

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.627 of 2020

IN THE MATTER OF:

Vikas Jain

...Appellant

Versus

MD Nazim Khan, Liquidator & Anr.

...Respondents

For Appellant: Ms. Neha Kapoor, Advocate

**For Respondents: Md. Nazim Khan, Liquidator
Mr. Mohtashim Kibriya and Mr. Nilotpall Shyam,
Advocates**

O R D E R

(Virtual Mode)

23.09.2020 Heard Counsel for the Appellant and learned Counsel for Respondent No.1 – Liquidator. This Appeal has been filed by the Appellant – Landlord claiming that the premises from which the Corporate Debtor was operating, was leased out and between the parties, the lease deed executed on 11th December, 2017 was of 11 months on monthly rent w.e.f. 01.01.2018 to 30th November, 2018 of Rs.1.5 Lakhs excluding other charges like electricity, water, taxes, GST, annual maintenance, charges of lift, etc. The Corporate Debtor had been tenant since 2008. Appellant claims that the property when it was given to Respondent No.2 was newly constructed and the Corporate Debtor paid rent of Rs.1.5 Lakhs till June, 2018 and thereafter, stopped paying. It is claimed that Respondent No.2 – Corporate Debtor caused major damages to the premises due to negligence i.e. heavy load/machinery being kept causing cracks to the beams apart from other damages. As the

Appellant made claims for damages, the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench – III) passed Orders in CA-465/C-III/ND/2019 in IB-391/ND/2018 and Valuer was appointed which gave Report. Appellant claims that after hearing the parties, the Impugned Order came to be passed and the Adjudicating Authority reproduced the Reply of Liquidator regarding various claims made by the Appellant and remarks of the Liquidator regarding admitting or rejecting the claims and the Impugned Order passed held that the decisions taken by the Liquidator were legally sound and justified and the Application of the Appellant came to be dismissed.

2. The learned Counsel for the Appellant is submitting that during pendency of this Appeal, the possession of the premises has been received. She submits that the Report of the Valuer which was appointed through Order of the Adjudicating Authority, is before this Tribunal (Page -132). The Report dated 29th November, 2019 gives particulars of the estimates of repair works required to be done in the premises. The learned Counsel submits that actually the premises have been caused so much of damage that it would require pulling down the existing structure and reconstructing and because of this, the Appellant had claimed with the Liquidator amount of Rs.1,15,50,350/-. She submits that Report of the Valuer is incomplete as the Valuer does not say what repairs are major and what repairs are minor. She submits that the Valuer should have examined the Lease Deed and given his opinion as to which of the damages caused to the property could be attributed to the Corporate Debtor.

2. The learned Counsel for the Appellant further submits that the Corporate Debtor has not paid TDS on the amounts from April, 2018 to July, 2018 and even that was rejected. She further states that Government dues of UPSIDC were also rejected. The learned Counsel states that the Liquidator agreed to pay rent which was falling due during CIRP period and the liquidation proceedings period but did not agree to pay earlier rent due.

3. The learned Counsel for the Liquidator is supporting the Judgement of the Adjudicating Authority and submitting that the dues payable to the Income Tax Department or UPSIDC would be claims for the concerned Departments to make.

4. Learned Counsel for the Appellant claims that in the Form submitted to the Liquidator, the Appellant had relied on the Clauses of the Lease Deed to claim the damages. She refers to Annexure – A2 (colly) where reference is made to the rent and damages.

5. The Adjudicating Authority in the Impugned Order after hearing the parties, had observed as under:-

“12. In relation to the **first** issue, this Authority vide Order dated 11th October, 2019 had directed the Liquidator and the Appellant (Landlord) to get the tenanted *premises* inspected through a Registered Valuer for the purpose of determining the quantum of damages, if any, caused. It is submitted by the Liquidator that he has proposed the names of three Registered Valuers, which were rejected by the Appellant. The Appellant has given different three names of the Registered Valuers, out of which, one Mr. Inderpal Singh was appointed, who has inspected the tenanted *premises* and sent the report on 29th November, 2019 to the Liquidator, wherein it has been noted that the estimate of re-repair work of the rented

premises is Rs.21,40,629.93. It has further been noted by the registered Valuer in the report that as per the *External and Physical Appearance of the property and out Professional Experience, there is no Structural damage to the building*. Based on report of the registered Valuer, the Liquidator has submitted that the report of the Valuer has brought out clearly that no damage has been caused to the building due to any negligence/misdemeanour of the Lessee (Corporate Debtor).

13. As per Para 14 of the Lease Agreement, ‘All major repairs **except** those caused due to the **negligence/misdemeanour** of the Lessee shall be attended to and borne by the Lessor.’ Para 14 of the Lease Agreement is reproduced as follows;

“That the Lessee shall attend to the minor repairs & maintenance of the said tenanted premises such as leaking taps, loose wiring etc. and other minor repairs to the internal electrical, water, drainage, in the said premises at its cost. All major repairs except those caused due to the negligence/misdemeanour of the Lessee, shall be attended & borne by the Lessor.”

14. There is nothing on record to establish that the Corporate Debtor due to its negligence/misdemeanour had caused any damages to the tenanted premises and as per the report of the Valuer, there is no Structural damage to the building. Therefore, Corporate Debtor/Liquidator is not under legal obligation to pay any damages/compensation to the appellant as all major repairs are to be attended to and borne by the Lessor. Accordingly, the second issue stands decided against the Appellant/Landlord and in favour of the Liquidator.

15. The second issue raised by the appellant is with regard to the recovery of the damages @ Rs.10,000/- per day from the Corporate Debtor for illegally using the occupying the tenanted premises w.e.f. the date on which the period of the Lease Agreement expired. The Lease Agreement was in force for a period of 11 months starting with effect from 1st January, 2018 and ending on 31st November, 2018. Thereafter, the Lease Agreement is not renewed. The initial rate of rent fixed for the period of 11 months was @ Rs.1,50,000/- p.m., excluding all other charges except the House Tax. In the

meantime, this Tribunal vide Order dated 13.06.2018 has initiated the CIR Process against the Corporate Debtor and the order for liquidation was passed on 3rd of April, 2019.”

6. The Adjudicating Authority after going through the Report of the Valuer, concluded that the Report shows that there is no structural damage to the building and the damage could not be attributed to negligence/ misdemeanour. The Adjudicating Authority referred to the Lease Agreement Para -14 and thus, declined to accept the claim of the Appellant.

7. In our view, when the matter is in liquidation, such claims which are not already liquidated cannot be gone into in a manner Civil Court would examine disputes being raised which would require recording of evidence. Valuer could not give opinion if Corporate Debtor caused the damages, as is being argued. The liquidation proceedings cannot be converted into Landlord Tenant dispute. We have seen the reasons given by Liquidator regarding the various claims, which are reproduced in the Impugned Order. In the set of facts which we have before us, going through the reasons recorded by the Adjudicating Authority, we do not find any reason to interfere.

There is no substance in the Appeal. The Appeal is dismissed.

[Justice A.I.S. Cheema]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

rs/md