

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, (COURT NO.-II)**

IA (I.B.C) No. 335/KB/2022

IN

C.P. (IB) No.662/KB/2018

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

IN THE MATTER OF:

State Bank of India

.....Financial Creditor

VERSUS

Sri Balaji Logistics Products Pvt. Ltd., (CIN No.: U72900WB2003PTC095621), a company incorporated under the provisions of the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having its registered office at 53A, Dr. Lala Mohan Bhattacharyya Road, 2nd Floor, Kolkata - 700014.

.....Corporate Debtor

IN THE MATTER OF:

SMRC Logistic and Warehouse Service Provider, an unregistered partnership firm having its office at 10/7, Ganpat Bagla Road, Kolkata-700007, Police Station, Jorabagan, and administrative office at BA-48, Salt Lake City, Sector-I, Kolkata-700064, represented herein by its Authorized Representative Mr. Rajesh Pandey.

.....Applicant

VERSUS

Mr. Anup Kumar Singh, Resolution Professional of **Sri Balaji Logistics Products Pvt. Ltd.** (in CIRP) having its office at Suite 1B, 1st Floor, 22/28A, Manoharpukur Road, Deshopriya Park, Kolkata-700029.

.....Respondent

Qwik Supply Chain Pvt. Ltd., (formerly known **Fine Tech Corporation Pvt. Ltd.**), having its registered office at 3rd Floor,

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Court House, Lokmanya Tilak Marg, Dhobitalao, Mumbai-400002.

.....Proforma Respondent

Date of Pronouncement:05.06.2024

Coram:

Shri Bidisha Banerjee, Member (Judicial)

Shri D. Arvind, Member (Technical)

Appearance (via video conferencing/physically):

**For the Applicant in Mr. Rishav Banerjee, Adv.
I.A.(IBC)No.335/KB/2022:**

**For the Respondent No. 7 in Mr. Z. Sultan, Adv.
I.A.(IBC)No.1975/KB/2023: Ms. S. Rao, Adv.
Mr. Mir Hassan, Adv.**

**For the Proforma Mr. Debargha Basu, Adv.
Respondent in Mr. V.V.V. Sastry, Adv.
I.A.(IBC)No.335/KB/2022:**

**For the Suspended Board of Ms. Jayati Chowdhury, Adv.
Directors Ms. Rashmi Singhee, Adv.
Ms. Sreya Sen Adv.**

**For the SRA Mr. Shaunak Mirta, Adv.
Mr. Saurav Jain, Adv.**

**For the Resolution Mr. Aman Agarwal, Adv.
Professional**

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Court is congregated through hybrid mode.
2. Ld. Senior Counsels/ Counsels were heard.

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3. The applicant SMRC Logistic & Warehouse Service Provider, has preferred this application to seek the following reliefs:

- i. The applicant is filing the instant application in view of the letters dated 12th March 2020, and 21st June 2021 which apparently reflects payment of rent by the Proforma Respondent to the Respondent inclusive of the share of rent of the applicant;*
- ii. The Respondent despite acknowledging the payment of rent is wilfully denying to release the legitimate share of rent in favour of the applicant;*
- iii. That the Respondent is acting in gross illegality, in arbitrarily, unreasonably and highhandedly by mis-appropriating the valid share of rent which the applicant is entitled to.*
- iv. The Respondent despite of receiving of the applicant's share of rent received from the Proforma Respondent is endeavoured/ apprehended to be utilizing it for its own purported benefits which is significantly against the basic principles of law.*

4. Facts in a nutshell:

4.1 The Applicant is an unregistered partnership firm partnered by Smt. Bibha Pandey and Smt. Rima Pandey and represented through its authorized representative, Mr. Rajesh Pandey.

4.2 It is urged that vide a Power of Attorney dated 15th February 2018, the applicant was authorised to act on behalf of the Corporate Debtor for leasing out the

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Corporate Debtor's warehouse at Baidyabati, Hooghly for which a lease agreement was executed by the applicant and the Proforma Respondent which came into effect from 7th April 2018,

- 4.3 The Respondent i.e. the Resolution Professional is presently managing the business affairs of the Corporate Debtor and conducting the CIRP. The Proforma Respondent, a company incorporated under the provisions of the Companies Act, 1956 is a Lessee in respect of the premises at Baidyabati, Hooghly.
- 4.4 The applicant had entered into a lease deed on 3rd April 2018 with the Proforma Respondent i.e. Quick Supply Chain Pvt. Ltd., (formerly known as Fine Tech Corporation Pvt. Ltd.,) for a period of 3(Three) years at a monthly rent was fixed at Rs. 31,73,314.00 excluding 18% GST which included the share of the Corporate Debtor and the applicant for both the open and covered areas respectively.
- 4.5 That after the execution of the lease deed, the Proforma Respondent had requested a No-Objection Certificate from the banker for the Corporate Debtor as the security document in order to ensure that the goods, stocks and materials kept at the warehouse at Baidyabati, Hooghly shall not be confiscated by the bank in case of any dispute that may arise between the Corporate Debtor and the bank in the future course. The Corporate Debtor being unable to procure such NOC from its banker had issued an Undertaking dated 16th May 2018 promising to indemnify the Proforma Respondent in case of any

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untoward situation which may lead to confiscation of the goods lying at the warehouse by the banks.

- 4.6 That the rent payable by the Proforma Respondent to the Corporate Debtor per month was Rs. 24,93,885.00 and Rs. 6,79,429.00 was due and payable to the applicant respectively for both the covered and open areas as depicted in the chart below: -

	Open Area Rent per month	Covered Area Rent per month	Total Rent per month
M/s Balaji Logs Produc t (P) Ltd.	5,27,563@Rs. 3 per sq.ft=15,82,689/-	75,933@Rs. 12 per sq.ft=9,11,196/-	24,93,8 85/-
SMRC Logisti c & Wareho use Service Provide r	5,27,563@Rs. 1 per sq. ft=5,27,563/-	75,933@Rs. 2 per sq. ft=1,51,866/-	6,79,42 9/-
Total (Princi pal Dues)	60,94,290/-	2,28,38,850/-	2,89,33, 140/-

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for 10 months			
Less: Security deposit and other adjustments	20,38,287+82,600 =21,20,887/-	74,81,655+2,47,800 =77,29,455/-	98,50,342/-
Interest @ 18%	20,84,248/-		
Total Dues	60,57,651/-	1,73,26,146/-	2,33,83,797/-

4.7 The Proforma Respondent since the execution of the lease agreement had accordingly deducted TDS @10% while making payment of such proportionate share of rent to both the Corporate Debtor and the Applicant as evident from the Form-26AS being the Annual Tax Statement being **‘Annexure-G’** on Page No(s). 123-126 of the application.

4.8 That the Provisional Respondent made payments of rent till May 2019 as evident by the Form 26AS but stopped payment from June 2019, which is annexed at **‘Annexure-H’** on Page No(s). 127-137 of the application.

4.9 It is alleged that vide a letter dated 12.03.2020, the Proforma Respondent, informed the applicant that it has cleared the due and payable amount of rent from May

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2019 till February 2020 to the Respondent which includes the share of the corporate debtor and the applicant, which is annexed at '**Annexure-I**' on Page No(s). 138-140 of the application. However, the Respondent RP having the relevant documents is illegally trying to misappropriate the legitimate share of rent to which the applicant is entitled to.

4.10 However, several representations of the applicant have gone in vain. Further, the Applicant wrote an email 25th June 2020 to the Proforma Respondent thereby seeking further clarifications about its outstanding share of rent and the Proforma Respondent vide an email dated 3rd July 2020 denied any dues in as far as the share of rent of the Applicant is concerned and have handed over the possession of the leasehold premises to the Respondent.

4.11 Thereafter on 29th December 2020, the applicant received a letter from the Proforma Respondent addressing to the Respondent whereby the Proforma Respondent reiterated the status of the Applicant in the furtherance explained and re-computed the demand raised by the Respondent vide its letter dated 4th August 2020.

4.12 The applicant has filed this application in view of the letters dated 12th March 2020 and 21st June 2021 which reflects payment of rent by the Proforma Respondent, to the Respondent inclusive of the share of rent of the applicant. The applicant alleges that the Respondent despite acknowledging the payment of rent is wilfully denying the legitimate share of rent of the applicant, is

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acting in gross illegality, in arbitrarily, unreasonably, and high handling misappropriating the valid share of rent to which the applicant is entitled to.

5. The Ld. Counsel for the Respondents would vehemently deny that the applicant's share of rent has been received by him.
6. We have perused the reply affidavit of Proforma Respondent, where the shares of **Sri Balaji Logistics Products Pvt. Ltd.**, the Corporate Debtor and the Applicant is depicted as under:

Details of payment

- SETTLEMENT COMPUTATION - [SRI BALAJI LOGS PRODUCTS PVT. LTD.]			Base Amount			TDS @ 10%			Net Amount Payable		
	Sri Balaji Logs	SMRC	Total	Sri Balaji Logs	SMRC	Total	Sri Balaji Logs	SMRC	Total	Amount in Rs.	
Jun'19	22,13,885	6,79,429	28,93,314	2,21,389	67,943	2,89,331	19,92,497	6,11,486	26,03,983		
Jul'19	22,13,885	6,79,429	28,93,314	2,21,389	67,943	2,89,331	19,92,497	6,11,486	26,03,983		
Aug'19	22,13,885	6,79,429	28,93,314	2,21,389	67,943	2,89,331	19,92,497	6,11,486	26,03,983		
Sep'19	22,13,885	6,79,429	28,93,314	2,21,389	67,943	2,89,331	19,92,497	6,11,486	26,03,983		
Oct'19	22,13,885	6,79,429	28,93,314	2,21,389	67,943	2,89,331	19,92,497	6,11,486	26,03,983		
Nov'19	22,13,885	6,79,429	28,93,314	2,21,389	67,943	2,89,331	19,92,497	6,11,486	26,03,983		
Dec'19	22,13,885	6,79,429	28,93,314	2,21,389	67,943	2,89,331	19,92,497	6,11,486	26,03,983		
Jan'20	22,13,885	6,79,429	28,93,314	2,21,389	67,943	2,89,331	19,92,497	6,11,486	26,03,983		
Feb'20	22,13,885	6,79,429	28,93,314	2,21,389	67,943	2,89,331	19,92,497	6,11,486	26,03,983		
Mar'20	22,13,885	6,79,429	28,93,314	2,21,389	67,943	2,89,331	19,92,497	6,11,486	26,03,983		
Less: Adj. for De-hired space (May '19)	2,80,000		2,80,000	28,000		28,000	19,92,497	6,11,486	26,03,983		
Less: Refundable Security Deposit						28,000	2,52,000		2,52,000		
NET RENT AFTER ADJUSTING SD AMOUNT							74,81,655	20,38,187	95,19,842		
Add: EB Charges as per bill recd. (Oct '19 to Dec '19)			<< Paid vide UTR No. N06420108285342 & N064201082859845 dated 4th Mar '20 >>				1,21,91,310	40,76,574	1,62,67,884		
TOTAL AMOUNT PAID			<< Paid vide UTR No. N064201082871138 dated 4th Mar '20 >>						2,23,715		
			<< Paid vide UTR No. N06420108285342 & N064201082859845 dated 4th Mar '20 >>				1,21,91,310	40,76,574	1,64,91,599		

7. It is evident that the breakup matches the breakup of arrears given on Page 145 of the petition which is as under:

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Subject: SRI BALAJI LOGS PRODUCTS PRIVATE LIMITED, Rent payment received from Fine Tech
From: Sri Balaji Logs Products Private Limited - To: warehouse@smrclogistics.com - Cc: rajesh@smrclogistics.com - Date: 22 May 2020 at 6:50 PM

Dear Sir,

This has reference to your mail dated 20th May, 2020 regarding clarification on the payment of outstanding rent made by M/s. Fine Tech Corporation Private Limited in the matter of Sri Balaji Logs Products Private Limited.

Please note that the undersigned has received INR 1,64,91,599/- as on 4th March, 2020 as rental arrears and other utility charges against the leased property.

Please be informed that no amount of SMRC has been claimed by the undersigned. Further, Fine Tech Corporation Private Limited is yet to pay INR 1,06,81,966/- of outstanding rent plus utility charges for the month of January 2020 February 2020 and March 2020 to the undersigned in the captioned matter of Sri Balaji Logs Products Private Limited

The Details of the outstanding rent amounting to INR 1,06,81,966/- is as follows:

Month	Rental Amount/INR	Electricity Cost/INR	Total outstanding/INR
June'2019	2694985.00 (2283885.00+ 18% GST Charges)	0.00	2694985.00
July'2019	2694985.00 (2283885.00+ 18% GST Charges)	0.00	2694985.00
Aug'2019	2694985.00 (2283885.00+ 18% GST Charges)	0.00	2694985.00
Sept'2019	2694985.00 (2283885.00+ 18% GST Charges)	0.00	2694985.00
Oct'2019	2694985.00 (2283885.00+ 18% GST Charges)	82323.00	2777308.00
Nov'2019	2694985.00 (2283885.00+ 18% GST Charges)	70330.00	2765315.00
Dec'2019	2694985.00 (2283885.00+ 18% GST Charges)	71062.00	2766047.00
Jan'2020	2694985.00 (2283885.00+ 18% GST Charges)	pending	2694985.00
Feb' 2020	2694985.00 (2283885.00+ 18% GST Charges)	Pending	2694985.00
March' 2020	2694985.00 (2283885.00+ 18% GST Charges)	pending	2694985.00
Total	26949850.00	223715.00	27173565.00
Received payment as on 04-03-2020			16491599.00
Outstanding rent to be paid			10681966.00 plus electricity charges for the month of Jan, Feb and March

8. Such being the position, we are constrained to hold that the arrears of Rs. 23,94, 958 include the applicant's share of Rs. 6,11, 486 deducting TDS of 10%.
9. As such we direct the RP to release the fair share of the applicant in two weeks in favour of the applicant.

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10. I.A. (I.B) No. 335/KB/2022 stands **disposed of** with no costs.

11. Urgent Certified copy of this order, if applied for be issued upon compliance with all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

Order Signed on the 5th Day of June 2024

A.S. LRA