



SL. No.1

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 03.09.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/08/2024 in Company Petition IB/172/9/2022
NAME OF THE COMPANY	Atluri Foods Pvt Ltd
NAME OF THE PETITIONER(S)	Hindustan Builders
NAME OF THE RESPONDENT(S)	Atluri Foods Pvt Ltd
UNDER SECTION	9 of IBC

ORDER

Company Petition IB/172/9/2022

Orders pronounced, recorded vide separate sheets. In the result, this Petition is dismissed with costs.

IA (IBC)/08/2024

As the Company Petition is dismissed, this IA has become infructuous.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II**

*(Under Section 9 of Insolvency and Bankruptcy Code 2016 read with Rule 6 of
Insolvency and Bankruptcy (Application to Adjudication Authority Rules, 2016)*

In the matter of M/s Atluri Foods Pvt Limited

CP(IB) No 172/9/HDB/2022

Between

M/s Hindustan Builders
Office at 5-9-250-257,
Unity House, Abids Road,
Hyderabad-500001

..... Petitioner/Operational Creditor

And

M/s Atluri Foods Pvt Limited
11-14-272, (Plot No 57/a, 57/b and 57/c) in Survey No 9/9.
Srinagar Colony, Saroornagar, Ranga Reddy

.... Respondent/ Corporate Debtor

CORAM

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Sri Sanjay Puri, Hon'ble Member (Technical)

Counsels/ Parties Present

For the petitioner: Mr. Mayur Mundra
For the Respondent: Mr. N. Kumar Swamy

Date of Hearing: 10.07.2024

Date of Order: 03.09.2024



Per: Sanjay Puri, Member (Technical)

O R D E R

1. The instant petition is filed under Section 9 of IBC¹ by M/s Hindustan Builders, the Operational Creditor (**OC**) seeking to initiate CIRP² against M/s Atluri Foods Pvt Limited, the Corporate Debtor (**CD**) for defaulting on payments of rent totalling Rs. 1,89,26,177. This amount includes a principal sum of Rs. 1,64,74,500 and interest of Rs. 24,51,677.
2. The OC is the owner of the property located at Municipal Nos. 5-9-248 and 5-9-249, Abids Road, Opposite St. George Grammar School, Hyderabad (hereinafter referred to as the '**Property**'). The CD, engaged in the hotel industry and operating a chain of hotels by the name 'Chutney', approached the OC in April 2018 with a request to lease the aforementioned property.
3. After due consideration, the OC agreed to lease the Property to the CD for a monthly rent of Rs. 10,50,000/-, payable on or before the 10th of each succeeding month. On 06.03.2018, a registered lease agreement³ was executed between the parties. According to the terms of the lease deed, the rent was to be increased by 15% every three years. The rent was set to commence from September 2018, following the completion of civil works by the OC. Upon completion of the work, the OC notified the CD through a letter dated 14.06.2018 and handed over the Property within 90 days of the said letter.
4. According to the OC, the CD was irregular in the payment of rent from the very inception and commencement of the lease. As of 01.04.2022, the CD is claimed to be due and liable for a sum of Rs. 1,64,74,500 towards rent

¹ Insolvency and Bankruptcy Code, 2016 [referred as "Code" in short]

² Corporate Insolvency Resolution Process

³ Lease deed at Pg. 33-53 of application



for the period from April 2020 to March 2022, as reflected in the Books of Accounts. It is stated, that on many occasions, the CD made partial payments towards the rent for a few months. However, the CD failed to make any rent payment since April 2021, thereby violating the terms of the lease agreement.

5. It is submitted that despite several requests made by the OC to the CD for payment of the rent due for the Property, the CD has failed to pay. As this transaction falls within the realm of a commercial agreement, the CD is liable to pay interest @ 24% per annum on the outstanding rent amount.
6. On 08.04.2022, the OC issued a Demand Notice to the CD under Section 8 of IBC, read with Rule 5 of the applicable Rules⁴. In this notice, it is claimed that the CD is liable to pay the following amounts as of 31.03.2022, calculated from the respective due dates:

Principal Amount	Rs. 1,64,74,500/-
Interest @ 24% Per annum	Rs. 24,51,677/-
TOTAL	Rs. 1,89,26,177/-

It is the contention of the OC that the unpaid lease rent for the property leased for business purposes qualifies as an "operational debt" under Section 5(21), and therefore, its petition against the CD under Section 9 of IBC should be admitted. The case of **Jaipur Trade Expocentre**⁵ has been cited to support this contention.

7. In the counter-reply, it has been argued on behalf of the CD that the alleged amount does not fall under the definition of "operational debt" as per Section 5(21) of IBC, as the lease of immovable property cannot be

⁴ Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

⁵ Jaipur Trade Expocentre Pvt. Ltd. v. Metro Jet Airways Training Pvt. Ltd.: CA (AT) (Ins) No. 423 of 2021 decided on 05-Jul-22: (2022) ibclaw.in 478 NCLAT



considered a supply of goods or services. A case of **Promila Taneja**⁶ has been cited to support this argument.

8. It is further contended that the present petition is not maintainable, as the alleged default amount pertains to the period between March 25th, 2020, and the subsequent months, which falls under the Section 10A period. This section stipulates that amounts due during the Covid-19 period do not constitute a default.
9. It is also argued that the CD wrote to the OC on 07.05.2021, informing them that they had vacated the premises due to the COVID-19 lockdown, which forced their outlet to shut down. It is claimed that no rent was payable to the OC after that date. A reference is also made to the security deposit of Rs 63 lakhs kept by the OC under the lease agreement, which has not been returned to the CD.
10. We have heard the parties and reviewed the records before us. Before advertng to the specific facts of this case, we would like to address the issue of whether debt arising from unpaid lease rent qualifies as 'operational debt' under section 5(21) of IBC. This question has been comprehensively dealt with by Hon'ble NCLAT in the case of **Jaipur Trade Expocentre** (*supra*) where it has been held that **"the claim of Licensor for payment of license fee for use of Demised Premises for business purposes is an 'operational debt' within the meaning of Section 5(21) of the Code"**. Hon'ble NCLAT also held that the judgment in **Promila Taneja** (*supra*) case, which was relied upon by the CD, does not lay down the correct law. Considering this legal position, we in agreement with the OC that the debt arising from unpaid lease rent constitutes 'operational debt' within the meaning of section 5(21) of IBC, and can be made a subject

⁶ Promila Taneja Vs. Surendri Design Pvt. Ltd.: Company Appeal (AT) (Insolvency) No. 459 of 2020: (2020) ibclaw.in 428 NCLAT



matter of a section 9 petition, as is the case here.

11. To determine the applicability of Section 10A of the IBC and assess the impact of the security deposit of Rs. 63 lakhs retained by the OC, we have referred to a table filed as the 'statement of account and interest' submitted⁷ with the application. It is seen from this table that out of the 'FINAL BALANCE' of Rs 1,89,26,177, a sum of Rs 42,12,673 pertains to the rent that was due within Section 10A period i.e. between 25th March 2020 to 25th March 2021. Following are the amounts which fell due in that period, as per the 'statement of account and interest' filed by the OC with this petition:

Due Date	Rent (Rs)	Payment Date	Received (Rs)	Balance (Rs)	Interest @24% (Rs)	FINAL BALANCE (Rs)
10-05-2020	10,50,000	03-09-2020	7,56,000	2,94,000	1,31,648	4,25,648
10-06-2020	10,50,000	03-09-2020	7,56,000	2,94,000	1,25,848	4,19,848
10-07-2020	10,50,000	03-09-2020	7,56,000	2,94,000	1,20,049	4,14,049
10-08-2020	10,50,000	23-09-2020	6,82,500	3,67,500	1,42,812	5,10,312
10-09-2020	10,50,000	23-09-2020	6,82,500	3,67,500	1,35,562	5,03,062
10-10-2020	10,50,000	20-10-2020	6,82,500	3,67,500	1,28,313	4,95,813
10-11-2020	10,50,000	16-11-2020	6,82,500	3,67,500	1,21,064	4,88,564
10-12-2020	10,50,000	10-12-2020	6,82,500	3,67,500	1,13,814	4,81,314
10-01-2021	10,50,000	16-01-2021	6,82,500	3,67,500	1,06,565	4,74,065
10-02-2021	10,50,000	24-02-2021	10,50,000	0	-	0
10-03-2021	10,50,000	12-03-2021	10,50,000	0	-	0
						42,12,673

12. Now, section 10A of IBC provides⁸ that, no application for initiation of CIRP

⁷ Page 72 of the Application

⁸ **Section 10A: Suspension of initiation of corporate insolvency resolution process.**

10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation. – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.

Further extended for 3 months from 25.09.2020 vide Notification No. S.O. 3265(E) dated 24.09.2020 issued by MCA. Further extended for 3 months from 25.12.2020 vide Notification No. S.O. 4638(E) dated 22.12.2020 issued by MCA.



of a corporate debtor can be filed for any default arising between the period 25.03.2020 to 25.03.2021. It goes further to declares that no application shall **ever** be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during this period.

13. Therefore, according to the statement filed by the OC, if the claimed amounts totalling Rs 42,12,673, which became due during the Section 10A period, are excluded, the remaining FINAL BALANCE would be Rs 1,47,13,503. This consists of Rs 1,33,87,500 as the principal amount of rent payable and Rs 13,26,003 as accrued interest.
14. If this amount is further reduced by the Rs. 63 lakhs retained by the OC as a security deposit, the remaining amount for which a Section 9 application can be made falls below the Rs. 1 crore threshold stipulated in Section 4 of the IBC. It is undisputed that the OC has retained Rs. 63,00,000 from the CD as a security deposit, which has not been returned. This amount must be considered when determining the debt due from the CD.
15. Additionally, disputes regarding the vacation of the premises are also evident from the correspondence⁹ between the CD and the OC. On 07.05.2021, the CD informed the OC of its decision to vacate the leased premises. In response, the OC sent a letter on 17.06.2021, reminding the CD of the terms of the lease agreement, particularly the three-year lock-in period. This was followed by another letter on 21.09.2021, in which the OC alleged a violation of lease terms and sought compliance with their earlier communication. These exchanges clearly reflect the existence of unresolved issues between the parties, indicating that a dispute existed before the notice under Section 8 was sent to the CD on 08.04.2022.

⁹ Pages 57, 58 & 59 of the Application



16. Here it is useful to refer to the judgement of Hon'ble NCLAT in the case of **Rakesh Kumar**¹⁰ wherein it was held that

“disputes surrounding claims and counter-claims cannot be adjudicated or determined by the Adjudicating Authority given their summary jurisdiction”.

We would also like to refer to the decision in the case of **Mobilox**¹¹ wherein, the Hon'ble Supreme Court has held in relation to Section 9 proceedings that;

*“all that the adjudicating authority is to see at this stage is whether there is **a plausible contention which requires further investigation** and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”*

17. In the present case, it is a fact that the lease agreement provided¹² for a 'lock-in' period of three years from the commencement of lease – i.e. during the first three years of lock-in period neither party was entitled to terminate the lease. After the lock-in period, lessee had the right to vacate the leased property. As per the lease agreement, the lock-in period started from the 'commencement date' The 'commencement date in the agreement is specified¹³ as 01.04.2018. Therefore, the lock-in period should have ended three years later on 31.03.2021. The OC has however contested the date of ending of the lock-in period, as is apparent from its letter dated

¹⁰ Rakesh Kumar vs Flourish Paper & Chemicals Ltd and Another (2023 SCC Online NCLAT 668)

¹¹ Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. [2017] ibclaw.in 01 SC

¹² Clause 13 of the Lease Agreement: Page 45 of the Application

¹³ Clause 1(b) of the Lease Agreement: Page 36 of the Application



17.06.2021 sent in response to the letter of CD dated 07.05.2021.

18. A large part of the final year of the lock-in period overlapped with the COVID-19 pandemic. The CD expressed its intention to vacate the premises in a letter dated 07.05.2021 and requested an exemption from providing the required three months' notice, which the OC did not allow. Even if the notice period is considered, it was the OC's responsibility to repossess the premises within the following three months.
19. The CD asserts that the premises were vacated, while the OC disputes this claim. Reportedly, an FIR was also filed with the Police (later 'closed as false') requiring investigation concerning the possession of the leased premises. Therefore, the issue of lease rent determination after vacation letter dated 07.05.2021 from the CD is therefore a matter of detailed examination.
20. There are indeed plausible contentions raised by the CD that require detailed examination concerning the terms of the Lease Agreement and the vacating of the leased premises. These contentions constitute a dispute that can be examined by the Competent Forum/Court to determine the correct amount of outstanding debt. Given our summary jurisdiction, we are not in a position to adjudicate on the claims and counterclaims of the parties.
21. Moreover, the present petition is a clear attempt to pursue recovery of an uncertain debt. It has not been filed for the resolution of insolvency of the CD, but to make use of IBC as a recovery forum, which cannot be permitted. As held by Hon'ble Supreme Court in the case of **S.S. Engineers**¹⁴ that

"The NCLT, exercising powers under Section 7 or Section 9 of

¹⁴ S.S. Engineers v. HPCL, 2022 SCC OnLine SC 1385



IBC, is not a debt collection forum. The IBC tackles and/or deals with insolvency and bankruptcy. It is not the object of the IBC that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an operational creditor.”

22. In summary, several issues prevent the acceptance of the present petition under Section 9 of the IBC. Firstly, after excluding the amounts covered under Section 10A and accounting for the Rs. 63 lakh security deposit, the remaining debt falls below the threshold required to invoke Section 9 of the IBC. Secondly, a dispute existed regarding the lease rent payable after the CD expressed its intention to vacate the leased premises on 07.05.2021, well before the Section 8 notice was issued nearly a year later, on 08.04.2022. Lastly, the primary objective of this application appears to be the recovery of a contested debt rather than the resolution of the CD's insolvency. For all these reasons, we find no merit in the present application, and it is liable to be dismissed.

In view of the foregoing discussion, the present petition CP(IB) No 172/9/HDB/2022 is dismissed, with costs.

Sd/-

(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-

(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)