

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 1324 of 2019

IN THE MATTER OF:

Vishal Ghisulal Jain

...Appellant

Vs

Amar Universal Pvt. Ltd.

....Respondent

Present:

For Appellant: Present but appearance not marked.

For Respondent:

ORDER

20.11.2019: In the Corporate Insolvency Resolution Process of ‘S. K. Wheels Pvt. Ltd.’, ‘Amar Universal Private Limited’ - 1st Respondent, who is landlord filed Miscellaneous Application for direction on Resolution Professional to handover the land to said landlord – ‘Amar Universal Private Limited’ being a third party property.

2. The Appellant – Resolution Professional, raised objection relating to claim made by the 1st Respondent on the ground that ‘Amar Universal Private Limited’ has no complete right over the premises of land or has dues outstanding.

3. The Adjudicating Authority noticed that a civil suit is pending before the Court of Law and based on the agreement, the tenancy/ license fee was to be paid on 7th of every month by the Corporate Debtor, which entitles the owner of the land (1st Respondent) to reclaim the property if the rent is not paid.

4. The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, by impugned order dated 16th October, 2019 observed that the Resolution Professional may be for the said reason not have been sitting over the claim filed by the 1st Respondent – Landlord. In view of the same, Miscellaneous Application filed by 1st Respondent - ‘Amar Universal Private Limited’ was allowed with direction to the Resolution Professional to handover the land to the 1st Respondent including the claim amount within one week with further direction to the Resolution Professional to pay a cost of Rs.1 Lakh to the 1st Respondent.

5. Learned counsel appearing on behalf of the Appellant submitted that the premises is essential and necessary for the Corporate Debtor for operating in the vicinity of the Corporate Debtor. The Automobile Industry is a unique type and requires a large space of open land alongwith workshop area and accessibility to the residential area. The Corporate Debtor has already incurred huge expenditure for repairs and for capital expenditure on the subject premises. However, it is not disputed the in terms of the Agreement, the Resolution Professional on behalf of the Corporate Debtor has not paid the current rent during the Resolution Process and for such non-payment in terms of the agreement the land is to be returned.

6. Learned counsel appearing on behalf of the Appellant submits that the Resolution Professional has agreed to pay the rent. However, we are not inclined to give any direction to the Respondent of such. It is not disputed that the claim of the Respondent No. 1 was not decided by the Resolution Professional and no decision was communicated to the Landlord.

7. Further we find that as per Agreement, the Corporate Debtor was holding the vacant land for the purpose of keeping the automobiles pursuant to the license and not any Lease Agreement. There is nothing on record to substantiate existence of workshop on said land.

8. In that view of the matter, we are not inclined to interfere with substantive part of the order. However, we are of the view that it was not the case to impose any cost on the Resolution Professional. Therefore, we are inclined to interfere with such part of the impugned order.

9. Further we make it clear that the Resolution Professional who has been asked to pay the dues and hand over the possession of the land, will be paying the current rent of the period of Resolution Process, as in terms of Section 14 of the I&B Code, earlier claim amount cannot be returned to any Operational Creditor or other Creditors. Therefore, the Direction at para 19 should be read

as “pay the claim amount as raised by the Applicant for current period after initiation of the Corporate Insolvency Resolution Process”.

10. The Resolution Professional will determine the claim of the 1st Respondent and communicate the same to the 1st Respondent and may approach the 1st Respondent - ‘Amar Universal Private Limited’ for renegotiation and settlement of any grievance in terms of earlier agreement. ‘Amar Universal Private Limited’ in such case may reach new Terms of Settlement uninfluenced by the order passed by the Adjudicating Authority or this Appellate Tribunal.

11. For the reason aforesaid, the impugned order so far as it relates to imposition of cost of Rs.1 Lakh is set aside. The said order stands modified. The appeal stands disposed of with aforesaid observations and directions.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

am/sk