

IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through web-based video conferencing)

CP (IB) No.191/BB/2022
U/s. 9 of the IBC, 2016
R/w Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

Suzlon Energy Limited,
Registered Office at:
One Earth, Hadapsar,
Pune,
Maharashtra 411 028

... Petitioner/Operational Creditor

Versus

Legend Artists Private Limited,
Registered Office at:
No. 603/11A, 19th Main,
3rd Sector, HSR Layout,
Bengaluru 560 102.

... Respondent/Corporate Debtor

Order delivered on: 4th July, 2023

Coram: Hon'ble Ms. Bidisha Banerjee, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Ms. Amruta Thakur
For the Respondent : None

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition is filed on 25.04.2022 under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 6 of the I&B (Application to Adjudicating Authority) Rules

2016, by M/s Suzlon Energy Limited (for brevity 'Operational Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Process against M/s. Legend Artists Private Limited (hereinafter referred as 'Corporate Debtor/Respondent) on the ground that the Corporate Debtor has committed a default for a total outstanding amount of Rs. 2,12,38,497/- (Rupees Two Crore Twelve Lacs Thirty Eight Thousand Four Hundred Ninety Seven Only) comprising Principal amount of Rs. 1,80,48,219/-.

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner are as follows:
3. The Operational Creditor is engaged in the business of developing wind and solar power projects across India on behalf of its customers. The respondent is engaged in the business of 3D conversion and visual effects work.
4. It is submitted that in 2017, the Corporate Debtor evinced interest in occupying the Aqua Lounge, situated in the Building named "One Earth" (Licensed Premises) which is owned by the operational creditor. Pursuant thereto, the parties entered into a Leave and License Agreement dated 29.11.2017 for the Licensed Premises. (Leave and License Agreement)
5. Further, in or about January, 2020 onwards the corporate debtor started defaulting in payment of license fee with respect to the Licensed Premises. Thereafter, on 4th June, 2020, the Corporate Debtor issued notice to the Operational Creditor purportedly terminating the Leave and License Agreement claiming that the Corporate Debtor will not be liable to pay any rent to the Operational Creditor for the period during which it was unable to use the Licensed Premises despite the mainframe server of the Corporate Debtor, located within the Licensed Premises, continued to remain operational during the entire period of lockdown.
6. It is submitted that the Respondent abruptly vacated and left the premises, without handing over the possession of the Licensed Premises. Thereafter, vide email dated 19.06.2020, the Operational

Creditor placed on record that the respondent has not handed over peaceful and vacant possession of the Licensed Premises as per Clause 6.5 of the Leave and License Agreement to the Petitioner as per Clause 6.5 of the Leave and License Agreement.

7. However, the respondent vide email dated 23.06.2020 claimed that the petitioner refused to complete the handover. Further, in response thereto the vide email dated 23.06.2020 the petitioner placed on record that the respondent left the premises without completing the handover of the premises on the terms as agreed. The Petitioner vide email dated 04.01.2021 addressed to Senior Police Inspector, informed that the petitioner being the owner of the Licensed Premises, is taking back physical possession of the said Licensed Premises.
8. It is submitted that the respondent continued to default in its payment towards the license fees from January/February 2020. The corporate debtor is liable to pay license fees under the Leave and License Agreement from January/February 2020 till the expiry of Lock-in period i.e., till 19th November, 2020 and from 19th November 2020 till 5th January 2021, when possession of the Licensed Premises was actually taken back by the Petitioner.
9. Further, the petitioner issued Demand Notice dated 09.02.2022 to the Respondent under section 8 of the Insolvency and Bankruptcy Code, 2016 however, the corporate debtor has not replied to the demand notice nor made any payment.
10. The notice in the present case was issued on 14.11.2022. The Learned Counsel for the Petitioner has filed copy of proof of service and paper publication in one English and Kannada News Paper vide Diary Nos. 5422 dated 14.12.2022 and 5700 dated 27.12.2022. However, no representation was made by the respondent or objection was filed on behalf of the respondent inspite of repeated opportunity. On 25.04.2023 the Tribunal has forfeited respondent's right to file objection and the matter was reserved for orders on an exparte basis.

11. On 15.03.2023, tribunal directed the petitioner to file short synopsis and the same is compiled vide diary no. 2311 dated 26.04.2023 and the same is taken on record.
12. The Learned Counsel for the Petitioner in its written submission relied on the decision of Five member bench of NCLAT, Principal Bench New Delhi dated 05.07.2022 in the case of "*Jaipur Trade Expocentre Private Limited v M/s Metro Jet Airways Training Private Limited*" Company Appeal (AT) (Insolvency) No. 423 of 2021 wherein it is held that "*the Licnesee was licensed for a particular kind of service for use by the Licensee for running a business of Educational Institution. Hence, in the present case, debt pertaining to unpaid license fee was fully covered within the meaning of 'operational debt' under Section 5(21) and the Adjudicating Authority committed error in holding that the debt claimed by the Operational Creditor is not an 'operational debt'. This decision settles the issue regarding dues of License fees from Leave and License agreement being covered within the ambit of "Operational debt".*
13. The present petition is filed by M/s Suzlon Energy Limited against M/s Legend Artists Private Limited for a default of principal amount of License fee of Rs. 1,80,48,219/- along with 12% interest per annum amounting to Rs. 31,90,277/-.
14. It is seen from the Leave and License Agreement dated 29.11.2017 attached along with the petition that the respondent was occupying the building named "One Earth" which was owned by the Petitioner and invoices were raised by the petitioner.
15. It is submitted by the petitioner that, in or about January, 2020, the respondent started defaulting the License fees. Further, it is seen from the petition that from 17 February 2020 to 5th January 2021 the respondent has defaulted in making payments.
16. The petitioner issued demand notice dated 09.02.2022 under section 8 of the IBC via speed post, however, the same is returned as "Addressee left without instructions". It is noted from the petition that the demand notice was addressed to the registered office of the

respondent, as seen from the master data which is attached along with the Petition. Further, the petitioner send demand notice vide email dated 09.02.2022 to the email id of the respondent, its director and Chief Executive Officer. However, no dispute/reply was received from the respondent.

17. It is seen from the petition that the date of default is on 17.02.2020 and the petition is filed on 25.04.2022, which is well within the limitation. Further, the amount claimed in the petition amounts to Rs. 2,12,38,497/- which is within the threshold limit mandated under section 4 of the IBC, 2016. Further, the decision of the NCLAT, New Delhi cited supra makes it clear that the debt arising out of Leave and License Agreement in the present case falls within the category of 'operational debt'.
18. Accordingly this adjudicating authority is of the considered opinion that there is no reason to deny the petition filed under section 9 of the IBC, 2016 by the Operational Creditor to initiate CIRP against the Corporate Debtor, M/s Legend Artist Private Limited. Therefore, the instant Company Petition bearing CP (IB) No. 191/BB/2022 is **admitted** and moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:
 - 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
 - b. any court of law, tribunal, arbitration panel or other authority;
 - c. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - d. 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;

- e. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor.
 - f. It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
 - g. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
 - h. The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;
- 19.** This bench appoints TVS Siva Prasad Registration No. IBBI/IPA-003/ICAN00406/2021-2022/14051 having registered address Flat # C-339, Mahaveer ZEPHYR, KODI CHIKKANA HALLI, Near Easyday, Bangalore, Karnataka ,560076, e-mail sipra5860@gmail.com as Interim Resolution Professional to carry the functions as mentioned under the IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Section 15,17,18,19,20,21 of the IBC. The IRP shall file his written consent within one week from today.
- 20.** The Operational Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.

21. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.
22. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

-Sd-

**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

-Sd-

**(BIDISHA BANERJEE)
MEMBER (JUDICIAL)**