
(2022) 05 NCLT CK 0079

In the National Company Law Appellate Tribunal

Case No : CA 12/2020 (IB)310?(ND)2019

M.L. Gupta & Ors

APPELLANT

Vs

Kamal Aggarwal, Liquidator & Anr

RESPONDENT

Date of Decision : 27-05-2022

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 14, 33, 42, 60(5)

Citation : (2022) 05 NCLT CK 0079

Hon'ble Judges : Bachu Venkat Balaram Das, Member (J); Virendra Kumar Gupta, Member (T)

Bench : Division Bench

Advocate : Sameer Vasisth, Sanjana Nangia, Manashwy Jha

Final Decision : Disposed Of

Judgement

Virendra Kumar Gupta, Member (Technical)

1. This application has been filed under Sec 42 IBC, 2016 against the decision of the Liquidator vide its email dated 04.01.2021, whereby the claim of the appellant was rejected by the Liquidator as a whole.

2. The brief facts are that the CIRP was initiated vide order of the Adjudicating Authority dated 14.06.2019, subsequently, order for initiation of liquidation U/s 33 of IBC, 2016 was passed on 21.09.2020. The appellant submitted its claim before the Liquidator on 29.10.2020 which was resubmitted on 01.12.2020 after removing the defects as pointed out by the Liquidator. The Liquidator rejected the claim in toto vide its email dated 04.01.2021 for the reasons that the appellant was not a financial creditor and the amount of claim was not a financial debt.

3. The Liquidator was further of the opinion that the claim was not substantiated within the parameters as laid down in Regulation 18 of Liquidation Process

4. Regulations, 2016. In this background, it is submitted by and on behalf of

appellant that certain properties were given on rent to one M/s AGS Retail Pvt.Ltd. vide lease deed dated 25.08.2009 at a monthly rent of Rs.17,14,500/-. The lease rent was not paid which resulted into civil proceedings between the parties. A decree was passed by the competent Civil Court on 30.05.2017, whereby the appellants were entitled for possession as well as payment of outstanding lease rent w.e.f 2011 along with interest at 18% per annum. The execution proceedings were filed on 19.01.2019 and Execution Court issued warrants of possession in respect of subject property. It is claimed that the execution of the said warrant was resisted by the erstwhile Director of the corporate debtor. However, subsequently the objections were withdrawn by the corporate debtor on 03.05.2019. In this background, it is claimed that to avail the benefit of moratorium, the corporate debtor got an order of admission of itself into CIRP in collusion with one of the operational creditors.

5. It is also claimed that one application i.e. IA No.3587/2020 had been filed on 02.08.2020 for claiming possession of the said properties from the Liquidator, which was not accepted by the Liquidator. It is also claimed that the corporate debtor is continuing illegal possession of the property without paying any occupation charges. It was claimed that on the basis of said judgment and decree dated 03.05.2017, the appellants filed a claim for recovery of lease rent i.e (occupation charges).

6. On the other side, the Liquidator has submitted that the said decree is not passed against the corporate debtor as the corporate debtor was never a party to the petition. It is further claimed that warrant of possession dated 19.01.2019 did not confer upon the appellants of being a financial creditor. It is also brought to our notice that appellants never filed any claim at CIRP stage despite being fully aware of the fact of commencement of CIRP in the case of corporate debtor.

7. It is also pointed out that the appellants had filed an application U/s 60(5) of IBC, 2016 vide CA No.605 of 2019 dated 14.08.2019 praying for denial of protection to the corporate debtor U/s 14 of IBC, 2016 in respect of said property. Another IA No.3587 of 2020 was filed. Both these applications were however rejected by this Adjudicating Authority vide order dated 08.03.2021. It is claimed that only thereafter the appellants lodged a claim with the Liquidator on the basis of the said order and decree as financial creditor. Thus, there was an unexplained delay irrespective of the fact, whether they could be considered as financial creditor or not. In this regard, it is further claimed that the appellants have filed their claim against the corporate debtor with malafide and despite being fully aware that no claim of whatsoever nature was maintainable against the corporate debtor.

8. We have considered the submissions made by both the sides and material on record.

9. It is noted that the corporate debtor is not a party to the Court proceedings nor any decree has been passed against the corporate debtor. Further, there is

no lease agreement between the appellant and the corporate debtor. Even otherwise there is no merit in the claim of the appellant that they were financial creditors as it has not been done at the behest of the Liquidator as claimed by the appellants because the Liquidator only pointed out to them that the claim should be made in the appropriate form.

10. Further, no plausible reason has been given for delay which remain unexplained.

11. Thus, considering above facts, this application is dismissed as such.

12. Urgent certified copies of this order be issued, if applied for, subject to usual formalities.