

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, CHENNAI  
(APPELLATE JURISDICTION)**

**Company Appeal (AT) (CH)(Ins) No. 16 of 2021**

**(Under Section 61 of the Insolvency and Bankruptcy Code 2016)**

**(Arising out of Order dated 24.2.2021 in IA No.168/2020 in CP(IB)  
No.173/9/HDB/2018 and TCP(IB)No.22/9/AMR/2019 passed by Hon'ble  
National Company Law Tribunal, Amaravati Bench)**

**IN THE MATTER OF:**

Kenington Industries Private Ltd. ... Appellant  
Registered Off: 103, Sumer Kendra, P.B.Marge,  
Worli, Mumbai 400 018.

**V.**

M/s Siva Ram Yarns Pvt.Ltd.  
Through Resolution Professional,  
Mr.Dommeti Surya Rama Krishna Saibaba  
Flat A-105, Mahindra Ashvita  
Hafeejpet Road, Near Hi-Tech MMTS Railway Station,  
KPHB Colony, Hyderabad  
Telengana 500 085. ..Respondent

**Present :**

For Appellant : Mr.Sumesh Dhawan, Advocate

**ORDER**

**(VIRTUAL MODE)**

Heard the Learned Counsel Mr.Sumesh Dhawan, appearing for the Appellant/second Respondent.

2.According to the Learned Counsel for the 'Appellant/Second Respondent, the 'Adjudicating Authority'(National Company Law Tribunal, Amaravati Bench) while passing the 'Impugned Order' dated 24.2.2021, in IA No.168/2020 in CP(IB) No.173/9/HDB/2018 and TCP(IB)No.22/9/AMR/2019 had directed the Respondents' therein to pay a sum of Rs.55,50,000/-, to pay a sum of Rs.4,38,154/- towards

Insurance Premium amount and further amount of Rs.1,50,000/- per month due towards rent with effect from 1.8.2020 and further directed the Respondents therein to pay the above amounts forthwith and added further issued a direction to the Respondents therein to vacate the property and to facilitate the 'Resolution Professional' to proceed with 'CIRP process' and in this regard, it is the submission of the Learned counsel for the Appellant that the 'Adjudicating Authority'(National Company Law Tribunal, Amaravati Bench) had assumed the role of 'Civil Court' and granted a decree of eviction against the 'Tenant/Lessee' which is impermissible in Law.

3. The Learned Counsel for the Appellant takes a plea that the powers of the 'Adjudicating authority' under Section 60(5) and (6) of the Insolvency and Bankruptcy Code, 2016, is restricted because of the fact that it cannot assume the jurisdiction of a 'civil Court'.

4. The other stand of the 'Appellant' is that because of the ingredients of Section 231 of the Insolvency and Bankruptcy Code, 2016 'Bar of Jurisdiction' the 'Adjudicating Authority'(National Company Law Tribunal) cannot travel beyond its ambit to try disputes and adjudicate issues which squarely falls within the domain of 'Civil Court' jurisdiction.

5. The Learned Counsel for the 'Appellant' points out that no amount is payable by the 'Appellant' to the 'Respondent' for the period commencing from 1.7.2017 to 15.11.2019 and in fact, a sum of Rs.53,11,151.34/- was paid in excess over and above the lease rent and hence the 'Impugned Order' of the 'Adjudicating Authority' (National Company Law Tribunal, Amaravati Bench)is flawed one, because of the reason that it was based on incorrect and partial facts about the transactions between the parties as provided by the 'Respondent'.

6. The Learned Counsel for the 'Appellant' brings it to the notice of this 'Tribunal' that for the period commencing from 15.11.2019 to 31.07.2020 the purported amount of Rs.12,75,000/- claimed by the 'Respondent' is to be adjusted with the outstanding sum of the 'Appellant' that it had paid in excess of the rent paid to the 'Respondent'.

7. The Learned Counsel for the 'Appellant' refers to the judgement of the 'Appellate Tribunal' in K.L.Jute Products Pvt.Ltd. v.Tirupati Jute Industries Ltd. 2020 SCC online NCLAT 426, wherein the rejection of resolution plan by the 'Adjudicating Authority'(National Company Law Tribunal, Kolkatta Bench) was upheld for the reason among other things, that the 'Resolution Professional' cannot impose a condition that he will proceed with resolution plan only when the 'Adjudicating Authority' orders eviction of the tenant of the Corporate Debtor.

8. In this connection, the Learned Counsel for the 'Appellant' adverts to Paragraph 66 of the aforesaid judgement in K.L.Jute Products Pvt.Ltd. which runs as under:

*"66. In so far as, the eviction of 2<sup>nd</sup> Respondent is concerned, the Adjudicating Authority is not empowered to pass an order of eviction and it is for an 'Aggrieved party' to move the appropriate forum redressal of its grievances in accordance with Law. In short, the Committee of Creditors had approved the Resolution Plan in utter disregard regard to the ingredient of Section 30(2)(e) of the I&B Code and as hence the same was rejected by the Adjudicating Authority. Moreover, the Adjudicating Authority had appointed a 'Liquidator' other than the 'Existing Resolution Professional'.*

9. Considering the submissions advanced by the Learned Counsel for the 'Appellant', this 'Tribunal', at this stage, directs the issuance of notice through speed post, returnable by 16.4.2021. Let the requisite

together with process fee be filed by the 'Appellant's side within three days from today. The 'Appellant' shall provide the Mobile Number(s) and e-mail address of the Respondent. In the event of the Learned counsel for the Appellant providing the aforesaid details, then the Office of the Registry may issue notice to the Respondent.

10. In the meanwhile, in IA No.42 of 2021 in Comp.App.(AT)(CH)(Ins) No.16 of 2021, on the file of National Company Law Appellate Tribunal, Chennai, there shall be an 'Order of Stay' in regard to the implementation of the 'Impugned Order' dated 24.2.2021 in IA No.168/2020 in CP(IB)173/9/HDB/2018 and TCP(IB)No.22/9/AMR/2019 on the file of 'Adjudicating Authority' (National Company Law Tribunal, Amaravati Bench).

11. The 'Office of the Registry' is directed to List the matter on 16.4.2021.

***[Justice Venugopal M]***  
***Member (Judicial)***

***[V.P.Singh]***  
***Member (Technical)***

***18 .03.2021***

**HR**