



**THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT III**

Company Petition No. IB-2768(ND)/2019

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

Mr. Sunil Sachdeva

...Applicant/Petitioner

&

M/s Haldiram Fincap Private Limited

...Corporate Debtor

Judgment delivered on: 14.02.2023

Coram:

**SHRI BACHU VENKAT BALARAM DAS
Hon'ble MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

For the Applicant : Mr. Rajeev Rajan, Advocate.

For the Respondent :

ORDER

Per: BACHU VENKAT BALARAM DAS, MEMBER (J)

1. The present petition has been filed under Section 9 of the IBC, 2016 with the prayer to initiate CIR Process against the Corporate Debtor viz, *M/s Haldiram Fincap Private Limited*, declare Moratorium and appoint Interim Resolution Professional.

2. It is submitted by the Operational Creditor that, Late Sh. Ram Parkash Sachdeva and Smt. Chand Sachdeva through their duly constituted attorney Mr. Sunil Sachdeva, granted Lease with respect to entire constructed property comprising of Ground Floor, First Floor and



Second Floor bearing No. 8730 to 8733, D.B. Gupta Road, Paharganj, New Delhi – 110055, earlier known as plot No. 3, Block No. 5, (Kh. No. 863/10) original road, D.B. Gupta Road, Paharganj, New Delhi – 110055 (herein referred to as leased property) to Haldiram Fincap Private Limited (Corporate Debtor).

3. It is also submitted by the Operational Creditor that the property was leased and handed over to the Corporate Debtor for a fixed duration of 12 years commencing from 28.08.2016 to 27.08.2028. As per Clause 3 of the Lease deed, the Corporate Debtor was liable to pay rent of Rs. 3,90,000/- per month with the rent escalation clause i.e., “Rent shall be increased by 15% every three years.” The rent was payable in advance, before the 10th day of each month.

4. Further, it is submitted by the Operational Creditor that unfortunately Sh. Ram Parkash Sachdeva passed away on 09.04.2018. The fact was informed to the Corporate Debtor through email dated 01.05.2019. Thereafter, Smt. Chand Sachdeva passed away on 29.05.2018 and the Corporate Debtor was informed through email dated 16.06.2018.

5. It is the case of the Operational Creditor that Mr. Sunil Sachdeva entered the shoes of lessor on the basis of registered wills dated 09.10.2013 and 24.08.2016, after the demise of Sh. Ram Parkash Sachdeva and Smt. Chand Sachdeva. However, the Corporate Debtor did not make any payment towards the Rent and GST since, 10.03.2017.

6. It is also submitted that as per the terms of Clause 20.2 of the Lease Deed, in case of failure to clear the arrears of rent, the lease is liable to be terminated after giving a written notice of 60 days. The said non-payment of rent is a breach of the terms and conditions of the Lease deed. The Operational Creditor served a notice to the Corporate Debtor



on 05.02.2019. Even after the expiry of the 60 days notice period, the Corporate Debtor did not make any payment of the arrears of rent and thus, the Corporate Debtor committed a specific breach of the terms of lease deed.

7. It is further submitted that the Operational Creditor has no option but to terminate the lease deed by issuing a notice of termination dated 28.04.2019, which was sent to the Corporate Debtor. The termination of the said lease deed was to take with effect from 31.05.2019. The Corporate Debtor was requested to vacate the leased premises on or before 31.05.2019 and hand over the peaceful and vacant possession to the Operational Creditor. However, the Corporate Debtor neither handed over the peaceful and vacant possession of the leased premises nor did he pay the arrears of rent and GST till date.

8. The Operational Creditor issued a demand notice under Section 8 of the Code, to the Corporate Debtor on 17.09.2019 but no reply was received to the said demand notice from the Corporate Debtor.

9. Hence the present application has been filed under Section 9 of IBC for initiation CIRP against the Corporate Debtor/Respondent.

10. It is stated in the reply affidavit filed by the Corporate Debtor that the present petition has been filed for recovery of arrears of rent as per lease agreement and therefore the Applicant cannot be treated as an “Operational Creditor” within the meaning of Section 5(20) of IBC, 2016 and arrears of rent cannot be treated as “Operational Debt” within the meaning of Section 5(21) of the Code, 2016. The Corporate Debtor relied upon a judgment dated 17.01.2020 passed by Hon’ble NCLAT in Company Appeal (AT) (Insolvency) No. 331/2019 in the case of Mr. M. Ravindranath Reddy versus Mr. G. Kishan and Others, wherein it has been held that the lease of immovable property cannot be considered as supply of goods or rendering of any services and thus, cannot fall within



the definition of Operational Debt. It is also held that “in case of lease of immovable property, default can be determined, on the basis of evidence. While exercising summary jurisdiction, the Adjudicating Authority exercising its power under Insolvency and Bankruptcy Code, 2016, cannot give finding regarding default in payment of lease rent, because it requires further investigation.”

11. The Corporate Debtor has also stated in its counter affidavit that there is pre-existing dispute between the parties with respect to the alleged rent claimed by the Petitioner in support of which, he has filed a copy of the email dated 18.01.2018 and a copy of legal notice dated 22.10.2019 sent by the Corporate Debtor to the Operational Creditor. The Corporate Debtor has filed a Commercial Civil Suit against the Operational Creditor with regard to the same issue before the District Judge Commercial Courts Tis Hazari Courts, Delhi.

12. The Corporate Debtor has denied the facts that the Operational Creditor has entered the shoes of the original lessors on the basis of Registered Will dated 09.10.2013 and 24.08.2016. He has not disclosed as to whether he is the sole legal heirs of the original lessors or there are other legal heirs as well. The Corporate Debtor, therefore, prayed for dismissal for the present petition.

13. Before proceeding to examine the case on merits, we would like to mention that this matter was listed on 02.01.2023 for hearing. The matter was passed over on the first call, on the request made by the Proxy Counsel appearing for the Corporate Debtor on the ground that the Learned Senior Counsel is held up in another Court. On the second call, the Learned Senior Counsel was not available. We, therefore, heard the submissions of Mr. Rajeev Rajan, Learned Counsel for the Operational Creditor and adjourned the matter to the next day i.e., 03.01.2023 for arguments on behalf of the Corporate Debtor.



On 03.01.2023, the arguments on behalf of the Operational Creditor were concluded. The Proxy Counsel for the Corporate Debtor again prayed for a pass over. The prayer was declined and orders were reserved.

14. The Corporate Debtor filed an application under Rule 11 of NCLT Rules, 2016 seeking permission to argue the matter. The Tribunal passed the following order in this application: -

“New IA-118/2023:-

This application has been filed under Rule 11 of the NCLT Rules, 2016 on behalf of the Corporate Debtor seeking to grant an opportunity to argue the matter.

The Applicant in para 2 of the application has stated the following:-

“That the arguments on behalf of Petitioner/Operational Creditor” had already been heard on the last date, i.e., on 02.01.2023 and the matter was listed for hearing arguments on behalf of Corporate Debtor/Respondent/Applicant on 03.01.2023. It is submitted that the matter was listed at Item No. 201 in the cause list and when the matter was called out, the briefing counsel on behalf of the Respondent/Applicant sought a short pass over of 15 minutes as the . Senior Advocate Mr. Vivek Sood, who was to appear and advance arguments on behalf of the Respondent/Applicant, was on his legs in some other Court. It is further submitted that the briefing Counsel humbly and modestly made request for short pass over of 15 Minutes, but the Hon'ble Bench was pleased declined the said requests and reserved the matter for orders. While the next matter (Item No. 202) was called out, the Senior Advocate Mr. Vivek Sood also joined virtual hearing and as soon as the hearing in the next matter (Item No. 202) was finished, the Senior Advocate appearing on behalf of the Respondent/Applicant mentioned the present



matter, but the Hon'ble Bench did not entertain his request and was pleased to decline his request for allowing him to advance the arguments on behalf of the Respondent/ Applicant.”

We have heard the submissions of Mr. Vivek Sood, Learned Senior Counsel. Upon perusal of the records, we have observed that, on 15.12.2022, no one had appeared on behalf of the Corporate Debtor. Mr. Rajeev Ranjan, Learned Counsel appearing for the Petitioner submitted that the issue as to whether arrears of rent fell under the definition of Operational Debt within the meaning of Section 5(21) of the Code is covered by the judgment of Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 423/2021 dated 05.07.2022 in the case of Jaipur Trade Expocentre Private Limited versus M/s. Metro Jet Airways Training Private Limited. The matter was directed to be listed on 02.01.2023.

On 02.01.2023, the following order was passed: -

“This matter was passed over on the first call on the request made by the Proxy Counsel appearing for Corporate Debtor on the ground that the Ld. Sr. Counsel who has been engaged to argue the matter is held up in another Court. When the matter was called out again, a similar request was made on behalf of the Corporate Debtor. However, we are not inclined to grant any further pass over because the matter is pending since 2019. We therefore heard the submissions of Mr. Rajesh Ranjan, Ld. Counsel appearing for the Operational Creditor. Ms. Garima Khandelwal, proxy Counsel for Corporate Debtor again made a prayer for a short adjournment on behalf of main Counsel. At request, we adjourn the matter. Matter heard in part.

List on 03.01.2023 for arguments on behalf of the Corporate Debtor.”

On 03.01.2023, this Tribunal passed the following order:-



“We have heard the arguments of Mr. Rajeev Rajan, Learned Counsel for the Applicant on 02.01.2023. The matter has been listed today for arguments to be made on behalf of the Corporate Debtor. Proxy Counsel appearing for the Corporate Debtor has again prayed for a pass over. However, we are not inclined to grant any pass over since this is a part heard matter and pending since, 2019. The Parties are at liberty to file written submissions within one week.

Order reserved.”

*Since, the order in the main petition has been reserved, we are of the considered opinion that the present application cannot be entertained at this stage and therefore, is **dismissed.**”*

15. We have heard Mr. Rajeev Ranjan, Learned Counsel appearing for the Applicant/Operational Creditor and perused the records.

16. Mr. Rajeev Ranjan submitted that the issue involved in the present matter i.e., whether recovery of arrears of rent can be considered to be operational debt under Section 5(21) of IBC, 2016 has been considered by a Larger Bench comprising of Five Hon’ble Members of the Hon’ble NCLAT in its judgment dated 05.07.2022 passed in Company Appeal No. 423/2021 in the case of “*Jaipur Trade Expocentre Private Limited versus Mis Metro Jet Airways Training Private Limited.*” In Para 40 of the judgment is reproduced below:-

“In view of the foregoing discussion, we answer the two questions referred to the larger Bench in the following manner:

(1) Judgment of this Tribunal in Mr. M. Ravindranath Reddy (supra) as well as judgment in Promila Taneja’s case does not lay down the correct law.

(2) The claim of Licensor for payment of license fee for use of Demised Premises for business purposes is an ‘operational debt’ within the meaning of Section 5(21) of the Code.”



Learned Counsel, therefore, submitted that issue involved in the present matter is squarely covered by the aforesaid judgment of the Hon'ble NCLAT. He also fairly submitted that an Appeal has been filed before the Hon'ble Supreme Court against the said judgment of the Hon'ble NCLAT. However, the Hon'ble Supreme Court has not granted any stay of further proceedings pending before the Adjudicating Authority.

17. Having considered the arguments made by the Learned Counsel for the Operational Creditor and having perused the records and case law cited by the Learned Counsel, we are of the view that the issue involved in the present case is squarely covered by the judgment of Hon'ble NCLAT in the case of in "*Jaipur Trade Expocentre Private Limited versus Mis Metro Jet Airways Training Private Limited.*"

18. The Corporate Debtor has also contended that there is a pre-existing dispute which was raised. In this regard, the Corporate Debtor has relied upon the email dated 18.01.2019 and the legal notice dated 22.12.2019 sent by it to the Operational Creditor, in support of his contention that the Corporate Debtor has raised a pre-existing dispute. We have perused the email dated 18.01.2018, the contents of the said email are extracted below:-

"This is for your kind information that we have trying to last ten days for obtain the MCD Health Licence at MCD Anand Parvat Office. The department has not accepted our request letter due to conversion charges not paid by you against the property. We have lot of tried and ex plane about the no liability of conversion of this property but the department has not agreed.

We are requested is kindly come the MCD office for explain to the officer."



On perusal of the said email, we do not think that there is any whisper about any pre-existing dispute. Rather, the said email mentions about obtaining the MCD Health Licence at MCD Health Anand Parvat Office. Therefore, in our view, it cannot be considered to be pre-existing dispute.

19. We have also perused the legal notice sent by the Corporate Debtor to the Operational Creditor on 22.10.2019 which is much after the issuance of Section 8 notice dated 17.09.2019. Therefore, the said legal notice also cannot be construed to be a pre-existing dispute.

20. We further find from the averments made in the reply affidavit filed by the Corporate Debtor that the corporate Debtor has admitted its liability.

21. In view of the foregoing discussions, we are of the considered view that the Operational Creditor has clearly established a case under Section 9 of IBC and therefore, we **admit** the present petition and direct initiation of CIRP against the Corporate Debtor.

22. The Operational Creditor has not proposed the name of the Resolution Professional for appointment as Interim Resolution Professional (IRP), therefore, Mr. Prabhakar Kumar having Registration No. IBBI/IPA-002/IP-N00774/2018-2019/12373, email ID prabhakar_acs@rediffmail.com, Mobile No. 9810011532, is hereby appointed as IRP from the IBBI list. The IRP is directed to take charge of the Corporate Debtor's management immediately including Bank accounts. The IRP is directed to cause public announcement as prescribed under Section 15 of IBC, 2016 within three days from the date the copy of this order is received and call for submissions of claim by the Creditors in the manner as prescribed.

23. The moratorium is declared which shall have effect from the date of this Order till the completion of CIRP, for the purposes referred to in



Section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely: -

- (a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- (d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- (e) The explanation below section - 14 (1) also stipulates “that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period”.



24. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended, or interrupted during moratorium period. The provisions of Sub- section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

25. We hereby direct the Operational Creditor to pay a sum of Rs. 2, 00,000/- to the IRP, as required under the provisions of the Code to meet out the initial expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

26. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 for the purpose of discharging his functions under Section 20 of the IBC, 2016.

27. The Learned Counsel for the Operational Creditor and the Registry are directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the CD's assets etc., and make compliance with this Order as per the provisions of IBC, 2016. On receiving the order, the IRP is directed to communicate this Order to the Operational Creditor, the Corporate Debtor, and the concerned RoC.

28. The CP/IB-2768(ND)/2019 is **admitted**.

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**