

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 37 of 2018

IN THE MATTER OF:

JAS Telecom Pvt. Ltd. ...Appellant

Vs

Eolane Electronics Bangalore Pvt. Ltd.Respondent

Present:

**For Appellant: Mr. Nikhil Swami and Ms. Divya Swami,
Advocates.**

For Respondent: Mr. S. P. Singh Chawla, Advocate.

O R D E R

21.03.2018: This appeal has been preferred by the Land Lord (Operational Creditor), who has rented premises for office to the Corporate Debtor as tenant. The Appellant has challenged the order dated 20th December, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench, whereby and whereunder the grievance of the Appellant has not been entertained in view of the objection raised by Resolution Professional on 4th December, 2017.

2. As per the provisions of Insolvency and Bankruptcy Code, 2016 (in short I&B Code) after initiation of Corporate Insolvency Resolution Process, Operational Creditor (Appellant in this appeal) may file claim before the Resolution Professional. Which were filed and the matter was placed before the Committee of Creditors. On 8th March, 2018, this Appellate Tribunal noticed the submissions made on behalf of the counsel of the Corporate Debtor represented through Resolution Professional/ Liquidator as quoted below:

O R D E R

08.03.2018: Learned Counsel for the Respondent ("Corporate Debtor") submits that Insolvency Resolution Process has been initiated under Section 10 of Insolvency

and Bankruptcy Code, 2016 and the 'Corporate Debtor' is not in a position to pay rent to the 'operational creditor'. He also referred to Regulation 31(b) of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to suggest that the rent to be included towards Insolvency Resolution Process costs.

In view of the stand taken by learned Counsel for the Respondent, learned Counsel for the Appellant sought for time to address this Appellate Tribunal on the question whether landlord can recover rent from tenant Corporate Debtor during moratorium or not.

Post the matter on 21st March, 2018."

3. The question arises for consideration in this appeal is whether the amount of rent due to the Appellant has prejudicially affected on account of the moratorium imposed under Section 14(1)(d).

4. The insolvency resolution process cost as prescribed in regulation 31 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 reads as follows:

"INSOLVENCY RESOLUTION PROCESS COSTS

31. Insolvency resolution process costs.- *"Insolvency resolution process costs" under section 5(13)(e) shall mean –*

(a) amounts due to suppliers of essential goods and services under Regulation 32;

- (b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);*
- (c) expenses incurred on or by the interim resolution professional to the extent ratified under regulation 33;*
- (d) expenses incurred on or by the resolution professional fixed under regulation 34; and*
- (e) other costs directly relating to the corporate insolvency resolution process and approved by the committee.”*

5. From the aforesaid provision it is clear that the amounts due to the person whose rights are prejudicially affected on account of the moratorium imposed under Section 14(1)(d), such amount to be included in the insolvency resolution process costs.

6. So far as Appellant is concerned, the rent has not been paid by the Corporate Debtor since 1st January, 2017 that is much prior to order of moratorium.

7. Learned counsel for the Resolution Professional (Respondent) rightly pointed out that the rent amount due to the Appellant was not prejudicially affected on account of the moratorium imposed under Section 14(1)(d). In fact it has not been paid since prior to the order of moratorium i.e. since 1st January, 2017. The order of moratorium was passed subsequently on 31st August, 2017, therefore, the Appellant cannot claim that its right has been affected prejudicially on account of moratorium imposed by the Adjudicating Authority.

8. Learned counsel appearing on behalf of the Respondent submits that the liquidation process has already been started therefore the claim of the appellant may be considered in terms of provision of I&B Code, 2016.

9. In view of such development, the Appellant may take advantage of Section 53 of the I&B Code, which relates to distribution of assets. Therefore, as and when the proceeds from sale of the assets shall be distributed the Adjudicating Authority is required to pass order in terms of priority as mentioned in Section 53 of I&B Code. The appeal stands disposed of with aforesaid observations. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansilal Bhat]
Member (Judicial)

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