NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (Court-I), CHANDIGARH

CA No.600/2019
In
CP(IB) No. 174/Chd/Chd/2018
(Admitted)

(Application under sub-section (1) of Section 65 read with Section 25 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules,2016)

CA No. 600/2019
Mr. Sumat Gupta,
Resolution Professional, International Mega Food Park Limited
.. Applicant

Versus

Schreiber Dynamix Dairies Private Limited
..Respondent

IN THE MATTER OF CP (IB) No. 174/Chd/Chd/2018:
Small Industries Development Bank of India (SIDBI)
...Petitioner/Financial Creditor

Versus

M/s International Mega Food Park Limited
...Respondents/Corporate Debtor

Order Delivered on: 10.09.2026

Coram: MR KHETRABASI BISWAL, HON'BLE MEMBER (JUDICIAL)
MR SHISHIR AGARWAL, HON'BLE MEMBER (TECHNICAL)

Present:

For the Applicant	:	Dr. Rajansh Thukral, Advocate Mr. Sidharth Thukral, Advocate Mr. Rajan Thakur, Advocate
For the Respondent	:	Mr. Manish Jain, Sr. Advocate Mr. Siddhant Jain, Advocate Ms. Divya Sharma, Advocate

ORDER

The present Application has been filed on 01-08-2019 by **Mr. Sumat Kumar Gupta,** Resolution Professional *(hereinafter referred to as the*

"Applicant") of M/s International Mega Food Park Limited *(hereinafter referred to as the "Corporate Debtor"),* under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 *(hereinafter referred to as the "Code"*) read with Section 25 of the Code and Rule 11 of the National Company Law Tribunal Rules, 2016 *(hereinafter referred to as "Rules")* for seeking directions against **Schreiber Dynamix Dairies Private Limited** *(hereinafter referred to as the "Respondent")* for payment of ₹11,87,75,913/- along with interest @ 18% per annum. The Applicant has also sought initiation of proceedings under Section 71 of the Code alleging fabrication of the Lease Deed and fraudulent conduct on the part of the Respondent.

BRIEF FACTS:

2. Brief facts as averred in the Application, which are relevant to adjudicate the issue involved in the case, are as under:

(i) The Corporate Debtor was admitted into Corporate Insolvency Resolution Process (CIRP) by this Tribunal vide order dated 28.02.2019 passed in CP(IB) No. 174/Chd/CHD/2018, filed by Small Industries Development Bank of India (SIDBI) under Section 7 of the Code. The Applicant was appointed as the Interim Resolution Professional and was subsequently appointed as the Resolution Professional by the Committee of Creditors (CoC) in its first meeting held on 28.03.2019.

(ii) The Respondent had taken on lease approximately 65,000 sq. ft. of land forming part of the Food Park of the Corporate Debtor situated at Dabwala Kalan, Fazilka, Punjab. The Applicant states that pursuant to preliminary discussions and negotiations, an unregistered Lease Deed was

executed between the parties on 06.11.2015. Thereafter, another Lease Deed was executed and registered with the revenue authorities at Arniwala, Fazilka, on 09.03.2016. The Applicant relies upon the registered Lease Deed as Annexure A-2 and the earlier Letter of Intent and unregistered Lease Deed as Annexures A-3 and A-4, respectively.

(iii) According to the Applicant, the registered Lease Deed stipulated the monthly lease rental at ₹45.06 lakh. The Applicant has specifically relied upon the calculation appearing in the Lease Deed, which is set out as follows:

S. No.	Particulars	Amou
1.	ROI of 13.6% on existing investment of ₹9.10 crore	₹10,31,000/-
2.	ROI of 13.6% on security deposit of ₹5.00 crore	₹5,67,000/-
3.	ROI of 20.5% on additional investment of ₹17.00 cro	₹29,08,000/-
	Total	**₹45,06,000/-**

(iv) The Applicant accordingly contends that ₹45.06 lakh per month was the lease rental payable by the Respondent under the registered Lease Deed.

(v) A tripartite agreement was executed between the Respondent, the Corporate Debtor and State Bank of India, whereby, according to the Applicant, the Respondent had agreed that the lease rentals of ₹45.06 lakh per month, stated to be ₹5.20 crore per annum, would be deposited directly into an escrow account maintained with State Bank of India. A copy of the said tripartite agreement has been annexed as Annexure A-5. The Applicant alleges that the Respondent failed to comply with the said arrangement and adjusted lease rentals against various payments allegedly made to vendors of the Corporate Debtor.

(vi) A substantial part of the Applicant's case concerns Annexure 2 to the Lease Deed. The Applicant points out that although the registered Lease Deed refers to Annexure 2, no such annexure was attached to the Lease Deed available with the registering authority. The Applicant alleges that the Respondent subsequently relied upon a purported Annexure 2 showing a reduced lease rental and contends that the document was fabricated.

The Applicant has pleaded:

"This Annexure 2 is apparently neither attested by the revenue authorities while registering the lease deed nor attached to the lease deed available in the record of the registering authority as registered."

(vii) The Annexure 2 showed a reduced lease rent of ₹34.92 lakh per month, whereas the registered Lease Deed recorded ₹45.06 lakh per month.

(viii) The Applicant states that during the period from April 2016 to July 2019, the Corporate Debtor raised bills aggregating to ₹15,07,56,627/- including applicable taxes, at approximately ₹32.68 lakh per month, out of which ₹8,96,04,624/- was deposited by the Respondent in the escrow account. According to the Applicant, amounts were not deposited for February 2017, March 2017 and the period from December 2017 to January 2019. The Applicant has relied upon the statement of bills raised and amounts deposited as Annexure A-6.

(ix) The Applicant further states that, apart from the alleged short deposit into the escrow account, the Corporate Debtor had raised bills at a rate lower than the alleged actual lease rental of ₹45.06 lakh per month. The Applicant has calculated the resulting differential at ₹5,76,23,910/- and has relied upon the statement of calculation of differential lease rentals as Annexure A-7. The Applicant consequently claims ₹6,11,52,003/- towards

short deposit in the escrow account and ₹5,76,23,910/- towards the differential lease rental, aggregating to ₹11,87,75,913/-.

(x) The Applicant has also alleged that the Respondent is liable for prosecution under Section 71 of the Code on the ground that it fraudulently fabricated the Lease Deed by attaching a purported fabricated Annexure 2 with an intention to defraud or deceive the Corporate Debtor and its creditors. The Applicant has relied upon Section 71 of the Code and sought appropriate action against the Respondent on this basis.

(xi) In addition to the dispute concerning lease rental, the Applicant has alleged other fraudulent and suspicious conduct on the part of the Respondent. It is alleged that the Respondent had underpaid electricity charges payable to the Corporate Debtor by misinterpreting the Utility Operations and Management Agreement, resulting in a loss of more than ₹10 lakh per month to the Corporate Debtor. The Applicant has also alleged non-payment of warehousing charges under a separate Warehousing Agreement. The Applicant has referred to CA No. 464/2019 filed by the Respondent in relation to the proposed disconnection of electricity supply.

(xii) The Applicant submits that the present Application is maintainable under Section 60(5) of the Code. Reliance is placed upon the jurisdiction conferred upon the Adjudicating Authority to entertain and dispose of any application or proceeding by or against the Corporate Debtor, any claim made by or against the Corporate Debtor, and any question of law or fact arising out of or in relation to the insolvency resolution or liquidation proceedings.

(xiii) On the question of the applicable lease rental, the Applicant submits that the registered Lease Deed dated 09.03.2016 is the governing document and that the lease rental stipulated therein is ₹45.06 lakh per month. According to the Applicant, the Respondent cannot rely upon a lower rental allegedly contained in Annexure 2, particularly when the said annexure does not form part of the registered Lease Deed.

(xiv) The Applicant specifically disputes the Respondent's reliance upon the actual additional investment of ₹9.77 crore. It is submitted that the registered Lease Deed contemplated a minimum additional investment of ₹17 crore, on the basis of which the lease rental of ₹45.06 lakh was calculated. According to the Applicant, any alteration in the lease rental required execution of an addendum, and admittedly no such addendum was executed.

(xv) The Applicant accordingly submits that the Respondent's contention that the rent was ₹32.67 lakh per month is misconceived. The Applicant asserts that the fact that invoices may have been raised by the Corporate Debtor at a lower rate does not alter the contractual liability under the registered Lease Deed. The Applicant further alleges that such invoices were raised pursuant to collusion between the erstwhile management of the Corporate Debtor and the Respondent.

(xvi) The Applicant also disputes the Respondent's contention that payments made towards PSPCL dues, salaries, insurance, vendors or other liabilities of the Corporate Debtor could be adjusted against lease rentals. According to the Applicant, the Respondent was obliged to deposit the lease

rental into the escrow account and could not unilaterally adjust the amount against alleged payments made on behalf of the Corporate Debtor.

(xvii) The Applicant has further contended that the cause of action was continuing since lease rent accrued on a month-to-month basis and that the Application was therefore not barred by limitation. The Applicant has also maintained that the controversy involves only determination of the amount of lease rent payable and the amount actually deposited and therefore can be adjudicated by this Tribunal in exercise of its jurisdiction under Section 60(5) of the Code.

(xviii) On the allegation concerning Annexure 2, the Applicant maintains that the document relied upon by the Respondent is false and fabricated. The Applicant has relied upon the absence of the said annexure from the registered document and has contended that the lease rental could have been revised only by a formally executed addendum, which was never executed.

REPLY ON BEHALF OF THE RESPONDENT

3. The Respondent has filed its Reply dated 22.10.2019 and has made, inter alia, the following submissions:

(i) The present Application is devoid of merits as the Applicant is seeking to convert a disputed contractual claim arising out of the Lease Deed into proceedings under Section 60(5) of the Code. It is submitted that the Application involves substantial questions concerning interpretation of the contractual documents, determination of the applicable lease rental, the additional investment made by the Corporate Debtor, the validity and effect

of Annexure 2, and the payments allegedly made and adjusted by the Respondent. According to the Respondent, such disputed questions cannot be summarily adjudicated in the present proceedings.

(ii) The Applicant's assertion that the lease rental payable was ₹45.06 lakh per month is disputed as the rental was required to be determined in accordance with the formula agreed between the parties and with reference to the additional investment actually made by the Corporate Debtor. According to the Respondent, the actual additional investment was ₹9.77 crore and, on the basis of the agreed formula, the lease rental worked out to approximately ₹32.67 lakh per month. The Respondent has therefore denied the Applicant's computation of ₹5,76,23,910/- towards alleged differential lease rentals and has also disputed the Applicant's reliance upon the figure of ₹17 crore as the additional investment.

(iii) In support of its contention, the Respondent has relied upon Annexure 2, which, according to it, contained the working of the lease rental and was agreed and signed by the parties. The Respondent has denied the allegation that the document was fabricated merely because it was not physically annexed to the copy of the Lease Deed registered with the revenue authorities. It is contended that the omission was inadvertent and does not invalidate the document or the contractual arrangement reflected therein.

(iv) The Respondent has further relied upon the subsequent conduct of the parties, particularly the fact that the Corporate Debtor itself raised invoices at the rate of approximately ₹32.67 lakh per month and accepted payments from the Respondent on that basis. The Respondent therefore

contends that the Applicant cannot, after commencement of CIRP, retrospectively assert a different rate of rent without establishing that the contemporaneous invoices and payments were fraudulent or otherwise invalid. It is further submitted that the Applicant, having assumed the role of Resolution Professional, cannot disregard the contemporaneous records of the Corporate Debtor and unilaterally substitute a different rental figure.

(v) The Respondent has also contended that the Applicant has failed to account for payments made by the Respondent towards various liabilities of the Corporate Debtor, including electricity/PSPCL dues, salaries and wages, insurance and other expenses. According to the Respondent, such payments were made to ensure the continued and uninterrupted operation of the plant and were liable to be adjusted against the lease rentals. In this regard, reliance has been placed upon the Utility Operation and Management Agreement dated 06.12.2017 and various communications and documents concerning the payments allegedly made by the Respondent. It is submitted that such payments cannot simply be ignored while determining the net amount, if any, payable to the Corporate Debtor.

(vi) The Respondent has also drawn attention to the proceedings in CA No. 466/2019, in which the controversy concerning Annexure 2 had already arisen. The Respondent states that on 03.09.2019, it sought to file an affidavit clarifying certain statements made by it concerning Annexure 2 in the said application. The Respondent has stated:

"on September 3, 2019, the Respondent sought to file an affidavit rectifying/clarifying certain inadvertent statements made by the Respondent in relation to Annexure 2, in CA 466 of 2019."

(vii) It is further stated that, upon submissions made on behalf of the Applicant, the Tribunal did not deem it necessary to take the said affidavit on record. The Respondent has relied upon the letter dated 16.09.2019 recording the said position as Annexure R-11.

(viii) On the allegation of fabrication, the Respondent has maintained that Annexure 2 formed part of the contractual arrangement between the parties. It is contended that the Applicant's allegation rests primarily on the fact that the document does not appear as an attachment to the registered copy of the Lease Deed, which, according to the Respondent, is insufficient to establish fabrication.

(ix) It is submitted that no cogent material has been placed before the Tribunal to establish that the Respondent and the erstwhile management of the Corporate Debtor acted in collusion or that the invoices raised by the Corporate Debtor were part of any fraudulent arrangement.

(x) The Respondent has further raised an objection on limitation. It is contended that the Applicant seeks recovery in respect of transactions extending over several years and that the claim cannot be treated as a continuing cause of action merely because the Applicant has subsequently characterised the alleged differential rent as a continuing liability.

(xi) The Respondent has also questioned the jurisdiction of this Tribunal under Section 60(5) of the Code. It has been submitted that Section 60(5) cannot be invoked to adjudicate every contractual dispute involving a Corporate Debtor. According to the Respondent, the present controversy requires examination of the Lease Deed, Annexure 2, the investment actually

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made, the rental formula, contemporaneous invoices, payments and alleged adjustments, and therefore involves disputed questions of fact and contractual interpretation. The Respondent has further relied upon the dispute-resolution mechanism contained in the contractual documents and has contended that the Applicant cannot circumvent the agreed mechanism by presenting the dispute as an insolvency claim.

(xii) The Respondent has accordingly submitted that the Applicant's claim requires determination of disputed questions of fact and interpretation of contractual documents and cannot be allowed merely on the basis of the Applicant's unilateral computation. It has therefore prayed for dismissal of the Application, submitting that the Applicant has failed to establish a crystallised liability of ₹11,87,75,913/- and has also failed to establish any fraudulent conduct warranting action under Section 71 of the Code.

REJOINDER ON BEHALF OF THE APPLICANT

4. The Resolution Professional has filed the rejoinder dated 14.11.2019 and has made the following submissions:

(i) The Applicant has denied the preliminary objections raised by the Respondent and reiterated the contents of the Application. On jurisdiction, the Applicant has relied upon Section 60(5) of the Code and Section 280 of the Companies Act, 2013 and has contended that this Tribunal has jurisdiction to adjudicate claims made by or against the Corporate Debtor.

(ii) The Applicant has further relied upon Section 25(2)(a) and (b) of the Code to contend that the Resolution Professional is required to take custody and control of the assets of the Corporate Debtor and to represent the

Corporate Debtor in judicial, quasi-judicial and arbitration proceedings. It is therefore submitted that there is no attempt to bypass the provisions of the Code.

(iii) On estoppel and acquiescence, the Applicant has denied that the invoices raised by the Corporate Debtor at a lower rate preclude the present claim. The Applicant has alleged that the lower invoices were raised by the erstwhile management in connivance with the Respondent and that the discrepancy came to light after the Applicant assumed charge as Resolution Professional.

(iv) The Applicant has reiterated that the registered Lease Deed dated 09.03.2016 governs the parties and that the monthly rental stipulated therein was ₹45.06 lakh. The Applicant has relied upon the calculation contained in the registered Lease Deed:

"Rs.10,31,000/- + Rs.5,67,000/- + Rs.29,08,000/- = Rs.45,06,000/- per month."

(v) According to the Applicant, the three components represented the return on the existing investment of ₹9.10 crore, security deposit of ₹5 crore and additional investment of ₹17 crore respectively.

(vi) The Applicant has specifically disputed the Respondent's reliance upon the alleged additional investment of ₹9.77 crore. It is contended that the registered Lease Deed contemplated a minimum additional investment of ₹17 crore and that the rental was calculated on that basis.

(vii) The Applicant further submits that the rental could be revised only through an addendum to the Lease Deed. Since, according to the Applicant,

no such addendum was ever executed, there was no contractual basis for reducing the rental from ₹45.06 lakh per month to ₹32.67 lakh per month.

(viii) The Applicant has therefore denied the validity of Annexure 2 and has specifically stated that it was not attached to the registered Lease Deed. The Applicant has pleaded that the document is false and fabricated and cannot be relied upon for determining the contractual rent.

(ix) On the Respondent's alleged payments towards the liabilities of the Corporate Debtor, the Applicant has denied that such payments could be adjusted against lease rentals. The Applicant's case is that the Respondent was required to deposit the lease rentals into the escrow account and could not unilaterally set off amounts allegedly paid towards PSPCL dues, salaries, insurance or vendors.

(x) The Applicant has further stated that, even assuming that the Respondent had made payments on behalf of the Corporate Debtor, the Respondent could lodge a claim before the Resolution Professional in respect thereof. According to the Applicant, such payments could not be treated as adjustments against the lease rental payable under the escrow arrangement.

(xi) The Applicant has reiterated its calculation of ₹6,11,52,003/- towards short deposit and ₹5,76,23,910/- towards differential lease rentals, aggregating to ₹11,87,75,913/-.

ANALYSIS & FINDINGS

5. We have heard the Learned Counsel appearing for the parties and have perused the pleadings, documents and material placed on record.

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6. At the outset, it is relevant to note that the question regarding the jurisdiction of this Tribunal to adjudicate the dispute relating to the lease rentals has already been considered in the earlier proceedings. The Hon'ble National Company Law Appellate Tribunal, in its judgment dated 05.09.2022 passed in ***Company Appeal (AT) (Insolvency) Nos. 190 & 245 of 2021***, arising out of the proceedings concerning the same lease transaction, considered the objection that the dispute relating to the lease rentals could not be adjudicated by the Adjudicating Authority in exercise of jurisdiction under Section 60(5) of the Insolvency and Bankruptcy Code, 2016. While dealing with the said objection, the Hon'ble NCLAT specifically observed that the dispute relating to the lease rentals was capable of adjudication by the Adjudicating Authority as *"the lease rental payable by the Appellant to the Corporate Debtor is an asset of the Corporate Debtor and the Resolution Professional is entitled to recover the same."*

7. In view of the aforesaid findings of the Hon'ble NCLAT, the objection as to the jurisdiction of this Tribunal does not survive for consideration in the present proceedings. Therefore, the present adjudication is confined to the substantive controversy, namely, whether the Applicant has established the liability claimed against the Respondent on the basis of the contractual documents and the material placed on record, and whether the consequential reliefs sought by the Applicant are liable to be granted.

8. In this background, the following issues arise for consideration before this Tribunal:

(i) Whether the Applicant has established that the Respondent was liable to pay lease rentals at the rate of ₹45.06 lakh per month and, consequently, an amount of ₹11,87,75,913/- was due and payable to the Corporate Debtor, having regard to the Lease Deed dated 09.03.2016, the Escrow Agreement, Annexure 2, the additional investment made by the Corporate Debtor and the payments/adjustments claimed by the Respondent?

(ii) Whether the Applicant is entitled to the reliefs sought in the present Application, including recovery of the aforesaid amount and the relief sought under Section 71 of the Code?

Issue No. (i)

(a) The Applicant's case rests principally upon the registered Lease Deed dated 09.03.2016, which, as pleaded by the Applicant itself, superseded the earlier Lease Deed dated 06.11.2015. It is contended that the monthly lease rental under the registered Lease Deed was ₹45.06 lakh, calculated as follows:

Particulars	Amou
ROI of 13.6% on existing investment of ₹9.10 crore	₹10,31,000
ROI of 13.6% on security deposit of ₹5 crore	₹5,67,000
ROI of 20.5% on additional investment of ₹17 crore	₹29,08,000
Total	**₹45,06,000**

The Applicant accordingly treats ₹17 crore as the additional investment governing the rental throughout the lease period.

(b) However, a reading of the relevant clause of the Lease Deed does not support the proposition that ₹17 crore was stipulated as a fixed or final additional investment. The clause expressly records:

"Both parties have already come to an understanding that the lessor shall make an estimated additional investment of Rs 17 Crores (Rs. Seventeen Crores only) net of security deposit i.e. Total estimated additional investment of Rs. 22 crores less security deposit of Rs. 5 Crores for the purposes of this indenture."

The same clause proceeds to state:

"The aforesaid figure of Rs. 22 Crores has been arrived at as per the discussions held between the parties and is an estimated figure. The final figure shall be determined as per the actual investment made after completion of the work by the Lessor."

(c) The contractual language is therefore unambiguous on one material aspect: the figure of ₹17 crore was an estimate, and the final rental was to be worked out with reference to the actual investment made.

(d) The Lease Deed further provides that the monthly rental would comprise the return on the existing investment, the security deposit and the return on the additional investment. The Respondent has reproduced the operative formula as:

"ROI on existing investment of Rs. 9,10,00,000 i.e. Rs. 10,31,000; plus … ROI on the security deposit of Rs. 5,00,00,000 i.e. Rs. 5,67,000 plus … ROI of 20.5% on actual additional investment made by CD."

(e) Thus, the contractual mechanism itself distinguishes between the estimated investment used at the time of execution and the actual additional investment upon completion of the work. The Applicant's computation, however, proceeds by treating the estimated ₹17 crore as though it were the actual investment, without establishing that the Corporate Debtor in fact made an additional investment of ₹17 crore.

(f) In contrast, the Respondent has placed on record the case that the actual additional investment made by the Corporate Debtor was ₹9.77 crore, and that applying the very formula contained in the Lease Deed, the rental

consequently worked out to ₹32.67 lakh per month. The calculation relied upon by the Respondent is:

"ROI on existing investment of Rs. 9,10,00,000 … Rs. 10.31 lac";
"ROI on the security deposit of Rs. 5,00,00,000 … Rs. 5.67 lac"; and
"ROI on additional investment made by the Corporate Debtor i.e. Rs. 9.77 crores … Rs. 16.69 lac", aggregating to "Rs. 32.67 lac."

(g) The Respondent's case is further supported by the subsequent conduct of the parties. It is specifically pleaded that the Corporate Debtor and the Respondent signed a final working of the lease rental on the basis of the actual investment and that rent at the rate of ₹32.67 lakh per month was thereafter paid from April 2016. More significantly, the Respondent relies upon an invoice dated 06.03.2019, raised by the Applicant himself, for monthly lease rental of ₹32,67,550/-.

(h) This contemporaneous conduct assumes considerable significance. The Applicant does not dispute that invoices were raised by the Corporate Debtor at approximately ₹32.67 lakh per month. The explanation offered is that the erstwhile management raised such invoices in connivance with the Respondent and that the discrepancy was detected only after commencement of CIRP. However, no material has been brought on record demonstrating that the invoices were fabricated/ out of connivance or collusion, that the persons who raised them acted without authority, or that the Respondent procured their issuance with a view to suppress a liability of ₹45.06 lakh per month.

(i) On the contrary, the contemporaneous record demonstrates that the lower rental was not an isolated or subsequent unilateral assertion by the Respondent. It was the rate at which the Corporate Debtor itself invoiced the

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Respondent over the period of the lease and accepted payments. The fact that the Applicant, even after assuming charge as Resolution Professional, raised an invoice dated 06.03.2019 at ₹32,67,550/- materially weakens the contention that ₹45.06 lakh was the operative monthly liability throughout the relevant period.

(j) The Applicant's reliance upon the absence of an addendum also does not advance the claim to ₹45.06 lakh. The question is not whether a document reducing a fixed rental was executed; rather, the Lease Deed itself contemplated that the initial additional investment was estimated and that the final figure would be determined by reference to the actual investment. Consequently, the absence of an addendum cannot convert the estimated ₹17 crore into an actual investment figure contrary to the express contractual mechanism.

(k) The Applicant has also relied upon the Escrow Agreement to contend that ₹45.06 lakh per month was required to be deposited into the escrow account maintained with State Bank of India. The existence of the escrow arrangement is not in dispute. However, the escrow mechanism regulates the manner in which the amounts payable were to be deposited; it cannot, by itself, determine the underlying contractual quantum where the Lease Deed expressly makes the rental dependent upon the investment actually made.

(l) We therefore find that the Applicant's computation proceeds by treating ₹17 crore as the operative additional investment and consequently arriving at ₹45.06 lakh as the monthly rental. The Lease Deed, however,

contemplated an estimated additional investment and expressly required the final figure to be determined on the basis of the actual investment made. The Applicant has not established that the actual additional investment was ₹17 crore, and that too net of security deposit. The Respondent, on the other hand, has placed on record a specific computation based on additional investment of ₹9.77 crore, supported by contemporaneous invoices and payments consistent with the resultant rental of approximately ₹32.67 lakh.

(m) In these circumstances, we are unable to accept the Applicant's contention that ₹45.06 lakh per month was the contractual rental payable throughout the relevant period. The documentary record, read as a whole, supports the conclusion that the rental was to be computed with reference to the actual additional investment and that the parties acted upon the resultant figure of approximately ₹32.67 lakh per month. The Applicant has consequently failed to establish the foundation of the differential claim of ₹5,76,23,910/-.

(n) The further claim of ₹6,11,52,003/- towards alleged short deposit into the escrow account also cannot be sustained merely by applying the disputed higher rental figure. The Applicant has not established, after accounting for the rental actually payable and the payments/adjustments relied upon by the Respondent, that the said amount remained due and payable.

(o) Accordingly, the Applicant has failed to establish that the Respondent was liable to pay lease rentals at the rate of ₹45.06 lakh per month or that

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₹11,87,75,913/- was due and payable by the Respondent to the Corporate Debtor.

(p) **Issue No. (i)** is accordingly answered in the **negative** and against the Applicant.

Issue No. 2

(a) The second issue concerns the allegation of fabrication and the relief sought under Section 71 of the Code. Section 71 provides:

"Notwithstanding anything contained in any other law for the time being in force, where a corporate debtor is in the process of insolvency resolution and knowingly and wilfully with intent to defraud, destroys, mutilates, alters, falsifies or conceals or is privy to the doing of any such act in relation to any books, papers or securities of the corporate debtor…"

(b) As regards prayer for directions/orders in terms of 71 of the Code, Section 236 of the Code provides for commencement of prosecution for offences under the IBC. Section 236(1) vests the jurisdiction in the Special Court established under Chapter XXVIII of the Companies Act, 2013 and Section 236(2) bars cognizance of offence by a Court save on a complaint made by the Board or the Central Government or any person authorised by the Central Government in this behalf. Accordingly, this Tribunal may only refer the matter to the Board to take appropriate action or direct the Resolution Professional/Liquidator to do so.

(c) In view of the above statutory position, the prayer seeking directions/orders under **Section 71 of the Code** cannot be granted by this Adjudicating Authority in the manner prayed for by the Applicant.

(d) **Issue No. 2 is accordingly answered against the Applicant.**

CONCLUSION

9. In view of the foregoing, the Applicant has failed to establish the Respondent's liability for lease rentals at ₹45.06 lakh per month or the consequent claim of ₹11,87,75,913/-. The Applicant has also failed to establish the essential ingredients of Section 71 of the Code, including any knowing and wilful falsification or concealment with intent to defraud. Accordingly, the reliefs sought are not made out and the Application is liable to be dismissed.

10. Accordingly, the Company Application bearing ***CA No. 600/2019*** is **dismissed** and **disposed of**.

Sd/-

SHISHIR AGARWAL
MEMBER (TECHNICAL)
Ruhani

Sd/-

KHETRABASI BISWAL
MEMBER (JUDICIAL)

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