

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

**CORAM: SHRI. RAJEEV BHARDWAJ – HON’BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 13.10.2023, At 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/692/2022 in CP (IB) No.376/7/HDB/2018
NAME OF THE COMPANY	Sagar Infra Rail International Ltd
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Sagar Infra Rail International Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/692/2022

Present : Ld. Counsel Mr.Srikant Rathi for the applicant.

Orders pronounced, recorded vide separate sheets. In the result, this application is allowed and disposed of.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-II**

IA. No.692/2022

In

CP (IB) No. 376/07/HDB/2018

*[U/s.60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of
National Company Law Tribunal Rules, 2016]*

**In the matter of Mr. Sri Vamsi Kambhammettu v Mr. Mohd Jamal
Athemadnia**

In the matter of:

Mr. Sri Vamsi Kambhammettu
Liquidator for Sagar Infra Rail International Limited
Available at Rao & Rao Chartered Accountants
A85, #DX4, Level 2, Road No 11, Film Nagar,
Jubilee Hills, Hyderabad-500033

..... Applicant

Vs

Mr. Mohd Jamal Athemadnia
A 403, 4th Floor, Nafees Residency, A.C Guard,
Hyderabad-

..... Respondent

Date of Order:13.10.2023

CORAM:

Hon'ble Rajeev Bhardwaj, Member (Judicial)

Hon'ble Sanjay Puri, Member (Technical)

Counsels present:

For the Applicant : V.V.S.N Raju, Advocate
For the Respondent :

[PER: Sanjay Puri]

ORDER

1. The present application is filed on behalf of Mr. Sri Vamsi Kambhammettu, Liquidator for Sagar Infra Rail International Limited, being applicant herein u/s 60(5) of Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of National Company Law Tribunal Rules, 2016, praying this Hon'ble Tribunal to direct the respondent to pay arrears of rent of INR 1,15,000/- (Rupees One Lakh Fifteen Thousand Only) up to 30th April 2022 and INR 11,500/- per month and/or part thereof thereafter until the date of final payment of arrears and also prays to direct the respondent to vacate the schedule property.

Submissions of the Applicants:

2. It is averred that the present application filed against Respondent who was the tenant of Corporate Debtor (CD) in terms of lease deed dated 31.12.2013 on the property forming part of liquidation estate. The applicant was appointed as liquidator in terms of order dated **04.03.2021** by this Tribunal for conducting liquidation process in relation to CD and accordingly the applicant has herein taken the charge of assets of CD.
3. Applicant submitted that upon his appointment as liquidator he proceeded to review the books and assets of CD. Upon review he found the above-mentioned lease deed executed by the respondent and CD where the First floor bearing premises No 9-2-57/A/2, with built up area of 1,053.20 Sq. Ft (inclusive of common area and 1/3 of stair case) together with undivided share in land measuring 29.5 Sq. Yards out of

118 Sq.Yards situated at Regimental Bazar, Secunderabad referred as “*scheduled property*” which was given on lease to the Respondent. Applicant has submitted that upon his verification he found that the Respondent is running its business activities from the scheduled property.¹

4. It is further averred by the applicant that he requested the respondent to vacate the schedule property and to clear the outstanding dues amounting to INR 1,15,000/-. The Respondent however requested for renewal of lease and to continue in possession on pretext of paying rent. Applicant has considered the same but however the same could not be done.
5. It is averred that in furtherance of his duties as a liquidator, the applicant has issued a sale notice² dated 30.06.2021, where the respondent also submitted his bid for scheduled property. However, the said property was sold to Mr. Rajesham Anthergoan, for a total consideration of Rs 49,59,000 in terms of sale certificate³ dated 17.09.2022.
6. Applicant has further averred that despite personal visits and sale of property the respondent has not vacated the scheduled property. Therefore, applicant wrote a letter dated 26.03.2022 to the Respondent asking him to vacate. Instead of vacating the scheduled property and clearing arrears, the Respondent sent a reply on 25.04.2022 questioning the locus of applicant and refused to pay rent. Thereafter, the Applicant sent another notice on 26.04,2022 as a reminder for vacating and for paying arrears, to which the Respondent sent one line email asking the Applicant to refund the deposit money for vacation of the scheduled property.
7. Then as per the Applicant, he had issued a final notice dated 04.05.2022 to pay the outstanding rent and vacate the property and. He also

¹ Annexure-1 of the Application

² Annexure-5 of the Application

³ Annexure-7 of the Application

reminded the Respondent that lease deed dated 31.12.2013 does not make any stipulation as to refundable deposit and hence no refund is payable by Corporate Debtor.

8. The Applicant has submitted that respondent has not vacated the scheduled property and has not even responded to the notice, and has sought for allowing the application in the interest of CD and also because the public funds are involved.
9. To support his contention that liquidator can take recourse to their powers under Section 33(5) of IBC, the Applicants has relied on Paras 59, 61 and 62 in **Addinath Jewellery Exports v Mr. Brijendra Kumar Mishra and Ors⁴**. He has also relied upon Para 5,14,17,19 and 20 of **M/s Jhanvi Rajpal Automotive Pvt Ltd v. R.P of Rajpal Abhikiran Pvt Ltd⁵** to support his further contention that if the period of lease has come to an end then an eviction can be sought before the Adjudicating Authority.

Submissions of the Respondent

10. Contrary to the arguments made by the petitioner, the Respondent has averred that this application is not maintainable either in law or on facts and the same is liable to be dismissed. It is contended that the Respondent is a continuing as tenant and the applicant has no locus standi to file present application.
11. It is his submission that he admitted he is running business from the scheduled property and has also admitted that his intention to continue the business as per the understanding he has with original owner M/s Sagar Infra Rail International Limited to continue the lease from time to time and has deposited an amount of Rs 8,00,000/- with M/s Sagar Infra

⁴ (2023) ibclaw.in 262 NCLAT

⁵ Company Appeal(AT) (Insolvency) No 1417 of 2022

Rail International Limited and the said amount is still with M/s Sagar Infra Rail Limited.

12. It is further averred by respondent that the applicant after coming to know the understanding between him and M/s Sagar Infra Rail International Limited, informed him that the lease will continue as per original understanding.
13. The Respondent contends that due to the reasons best known to applicant a notice was issued on 26.03.2022 asking him to vacate and has submitted before us that he has replied to the said notice and informed clearly that applicant has no locus standi to send notice and to seek eviction. Respondent admits he participated in e-auction but could not purchase but the purchaser in auction knew that he is in possession.
14. It is further contended that sale certificate issued in favour of purchaser shows that property sold in favour of purchaser in “**as is where is, as is what is, whatever there is and no report**” basis. For this reason, he submitted that purchaser knowingly purchases the property along with tenant and accordingly submitted that once the sale is completed, the present applicant has no right over the scheduled property and the purchaser under sale certificate becomes owner of the scheduled property and there is “dural relationship” between applicant and respondent.
15. In view of the above contentions, the respondent seeks that he cannot be evicted and the legal notice will not have any impact and will not create any cause of action. He submitted that amount given by him is a refundable deposit and he is prepared to pay monthly amount once applicant agrees that said amount of Rs 8,00,000/- is continuing deposit and obtains consent from present purchaser. His further contention is that if the existing deposit is with applicant, it cannot be said that he committed default. In his written submissions the Respondent also relied

on Para 20 and Para 21 of **Tata Consultancy Service v Vishal Ghisulal Jain**⁶ case.

Decision

16. We have heard both the counsels and have perused the records. The following issues arise
- i. *Whether the Liquidator possess the legal right or obligation to file for the eviction of the Schedule Property subsequent to the receipt of proceeds from the assets sold in the auction?*
 - ii. *Whether the NCLT has jurisdiction in deciding the eviction of the Schedule Property*
 - iii. *Whether the said Lease Deed is still in existence and the respondent is a continuing tenant?*

Liquidator's right or obligation to file for the eviction

17. With regard to (i), it is trite that even after the sale of a company's property and the transfer of property to the Purchaser, the duties and responsibilities of the Liquidator persist, regardless of whether the sale is conducted on an "as is where is and whatever there is" basis. Both the Liquidator and the purchaser are bound by the terms and conditions outlined in the tender document and the conveyance deed.
18. Where in the course of executing the conveyance deed in favor of the buyer, if the Liquidator assured that the purchasers would possess the unencumbered right to use and enjoy the acquired property without any claims, obstacles, impediments, or demands, the Liquidator is bound to fulfill all essential actions and transactions to honor this commitment.
19. "Given these responsibilities, the [Liquidator] cannot be considered functus officio, indicating that his official function has not ceased.

⁶ 2021 SCC OnLine SC 1113

Consequently, he cannot be precluded from seeking vacant and peaceful possession of the premises occupied”⁷. In this case, the premises in question have been occupied by the Respondents, and the Liquidator is fully justified in approaching NCLT for seeking his eviction.

Jurisdiction of NCLT

20. For answering the question whether NCLT has the jurisdiction on the matters concerning the eviction of premises – we are guided by the judgment of Hon’ble NCLAT in the case of **Adinath Jewellery Exports**⁸, where under IBC, NCLT is held to be the appropriate forum for addressing matters arising during the liquidation process of a Corporate Debtor. In a case where the Appellant claiming to be a ‘tenant’ under Maharashtra Rent Control Act when it had signed no agreement with the Corporate Debtor and further Leave and Licence agreement had also expired, Hon’ble NCLAT held:

“We are of the opinion that the NCLT possesses the correct jurisdiction in considering an application for vacation of premises in question and that the NCLT was correct in passing the Impugned Order which would be necessary to put the premises in question with the Liquidator”

Thus, during the liquidation process NCLT is the right forum to decide on the matters concerning eviction of the premises owned by the Corporate Debtor.

Respondent whether a Continuing Tenant

21. Now, addressing the issue of whether the Respondent, currently occupying the premises owned by the Corporate Debtor in Liquidation, should be evicted, we note that the Respondent entered into a lease agreement with the Corporate Debtor on 31.12.2013. The lease term was

⁷ Ramkumar Sukhchandani Gupta vs. O.L. of The Navjivan Mills Company Ltd. and Ors. Dt. 18.03.2008 – GUJHC

⁸ Adinath Jewellery Exports v Mr. Brijendra Kumar Mishra and Ors in CA(AT)(Ins) No. 748 of 2023 [ibclaw.in 262 NCLAT]

of six years, commencing from 1st January 2014. The lease deed evidences the duration of the lease in the following manner:

“That the lease deemed to have effect from 1st January, 2014 for a period of six years revenue of both the parties with mutual understanding at end of the lease period”.

The currency of this Lease Deed thus expired on 1st January, 2020, and it was never renewed or extended.

22. However, even after the expiry of the Lease Deed the Respondent continued to occupy the schedule property. The Respondent, therefore is not a continuing tenant, but an unauthorised occupier of the property that belonged to the Corporate Debtor.
23. In his counter reply the Respondent had mentioned about some “understanding” he had with the Corporate Debtor “to continue the lease from time to time”. He has also mentioned about a sum of Rs 8 lakhs that he had deposited with the Corporate Debtor in view of such understanding. No evidence in writing or otherwise of such ‘understanding’ has been brought before us, in absence of which the claims of the Respondents about the understanding of continuation of the lease and the deposit of Rs 8 lakhs are bland claims and nothing else.
24. In his counter reply, the Respondent has referred to an 'understanding' he had with the Corporate Debtor 'to continue the lease from time to time'. Additionally, he mentioned depositing a sum of Rs 8 lakhs with the Corporate Debtor based on this understanding. However, no tangible evidence in the form of documentation or otherwise has been presented to substantiate this 'understanding'. In the absence of such evidence, the Respondent's claims regarding the lease continuation and the deposit of Rs 8 lakhs remain unsubstantiated.
25. In the written submissions by the Respondent, case of TATA Consultancy Services (supra) was cited without pointing out how it supports his contentions. Apparently, the reference was to that part of the Judgment

where Hon'ble Supreme Court had held that “NCLT does not have any residuary jurisdiction to entertain the [contractual dispute] which has arisen dehors the insolvency of the Corporate Debtor”. This part of the Hon'ble Supreme Court judgment also does not help the Respondent.

26. The present case has not arisen out of any contractual dispute. The only contract that the Respondent had with the Corporate Debtor was the Lease Agreement which expired on 1st January 2020. Thereafter he is in unauthorised occupation of the premises owned by the Corporate Debtor, in liquidation since 04.03.2021.
27. In light of the above facts and circumstances we direct the Respondent:
- a) to pay the arrears of rents of INR 1,15,000/- (Rupees One Lakh Fifteen Thousand Only) up to 30th April, 2022 and INR 11,500/- per month and/or part thereof thereafter until the vacation of the Scheduled Property.
 - b) to vacate the Scheduled Property.

Accordingly, this I.A is allowed and disposed of.

SD/-

Sanjay Puri, Member
(Technical)

SD/-

Rajeev Bhardwaj
(Judicial)

Sagire. S. Namratha (LRA)