IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT - VI

C.P. (IB) No. 597/ND/2024

Under section 9 of the Insolvency and Bankruptcy Code, 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

IN THE MATTER OF:

RADO REXINE CO. LIMITED

Registered Office:
D - 65, 1094, Main Road,
Budh Vihar, Badarpur,
Tajpur Hills,
Delhi - 110044

...**PETITIONER/
OPERATIONAL CREDITOR**

Versus

RAKSHA SUPREME CAMOUFLAGE PRIVATE LIMITED

Registered Office:
RZ - 666/2, Sadh Nagar - II,
Palam, New Delhi,
Delhi - 110045

**....RESPONDENT/
CORPORATE DEBTOR**

CORAM:

JUSTICE JYOTSNA SHARMA
HON'BLE MEMBER (JUDICIAL)

MS. ANU JAGMOHAN SINGH
HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Petitioner : Adv. Dhruv Gupta

For the Respondent : Adv. Ankit Sibbal

ORDER

ORDER DELIVERED ON: 12.11.2025

1. The operational creditor, **M/s Rado Rexine Co. Limited**, has filed this petition under **Section 9** of the IBC, 2016, seeking initiation of the Corporate Insolvency Resolution Process against the corporate debtor, **Raksha Supreme Camouflage Private Limited**. The petition claims an operational debt of Rs. 1,15,61,184/-, for lease agreement entered between the parties which was renewed multiple times.

2. Submissions of the Operational Creditor: -

    a. On 06.12.2012, the Applicant/Operational Creditor entered into a Deed of Rent Agreement with the Corporate Debtor, whereby the Operational Creditor agreed to let out a part of its property bearing Industrial Plot No. 132 situated at Sector 25, Ballabgarh, Faridabad - 121004, Haryana, along with certain plant and machinery and equipment.

    b. The aforesaid Deed of Rent Agreement was renewed vide another Deed of Rent Agreement dated 13.04.2018, under which the Corporate Debtor agreed to pay a sum of Rs. 3,00,000/- plus GST per month for a further period of five years, with an agreed annual enhancement of 5%. Thereafter, on 14.09.2020, on request of the Corporate Debtor, the parties executed a fresh Deed of Rent Agreement, reducing the monthly rent to Rs. 1,50,000/- plus GST on account of the business slowdown caused by the COVID-19 pandemic. Subsequently, another Deed of Rent Agreement dated 03.04.2024 was executed, revising the rent to Rs. 3,30,000/- plus GST per month.

    c. That, the Corporate Debtor had cleared all invoices issued by the Operational Creditor until 01.04.2018. Subsequently, the Applicant, vide email dated 15.07.2019, requested the Corporate Debtor to share the Statement of Account and Ledger Confirmation for the outstanding debt. In response, the Corporate Debtor sent an email dated 19.07.2019, sharing the Ledger Account Balance Confirmation for the period 01.04.2018 to 31.03.2019.

    d. That, the Corporate Debtor repeatedly acknowledged the outstanding debt by issuing duly signed and stamped Balance Confirmation of Accounts for the financial years 2018-2019, 2019-2020, 2020-2021, 2021-2022, and 2022-2023. Further, vide email dated 16.07.2024, the Corporate Debtor shared the Balance Confirmation Ledger for the period 01.04.2023 to 15.07.2024, confirming a total outstanding amount of Rs.1,06,66,016/- as of June 2024.

e. The Applicant sent several reminders requesting payment, in response to which the Corporate Debtor provided assurances of payment vide correspondences dated 03.05.2023, 24.05.2023, 27.08.2023, and 28.08.2023. The Applicant also received a Letter dated 18.07.2024 from the Corporate Debtor, acknowledging the total outstanding and requesting a further period of 6 months to clear the same.

f. The applicant submits that, it issued invoices from 14.04.2018 till August 2024 for the lease rentals accruing monthly, totaling an amount of Rs. 2,06,41,064/-. The Corporate Debtor made certain on-account payments amounting to Rs. 90,79,880/- (inclusive of two Credit Notes dated 31.01.2020 and 01.12.2022, and certain TDS deductions). After the adjustment of the said payments, a principal balance of Rs. 1,15,61,184/- remains outstanding.

g. The Operational Creditor sent a Demand Notice dated 08.08.2024 under Section 8 of the Insolvency and Bankruptcy Code, 2016 demanding payment of Rs. 1,15,61,184/- (calculated till 01.08.2024). The said Demand Notice was duly delivered to the Corporate Debtor via Speed Post on 14.08.2024 and via email on 09.08.2024. The Corporate Debtor failed to reply to the Demand Notice and failed to clear the admitted Operational Debt within the statutory period of 10 days.

3. Submissions of the Corporate Debtor:

a. That, the present petition is inadmissible as the claim of the Operational Creditor arises solely from the lease deeds dated 13.04.2018, 14.09.2020, and 03.04.2024, which, in terms of **Section 107** of the Transfer of Property Act, 1882, were mandatorily required to be executed through a registered instrument. The Respondent submits that, in view of **Section 17(1)(d)** of the Registration Act, 1908, such lease deeds compulsorily require registration, and their non-registration prohibits their admission in evidence, as prescribed under **Section 49** of the said Registration Act, 1908.

b. The Respondent has placed reliance on ***K.B. Shah & Sons Pvt. Ltd. vs. Development Consultant Ltd.***

(MANU/SC/7679/2008) wherein the Hon'ble Supreme Court held that if a document is inadmissible for non-registration, all its terms are inadmissible and cannot be admitted in evidence, and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose. Reliance has also been placed on NCLT, Ahmedabad's decision in ***Ms K.K. Homes vs. Ms Eylex Films Pvt. Ltd., CP (IB) No. 103 of 2024,*** wherein an Application under **Section 9** of the Code was rejected on the ground of the same being based on an unregistered lease deed.

c. The Respondent contends that the Applicant has made a false and exaggerated claim with the intention of meeting the threshold of Rs. 1 crore under the IBC, 2016, which amounts to forum shopping and suppression of true facts. The receipt of the statutory demand notice is also denied by the Respondent, which is a pre-requisite for proceedings under Section 9 of the Code.

d. The Respondent further contends that a pre-existing dispute exists, asserting that after the first Covid-19 lockdown in 2020, it repeatedly informed the Applicant about the deteriorated condition of the leased premises, which had become entirely unfit for use due to severe waterlogging. Despite repeated assurances, the Applicant failed to undertake any repairs or maintenance, rendering the property unusable.

e. The Statement of Account and Ledger were shared by the Respondent Company only for accounting purposes as asked by the Applicant over several calls. However, the accounts department of the Applicant Company sent manipulative emails to give a different context to the emails shared and the Respondent Company, without going into the technicality of the email language, shared the said Statements and Ledgers for accounting purposes only.

4. Submissions made by the Operational Creditor in its Rejoinder:

a. That, the non-registration of the subject lease deeds does not render them inadmissible. Citing ***Tata Seera Pani vs. Relangi Nagashwara Rao (Civil Appeal No. 1316 of 2001)***, the Petitioner argues although unregistered lease deed is inadmissible in evidence under Section 49 of the Registration Act for substantive claims, but it remains admissible for collateral purposes, including proving the nature and character of possession and the relationship of landlord and tenant.

b. It is submitted by the Petitioner, that the Corporate Debtor has not disputed the execution of the lease agreements, nor has it denied the possession or use of the leased property (Industrial Plot No. 132, Sector 25, Ballabgarh, Faridabad), or the fact that it made regular payments until 17.03.2018. The Petitioner further highlights that the Corporate Debtor availed Input Tax Credit (ITC) on the GST deposited by the Operational Creditor against the monthly invoices. It is submitted that having availed ITC, the Corporate Debtor cannot now deny having entered into the Lease Rent Agreement on a monthly basis.

c. That, the lease deeds do not create any right, title, or interest in the immovable property in favour of the Corporate Debtor and hence do not require registration under **Section 17(1)(b) of the Registration Act, 1908**. Reliance is placed on the Hon'ble NCLAT judgment in ***Smartworks Coworking Spaces Private Limited vs. Turbot HQ India Private Limited (Company Appeal (AT)(INS) No. 772 of 2022)***.

d. Relying on **Section 107** of the Transfer of Property Act and the Supreme Court judgment in ***Burmah Shell Oil Distribution vs. Khaja Midhat Noor***, the petitioner contends that in the absence of a registered instrument, the lease shall be treated as a month-to-month tenancy.

e. That, the Demand Notice dated 08.08.2024 was duly served upon the Corporate Debtor through multiple modes, evidenced by Speed Post receipts dated 09.08.2024, Tracking Reports dated 14.08.2024 and 12.08.2024, and an email dated 09.08.2024.

f. The existence of any pre-existing dispute is denied by the Petitioner, stating that the Corporate Debtor never raised any concern regarding the premises prior to the Demand Notice dated 08.08.2024. The Corporate Debtor’s continued possession without seeking return or repairs further negates its claim of the property being unusable.

ANALYSIS & FINDINGS

5. We have heard the Learned Counsel(s) and perused the records.

6. This is a case where the Operational Creditor has filed the current petition to initiate CIRP against the Corporate Debtor for default in payment of dues arising out of an unregistered Lease Agreement. The Petitioner has claimed Rs. 1,15,61,184/- rent, as outstanding as per terms of the Lease Agreements executed between the parties.

7. Before proceeding to deal with the submissions made by both the sides we prefer to reiterate the case and the defense put up by the Petitioner and the Respondent respectively in brief. The case of the Petitioner is that the Petitioner entered into a lease agreement which was renewed from time to time and that the Respondent failed to pay the rent for the lease rentals adding up to more than the threshold limit. The Petitioner has relied upon several written agreements, the first amongst those is dated 06.12.2012, subsequently renewed from time to time and the latest one having been executed on 03.04.2024. The defense which has been taken by the Respondent is that the lease agreement set out an agreement from year to year and since they were unregistered therefore cannot be read in evidence, hence the application under **Section 9** itself is not maintainable. The plea of the Respondent is that the legal provisions prohibit the admission of such a document in evidence rendering the present application not maintainable. In support of this plea the Respondent has relied upon the judgment of the Hon'ble Supreme Court passed in ***K.B. Saha & Sons Pvt. Ltd. vs. Development Consultant Ltd. (MANU/SC/7679/2008).***

8. The Hon'ble Supreme Court in ***Anthony Vs KC ITTOOP and Sons and others (2006 SCC 394),*** while deciding a Civil Appeal filed under the provision of Rent control and Eviction Act, which mandates that the leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent can only be entered into by a registered document. Referring to **Section 17(1)** of the Registration Act, 1908 which requires such a lease to be mandatorily registrable and further referring to **Section 49** of the Registration Act, which deals with the legal effect of non-registration of such documents, the Hon'ble Supreme Court held in para 11, 12 and 13 as below:

"11. The resultant position is insurmountable that so far as the instrument of lease is concerned there is no scope for holding that the appellant is a lessee by virtue of the said instrument. The Court is disabled from using the instrument as evidence and hence it goes out of consideration in this case, hook, line and sinker (vide Shantabai v. State of Bombay, Salish Chand Makhan v. Govardhan Das Byas and Bajaj Auto Ltd. v. Behari Lal Kohli).

12. But the above finding does not exhaust the scope of the issue whether the appellant is a lessee of the building. A lease of immovable property is defined in Section 105 of the TP Act. A transfer of a right to enjoy a property in consideration of a price paid or promised to be rendered periodically or on specified occasions is the basic fabric for a valid lease. The provision says that such a transfer can be made expressly or by implication. Once there is such a transfer of right to enjoy the property a lease stands created. What is mentioned in the three paragraphs of the first part of Section 107 of the TP Act are only the different modes of how leases are created. The first para has been extracted above and it deals with the mode of creating the particular kinds of leases mentioned therein. The third para can be read along with the above as it contains a condition to be complied with if the parties choose to create a lease as per a registered instrument mentioned therein. All other leases, if created, necessarily fall within the ambit of the second para. Thus, dehors the instrument parties can create a lease as envisaged in the second para of Section 107 which reads thus:

> *"All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession."*

13. When lease is a transfer of a right to enjoy the property and such transfer can be made expressly or by implication, the mere fact that an unregistered instrument came into existence would not stand in the way of the court to determine whether there was in fact a lease otherwise than through such deed."

The Hon'ble Supreme Court in para 16 of the same judgment observed that non-registration of the document has only two consequences: one that no lease exceeding one year was created and second that instrument became useless so far as creation of the lease is concerned. **Further it was observed that nonetheless the presumption that a lease (not exceeding one year) could be created by conduct of parties remains unrebutted.**

9. The Hon'ble Supreme Court in ***M/s. Paul Rubber Industries Pvt. Ltd. Vs. Amit Chand Mitra & Anr*. *(2024 13 SCC 219)*** reiterated an established principle of law that in such circumstances as above the deed can be read for collateral purposes even if it is unregistered as per the proviso to **Section 49** of the Registration Act. The Hon'ble Supreme Court observed in para 19 as below:

> ***"19. The expression 'collateral purpose' has been employed in the proviso to Section 49 of the Registration Act to imply that content of such a document can be used for purpose other than for which it has been executed or entered into by the parties or for a purpose remote to the main transaction. This view was taken by this Court in an earlier decision, in K.B. Saha & Sons Pvt. Ltd. vs. Development Consultant Ltd. The position of law on this point has been summarised in para 34 (of the report) in this judgment: (SCC p. 577)***
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> > *"34*. From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that: I. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act. 2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act. 3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration. 4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards. 5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose."*

10. In the case in hand an application under **Section 9** of Insolvency and Bankruptcy Code, 2016 has been moved not with the purpose to prove execution of a rent agreement for a period exceeding one

year, or reserving a yearly rent. The Petitioner is only exercising his right to invoke the commencement of Insolvency proceedings for a debt arising out of the non-payment of rental dues. The necessary substratum on which the rights under **Section 9** of Insolvency and Bankruptcy Code, 2016 can be invoked is establishment of debt and the default in payment thereof. Definitely, in our view these are collateral purposes for which the rent agreement can be read in evidence. Besides the above legal position, we are of the opinion that for the sake of argument even if rent agreement is ignored as evidence of debt and default there are enough documentary evidence on record establishing the fact that the amounts as rent were due on the Respondent and that the Respondent has defaulted in their payments. The Corporate Debtor has itself signed a number of documents i.e. confirmation of accounts ranging from 2019 to 2024 and they have been given as **Annexure A14**, annexed to the petition. Furthermore, vide E-Mail dated 16.07.2024, the Corporate Debtor shared the Balance Confirmation Ledger, confirming an outstanding amount of Rs. 1,06,66,016/- as of June 2024. The Respondent has not rebutted those papers by any evidence. In fact, the Corporate Debtor has admitted that the statement of accounts and Ledgers were shared by the Respondent Company. The Respondent nowhere in his reply has ever said that there was no lease agreement and that no rents remained outstanding. The tone and tenor of the reply and the papers given by the Petitioner indisputably establish the necessary ingredients for invocation of **Section 9** of the Insolvency and Bankruptcy Code, 2016.

11. The other feeble defense of the Respondent is about the existence of a pre-existing dispute. However, the Respondent has failed to even indicate in certain terms what was the dispute if any. He has simply said that the Applicant failed to undertake any repairs on maintenance rendering the property unfit for occupancy. No papers or exchange of communication has been placed before us to substantiate the existence of any such dispute. In our view, only a shallow plea with no substance beneath as regard the existence of pre-existing dispute has been taken by the Respondent. The Operational Creditor issued a demand notice in Form 3 dated 08.08.2024, under **Section 8(1)** of the Insolvency and Bankruptcy Code, 2016, which was duly delivered to the Corporate Debtor as evident from the Tracking Receipt placed on record. Furthermore, the Corporate Debtor has not within a period of 10 days of the receipt of demand notice brought to the notice of the Operational

Creditor existence of any dispute whatsoever or has paid any amount is required under **Section 8(2)** sub-clause **(a)** and **(b)**. We are of the view that no such dispute existed between the two sides.

12. In the present case, there is debt which is more than the threshold limit of Rs. 1 crore, and there is a default in the repayment of the said debt and there is no pre-existing dispute with respect to this debt, furthermore, the present application has been filed within the period of limitation. The date of default is 14.04.2018; however, the limitation period stood extended through various confirmations of accounts and part payments made by the Corporate Debtor. Accordingly, the present application, filed on 04.09.2024, falls within three years from the last acknowledgement which was done on 18.07.2024 seeking more time for repayment. Further, all other conditions for admission of application under Section **9(5)(i)** of the Code against the Corporate Debtor, have also been found to be fulfilled and the Application is complete in all respect, thus, we find this application as being fit for admission under Section **9(5)(i)** of the Code for starting CIRP against the Corporate Debtor.

13. In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present Applicant fulfils the criteria laid down under Section 9 of the Code. It is accordingly, hereby ordered as follows:

    a. The Application bearing **IB-597/ND/2024,** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating Corporate Insolvency Resolution Process against the Respondent is hereby admitted.

    b. We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

        i. The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

ii. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

iii. Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

iv. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

c. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.

d. The Operational Creditor has not proposed any name for the Interim Resolution Professional ("IRP"). Therefore, we appoint **Mr. Navdeep Gupta** as Interim Resolution Professional ("IRP") having Email address: ngaoffice@gmail.com and Contact No.- 9810343503. His registration number is **IBBI/IPA-001/IP-P-01791/2019 - 2020/12814**. Therefore, the IRP shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.

e. In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 9 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

f. During the Corporate Insolvency Resolution Process period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.

g. The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

h. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the Corporate Insolvency Resolution Process in respect of the Corporate Debtor.

i. The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however is subject to adjustment by the Committee of Creditors, as accounted for by IRP, and shall be paid back to the Operational Creditor.

j. In terms of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this Application must be notified.

k. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.

l. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD/-	**-SD/-**
ANU JAGMOHAN SINGH	**JYOTSNA SHARMA**
HON'BLE MEMBER (TECHNICAL)	**HON'BLE MEMBER (JUDICIAL)**