

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 169 OF 2021

Under Section 60(5) of the Insolvency &
Bankruptcy Code, 2016 r/w Rule 11 of
NCLT Rules 2016

Spine Properties Private Limited

...**Applicant**

V/s

Jitendrakumar Rambaran Yadav & Others

... **Respondents**

In the matter of

C.P. (IB)No.1967/MB/2019

Creative Garments Pvt Ltd

...Petitioner

V/s.

Dilip Chhabria Design Pvt Ltd

... Respondents

Order delivered on: 22/11/2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the Applicant : Mr., Jayesh B. Dolia Advocate

For the RP : Mr. A.K. Mishra, Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This IA 169_2021 is filed by M/s Spine Properties Private Limited (“Applicant”) in the matter of M/s Dilip Chhabria Design Private Limited (“Corporate Debtor”), Sh. Jitendrakumar Rambaran Yadav, the Resolution Professional (“Respondent”) for direction to make payment to the Applicant of the outstanding amount of Rs. 1,29,82,442/- (which includes interest of Rs. 12,99,623/-, Maintenance charges of Rs. 4,01,996/- and Electricity charges of Rs. 4,32,615/-) treating the same as insolvency resolution process cost along with interest @ 18% p.a. on the outstanding amount in terms of clause 3(g) of the Lease deed dated 6.5.2021 till the vacation of the leased premises; and to vacate the leased premises and claim the security deposit from the applicant only after payment of full admitted pre-CIRP claim u/s 40 of the Insolvency & Bankruptcy Code, 2016 (“Code”); to make payment of the increased rent from 1.6.2020 in terms of clause 4 of the Lease deed dated 6.5.2011.
2. The Corporate Insolvency Resolution Process (“CIRP”) commenced on 17.09.2019, and the Applicant was confirmed as Resolution Professional on 6.11.2019.
3. It is the case of the Applicant that the Lease deed dated 6.5.2011 expired on 31.5.2020 and the applicant requested the Corporate Debtor as well as respondent to vacate the premises vide its letter dated 28.12.2019 and 30.04.2020 pursuant to the provisions of Lease Deed and in order to run the affairs of the Corporate Debtor economically, however, neither vacation of leased premises took place nor any

communication was received in this regard from the Corporate Debtor or Respondent.

3.1. The representative of Respondent vide email dated 29.9.2020 also requested revision in the electricity bill regarding changes in electricity load usage in the leased premises considering it as essential goods and services, which implies that the respondent is continuing to avail essential services for the corporate debtor at the cost of applicant.

3.2. To the utter shock and surprise of the applicant, a letter dated 27.11.2020 was received from the Respondent demanding refund of security deposit amounting to Rs. 18,40,000/- from the applicant, whereas the Corporate Debtor was still occupying the leased premises, and the Security Deposit becomes refundable only upon vacation of the premises after deduction of outstanding dues, if any, under the lease deed to which the applicant is entitled.

4. The Respondent has filed the reply stating that the rent is not included under the essential goods and services referred in section 14(2) of the Code, accordingly the same does not qualify as Insolvency Resolution Cost. Further, the true interpretation of lease agreement shows that the lease premises is for vehicle modifications and related operations and as such the rent is a direct cost in manufacturing which does not figure as essential supplies in Regulation 32 (Insolvency Resolution Process for Corporate Persons) Regulations 2016. Further, the demand for refund of security deposit of Rs. 18,40,000/- was made in discharge of his duty to take control and possession of assets of the Corporate Debtor.

4.1. It is further stated that the Respondent has filed an application seeking liquidation of Corporate Debtor after expiry of maximum period permitted for completion of CIRP after CoC voted for it in

its meeting held on 5.1.2021 and the said prayer is pending for adjudication in IA 144/2021. We find that this prayer has since been allowed by this Tribunal.

5. We have heard the Counsel and perused the material available on record.

5.1. It is undisputed fact that the Corporate Debtor is in occupation of the Premises of the Applicant for its business purposes and the Plant & Machinery is lying thereat. The said premises was not vacated as it would entail removal of Machineries and there was no place to store said Machineries with the Corporate Debtor. Further, it would have eroded the value of the Corporate Debtor as going concern as the Corporate Debtor was engaged in the designing and customisation of auto vehicles.

5.2. Insolvency Resolution Process Cost is defined under Regulation 31 of (Insolvency Resolution Process for Corporate Persons) Regulations 2016, which includes “*amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d)*”. Section 14(1)(d) of the Code reads as “*the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor*”. The combined reading of both the provisions clearly provides that amounts due (rentals for the period) to an owner or lessor where such property is occupied by or in the possession of the corporate debtor, who was barred to recover his property on account of Moratorium u/s 14 of the Code is included in the definition of Insolvency Resolution Process Costs. Accordingly, we do not find any merit in the contention of the Respondent and his reliance on the provisions contained in Regulation 32, which in this case are not applicable, to say that the

rent for the period post CIRP commencement date does not form part of CIRP dues.

- 5.3. The lease deed also contemplate payment of periodic maintenance charges and electricity consumption cost, which is attributable to the occupation of applicant's premises. Accordingly, we hold that the Rent, Maintenance Charges and Electricity Charge for the period from 17.09.2010 shall be payable to the Applicant as Insolvency Process Resolution Cost, and the such charges for the period prior to CIRP commencement date shall be admitted as dues of the Operational Creditor. As the Corporate Debtor is undergoing Insolvency Resolution Process Cost, we do not find the the merit of the Applicant in claiming interest for delayed payment. It is made clear that the Applicant shall be entitled to set off the amount of security deposit refundable against the dues determined as Insolvency Process Resolution Cost and the rest shall be payable by the Liquidator in terms of Section 53 of the Code, as Insolvency Process Resolution Cost. The dues pertaining to Pre-CIRP period shall be payable as dues of Operational Creditor (other than workmen & employees and Statutory dues).
- 5.4. The Liquidator shall place the issue of vacation of premises before the Stakeholder committee for their consideration within 15 days, which shall evaluate the necessity of occupation of the leased premises considering the costs involved therein and the benefits expected to accrue from its continued occupation.
- 5.5. The Applicant shall allow the removal of the same without any insistence for clearance of its admitted dues first as the same are to be settled in accordance with Section 53 of the Code in case the Stakeholders committee decide to vacate the premises.

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6. In view of the aforesaid, IA 169/2021 is disposed of as partly allowed.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

V.G. Bisht
Member (Judicial)