

National Company Law Appellate Tribunal,
Chennai Bench
Company Appeal (AT) (CH) (Insolvency) No. 37 of 2022

(Arising out of order dated 7th January, 2022 passed by National Company Law Tribunal, Chennai Bench in IA (IBC)/671/CHE/2021 in CA/1/IB/2017)

IN THE MATTER OF:

1. **S. Rajendran**
Resolution Professional of M/s. Vasan Health
Care Pvt. Ltd.
2nd Floor, Hari Krupa, 71/1, Mc Nichols Road
(Off Poonamallee High Road), Chetpet,
Cheennai- 600031**...Appellant**

Versus

1. **Mr. B.M Anand (HUF),**
Represented by its Karta Mr. B.M Anand
No. 25, 8th 'C' Main, 4th Block,
Jayanagar, Bangalore- 560011
2. **B.M. Anand**
No. 25, 8th 'C' Main, 4th Block,
Jayanagar, Bangalore- 560011
3. **Pradeep Kumar Anand, s/o Mr. B.M.Anand**
No. 25, 8th 'C' Main, 4th Block,
Jayanagar, Bangalore- 560011
4. **Sandeep Anand, s/o Mr. B.M. Anand**
No. 25, 8th 'C' Main, 4th Block,
Jayanagar, Bangalore- 560011**...Respondents**

Present:

For Appellants: Mr. N.P. Vijaya Kumar, Advocate
For Respondents: Mr. Chandramouli Prabhakar, Advocate for R-1 to 4.

J U D G M E N T
(11th March, 2022)

KANTHI NARAHARI, MEMBER (TECHNICAL)

Preamble:

The Present Appeal is filed aggrieved by the order dated 07.01.2022 passed by the Adjudicating Authority (National Company Law Tribunal, Division Bench –I, Chennai) whereby, the Adjudicating Authority disposed of the Application filed by the Respondents herein.

Brief Facts:

Appellants Submissions:

2. The Learned Counsel for the Appellant submitted that the Appellant is the Resolution Professional of the Corporate Debtor namely M/s Vasan Healthcare Pvt. Ltd. preferred the present Appeal. The Learned Counsel submitted that the Hon'ble Adjudicating Authority vide impugned order directed the Appellant to pay to the Respondents a sum of Rs. 1,17,28,159/- within a period of 14 days from the date of order and the same shall be paid from the Insolvency Resolution Process cost. Further, the Hon'ble Adjudicating Authority directed the Appellant to pay monthly rent

to the Respondents during the CIRP Period till such time the Corporate Debtor is in occupation of the premises.

3. The Learned Counsel for the Appellant submitted the facts, stating that the Corporate Debtor was admitted into CIRP vide an order dated 21.04.2017 in CA 1 (IB) of 2017. However, the CIRP Period extended from time to time. The Appellant was replaced/appointed as RP for the Corporate Debtor and took necessary steps to take control of the Corporate Debtor. It is submitted that the Appellant took necessary steps to ensure increase in the revenues generated by the Corporate Debtor so as to adequately meet out the payments towards all CIRP Costs. In view of lockdown, the generation of revenue has been impacted and only 50% of the payments to the Landlords towards rental dues could be paid for the month of May 2021. It is submitted that since June, 2021 onwards due to the improvement in the pandemic situation and increase in the operations of the Corporate Debtor, the Appellant has been able to meet the 100% payment of monthly rent to the Landlords, Staff salaries, Statutory dues and other CIRP Costs. It is submitted that the CIRP of the Corporate Debtor fully depends on

the revenues generated from its business and presently the revenues generated are just adequate only to meet the current CIRP costs and to run the operations of the Corporate Debtor leaving no surplus funds.

4. The Learned Counsel submitted that in view of the impugned order passed by the Hon'ble Adjudicating Authority, the same will be a great impact on payment of unpaid CIRP costs of Rs. 53 Crores approximately including rental dues to all other Landlords amounting to Rs. 31 Crores approximately whereas the revenues generated at present by the Corporate Debtor are just adequate to meet the payments towards rents, staff salaries, statutory dues.

5. The Learned Counsel submitted that the unpaid accumulated CIRP dues until the month of May, 2021 is due to the critical situation of the Corporate Debtor and the Covid -19 impact and the same being impracticable to met now.

6. It is submitted that the rental dues for the period up to May 2021 were paid on Pro-rata/Ad hoc basis due to the critical circumstances of the CIRP of the Corporate Debtor. It is submitted that the Corporate Debtor operates its business, out of leased

premises at almost all centres wherein substantial amount towards interior development has been invested and it is important to retain the leased premises of these centres of the Corporate Debtor so as to continue the Corporate Debtor as a going concern based on which the Resolution Plans have been submitted by various prospective Resolution Applicants.

7. The Learned Counsel further submitted that the Learned Adjudicating Authority ought to have noted that the payments towards rent to all the Landlords including the Respondents herein for the period up to May 2021 were paid on Pro-rata/Ad hoc basis for reasons being the downfall in revenues generated by the Corporate Debtor and such downfall in the revenues was due to the decline in footfall of patients, consequent to the lockdown situation prevailed across the country due to the Covid- 19 pandemic situation.

8. In view of the reasons as stated above the Learned Counsel prayed this Bench to allow the Appeal by setting aside the impugned order.

Respondents Submissions:

9. The Learned Counsel appearing for the Respondents submitted that the Hon'ble Adjudicating Authority in an Application filed by them directed the Appellant to pay a sum of Rs. 1,17,28,159/- within a period of 14 days and directed to pay the monthly rent to the Respondents during the CIRP period. It is submitted that the Respondents are the absolute joint owners and Landlords of the Premises situated at No. 28-29, 7th Main Diagonal Road, 4th Block Jayanagar Bangalore. The said property has been leased out to the Corporate Debtor vide a lease deed dated 28.02.2011 entered to by and between M/s Vasan Healthcare Pvt. Ltd. i.e. the Corporate Debtor and the Respondents herein. The premises has been utilised since then by the Corporate Debtor. The Learned Counsel submitted that in terms of the lease deed, the Corporate Debtor ought to have made payments of monthly rent as per the terms made in the deed. However, the Corporate Debtor has been inordinately been delayed paying the rents as a result of which the non-payments of rents is causing a tremendous monetary loss to the Respondents who are dependent upon the income from such premises. It is submitted that the Application filed by the

Respondents before the Learned Adjudicating Authority with bona fide intent and merely to seek the legitimate dues payable by the Corporate Debtor during the CIRP to the Respondents. After hearing the parties the Learned Adjudicating Authority passed the order directing the Appellant to pay the sum as directed therein.

10. It is submitted that the Appellant is duty bound to pay the CIRP Costs as per the provision of Section 5 (13) (c) read with regulation of 31 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Learned Counsel submitted that the Appellant cannot seek to deviate from the provisions of the Code and the Regulations framed there under by claiming peculiar facts or exceptional circumstances to prevent the legitimate dues of the Respondents.

11. It is submitted that the Appellant placing reliance upon an order dated 13.04.2021 of the Learned Adjudicating Authority in another matter pertaining to the Corporate Debtor cannot be made applicable in the present case. It is submitted that the Respondents are the owners of the premises wherein the Corporate Debtor

carries on its business and the Respondents had only been made certain ad hoc payments between October 2019 and May 2021.

12. It is submitted that the Appellant instead of implementing the order dated 07.01.2022 and in order to overcome the obligation arising out of the above impugned order, is merely seeking to state that the other Landlords would also claim such legitimate dues based upon such order which would entail huge outlay on the part of the Corporate Debtor, the said submissions are based on mere conjectures and surmises and ought not to be considered while dealing with the merits of the impugned order. The Rights of the Respondents herein ought not to be prejudiced merely based on apprehensions.

13. In view of the reasons as stated above, the Learned Counsel prayed this Bench to dismiss the Appeal with costs.

Appraisal/Analysis:

14. Heard the Learned Counsel appeared for the respective parties perused the pleadings/documents and Citations relied upon by them. After analysing the pleadings the point emerges for

consideration is whether the impugned order passed by the Learned Adjudicating Authority is sustainable in law or not.

15. It is an admitted fact that in pursuance of the lease agreement entered between the Corporate Debtor and the Respondents herein who are the owners of the premises, the Corporate Debtor carrying on its business from the leased premises as per the terms agreed in the agreement/lease deed dated 28.02.2011 and the Corporate Debtor is liable to pay the rents to the Respondents herein. While so the Corporate Debtor is into the CIRP and the Resolution Professional managing the affairs of the Corporate Debtor as per the directions of the Adjudicating Authority in the matter. Therefore, the Resolution Professional who is in the helm of affairs of the Corporate Debtor is liable to pay the rents payable to the Respondents herein. In this context, the Respondents herein have filed an application being I.A. 671 of 2021 in CA 01 of 2017 praying the Adjudicating Authority to pass an order directing the Appellant herein to make payment of the lease rental dues of Rs. 1,36,66,667/- as on 01.06.2021 to the Respondents forthwith. The Respondents also sought various other reliefs in the application

filed by them. After Adjudicating the Application on merits, the Learned Adjudicating Authority passed the following ORDER as under:

(a) The second Respondent is directed to pay to the Applicants a sum of Rs. 1,17,28,159/- within a period of 14 days from the date of this order and the same shall be paid from the Insolvency Resolution Process Cost.

(b) In so far as prayer (b) is concerned, the same stands rejected.

(c) In so far as prayer (c) is concerned, the Second Respondent is directed to pay the monthly rent to the Applicants during the CIRP Period, till such time the Corporate Debtor is in occupation of the Premises.

16. With the above directions the Adjudicating Authority disposed of the application. The Respondents in the application as relief (b) sought direction to the Appellant herein to handover vacant and peaceful possession of the leased out premises belonging to the Respondents. However, the Learned Adjudicating Authority rejected the prayer of the Respondents seeking handing over of vacant possession of the property.

17. In view of the fact that the Appellant is in obligation to pay the dues to the Respondents. This Tribunal is of the view that the issue that arises for consideration is mixed question of fact and law. The fact remains that the premises in which the Corporate Debtor is carrying on its business is belongs to the Respondents herein and the Appellant is duty bound to pay the dues to the Respondents. Therefore, we are of the view that on facts, the Adjudicating Authority has not committed any error in passing the above direction/order. In so far as the law is concerned, the status quo is to be maintained with respect to the premises which the business of the Corporate Debtor is carrying on, when the Corporate Debtor is into CIRP i.e. after admission of Application under Section 7 or Section 9 or Section 10. After admitting the Application, the Adjudicating Authority would declare moratorium as per Section 14 of the I & B Code, 2016. Admittedly the Corporate Debtor is into CIR Process and declared moratorium by the Adjudicating Authority on admission of the Application against the Corporate Debtor. In pursuance of clause (d) of Sub- Section 1 of Section 14, which provides that during the moratorium period the lesser or an owner

of the property cannot recover the possession of the property from the Corporate Debtor. In view of the law, the Corporate Debtor continuing its business in the premises leased to it. For the aforesaid reason the Learned Adjudicating Authority rejected the prayer of the Respondents seeking handing over of vacant possession of the premises. Hence, no interference is called for.

18. Further, the Learned Counsel for the Appellant contended that if the impugned order is implemented it would result in Corporate Debtor to pay huge sums of money towards payment of rental dues to all other Landlords. The said contention of the Learned Counsel for the Appellant cannot be accepted for the reason that the Law provides for payment of Insolvency Resolution Process Costs as defined under Sub clause (c) of Sub Section 13 of Section 5 of IBC, 2016 which states as '*(c) any cost incurred by the Resolution Professional in running the business of the Corporate Debtor as a going concern*'. From a plain reading of the said definition it is crystal clear that during the period of moratorium the Resolution Professional who carries on the business of the Corporate Debtor and in carrying on the business and to keep the Corporate Debtor

as a going concern, the costs so incurred by the Resolution Professional shall have to be paid. As stated supra the Landlord cannot recover the possession of its premises in view of imposition of moratorium. Further, as per Section 14 (1) (d) of the I & B Code, 2016 provides that during the moratorium period the lesser or an owner of the property cannot recover the possession of the property from the Corporate Debtor. In view of the said embargo the lesser cannot recover the property and in variably the Resolution Professional to keep the business of the Corporate Debtor as a going concern the cost so incurred have to be borne by the Resolution Professional of the Corporate Debtor.

19. Also, in this regard Regulation 31 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 also provides for Insolvency Regulation Process Costs as mentioned under Section 5 (13) (b) shall mean “*amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under Section 14 (1) (d) of the I & B Code*”.

20. Therefore, the law in this regard clearly specifies the IRP Costs which includes any cost incurred by the Resolution Professional in running the business of the Corporate Debtor as a going concern. In the present case as stated supra the Corporate Debtor is into CIRP and due to imposition of moratorium the Respondents should not suffer. Therefore, the IRP Costs makes provision for payment in such cases as defined in Sub Section 13 of Section 5 of the I & B Code, 2016 and as detailed out in Regulation 31 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It is apt to state that no one can seek to deviate from the provisions of the Code and the Regulations framed there under.

21. In view of the above provisions of law the dues namely rents due to Respondents need to be treated as IRP Costs and the same are to be paid. This Tribunal in a Contempt Case (AT) No. 03 of 2020 in Company Appeal (AT) (Ins) No. 1040 of 2019 observed and held as at paragraph 20 & 21 as under:

“20. As per Regulation 31 Insolvency Regulation 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 lesser could not recover the possession of the property from the corporate Debtor. Thus, the right of lesser to recover rent are affected on account of moratorium. Therefore, the lesser is entitled to recover the rent and which shall include in CIRP Costs”.

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

22. As held by this Tribunal supra, it is unequivocal that the rents fall under the category of CIRP Costs.

23. In view of the facts and law as discussed above the Appellant has not made out any case calling interference of the order passed by the Adjudicating Authority dated 07.01.2022 which is impugned in this Appeal. Resultantly, the order of the Adjudicating Authority is well sustained in the eye of Law.

24. In fine, the Company Appeal stands dismissed by upholding the order of the Adjudicating Authority. No orders as to cost. All the Applications stand disposed of.

25. Though the order passed by the Adjudicating Authority on 07.01.2022 the present Appeal filed before this Tribunal on 24.01.2022 and the direction to pay by the Appellant to the

Respondents within a period of 14 days from 07.01.2022 already expires when the said Appeal preferred before this Tribunal. Keeping in view of pendency of Appeal before this Tribunal from 24.01.2022 till passing of this Order the period stand exempted for the purpose of implementation of the impugned order passed by the Adjudicating Authority. Abiding by the Principles of Natural Justice this Tribunal directs the Appellant herein to implement the order of the Adjudicating Authority dated 07.01.2022 within a period of two weeks from passing this order and report compliance before the Learned Adjudicating Authority.

[Justice Venugopal M.]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

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