

SL. No.2

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

**CORAM: SHRI. RAJEEV BHARDWAJ – HON’BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 12.12.2023, At 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/942/2023 in CP (IB) No.260/9/HDB/2020
NAME OF THE COMPANY	Jeevan Polymers Pvt Ltd
NAME OF THE PETITIONER(S)	Shruti Impex
NAME OF THE RESPONDENT(S)	Jeevan Polymers Pvt Ltd
UNDER SECTION	9 of IBC

ORDER

IA (IBC)/942/2023

Orders pronounced, recorded vide separate sheets. In the result, application is disposed of accordingly.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

IA No.942 of 2023 in
CP(IB) No.260/9/HDB/2020

In the matter of:

Mr. Gullapalli Kishore Babu
Chairperson of the Monitoring Committee of
M/s. Jeevan Polymers Private Limited,
H.No.11-11-169, Sowbhagyapuram,
Road No.1, Kothapet,
Hyderabad – 500 035.

.... Applicant/RP

Vs.

Mr. Chandra Sekhar Gour,
M/s. Crystal Paper Industries,
Plot No.F-12, Road No.7,
IDA, Kukatpally,
Hyderabad – 500 037.

.... Respondent

Date of Order: 12.12.2023

CORAM:

Hon'ble Sri Rajeev Bhardwaj, Member (Judicial)

Hon'ble Sri Sanjay Puri, Member (Technical)

Counsels present:

For the Applicant : Ms. JVL Bharati, Advocate
For the Respondent : Mr. Manjeet Bucha, PCS
Heard on : 01.11.2023

PER: SANJAY PURI

ORDER

1. This application is filed by the Chairperson of the Monitoring Committee of the Corporate Debtor (**CD**) M/s Jeevan Polymers Private Limited, seeking to issue the directions to the Respondent;
 - i. To vacate the leasehold premises of CD and to remove the machinery/equipment installed by the Respondent and hand over possession to the Monitoring Committees.
 - ii. For payment of rental dues for the CIRP period starting from 19.04.2022.
 - iii. To clear all Government dues i.e. electricity dues, water connection dues etc., and give copies of the same to the Applicant and
 - iv. To direct the Local District Administration under Regulation 39(8) of CIRP Regulations for providing assistance in implementing the terms of the Resolution Plan.

Brief facts of the Application:

2. The Corporate Insolvency Resolution Process (**CIRP**) was initiated against the CD by virtue of the Order of this Tribunal dated 19.04.2022 and Mr. Gullapalli Kishore Babu was appointed as Interim Resolution Professional (**IRP**) and was continued as Resolution Professional (**RP**) with the approval of the Committee of Creditors (**CoC**).
3. It is submitted that, pursuant to which, the RP successfully completed the CIRP Process and consequent to the voting results, RP filed IA No. 480/2023 before this Tribunal for approval of the Resolution Plan submitted by M/s. Radiant Corporation Private Limited and the same was approved by this Tribunal vide its Order dated 21.4.2023.
4. It is further submitted that, during CIRP, RP noticed that the Director Mr. Sanjay Dugar representing CD had leased out two of the premises belonging to CD on Rs. 100/- stamp paper notarized, as per the following details:
 - (i) Lease Agreement¹ with the Respondent Company w.e.f. 10.01.2022 @ Rs.37,500/- per month for a period of 9 years for Plot No.F-12, Survey No. 356 & 357, IDA, Kukatpally, Balanagar Mandal, Rangareddy District. [**Premises of F-12**]

¹ Pg 12-14 of the Application (Annexure-2)

(ii) Lease Agreement² with the Respondent Company w.e.f. 01.01.2022 @ Rs.15,000 per month for a period of 11 months for Plot No. A/24/Part, IDA, Kukatpally, Balanagar Mandal, Rangareddy District. **[Premises of A-24]**

5. It is submitted that the Resolution Professional (RP) duly informed the Respondent about the commencement of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor (CD). The RP also communicated about his appointment and explicitly requested the Respondent to vacate the leasehold premises. The Respondent reportedly failed to comply. As per the Applicant, under Section 18 of IBC, it was imperative for the RP to "take control and custody of any asset over which the CD has ownership rights." Consequently, the RP issued a Legal Notice dated 16.8.2022³, instructing the Respondent to vacate the leasehold premises. The notice further directed the removal of any machinery installed by the Respondent, settlement of outstanding electricity and water bills, and clearance of all other pending government dues.
6. It is stated that the Respondent did vacate the leasehold premises of A-24 after the expiration of the lease period. However, the lease rent for the aforementioned premises remained unpaid from the initiation of CIRP until the vacation of the premises. Notably, the Respondent has yet to

² Pg 15-17 of the Application (Annexure-3)

³ Pg 18-19 of the Application (Annexure-4)

vacate the leasehold premises of F-12 and has not cleared the rental dues.

7. It is further stated that the RP sent a notice to the Respondent on 28-04-2023⁴, notifying them of the Tribunal's approval of the Resolution Plan. The notice advised the Respondent to vacate the leasehold premises of F-12 by 15.05.2023, failing which legal action would be initiated. Despite these communications, it is submitted that the Respondent has not been responding and not cooperating. Hence this application.

The Counter:

8. In response, the Respondent has filed a Counter, refuting the assertions made in the Application. The Respondent contends that the Lease Deed dated 09.05.2021, executed between the Corporate Debtor (CD) and the Respondent for the premises of F-12, predates the initiation of the Insolvency Resolution Process. The Respondent submitted that the mentioned leasehold premises are being used for the manufacturing of paper and paper products.
9. It is submitted that the Respondent is willing to pay the rental dues of the said leasehold premises and had requested the Petitioner to provide the bank account details to deposit the rental dues, but the Petitioner had not provided the same.

⁴ Pg 20-21 of the Application (Annexure-5)

10. It is further submitted that, as per Clause 5 of the Lease Agreement (for premises of F-12), lease can be terminated by the lessee only and the lessor was not entitled to terminate the lease. The lessor had explicitly waived the right to terminate the lease agreement. Hence, the Lessor (CD) does not have power to terminate the lease in terms of the provisions of the Lease Agreement.
11. It is submitted that, the Respondent had never disputed the ownership of the CD of the leasehold premises. According to the Respondent, the RP has failed to understand that taking control of the Assets of the CD does not mean removing the existing lessee from the leased premises of the CD. It is asserted that the RP has no power and jurisdiction to terminate the Lease Agreement after the cessation of moratorium. Once the moratorium was lifted by the order of this Tribunal, the management and control of the CD would be vested with the Board of Directors of the CD.
12. It is submitted that, under Section 30(2)(c), the RP cannot exercise the power of management of the affairs of the CD. Further, Section 31(3) of IBC provides that, after the approval of Resolution Plan, moratorium order shall cease to have effect and the RP shall forward the records of CIRP to the Board and the Resolution Applicant shall exercise such powers in terms of the approved Resolution Plan.

13. Further, Section 31(4) of the IBC, 2016 specifically provides that Resolution Applicant shall obtain necessary approvals as required by law and Section 31(4) specifically excludes the RP to obtain necessary approvals as required by law. Also, the Legal Notice issued by the RP after cessation of moratorium was, without power and authority.
14. About the Lease Deed being unregistered, it is argued that this would not invalidate the Agreement entered between the Parties. According to Section 107 of the Transfer of Property Act, 1882, where a lease was for a period exceeding one year could only have been made by a registered instrument executed by lessor and lessee. In the absence of the registered instrument, the lease shall be from month to month. Reliance was placed on *Burmah Shell Oil Distribution now Bharat Petroleum Vs. Khaja Midhat Noor and Others 1998 AIR 1470, 1988 SCR(3)811* wherein held that “it is clear from the very language of Section 107 of the Act which postulates that a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. In the absence of registered instrument, it must be a monthly lease.”
15. The Respondent has further relied on *Tata Seera Pani Vs. Relangi Nagashwara Rao and Others (Civil Appeal No. 1316 of 2001)*, where the Hon’ble Supreme Court of India held that “unregistered Lease Deed is inadmissible in evidence

under Section 49 of the Registration Act, except for the collateral purpose of proving the nature and character of the possession of the defendant i.e. relation of landlord and tenant.”

16. It is submitted that, the Rent Control Act provides the procedure to resolve the dispute arising between the lessor/landlord and lessee/tenant and thus, the said Act provides the remedy to the Petitioner for the eviction of the tenant from the lease premises. The Apex court in catena of judgement has ruled that where an alternative efficacious remedy is available, the Courts should refrain from exercising its jurisdiction.
17. Citing various judgments of the Supreme Court, the Respondent has argued that the Tribunal should not exercise its inherent power under Rule 11 of NCLT Rules, 2016 when an alternative efficacious remedy is available to the Petitioner. Hence, the present Application is liable to be dismissed, it is stressed.

The Decision:

18. In this case, the CIRP was ordered⁵ on 19.04.2022 and after due deliberations, a resolution plan was approved⁶ on 21.04.2023. The present application filed by the Resolution Professional as Chairperson of the ‘Monitoring Committee’ was completely unnecessary. The resolution plan of Radiant

⁵ In CP(IB)No.260/9/HDB/2020

⁶ In IA No. 480/2023

Corporation Private Ltd who were the successful resolution applicant (SRA) did take note of the premise given on lease by the Corporate Debtor before CIRP commenced. Notably, both Page-5 and Page-47 of the Resolution Plan, submitted by the SRA on 9th January 2023, explicitly document the existence of the F-12 and A-24 premises, affirming that they were "given on lease to one M/s Crystal Papers Inds, a paper cup making industry."

19. The Monitoring Committee, with the RP currently serving as Chairman, consists of two nominees from the Successful Resolution Applicant (SRA) and a nominee from Union Bank of India, the sole member of the Committee of Creditors (CoC). Their attempt to secure the vacation of the property leased through an uncontested and valid lease deed raises concerns and could be perceived as potentially collusive in nature.
20. Regarding the property at the A-24 premises, it has already been vacated by the Respondent Lessee upon the expiration of the lease period. Concerning the outstanding rent for this property, the Respondent has not opposed settling it. According to the Respondent, the Corporate Debtor (CD), now under the control of the Successful Resolution Applicant (SRA), is yet to furnish the requisite banking details for the deposit of the outstanding rent.

21. Turning to the F-12 premises, the sole contention raised, albeit weakly during the hearing, pertains to the unregistered status of the lease deed dated 9th May 2021.
22. It is acknowledged that this lease agreement, spanning nine years from 10.01.2021 to 09.01.2029, was liable to be mandatorily registered as per Section 17(1)(d) of the Registration Act and Section 107 of the Transfer of Property Act (TOPA). As the lease deed was not registered the implications can be discerned from Section 49 of the Registration Act, 1908, which sets out the consequences of non-registration of documents, which are required to be compulsorily registered.
23. Section 49 makes it clear that any document specified by section 17 that needs to be registered will not impact any immovable property mentioned in it unless it has been registered. However, an unregistered document affecting immovable property, which is required to be registered, can be accepted as evidence of a contract in a specific performance lawsuit or as evidence of any collateral transaction that doesn't necessitate a registered instrument. Evidently, the mere non-registration of the lease deed does not invalidate a lease that is still in force and is evidence of lessor and lessee relationship.

24. We are also persuaded by the judgment cited by the Respondent, in the case of *Burmah Shell*⁷ where Hon'ble Supreme Court had held that:

“ It is clear from the very language of Section 107 of the Act which postulates that a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. In the absence of registered instrument, it must be a monthly lease. The lessee and the sub-lessee in the facts of this case continued to remain in possession of the property on payment of rent as a tenant from month to month. The High Court so found. We are of the opinion that the High Court was right.”

25. In this particular case, the lease deed in question was executed prior to the initiation of the Corporate Insolvency Resolution Process (CIRP), with a stipulated lease period of nine years. The Respondent has admitted readiness to pay the rent, but the Applicant has not provided the necessary bank account details for the rent transfer.
26. Hon'ble NCLAT judgment in *Jhanvi Rajpal Automotive Pvt Ltd*⁸ cited by the Applicants does not apply in the present circumstances. In that case, the lease was first renewed by the CoC during the CIRP period and later it decided to get the leased property vacated after the renewed lease expired.

⁷ *Burmah Shell Oil Distributing v. Khaja Midhat Noor*, (1988) 3 SCC 44 at page 47

⁸ *Jhanvi Rajpal Automotive Pvt Ltd vs RP of Rajpal Abhikaran P Ltd* in **CA(AT) (Ins) No. 1417/2022**

In the case in hand, the lease period has not expired and is continuing, distinguishing it with the cited case.

27. Under the circumstances, we direct as follows:

- The prayer, for issuing of directions to the Respondents to vacate the leased premises where the period of the lease has not expired, is denied;
- The Respondents are instructed to clear all outstanding rent for the leased premises promptly; and
- The Corporate Debtor, currently under the control of Radiant Corporation Private Limited, the successful resolution applicant, to furnish banking details to the Respondents to facilitate deposit of the outstanding rent.

The application is disposed of accordingly.

Sd/-
(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-
(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

VL/NS

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

**CORAM: SHRI. RAJEEV BHARDWAJ – HON'BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 12.12.2023, At 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/449/2023 IA (IBC)/941/2022 Contempt Application(IBC)/6/2023 in CP(IB) No.260/9/HDB/2020
NAME OF THE COMPANY	Jeevan Polymers Pvt Ltd
NAME OF THE PETITIONER(S)	Shruti Impex
NAME OF THE RESPONDENT(S)	Jeevan Polymers Pvt Ltd
UNDER SECTION	9 of IBC

ORDER

IA (IBC)/449/2023, IA (IBC)/941/2022 and Contempt A (IBC)/6/2023

Present: Ld. Counsel Ms. JVL Bharathi for the Applicant/RP.
Ld. Counsel Mr. M. Maharshi Viswaraj for R1.
None appeared for R2.

Counter has already been filed by R1. None appeared for R2. As per report, summons issued to R2, it has been mentioned that there is no such person. Accordingly, applicant is directed to issue notice at the correct address of R2 through paper publication in English and Vernacular languages having wide circulation in the area where the R2 resides. **Matter is adjourned to 31.01.2024.**

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)