NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal(AT)(Insolvency) No. 204 of 2021

IN THE MATTER OF:

Vijisan Jewels Pvt. Ltd
Plot No.71, M.I.D.C., Cross Road "C",
Opp. Seepz Gate No.2,
Andheri (East) Mumbai – 400 093 ...Appellant

Vs.

1. **Cimme Jewels Limited**
   Plot No.71, M.I.D.C., Cross Road "C",
   Opp. Seepz Gate No.2,
   Andheri (East) Mumbai – 400 093 ...Respondent No.1

2. **Mr. Naren Sheth**
   Liquidator of Ciemme Jewels Ltd.
   1041 Prasad Chamber,
   Tata Road No.1, Opera House,
   Mumbai – 400 004 ...Respondent No.2

Present:

For Appellant: Mr. Saurabh Jain, Advocate
For Respondent: Mr. Ankit Sharma (Intervenor for SBI) Ms. JVL Bharti, Mr. Naren Sheth (for R2, Liquidator)

J U D G M E N T

DR. ASHOK KUMAR MISHRA, TECHNICAL MEMBER

1. The present appeal has been filed by the 'Appellant' – 'Vijisan Jewels Pvt Ltd' under Section 61 of the 'Insolvency and Bankruptcy Code, 2016' (in short 'Code') against the order dated 05.02.2021 passed by the 'Adjudicating Authority' (National Company Law Tribunal), Mumbai Bench

Court - III, in I.A/1081/2020, MA/4182/2019 M.A.3930/2019 and M.A 3273/2019 in CP(IB)-297(MB)/2018.

2. The Appellant has sought the following reliefs:

    a. To set aside the impugned order dated 05.02.2021, as stated above, passed by the Adjudicating Authority;
    b. To direct the 'Liquidator' to consider the offer of the appellant to buy out the factory premises and sale in its favour;
    c. To direct the Liquidator to obtain fresh valuation report of the Corporate Debtor;
    d. To direct the Liquidator to issue fresh e-auction for the Corporate Debtor;
    e. To allow the Appellant to continue to use the factory premises of the corporate debtor until sale is confirmed in e-auction
    f. To direct the Liquidator to give 45 days' time to vacate the premises from the date of sale of property
    g. To waive the rent for the period April to November, 2020 in view of national wide lockdown etc.

3. Brief facts of the case as mentioned in the Application are as follows:

    a. The Appellant has moved an application under section 9 of the Code for initiation of 'Corporate Insolvency Resolution Process' (CIRP) of the Corporate Debtor – 'Cimme Jewels Limited (Mumbai)' (CJL) which was admitted by the Adjudicating Authority on 18.04.2018. Mr. Naren Sheth was appointed as 'Resolution Professional' (RP) for the Corporate

Debtor in the 'Committee of Creditor' (CoC) meeting held on 08.06.2018. CoC resolved with 100% majority to liquidate the Corporate Debtor and the Adjudicating Authority vide its order dated 25.03.2019 passed the 'Liquidation Order' for the corporate debtor and appointed the RP as the 'Liquidator' *(Annexure A-4 page 42 of the Appeal Paper book).*

b. The Appellant is leave and license holder for the period 01.04.2016 to 31.03.2019 of the premises - situated at Plot No. 71, MIDC Cross Road –C, SeePZ Gate No.2, Andheri – East, Mumbai – 400 093, admeasuring 1019.81 sq meters. As per the lease agreement entered between parties, which was expired on 31.03.2019. Lease agreement was not renewed thereafter which is not in dispute. The Appellant has also submitted that all certificates & registrations including registered office as per Companies act, GST Registration, Factory licenses, PF, ESIC, pollution certificates and all other registration licenses cannot be changed in such short span of time and as such the livelihood of more than 100 workmen working with the Appellant at the factory premises will be at stake if the Appellant is forced to vacate the premises immediately in terms of the impugned order dated 05.02.2021.

c. The Appellant had moved the application before the Adjudicating Authority to allow it to purchase the premises and also sought directions to allow appellant to continue to occupy the premises till the sale of premises is not finalised.

But the Adjudicating Authority has rejected the relief without assigning any reason. The Appellant wanted to buy out the factory for Rs. 13 Crore to be paid in 60 instalments of Rs. 18 lacs each and upfront payment of Rs. 2.2 crore but was not accepted by the 'Liquidator' and now they have offered one time payment of Rs. 10.5 Crore. The Appellant is asking the 'Liquidator' to sale the properties to them as the original pre-covid valuation was Rs. 12.68 Crore as learnt during hearing before the Adjudicating Authority. This Appellate Tribunal vide its order dated 17.03.2021 asked the Appellant to pay an amount of Rs. 10 lac on account of outstanding liability of rental dues admittedly not been paid since January, 2020. As per the Leave & License Agreement between the Appellant and Corporate Debtor, as stated above, the license fee per month is Rs.2,18,900/-, apart from maintenance charges, electricity charges and for other expenditure etc., as mentioned in the agreement. The Appellant has made the submission that it is only proposed buyer for the premises. The real estate prices have come down drastically after Covid-19 Pandemic and accordingly the 'Liquidator' is required to obtain fresh valuation report of the premises. They have also stated that they have engaged 100 employees working in the premises.

4. The 'Adjudicating Authority' vide its order dated 05.02.2021 has permitted the 'Liquidator' to proceed with the e-auction and asked the Appellant herein to handover the vacant possession of the said premises and also

directed the Appellant herein to deposit the arrears in rent due from January, 2020 till date in respect of the said premises. The Adjudicating Authority has permitted the Appellant herein to participate in the e-auction.

5. The Respondent - Liquidator has submitted that the Appellant has no locus standi, he is neither a stake holder nor a bidder participated in the auction done by the Liquidator. He is only an illegal occupant of the premises and has cited the judgment passed by this Appellate Tribunal in D & I Taxcon Services Pvt Ltd Vs. Mr. Vinod Kumar Kothari – Company Appeal (AT) (Ins) No. 1347 of 2019 NCLAT that "being a tenant does not confer any locus under Section 47(1) of the Code to seek any direction against the Liquidator". The Liquidator has alleged that the Appellant is interfering in the process of Liquidation and desires to purchase the property without following the laid down provisions of the Code and related Regulations, the Appellant is harassing the Liquidator by filing various applications before Adjudicating Authority / this Appellate Tribunal. The Lease Agreement has already expired on 31.03.2019 and the Lease Agreement was not renewed thereafter. They have even not paid the rent since January 2020 and only on the order 17.03.2021 of this Appellate Tribunal, they have remitted Rs. 9.25 lacs. The Liquidator has sent them email on 21.12.2019 for handing over the said premises to the Liquidator but the Appellant vide letter dated 21.12.2019 had sought two months time from the Liquidator to vacate the said premise which they have still not done. The Liquidator, thereafter, filed an IA for passing an order for handing over the premises to the Liquidator and then on 05.02.2021, the order has been passed which is under challenge. The Liquidator has also

stated that the Appellant is just misusing the process of law and accordingly the Appeal is not maintainable.

6. We have gone through the submissions of the parties and impugned order passed by the Adjudicating Authority and are observing the followings:

    a. As far as application of Intervenor is concerned, this Tribunal vide its order dated 28.07.2021 has already observed that the Intervenor – Financial Creditor (SBI) is not a necessary party and accordingly has rejected application for impleadment.

    b. The Appellant was supposed to vacate the premises in April 2019 and inspite of agreeing to vacate in two months' time in December, 2019 has not yet vacated the same either one pretext or another.

    c. Liquidation process is governed by Chapter III Part - II of the Code. The Regulation governing Liquidation process providing elaborate provisions on "Realizations of Assets" vide Chapter – VI of IBBI (Liquidation Process) Regulations, 2016. The Appellant is forcing the Liquidator to sale the property to them only which is not permissible under the provisions of the Code and Regulations.

    d. It is undisputed fact that Appellant has no locus standi and accordingly he cannot seek the sale of the property to the Appellant only. The Appellant is reagitating the same matter in different rounds before the Adjudicating Authority. The Code provides for time bound resolution and if such frivolous actions are allowed, it will be never ending process to complete the liquidation.

e. We feel convinced that the appeal is frivolous and devoid of any merits.

f. After deliberations, we are of the considered opinion that the view taken by the Adjudicating Authority does not suffer from any legal infirmity or factual error.

7. In view of above observations, we decline to interfere with the order passed by the Adjudicating Authority and we uphold the impugned order passed by the Adjudicating Authority in the circumstances of the case. Accordingly, the Appeal is not maintainable and deserves to be dismissed and is accordingly dismissed.

Pending IAs, if any stands disposed of. Interim Orders, if any, passed by this Appellate Tribunal stands vacated. No orders as to costs.

[Justice Jarat Kumar Jain]
Member (Judicial)

(Dr. Ashok Kumar Mishra)
Member(Technical)

13th August, 2021

New Delhi

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