
(2020) 02 NCLT CK 0020

In the National Company Law Appellate Tribunal

Case No : (IB) No. 1928/(ND) Of 2019

Rhydburg Pharmaceuticals Ltd

APPELLANT

Vs

Libra Cars Pvt. Ltd

RESPONDENT

Date of Decision : 28-02-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 9

Citation : (2020) 02 NCLT CK 0020

Hon'ble Judges : Abni Ranjan Kumar Sinha, J;Dr. V.K. Subburaj, Member (Technical)

Bench : Division Bench

Advocate : Utkarsh Srivastava

Final Decision : Dismissed

Judgement

1. This is an application filed by the Applicant M/s. Rhydburg Pharmaceuticals Ltd. seeking to initiate corporate insolvency resolution process ("CIRP") against the Respondent M/s. Libra Cases Pvt. Ltd. under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent in settling an amount of Rs. 17,57,078/- towards the lease rent arrears for the premises leased out by the Applicant. The details of transactions leading to the filing of this petition as averred by the Applicant are as follows:

i. The Applicant is a company incorporated as per the provisions of the Companies Act, 1956 and is the absolute owner of the double storey built-up property bearing No. 21, G. T. Karnal Road, Kundli Sonapat, Haryana, PIN-131028 ("the property"). The Applicant had leased the property to the Respondent vide a registered lease deed dated 25th January, 2012 for a lease rent of Rs. 1,25,000/- subject to enhancement of rent by 7.50% every ear. In continuation of the lease deed, the Applicant provided the service of lease of immovable property to the Respondent and also raised invoices against the same to the Respondent. The monthly lease rent at the time of default was Rs. 2,44,708/-. The Respondent started defaulting and failed to make payments

against various invoices. The Applicant raised invoices accordingly.

ii. The Applicant issued a demand notice in Form 3 dated 21.06.2019 to the current registered address i.e. as per the address mentioned on the MCA website, to the address of the sales outlet i.e. the property, to the Libra Ford Corporate Office and to the earlier registered address of the Respondent. The notice remained undelivered to the current registered address and was returned with the remark 'address insufficient', but the notice was delivered to the earlier registered address of the Respondent and also served the notice through email on 25.06.2019 which was successfully delivered.

2. Consequent to the service of copy of this application by the Applicant as well as issue of notice by this Tribunal the Respondent filed the following reply:

i. The present application has been filed before this tribunal without disclosing the material fact that there was a dispute between the parties.

ii. As per the submissions made by the Applicant in the present application, it becomes clear that the present proceedings is only for recovery of money, which cannot be pursued by the Applicant under the provisions of the Code. Therefore, the present proceedings need to be dismissed on this ground as well.

3. The Applicant filed a rejoinder to the reply of the Respondent on 23.10.2019 and has rebutted the contentions of the Respondent as follows:

i. The allegations and averments made in the present reply against the Applicant are frivolous. The Respondent has failed to produce even a single document so as to substantiate the allegations made against the Applicant. The Respondent has failed to establish any deficiency on part of the Applicant.

ii. The reply talks of existence of a dispute between the parties, however, the Respondent has not filed a single document to substantiate the claim of existence of a dispute between the parties.

iii. The present application is an application under Section 9 of the Code i.e. an application for initiation of CIRP by the Applicant and nowhere has it been stated that the Applicant is using the present proceedings for the purpose of recovery of money.

4. We have gone through the details of documents filed by both the parties the sides. We have also gone through the written arguments. The main issue to be considered in this case is whether the lease rental arrears come under the category of operational debt. The learned counsel for the Applicant has cited the following judgments to argue the fact that the debt is an operational debt and the Applicant is an operational creditor.

1) Sarla Tantia Vs. Ramaanil Hotels & Resorts Pvt. Ltd. dated 26.02.2019 by Hon'ble NCLAT.

2) Mrs. Renu Kumar & Another vs. Solutions Business Centre Private Limited

dated 14.03.2019 by Hon'ble NCLT, New Delhi (Bench IV).

3) Apeejay Trust vs. Aviva Life Insurance Co. India Ltd. dated 04.11.2019 by Hon'ble NCLT, New Delhi (Bench V).

5. The Hon'ble NCLAT in the matter of Mr. M. Ravindranath Reddy vs. Mr. G. Kannan & Others dated 17th January, 2020 has elaborately discussed this issue and categorically decided that the lease rent for an immovable property cannot be considered as an operational debt.

The order states as follows:

"Therefore, we are of the considered opinion that lease of immovable property cannot be considered as supply of goods or rendering of any services and thus cannot fall within the definition of 'Operational Debt'".

6. The above order of the Hon'ble NCLAT will squarely apply to the matter at hand. The claim made by the Applicant is not operational debt and the Applicant is not an operational creditor. Thus, the present application is dismissed with no costs.