

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) NO. 1843/KB OF 2023

In

C.P. (IB) NO. 250/KB OF 2021

An application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

IN THE MATTER OF:

MR. AMARHIT SINGH SATIA, s/o of Late
Narinder Singh, residing at F-15,
Model Town, New Delhi - 110009.

...Applicant

Verses

MR. PRATIM BAYAL, Resolution
Professional of Birla Tyres Limited
(under CIRP), Registration No.
IBBI/IPA-003/IP-N00213/2018-2019 /
12385.

...Respondent

CORAM: Mr. Labh Singh, Member (Judicial)
Ms. Rekha Kantilal Shah, Member (Technical)

Case Citation: (2026) ibclaw.in 2367 NCLT
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I.A. (IB) NO. 1843/KB OF 2023
In
C.P. (IB) NO. 250/KB OF 2021

Present:

Ms. Tanvi Luhariwala, Adv.] For Applicant

Mr. D. Khan, Adv.]

Mr. A. Malhotra, Adv.] For Respondent

Mr. Rishav Maity, Adv.]

Mr. A. Sharma, Adv.]

Date of Pronouncement: 24.6.2026

O R D E R

Labh Singh, Member (Judicial)

1. The present Interlocutory Application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter being referred to as the 'Code') by the Applicant against the Respondent, Mr. Pratim Bayal, the Resolution Professional of the Corporate Debtor, Birla Tyres Limited, seeking payment of rent due for an amount Rs. 8,52,171/- (Rupees Eight Lakhs Fifty-Two Thousand One Hundred and Seventy-One only) from the date of termination of the lease agreement till the handover of the keys of the locked premises, i.e., from February, 2023 to July, 2023, as CIRP costs.

2. The Applicant is Mr. Amarjit Singh, the son of Late Narinder Kumar, an Operational Creditor of the Corporate Debtor. Late Narinder Kumar had entered into a lease agreement dated 07.03.2022 for the period from 20.11.2019 to 30.04.2021 for letting out the premises for business purposes as a warehouse for storing and distribution purposes, situated at AG-44, Sanjay Gandhi Transport Nagar Kamal Bye Pass Road, New Delhi - 110042. After the demise of the Applicant's father on 23.05.2020, the Applicant continued the lesser-lessee relationship with the Corporate Debtor and entered into another lease agreement for the same premises on 21.01.2020. A copy of the agreement dated 21.10.2020 is annexed as the **Annexure - 0**.
3. It is submitted that the monthly rate by the second agreement was fixed at Rs. 1,25,686/- (Rupees One Lakh Twenty-Five Thousand Six Hundred and Eighty-Six only) and that the Corporate Debtor was a 'habitual defaulter' since the commencement of lease dated 07.03.2020.
4. It is submitted that the Corporate Debtor had defaulted in payment of monthly rents from March 2021 till the commencement of the CIRP on 05.05.2022 by an order by this Tribunal on the Company Petition being C.P. (I.B.) No.

250/KB/2021. A copy of the order dated 05.05.2021 is attached as the Annexure - A.

5. It is further submitted that after expiry of the lease dated 21.10.2021, the Applicant repeatedly approached the Corporate Debtor for executing a new agreement but was met with no response. Further, both the parties agreed to enter a fresh agreement for the premises. The Corporate Debtor also agreed to clear any pending past dues; however, no such agreement was executed as the Corporate Debtor never returned a signed copy of the new agreement. The Corporate Debtor continued to occupy the premises as a lessee under a month-to-month tenancy by operation of law. The Corporate Debtor kept defaulting in making the payments the rent.
6. On 05.05.2022, this Tribunal admitted the Company Petition, C.P. (I.B.) No. 250/KB/2021 filed by SRF Limited, the Operational Creditor for initiating CIRP under Section 9 of the Code. Mr. Seikh Abdul Salam, bearing Registration No. IBBI/IPA-003/IP-N00250/2019-2020/12966, was appointed as the Interim Resolution Professional (IRP).
7. Subsequently, the Applicant submitted his proof of claim in accordance with Form 'B' dated 16.06.2022, vide email dated 07.07.2022. The Applicant claimed the unpaid monthly rents, water bills and electricity bills aggregating to Rs.

19,32,027/- (Rupees Nineteen Lakhs Thirty-two and Twenty-Seven only) with interest at the rate of 18% per annum. A copy of the claim dated 16.06.2022 is annexed as **Annexure - B (Colly)**.

8. It is submitted that the IRP partially admitted the claims of the Applicant for a total amount of Rs. 6,77,726/- (Rupees Six Lakhs Seventy-Seven Thousand Seven Hundred and Twenty-Six only) and informed vide email dated 29.08.2022. It has been emphasised by the Applicant that during settlement talks between the Applicant and the Corporate Debtor, the accounts of the latter did reflect the initially claimed dues of the former. Subsequently, by an email dated 08.09.2022, the Applicants sought clarifications regarding the admitted claim amount and also asked the IRP to relocate the goods in the leased-out premises.
9. It is submitted that no rent payment was being made by the IRP after the initiation of the CIRP. The Applicant again sent an email dated 20.09.2022 as a reminder for removing the goods from the premises and taking custody of the same. The copies of the emails dated 29.08.2022, 08.09.2022 and 20.09.2022 are annexed as Annexures-‘C’, ‘D’ and ‘E’, respectively.

10. On 31.10.2022, this Tribunal appointed Mr. Pratim Bayal, having _____ Registration _____ No. IBBI/IPA-003/IP-N00213/2018-2019/12385, the Respondent, as the Resolution Professional. A copy of the order dated 31.10.2022 is annexed as Annexure - 'F'.
11. It is submitted that the Applicant reached out to the RP with his concerns and requested immediate actions on the matter with regard to partial claim being admitted. Thus, the RP revised the Applicant's claim to a final amount of Rs. 15,19,977.55/- (Rupees Fifteen Lakhs Nineteen Thousand Nine Hundred Seventy-Seven and Fifty-Five paisa only). It is submitted that in the claim amount, the unpaid water and electricity bill was not included despite the Applicant providing adequate documents and evidence. The copies of the emails from 16.11.2022 to 11.01.2023 are annexed as Annexure - G (Colly).
12. It is further submitted that the Respondent did not take any action with regard to claim or take custody of the same, as per the Section 18(f) of the Code, even after repeated reminders from the Applicant. The copies of email communication from dates 12.01.2023 to 23.01.2023 are annexed as **Annexure - H (Colly)**.

13. On 03.02.2023, the Respondent, vide email and Letter No. BTL/CIRP/2022-2023/147, sent a notice of termination of the lease agreement between the Applicant and the Corporate Debtor and such termination was stated to be effective from 31.01.2023. The present letter mentioned that the rent payable from 05.05.2022 to 31.01.2023 would be considered as CIRP costs. The Applicant was asked to provide invoices for the same. The Respondent also asked for a date for shipping of the goods in the premises back to the Corporate Debtor.
14. It is further submitted that the Applicant sent another email dated 14.02.2023 requesting a convenient time for collection of the goods from the premises. Upon receiving no response, several reminder emails were sent to the Respondent dated 23.02.2023 and 17.03.2023. The copies of the emails dated 14.02.2023, 23.02.2023 and 17.03.2023 are annexed as Annexure - 'J'.
15. On 12.04.2023, the Respondent informed the Applicant that Mr. Shubham Aggarwal, the former's representative, would visit the premises for an inspection. Due to unavailability of the keys, the locks were broken for getting access to the goods/ Mr. Shubham Aggarwal inspected and took possession of the goods but did not remove the goods physically from the premises. Subsequent to the visit of the Respondent's

representative, the Applicant sent several email reminders dated 14.05.2023 and 22.05.2023 for removing the goods from the premises but received no response. The copies of the emails exchanges dated 12.04.2023 are annexed as Annexure - K (Colly). The copies of the email exchanges are annexed as Annexure - 'L' (Colly).

16. On 03.07.2023, the Applicant received an email demanding Rs. 70,000/- (Rupees Seventy Thousand only) as a valuation of the goods so that the premises can be vacated and utilised by the Applicant. This figure was mutually decided between both the parties on the day of the lock-breaking. Subsequently, the amount was paid promptly and the Respondent was requested to hand over the keys to the Applicant. The copy of the email exchanges dated 03.07.2023 are annexed as Annexure - 'M' (Colly).
17. On 09.07.2023, the Respondent handed over the keys and the Applicant took possession of the premises. The Applicant via an email dated 20.07.2023 requested the Respondent to update the rent payable till the date of handover of the keys, i.e., July, 2023. It is submitted that the Respondent, vide an email dated 27.07.2023, denied including the requested time period's rent citing reasons that neither did they used the premises nor were any operations conducted. The emails

dated 20.07.2023 and 27.07.2023 are annexed as Annexure-‘N’ (Colly).

18. It is submitted that the monthly rent for post-commencement of the CIRP period, as admitted by the Respondent, is Rs 1,30,565/- (Rupees One Lakh Thirty Thousand Five Hundred and Sixty-Five only). It is submitted that this rent amount will be applicable till April because as per the clause 3(i) of the lease agreement dated 21.10.2020, an increase of 5% of the existing rent per annum was agreed upon. Thus, from May 2023, the rent amount would be Rs. 1,45,492/- (Rupees One Lakh Forty-Five Thousand Four Hundred and Ninety-Two only). Hence, the Applicant claims a total amount of Rs. 8,52,171/- (Rupees Eight Lakh Fifty-Two Thousand One Hundred and Seventy-One only) for the period of February, 2023 to July, 2023.
19. It is submitted that the rent payable for the post-commencement of CIRP period should be for the time period from the date of commencement of the CIRP till the handover of the keys. It is further submitted that the delay in taking custody and control of the goods is solely on the Respondent as the Applicant has reminded the former of the same numerous times.

20. It is further submitted that the Respondent has failed to provide any proper reason for not accepting the total amount of rent post-commencement of CIRP even after occupying the premises after the letter of termination from their end. It is also submitted that the Respondents had terminated the agreement violating the terms and conditions of the agreement itself.
21. Respondent appeared in pursuance of notice issued by this Tribunal and filed its reply raising preliminary objection that the present Interlocutory Application is not at all maintainable in law and in facts. The present Petition has been filed in gross abuse of the process of law and the same is liable to be dismissed in limine.
22. It has been replied that no claim, after termination of the lease agreement on 31.01.2023, can be tenable in law and thus, the claim for rents arising from the time period February, 2023 to July, 2023 is discrepant, ex-facie incorrect and baseless. The date of handover of keys is irrelevant when it is a matter of record and an admitted fact that the agreement was terminated in January, 2023. It is denied that the claims for unpaid monthly rents before the commencement of the CIRP is irrelevant for the present claim and the same were not admitted.

23. It has further been replied that the amount claimed cannot be called as a part of the CIRP costs as per Section 5(13) of the Code. Therefore, the present application deserves to be dismissed.
24. Heard Learned Counsels appearing on behalf of Applicant and the Respondent. We have gone through the pleadings of the parties and documents placed on record. We have duly appreciated the law applicable on the facts and circumstances of the present case.
25. Insofar as the point of limitation is concerned, we note that the application was filed on 19.10.2023 and the order approving the Resolution Plan was pronounced on 19.10.2023. Thus, this application is well within limitation.
26. The main issue involved in the present case is whether post CIRP rental would form part of the CIRP Costs and if it is part of the CIRP cost then whether it is payable in the present case.
27. In order to decide the controversy involved in the present case, it is pertinent to refer to the relevant provisions of Section 5(13) of the Code wherein CIRP costs are defined and supporting IBBI Regulations. The relevant provision of section 5(13) of the Code read as under:

“5(13). *“insolvency resolution process costs”*”

means–

- (a) the amount of any interim finance and the costs incurred in raising such finance;*
- (b) the fees payable to any person acting as a resolution professional;*
- (c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;*
- (d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and*
- (e) any other costs as may be specified by the Board;”*

28. The relevant provision of regulation 31 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read as under:

“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.”

29. It is also relevant to refer provision of section 25 of the Code which read as under:

“25. Duties of resolution professional.–

(1) xxxxx

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely:–

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;”

30. In the instant case, it is evident from the submissions of both the parties that the Applicant and the Corporate Debtor

had entered into a lease agreement for use of the premises as a storage for goods. Thus, the premises, for the entire period, continued to remain in use for the goods stored therein. Therefore, if the goods were present in the premises, then the premises was being used in accordance with the terms and condition of the agreement.

31. From perusal of Section 5(13)(c), it is clear that any costs incurred by the RP in running the business of the Corporate Debtor as a going concern would be included as IRP costs. Thus in the present case, the lease agreement was executed for business purposes which included storage of stock or goods in the premises. Thus, continued storage of the Corporate Debtor's goods shall be considered as an action of "running the business of the Corporate Debtor as a going concern".
32. In the instant case, the Resolution Professional, vide email dated 03.02.2023, requested the applicant to accept termination of agreement entered between the applicant and Corporate Debtor for providing depot and godown service with effect from 31.01.2023. It was further requested to the applicant to appraise the Resolution Professional about the date by which the goods lying in the Depot/Godown will be collected and removed back to the Corporate Debtor. The

applicant was also requested to submit invoices for period 05.05.2022 to 31.01.2023 for rent and other related expenses. The applicant, vide reply email dated 14.02.2023, sought for date and time when possession can be handed over to the applicant and stock/goods lying inside the premises are handed over to the Resolution Professional.

33. The applicant, vide email dated 23.02.2023, forwarded invoices for the period 05.05.2022 to 31.01.2023 for rent and other related expenses. The applicant further inquired from the Resolution Professional about the date and time to remain present in New Delhi for collection of stocks/goods lying at the premises and handing over possession of premises to the applicant. The applicant, vide email dated 17.03.2023, stated that there were some discussion with the Resolution Professional and his subordinates Mr. Shubham Aggarwal and Mr. Nikhil on 10.03.2023 and the Resolution Professional had to respond on 13.03.2023 to an email dated 14.02.2023 for collection of stocks/goods lying at the premises and handing over possession of premises to the applicant.
34. The Resolution Professional, vide email dated 12.04.2023, informed the applicant that Mr. Shubham Aggarwal of his team will be visiting the premises on the same date at 03:00 pm

and request to keep the lock of the premises open. The applicant, vide email on the same date 12.04.2023, responded that Mr. Amarjit Singh Setia will remain present at the premises but intimated that premises is under padlock condition and they do not have keys and informed it might be with Birly Tyres Limited.

35. It has come on record that the Applicant had sent several reminders before as well as after the letter of termination dated 03.02.2023, which is annexed as **Annexure-I (Colly)**. It is an admitted fact that the termination of the lease agreement had been sent on 03.03.2024 by a Letter bearing No. BTL/CIRP/2022-2023/147. It is also an admitted fact that even after the termination letter, the goods remained stored in the premises and on 12.04.2023, the representative of the Respondent finally broke the lock and took custody of the goods. The Resolution Professional, on the same date, responded quickly that the applicant arranged locksmith to open the locks in the presence of Subham Aggarwal. The applicant responded to the said email that they are arranging for blacksmith but the costs of the same should be on the Resolution Professional.
36. The applicant, vide email dated 14.05.2023, admitted that Mr. Shubham Aggarwal had visited the premises on 12.04.2023

and the lock was opened. After the lock was broken, the applicant proposed a maximum amount of Rs. 70,000/- for the goods and stock lying in the premises which had been trashed and it was also suggested to carry on the goods and vacate the premises. The applicant, vide email dated 22.05.2023, sought early response of the Resolution Professional on proposal given on 12.04.2023 to the representative of the Resolution Professional. The applicant, vide email dated 03.07.2023, sent payment details of Rs. 70,000/- and demanded the key of the Godown.

37. The applicant for the first time claimed rent payment for the period until July 2023 vide email dated 20.07.2023. The Resolution Professional, vide email dated 27.07.2023, informed the applicant that the rent for the period of CIRP i.e from 05.05.2022 up to date of termination notice will form part of the CIRP Cost and paid in priority in terms of resolution plan.

38. As per email dated 19.09.2023, the applicant informed that though termination was sent to the applicant in February 2023 but the possession was handed over in July 2023. Thus, the Corporate Debtor was in possession of the premises and the possession was handed over to the applicant on 09th July 2023.

39. Thus, from correspondence entered between the parties, it is clear that the applicant despite receipt of email from the resolution professional on 03.02.2023 responded on 14.02.2023 and enquired about the date and time when the stock/goods lying in the premises will be removed by the Resolution Professional. The applicant again enquired about date and time for removal of the stock/goods lying in the premises. The applicant also submitted invoices from 05.05.2022 to 31.01.2023 with no such dispute of delay in removing the stock and goods.
40. A perusal of email dated 17.03.2023 reveals that there was some difference between the applicant and Resolution Professional and his representative Mr. Shubham Aggarwal and Mr. Nikhil. It is also clear from the same that again date and time was sought by the applicant for handing over possession of the premises and removal of stocks/goods from there. Thereafter, on 12.04.2024 multiple emails were exchanged between the applicant and respondent. Ultimately, the lock was broken and the applicant offered an amount of Rs. 70,000/- for the stock/goods lying therein. The applicant confirmed payment of the said amount of Rs. 70,000/- on July 03, 2023 and requested to return the keys of the Godown handed over to Mr. Shubham Aggarwal.

41. Therefore, it is crystal clear from the correspondence entered between the parties that there is no such delay on the part of the Resolution Professional to vacate the premises. The Resolution Professional quickly informed the applicant vide email dated 03.02.2023 that agreement for lease has been terminated with effect from 31.01.2023 and the applicant to appraise a date by which the goods/stock may be shipped back to the Corporate Debtor lying in the Godown. Thereafter, it is the applicant who delayed in removal of the stock/goods. The Resolution Professional, vide email dated 03.07.2023, requested the applicant to conclude the matter and as discussed vide email dated 14.05.2023, to release payment of Rs. 70,000/- for the goods/stock lying in the premises which belongs to Birla Tyres Limited. The applicant, ultimately on the same date vide email dated 03.07.2023, submitted payment proof for an amount of Rs. 70,000/-.
42. In this instant case, it is undisputed fact that the Resolution Plan has already been approved by this Tribunal. It is a settled law that after the approval of a Resolution Plan, there cannot be any changes in the same as it will disrupt the Insolvency Resolution Process.

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43. Therefore, in view of our aforesaid observation and law applicable thereon, the I.A (I.B.) No. 1843/KB/2023 requires to be dismissed being devoid of merits.
44. The Registry is directed to send copies of the Order forthwith to all the parties and their representative for information.
45. Certified Copies of this order may be issued, if applied for, upon compliance with all requisite formalities.
46. File be consigned to records.

Rekha Kantilal Shah
Member(Technical)

Labh Singh
Member(Judicial)

T.Roy (LRA)