

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

MA (IBC)/1(KB) 2022

in

C.P. (IB)/892(KB) 2019

An application for initiation of Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016;

In the matter of

Borojalingah Tea Company

...Financial Creditor

-Versus-

Imeco Limited

...Corporate Debtor

In the matter of:

Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

And

In the matter of

LVS Properties LLP.

... Applicant

-Versus-

Imeco Limited through IRP

...Respondent

Date of Hearing: 13/05/2022

Date of pronouncement :15/07/2022

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

Appearances:

For RP	:	Mr. Rishav Banerjee, Adv. Mr. Rajarshi Banerjee, Adv. Mr. A.K. Awasthi, Adv.
For successful Resolution Applicant, Imeco Overseas Limited	:	Mr. Joy Saha, Sr. Adv. Mr. Yash Vardhan Deora, Adv. Mr. Nikunj Berlia, Adv. Ms. Anshu Jain, Adv.
For applicant, LVS Properties: In MA/1/2022	:	Mr. Tanoy Chakraborty, Adv. Mr. S. Mitra, Adv. Mr. Keshav Kr. Daruka, Adv.

O R D E R**Per: Rohit Kapoor, Member (Judicial)**

1. The court convened through hybrid mode.
2. The instant application has been filed under Rule 11 of National Company Law Tribunal Rules 2016, seeking direction for the IRP to vacate the tenanted property and handed over to applicant and also directing IRP to include the claim of applicant on account of enhanced rent plus municipal taxes.
3. In view of rejection of its claims by the Resolution Professional on 1st of September, 2021 the rejection was conveyed to the applicant by the Resolution Professional through letter dated 1st of September, 2021 which is annexed as Annexure- F with this application.
4. We have perused the contents of letter dated 1st of September, 2021. As is reflected from the contents of this letter of the Resolution Professional, the claim of rent payable at the rate at which the rent was paid by the Corporate Debtor before the commencement of CIRP has been admitted.
5. It is also seen from this communication, the Corporate Debtor in addition to this, the applicant had not submitted any agreement or related document regarding the payment of taxes etc. within the period of submission of claims before the Resolution Professional.

6. We also see the Resolution Plan was approved by the CoC on 15th of February, 2022 and this application has been filed on 29th of March, 2022 i.e. after the approval of the Resolution Plan.
7. Seeking ejectment has been filed and pending before Learned Small Causes Court at Calcutta. Reference to this Civil Suit has been made in this application in para II and III.
8. Having regard to the averments contained in this application and the position of law, we are of the view;-
 - a. This application is not maintainable in view of the fact that the applicant did not furnish the claim of its municipal taxes within the time before the Resolution Professional.
 - b. The claim of enhanced rent cannot be determined by this Adjudicating Authority in its summary jurisdiction.

A civil suit for seeking ejectment is already pending before the competent court of jurisdiction.
9. For the foregoing application, this instant application is hereby rejected.
10. Urgent certified copy of this order, if applied for, be supplied subject to compliance with all requisite formalities.

Harish Chander Suri
Member (Technical)

Rohit Kapoor
Member (Judicial)

Order signed on the 15th day of July 2022.

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