

**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

CP/115(IB)/2018

[U/s 9 of IBC, 2016 r/w Rule 6 of IB (AAA) Rules 2016]

In the matter of

1. M Goutham Chand Bafna (M Goutham Bafna)
2. G Shobha Bafna

... Petitioner/Operational Creditor

Vs.

M/s Hi-Style India (P) Limited

... Respondent/ Corporate Debtor

Order delivered on: 04.09.2018

CORAM

**K. ANANTHA PADMANABHA SWAMY, MEMBER (J)
S. VIJAYARAGHAVAN, MEMBER (T)**

For the Petitioners: M/s. R. Parthasarathy, Rahul Balaji, Madhan Babu & Vishnu Mohan, Advocates

For the Respondent: Mr. Avinash Wadhvani, Advocate

ORDER

Per: K. ANANTHA PADMANABHA SWAMY, MEMBER (J)

Under consideration is a Company Petition filed by the Petitioner herein against the Respondent company under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short

IBC) r/w rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, IB Rules) for initiation of Corporate Insolvency Resolution Process against the Respondent company for recovery of ₹5,32,88,170/-.

2. It is the case of the Petitioner that the debt claimed in the petition has arisen on account of short payment for rent, damages to the rented property, short payment of service tax, short payment of TDS and compensation for damage caused to property as per report of the independent engineer during the joint inspection from the Respondent Company in terms of the lease agreement dated 09.01.2009.

3. The Respondent filed a detailed Counter and, *inter-alia*, stating that the Respondent Company was earlier a partnership firm by name Hi-Style Apparels which entered into an unregistered lease agreement dated 09.01.2009 with the Petitioners. The period of lease was 15 years commencing from 01.02.2009 at a rent of ₹11,21,000/- per month for a total area of 24,300 sq. ft. at No. 131/2A, Kandanchavadi, Old Mahabalipuram

Road, Chennai 96. It is further stated in the counter that a sum of ₹1.25 crores was paid as a refundable security deposit. The Respondent claimed that since the 2nd Petitioner had not signed the unregistered lease deed, the contract was neither concluded nor it is enforceable for the period of lease was beyond twelve months. Further, since the lease agreement was entered with a partnership firm, the provisions of IBC are not applicable.

The Respondent further contended that the Petitioners herein had earlier initiated proceedings under the Tamilnadu Buildings (Lease and Rent control) Act, 1960 for eviction of the respondent on the ground of willful default and owner's occupation in RCOP No. 22/2015 before the Principal District Munsif Court cum Rent Controller of Alandur. In the said RCOP proceedings the Respondents pointed out damages caused to the Respondents goods due to leakages and improper maintenance of the building. The Petitioners herein obtained an exparte order on 28.04.2016 from the Rent Controller which was set aside on 11.11.2016 with a direction by the Rent Controller to pay a sum of ₹1,24,62,658/- being the rent payable for the period December, 2014 to October, 2016. The said order was not

appealed by the Petitioners herein and has become final. Thus the rent payable was fully satisfied up to October, 2016, the Respondent averred.

In the counter it is further stated that the proceedings before the Rent Controller was settled on 07.04.2017 and was recorded by the court on 10.04.2017. The compromise recorded in the RCOP proceedings as quoted in the counter read as follows:

“Both the petitioners and Respondents present. Both counsel for petitioners and respondents are present. Memo filed by the respondent/tenant that he had vacated the premises. Recorded. Memo filed by the counsel for petitioner stating that in the presence of both the parties a civil engineer assessed the damages caused to the premises. The report of the civil engineer along with photographs filed along with this memo. Further the counsel for petitioner had endorsed that he had received the keys, arrears of rents without prejudice to his case. Recorded. Another memo filed by the counsel for petitioner and respondent with respect to payment of arrears of rent. Recorded. Hence in view of all the 3 memos RCOP is dismissed as infructuous. No costs. All the 3 memo’s along with the engineer’s report and photos shall form part”.

The Respondent further contended that since the Petitioners had entered into a compromise with the Respondent before the Rent Controller they

are estopped from raising the issue again. It is also stated there are no records to show that the demands are liquidated and it construed as a debt. On such grounds, the Respondents pleaded to dismiss the petition with exemplary costs.

4. Heard the submissions made by the learned Senior Counsels for both the sides. Perused pleadings and documents submitted by both the parties. The point for consideration is whether the present petition filed under IBC is to be allowed or not.

5. In the instant petition the facts and background leading to the case has not brought out in its entirety by the Petitioner. It has been simply stated that the amount claimed is on account of short payment of rent, service tax, TDS by the Respondent and compensation for damage caused to the property from the Respondent. From the counter and type set of documents filed by the Respondents, it is observed that there was a pre-existing dispute between the parties agitated before the District Munsif cum Rent Controller Court, Alandur in RCOP 22/2015. The Petitioner herein succeeded in the said RCOP ✓

proceedings and obtained an *ex parte* decree dated 28.4.2016. Based on the said decree the Petitioner herein preferred an Execution Petition in E.P. No. 73/2016. While so, the Respondent herein preferred an MP 142/2016 in RCOP 22/2015 to set aside the *ex parte* decree passed against them and obtained a conditional order on 11.11.2016 (Pages 194 to 199 of the counter) in their favour whereby they were directed to pay ₹1,24,62,658/- being the arrears of rent payable, after adjusting the advance paid by the Respondent, for the period in default i.e. December 2014 to October 2016 (Page 198 of the counter). It is also observed from the detailed tabulation made available in Paragraph 12 of the Counter wherein the Respondent stated to have complied with directions issued in MP No. 142/2016 in RCOP 22/2015 and has allegedly paid ₹1,24,62,658/- on 31.12.2016. It is also seen that the Respondent herein vacated the subject premises/property pursuant to the RCOP proceedings initiated by the Petitioner. This Tribunal is also given to understand that the said RCOP was disposed of by the Rent Controller subsequent to the compromise arrived at between the parties (Paragraph 10 of the Counter). Thus it could be seen that the parties herein have contested in the RCOP proceedings before the

Rent Controller, Alandur District and have finally settled the dispute between them by way of compromise. In case of any failure on the part of the Respondents to honour the commitment, if any, under the compromise so arrived, the Petitioner ought to have approached the concerned civil court for remedy/further directions.

6. In such circumstances, we hold that the present petition filed under the provisions of IBC cannot be sustained for the following reasons:

- a. There is a pre-existing dispute between the parties; and
- b. The subject matter is hit by *res judicata*

In view of the above reasons, the present Petition is dismissed as devoid of merits. There will be no order as to costs.



[S. Vijayaraghavan]
Member (Technical)



[K. Anantha Padmanabha Swamy]
Member (Judicial)

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