

(2024) 02 NCLT CK 0005

In the National Company Law Tribunal

Case No : C.P. (IB) No. 592/MB/2023

Amex Infrastructure Private Limited Vs Samaro Global Industries Private Limited ?

Date of Decision : 01-02-2024

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 4, 9

Citation : (2024) 02 NCLT CK 0005

Hon'ble Judges : Kishore Vemulapalli, Member (J); Anu Jagmohan Singh, Member (T)

Bench : Division Bench

Advocate : Rushabh Sheth

Final Decision : Disposed Of

Judgement

1. This is a Company Petition filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 ("IBC, 2016") by Amex Infrastructure Private Limited ("Operational Creditor") on 22.07.2023 seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against Samaro Global Industries Private Limited ("Corporate Debtor") for the amount payable to the Operational Creditor.

Submissions of the Operational Creditor

2. The Corporate Debtor is a private company incorporated on 11.10.2019 under the Companies Act, 1956, having its Registered Address at Office

Nos. 213, 214 and 215, 2nd floor, Hub Town Solaris, N.S. Phadke Marg, Andheri (E), Mumbai, Maharashtra. This Bench has territorial jurisdiction to deal with the present petition.

3. The present petition is filed by the Operational Creditor before this Adjudicating Authority, on the ground that the Corporate Debtor herein has failed to make payment of a sum amounting to INR 2,38,26,883/- (Rupees Two crores, thirty-eight lakhs, twenty-six thousand, eight hundred and eighty-three only). The Date of Default, as specified in Part-IV of the Application, is 01.12.2021.

4. The Operational Creditor submits that by way of Mortgage Agreement dated 29.04.2014, it acquired the sole and absolute possession of all that piece and parcel of land bearing Old Survey No. 121 (p) and New Survey No. 640, 649, 651, 652, 653 & 650 of larger land ("Larger Premises") within the limits of Village Malav, Taluka Umargaon, Distt. Valsad, Gujarat along with the "...structure standing thereon", which is referred to hereinafter as the Licensed Premises.

5. The Operational Creditor submits that it was approached by the Corporate Debtor, who intended to set up its factory in the afore-mentioned licensed premises, on a leave and license basis to conduct its business. Consequently, the Corporate Debtor herein entered into and executed a Leave & License Agreement ("L&LA") with the Operational Creditor dated 16.08.2019 for a period of 5 (five) years from 01.07.2019 to 30.06.2024 for industrial and commercial purposes of carrying on the said business activities. The rent breakup, in terms of the afore-state L&LA is as follows:

S. No.

Particulars

Term

01

Rent free period in lieu of Constructions, Alteration, Modification/ Additions, and getting Electricity Supply including all hardware and deposits

01.07.2019

to 30.09.2020

(15 months)

02

Monthly Licensee fee of INR 8,00,000/- (Rupees Eight Lakhs Only) plus GST

01.10.2020

to 30.06.2023

03

Monthly Licensee fee of INR 9,60,000/- (Rupees Nine Lakhs Sixty thousand only) plus GST

01.07.2023

to 30.06.2024

6. The Operational Creditor further submits that along-with the said L&LA, the

Operational Creditor and the Corporate Debtor entered into an Amenities Agreement dated 16.08.2019 whereby it was agreed that during the term of the said license period viz. 01.07.2019 to 30.06.2024, the Operational Creditor would permit the Corporate Debtor to use the amenities and facilities in consideration of which, the latter would pay the Amenity Fee. The breakup of the Amenity Fee, in terms of the afore-state Amenities Agreement is as follows:

S. No.

Particulars

Term

01

Fees of INR 2,00,000/- (Rupees Two lakhs only) plus GST as and by way of monthly amenities fee plus GST for a period of 30 months

01.07.2019 to

31.12.2021

02

Monthly Amenities fee of INR 4,00,000/- (Rupees Four lakhs only) plus GST for the use of amenities shall be in addition to the License fee payable by the Licensee to the Licensor to the L&LA

01.02.2022 to

30.06.2023

03

Fees of INR 4,80,000/- (Rupees Four lakhs eighty-thousand only) plus GST per month on chargeable area as amenities fees

01.07.2023 to

30.06.2024

7. The Operational Creditor contends that the Corporate Debtor was irregular in making payments in terms of the afore-stated License & Amenities Fees, and

that it defaulted in discharging the pending fees w.e.f. 01.12.2021 viz. the Date of Default cited in Part-IV of this petition. Further, the Operational Creditor claims that albeit the Corporate Debtor confirmed balance due to the former, it failed to release the outstanding amount despite repeated follow-ups, representations and repeated assurances and did not vacate the premises thereto. Therefore, the Operational Creditor sent a Notice via E-mail dated 04.02.2023 and called upon the Corporate Debtor to discharge the dues owed to the former.

8. At the backdrop of the above notice, the Operational Creditor claims that the agents and employees of the Corporate Debtor purportedly manhandled its guards, removed the operational power supply (which was expressly provided for as an asset of the Operational Creditor at all times vide terms of the L&LA dated 16.08.2019) and carried the same along with other equipment(s) via two vehicles out of the licensed premises. Pursuant to these events, the Operational Creditor claims that it was constrained to serve a Demand Notice dated 02.05.2023, thereby calling upon the Corporate Debtor for release of payment of total dues owed to the former.

9. In light of the aforesaid, the Operational Creditor claims that on account of Corporate Debtor's purported violation of the L&LA and the Amenities Agreement, and its inability of not handing over the vacant and peaceful possession of the licensed premises to the Operational Creditor, it decided to initiate CIRP of the Corporate Debtor to recover its dues and has therefore, filed this petition under Section 9 of the IBC, 2016.

Submissions of the Corporate Debtor

10. The Corporate Debtor disputes the veracity of the claims of Operational Creditor, in so far as the alleged violation of the L&LA and the Amenities Agreement, amount and facts affirmed in relation to the power supply, computation of interest as laid out in Part-IV of the present petition, and the alleged delay on part of the Corporate Debtor towards the payment of rent is concerned. The particulars of outstanding amount, as laid out in Part-IV of the present petition, is extracted hereinunder:

S. No.

Particulars

Amount (in

INR)

1

Rent & Amenities (July, 2019 till Feb, 2023)

4,10,64,000/-

2

Rent & Amenities for March 2023

14,16,000/-

1+2=A

SUB-TOTAL (A) Total License &
Amenities Fee (Juy,2019 to March, 2023)

4,24,80,000/-

4

Total Rent Received

3,27,09,095/-

5

Total TDS Received

20,36,000/-

4+5=B

SUB-TOTAL (B) Total Amount Received

3,47,45,095/-

C

Double License fees/ amenities

28,32,000/-

D

Interest charges

17,32,978/-

E

Discount of power connection to be
retained in our name

1,20,00,000/-

F

GST & Expenses

4,73,000/-

A+C+D+E- B-F=G

Net Recievable to Amex Infrastructure Pvt. Ltd. from Samaro Global Industries

Pvt. Ltd. as on 30.04.2023

2,38,26,883/-

11. The Corporate Debtor further contends that the Amenities Agreement dated 16.08.2019 is an independent agreement and is to be treated as ancillary/incidental in so far as the L&LA dated 16.08.2019 is concerned. The Corporate Debtor therefore disputes the territorial as well as pecuniary jurisdiction of this Tribunal in relation to claims arising out of the said L&LA and the Amenities Agreement are concerned.

Findings

12. Heard the Learned Counsel(s) for the Operational Creditor and the Corporate Debtor.

12.1. The Operational Creditor in Part-IV of the present petition has specified Date of Default as 01.12.2021 and, the present petition filed on 22.07.2023 is thereby within the Limitation period as specified under law. Therefore, this Tribunal has jurisdiction to adjudicate the Company Petition filed by the Operational Creditor.

13. Upon perusal of the record files present before us, we are of the considered view that:

i. The Corporate Debtor's contention that the Amenities Agreement is an independent agreement and that, it is to be treated as ancillary/incidental to L&LA is without any basis. Clause (13) of the Amenities Agreement expressly reads as hereunder:

"13. This Agreement shall run concurrent with the License Agreement of even date in respect of the said premises and shall expire or be terminated only simultaneously with the same and none of the parties to this agreement have any right to receive or repudiate this Agreement independently of License Agreement."

This Bench, therefore has jurisdiction to deal with the present petition.

ii. Without prejudice to the afore-stated, it was expressly agreed under the L&LA dated 16.08.2019 that the Licensor viz. Operational Creditor has given a 15-month rent-free period to the Corporate Debtor, and thus the latter is not liable to reimburse the license fee during the rent-free period of 15 (fifteen) months w.e.f. 01.07.2019 to 30.09.2020 aggregating to INR 1,20,00,000/-. With regards to the double license-fee charged by the Operational Creditor, we find that the said L&LA clearly specifies that double fees amount can be charged only if there is a default under Clause {12(d)} of the said L&LA, which comes into force only "...in case the licensee does not vacate". In the present case however, the Corporate Debtor had duly vacated the premises. Furthermore, the claim amount(s) as against interest charges, discount of power connection and GST expenses are unsubstantiated in terms of the L&LA dated 16.08.2019. The net

amount payable, therefore, falls below the threshold limit in terms of Section 4 of the IBC, 2016. Hence, we do not find any reason to delve into the other merits of the Application.

(Space Left Intentionally Blank)

ORDER

14. It is accordingly hereby ordered as follows:

(a) The above Company Petition No. (IB) 592/2023 filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 is hereby Rejected.

(b) We make it clear that any observations made in this Order shall not be construed as expressing opinion on merits. The right of the Operational Creditor available as per law before any judicial/quasi-judicial forum shall not be prejudiced on the grounds of rejection of the present Application.