

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH (Court-II)**

KOLKATA

IA.(IB)No. 1030/KB/2021

In

C.P (IB) No.440/KB/2018

In the matter of

An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of National Company Law Tribunal.

And

In the matter of:

RVG Enterprises LLP, having its office at 160B, Chittaranjan Avenue,Kolkata -700007.

...Applicant

Versus

1. Sunil Mohan Acharya, Liquidator of Amrit Feeds Limited, having his office at YMCA Building, 2nd Floor, 25 Jawaharlal Nehru Road, Kolkata-700087.
2. Pankaj Kumar Tibrewal, erstwhile Resolution Professional of Amrit Feeds Limited, having his office at 15B,Ballygunge Circular Road, Kolkata-700019.

... Respondents

Date of hearing :20/02/2023

Order Pronounced on : 19/09/2023

Coram:

Ms.Bidisha Banerjee, Member (Judicial)

Mr.Balraj Joshi, Member (Technical)

Counsels appeared through Physically/ Video Conference

Ms.Swapna Choubey, Adv.] For the Applicant in 1030/KB/2021
Mr.Udit Agarwal, Adv.]

Mr.K.Thakar,Adv.] For the Liquidator
Ms.S.Thakar,Adv.]
Ms.Sneha Singhania,Adv.]
Mr.S.Das,Adv.]

ORDER

Per: Balraj Joshi , Member (Technical)

1. **IA (IBC)/1030/KB/2021**, is an application filed by the applicant RVG Enterprises LLP against the Liquidator praying for an order to the Respondent to consider, admit and release the rent accrued during the period of insolvency resolution process against the letting out of immovable property situated at Infinity Benchmark Building, Unit No. 604, 6th Floor, Block-EP & GP, Sector-V, Salt Lake, Kolkata owned by the Applicant being used by the Corporate Debtor.
2. It is submitted that the being the Operational Creditor of the Corporate Debtor, the claim was filed with the IRP on 4th November, 2019 and the applicant further kept raising the bills during the CIRP process.
3. The RP was appointed in the matter had also admitted the claim of the applicant and had considered the dues of the Applicant as ongoing cost which is a part of CIRP cost.
4. Subsequently, an order of liquidation came to be passed on 19/02/2021 and Mr. Sunil Mohan Acharya, has been appointed as Liquidator. Vide email dated 12/03/2021 the liquidator apprised the Applicant regarding liquidation of the Corporate Debtor and requested to share the lease agreement and claim of the outstanding dues.
5. The applicant immediately thereafter share the details along with total claim amount of Rs.1,02,33,328/-. The claim was admitted as intimated vide email

dated 7th April, 2021. The respondent's name was also included in the list of claim of Operational Creditor showing the full claim of Rs.1,02,33,328/- of the applicant being admitted.

6. The Respondent thereafter vacated the premises of the Applicant on 23rd April, 2021 and informed the same through email on the same day.
7. The Respondent held the meeting of Stakeholders Consultation Committee on 4th August, 2021 and 18th August, 2021 where claim of the Applicant was not considered as CIRP cost and apprised the outcome of the said consultation of Stakeholders to the Applicant vide email dated 14th August, 2021, to which the Applicant replied on 24th August, 2021 bifurcating the claims into three different stages.
8. The Respondent thereafter made the payment of Rs.6,97,268/- on 8th September, 2021 forming part of Liquidation Cost during the period of liquidation from 19.02.2021 to 23.04.2021.
9. While taking over the property upon release, it was found that the persons appointed by the liquidator had damaged the office badly. The photographs were shared with the liquidator, and put up in the application, and the amount of Rs.15,00,000/- was claimed. However, no payment was released by the liquidator and hence this present application has been filed.
10. In reply to the petition, respondent has completely denied the allegations of damaged property and resolving the pending issues during the CIRP period. It has been stated that the erstwhile CoC had not approved the cost and accordingly earlier RP had not paid the same. However, upon being appointed as Liquidator, Respondent had paid the rental amount of Rs.7,54,739/-incurred during liquidation period from 21.2.2021 to 23rd April 2021 and the amount of Rs 51,62,395/- incurred during the CIRP i.e. from 2nd Oct2019 to 18th Feb 2021was not paid because this claim was not admitted by the erstwhile CoC (Pg. 6 of the

Reply) and in view of the fact that even though the claim of the applicant was finally approved by the Liquidator but after consideration by the stakeholders committee creditors in the meeting held on 4th August, 2021 and 12th August, 2021, the claim of the CIRP and pre CIRP period could not be settled due to rejection by the erstwhile CoC.

11. We have noted the rival contentions and heard the Ld.Counsel appearing on both sides. It is an admitted position that the Corporate Debtor had been using the subject premises during the CIRP and therefore the rent during the period should have been paid during the period. This is also borne out from the fact that the liquidator after verification of the lease deed has arrived at a sum which was duly paid to the applicant albeit only for the liquidation period. It is also averred that PNB/Financial Creditor had vide letter dated 9th August 2021 stated that “CoC had not approved or ratified the going concern cost as submitted by the Resolution Professional in the meeting with 64% voting share. Therefore, the claim has not been considered as CIRP cost. No tangible reasons have been advanced by the liquidator even on behalf of the erstwhile RP or the CoC, for not considering the rental expenses during the CIRP, except that the same was not approved by the CoC.
12. In this matter, we rely on the judgement of Hon’ble NCLAT, in the matter of **Prerna Singh Vs. CoC of M/s Xalta Food and Beverages Pvt. Ltd., Contempt Case (AT) No. 03 of 202n Company Appeal (AT) (Insolvency) No. 104 of 2019**, the relevant part of the order is extracted below :
 13. *“Section 5(13) insolvency resolution process costs means— (a) the amount of any interim finance and the costs incurred in raising such finance; (b) the fees payable to any person acting as a resolution professional; (c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern; (d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and (e)*

any other costs as may be specified by the Board; 19.

Section 14(1) (d) provides that during the moratorium period the lessor or an owner of the property cannot recover the possession of the property from the Corporate Debtor.

Regulation 31 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 is as under:-

31. Insolvency resolution process costs. "Insolvency resolution process costs" under Section 5(13)(e) shall mean-

(a) amounts due to suppliers of essential goods and services under Regulation 32; (b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);

(c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33;

(d) expenses incurred on or by the resolution professional fixed under Regulation 34; and

(e) other costs directly relating to the corporate insolvency resolution process and approved by the committee.

20. As per Regulation 31 Insolvency Resolution Process costs under Section 5(13) (e) mean defined in clause (a) to (e). for the present case, Regulation CA No. 17/2020 in CP (IB) No.08/Chd/Chd/2017 (Admitted) Page 6 of 7 31

(b) is relevant which provides that amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under Section 14(1) (d). Due to moratorium period the lessor could not recover the possession of the property from the Corporate Debtor. Thus, the right of lessor to recover rent are affected on account of moratorium. Therefore, the lessor is entitled to recover the rent and which shall include in CIRP costs.

21. Thus, we find no substance in the argument that the rent cannot be included in the CIRP costs."

14. Thus we do not find any rationale behind the decision of the CoC of not approving the payment of rent of the subject property during the CIRP,

except that the Members of SCC are same as Members of erstwhile CoC, who had earlier not approved the CIRP cost despite the fact that the Resolution Professional from time to time placed before the CoC to consider the CIRP cost to which the CoC did not respond and hence the Resolution Professional considered the same as part of CIRP cost which was later on confirmed by the Resolution Professional and also forwarded to the Liquidator (page 27 of the application). As such, we direct the respondent to consider and pay the claim of the applicant viz. the CIRP i.e. w.e.f. 23.10.2019 to 18.02.2021 , Cost as admitted during the CIRP and also at the time of start of liquidation period, subject to verification as required under various provisions of IBC, including rules and regulations as applicable.

15. Let the payment be made within four weeks from the date of this order and compliance report be filed by the Respondent.
16. With these directions ***IA.(IB)No. 1030/KB/2021*** is allowed and disposed of.
17. The Registry is directed to send e-mail copies of the order forthwith to all the parties for information and for taking necessary steps.
18. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

Order signed on this, the 19th day of September,2023.

PJ