



**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**CA No. 17/2020
in
CP (IB) No.08/Chd/Chd/2017
(Admitted)**

**Under Regulation 60(5) of the
Insolvency and Bankruptcy
Code, 2016**

In the matter of :

Super Multicolor Printers Private Limited

having its registered office at
Plot No. 104, Industrial Area, Phase-I,
Chandigarh

... Corporate Debtor

And in the matter of CA No. 17/2020

Dalip Kumar Singh Boora,

through Special Power of Attorney I.P. Singh, Advocate
having its registered address at
House No. 226, Sector-11-A, Chandigarh

...Applicant

Vs.

**Super Multicolor Printers Private Limited
through Mr. Rajiv Khurana (Liquidator)**

having its registered office at
Plot No. 104, Industrial Area, Phase-I,
Chandigarh

...Respondent

Order delivered on: 28.04.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:

For the Applicant in

CA No. 17/2020 : Mr. Vaibhav Sahni, Advocate

For respondent in

CA No. 17/2020 : Mr. Arora Vishwas Kumar, Advocate



Per: Subrata Kumar Dash, Member (Technical)

ORDER

The present application is filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016, seeking directions against the liquidator to vacate the premises as per the eviction orders passed by the Ld. Rent Controller, Chandigarh.

2. In the present application, the applicant has stated that the corporate debtor took on lease the entire premises comprising of Plot No. 104, Industrial Area, Phase-I, Chandigarh, for an initial monthly rent of Rs. 2,25,000/-plus service tax payable in advance for a period of 10 years starting w.e.f. 01.06.2015 to 31.05.2025. It was further agreed that there would be an annual enhancement @ 7% each year. As per the terms and conditions of the lease deed, the same was for a period of 10 years starting w.e.f. 01.06.2015 till 31.05.2025.

3. It is submitted that the Corporate Debtor was in arrears of rent/lease amount w.e.f. 01.06.2017, which is @ Rs.2,57,602/- per month as per the terms and conditions of the lease deed. The Corporate Debtor also did not pay the lease amount w.e.f. 01.11.2016, and in addition to that, the TDS, as well as other taxes, were also not paid by the Corporate Debtor. The lease amount payable by the Corporate Debtor w.e.f. 01.11.2016 is @ Rs.2,40,750/- per month and w.e.f. 01.06.2017 is @ Rs.2,57,602/- per month as per the terms and conditions of the lease deed. Thus, the Corporate Debtor was in arrears of the rent. Apart from this, the Corporate Debtor had withheld an amount of Rs. 1,12,500/- towards TDS for the year 2016-2017, and TDS for the year 2017-2018 was outstanding. The Service Tax payable on Rent/Lease amount from the



quarter 1 October 2015 onwards, as well as other Taxes, have also not been paid by the Corporate Debtor.

4. The Applicant served a notice on the Corporate Debtor on 03.09.2017, demanding payment of arrears of the lease amount and stating that failure to comply would result in termination of the lease. The notice was sent via registered post and email and was delivered to the Corporate Debtor. Despite the notice, the Corporate Debtor did not comply with the demand, leaving the Applicant with no choice but to file a petition for eviction. The copies of the notice and postal track report receipt is attached as Annexure A-2 with the application.

5. The applicant filed an eviction petition before the Ld. Rent Controller, Chandigarh. A copy of the same is attached as Annexure A-3 of the application. The Ld. Rent Controller, Chandigarh, allowed the eviction petition filed by the Applicant through an order dated 27.04.2018. The order directed the Corporate Debtor to be evicted from the premises owned by the Applicant. A copy of the decree or judgment passed by the court is attached as Annexure A-4 of the application.

6. In the meanwhile, by order dated 23.05.2018, this Adjudicating Authority ordered the liquidation of the corporate debtor and Mr. Rajiv Khurana was appointed as the liquidator.

7. It is alleged that the liquidator did not allow the bailiff of the Court to execute the warrants of possession of the premises, so the premises could not be delivered to the applicant on 03.12.2018. Subsequently, the liquidator has also filed an application for setting aside the judgment/order of eviction order dated 27.04.2018 and has taken the plea that due to the moratorium period, the order of eviction dated 27.04.2018 is liable



to be set aside. The copies of the application dated 04.07.2018 and objections dated 03.01.2018 are attached as Annexure A-7 & A-8, respectively, with the application.

8. It is further submitted that no response has been received from the liquidator with regard to the amount payable to the applicant from 01.11.2017 to 30.12.2019, along with service tax and GST of Rs. 1,19,17,044.

9. The ten-year lease deed for the period from 01.06.2015 to 31.05.2025. The same is attached as Annexure A-1 to the application.

10. In its reply filed by diary No. 00009/01 dated 01.12.2020, wherein it is stated by the learned counsel for the liquidator that the premises are lying vacant till 31.08.2020, and various emails have been sent to the applicant to take back possession of the premises. The applicant was even asked to take the final decision on the deployment of the security personnel after 31.08.2020 and was informed that the expenses towards security will be to his account. The applicant has submitted his claim for arrears of rent by email dated 18.06.2018, and the same shall be paid as per the provisions of Section 63 of the IBC 2016. The claim filed in Form C is attached to the reply as Annexure R-2.

11. It is stated that the order passed by the Ld. Rent Controller dated 27.04.2018 was illegal and therefore was challenged by the liquidator. The liquidator has stated that as the corporate debtor is not operational and there is no cash generation, even the secured creditors also did not contribute to CIRP/liquidation costs. It is further stated that the plant and machinery of another company, i.e. Skyblue Papers Private Limited operating from the same premises, was lying at the subject premises, and the liquidator for the said company was Mr. Prem Garg. However, the assets in those premises belonging to Skyblue Papers Private Limited have secured assets against the loan of the creditor Punjab National Bank.



12. We have carefully considered the contentions of the rival parties and have also gone through the relevant lease deed and other documents.

13. The law on the issue of recovery of lease rent which could not be recovered because of the imposition of a moratorium after the initiation of CIRP, has been clearly laid down by the Hon'ble NCLAT in the case of ***Prerna Singh Vs. CoC of M/s Xalta Food and Beverages Pvt. Ltd., Contempt Case (AT) No. 03 of 2020 in Company Appeal (AT) (Insolvency) No. 104 of 2019***, the relevant part of the order is extracted below for the sake of clarity.

“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



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. In the present case, the respondent-Corporate debtor had entered into a Space Utilization Agreement with a third party, i.e., Skyblue Papers Private Limited, which was valid for five years till the year 2021. It is further mentioned in the email from the sub-tenant, i.e. Skyblue Papers Private Limited dated 28.06.2018, to the applicant that the plant and machinery of the sub-tenant were lying in the said premises, and the applicant was under a legal obligation to secure the same. The letter of the applicant dated 16.10.2019 (Annexure A-10 of the application) clearly indicates that the entire building was locked up by the respondent-liquidator, and there was even a suggestion to remove the machinery of the third party, i.e. Skyblue Papers Private Limited and store the same in the separate godown. Finally, by the email dated 31.08.2020 (part of Annexure R-1 of the reply) of the respondent, the respondent-liquidator had unequivocally asked the applicant to take over the property and has also clarified as under:

“Payment of rent is subject to the outcome of the application filed by you before the Hon’ble NCLT, Chandigarh Bench.

Please also be informed that the premises has been completely vacated today i.e. 30.08.2020.

Finally, it is reiterated for abundant clarity that no rent shall be payable after 31.08.2020.

As regards security of the premises is concerned, the same shall also be to your account after 31.08.2020. However, if you do not want deployment of security at the premises, please inform the undersigned and on your confirmation, no security shall be placed at the premises after 31.08.2020.”



15. There is no evidence produced before us that the applicant has taken any step after receipt of this email dated 31.08.2020 to take over the property. We are therefore of the considered view that the rent as per the lease deed dated 08.05.2015 is payable to the applicant by the respondent-liquidator for a period ending on 31.08.2020. We, however, direct that the rent should be calculated, taking into account the percentage increase clause in the aforementioned lease deed. As laid down in the order of the NCLAT in the case of ***Perna Singh (supra)***, the rent payable to the applicant ‘ *should be treated as CIRP cost and will be recovered in accordance with the provisions of Section 53(1) (a) of the Code.*’

16. With regard to the quantum of damages claimed, we are of the considered view that the issue of damages cannot be adjudicated by this Authority, we, however, give liberty to the applicant to approach the appropriate forum for recovery of the same if so advised.

17. The liquidator is directed to hand over the possession of vacated premises if not already done, to the applicant within one week of this order.

18. In the result, CA No. 17/2020 is allowed and disposed of accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

April 28, 2023

PB