

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT V**

I.A. 455 OF 2021

IN

C.P. (IB) No. 2520 of 2018

Under Section 60 (5) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016

Mala Verma

....Applicant

vs.

**Mr. Pankaj Srivastava/ Resolution Professional
& Ors.**

...Respondents

In the matter of:

Valuelabs LLP

... Operational Creditor

vs.

Global Energy Private Limited

...Corporate Debtor

Order Dated: 22.04.2024

Coram:

Hon'ble Ms. Reeta Kohli, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

Appearance (Physically/ Video Conference):

For the Applicant: Adv. Adv. Abhishek Anand, Karan Kohli and Kashish
Rehan

For the Respondent: Adv.

ORDER

1. The above Interlocutory Application bearing I.A. No. 455 of 2021 is filed by **Mala Verma** (hereinafter referred to as the “**Applicant**”) seeking directions against **Mr. Pankaj Srivastava** (hereinafter referred to as the “**Respondent**”) under Section 60 (5) of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “**the Code**”) praying for following reliefs:

- a) *Appoint the Interim Resolution Professional in the Corporate Insolvency Resolution Process of the Corporate Debtor in the matter CP(IB) 2520/MB/2018 titled as «Valuelabs LLP vs Global Energy Pvt. Ltd.»;*
- b) *Direct the Interim Resolution Professional to pay the rent due to the Applicant accrued during the CIRP process since 02/12/2019 for the premises of the Applicant in use and possession of the Corporate Debtor;*
- c) *Direct the Interim Resolution Professional to handover the possession of the said premises of the Applicant which are not being utilised by the Corporate Debtor and the Lease Agreement dt. 12/01/2018 has already been terminated;*
- d) *Any other order and/or direction this Hon'ble Tribunal deems fit and proper in the interest of justice.*

Submission by the Applicant

Rent Accrued being adversely affected by the grant of moratorium is part of CIRP Cost: *“The Applicant submitted that as per Section 14(1)d) IBC during the period of moratorium the lessor or an owner of the property cannot recover*

the possession of the property from the Corporate Debtor otherwise than through IRP/RP". But according to *Regulation 31(b)* of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the rent accrued during the period of moratorium (from 02.12.2019 until possession was handed over on 17.08.2022) is considered a part of the CIRP costs. This means that the applicant is entitled to claim the rent accrued during this period as a part of the expenses incurred in the resolution process. Section 31(b) is as follows:

- *Insolvency resolution process costs:*

Insolvency resolution process costs" under Section 5(13)(e) shall mean-

(a)

(b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);

(c)

(d)

(e)

Brief Facts of the Case

2. The present Application has been preferred by Applicant Mala Verma with a prayer to "appoint RP in the matter of CP No. 2520 of 2018 and direct the Interim Resolution Professional to pay rent owed to the Applicant for premises used by the Corporate Debtor during the insolvency process since 02.12.2019 and to return possession of premises not utilized by the Corporate Debtor, as the lease agreement has ended."
3. In the present Application, the Respondent is the Resolution Professional (herein after referred to as "**RP**") appointed vide order dated **03.08.2022** by this Hon'ble Tribunal as the Resolution Professional of Corporate Debtor/M.s

Global Energy Private Limited which is incorporated under the “*Companies Act 1956*” (herein after referred to as “**Corporate Debtor**”) undergoing **CIRP** pursuant to Admission Order dated 06.05.2022 passed by this Hon’ble Tribunal.

4. The Applicant had submitted that she, being a senior citizen, had entered into a lease agreement on 12.01.2018 for a period of 3 years with the Corporate Debtor for premises located at 2, Panchsheel Community Centre, Panchsheel Park, Delhi. Moreover, the Applicant had submitted that the Corporate Debtor had failed to meet its financial obligations under the lease agreement, including rent payments, GST, and TDS deposits. On repeated failures on the part of the CD, the Applicant was compelled to issue termination notice in April 2020, demanding vacation of the premises and rendering over the possession. The notice had been sent via email on 22.04.2020 and through speed post on 20.05.2020. However, the speed post had been returned with the message "Door Locked," indicating that the recipient had been inaccessible or unwilling to accept the notice.
5. The Applicant submitted that on 24.06.2020 via email the Respondent/RP replied to the termination notice and admitted to having the possession of the premises. He informed that on 02.12.2019, the Hon'ble NCLT, Mumbai Bench, had admitted an application filed under Section 9 of the *Insolvency and Bankruptcy Code, 2016*, against the Corporate Debtor. The Hon'ble NCLT had appointed Mr. L.V. Shyamsundar as the IRP. The Respondent also mentioned that an appeal had been filed against the admission order dated 02.12.2019 before the Hon'ble NCLAT and was pending final adjudication.
6. The Applicant submitted that, the Operational Creditor has filed an MA No.308 of 2020 before the Hon’ble Tribunal to replace the IRP and appoint Mr. Anurag Jain as IRP, the same was allowed by the Hon’ble Tribunal vide

order 05.02.2020 but the IRP expressed his inability to accept the appointment.

7. The Applicant submitted that, the Corporate Debtor and the Operational Creditor are hand in glove in the present case as they were deliberately not letting the IRP to take the charge of the Corporate Debtor even though the Hon'ble Appellate Tribunal directed.
8. The Applicant relies on the Judgement passed by the Hon'ble National Company Law Appellate Tribunal, New Delhi titled as "***Prerna Singh Vs. Committee of Creditors & Ors.***" ***Contempt Case (AT) No. 03/2020 Company Appeal (AT) (Insolvency) No. 104 of 2019 (Para 19,20) dated 17.12.2021***; states that during a moratorium period, the lessor (property owner) may not be able to recover possession of their property from the Corporate Debtor. This affects the lessor's rights to collect rent. However, the lessor is entitled to recover the rent owed to them, and this amount is included in the costs of the CIRP. This means that the rent owed to the lessor becomes a part of the expenses associated with the insolvency proceedings.
9. Hence this Application.

RESPONDENT:

10. The Respondent stated that the Applicant had leased property at No. 2, Panchsheel Community Centre, New Delhi, comprising the entire basement and ground floor, along with fixtures and furniture, for three years starting from 12.01.2018 prior to the initiation of CIRP against the Corporate Debtor. The Hon'ble Adjudicating Authority, upon receiving the Operational Creditor's application under Section 9 of the Code, had initiated the CIRP against the Corporate Debtor on 02.12.2019, appointing Mr. L.V. Shyamsunder as the IRP and declaring a moratorium under Section 14 of the Code. The Respondent further submitted that one of the suspended Board of Directors of the

Corporate Debtor had appealed the CIRP order of 02.12.2019 before the Hon'ble Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 1415 of 2019. The Hon'ble Appellate Tribunal, via interim orders on 09.12.2019, had instructed the IRP to refrain from making a public announcement.

11. The Respondent submitted that following an adverse ruling by the Appellate Tribunal on 09.02.2019, a suspended board of director of the Corporate Debtor filed Civil Appeal No. 671 of 2021 before the Supreme Court, leading to the stay of the CIRP through an order dated 26.02.2021. Ultimately the Hon'ble Supreme Court, in its order dated 31.03.2022, lifted the stay on the CIRP and instructed the Adjudicating Authority to resume proceedings for the Corporate Debtor's CIRP.

12. During the moratorium period under Section 14 of the Code, the Applicant issued a termination notice dated 22.04.2020 to the Corporate Debtor, requesting full physical possession of the premises, including fixtures, furniture, workstations, and cubicle. During the stay of CIRP since its initiation on 02.12.2019, American Express Banking Corp., a financial creditor, filed IA No. 2861 of 2021, seeking directions against the IRP Mr. M.L. Shyamsunder or appointment of a new IRP to advance the CIRP. The Adjudicating Authority, in its order dated 06.05.2022, appointed Mr. Dilipkumar Natvarlal Jagad as the new IRP from the panel of insolvency professionals.

13. The Respondent further submitted that in accordance with Regulation 6(2)(c) of the CIRP Regulations, 2016, the deadline for submission of proof of claim, as specified in the public announcement made by Mr. Dipkumar Natvarlal Jagad (erstwhile IRP) on 09.06.2022 in FORM A, was 22.06.2022. The Adjudicating Authority granted the exclusion of the time period from 02.12.2019 to 08.06.2022 from the CIRP and vide order dated 03.08.2022 appointed the Respondent as the RP based on applications IA No. 2110 of 2022 and I.A. No. 2111 of 2022, respectively.

14. The Respondent further stated that the applicant's claim has been rejected due to the fact that the possession of the property in question was already transferred to the applicant by the Resolution Professional vide letter dated 17.08.2022.

15. The Respondent relies on the Judgement passed by the Hon'ble NCLAT in "**JAS Telecom Pvt. Ltd vs. Eolane Electronics Bangalore Pvt. Ltd[Company Appeal (AT)(Insolvency) No.37 of 2018]**" Wherein it is held that amounts due to persons whose rights are affected by the moratorium under Section 14(1)(d) are considered part of the insolvency resolution process costs, as per Regulation 31 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The aforesaid Judgement was upheld by the Hon'ble Supreme Court vide order dated 08.07.2018.

16. While concluding the arguments the Ld. Counsel summarised as under:

- a. The Applicant filed a claim amounting to Rs. 64,13,118 on 28.06.2022 in FORM-B. The Respondent admitted a portion of the claim, totalling Rs. 23,66,000, including rent owed until the lease agreement's validity ended on 30.11.2020.
- b. During the 3rd Committee of Creditors (CoC) meeting on 05.09.2022, it was resolved that accrued rent from 08.06.2022 to 17.08.2022, amounting to Rs. 5,03,000, would be considered part of the CIRP costs. However, the Respondent rejected the claim of Rs. 23,66,000 and inform the same via email on 17.11.2022. The Applicant hasn't filed a separate application regarding this rejection.
- c. Despite the Corporate Debtor defaulting on rent payments, the Applicant didn't take any action against them before the initiation of

the CIRP. Consequently, the Respondent contends that the application should be dismissed.

- d. The applicant's failure to disclose the transfer of possession rendered their then-current application moot. The respondent denied any merit to the applicant's claims and asserted that the application lacked bona fides. They argued that granting the applicant's prayers would cause irreparable harm to all stakeholders involved.

17. The Respondent submits that it is a well settled principal of law laid down by the Hon'ble Supreme Court of India that a litigant who is coming to the court must come with clean hands however the Applicant is guilty of "*Suppressio vari*" and "*Suggestio Falsi*" as they have concealed material facts from this Hon'ble Adjudicating Authority.

REJOINDER BY APPLICANT:

18. The assertion made in paragraph 12 was refuted and denied. It was argued that the Respondent, through a letter dated 17.11.2022, did not admit the Applicant's claim of Rs. 23,66,000, which included rent until the lease agreement's validity till 30.11.2020. The Applicant was accused of deliberately concealing this information from the Adjudicating Authority. Additionally, it was contended that the Respondent had provisionally approved the Applicant's claim, subject to further verification. The Respondent purposely omitted filing its letter dated 10.10.2022 and the Applicant's reply dated 20.10.2022, withholding crucial information from the Tribunal.

19. The assertion presented in paragraph 13 is vehemently refuted and dismissed as false. There is a complete lack of acknowledgment regarding the purported convening of the 3rd Committee of Creditors (COC) meeting by the Respondent or any unanimous approval of discussed matters. Furthermore, it is firmly asserted that the exclusion of the period from 02.12.2019 until 08.06.2022

does not absolve the obligation to settle accrued rent. This is grounded in the fact that the moratorium was still in effect during this period, and previous IRP were in possession of the property. Additionally, the claim suggesting the potential dismissal of the application on the basis of rent being encompassed within the CIRP costs is emphatically rejected.

20. The assertions made in paragraph 14 are refuted and deemed false. It is disputed that the Respondent admitted the Applicant's claim to Rs. 23,66,000 or that the claim was never contested, as it was rejected in a letter dated 17.11.2022. Moreover, the contention that the relief sought by the Applicant has become irrelevant, leading to potential dismissal of the present application, is also denied.

21. Regarding paragraphs 15-19, the claims are rebutted as false. The Applicant did not approach the Tribunal with unclean hands, nor did they attempt to mislead by concealing vital information. It is acknowledged that the former RP transferred possession of the Applicant's property at 2, Pansheel Community Center, New Delhi, comprising the entire basement and ground floor, as per the possession letter dated 17.08.2022. The Applicant had submitted Annexure A-8, containing the possession letter, on 01.09.2022, thus refuting any accusation of concealment. Claims of suppression of facts or intention to disrupt the Corporate Debtor's CIRP are also rejected. Additionally, the fact of possession transfers by the former RP to the Applicant had been previously brought to the Tribunal's attention.

FINDINGS

22. After having appreciated the contentions of both the Ld. Counsels and on perusal of the documents placed on record with their able assistance, what emerges is that the Corporate Debtor was admitted to CIRP on 02.12.2019. The Hon'ble NCLAT vide order dated 09.12.2019 stayed the publication by the IRP and also the constitution of CoC.

23. The contention of the Applicant is that the lease agreement was terminated on dated 22.06.2020 but the property in question was ultimately handed over to the Applicant only on 17.08.2022 by the Respondent/RP. The claim of the Applicant is for the payment of rent from 02.12.2019.

24. On the other hand, the contention of the Respondent is that he has already admitted the claim of the Applicant till the expiry of lease agreement i.e. 30.11.2020 amounting to Rs. 23,66,000/- and has stated that the remaining amount of Rs. 40,47,277.50/- is under verification. Vide letter dated 17.11.2022, Respondent/RP has conveyed as under to the Applicant:

“Accordingly, we have received your claim dated 28.06.2022 in claim Form B under Regulations 7 of the CIRP Regulations. You are requested to note down the status of your claim along with the following observations made by the RP:

<i>Sr. No</i>	<i>Name of Claimant</i>	<i>Amount of Claim</i>	<i>Amount of Approved</i>
<i>1</i>	<i>Mrs.Mala Verma</i>	<i>64,13,188</i>	<i>23,66,00</i>
<i>Remarks:</i>	<p><i>1.Claim of Rent has been admitted till date of 30.11.2020 i.e. till the date of lease agreement valid.</i></p> <p><i>2. Once the Company undergoes CIRP, the IRP/RP is not liable to bear the expenses incurred by or on behalf of the suspended board of directors until and unless the possession of the property is in the custody of the IRP/RP or the property is used for commercial purpose by IP/RP. The property was never in the custody of RP.</i></p> <p><i>3. There is no express privity of contract after the initiation of CIRP. Hence, if the expiry date of the validity of the agreement, then they are liable personally for the same and not the Corporate Debtor or</i></p>		

	<p><i>the RP to bear its expenses as all of them are separate entities in the eyes of law.</i></p> <p><i>4. If the situation persists in this case, the suspended board of directors will thereafter be considered trespassers to the property.”</i></p>
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25. From the perusal of the above, it is evident that the partial claim has been rejected by the Respondent/RP stating that the property was never in the custody of RP. This statement of respondent is factually incorrect as it is the Respondent/RP who vide letter dated 17.08.2022 handed over the possession of the property to the Applicant. Thus, this submission on the part of the Respondent/RP stating that the property was not in the custody of RP and hence the claim is rejected, merits no consideration. The document handing over the possession back to the Applicant is reproduced here under:

“The undersigned, Mr. Mahvir Singh, Advocates, having office at Chamber No 730, Advocates Chambers block, Rohini District Courts, Delhi 110085 appointed as the authorized representative of the Company by Mr. Dilipkumar Natvarlal Jagad, being Interim Resolution Professional of Global Energy Limited (hereinafter referred to as "Company"), who was appointed by the order of National Company Law Tribunal, Mumbai Bench dated 6th May, 2022 (Copy of order received on 8th June, 2022) in the matter IA No. 2861 of 2021 in CP (IB) 2520 of 2018, passed in the matter of Value Labs LLP Vs Global Energy Private Limited, attached as Annexure I and Annexure II respectively, under the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "Code") and in exercise of the powers conferred under section 17 of the Code and regulation made there under, the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016 took possession of the lease hold property of the company situated at 2,

Panchsheel Community Centre, New Delhi and as the said property is no required for the Corporate Insolvency Resolution Process, and to reduce cost, as per concurrence with the Committee of creditors, hand over the said Tease hold property to the lessor Ms. Mala Verma today.”

26. In addition, the Ld. Counsel for the Applicant also relied upon the judgement of the **Hon’ble NCLAT in Prerna Singh v. CoC PF m/S Xalta Food and Beverages Pvt Ltd** wherein the Hon’ble NCLAT has categorically held the inclusion of the Post-CIRP rental dues in CIRP costs and their payments on priority, the Hon’ble NCLAT states, *“that if the right of the lessor to recover rent is affected on account of a moratorium, the lessor is entitled to recover the rent, which shall be included in the CIRP cost”*.

27. Therefore, in view of the above facts and circumstances, **prayer (b) of the IA is allowed**. During the course of arguments, the Ld. Counsel for the Applicants fairly submitted that in view of changed circumstances he is not pressing the prayer (a) and (c). IA stands disposed of in above terms.

SD/-

MADHU SINHA
MEMBER (TECHNICAL)

SD/-

REETA KOHLI
MEMBER (JUDICIAL)