

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

IA (I.B.C.)/1697(MB)2025 In

IN

CP (IB) 494 / MB / 2019

Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 Section 32A of the
Code and Rule 11 of NCL T Rules, 2016.

Mr. Pankaj R. Majithia

...Applicant

V/s

**Classic Marble Company Private Limited
& Anr.**

...Respondents

IN THE MATTER OF

Company Petition No. 494 of 2019

SREI EQUIPMENT FINANCE LTD

...Petitioner/Financial Creditor

V/s

SHREE RAM URBAN INFRASTRUCTURE LTD

...Respondent/Corporate Debtor

Order delivered on: 12.01.2026

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Coram :

Shri. Prabhat Kumar

Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey

Hon'ble Member (Judicial)

Appearances:

For the Applicant

: Adv. Ahish Pyasi a/w Adv. Arshu Rathore, Adv. Pulkit Sharma, a/w Adv. Ashish Pyasi, Adv. Anshu Rathore, Adv. Yushwin Daga, Adv. Yugini T., Adv. Maman Jain, Adv. Rohan V.

For the Respondent

: Adv. Shyam Kapadia, a/w Adv. Tarak Shah, Adv. Sahil Panjwani

ORDER

1. This Interlocutory Application IA 1697 (IBC)/MB/2025 is filed by Mr. Pankaj R. Majithia, Resolution Professional (“Applicant/RP”) in the Corporate Insolvency Resolution Process (“CIRP”) of Shree Ram Urban Infrastructure Ltd. (“Corporate Debtor”) under section 60(5) of the Code read with Section 32A of the Insolvency and Bankruptcy Code, 2016 (“IBC/Code”) and Rule 11 of NCLT Rules, 2016 seeking appropriate directions against Classic Marble Company Private Limited (“Respondent No. 1”) and directions for co-operation to Station House Officer, Worli, Mumbai (“Respondent No. 2”). The Applicant has made following prayers :

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- a. Consider and allow the IA No. / 2025 in terms of Section 60(5)(c) read with sections 18, 20 and 25 of the Code and Rule 11 of NCLT Rules, 2016;*
- b. Pass necessary order directing Respondent No. 1 to not resort to any further illegal action and to give the handover of such immovable property (mentioned in para 6 above) peacefully forthwith to the Applicant;*
- c. Pass necessary orders to direct Respondent No. 2 (Station House Officer, Worli Mumbai) to provide their necessary assistance to the Applicant in acquiring peaceful possession of assets of the Corporate Debtor and to evict Respondent No. 1 and such individuals who are presently illegally /unauthorizedly occupying the said immovable property of the Corporate Debtor;*
- d. Issue such other orders as the Hon'ble Tribunal may deem fit.*

2. The CIRP of the Corporate Debtor commenced on 6.11.2019 vide order of even date passed by this Tribunal allowing a Section 7 application filed by SREI Equipment Finance Ltd. (“SREI”). The admission order dated 06.11.2019 was challenged before the Hon’ble NCLAT, which initially held the Section 7 application is not maintainable by its order dated 07.02.2020, which was, later on, modified on 21.09.2020 holding that the application was maintainable. These orders were further challenged before the Hon’ble Supreme Court in connected civil appeals, pursuant to which interim stays were granted on proceedings before the NCLT on 27.10.2020 and 18.12.2020. The Supreme Court ultimately dismissed both sets of appeals on 09.02.2021 and 01.03.2021, thereby vacating the interim stays and allowing the CIRP to continue. Subsequently, vide interim order dated 17.12.2021 passed in Company Appeal

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(AT) (Ins) No.983 & 984 of 2021, the Committee of Creditors was directed not to take any further steps in the matter and the said order is still in force.

3. This Tribunal vide Order dated 22.12.2022 appointed the applicant herein as RP, who has also subsequently been replaced vide order dated 03.07.2025 by IPE M/s Truvisory Insolvency Professionals Private Limited. Prior to appointment of applicant herein as Resolution Professionals, Mr. Srigopal Chaudhary was appointed as Interim Resolution Professional, and thereafter vide Order dated 28.11.2022, Mr. Sapan Mohan Garg was appointed as RP.
4. One of the corporate debtor's properties is situated at Shree Ram Mills Premises, Ganpatrao Kadam Marg, Lower Pare), Near Worli Naka, Lower Parel, Mumbai - 400013 [Plot No. 9, C.S. No. 2/289, area admeasuring of 3046 sq. mtrs., and some part of said property is in occupation of Respondent no. 1 allegedly without any rights and without any lease and license rental agreement, accordingly is being encroached by the Respondent No. 1. The Applicant is stated to have never authorised any such party to operate or use the assets of the corporate debtor.
5. The Applicant sent a letter and email dated 10 February 2023 to Respondent No. 1, informing that they are under unauthorized and unlawful occupation of the part of property and their use of a portion of the land and building constitutes criminal trespass, therefore, asking them not remove any goods therefrom and to desist from entering upon any part thereof. However, no response is stated to have been received from Respondent No. 1. The applicant is stated to have assigned two security guards to the said premises to secure the said property however, they were prevented

from entering the property. Thereafter, various oral discussion took place between Respondent No. 1 and the Applicant RP, however, all in vain. Further, the Applicant once again sent an Eviction Notice dated 20 March 2025 to Respondent No. 1 to inform that the actions taken by Respondent No. 1 concerning the property constitute encroachment and are unlawful, and also emphasized that the property in question is owned by the Corporate Debtor and, therefore, must be vacated by Respondent No. 1. However, neither the said property was vacated nor any response was received from Respondent No. 1.

6. Accordingly, the applicant has filed present application in discharge of his duty to protect the assets of the Corporate Debtor and has sought necessary cooperation/assistance of police personnel/Respondent No. 2 for provision of sufficient team from the police administration to assist the applicant in taking back the peaceful and vacant possession to the property at the earliest.
7. The Respondent No. 1 filed its reply challenging the maintainability of this application on ground of (i) lack of jurisdiction u/s 60(5) of the Code to evict a tenant/lessee in possession of the Premises, (ii) absence of valid authorisation of Assignment in favor of the Applicant to carry out functions of Insolvency Professional and (iii) intentional suppression of necessary facts and documents from this Tribunal.
8. It is also submitted by Respondent No. 1 that it had supplied marble/stones and other allied products of different kinds to Corporate Debtor since 2006 until 2013 on regular basis on 45 days credit with stipulation of 18% p.a. interest on overdue payments, and the Corporate Debtor promptly made payments to it towards the outstanding amounts for supply of Materials by Respondent No. I, however, from and between the years 2008 to 2012, the Corporate

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Debtor became erratic and irregular in making payments towards the invoices for supply of the Material.

9. It is further asserted by Respondent No. 1 that the Corporate Debtor required samples of various products on a regular basis for their construction work being carried out at the Plot, and the Corporate Debtor requested Respondent No. I to set up a sales office near the main entrance of the Plot with a condition to solely supply Materials to it so that additional costs towards transportation, labour, warehousing, etc. of the Materials could be reduced for the Corporate Debtor thus placing it in exclusive, vacant and peaceful possession of occupied premises since December 2008.
10. It is also asserted by Respondent No. 1 that it was agreed between the Corporate Debtor and itself that its possession of the Premises would be exclusive, continuous and uninterrupted for a long period of time until all the outstanding amounts payable to Respondent No.1 were cleared, and it was also permitted to put up necessary shed/structures on the Premises at its cost and also to carry on its business operations from the Premises by catering to its other customers, accordingly, in view of this agreement, it did not demand payment from the Corporate Debtor towards the outstanding amounts.
11. It is further asserted by Respondent No. 1 that it obtained Telephone connection, Registrations under VAT and GST law, Registration for the Premises under the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017, and insurance policies in relation to material stored thereat. It is also stated that it has erected a structure thereat and has engaged professional maintenance and security service providers to maintain and protect the Premises.

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12. It is claimed by Respondent No. 1 that, as on April 2017, a total principal amount aggregating to Rs. 1,34 86,201/- (Rupees One Crore Thirty Four Lakhs Eighty Six Thousand Two Hundred and One) was payable by the Corporate Debtor to Respondent No. 1, and interest at agreed rate thereon works out to Rs. 24,27,516/- (Rupees Twenty Four Lakhs Twenty Seven Thousand Five Hundred and Sixteen) per annum which is being appropriately adjusted towards rent of the Premises. Accordingly, Respondent No.1 has been in continuous and exclusive possession of the Premises since the year 2008.

13. Heard the Learned Counsel and perused the material on record.

14. The Respondent No. 1 has challenged the maintainability of this Application on ground of lack of jurisdiction u/s 60(5) of the Code to evict a tenant/lessee in possession of the Premises. It is pertinent to note that the Respondent No. 1 is claiming occupation of said premises based on oral understanding with Corporate Debtor permitting it occupy the same on account of inability of Corporate Debtor to pay its debt till the time outstanding dues of the Respondent No. 1 are paid by the Corporate Debtor. Accordingly, by admission of the Respondent No. 1, the occupation of said premises is arising from the insolvency i.e. inability to pay the dues, of the Corporate Debtor, and such limited license was not intended to create any tenancy in favor of the Respondent No. 1. It is trite that this Tribunal is vested powers u/s 60(5) of the Code to adjudicate any matter arising from insolvency of the Corporate Debtor. Accordingly, there is no merit in this ground.

15. As regards absence of valid authorisation of Assignment in favor of the Applicant to carry out functions of Insolvency Professional, it is trite that the Insolvency Professional is obligated to conclude the assignments in his hand even in extreme cases of suspension or

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cancellation of AFA, whereas in the present case, the renewal thereof only was pending. Accordingly, there is no merit in this ground also.

16. As regards intentional suppression of necessary facts and documents from this Tribunal, it is noted that the Applicant has filed this application for vacation of premises, which the Respondent No. 1 was occupying, based on the records available with him. The oral understanding as well as events taken place during winding up proceedings can not be said to be suppressed. Accordingly, there is no merit in this ground also.
17. Indubitably, the applicant is obligated to take control of assets of Corporate Debtor as well as to protect and preserve the same under Section 25 of IBC, and there is no written agreement or contract between Corporate Debtor and Respondent No. 1. The Respondent No. 1 has admitted that the property, in question, is owned by the Corporate Debtor, and it was given occupation initially to set up a sales office near the main entrance of the Plot with a condition to solely supply Materials to it and later on continued occupation of the said property so as to settle the outstanding due from the Corporate Debtor.
18. The Respondent No. 1 has not placed on record any written agreement or arrangement to evidence existence of such purported arrangement with the Corporate Debtor, however, Respondent No. 1 has sought to evidence the same by way of registration with tax and municipal authorities in its name at the said premises, insurance policies, telephone connection etc. Further, Respondent No. 1, to justify its purported legal occupation, has also relied upon some events taken place course of winding up proceedings under Companies Act, 2013 commenced against the Corporate Debtor in terms of order dated 5 October 2016 passed by Hon'ble Bombay

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High Court which came to be briefly terminated on 22nd March, 2017 and again got revived on 24th August, 2017 due to failure to compliance with consent terms executed by Corporate Debtor with Action Barter Pvt. Ltd, the petitioner therein.

19. It is recorded in the report dated 4.6.2019 prepared by the Official Liquidator and duly counter-signed by representative of Respondent No. 1, in winding up proceedings that

“xxx xxx xxx

There after the representatives of the Official Liquidator proceeded for taking physical possession of the CNC (Classical Marble Company) manufacturing marbles working adjacent to Gate No. 3A. ie Plot No. 9. Shri Mashroof FoF, representative of CMC (Classic Marble Company) informed the representative that there is no prior Intimation/letter from the Official Liquidator to vacate the aforesaid premises. and he further informed the Company, Shree Ram Urban Infrastructure Ltd has permitted Classic Marble Impex Pvt. Ltd. to stock marbles at Shree Ram Mills Premises, vide their letter dated 22nd December 2008 issued by Shree Ram Urban Infrastructure Ltd. to Classic Marble Impex Pvt. Ltd. The copy of the letter dated 22nd Deamber, 2008 is annexed herewith to this minutes as “Exhibit B.

Thereafter the representative of the Official Liquidator requested to Shri Mashruf fof to vacate the aforesaid premises and remove the goods/materials belongs to classic marble Company. lying in the aforesaid premises. However he informed that huge and heavy materials are lying in the aforesaid premises and also he informed that they have not received any prior intimation from the official liquidator to

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vacate the promises. However, Shri Masbraut fof requested the representatives of the official liquidator to allow one month time to remove the huge and heavy materials and vacate the aforesaid Promises. As the request received from Shri Mashruf Fof not accepted and the representatives of the Official Liquidator proceeded for physical possession. However Shri Mashruf fof has strongly objected to take physical possession of the aforesaid premises, since there is no specific Court order or any intimation to take physical possession of Classic Marble Company, therefore the representatives of the official liquidator taken symbolic possession of the Classe Marble Company which is situated at Plot No. 9. by pasting possession boxe of the Official Liquidator on main entrance of Marble Company.

xxx xxx xxx”

S. R. LOKHANDE MUMBAI PASHTRA”.

20. It is further noted that the Official Liquidator sent a letter dated 25.6.2019 to the Respondent No. 1 stating that “.....However your representative has not handed over physical possession of the aforesaid property. Therefore the representatives of the Official Liquidator have taken symbolic possession of the aforesaid premises on 4.6.2019. It appears that you are occupying and storing marbles in the aforesaid premises without any authority.” and fixing 1st July, 2019 for taking possession thereof. However, the Respondent No. 1 filed a Company Application (L) No. 261 Of 2019 In Company Petition No. 1066 Of 2015 before Hon’ble Bombay High Court seeking, inter-alia, restraint from taking over possession of said property, and permitting the Respondent No. 1 to hold possession of said property as Agent of Liquidator. Though, no written order was

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passed on mentioning of matter on 1.7.2019, however, the advocate of Respondent No. 1 vide his email dated 1.7.2019 informed the Respondent No. 1 that "*It was informed to the Hon'ble Court that you are in peaceful possession of the property belonging to the Company (In Liqn.) since the year 2008, as the occupant and tenant thereof. Further, it was informed to the Hon'ble Court that you have received a notice dated June 25, 2019 on June 28, 2019 from the office of Official Liquidator informing about the physical possession of the property scheduled today at 11.30. In view of extreme urgency of the matter, we have requested the Hon'ble Court to take the matter on production at 11.00 am or in the alternative give direction to the Official Liquidator to postpone the schedule of physical possession to some other date. The Public Prosecutor of the Official Liquidator Mr. Ahite was present in the Court and informed the Hon'ble Court that you are illegally residing in the said property and informed the Hon'ble Court that the schedule of physical possession can be postponed, if so directed by the Hon'ble Court and a date of hearing can be fixed in the matter. The Hon'ble Court was therefore pleased to fix the hearing of the Company Application on Wednesday 3, 2019 and in the meanwhile, the Official Liquidator is orally restrained from taking the physical possession of the property, which please note.*"

21. It is noted that no interim or final order has been passed since then, and the CIRP commenced in case of Corporate Debtor on 6.11.2019 thus terminating the earlier winding up proceedings. It is also noted that, on 5 February 2020, Respondent No. 1 filed its proof of claim claiming a total amount of Rs. 3,06,51,041/- (Rupees Three Crores Six Lakhs Fifty One Thousand and Forty One) outstanding as on 17 December 2019 which included the principal amount of Rs. 1,34,86,201/- (Rupees One Crore Thirty Four Lakhs

Eighty Six Thousand Two Hundred and One) along with interest @ 18% per annum. It is pertinent to note that the Respondent No. 1 has included the interest, purported to be accruing on outstanding due from Corporate Debtor till date of filing of its claim in CIRP. However, it is noted that the confirmation of account dated 9.3.2016 and 1st April, 2017 received from the Corporate Debtor and relied upon by the Respondent No. 1 in its claim form to prove substantiate limitation of debt does not record any accrual of the interest as claimed by the Respondent No. 1. Further, the copies of invoice(s) as well as high seas sale agreement placed on record does not contemplate payment of any interest. Accordingly, the claim of the Respondent No. 1 that it was entitled to interest @ 18% on over due payment is not substantiated by an documentary evidence placed on record and is devoid of any evidence and oral assertion of the applicant at Para 13.c that *the Corporate Debtor would be liable to pay an interest of 18% per annum on the outstanding amounts under the respective invoices.*

22. Further, even if is considered that, there was a mutual understanding later on for payment of interest @ 18% p.a. on over due amounts and appropriation thereof against the rent for occupation of said premises till the principal outstanding is not paid, the Respondent No. 1's claim for interest amount till the claim date is not admissible, as such interest could be claimable prospectively. The quantum of admission of claim of Respondent No. 1 is not before us and these aspects have been considered by us to test the veracity of assertions made by Respondent No. 1, nonetheless, based on the facts before us it can be said that such inclusion of interest in claim, if admitted by the erstwhile RP, is perverse and without due consideration of relevant evidences enclosed with the claim form.

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23. Now coming to the issue in hand, it is noted from the report of representative of official liquidator, the vacation of the said premises was resisted by the Respondent No. 1 for want of advance notice, which was given to vide letter dated 25.6.2019 fixing it for 1.7.2019. On that date, as is revealed from the email sent by advocate of the Respondent No. 1, the Hon'ble High Court posted the in Application filed by Respondent No. 1 to 3.7.2019, however no order came to be passed. It is pertinent to note that the Respondent No. 1 had sought order for restraining the Official Liquidator from taking over the possession and further direction to allow the Respondent No. 1 to continue in occupation as agent of the Official Liquidator, and there is no prayer for declaration of tenancy of the Respondent No.1 in relation to said premises. Accordingly, the reliance placed by Respondent No. 1 on events taken place during winding up proceedings does not help the case of the Respondent No. 1.

24. The Respondent No. 1 has also placed reliance on certain registrations as well as the occupation of said premises recorded with other department. As noted earlier, as per own admission of the Respondent No. 1, the said premises was initially given to it in December, 2008 for setting up *a sales office near the main entrance of the Plot with a condition to solely supply Materials to it so that additional costs towards transportation, labour, warehousing, etc. of the Materials could be reduced for the Corporate Debtor*, and it supplied material to Corporate till 2013 after the payments of Corporate Debtor turned erratic in 2012.

25. Section 105 of the Transfer of Property Act, 1882 defines Lease as "*A lease of immoveable property is 'a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of*

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money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. ”

26. Since, it is clear that the Respondent No. 1 was asked to set up a Sales Office for catering the Corporate Debtor exclusively for its convenience without any rent, there was not consideration for permitting such usage. No rent was charged for the said premises since December, 2008 and thereafter. Since, the Corporate Debtor had intended the Respondent No. 1 to store its goods, the issuance of necessary NoC for seeking registrations, utility connection and insurance coverage is inevitable, and can not be said to create any tenancy rights in favor of the Respondent No. 1. Accordingly, this does not create any tenancy right in favor of the Applicant as the Corporate Debtor had allowed it to serve the business of Corporate Debtor exclusively therefrom.
27. The Respondent No. 1 stopped supply of the material in 2013, however, it remained in possession of said premises without any rent presumably because the Corporate Debtor owed amounts against material supplied till that time and was not in capacity to pay. The Respondent No. 1, in its claim form has claimed interest on overdue amounts from 2012 till the CIRP date, but has not appropriated any amount towards rent, which does not corroborate with the assertions made by Respondent No. 1 that it was allowed to retain the occupation of said premises in consideration of rent which was to be appropriated from accrual of interest @ 18% p.a. on principal outstanding till the principal is paid. The Respondent No. 1 has also not filed any evidence on record to demonstrate whether any GST was paid on such accrued interest in terms of Section 15 of the CGST Act.

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28. Further, in terms of IBC, the claims of the creditors as on Insolvency Commencement Date are to be settled in accordance with Resolution Plan, which is invited by the Resolution Professional from the interested Resolution Applicants. The claims of all creditors stand frozen on that date i.e. 6.11.2019 and no further addition in form of interest on such claims accrues in favor of the Creditor. Further, in terms of Section 14 of the IBC, the creditors are barred from recovering their dues from the Corporate Debtor after declaration of moratorium, which commenced in the present case on Insolvency Commencement date. Accordingly, if the contention of the Respondent No. 1 in relation to adjustment of rent against accrual of interest on its claim amount is accepted, such appropriation is not permissible as the claim amount stands frozen on 6.11.2019 and interest stops accruing thereon. Accordingly, by own admission, the Respondent No. 1 is obligated to pay Rs. 24,27,516/- per annum, being the amount of rent as per their own admission at para 13.c of the Reply, from 6.11.2019 till the date they remain in occupation.

29. After consideration of the facts before us, we find that the assertions of Respondent No. 1 to justify its occupation of said occupation as legal are contradictory to the facts on record and are false as is revealed from the aforesaid analysis. Accordingly, we do not find any merit in the contention that the occupation of said premises by Respondent No. 1 is legal, thus, we have no hesitation to hold that the Respondent No. 1 is in unlawful and illegal occupation of said premises and it is obligated to vacate the same forthwith. Since, the Respondent No. 1 has stored its goods thereat, we consider it appropriate to allow a period of 30 days for handing over the peaceful and vacant possession of said premises to the applicant. Having said so, we request Respondent No. 2 to extend necessary

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assistance and co-operation to the Applicant for peaceful and vacant possession of the said premises from Respondent No. 1 as and when their assistance is requested by the Applicant herein.

30. In terms of aforesaid directions, IA 1697 of 2025 is allowed and disposed of.

Sd/-

Prabhat Kumar

Member (Technical)

Sd/-

Sushil Mahadeorao Kochey

Member (Judicial)