

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH -IV**

I.A. No. 5065 (MB) 2023

IN

C.P. (IB) No. 543/MB/2022

Under Section 7 of the Insolvency and Bankruptcy Code, 2016, r/w. Rule 11 of the National Company Law Tribunal Rules, 2016.

In the matter of

I.A. No. 5065 (MB) 2023

Harish Kant Kaushik

*Resolution Professional of Rajmal Lakhichand Jewelers
Private Limited*

...Applicant

v/s.

Wakai Hospitality Private Limited

...Respondent

In the matter of:

C.P. (IB) No. 543/MB/2022

State Bank of India

...Financial Creditor

v/s.

Rajmal Lakhichand Jewelers Private Limited

...Corporate Debtor

Order Delivered on: **29.02.2024**

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

I.A. No. 5065 (MB) 2023

For the Applicant:

Mr. G. Aniruth Purusothaman, Ld.
Counsel for the Applicant.

For the Corporate Debtor:

Mr. Shyam Kapadia *a/w* Mr. Harsh
Moorjani, Ld. Counsel for the
Respondent.

ORDER

1. The present application has been filed by Mr. Harish Kant Kaushik, Resolution Professional (“**Applicant / RP**”) of Rajmal Lakhichand Jewelers Private Limited (“**Corporate Debtor**”) on 30.10.2023 *u/s* 18(f) of the Insolvency and Bankruptcy Code, 2016 (“**IBC, 2016**”) *r/w* Rule 11 of the National Company Law Tribunal, 2016, seeking peaceful vacant possession and payment of outstanding license fees along-with interest thereon, pertaining to commercial premises as detailed hereinafter.

Submissions of the Financial Creditor

2. The Applicant *viz.* Resolution Professional of the Corporate Debtor herein submits that the present application emanates from 14.07.2022, whereby Wakai Hospitality Private Limited (“**Respondent**”) approached the Corporate Debtor herein for use of Commercial Premises admeasuring approx. 2853.62 sq. ft. (built-up) in Mangesh Sandesh Building, ‘B’ wing, Plot No. 490 bearing CTS No. E-72, Village-Khar , 17th Road, Division of the Municipal Corporation of Mumbai (“**Premises**”) and pursuant to which; A registered Leave and License Agreement *dated* 14.07.2022 (“**L&LA**”) was executed forthwith to lease out the said premises to the Respondent for INR 7,50,000/- p.m., subject to a 5% increase every year after one year of the rent period from 12.07.2022, with effect from 13.09.2022 after considering a fit-out period of 2 (two) months. Further,

the said license was admittedly granted for a period of 60 (sixty) months which commenced from 12.07.2022 and was bound to expire on 11.07.2027.

3. The records reflect that State Bank of India (“**Financial Creditor**”) filed the captioned petition bearing C.P. (IB) No. 543 of 2022 *u/s. 7* of the IBC, 2016, for initiating Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor for default amounting to INR 535.91 Crores. This Bench was pleased to admit the same *vide* Order *dated* 09.02.2023 and, appointed the Applicant herein as the Interim Resolution Professional of the Corporate Debtor subsequent thereto.
4. Pursuant to initiation of CIRP, the Applicant submits that it issued a Public Announcement in FORM-A *dated* 12.02.2023, calling upon the creditors of the Corporate Debtor to file their respective claims along-with proof thereof. Consequently, the Applicant issued the first FORM-G *dated* 18.04.2023 for Expression of Interest, and thereafter a fresh Form-G *dated* 14.07.2023 in the matter of Corporate Debtor.
5. The Applicant submits that on receipt of the said L&LA from suspended directors of the Corporate Debtor on 30.05.2023, the Applicant sent a letter *dated* 12.07.2023 to the Director of the Respondent whereby the status of CIRP was duly communicated to him, and the Respondent was thereby requested for payment of monthly rentals as per terms and conditions of L&LA *dated* 14.07.2022. The Respondent *vide* Letter *dated* 19.07.2023, informed the Applicant that they were able to start commercial operations only from 01.07.2023 due to permissions from the BMC, Civil works etc. The Respondent further relied upon a Letter *dated* 23.06.2023 addressed to the suspended director of Corporate Debtor repudiating its liability to pay up until 01.07.2023 and that, the expenses incurred by them would have to be adjusted against future rentals. The Applicant refutes the afore-stated contentions of the Respondent about

adjustment of expenses incurred for further approvals from the municipal corporation and contends that the Corporate Debtor cannot be held responsible for/ liable to adjust the further expenses incurred by the Respondent due to “*..erroneous due diligence conducted by the Respondent.*”

6. The Applicant further submits that after initiation of CIRP for the Corporate Debtor *w.e.f* 09.02.2023, the Committee of Creditors (“CoC”) in its sixth meeting *dated* 25.08.2023 directed the Applicant herein to issue a Demand Notice to the Respondent in terms of the Lease Agreement *dated* 14.07.2022 and to take required action to protect the interests of the Corporate Debtor. Acting on the same, the Applicant sent a Legal Notice *dated* 02.09.2023 to the Respondent, informing them that they had committed a default and thus, per Clause 12.1 of the Agreement, a cure period of 30 days was given to the Respondent to make good the default and pay the outstanding license fees of INR 87,25,000/- to the Corporate Debtor towards the outstanding for the period of 13.09.2022 to 31.08.2023 into its account within 30 days.

7. In light of the afore-stated, the Applicant submits that the Respondent has not made good the default within 30 (thirty) days cure period as afore-mentioned, and has thereby committed default in terms of the L&LA *dated* 14.07.2022 which stood terminated as on 03.10.2023 per Clause 12.1 thereunder; The Applicant therefore prays for peaceful vacant possession of the said premises and payment of the outstanding license fee aggregating to INR 1,14,84,348 (Rupees One Crore, fourteen lakhs, eighty-four thousand, three hundred and forty-eight only).

Hence, the present application.

Submissions of the Respondent

8. At the outset, the Respondent herein *viz.* Wakai Hospitality Private Limited has disputed the jurisdiction of this Tribunal forthwith in the present matter-at-hand.

Further, the Respondent submits that with regards to the objections raised by Municipal Corporation of Greater Mumbai *viz.* BMC *vide* its Notice *dated* 07.09.2022, it addressed a correspondence to the Corporate Debtor *dated* 11.10.2022 and in response to which the Corporate Debtor purportedly agreed to extend the afore-said fit-out period (*as duly mentioned in para (2) hereto*) to 01.07.2023 instead of 13.09.2022. The Respondent further submits that the afore-stated L&LA *dated* 14.07.2022 permitted adjustment of expenses from the license fees “*..such as BMC, liasoning, architect fees and other compliances incurred by the Respondent in relation to the licensed premises*” up to INR One Crore.

9. The Respondent submits that pursuant to the said communication to the Corporate Debtor, it was granted with Completion certificate/ Occupation Certificate on 28.03.2023, License from Health Department of BMC on 12.04.2023 and Excise License on 17.05.2023. Accordingly, the Respondent addressed a Letter *dated* 23.06.2023 to the Corporate Debtor whereby the status of the afore-mentioned licenses was duly communicated along-with the costs/ expenses incurred by the Respondent amounting to INR 1,00,14,486/-.
10. The Respondent submits that it received a Letter from the Applicant *dated* 12.07.2023 regarding the initiation of CIRP of the Corporate Debtor whereby the Applicant had sought rentals under the said L&LA from the Respondent. Pursuant to a meeting with the Applicant and in consonance with its E-mail *dated* 25.07.2023, the Respondent submits that its proposal to pay was rejected *via* Applicant’s E-mail *dated* 09.08.2023. The Respondent therefore, refutes the contentions and averments raised by the Applicant in its Legal Notice *dated* 02.09.2023, and prays for dismissal of the captioned application.

Findings

11. Heard the Learned Counsel(s) for the Financial Creditor and the Corporate Debtor.

12. Upon perusal of all records, we are of the considered view that:

12.1. In order to delve into the aspect of jurisdiction of this Tribunal in relation to adjudication of the captioned Company Application bearing I.A. 5065 of 2023 filed by the Applicant Resolution Professional, we place reliance on the position adopted by the Hon'ble NCLAT in *M/s. Jhanvi Rajpal Automotive Pvt. Ltd. v. R.P. of Rajpal Abhikaran Pvt. Ltd. & Ors.* [Company Appeal (AT)(Ins.) No. 1417 of 2022] whereby, with regards to Section 18(1)(f) of IBC, 2016, the following relevant observations were made:

“13. The above provision empowers the IRP to take control and custody of any asset over which the corporate debtor has ownership rights. When we look into the Section 18(1)(f)(ii), the duty is also to take control and custody of assets that may or may not be in possession of the corporate debtor. For carrying out the duties entrusted to the IRP under Section 18 of the Code and those entrusted on RP under Section 25, the IRP/RP can very well take recourse to Section 60. Section 60(5) of the Code is as follows:

[...]

14. For effectuating the duties entrusted on the IRP under Section 18 recourse to adjudicating Authority by filing an Application under Section 60(5) is fully permissible. In the present case, we are considering the case where there is no dispute that assets in question is owned by the Corporate Debtor hence by virtue of Section 18(1)(f), Resolution Professional can take steps for taking possession of the assets. [...]

20. Accepting the contention of the Learned Counsel for the Appellant that RP is obliged to file a suit for eviction of the Appellant under MP Accommodation Control Act, 1961 even though lease in favour of the Appellant has expired shall be unduly prolonging the insolvency process which is a time bound process. When the Corporate Debtor has the ownership rights over the premises

which premises can be taken in control by IRP/RP, we are of the view that for eviction of the Appellant especially in event when lease in favour of the Appellant has come to an end, filing a suit is not contemplated in the statutory scheme contained in IBC.”

(Emphasis supplied)

In light of the afore-stated, this Tribunal has jurisdiction to adjudicate upon the captioned application.

12.2. The Respondent, per its Reply *dated* 09.01.2024, contends that the purported adjustment of expenses is in consonance with L&LA *dated* 14.07.2022. We find that the same is devoid of any merits and place reliance hereto upon Clause (5) of the said L&LA pertaining to the ‘Fit-Out Period’. The said clause expressly warrants for extension of the Fit-Out Period only in the eventuality/ on account of pandemic. Further, the correspondences relied upon by the Respondent with a member of the suspended Board of Directors of the Corporate Debtor, are contrary to the terms and conditions set out in the afore-stated L&LA *dated* 14.07.2022 and the said correspondences would thus have no detrimental bearing upon the same.

12.3. We are therefore of the considered view that in light of the default committed by the Respondent herein in so far as clause(s) 10.1.4, 10.1.5, 10.1.6 of L&LA *dated* 14.07.2022 are concerned, and in light of clause(s) 7.2, 7.3, 12.1. subsequent thereto along-with the observations mentioned in Para (12.1) herein; The Applicant is duly entitled for peaceful vacant possession of the premises and arrears of rent *w.e.f.* 13.09.2022 to 24.10.2023 along-with 18% monthly interest thereon, as duly provided for by sub-clause (iv) of clause 6.2.1 of the afore-said L&LA.

Ordered accordingly.

ORDER

13. The captioned application bearing **I.A. No. 5065 of 2023** filed by Shri. Harish Kant Kaushik, Resolution Professional for the Corporate Debtor, is hereby **Allowed** as against Wakai Hospitality Private Limited.
14. This Bench hereby directs the Respondent herein to handover peaceful vacant possession of the commercial premises mentioned hereto, and arrears of rent *w.e.f.* 13.09.2022 to 24.10.2023 amounting to INR 1,01,00,000/- along-with 18% monthly interest thereon for the said period, amounting to INR 13,84,348/- thereby totaling to **INR 1,14,84,348/-** (Indian Rupees Once crore, fourteen lakhs, eighty-four thousand, three hundred and forty-eight only) within **15 days** of this Order.
15. With the afore-stated directions, this I.A. No. 5065 of 2023 stands **allowed** and disposed-of.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
29.02.2024
Aditya Kalia

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)
