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(2020) 02 NCLT CK 0038

In the National Company Law Appellate Tribunal

Case No : Company Application No. 465/C-III/ND Of 2019 In (IB) No. 391/ND Of 2018

Balaji Printopack Private Limited — APPELLANT

Vs

Nazim Khan Liquidator And Ors — RESPONDENT

Date of Decision : 26-02-2020

Acts Referred:
Insolvency And Bankruptcy Code, 2016 — Section 60(5), 67

Citation : (2020) 02 NCLT CK 0038

Hon'ble Judges : Ch. Mohd. Sharief Tariq, J;Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : Satya Bhushan, Mohd. Nazim Khan

Final Decision : Dismissed

Judgement

Ch. Mohd. Sharief Tariq, J

1. It is stated by the Appellant (herein referred as appellant), that the Corporate Debtor had approached him to take on rent his property i.e. Ground Floor, first floor and second floor bearing number A-33/21, Site-4, situated at Sahibabad Industrial Area, Tehsil & Distt. Ghaziabad, U.P. A lease agreement was executed between the Appellant and Corporate Debtor on 11.12.2017 for a period of 11 months starting from 1.1.2018 to 30.11.2018. Thereafter, the agreement for lease was not renewed.

2. It is contended by the appellant that at the time of taking on rent the premise was having amenities like new submersible, new lift, electricity fitted. Even the premises were a newly built-up building at that time. The agreement for lease provides that the rent shall be @Rs. 1,50,000 per month excluding all other charges except the house tax. The Corporate Debtor was to pay all the bills of electricity/water charges and also all kinds of taxes/GST/levies etc, if any as imposed or to be imposed by the Central and/or State Government on the rent

amount. The annual maintenance and all other charges of the lifts.

3. It is stated that pursuant to the agreement, the Corporate Debtor handed over 11 post dated cheques of Rs. 1,50,000/- each towards monthly rent to the appellant/Operational debtor. The Corporate Debtor had paid monthly rent upto June 2018 and after that Corporate Debtor failed to pay the rent.

4. The appellant/OC was served with letter dated 11.07.2018 by IRP viz., Ms. Mitali Shah whereby the appellant/OC came to know about the declaration of Moratorium declared by the NCLT Delhi.

5. The appellant/OC on 13.7.2018 mailed to IRP, raising his concern and seeking assurance about the payment of rent during the insolvency proceedings period. In response the appellant received e-mail from IRP, whereby appellant was assured that as per IBC provisions and IBBI regulations, rent payment in respect of factory premises is forming a part of Insolvency Resolution Cost, which is to be paid first in case of Resolution or Liquidation.

6. It is stated that the appellant received rent till July 2018 and thereafter sent a legal notice to the Corporate Debtor on 31.10.2018 seeking payment of outstanding rent, vacating and handing over the peaceful possession of his premises.

7. The appellant has filed an application under Section 67 read with Section 60(5) of the IBC 2016, seeking direction to the Resolution Professional to restore the possession of the property and pay monthly rental as per the lease agreement apart from the damages. The aforesaid application become infructuous as the adjudicating authority has appointed liquidator by initiating liquidation proceedings against the Corporate Debtor on 3.4.2019.

8. The appellant contended that the Corporate Debtor has neither paid outstanding rent for 4 months nor got deposited TDS or any other tax (s) to the concerned department and till commencement of liquidation proceedings i.e. 3.4.2019, after adjusting the refundable security amounting to Rs. 4,00,000/- against total outstanding of Rs. 1,36,83,500/- and the Corporate Debtor is liable to pay Rs. 1,32,83,500/. In short, it is alleged that the Liquidator has rejected the claim of appellant and failed to release the leased premise to the appellant. In the premises the Appellant has made the prayers as follows;

a) call for records of the Liquidation Proceedings in the case being No. (IB)-391(ND)/2018 titled M/s. Usaka Electrotech Pvt. Ltd. vs. M/s. Shree Balaji Printopack Pvt. Ltd.; and

b) stay the Liquidation Proceedings in the case being No. (IB)-391(ND)/2018 titled M/s. Usaka Electrotech Pvt. Ltd. vs. M/s. Shree Balaji Printopack Pvt. Ltd. till the final disposal of the present appeal; and

c) direct the Liquidator/corporate debtor to release the leased property i.e. Ground Floor, First Floor & Second Floor of the property being No. A-33/21,

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Site-4, situated at Sahibabad Industrial Area, Tehsil & Distt. Ghaziabad, U.P. and put the appellant into the possession thereof; and

d) direct the Liquidator to pay a total compensation of Rs. 1,32,83,500/- (Rupees one crore thirty two lakhs eighty three thousand five hundred only) to the appellant; and

e) direct the Liquidator to pay a total sum of Rs. 8,60,000/- (Rs. 10,000/- per day x 86 days) to the appellant towards the per day rent from 04.04.2019 till 29.06.2019.

9. The liquidator has filed the reply with respect to the claim of appellant/ operational creditor in tabular form as follows:

S. NO.

NATURE OF CLAIM

AMOUNT CLAIMED

AMOUNT ADMITTED

REMARK

1

Corporate Debtor has not paid monthly rent@ 1,50,000 from August 2018 to November 2018 i.e. (Rs. 1,50,000 *4)

6,00,000

6,00,000

Admitted in full and is forming part of the CIRP cost.

2

Interest @ 18% from 01.12.2018 to 31.3.2019 on total outstanding of Rs. 6,00,000

32,400

Nil

Rejected, as there are no contractual obligation exists or specific clause has been given in the agreement for lease deed dated 11.12.2017.

3

Corporate Debtors had not paid TDS amount from April 2018 to July 2018

60,000

Nil

Rejected, because this is the government dues which shall be claimed by the

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Income Tax Department.

4

Lease Agreement got expired on 30.11.2018 so liable to damage of Rs. 10,000 per day from 1.12.2018 to 3.4.2019 (124 days)

12,40,000

6,42,000 (@1,60,500 for four months)

Admitted, considering the clause 20 of the Agreement for lease deed dated 11.12.2017 @ Rs. 1,60,500 and the same is forming the part of the CIRP cost.

5

Non- payment of electricity bill from December 2018 to 2.5.2019 and therefore restoration cost to be deposited to department.

70,000

Nil

Rejected, because the Liquidator has paid the electricity dues of the corporate debtor till date. As on date there are no outstanding dues of Electricity Department.

6

UPSIDC permission Tax from the year 2014-15 up to 2018-19 (to be borne by 50:50 of Rs. 1,61,500)

80,750

Nil

Rejected, as the same is the government dues which shall be claimed by UPSIDC.

7

Restoration charges of Premises

1,15,50,350

Nil

Rejected, in view of para 14 (please refer to page No. 59 of the petition) of the Agreement for lease deed dated 11.12.2017 which is reproduced as under : "That the Lessee shall attend to the minor repairs & maintenance of the said tenanted premises such as leaking taps, loose wiring etc. and other minor repairs to the internal electrical, water, drainage, in the said premises at its cost. All major repairs, except those caused due to the negligence/misdemeanor of the lessee shall be attended to & borne by Lessor".

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Para 11 (please refer to page No. 58 of the petition) of the Agreement for lease deed dated 11.12.2017 is also not applicable in view of the valuation report dated 29.11.2019 of the Registered Valuers namely Mr. Inderpal Singh.

Relevant extract of said para 11 is reproduced as under : ".......... if any damage is caused to the said tenanted premises the lessee shall restore the said premises in the original condition....."

The Registered Valuer namely Mr. Inderpal Singh vide his valuation report dated 29.11.2019 has confirmed no damage to said tenanted building.

Relevant extracts of Valuation Report given at page 10 (Annexure-4) of the report submitted by the Liquidator on 11.12.2019 vide diary No. 0710200413652018/4 are as under : ".....as per external and physical appearance and our professional experience, there is no structural damage to the building."

The said Registered Valuer has given the estimate of major repairs and maintenance of Rs. 21,40,629.93. In view of Clause 14 of the agreement to lease deed dated 11.12.2017 which is not applicable on the Corporate Debtor because all major repairs and maintenance have to be borne by Lessor.

Relevant extracts of the said Para 14 as under : "......All major repairs, except those caused due to the negligence/misdemeanor of the Lessee, shall be attended to and borne by Lessor."

8

Litigations Expense

50,000

Nil

Rejected, as there are no contractual obligation exist or specific Clause has been given in the Agreement for lease deed dated 11.12.2017.

10. On perusal of the pleadings and the record placed on file, the issues that arose are as follows;

i) Whether the Liquidator is under legal obligation to pay total compensation of Rs. 1,32,83,500/- (Rupees One Crore Thirty Two lakhs Eighty three thousands and five hundred only) to the Appellant?

ii) Whether the Liquidator is under legal obligation to pay total sum of Rs. 8,60,000/- (Rs. Ten thousand per day x 86 days) to the Appellant towards per day rent from 04.4.1990 till 29.6.2019 ?

11. The Appellant submits that the Corporate Debtor M/s. Shree Balaji Printopack Private Limited [(Corporate Debtor), (now under liquidation process)] and the Appellant entered into Lease Agreement dated 11th December, 2017 which as

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per Para-14 provides that the Lessee shall attend to the minor repairs and maintenance of the said tenanted premises, such as leakage of taps, loose wiring and other minor repairs to the internal electrical, water, drainage in the said premises at its cost. All major repairs except those caused due to the negligence/ misdemeanor of the Lessee shall be attended to and borne by the Lessor. Based on this recital, it is contended by the Appellant that the Corporate Debtor has caused damage to the tenanted premises, and in terms of the lease agreement the Liquidator is under legal obligation to pay the damages caused to the tenanted premises.

12. In relation to the first issue, this Authority vide Order dated 11th October, 2019 had directed the Liquidator and the Appellant (Landlord) to get the tenanted premises inspected through a Registered Valuer for the purpose of determining the quantum of damages, if any, caused. It is submitted by the Liquidator that he has proposed the names of three Registered Valuers, which were rejected by the Appellant. The Appellant has given different three names of the Registered Valuers, out of which, one Mr. Inderpal Singh was appointed, who has inspected the tenanted premises and sent the report on 29th November, 2019 to the Liquidator, wherein it has been noted that the estimate of re-repair work of the rented premises is Rs. 21,40,629.93. It has further been noted by the registered Valuer in the report that as per the External and Physical Appearance of the property and our Professional Experience, there is no Structural damage to the building. Based on report of the registered Valuer, the Liquidator has submitted that the report of the Valuer has brought out clearly that no damage has been caused to the building due to any negligence/ misdemeanor of the Lessee (Corporate Debtor).

13. As per Para 14 of the Lease Agreement, 'All major repairs except those caused due to the negligence/misdemeanor of the Lessee shall be attended to and borne by the Lessor.' Para 14 of the Lease Agreement is reproduced as follows;

"That the Lessee shall attend to the minor repairs & maintenance of the said tenanted premises such as leaking taps, loose wiring etc. and other minor repairs to the internal electrical, water, drainage, in the said premises at its cost. All major repairs except those caused due to the negligence/misdemeanour of the Lessee, shall be attended & borne by the Lessor."

14. There is nothing on record to establish that the Corporate Debtor due to its negligence/misdemeanour had caused any damages to the tenanted premises and as per the report of the Valuer, there is no Structural damage to the building. Therefore, Corporate Debtor/Liquidator is not under legal obligation to pay any damages/compensation to the appellant as all major repairs are to be attended to and borne by the Lessor. Accordingly, the second issue stands decided against the Appellant/Landlord and in favour of the Liquidator.

15. The second issue raised by the appellant is with regard to the recovery the of

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damages @ Rs. 10,000/- per day from the Corporate Debtor for illegally using and occupying the tenanted premises w.e.f. the date on which the period of the Lease Agreement expired. The Lease Agreement was in force for a period of 11 months starting with effect from 1st January, 2018 and ending on 31st November, 2018. Thereafter, the Lease Agreement is not renewed. The initial rate of rent fixed for the period of 11 months was @Rs. 1,50,000/- p.m., excluding all other charges except the House Tax. In the meantime, this Tribunal vide Order dated 13.06.201 has initiated the CIR Process against the Corporate Debtor and the order for liquidation was passed on 3rd of April, 2019.

16. Since the initiation of CIR Process against the Corporate Debtor, the tenanted premises are in the occupation of the IRP/R.P. and now the Liquidator, which has happened due to the operation of law. Therefore, the condition contained in the Lease Agreement that the Tenant/Lessee shall be liable to pay damages @ Rs. 10, 000/- per month for illegally using and occupying the tenanted premises, does not apply to the Corporate Debtor/Liquidator, as there is no failure on the part of the Corporate Debtor in relation to handing over the vacant possession of the tenanted premises to the Appellant/Landlord. Moreover, the Liquidator has agreed to pay arrear of rent @ Rs. 1,60,500/- p.m. as per Clause 20 of the Agreement which reads as follows:

"20. That the present Lease shall be for a limited period of eleven months only commencing from 1st January, 2018 and ending on 30th November, 2018. However, if the parties so desire and agree, the period of Lease may be extended for further period of 11 months subject to encashment of rent by 07% that is to that the rate of rent Rs. 1,60,500/- (One Lakh Sixty thousand and five hundred only) Per Month excluding all other charges except House Tax with effect from 1st September, 2018".

17. In view of the above, the second issue also stands decided against the Appellant/Landlord and in favour of the Liquidator.

18. In light of the discussions made above, the decision take by the liquidator is legally sound and justified. Accordingly, the Company Application filed by the Appellant/Landlord is hereby dismissed. There is no order as to costs.

19. The Order is pronounced in the Open Court.

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