7. The Respondent Nos. 1 to 5 despite being informed that the Corporate Debtor cannot pay any rent in respect of the concerned premises without the existence of an agreement of rent receipt relating to the period prior to commencement of CIRP,

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continued to write emails and demanded rent from the Corporate Debtor without any legitimate basis or document to substantiate the same. The said emails disclosed by the Respondent No. 1 in these proceedings do not disclose and/or refer to any agreement or arrangement for payment of rent that was legally tenable under the applicable provisions of law.

8. On 28th July,2020, the applicant was informed by the employees of the corporate debtor that the directors/ officers of the respondent No. 1 have forcefully and illegally restrained entry of the applicant and have put padlocks at the said premises and employees of the corporate debtor and the applicants representative were denied access to the said premises against which the applicant issued legal notice and has also lodged compliant with the respondent no. 6 requesting him to immediately take steps to remove the padlocks and restore possession of the said premises to which no effective steps were taken by the respondent. The security personnel of the Corporate Debtor along with other personnel were not able to access the office located within the premises of JOML. The Respondent No. 1 to 5 have by such illegal acts obstructed the Applicant and it's representative, officers staff and employees of the Corporate Debtor from accessing essential documents, records, server computers, etc. lying at the registered office at Ashapur, Varanasi, thereby interfering, hampering and obstructing the CIRP and the Liquidation process being conducted by the Applicant.

9. In reply to the above, the counsel for the respondents in IA No.199/2020 stated that the Corporate Debtor in January 2018 requested the JOML to shift its registered office and the deal was negotiated and agreed that the registered office can be shifted but a rent amount of Rs. 5,00,000/- + Rs. 1,00,000/- total Rs. 6,00,000/- plus GST would be payable and an agreement would be entered for 7000 Sqft. The terms were agreed by the Corporate Debtor and a NOC was issued by the Applicant herein. The

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registered office of the Corporate Debtor was shifted in the premises of the applicant herein on 14.02.2018. The deed was to be executed in this regard. However, the Corporate Debtor kept postponing the execution of any formal rent agreement on some or other reasons and before deed could be executed the Corporate Debtor went to CIRP in July, 2018.

10. It is contended on behalf respondent that that JVL Agro Industries Ltd.i.e Corporate Debtor under liquidation is using the premises and had shifted its registered office in Feb-March, 2018, however, it has failed to pay the rent for the use of the said premises. Further NOC confirms shifting of the registered office and but no confirmation that the rent will not be charged.

11. Further stated that Jhunjhunwala Oil Mills Ltd. Corporate Debtor entity which has also taken finance assistance from State Bank of India and due to various factors the Applicant was unable to meet its timely commitment towards its financial institution namely State Bank of India.

12. Thereafter, an email dated 28.08.2018 was sent to the corporate debtor to enter into rent agreement as the company had gone into CIRP and clarified the terms of agreement and demanded the rent for the said premises, which is part of CIRP process cost, however, the same was not replied nor any payment was made, then again an email dated 31.08.2018 was sent to senior official of the JVL and an email dated 24.09.2018 was sent to Company Secretary of JVL Agro Industries Ltd, however, no response or reply was received. Even after several follows with Resolution Professional no action has been taken by him and no payment has been received by JOML till date, which is drastically affecting the existence and working of the company.

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13. It is further stated that to meet its obligation under the One Time Settlement, JOML entered into memorandum of Understanding with the Rudra Realtech Pvt. Ltd for payment of OTS amount to SBI and to save its existence . If JVL Agro Industries Ltd does not pay the rent then OTS of JOML with SBI might fail due to the act done by RP and also if they do not vacate the campus of the applicant then Rudra RealTech Pvt. Ltd. will not pay further installment of SBI and the corporate debtor may lose its existence.

14. JOML again send a reminder email dated 12.12.2019 demanding the amount due and payable by the Corporate Debtor Further again on 18.12.2019 an email was sent to the corporate debtor informing the fact that they require a vacant position of the land by February, 2020, to which also no reply was received from the corporate debtor. It is contended that a long period has lapsed since the CIRP process was initiated against the Corporate Debtor, however, no proper steps having been taken by the RP nor any payment has been made till date and a period more than prescribed in the IBC has lapsed. Several reminders were sent vide emails dated 21.07.2020, 24.04.2020, 25.07.2020 but applicant chooses not to reply to the said mails neither any payment was made.

15. After hearing the learned counsel for the parties, this Bench observes that it is an undisputed fact that the premises in question was and is being used by JVL Agro Industries Limited as its registered office and for commercial purpose and no rent is being paid for the same by the occupier.

16. From perusal of the documents and the copy of the emails attached thereto it is observed that in the minutes of meeting dated 14.02.2018, the corporate debtor

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resolved to shift the registered office of the company to the premises in dispute i.e Village Tilmapur, Ghazipur Road, Ashapur, Varanasi, UP and the same is duly acknowledged by JOML, which thus reflects that the corporate debtor is using the premises fom the month of February, 2018.

17. Further email dated 28.08.2018 sent by Jhunjhunwala Oil Mills Ltd.to JVL Agro Industries Limited shows that they have specifically stated to enter into a rent agreement initially for 6 month which is to start from 01.08.2018 with terms and conditions as mentioned in it, to which no response was given and thereafter copies of several emails have been attached to show that the JOML has time and again demanded for the rent to be paid but neither the parties entered into an agreement nor any rent has been paid.

18. This Adjudicating Authority takes note of the fact that the JVL Agro Industries Ltd. are in possession of the premises in question and they did not enter into the rent agreement timely and in the meantime CIRP was initiated against the corporate debtor. Such in action on the part of the JVL Agro Industries Ltd. cannot give them the advantage to use the premises of JOML for offices purposes for commercial use and for which they are not liable to pay any rent in the absence of any rent agreement, as contended on their behalf.

19. It is not disputed that the premises of JOML is being used by JVL Agro Industries Pvt. Ltd. for their business purposes/commercial purposes since 2018. The stance which has been taken by JVL Agro Industries Pvt. Ltd, as argued by their learned counsel is that in the absence of any agreement of rent between the parties, the same is not payable.

20. Such stance cannot be taken legally as undisputedly the premises are being used by the JVL Agro Industries Pvt. Ltd for commercial purposes since 2018 and it is very

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illogical to say that they would be using the said premises without the payment of any rent in the absence of the rent agreement. Such stance is not only against the provisions of law but also against basic logic and reason. The only point which needs consideration is the quantum of rent which is payable by JVL Agro Industries Pvt. Ltd to JOML for this period.

21. In the opinion of this Court, it would only be appropriate to ascertain official rental which has been fixed by the office of the District Magistrate specifying the rental, per square feet, for commercial property in the area where the office is situated and fix the rent as per the official rate specified by the office of the District Magistrate per square feet which is being occupied by the JVL Agro Industries Pvt. Ltd for their commercial purposes. After computing the rental so fixed by the Office of the District Magistrate as may have been notified, the same may be paid over to JOML within three months from the date of the passing of the order.

22. Let the process of obtaining the details of the official rental fixed by the office of the District Magistrate and the amount due be done within two months from the date of passing of the order and payment pursuant to the said computation be made to JOML within one month thereafter.

23. In view of the aforesaid observations, the present applications stands disposed of. No order as to cost.

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JUSTICE RAJESH DAYAL KHARE

MEMBER (J)

Date: 06.08.2021

Swati Gupta
(LRA)