(2026) 04 NCLAT CK 1934

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Comp. App. (AT) (Ins) No. 1558 of 2024 (Arising out of the Order dated 05.06.2024 passed by the National Company Law Tribunal, Kolkata Bench, in IA (IBC) No. 335/KB/2022 in Company Petition (IB) No. 662/KB/2018)

Mr. Anup Kumar Singh Resolution Professional Of Sri Balaji Logistics Products Private Limited (In CIRP) — APPELLANT

Vs

SMRC Logistic And Warehouse Service Provider, QWIK Supply Chain Private Limited — RESPONDENT

Date of Decision : 21-04-2026

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 14, 61
CIRP Regulations, 2016

Citation : (2026) 04 NCLAT CK 1934

Hon'ble Judges : Justice Mohammad Faiz Alam Khan, Member (Judicial);Naresh Salecha, Member (Technical)

Bench : Division Bench

Advocate : For Appellant: Mr. Gaurav H. Sethi, Mr. Rahul Pawar, Mr. Rahul Kapoor & Mr. Kartik Nagpal, Adv. For Respondents: Mr. Uttiyo Mallick & Mr. Shreedhar Gaggar, for R1. Mr. Debargha Basu & Mr. Soumya Dutta, for R2.

Final Decision : Dismissed

Judgement

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed by the Appellant i.e., Mr. Anup Kumar Singh, who is the Resolution Professional of Sri Balaji Logistics Products Private Limited **(“Corporate Debtor”)**, under Section 61 of the Insolvency and Bankruptcy Code, 2016 (‘**Code**’) against the Order dated 05.06.2024 ("Impugned Order") passed by the National Company Law Tribunal, Kolkata Bench **("Adjudicating Authority")** in in IA (IBC) No. 335/KB/2022 in Company Petition (IB) No. 662/KB/2018.

SMRC Logistic and Warehouse Service Provider, who is an unregistered partnership firm of the Corporate Debtor, is the Respondent No.1 herein.

QWIK Supply Chain Private Limited., who is the lessee of the Corporate Debtor, is Respondent No. 2, herein.

2. The Appellant contended that upon commencement of the CIRP on 17.07.2019, the Appellant, having been appointed as Resolution Professional, conducted a thorough inspection of the books and records of the Corporate Debtor and ascertained that the Corporate Debtor was owner of the open area measuring 5,27,653 square feet and covered area measuring 75,933 square feet situated at Mouza-Bighati, J.L. No. 14, China More J.L. No. 92 and Palara J.L. No. 15 under P.S. Bhadreshwar and Singur, Baidyabati, N.H-6, District-Hooghly, West Bengal-712124. The Appellant submitted that the said land had been made the subject matter of an unregistered "Lease Deed" dated 03.04.2018 executed between the Corporate Debtor as lessor and Fine Tech Corporation Pvt. Ltd. (now Qwik Supply Chain Pvt. Ltd., Respondent No. 2) as lessee for a period of three years at a total monthly lease rental of Rs. 31,73,314/- plus GST.

3. The Appellant contended that the lease deed itself clearly delineated the respective entitlements inasmuch as the Corporate Debtor was entitled to receive Rs. 24,93,885/- per month while the Respondent No. 1, claiming to have been appointed as Constituted Attorney of the Corporate Debtor under the same lease deed, was entitled to a separate sum of Rs. 6,79,429/- per month, with the explicit stipulation that both shares were to be paid directly and individually by the lessee into the respective bank accounts of the Corporate Debtor and the Respondent No. 1.

4. The Appellant submitted that in terms of the said unregistered lease deed, the Respondent No. 2 as lessee had paid an advance of Rs. 74,81,655/- to the Corporate Debtor and a separate advance of Rs. 20,38,287/- to the Respondent No. 1, thereby reinforcing the parties' consistent understanding that the two shares were distinct, severable and never intended to be co-mingled.

5. The Appellant contended that when the Respondent No. 2 as lessee defaulted in payment of lease rentals for a substantial period, the Appellant, acting as Resolution Professional and being in complete charge of the management of the Corporate Debtor, was constrained to file C.A.(IB) No. 1769/KB/2019 specifically seeking recovery of only the Corporate Debtor's share of outstanding lease rentals amounting to Rs. 1,82,51,922/- for the period from June 2019 to December 2019, comprising Rs. 47,76,997/- as on the CIRP commencement date and Rs. 26,94,985/- per month for the subsequent five months (August to December 2019) together with utility charges.

6. The Appellant submitted that the Adjudicating Authority by its order dated 20.02.2020, allowed the said application and directed the lessee, Respondent No. 2, to pay the sum of Rs. 1,82,51,022/- to the Corporate Debtor, thereby crystallizing that the direction was confined solely to the Corporate Debtor's entitled share and did not encompass the separate entitlement of the

Respondent No. 1.

7. The Appellant submitted that pursuant to the said letter, the Respondent No. 2 as lessee paid Rs. 1,64,91,599/- to the Corporate Debtor, which amount represented only a part payment towards the Corporate Debtor's own outstanding dues and did not include any component of the Respondent No. 1's separate share of Rs. 6,79,429/- per month.

8. The Appellant contended that immediately upon receipt of the said sum, the Respondent No. 1 addressed multiple emails to the Appellant and the lessee demanding its own independent share, thereby demonstrating that even the Respondent No. 1 was fully conscious that the payment of Rs. 1,64,91,599/- had been received by the Corporate Debtor exclusively towards its own dues. The Appellant contended that despite the clear mandate of the Adjudicating Authority order, the lessee, Respondent No. 2, by its letter dated 12.03.2020, represented to the Appellant that the payment being made to the Corporate Debtor included the share of the Respondent No. 1, which was factually incorrect, contrary to the lease deed and contrary to the specific relief granted in C.A.(IB) No. 1769/KB/2019.

9. The Appellant submitted that in response to the aforesaid communications, the Appellant addressed a detailed reply dated 22.05.2020 to the Respondent No. 1, clarifying that Rs. 1,64,91,599/- was received solely as the Corporate Debtor's share and the Corporate Debtor had not received any amount on account of the Respondent No. 1's share, and that the lessee still remained liable to pay a further sum of Rs. 1,06,81,966/- to the Corporate Debtor towards its outstanding dues.

10. The Appellant submitted that the Respondent No. 1 instituted I.A.(IB) No. 335/KB/2022 claiming a "fair share" from the very sum of Rs. 1,64,91,599/- that had been paid exclusively to the Corporate Debtor, thereby attempting to appropriate the Corporate Debtor's assets in violation of the statutory scheme of the Code. The Appellant contended that the application I.A.(IB) No. 335/KB/2022 was not maintainable before the Adjudicating Authority inasmuch as it was squarely barred by the moratorium declared under Section 14 of the Code, which prohibits any recovery proceedings or enforcement of claims against the Corporate Debtor or its assets outside the prescribed insolvency resolution process.

11. The Appellant submitted that by allowing the said application and directing the Appellant to "release the fair share of the Applicant in two weeks in favour of the Applicant", the impugned order has permitted the Respondent No. 1 to bypass the mandatory requirement of filing its claim, if any, before the Resolution Professional in accordance with the provisions of the Code and the CIRP Regulations, 2016, thereby undermining the collective insolvency resolution process.

12. The Appellant contended that the impugned order proceeds on an

interpretation of both facts and law inasmuch as it fails to appreciate that the payment of Rs. 1,64,91,599/- was made in partial compliance of the order dated 20.02.2020 which was restricted to the Corporate Debtor's share alone, that the lease deed mandated separate payments to separate accounts, and that the Respondent No. 1 had itself admitted the non-inclusion of its share in the said amount.

13. The Appellant submitted that the impugned order dated 05.05.2024 is unsustainable, suffers from material legal and factual infirmities, and is liable to be set aside with a direction to the Respondent No. 2 to remit the remaining dues of Rs. 1,06,81,966/- to the Corporate Debtor.

14. Concluding its arguments, the Appellant requested this Appellate Tribunal to set aside the Impugned Order and allow this appeal.

15. Per contra, the Respondent No. 1 and the Respondent No. 2, denied all averments made by the Appellants as misleading and baseless.

16. The Respondent No. 1 stated that it was appointed as the constituted attorney of the Corporate Debtor in terms of the lease deed dated 03.04.2018 and the parties duly acted upon the covenants contained in lease deed and had been regularly paying the due share of lease rent to the Respondent No. 1 and to the Corporate Debtor. The Respondent No. 1 submitted that the ratio of the rent receivable by the Respondent No. 1 to the tune of Rs. 6,79,429/- per month is an admitted fact and the Respondent No. 1 is entitled to receive the said amount. The Respondent No. 1 submitted that the proportionate share of the rent had been paid to the Corporate Debtor and to the Respondent No. 1, which fact is evident from the statement of Form-26AS reflecting the amount of TDS deducted by Respondent No. 2 against the Respondent No. 1. The Respondent No. 1 contended that, apart from deduction of taxes at source, Respondent No. 2 had also been regularly paying GST at 18%, which position is fully supported by the GST certificate. The Respondent No. 1 submitted that Respondent No. 2 failed to pay the lease rent in favour of the Respondent No. 1 and the Corporate Debtor from January 2019 to March 2020. Relying upon the lease deed, the Appellant had surreptitiously issued emails to Respondent No. 2 demanding payment of lease rent to the tune of Rs. 47,76,997/- as on the CIRP commencement date i.e. 17.07.2019 and the balance amount to the tune of Rs. 1,82,51,922/- calculated at the rate of Rs. 26,94,985/- per month.

17. The Respondent No. 1 submitted that he was neither impleaded as a necessary party in the application preferred by the Appellant before the Adjudicating Authority being C.A.(IB) No. 1769/KB/2019 nor was any communication of the order dated 20.02.2020 ever sent to the Respondent No. 1. The Respondent No. 1 submitted that upon obtaining the aforesaid order, Respondent No. 2 had duly made payment of the entire dues, which payment included the share of the Respondent No. 1, as evident from the letter dated 12.03.2020 issued by Respondent No. 2 enclosing the details of such payments.

18. The Respondent No. 1 submitted that the Appellant, being fully satisfied by the intimation dated 12.03.2020 from the Respondent No. 2, neither sought any clarification nor raised any objection pertaining to the share of lease rent paid by Respondent No. 2 in favour of the Respondent No. 1. The Respondent No. 1 contended that, on the contrary, the Appellant, despite having relied upon the lease deed and having sought payment of lease rentals from Respondent No. 2 for an amount which included the share of the Respondent No. 1, is now estopped from contending that the payments made by Respondent No. 2 were distinct and were paid to the separate bank accounts of the Corporate Debtor and the Respondent No. 1.

19. The Respondent No. 1 submitted that the lease rental sharing ratio as indicated in the lease deed, coupled with the specific averments makes the matter clear that the amount claimed by the Appellant in its application being C.A.(IB) No. 1769/KB/2019 is identical to the payments made.

20. Concluding its arguments, the Respondent No. 1 requested this Appellate Tribunal to dismiss the appeal.

21. The Respondent No. 2 submitted that it became the lessee of the Corporate Debtor by virtue of the lease deed dated 03.04.2018 executed between the predecessor-in-interest of the Respondent No. 2 and the Corporate Debtor. The Respondent No. 2 submitted that the lease was for a fixed term of three years commencing from 07.04.2018 and ending on 06.04.2021, subject to earlier determination by the Respondent No. 2 as lessee.

22. The Respondent No. 2 contended that in terms of Clause 5.1 of the lease deed, the Respondent No. 2 was required to pay a monthly rent of Rs. 31,73,314/, which was all inclusive, meaning that all taxes, charges, levies, etc., stood included in the said amount, and the said rent was payable to the Corporate Debtor for Rs. 24,93,855/- and Rs. 6,79,429/- to the Respondent No. 1. The Respondent No. 2 submitted that the monthly lease rental payable to the Corporate Debtor was later mutually revised on account of reduction in the usage of the area of the demised premises and was thereafter payable in the ratio of Rs. 22,13,855/- to the Corporate Debtor; and Rs. 6,79,429/- to the Respondent No. 1.

23. The Respondent No. 2 contended that in terms of Clause 6.1 of the lease deed, the Respondent No. 2 had paid an interest-free refundable security deposit to the lessor i.e. of Rs. 95,19,942/- to the Corporate Debtor i.e. Rs. 74,81,655/- and Rs. 20,38,287/- to the Respondent No. 1. The Respondent No. 2 submitted that, further in terms of Clause 6.1 of the lease deed, upon expiry of the term of the lease or upon its earlier determination, the Respondent No. 2 was entitled to the refund of the security deposit and was also entitled to adjust the security deposit from the Corporate Debtor or the Respondent No. 1, either jointly or severally.

24. The Respondent No. 2 contended that the CIRP in respect of the Corporate

Debtor commenced on 17.07.2019 and an Interim Resolution Professional was appointed. The Respondent No. 2 submitted that by a letter dated 26.02.2020, the Respondent No. 2 addressed a notice to the Interim Resolution Professional expressing its desire to terminate the lease and to vacate and hand over peaceful possession of the demised premises within a period of 30 days from the date of the said notice. The Respondent No. 2 contended that accordingly the lease stood terminated and the demised premises was handed over and peaceful possession thereof was taken by the Resolution Professional of the Corporate Debtor on 18.03.2020. The Respondent No. 2 submitted that the lease rent was duly paid by the Respondent No. 2 to the Corporate Debtor and to the Respondent No. 1 in the shares stipulated in the lease deed till May 2019. The Respondent No. 2 contended that after the commencement of CIRP on 17.07.2019, lease rent in respect of the demised premises remained due and payable by the Respondent No. 2 only from June 2019 to March 2020, when the lease was terminated. The Respondent No. 2 submitted that in compliance with the orders passed by the Adjudicating Authority, the Respondent No. 2 paid the entire outstanding rent and utility charges to the Resolution Professional of the Corporate Debtor after duly adjusting the security deposit to which the Respondent No. 2 was entitled under the lease deed. The Respondent No. 2 contended that the said payment and adjustment were duly communicated to the Resolution Professional by a letter dated 12.03.2020, which was accompanied by a tabular statement containing the detailed break-up of the respective shares of rent payable to the Corporate Debtor as well as to the Respondent No. 1, together with the adjustments made. The Respondent No. 2 submitted that it has therefore paid the entire outstanding rent and utility charges payable to the Appellant, after adjusting the security deposit in terms of the lease deed, to the Appellant and nothing further remains due or payable.

25. The Respondent No. 2 contended that as per mutual agreement between the parties on account of reduction in space usage, the Respondent No. 2 was liable to pay to the Corporate Debtor only the reduced rental of Rs. 22,13,855/-per month (subject to tax deduction at source) and not Rs. 26,94,985/- per month as wrongly alleged by the Appellant.

26. The Respondent No. 2 contended that the Respondent No. 2 is not aware of the reply dated 22.05.2020 referred to by the Appellant. However, the said reply did not take into account the payment already made by the Respondent No. 2 as per the ratio stipulated in the lease deed and further did not consider the adjustment of the security deposit. The Respondent No. 2 denied any liability to pay a further sum of Rs. 1,06,81,966/- to the Corporate Debtor. The Respondent No. 2 reiterated that the amount paid to the Appellant already includes the share of the Respondent No. 1. There is no outstanding amount payable to the Corporate Debtor or the Respondent No. 1.

27. Concluding its arguments, the Respondent No. 2 requested this Appellate Tribunal to dismiss the appeal.

Findings

28. We note that through an unregistered Lease Deed dated 3rd April, 2018, the Corporate Debtor leased the said premise for a period of 3 years at a monthly lease rental of Rs. 31,73,314 + GST to Fine Tech Corporation Pvt Ltd. now known as Qwik Supply Chain Pvt Ltd., the Respondent no. 2 herein. We also take into consideration that in terms of the lease agreement dated 03.04.2018, out of a total monthly rent aggregating to Rs. 31,73,314/-, the Corporate Debtor was entitled to a sum of Rs. 24,93,885/- per month and the Respondent no.1 herein as Constituted Attorney of the Corporate Debtor, was entitled to a sum of Rs. 6,79,429/- per month. Further, as per lease deed, Rs. 74,81,655/- was paid as advance by the Respondent No. 2 to the Corporate Debtor and Rs. 20,38,287/- was paid as advance to the Respondent No. 1.

29. It has been brought out that the Respondent No. 2 had not been paying the lease rentals and upon initiation of CIRP, the Appellant as the Resolution Professional of the Corporate Debtor filed and application before the Adjudicating Authority being C.A(IB) No. 1769/KB/2019 against Respondent no.2 herein, seeking payment of a sum of Rs. 1,82,51,922/- in respect of outstanding lease rentals for the period June 2019 to December, 2019. The Adjudicating Authority vide order dated 20.02.2020 directed the Respondent No. 2 to pay Rs. 1,82,51,922/- to the Corporate Debtor and the Respondent No. 2 intimated the Appellant that in compliance with the order dated 20.02.2020, the Respondent No. 2 was making payments of outstanding lease rentals to the Corporate Debtor. It is the case of the Appellant that the payment to the Corporate Debtor and the Respondent no.1 were completely distinct and separate and were being made individually to the bank accounts of the Respondent no.1 and the Corporate Debtor. We note that pursuant to payment by Respondent no.2 to the Corporate Debtor, several e-mails were addressed by the Respondent no.1 to the Appellant seeking its own share of the lease rentals from the payments made by the Respondent no.2 to the Corporate Debtor. It has been brought out by the Appellant that by reply dated 22.05.2020, the Appellant intimated the Respondent No. 1 that the amount received on 04.03.2020 was only the share of the Corporate Debtor and do not contain the share of the Respondent No. 1.

30. The Respondent No. 1 filed an application being I.A.(IB)NO. 335/KB/2022 [SMRC Logistic and Warehouse Service Provider -Versus- Mr. Anup Kumar Singh] before the Adjudicating Authority seeking its share of lease rentals from Rs. 1,64,91,599/- paid by the Respondent no.2 to the Corporate Debtor. By the impugned order dated 05.05.2024, the Adjudicating Authority held that the share of outstanding rents received by the Corporate Debtor includes the share of the Respondent No. 1 further directing the Appellant to release the fair share of the Applicant in two weeks in favour of the Applicant.

31. It is noted that in terms of clause 5.1, the respondent no. 2 as lessee was required to pay monthly rent of Rs.31,73,314/- to the Corporate Debtor; and Rs. 6,79,429/- to the Respondent No. 1. The said clause 5.1 of the lease deed

indicate that the lease rental payable was all inclusive indicating that all taxes, charges, levies etc. were included in the amount payable by the Respondent No. 2 as lease rental. It has also been brought to our notice that the monthly lease payable to the corporate was later revised considering the reduction in the usage of the area of the said premises i.e. Rs.22,13,855/- to the corporate debtor; and Rs.6,79,429/- to the respondent no.1.

32. We have noted that, in terms of Clause 6.1 of the lease Deed, the respondent no. 2 paid interest free refundable security deposit as lessor i.e. Rs.74,81,655/- to the corporate debtor; and Rs.20,38,287 to respondent no. 1 and in terms of Clause 6.1, upon expiry of the term of lease or earlier determination of the lease deed, the respondent no. 2 was entitled for the refund of the security deposit or to adjust the security deposit from amount payable to the Appellant or the Respondent No. 1 either jointly or severally.

33. It is not disputed that the lease rent was paid to the corporate debtor and the respondent no. 1 by the respondent no. 2 in the share stated in lease deed till May 2019, the outstanding lease rent in respect of the said premises was due and payable by the respondent no. 2 from June 2019 to March 2020 (when the lease was terminated). The respondent no. 2 paid the outstanding dues to the Appellant after adjusting the security deposit which respondent no. 2 was entitled to as per the lease deed and the same was communicated by the respondent no. 2 to the Appellant by a letter dated 12.03.2020 along with a tabular statement containing the break-up of not only the respective shares of the rent payable to the corporate debtor as well to the respondent no. 1 but also the adjustments made. We take into consideration the said letter dated 12.03.2020 as well as the tabular statement which reads as under: -

[An exhibit is reproduced here in the original judgment.]

[An exhibit is reproduced here in the original judgment.]

[An exhibit is reproduced here in the original judgment.]

34. From above, it is evident that the respondent no. 2 has paid the outstanding rent and utility charges payable to the Appellant, after adjusting the security deposit in terms of the lease deed to the Appellant including the share of respondent no. 1 has been paid to the Appellant. At this stage, we reproduce the relevant portion of the lease deed, which reads as under:-**Clause 5.1 Clause 6**

[An exhibit is reproduced here in the original judgment.]

[An exhibit is reproduced here in the original judgment.]

35. In terms of clause 5 of deed, as above, it is noted that the amount owed by the Respondent No. 2 to the Appellant was comprehensive sum including the share of the Respondent No. 1’s amount.

36. It is observed that the Appellant never disputed receipt of payment of the lease rent from the Respondent No. 2 nor has made any further claims in respect of the same from the Respondent No. 2, and has neither instituted any further proceeding for recovery of any amount in respect of the lease rent from the

Respondent No. 2.

37. We note that the Respondent No.2 has been paying the due share of the lease rent to the Respondent no. 1 and the corporate debtor in the ratio of the rent receivable. We note that the Respondent No. 2 has separately filed before us the statement of the Form-26 AS reflecting the amount of TDS deducted by the respondent no. 2 against the respondent no. 1 and also been paying GST @ 18% which can be seen from the GST certificate. The copies of Form 26 AS and the GST certificate are reproduced as under :-

[An exhibit is reproduced here in the original judgment.]

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38. Based on above observations, we do not find any error in the Impugned Order dated 05.06.2024. we hold that the Adjudicating Authority, after going through all the documents and evidences, has correctly directed the Appellant to pay due share to the Respondent No. 1. We also note that the Appellant has not challenged the earlier order of the Adjudicating Authority dated 20.02.2020, based on which the Respondent No. 2 had paid to the Corporate Debtor and thus the said order dated 20.02.2020 has attained finality. On the face of it, the Appellant cannot now seek any further alleged outstanding from the respondent no. 2 of Rs. 1,06,81,996/- as sought as one of the reliefs in the present appeal before this Appellate Tribunal.

39. In view of above, we do not find any merit in the appeal. The appeal fails and stand rejected. No cost. I.A., if any, are closed.