

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

**C.P(IB) No.65/BB/2017  
IN  
I.A. 161/2017**

**IN THE MATTER OF COMPANIES ACT, 2013  
AND  
IN THE MATTER OF SECTION 10 OF I&BC, 2016  
READ WITH RULE 7 OF I&B CODE, 2016  
AND  
EOLANE ELECTRONICS BANGALORE PVT. LTD.**

Order delivered on 20.12.2017

JAS Telecom Private Limited  
Villa No.16, Prestige Lake Vista  
Ramakondanahalli, Varthur Main Road  
Bengaluru 560 066

**..APPLICANT/OPERATIONAL CREDITOR**

Vs.

Eolane Electronics Bangalore Pvt. Ltd.  
Plot No.16, Survey No.42 (P)  
Electronics City, Phase II  
Bangalore 560 100

**..RESPONDENT/CORPORATE DEBTOR**

Coram: 1. Hon'ble Shri.RatakondaMurali, Member Judicial  
2. Hon'ble Shri.Ashok Kumar Mishra, Member Technical

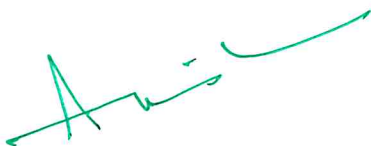
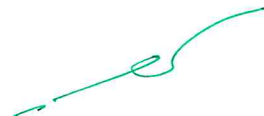
For the Applicant(s) : Shri Perikal K Arjun, Advocate  
For J Sagar Associates, Advocates  
For the Respondent(s): Shri Gorur R Venkataraman  
Resolution Professional for Respondent

Per: Hon'ble Shri Ashok Kumar Mishra, Member Technical - Author

Heard on : 31.07.2017, 04.08.2017, 07.08.2017, 09.08.2017, 16.08.2017, 31.08.2017  
13.09.2017, 10.10.2017, 23.10.2017, 13.11.2017, 04.12.2017 and 11.12.2017

**ORDER**

The above application is filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016 praying this Tribunal to-

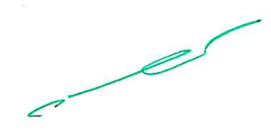
1. Direct the Resolution Professional to consider the claim of the Applicant as Insolvency Resolution Process cost as per Regulation 31(b) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 and be paid in priority to workmen, employees and all other class of Operational Creditors; and
2. Pass any such order, as the Tribunal may deem fit, in the interest of justice and equity.

The averments made in application are as follows:

1. It is averred by the Applicant that the Operational Creditor herein is the landlord of the Corporate Debtor and retains all right, title and interest over the property bearing Plot No.16, Sy.No.42(P), Hosur Road, Electronics City Phase-II, Bengaluru 560 100 out of which the Corporate Debtor was running and operating its business. The Lease Deed dated 29.06.2016 entered as Document No.2360/16-17 in Book I and stored in CD No.JAYD259 in the offices of the Sub-Registrar, Jayanagar. Copy of the lease deed dated 29.06.2016 is produced herewith as Annexure-A to the application.

2. That the Corporate Debtor has not been paying rent for the premises since January, 2017 and that the total amount of claim due to the Applicant by the Corporate Debtor is Rs. 1,47,94,599/- thus entitled to arrears of rent and vacant possession of the said property/premises due to the Corporate Debtors inability to pay monthly rentals as well as the equipment purchased by the Applicant for the benefit of Corporate Debtor and located in the leased premises.

3. It is further averred that due to non-payment of the rents, the Applicant has filed a suit bearing O.S. No.1909/2017 before Hon'ble Principal Senior Civil Judge, Bengaluru Rural District, for eviction of the Corporate Debtor from the premises and for payment of the arrears of rent payable to the Petitioner. The said suit is still pending. Copy of the Complaint in O.S. No.1909/2017 is produced herewith as Annexure-B.



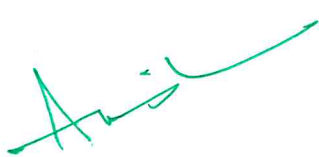
4. It is also averred that the Corporate Debtor filed an application under Section 10 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 on 17.07.2017. This Hon'ble Tribunal was pleased to admit the application vide Order dated 16.08.2017 and appointed an Interim Resolution Professional by order dated 31.08.2017. Copy of the Order is produced herewith as Annexure-C.

5. It is averred that Mr. Gorur N Venkataraman was appointed as the IRP. It is also averred that vide Order dated 31.08.2017, a moratorium with effect from 31.08.2017 till the completion of the Corporate Insolvency Resolution process or until the Hon'ble Tribunal approves the Resolution Plan or passes an order of liquidation of the Corporate Debtor and during the said period, all proceedings pending against the Corporate Debtor stood suspended as per Section 14 of the IBC. Accordingly, the suit filed by the Petitioner against the Corporate Debtor for evicting and recovery or rental amounts due to the Petitioner is also suspended.

6. That the first meeting of the Committee of Operational Creditors was held on 04.10.2017. The main agenda of the first meeting was to appoint Resolution Professional as per section 22 (1) and (2) of the I&B Code, 2016. The IRP was resolved as the Resolution Professional.

7. It is further averred that on 23.10.2017, the Petitioner issued a letter dated 23.10.2017 to the RP with respect to Agenda Item 1(a), stating that as per Regulation 31(b) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with Section 14(1) (d) of the I&BC 2016, rents due to the land lord whose rights are prejudicially affected on account of the moratorium imposed by the Tribunal, should also be considered and included in the 'insolvency resolution process cost' for the purpose of Section 53 of the I&BC 2016. Copy of the letter dated 23.10.2017 is produced herewith Annexure-F.

8. It is also averred that on 24.10.2017 and as per Minutes of the Second Meeting of Committee of Operational Creditors dated 25.10.2017, the


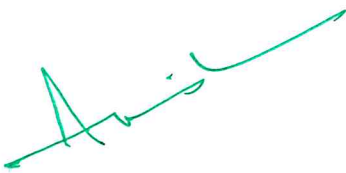




Resolution Professional did not accept the claim of the Petitioner to be treated as Resolution Process Cost. The RP stated that since the Operational Debtor has not paid rent from January, 2017, the item will not be treated as Resolution Process Cost. Copy of the Minutes of the Meeting of Second Meeting of Operational Creditor dated 25.10.2017 is produced herewith as Anenxure-G.

9. It is also averred that the priority of payment considered by the RP is incorrect and contrary to the provisions of law. It is averred that Regulation 31 (b) of IBBI (Insolvency Resolution Process for Corporate Persons), Regulations, 2016 categorically states that the amounts that are due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d) of I&BC 2016 should be treated as part of the 'insolvency resolution process cost'. It is clear that Section 14(1)(d) of I&BC 2016 deals with recovery of any property by an owner or lessor where such property is occupied by or in the possession of corporate debtor. Therefore, from the joint reading of both the provisions, it is abundantly clear that the rents due to the landlord whose rights are prejudicially affected on account of the moratorium imposed by the Tribunal, should also be considered and included in the 'insolvency resolution process cost' for the purpose of Section 53 of Insolvency and Bankruptcy Code, 2016.

10. It is averred that the Applicant is entitled to payment of rentals on priority basis as Insolvency Resolution Cost involves 'Essential Services' like water, electricity, security services, rent, maintenance, legal and professional charges, insurance, corporate debtor's management expense etc. It is averred that rents payable to the Petitioner also falls under this category as the rents payable is a routine expense incurred by the Corporate Debtor during its operation. It is submitted that in view of the moratorium imposed by this Hon'ble Tribunal, the Petitioner cannot enforce its right under the Lease Deed dated 29.06.2016 and the suit filed by the Petitioner has also been suspended due to the moratorium imposed by this Hon'ble Tribunal.



The RP has filed his objection dated 13.11.2017 in respect of the above Application wherein he has submitted as under:

1. That the request of Operative Creditor i.e. JAS Telecom to consider claim under resolution process costs is not in line with Section 5(13) read with Regulation 32 of IBC which mentions to consider only essential goods and services referred in Section 14(2) in application vide para 12 which does not include rent and even the essential goods and services or to the extent that are not direct input to the output produced by the Corporate Debtor.
2. Further, RP has alleged that the Applicant in para 14 of his application alleged that RP has not informed the operative creditor that CD will not be able to continue to carry its business and premises will be utilised only for storing machines until they are sold is wrong as we are still in CIRP, the question of selling does not arise and RP communicated that any disturbance in partial vacation is not possible and hinders the progress of CIRP.
3. RP has mentioned the accusation at para II of the Applicant's application that RP without any legal basis has rejected the claim to be included in insolvency resolution process costs is not tenable as RP has acted in good faith and as submitted above is within the provisions of IBC.
4. RP further mentioned that when the operative creditor request for payment was submitted, the matter was brought by RP for discussion in the 2<sup>nd</sup> Meeting of COC held on 24<sup>th</sup> October, 2017, the minutes clearly indicated that it was the decision of the COC not to treat this under section 14 as an item of resolutionary process costs.
5. Finally, RP submitted that in para 2 of the application, the operative creditor's claim of Rs. 147.99 lakhs even though initially estimated and determined by IRP has not been reviewed by RP under Regulation 14(2) on coming across additional information of a security deposit of Rs. 100 lakhs which has not been mentioned by the operative creditor and as such this has warranted the review of RP of operative creditor's claim to Rs. 92.07

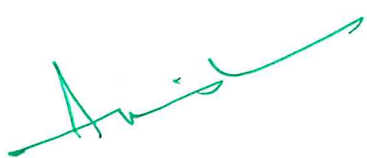
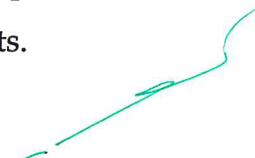


lakhs. As the operative creditor is still having Rs. 100 lakhs as security deposit, the question of interest on arrears does not arise as determined by RP under the above circumstances.

Further, the RP has filed further objection dated 04.12.2017 wherein he has stated that -

1. JAS Telecom Pvt Ltd. is a lessor and premises is given to the Corporate Debtor on a lease for which lease agreement has been filed by the applicant. The lease agreement clearly says that the premises is for running the manufacturing and related operations and as such the RENT is a DIRECT COST in manufacturing as defined in regulation Reg. 004 of CIRP, Regulation 32 essential supplies wherein RENT does not figure as such Regulation 31, 32, 33, 34. IBC regulations does not provide rent to be included in the INSOLVENCY RESOLUTION PROCESS COST. The rent reported is in the amount of default like any other Operational Creditors.
2. Considering this JAS Telecom Pvt Ltd. has submitted claim as Operational Creditors and thereby included as member of COC. He has also submitted the claim which has been determined by IRP and reviewed by RP.

The RP has filed a letter dated 20.12.2017 wherein he has submitted that the vacation of 2<sup>nd</sup> floor of the premises is possible with the following terms:

- a. As offered by the Lessor to this Tribunal during the hearing, Lessor should reduce the monthly rent by Rs. 5 lakhs in lieu of vacation of the premises at second floor from the date of vacation.
  - b. RP will ensure that all the items stacked thereof are all scrap items brought by the Corporate Debtor from the previous factory premises which has not been valued and not shown in the books of accounts.
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After hearing the Counsel for the Applicant and also the RP and in the circumstances as stated above, we are of the view that the rent is not getting covered under IRP cost and accordingly, the application is dismissed. No cost imposed. However, it is left open to the applicant to consider the proposal by RP in his letter dated 20.12.2017.



(ASHOK KUMAR MISHRA)

MEMBER, TECHNICAL



(RATAKONDA MURALI)

MEMBER, JUDICIAL