IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH-II, CHENNAI

IA(IBC)/501(CHE)/2022
In
IA(IBC)/214/2020
In
IBA/1325/2019

(filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of National Company Law Tribunal Rules 2016)

In the matter of **CURA HEALTHCARE PRIVATE LIMITED**

S.Dellibabu,
Son of S.Sankaran,
Proprietor, Boozan Controls,
No. 250, Velachery Main Road,
Velachery, Chennai - 600 042.

… Applicant

Vs.

1. Cura Healthcare Private Limited,
Rep. by its Authorised Signatory
No. DP 56, 3rd Main Road,
Sidco Industrial Estate,
Thirumudivakkam, Chennai-600 044.

… Respondent - 1

2.Mrs.Jayashree S lyer,
Insolvency Resolution Professional (IRP),
Reg.No (IBBI/IPA-002/IP-N00741/2018-2019/12211),
No.23, Lake Area, 3rd Cross Street,
Nungambakkam, Chennai - 600 034.

… Respondent - 2

Order Pronounced on ***07th June 2024***

CORAM

SHRI JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)
SHRI VENKATRAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Present:

For Applicant	*:Mr.G.Ravishankar, Advocate*
	Mr.S.Shivakumar, Advocate
For SRA	*:Mr.M.S.Krishnan, Sr.Advocate,*
	Ms.Vidhya, Advocate
For Resolution Professional	*:Mr.B.Dhanraj, Advocate*

ORDER

This Application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 by Mr.S.Dellibabu against the Corporate Debtor viz.Cura Health Care Private Limited and the Resolution Professional of the Corporate Debtor seeking reliefs as follows,

i) To direct the IRP to pay the Advance Amount of Rs.67,61,250/- given under the Lease deed dated 01.07.2017 by the Corporate Debtor which had been already adjusted for the pending due rents of the Corporate Debtor in the month of June, 2019 to 08.12.2019 and the EB penalty charges; and

ii) pass such further or other orders as this Honourable Tribunal may deem fit and proper in the circumstances of the case.

2. It is submitted by the Ld. Counsel for the Applicant that, the Applicant is the sole and absolute owner and presently in possession of a property leased to the Corporate Debtor vide lease deed dated 01.07.2017. As per lease Agreement the lease period is for five years, the Corporate Debtor has to pay the Applicant a monthly interest of Rs.7,51,250/-. The Corporate Debtor has also provided a refundable interest free deposit of Rs.67,61,250/-.

3. It is submitted that as per the Lease Deed, if the Corporate Debtor to failed to make payments towards the rentals for three consecutive months or in the case of any contravention, the Applicant has the right to terminate the Lease Deed and to settle all accounts against the said security deposit. It is submitted that the EB connection for the said property was to remain in the name of the Applicant. The Corporate Debtor undertook to pay the monthly dues towards Industrial usage and other charges and penalties.

4. It is submitted that the Applicant had availed a rental loan of Rs.3,50,00,000/- based on the said Lease Deed by entering into a Tripartite Agreement dated 19.01.2018 with M/s. Lakshmi Vilas Bank and the Corporate Debtor. The Corporate Debtor had also provided a letter of undertaking to Lakshmi Vilas Bank, to pay a sum of Rs.7,51,250/- every month out of the monthly rental dues in terms of the said Lease Deed.

5. It is submitted The Corporate Debtor had illegally indulged in electricity theft and had had to approach the Hon'ble Madras High Court in W.P. 28970 of 2018 against compounding penal charges levied by the TNEB, wherein vide order dated 21.11.2018, the Hon'ble Madras High Court had granted an interim stay.

6. It is submitted that the Corporate Debtor had been intermittently making payments, abruptly stopped depositing the lease amounts from the month of June, 2019 in breach of the terms and conditions agreed in the Lease Deed. The Applicant, thereafter, issued multiple notices to the Corporate Debtor including on 01.08.2019, 26.09.2019 and 04.10.2019. As the Corporate Debtor had failed to reply to same, the Applicant had issued a Legal Notice dated 14.10.2019 terminating the Lease Deed and adjusted the then pending sum of Rs.30,76,649/- for rent for the period from June 2019 to September 2019 along with penalties and dues towards electricity charges amounting to a sum of Rs.30,00,000/-. Further, the Applicant herein sought peaceful and vacant possession of the leased property.

7. Afterwards, the Applicant learnt that the Corporate Debtor was in CIRP, and that the 2nd Respondent herein was appointed as Interim Resolution Professional ('IRP'). Pursuant to that the Applicant immediately filed his claim before the 2nd Respondent on 23.12.2019, which included sums due from July 2019 to 08.12.2019. It is also relevant to note that, as a consequence of the breach of the Corporate Debtor, the Applicant had defaulted on payments on the Tripartite

Agreement and the said Bank had taken action against the property in question under the SARFAESI Act, 2022.

8. The TNEB, on account of non-payment and illegal misuse by the Corporate Debtor, had taken action against the Applicant and has levied a penalty of Rs.23,32,588/-. It is submitted that the Applicant is entitled to outstanding rent and possession as the Lease Deed was terminated before CIRP. Since, the 2nd Respondent had even failed to make payments towards accumulated rentals for the CIRP period, the Applicant herein filed IA(IB)/214/2021, seeking payment of pending rentals and possession of the property in question. This Tribunal vide daily orders dated 08.01.2021, 08.04.2021, 02.09.2021 and 29.09.2021 and final order 08.01.2022 had directed the 2nd Respondent to make payments towards the pending rentals for the CIRP Period and to handover possession to the Applicant.

9. However, on 17.02.2022 the Applicant received an email from the 2nd Respondent, stating that the payment of rentals for the CIRP period would be made after deducting TDS and the security deposit in question which had already been adjusted by the Applicant. In reply, the Applicant herein sent an email dated 19.02.2022 whereby the Applicant clearly indicated that the security deposit, not being an asset

of the Corporate Debtor at the time of CIRP having been already adjusted, could not be deducted from the rentals for the CIRP period. Further, on 01.03.2022, the 2nd Respondent sent an email stating that the Applicant had already filed its claim and that only 7.36% of the same would be paid in terms of the resolution plan. Aggrieved by this reply, the Applicant moved this Application.

10. It is submitted that Resolution Plan of the Corporate Debtor was approved by this Tribunal on 13.01.2022. The 2nd Respondent as the Chairman of the Implementation and Monitoring Committee has handed over the Corporate Debtor to the SRA on 02.03.2022 and 09.03.2022 along with all documents of the Corporate Debtor.

11. It is stated that the Applicant had filed an Application IA. No.214 of 2020 before this Tribunal, seeking to direct the IRP to release the Building leased out to the Corporate Debtor. During the pendency of the said Application, the 2nd Respondent has paid partial amount to the Applicant and also filed an Affidavit dated 08.10.2021 informing that the rent outstanding during the CIRP period will be covered under the head "CIRP Cost and Expenses".

12. Pursuant to the approval of the Resolution Plan, the 2nd Respondent disbursed a sum of Rs.1,25,68,863/- towards the Rental Dues for the

remaining CIRP period from 09.06.2020 to 13.01.2022 for Rs.2,07,26,653.00, post deducting Advance Paid by the Corporate Debtor for Rs.67,61,250/- and TDS Amount for Rs.13,96,540.00 and the same was duly informed by the 2nd Respondent to the Applicant by her Email dated 17.02.2022 .

13. The 2nd Respondent as per the approved Resolution Plan, disbursed the Settlement amount of Rs.2,68,603/- (post deduction of TDS) with a ratio of 7.36% in respect to the admitted Claim of Rs.40,53,978/- towards the Arrears of Rents for the period of June, 2019 (Balance), August, 2019 to December 2019 along with EB Levied Penalty, EB Enhancement, Expenses 330 H.P etc.

14. It is submitted that in response to the E-mail dated 17.02.2022, the Applicant addressed an E-mail dated 19.02.2022 to the 2nd Respondent, informing that the Advance Amount was already adjusted towards the pending rental dues for the month of June, 2019 (Partial), July, 2019 to December, 2019 and other EB statutory dues by the Corporate Debtor.

15. In turn, the 2nd Respondent by E-mail dated 01.03.2022 clearly informed the Applicant on the Breakup of the amount paid i.e. Rs.1,25,68,863/- towards pending rents dues during CIRP period and

further clarified the Applicant that in its Claim Form dated 23.12.2019, the Applicant had claimed for arrears of rent for the months of June, 2019 (Partial) and from August, 2019 till December, 2019 along with other EB dues and penalty as detailed therein and the Claim of the Applicant was duly verified and admitted by the 2nd Respondent to a tune of Rs.40,53,978/- and as per the approved Resolution Plan, a sum of Rs.2,68,603/- (post deduction of TDS) was paid to the Applicant.

16. It is further submitted that without considering above the facts, the Applicant addressed an E-mail dated 07.03.2022 to the 2nd Respondent informing that the Advance Amount was already adjusted to the rental dues and EB Dues and further informed that the said deduction of Advance Amount is not justifiable.

17. The 2nd Respondent contends the Applicant had already submitted the claim for the relevant period to the 2nd Respondent in his Claim Form and the same was duly considered by the 2nd Respondent. Therefore, the deduction of Advance Amount from the total CIRP rental dues of the Applicant is sustainable in law. Therefore, the contention of the Applicant that the Advance Amount was duly adjusted towards the old rental dues and other EB dues is not maintainable.

18. In the written submission filed by the SRA it is stated the Applicant caused legal notice to the Corporate Debtor on 14.10.2019 informing the adjustment of Rs.30,76,649/- from the security deposit of the Corporate Debtor i.e.Rs.62,61,250/- towards the arrears of rents for the period from June to October 2019 and termination of the lease agreement. In response the Corporate Debtor vide e-mail dated 04.11.2019 requested the Applicant to grant 15 day time for providing solution.

19. Meanwhile, the Corporate Debtor was admitted to CIRP on 10.12.2019. Pursuant to that the Applicant filed a claim for a sum of Rs.87,67,602/- for the rental dues from June to December 2019 including EB expenses and the penalty. The legal notice dated 14.10.2019 was attached as the one of the document in the claim form. Upon verifying the claim, the 2nd Respondent admitted sum of Rs.40,53,978/- under the class of Operational Creditor other than Employees. The Applicant has not challenged against the partial admission of its claim before this Tribunal.

20. After approval of the Resolution Plan the 2nd Respondent as per the approved Resolution Plan, disbursed the settlement amount of Rs.2,68,603/- (post deduction of TDS) with a ratio of 7.36% in respect to

the admitted claim of Rs.40,53,978/- (towards the arrears of rents for the period of June, 2019 (Balance) to December, 2019, EB Levied Penalty, EB Enhancement, Expenses and other expenses). Further, a sum of Rs.1,25,68,863/- towards the Rental Dues for the remaining CIRP period from 09.06.2020 to 13.01.2022, post deducting the TDS of Rs.13,96,540/- and Advance Security Deposit of Rs.67,61,250/- paid by the CD. It is also emphasised by the SRA that the Applicant had not challenged the payments provided under the Resolution Plan.

21. Further the Respondent and the SRA relied on the judgement of ***Sandeep Goel, Liquidator of Chaudhary Ingots P. Ltd., vs. Paschimanchal Vidyut Vitran Nigam Ltd.,*** wherein Hon'ble the Supreme Court of India and observed at Para No. 28 to 31 that the Security Deposit would form part of the Liquidation Estate.

22. In addition to the above, they submitted that the 1st Respondent Company was taken over by the Successful Resolution Applicant namely M/s. Sherisha Technologies P. Ltd., by way of the Resolution Plan. It is a well settled proposition of law laid down by the Hon'ble Supreme Court of India, in the matter of ***Committee of Creditors of Essar Steel India Ltd., vs. Satish Kumar Gupta & Ors.,*** at Para 67 that

the Successful Resolution Applicant cannot suddenly be faced with "undecided" claims after the Resolution Plan is accepted. Recently, the above position of law has been reiterated by the Hon'ble Supreme Court of India, in the matter of ***Ghanashyam Mishra and Sons P. Ltd., vs. Edelweiss Asset Reconstruction Company Ltd***.

23. Heard the Ld. Counsels all the parties and perused the documents on record.

24. From the submissions it is understood that the Corporate Debtor paid Rs.67,61,250/- as a security deposit to the Applicant for the lease agreed between them. The Applicant stated that he had adjusted the security deposit because of the non-payment of rent by the Corporate Debtor for the period from June 2019 to 08.12.2019 and for the EB charges and penalty.

25. On 10.12.2019 the Corporate Debtor was admitted into CIRP. During CIRP till approval of the Resolution Plan the Corporate Debtor used the premises of the Applicant and rent for the entire CIRP period is Rs.2,07,26,653/- which forms the part of CIRP cost. As per the approved Resolution Plan the Applicant entitle to entire rent dues during CIRP i.e. Rs.1,93,30,113/- (after deducting TDS Rs.13,96,540/-).

26. The contention of the Applicant is while making the aforesaid payment as per the Resolution Plan the Resolution Professional adjusted the security deposit Rs.67,61,250/- paid by the Corporate Debtor to the Applicant before initiation of CIRP and paid only Rs.1,25,68,863/- to the Applicant and argued that the security deposit is not the asset of the Corporate Debtor at the time of initiation of CIRP.

27. **Now the point for consideration before this Tribunal is whether the act of the Resolution Professional adjusting the security deposit paid by the Corporate Debtor before initiation of CIRP from the rental dues during CIRP period is valid?**

28. It is seen from the legal notice dated 14.10.2019 that the applicant stated that he adjusted Rs.30,76,649/- from the advance paid the Corporate Debtor for the lease rent till month of October 2019. Further, it is stated that the Applicant has adjusted balance security deposit for the penalty levied by the Electricity board Rs.30,00,000/-. But there is nothing in the records shows that the Corporate Debtor acknowledged the adjustment made by the Applicant.

29. The claim submitted by the Applicant in the Form-B is extracted below,

PARTICULARS		
4.	TOTAL AMOUNT OF CLAIM (INCLUDING ANY INTEREST AS AT THE INSOLVENCY COMMENCEMENT DATE)	JUNE BAL RENT & JULY TO DEC 2019 RENT Rs. 63,83,220.00 EB LEVIED PENALITY Rs. 23,32,588.00 +INTEREST EB ENHANCEMENT EXPENSES 330 H.P. Rs. 4,75,000.00 DEFAULT IN EMI INTEREST AND PENALITY RS. 1,50,000.00 (APPROX) DAMAGES IN PROPERTY RS. 4,50,000.00 (APPROX) --- TOTAL CLAIM RS.97,90,808.00 INTERIM PYMT RCVD FROM CURA RS.10,23,206.00 --- **TOTAL** **RS.87,67,602.00**
5.	DETAILS OF DOCUMENTS BY REFERENCE TO WHICH THE DEBT CAN BE SUBSTANTIATED.	LEASE AGREEMENT
6.	DETAILS OF ANY DISPUTE AS WELL AS THE RECORD OF PENDENCY OR ORDER OF SUIT OR ARBITRATION PROCEEDINGS	NIL
7.	DETAILS OF HOW AND WHEN DEBT INCURRED	FROM JULY 2019 TO DECEMBER 2019 RENT MONTHLY +.GST EB INSPECTION REPORT DATE - 24.10.2018
8.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE DEBTOR AND THE CREDITOR WHICH MAY BE SET-OFF AGAINST THE CLAIM	NIL
9.	DETAILS OF ANY RETENTION OF TITLE ARRANGEMENTS IN RESPECT OF GOODS OR PROPERTIES TO WHICH THE CLAIM REFERS	NIL
10.	DETAILS OF THE BANK ACCOUNT TO WHICH THE AMOUNT OF THE CLAIM OR ANY PART THEREOF CAN BE TRANSFERRED PURSUANT TO A RESOLUTION PLAN	LAKSHMI VILAS BANK, VELACHERY BRANCH SPECIAL PURPOSE CURRENT ACCOUNT NO.0442353000000015
11.	LIST OF DOCUMENTS ATTACHED TO THIS PROOF OF CLAIM IN ORDER TO PROVE THE EXISTENCE AND NON-PAYMENT OF CLAIM DUE TO THE OPERATIONAL CREDITOR	1.PAN CARD COPY 2. AADHAR CARD COPY 3.LEASE AGREEMENT COPY 4. ADDL AREA AGREEMENT MAIL COPY

In the above form we see that the Applicant had filed a claim of Rs.87,67,602/- for the rental dues for the period June 2019 to December 2019 and for the Electricity Board penalty, interest thereof and the damages in the Property. It is further noticed from S.No.8 in the above

form which requires the details of *'any mutual credit, mutual debts, or other mutual dealings between the Corporate Debtor and the creditor which may be set-off against the claim"*. The Applicant had marked S.No.8 as 'NIL'.

30. If the Applicant had adjusted the Security Deposit of the Corporate Debtor for the rental dues and Electricity dues, he should not have claimed the rental dues for the same period in the claim form. Further, he should have mentioned the details of the adjustment in the S.No.8 of the claim form. The acts of the Applicant clearly shows that the both the Applicant and the Corporate Debtor had not acknowledged the adjustment done by the Applicant and the transaction it is non-est in the eyes of law. Thus, it is clear that the advance money left with the Applicant belongs to the Corporate Debtor.

31. Further it is noticed that the Resolution Professional admitted only Rs.40,53,973/- of the Applicants claim against the claim of Rs.87,67,602.00/-. **The Applicant had not filed any appeal on the decision of the Resolution Professional which clearly shows that the Applicant had no objection on the partial admission of his claim.**

32. Further, it is seen that the Resolution Plan of the Corporate Debtor was approved by this Tribunal on 13.01.2022. Wherein Rs.20,00,000/- was allotted towards full and final settlement for all the Operational Creditors. The Applicant being an Operational Creditor received Rs.2,98,448/- as full and final settlement as per the approved Resolution Plan. The extract of distribution in the Resolution Plan is reproduced below is reproduced below,

> (iv) The Resolution Applicant has proposed to settle an amount of Rs.1,00,00,000/- out of the Admitted Claim of Rs.2,16,46,507/- as against the Operational Creditors - Employees Claims received for Rs.2,50,05,992/- with 53.80% waiver. In respect to Operational Creditors other than Employees, the Resolution Applicant has proposed to settle an amount of Rs.20,00,000/- out of the admitted claim of Rs.2,33,73,380/- against the Claim Received for Rs.27,45,02,639/- with 91 % waiver. It is relevant to note that the settlement proposed by the Resolution Applicant to the Operational Creditors is higher than the amount payable in case of Liquidation of the Corporate Debtor under Section 53 of I&B Code, 2016.

33. It is pertinent to note that the Applicant has not raised any objection regarding the amount allotted in the Resolution Plan. It is clear that the claim regarding rental dues during June 2019 to December 2019 and the Electricity Board penalty and other claims of

the Applicant as per Form-B submitted by the Applicant are entirely covered in the Resolution Plan. If that being so, the Applicant justifying the act of adjusting the security deposit paid by the Corporate Debtor for the same claims that was settled in the resolution plan is specious.

34. From the submission of the SRA and records we see that the Resolution Plan is completely implemented. The Corporate Debtor is completely taken over by the SRA. At this stage contesting this kind of applications will impact the progress of the just revived Corporate Debtor and is against the very object of the IBC.

35. Hon'ble Supreme court in the case of ***Ghanashyam Mishra and Sons P. Ltd., vs. Edelweiss Asset Reconstruction Company Ltd***. categorically held that once the resolution plan is approved the Resolution Applicant should start as clean slate without any hindrances relevant paragraph of the judgement is extracted under,

> *"86. As discussed hereinabove, one of the principal objects of I&B Code is, providing for revival of the Corporate Debtor and to make it a going concern. I&B Code is a complete Code in itself. Upon admission of petition under Section 7, there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required*

to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure, that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the Corporate Debtor is revived and is made an on-going concern. After CoC approves the plan, the Adjudicating Authority is required to arrive at a subjective satisfaction, that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only thereafter, the Adjudicating Authority can grant its approval to the plan. It is at this stage, that the plan becomes binding on Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan. The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable."

Emphasis supplied

36. In view of the above discussions we are the considered opinion that the security deposit Rs.67,61,250/- paid by the Corporate Debtor to the Applicant before initiation of CIRP forms the part of asset of the

Corporate Debtor. Under Section 25 of IBC, 2016 the Resolution Professional has every right to recover that money from the Applicant. The Resolution Professional act of adjusting Rs.67,61,250/- from the payment of Applicant is good in law and does not require any intervention of this Tribunal.

37. Accordingly, **IA(IBC)/501(CHE)/2022** stands **dismissed** and **disposed of.**

Sd/-

VENKATRAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)

Order Pronounced under Rule 151 of NCLT Rules 2016, by ***Hon'ble Judicial Member, Jyoti Kumar Tripati*** *on behalf of the Special Bench Comprising of* ***Shri Jyoti Kumar Tripati, Member (Judicial)*** *and* ***Shri Venkataraman Subramaniam, Member (Technical).***

Sd/-
Court Officer