

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

**I.A. 861 OF 2022**

Under Section 60(5) of Insolvency &  
Bankruptcy Code, 2016

Hira Lal & Sons

...Applicant

Vs.

Anish Niranjan Mohanty

Resolution Professional/

...Respondent

In the matter of

C.P.(IB) No. 3025/MB/2019

State Bank of India

**Financial Creditor**

Vs.

Reliance Communications Infrastructure  
Limited

**Corporate Debtor**

*Order delivered on: 11.10.2023*

*Coram:*

**Shri Prabhat Kumar**

Hon'ble Member (Technical)

**Justice Shri V.G. Bisht**

Hon'ble Member (Judicial)

*Appearances*

For the Applicant : Mr. Viraj Parikh, Advocate

For the Respondent : Mr. Gaurav Joshi, Advocate

## ORDER

*Per: V.G. Bisht, Member (Judicial)*

1. The present application IA No. 861/2022 is filed by **Hira Lal & Sons** (“Applicant”) for seeking direction against the **Anish Niranjan Nanavaty**, the Resolution Professional (“RP”) of Reliance Communication Infrastructure Limited (“Corporate Debtor” or “RCIL”)
  - a. to forthwith vacate the Premises bearing private no. 27, a part of Municipal Corporation House No.100 admeasuring 34,375 sq. ft. situated at Baghpat Road, Maliyana, Meerut — 250002 (U.P.) (“Premises”);
  - b. to handover Peaceful Possession of the same to the Applicant and to treat the Sum of Rs. 61,23,646/- (Rupees Sixty-One Lakhs Twenty-Three Thousand Six Hundred Forty Six Only) being the Pending License Fees due and payable to the Applicant from the CIRP Commencement Date up to 1<sup>st</sup> December 2021, as CIRP costs and make payment of the same to the Applicant with immediate effect;
  - c. to treat all future License fees for the Premises as CIRP Costs and make Payment of the same on a timely basis, without any delay, till such time as the Premises are handed over to the Applicant;
  - d. to provide the Applicant with access to the Premises and direct the RP to take a joint inspection of the Premises with the Applicant to assess the damage to the Premises and ascertain the repairs required to the same;
  - e. to declare that RCIL is liable to compensate the Applicant for the damage suffered to the Premises on account of its continuous non-use for a period of more than two years and appoint a suitable third party expert in order to quantify the cost of restoring the Premises back to its original condition;

- f. to treat the cost of repairing the Premises in order to restore it back to its original condition as CIRP costs and make payment of the same to the Applicant with immediate effect; and
  - g. to rectify the admitted Claim Amount of the Applicant to a Sum of **45,03,361/- (Rupees Forty-Five Lakhs Three Thousand Three Hundred Sixty One Only)** in accordance with the Applicant's Claim Form Dated 12<sup>th</sup> October 2019.
2. The Applicant has submitted that the Corporate Debtor is engaged in business of providing Telecommunication Services, *inter-alia*, mobile, internet, broadband and telephone services. RCIL entered into a "Leave and License Agreement" ("**Agreement**") with the Applicant for using the godown/warehouse bearing private no. 27, a part of Municipal Corporation House No. 100 admeasuring 34,375 sq. ft. situated at Baghpat Road, Maliyana, Meerut—250002 (U.P.) as its warehouse for an initial period of 11 months. This stood extended from time to time and expired on 14<sup>th</sup> April 2018. Since the commencement of its corporate insolvency resolution process ("**CIRP**") on 25<sup>th</sup> September 2019, RCIL is no longer using the Premises. As of today, the Premises continues to remain in lock and key since more than 4 years.
- a. Upon expiry of the Agreement, RCIL (before and after commencement of CIRP) has been holding onto the Applicant's Premises without its consent. The Applicant is not providing any service to the Resolution Professional that it is required to raise invoices. If the Resolution Professional is occupying the Premises and claiming the benefit of the moratorium, he is obligated to compensate the Applicant for this forced occupation. In this regard, no invoice is required. If the Applicant is to raise an invoice, it would tantamount to admission that the Resolution Professional and RCIL's possession of the Premises is with its consent, which is not the case. The

Applicant has claimed monthly compensation of Rs. 1,71,475/- from RCIL and this figure was accepted in December 2018. Thereafter, 5 years had elapsed. On the base of Rs. 1,71,475/- the Applicant is entitled to yearly customary increases. It cannot be that on the one hand, RCIL enjoys possession and occupation of the Premises despite expiry of the Agreement and on the other hand, the Resolution Professional makes hyper-technical arguments on lack of invoices to deny the Applicant its fair claim of CIRP Costs.

- b. It is a matter of record that the Agreement between the Applicant and RCIL for the Premises expired on 14th April 2018. Despite this, RCIL did not vacate the Premises. Therefore, the Applicant had put RCIL to notice by way of its letter dated 1st December 2018 that RCIL would be liable to pay monthly compensation of Rs, 1,71,475/- per month. Pertinently, the authorised officer of RCIL (Mr. Javeed Ahmed) who continues to represent the Corporate Debtor even today, and was present during settlement talks agreed to this amount by way of his e-mail dated 2nd January 2019. Therefore, for the continued un-authorised occupation of the Premises, the Applicant is entitled to compensation at the rate of 1,71,475/- alongwith customary increases.
3. The Resolution Professional has filed Affidavit in Reply dated 03.05.2023 contending the license fee payable under the Agreement on its expiry on 14.04.2018 was Rs. 1,09,448/- per month and, in terms of agreement, the same was subject to increase @ 5% if the term of the agreement was extended beyond 14.04.2018 and the same was subject to execution of separate fresh agreement between the parties as provided in clause IV(Ii)(a) of the Agreement dated 15.05.2017. However,

no agreement was executed, and the applicant has not provided any copy of the agreement, if any executed. On the contrary, the Applicant had issued a notice dated 10.04.2018 seeking vacation of the premises, and thereafter another notice dated 1.12.2018 was issued demanding payment of Rs. 19,64,604.17 towards outstanding rental dues/license fee till 30.10.18. These dues remained unpaid as on date of commencement of CIRP i.e. 25.09.2019 and the premises was still in occupation and use of the Corporate Debtor. It is further submitted that while the Premises may be non-operational for some time, the Premises continue to hold inventory of the Corporate Debtor and its subsidiaries of over Rs. 30 crores in value, and the substantial cost would have to be incurred by the RP in case said inventory has to be shifted to another location. It is also submitted that while he had reached out to arrive at a mutually acceptable commercially acceptable rental/license arrangement for the period of occupation by the Corporate Debtor of the Premises during the CIRP, however, the Applicant has been unreasonably insisting on escalations and interest amounts which were not mutually agreed. It was also submitted that no invoice was raised by the Applicant claiming the license fee, and on account of expiry of leave & license agreement, he could not verify the claim of the applicant for the period after expiry of such agreement. Further, the RP has contended that the claim can not be considered as the application for approval for Resolution Plan has already been filed.

4. We have heard the counsel and perused the material available on record.
  - a. We find that the Corporate Debtor is in possession of the premises upon commencement of CIRP and the said

premises is used for storing the material of the Corporate Debtor. The leave & license agreement between the parties expired on 14<sup>th</sup> April 2018, however, the Corporate Debtor had not vacated the said premises even upto the date of commencement of CIRP on 25<sup>th</sup> September, 2019. These facts are not disputed. The RP has rejected the claim on account of absence of valid agreement between the parties, but has not denied the fact of its occupation and enjoyment for the purpose of business of Corporate Debtor. The fact that the Corporate Debtor has been enjoying the possession of said premises for its business even during the CIRP period is also in the knowledge of the RP, hence, it can not be said that the applicant's claim does not sustain at all. We find that there is dispute as to quantum of amount payable in respect of each month. The Applicant has claimed the license fee alongwith customary increases therein.

- b. Section 14 of the Code expressly provides that the Corporate Debtor can avail the services during the CIRP period upon payment for that period. Accordingly, we find merit in the contention of the applicant that he is entitled to monthly license fee in accordance with the terms of expired license agreement for the CIRP as CIRP costs, as well as License fee due upto the date of commencement of CIRP as Operational Debt. We find that the applicant has claimed monthly rent of Rs. 1,71,475/-, as claimed to have been accepted in December, 2018, and for this purpose has relied upon one e-mail communication from one Mr. Jawed Ahmed, the employee of the Corporate Debtor, asking the applicant in response to applicant's notice dated 1.12.2018 claiming rent of Rs. 1,71,875/- per month. However, on perusal of the said e-mail, we find that he had asked the

Applicant to submit copy of agreement for execution in the name of M/s Reliance Communications Limited, a sister concern of the Corporate Debtor. However, it is undisputed fact that no such agreement came to be entered into with either of the company. We notice that the acceptance of the amount claimed in the notice dated 1.12.2018 was subject to execution of agreement in the name of M/s Reliance Communications Limited, hence, the admission in the mail dated 2.1.2019 can not be taken as admission of monthly rent of Rs. 1,71,875/- per month. In view of this, we direct the Resolution Professional to admit the claim for rent at Rs. 1,09,448/- per month and, apply agreed increase of 5% thereto in terms of agreement dated 15.05.2017.

- c. We find that the Applicant, being the owner of the premises, is obligated to carry out routine repairs and maintenance, hence, the prayer for treating such cost of repair and maintenance can not form part of CIRP costs.
- d. As regards prayer for joint inspection, we direct the RP to fix mutually convenient time and allow the inspection, where RP can depute any of his person as his representative.

5. In view of the above, the Present Application no. 861/2022 is allowed.

Sd/-

**Prabhat Kumar**  
Member (Technical)

Sd/-

**Justice V.G. Bisht**  
Member (Judicial)