

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1077 of 2020

[Arising out of Order dated 4th November, 2020 passed by the National Company Law Tribunal, Special Bench, Chennai in IA/626/2020 in CP/877/IB/2018]

IN THE MATTER OF:

Ms. Rajalakshmi Vardarajan

Resolution Professional of Arudaavis Labs Pvt. Ltd.

351/18, Ishwarya Flats,

36th Street, I Block, Anna Nagar,

Chennai – 6000 040.

...Appellant

Versus

Mr. G. Dhananjaya Naidu

Represented by POA Mr. D. Balaji,

2/42, Chennivakkam Village

Jagannathapuram Post,

Ponneri Taluk,

Chennai – 600 067.

....Respondent

Present:

For Appellant: Ms. Anjali Sharma, Advocate with Ms. Rajalakshmi Vardarajan, RP in person.

For Respondent: Mr. B. Dhanaraj and Mr. G. Ananda Selvam, Advocates.

J U D G M E N T

BANSI LAL BHAT, J.

Respondent herein filed application being IA/626/2020 under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') seeking direction in the name of Resolution Professional of the Corporate Debtor – 'M/s Arudaavis Labs Pvt. Ltd.' to handover vacant possession of the leased out premises to the Respondent besides claiming lease rental. By virtue of impugned order dated 4th November, 2020, the Adjudicating Authority (National Company Law Tribunal) Special Bench, Chennai allowed the application directing the Resolution Professional to vacate and handover the possession of land and building measuring 95 Cents and 10,504/- sq.ft. respectively comprised in survey no. 105/3C, 105/3D, 105/7B and 105/6B at Chennivakkam Village, Ponneri Taluk, Tiruvallur District to Respondent within 30 days starting from 5th November, 2020. Respondent was given liberty to file claim application within 30 days for the rental dues before the Resolution Professional. Aggrieved thereof, the Resolution Professional has preferred the instant appeal questioning the legality of the order impugned on the grounds set out in memo of appeal to which we shall be adverting to shortly.

2. Before proceeding to take note of the rival contentions, it would be appropriate to briefly notice the factual matrix attending upon the passing of impugned order. Corporate Insolvency Resolution Process (for short 'CIRP')

was triggered at the instance of Respondent by filing application under Section 9 of the I&B Code with the CIRP commencing w.e.f. 30th July, 2019 and Appellant being appointed as Interim Resolution Professional (IRP). Respondent lodged its claim before IRP for a total sum of Rs.66,79,260/- on account of rental arrears with interest covering the period from 1st April, 2014 till 1st August, 2019. According to Respondent, the claim came to be admitted by the Appellant in its entirety. Respondent, in his application filed before the Adjudicating Authority claimed that he being the absolute owner of land and building (godown cum shed) and the vacant land leased out to Corporate Debtor for manufacture of pharmaceutical ingredients etc. did face immense hardship and financial loss due to lack of godown space for storing his paddy stock harvested during May, 2020 leaving him with no option but to sell the stock at a throw away price and thus staked his claim to obtain vacant possession of leased premises for storing his future paddy stock. The Appellant contested the application on various grounds though the factum of admission of claim of Respondent to the tune of Rs.66,79,260/- on account of rental arrears was admitted. It was pleaded that the Lease Deed initially executed in year 2011 was renewed on 23rd November, 2013 for 11 months with effective lease period starting from 1st June, 2013 and after completion of 11 months the lease was not renewed further. It was further pleaded that moratorium had come to an end on the date of approval of Resolution Plan or Liquidation Order and as such Respondent could submit the claim only when Liquidation Process was initiated. In rejoinder, Respondent submitted before the Adjudicating

Authority that the Appellant was liable to pay the lease rental incurred during the CIRP Period besides handover vacant possession of premises held by the Corporate Debtor. On consideration of the rival contentions, the Adjudicating Authority, keeping in view the admission by the Appellant of the claim of Respondent to the tune of Rs.66,79,260/- being rental arrears for the period from 1st April, 2013 till 1st August, 2019 based on lease agreement entered inter-se the parties allowed the application culminating in passing of the impugned order assailed in this appeal.

3. Learned counsel for Appellant submits that the impugned order is at variance with the admission order dated 30th July, 2019 passed by the Adjudicating Authority which, while declaring the moratorium, had specifically prohibited the recovery of any property by an owner or lessor whether such property was occupied by or in the possession of the Corporate Debtor. He further submits that the impugned order violates the mandate of Section 14 (1) (d) of the I&B Code. Reliance is placed upon the order of this Appellate Tribunal dated 30th July, 2018 in **“M/s Navbharat Castings LLP vs. M/s Moserbear India Ltd. & Anr.”** being Company Appeal (AT) (Insolvency) No. 323 of 2018 and the judgement of Hon’ble Apex Court in **“Rajendra K. Bhutta vs. Maharashtra Housing and Area Development Authority”** being Civil Appeal No. 12248 of 2018. It is contended that as the Corporate Debtor is in actual physical occupation of the property the same cannot be recovered by the Owner or Lessor. It is further submitted that the application filed by the Respondent was premature as moratorium continued to be in effect and

neither any Resolution Plan had been approved for the Corporate Debtor nor had the Corporate Debtor been sent into liquidation.

4. Per contra it is contended by learned counsel for Respondent that the CIRP period of Corporate Debtor expired on 26th January, 2020 and no application was filed by the Resolution Professional for extension of CIRP period. It is further submitted that the CoC in its sixth meeting held on 20th January, 2020 resolved to liquidate the Corporate Debtor. The application for liquidation of Corporate Debtor was filed on 14th February, 2020. Respondent filed IA 626/2020 before the Adjudicating Authority on 5th August, 2020 praying for handing over of leased premises as CIRP period had expired and moratorium had ceased to have effect from 27th January, 2020. Same was allowed by the Adjudicating Authority in terms of the impugned order. It is further submitted that the Respondent's claim of rental dues was till the date of handover of premises even prior to the date of liquidation. As on date the liquidation of Corporate Debtor stands approved by the Adjudicating Authority vide order dated 12th January, 2021 in IA 280/2020.

5. Heard learned counsel for the parties and perused the record. The sole question arising for consideration in this appeal is whether the Owner/ Lessor of land in actual physical possession of Corporate Debtor can recover the same while moratorium is in effect.

6. This Appellate Tribunal had an occasion to deal with the issue in *Company Appeal (AT) (Insolvency) No. 323 of 2018, "M/s Navbharat Castings LLP vs. M/s Moserbear India Ltd. & Anr"*. It was held:-

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“3. On hearing, the learned counsel for the Appellant and in view of sub-clause (i) of clause (d) of Section 14 of the Insolvency and Bankruptcy Code, 2016, the recovery of the property by the owner occupied by the Corporate Debtor is not permissible during the period of moratorium.”

In the afore titled appeal this Appellate Tribunal was dealing with the issue whether the order of moratorium will be applicable to the lease hold property of a Landlord in which the Corporate Debtor is a tenant, particularly after decree of eviction passed in favour of the land lord against the Corporate Debtor. The finding recorded is unambiguous and lucid. The recovery of property by the Owner/ Landlord occupied by the Corporate Debtor is not permissible during the period of moratorium.

7. In **“Rajendra K. Bhutta vs. Maharashtra Housing and Area Development Authority”**, Civil Appeal No.12248 of 2018, the Hon’ble Apex Court was dealing with the issue whether Section 14(1) (d) of the I&B Code would apply to statutorily freeze occupation that may have been handed over under a Joint Development Agreement. After taking note of the judgments rendered in *“Municipal Corporation of Greater Mumbai vs Abhilash Lal & Ors. (Civil Appeal No. 6350 of 2019)”* and *“Sushil Kumar Agarwal vs. Meenakshi Sadhu & Ors. (2019) 2 SCC 241”*, the Hon’ble Apex Court held that Section 14(1)(d) of the I&B Code, when it speaks about recovery of property “occupied”, does not refer to rights and interests created in property but only actual physical occupation of the property.

8. It is abundantly clear that the property occupied by the Corporate Debtor cannot be recovered by the Owner/ Lessor during the period of moratorium. What is material is that the property should be occupied by the Corporate Debtor which is interpreted as 'actual physical occupation of the property' and 'not right or interest created in such property'.

9. Section 14 of the I&B Code provides for slapping of moratorium as a sequel to the order of admission of application under Section 7, 9 or 10 of I&B Code. It inter-alia, prohibits recovery of any property by an Owner or Lessor where such property is occupied by or in possession of the Corporate Debtor. Sub-section (4) & proviso thereto relevant for our purpose is reproduced as under:-

“(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

10. A bare reading of this provision reveals that the order of moratorium takes effect from the insolvency commencement date which, as defined under

Section 5(12), means the date of admission of an application for initiating CIRP by the Adjudicating Authority under Section 7, 9 or 10 of the I&B Code. It lasts till completion of CIRP. Under Section 12 of I&B Code the time limit for completion of CIRP is provided as 180 days from the date of admission of application to initiate such process which can be extended for a further period not exceeding 90 days but has to be mandatorily completed within a period of 330 days from the insolvency commencement date including the period of judicial intervention. However, the proviso to Section 14(4) makes it clear that in the event of approval of a Resolution Plan under Section 31(1) or passing of an order for Liquidation of Corporate Debtor under Section 33 by the Adjudicating Authority, the moratorium shall cease to have effect from the date of approval of the Resolution Plan or passing of order of Liquidation as the case may be.

11. Adverting to the facts of instant case be it seen that 180 days from the date of commencement of CIRP expired on 26th January, 2020 and since the Resolution Professional did neither apply for extension for CIRP beyond the ordinary period of 180 days nor was a Resolution Plan approved or liquidation order passed by the Adjudicating Authority before the expiry of CIRP period viz. 26th January, 2020, moratorium ceased to operate beyond 26th January, 2020. It is not in controversy that the Corporate Debtor has subsequently been pushed into liquidation in terms of order dated 12th January, 2021 passed by the Adjudicating Authority. Therefore, we find no force in the contention raised by the Appellant that the moratorium was in force on 4th November, 2020 when the impugned order came to be passed. It

also emerges from record that the Appellant herself has admitted the claim of Respondent to the tune of Rs.66,79,260/- for the period from 1st April, 2014 till 1st August, 2019 by relying on the lease agreement entered inter-se the parties. With prohibition in terms of moratorium having ceased to operate w.e.f. 26th January, 2020, Appellant cannot justifiably hold on to the leased premises nor resist payment of outstanding rental arrears for the CIRP period.

12. We find no legal infirmity in the impugned order. The appeal is accordingly dismissed. No order as to costs.

**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

**[Dr. Alok Srivastava]
Member (Technical)**

NEW DELHI

31st March, 2021

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