



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT NO.-II)
KOLKATA

I.A (IB) No. 198/KB/2025

In

C.P (IB) No. 730/KB/2019

*An Application under Section 60(5) read with Section 60(2) of
the Insolvency and Bankruptcy, 2016 read with Rule 11 of the
National Company Law Tribunal Rules, 2016.*

IN THE MATTER OF:

RSI PRIVATE LIMITED

.....Corporate Debtor

AND

IN THE MATTER OF:

CALCUTTA PINJRAPOLE SOCIETY

.....Applicant

VERSUS

MR. PRATAP MUKHERJEE, Resolution Professional of RSI Private
Limited.

.....Respondent

Date of Pronouncement: 22.01.2026

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT NO.-II)
KOLKATA

I.A.(IB) No.198/KB/2025
C.P (IB) No.730/KB/2019



Coram:

Shri. Labh Singh, Member (Judicial)

Ms. Rekha Kantilal Shah, Member (Technical)

Appearances (via Hybrid Mode):

Mr. Jishnu Chowdhury, Sr. Adv.] For the Applicant

Ms. Shruti Singhania, Adv.]

Mr. Shaunak Mitra, Adv.]

Ms. Vedika Sureka, Adv.] For the RP

Mr. Pratap Mukherjee, RP]

O R D E R

Per: Rekha Kantilal Shah, Member (Technical)

1. This Interlocutory Application has been filed by Calcutta Pinjrapole Society under Section 60(5) read with Section 60(2) of the Insolvency and Bankruptcy Code, 2016 (“IBC”) and read with Rule 11 of the National Company Law Tribunal Rules, 2016 (“NCLT Rules”) *inter alia* seeking following reliefs:

a) To direct the Resolution Professional to set aside the property measuring in area 14 Bighas and 1 cottah more or less situated at 30, Goshala Road in Mauza Lillooah Thana Bally in the district of Howrah out of the resolution assets as the said property is completely

owned and controlled by the Applicant i.e. Calcutta Pinjrapole Society, a society registered under the Societies Registration Act, 1860 registered on 25th March, 1889;

- b) To direct the Resolution Professional to pay a sum amounting to Rs 68,72,94,678/- (Rupees Sixty-Eight Crores Seventy-Two Lakhs Ninety-Four Thousand and Six Hundred Seventy-Eight only) towards the arrears of rent and mesne profit liable to be paid by the Corporate Debtor;*
- c) Such further order or orders and/or direction or directions as this Hon'ble Tribunal may deem fit and proper in the given facts and circumstances.*

2. Background of the Case

2.1 The Original Company Petition under Section 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC") read with Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as the "IBC Rules") was filed by RSI Private Limited (hereinafter referred to as the "Corporate Debtor") vide C.P (IB) No.730/KB/2019 before the National Company Law Tribunal, Kolkata Bench (hereinafter referred to as "Tribunal") in which this Tribunal pass



an order dated 24.04.2024¹ for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as the “CIRP”) of the Corporate Debtor and appointed Mr. Pratap Mukherjee as the Interim Resolution Professional (hereinafter referred to as “IRP”). Subsequently on 24.05.2024 the IRP was appointed as Resolution Professional (hereinafter referred to as “RP”) by the Committee of Creditors (hereinafter referred to as “CoC”).

2.2 The instant application is filled by Calcutta Pinjrapole Society, registered under Society Legacy Registration No.00571 having its registered office at 34, Armenian Street, Kolkata-700001, West Bengal.

2.3 The Applicant came to know that CIRP has been initiated against the Corporate Debtor and vide letter dated 09.09.2024² submitted the claim to the RP. The RP vide letter dated 19.09.2024³ directed the Applicant to submit the claim in appropriate form as prescribed under the Code. The applicant vide letter dated 04.10.2024⁴ submitted the claim in Form-B. Thereafter vide letter dated 22.10.2024⁵ the RP rejected the claim of Rs 68,72,94,678/- (Rupees Sixty-Eight Crores

¹ Annexure- A

² Annexure- H

³ Annexure- I

⁴ Annexure- J

⁵ Annexure- K



Seventy-Two Lakhs Ninety-Four Thousand and Six Hundred Seventy-Eight only) on the ground that the claim is completely unilateral and without any reference to the facts and records.

- 2.4 The claim of the Applicant emanates from its status as the lessor of the immovable property admeasuring about 14 Bighas and 1 Cottah, more or less, situated at 30, Goshala Road, Mouza-Lillooah, P.S. Bally, District-Howrah. It is stated that with effect from 01.01.1958⁶, the Applicant had leased the said property to the Corporate Debtor for a period of 21 years at a monthly rental of Rs 675/-.

3. Submission of behalf of the Applicant

- 3.1 Ld. Counsel submits that as per lease deed with mutual terms and conditions of both the parties i.e. lessor and lessee on completion of 21 years, may extend the lease deed for another 5 (five) years by executing a new Lease Agreement for the said property. However, to the contrary the Corporate Debtor (Lessee) on completion of 21 years on 31.12.1978 was found guilty of wrongfully and illegally changing the character of the said property during and after expiry of the terms of the lease. It is further submitted

⁶ Annexure- C



that the Corporate Debtor did not vacate the possession of the said property even after the expiry of the term of lease on 31.12.1978.

3.2 Subsequently, the Applicant (lessor) filed a suit before the Hon'ble Civil Judge (Senior Division) 1st Court, Howrah vide Title Suit No.101 of 2004 for recovery of khas possession of the said property and claim compensation with effect from 01.01.1979 till the date the khas possession of the said property is delivered to the Applicant (lessor). It is matter of record that the Hon'ble Civil Judge (Senior Division) 1st Court, Howrah in Title Suit No.101 of 2004 was pleased to pass a decree vide dated 21.05.2005⁷ pronouncing a decree to the Applicant for ejectment and recovery of khas possession of the said property from the Corporate Debtor within 6 (six) months from the date of decree and directed the Corporate Debtor (lessee) to vacate the possession of the said property failing which the applicant shall be at the liberty to execute the order and claim compensation at a rate of Rs 700/- per month from January, 1979 till the date of getting the physical possession of the said property.

⁷ Annexure- D



3.3 Subsequently, the Corporate Debtor filed an appeal before the Hon'ble High Court at Calcutta against Applicant. Vide order dated 17.10.2012⁸ passed by the Hon'ble High Court at Calcutta dismissed the said appeal on the grounds that the Corporate Debtor could not satisfy the elementary test relating to an offer for creation of a new tenancy and the acceptance thereof by the Applicant.

3.4 It is further submitted that the Corporate Debtor immediately moved to Hon'ble Supreme Court challenging the judgment and order dated 17.10.2012 passed by the Hon'ble High Court at Calcutta by filing a petition for Special Leave to Appeal in Civil No.19628/2013. It is matter of record that the said appeal was dismissed by the Hon'ble Supreme Court vide order dated 12.08.2013⁹.

3.5 Ld. Counsel submits that till date the Corporate Debtor has not vacated the said property and wrongfully holding the physical possession of the said property. It is further submitted that till 24.04.2024 the Corporate Debtor is liable for a sum amounting to Rs.68,72,94,678/- towards the arrears of rent and other charges as per the Courts orders.

⁸ Annexure- E

⁹ Annexure- F



3.6 Ld. Counsel submits that the Applicant is the absolute owner of the said property and is in possession thereof. The Corporate Debtor has no right or interest in the said property and that during and after the expiry of term of lease have wrongfully and illegally making additions and alterations i.e. violating the provisions of clause (m), (o), (p) of Section 108 of the Transfer of Property Act, 1882.

3.7 In such circumstances, it is prayed before this Hon'ble Tribunal to direct the RP to forthwith keep the above mentioned property out of the resolution assets as the said property does not and cannot form part of the resolution process.

4. Submission on behalf of the Respondent/ RP

4.1 It is an undisputed fact that the Corporate Debtor was a lessee of lands admeasuring 14 Bigha 1 Katha, more or less, situated at Plot Nos. 3168, 3169, 3170 of Kh No.491, Plot Nos. 3165, 3166 & 3187 of Kh. No.858, Plot Nos. 3164 of Kh. Nos. 1095 and 1096, Plot No. 3171 of Kh. No. 3020 being located at Holding No.30 Gowshala Road (now Netaji Subhash Road), P.S. Liluah, P.S. Bally, Dist Howrah ("said Land") since the year 1958.



4.2 The Applicant herein had filed an eviction suit against the Corporate Debtor in 1982. In the eviction suit numbered as T.S No. 12 of 1982 and renumbered as T.S No.101 of 2004, decree was passed by the 1st Court of Ld. Civil Judge (Sr. Division), Howrah on 21.05.2005 ordering the Corporate Debtor to vacate the said land within 6 months and mesne profit in favour of the Applicant at the rate of Rs. 700/- per month from January, 1979 till getting the possession of the said land.

4.3 Ld. Counsel submits that the Corporate Debtor had challenged the decree dated 21.05.2005 in appeal (Title Appeal No.78 of 2005) before the Additional District Judge, 5th Court at Howrah which had passed a detailed judgment dated 30.06.2010¹⁰ allowing the appeal in part, upholding the decree regarding delivery of khas possession but setting aside the direction regarding mesne profit demanding the matter relating to mesne profit with a direction for the Learned Court below to determine the same in accordance with law after giving opportunity to both the parties for hearing.

¹⁰ Annexure- A of Reply Affidavit of RP



4.4 Ld. Counsel submits that the above order has been suppressed in the instant application by the applicant. From the said order it will appear that the issue of mesne profit remains to be adjudicated by the Civil Court and without such adjudication the Applicant is not entitled to make any claim on such score. Strictly without prejudice, it is humbly submitted that adjudication of mesne profit can only be done upon leading of appropriate evidence and hearing as per provision of Code of Civil Procedure, 1908 and the RP does not have adjudicatory powers in this regard particularly regarding determining of mesne profit.

4.5 Ld. Counsel submits that 2nd appeal preferred by the Corporate Debtor from the judgment and order dated June 30.06.2010 came to be dismissed by the Hon'ble High Court at Calcutta by a judgment and order dated 17.10.2012 and Special Leave Petition therefrom was also not entertained by the Hon'ble Supreme Court by the order dated 12.08.2013.

4.6 Ld. Counsel submits that in execution proceedings filed by the Applicant arising out of the decree dated 21.05.2005, the Applicant itself has claimed mesne profit at the rate of Rs 700/- per month for the



entire land. In other words, even as per the Applicant's case its claims for mesne profit at the highest can only be Rs 700/- per month for the entire land. A copy of execution petition¹¹ along with tabular statement is attached in the RP's reply affidavit.

4.7 In the present application, the Applicant has purported to give a calculation of alleged dues at Pages 81-83 aggregating to Rs. 68,72,94,678/- as alleged "arrear rent" from 01.01.1979 till 31.08.2024. At the very outset, it is submitted that the purported calculation is ex-facie contrary to the orders passed regarding determination of alleged occupation charges/mesne profit. The purported calculation at Pages 81-83 also destroys the Applicant's reliance on the eviction proceeding and the execution case filed therefrom since in the calculation chart, the Applicant admits that its claim is on the basis of "new lease" operative for three different periods i.e. from 01.01.1979 till 31.12.1999, thereafter from 01.01.2000 till 31.12.2020 and finally from 01.01.2021 till 31.08.2024. Strictly without prejudice to the fact that the alleged claim is completely de-hors the records and is an imaginary and absurdly inflated

¹¹ Annexure- B of Reply Affidavit of RP



figure without any basis, it is humbly submitted that the Applicant, by making the claim on the basis of a “new lease”, has waived any right that may have accrued in its favour in the eviction proceeding. In other words, the Applicant has voluntarily relinquished its purported reliance on the eviction proceeding and orders passed thereon and the Applicant itself is proceeding on the basis of “new lease”. The lease, therefore, as per the Applicant's case is continuing even as on the CIRP commencement date and thus, the Applicant is estopped in the present proceeding from basing any claim on the said land based on the eviction proceedings.

4.8 Ld. Counsel submits that despite the orders passed in favour of the Applicant regarding the said land in the eviction proceedings, the Applicant has knowingly chosen to voluntarily relinquish any right in its favour by treating the lease as subsisting on the date of CIRP commencement. Thus, as per the Applicant, there is a new lease valid upto 2042 and the Applicant is estopped from claiming any benefit or right under the earlier eviction orders. The Applicant cannot be permitted to resile from its own unequivocal stand that there was a new lease valid till 2042.



4.9 Ld. Counsel further submits that the Applicant wrongly alleges in the application that it is the sole owner of the said land and that it is also allegedly in possession thereof. As regards possession, it is an undisputed matter of record that the Corporate Debtor has been in exclusive khas possession of the said land since 1958 and this is also admitted by the Applicant in proceedings concerning the said land. In fact, the Applicant's execution petition proceeds on the basis that the Corporate Debtor is in possession.

4.10 Ld. Counsel submits that as regard the Applicant's purported title as owner of the land, such claim is not supported by the records. There was a decision taken by the appropriate authority of the Government of West Bengal in the year 1994 for vesting of the said land in the State Government. From the records that have been made available to RP, there have been numerous litigations that had been instituted in regard to the decision taken for vesting of the said land. However, what can be gathered from the records as on date is that the order of vesting was confirmed by the appropriate authority sometime in the year 1997. It also transpires that the Applicant has taken steps to challenge such confirmation of vesting in



legal proceedings. The Applicant had filed a writ petition being W.P. 7588 in 2001 which has recently been transferred by the Hon'ble High Court at Calcutta by order dated 19.11.2022 to the West Bengal Land Reforms and Tenancy Tribunal. The said proceeding as on date is pending before the West Bengal Land Reforms and Tenancy Tribunal, being numbered as T.A. 1 of 2022 (LRTT).

4.11 Notably, while the aforesaid issue has remained pending before the LRTT for a final decision on the challenge of the Applicant herein to the vesting of the said land, on the Applicant's own application before the LRTT, there has been an order passed on 12.05.2023¹² by LRTT directing "a rule of injunction be issued at once asking the parties to maintain complete status quo as its (sic) stands today in respect of the property as involved in this proceeding till next date." In other words, the status quo as on the date of the order i.e. Corporate Debtor being in possession of the land, is ordered to be maintained. The Corporate Debtor had also filed an application being numbered M.A. No.55 of 2024, to intervene in the said

¹² Annexure- C of Reply Affidavit of RP



proceeding before the LRTT, and such application is also presently pending adjudication.

4.12 Ld. Counsel submits that the Applicant is inviting this Hon'ble Tribunal to adjudicate and determine issues that are squarely sub-judice before other judicial fora and thus, the present application is without jurisdiction. Needless to mention, the Information Memorandum ("IM") and Request for Resolution Plan ("RFRP") in the present CIRP reflect accurately the present status of the litigation and the details of litigations are also mention. The prospective resolution applicant have been duly notified and the process is being conducted strictly in accordance with law.

5. Rejoinder on behalf of the Applicant

5.1 Ld. Counsel submits that the claim of the Applicant is a sum of Rs. 68,72,94,678/- along with further interest, as stated in the said Application. The said claim arises on the basis of the last paid rate of rent of Rs.675/- per month (with timely enhancement as per the lease deed) along with necessary interest. Even without a decree for mesne profit and/or without determination, the petitioner is entitled to claim rent at the last paid rate. This is a crystalized

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claim and the Applicant is entitled to the same. In any event, this is the minimum that the Applicant will get upon determination of mesne profit. Therefore, the petitioner's claim cannot be doubted. That Rs.675/- was the last paid rent is the admitted position as would appear from the lease deed dated 9th January, 1958.

5.2 Ld. Counsel submits that the Corporate Debtor instead of complying the order dated 21.05.2005 of the Civil Court, filed an appeal via Title Appeal No.78 of 2005 and vide order dated 30.06.2010 the Court allow the appeal in part and the determination of mesne profit was set aside but the decree for eviction was upheld. Henceforth, the appeal upheld the delivery of Khas possession to the Applicant and till date the same has not been complied by the Corporate Debtor and the same has been suppressed in their reply.

5.3 Ld. Counsel submits that the Respondent has admitted that Rs 700/- is payable per month. It is on this admission that the Applicant is entitled to proceed. It is stated that the escalation clauses contained in the agreement may also be taken into consideration as evident from the particulars of claim disclosed along with the application. In the event, the Applicant



would have taken steps to have further computation of mesne profit before the Learned Civil Court, the Applicant would only have received sums over and above the aforesaid. Thus, it is on the basis of the minimum, to which, the petitioner is entitled to, that the claim has been made.

5.4 Ld. Counsel deny and dispute that the calculation is contrary to orders passed or that the same would destroy reliance on eviction proceedings as alleged or at all. It is submitted that there has been no new lease admitted by the Applicant. While computing its claim, the Applicant has merely used the document of lease. There is no admission and the Applicant proceeds on the basis that the Corporate Debtor is trespasser. It is deny that there has been any wavier of eviction proceedings or that there has been any relinquishment of stand taken in eviction proceedings. It is further deny that there was any lease continuing as on CIRP commencement date or that the Applicant is estopped from basing any claim on the eviction proceedings. It is deny that there is any new lease upto 2024.

5.5 Ld. Counsel submits that the Corporate Debtor incorrectly attempted to contend that it was entitled



to remain as a raiyat on the property and on that basis filed proceedings before the West Bengal Land Reforms and Tenancy Tribunal in case no. O.A. 1081 of 2014. The Hon'ble Tribunal in its order 02.05.2014 rejected the order of decree. It is submitted that the Hon'ble High Court of Calcutta in W.P.L.R.T No.160 of 2014 was please to pass order on 14.09.2023¹³ by setting aside the impugned order of the West Bengal Land Reforms and Tenancy Tribunal in AO 1081 of 2014 and directing the executing court to comply with the Order dated 12.08.2013 passed by the Hon'ble Supreme Court of India in SLP No.19628 of 2013 as expeditiously and preferably within 6 months from the date of communication of this independent order, directing to return of possession.

5.6 Ld. Counsel submits that the property in question is not being used by the Corporate Debtor and is lying fallow. It is not necessary for the Corporate Debtor to hold the same as a going concern. Therefore, not only should the said property not be included in the information memorandum, but the Corporate Debtor should also be directed to forthwith return possession of the property to the Applicant. Neither is the

¹³ Annexure- D of Applicant's Rejoinder



property required for the Corporate Debtor to be maintained as a going concern and nor can such contention be raised.

5.7 Ld. Counsel deny that there is any imaginary or inflated figure given in pages 81-83 of the instant application or that the claim is not capable of admission.

5.8 Ld. Counsel deny that the Applicant is not owner of the land. The Corporate Debtor is wrongfully in possession of the said property.

5.9 Ld. Counsel deny that there is any suppression of facts and further deny that the said property has been vested on the Government of West Bengal.

5.10 Ld. Counsel states that there is no vesting in the eye of law and in any event, by reason of estoppel, the Corporate Debtor as tenant of the Applicant is not entitled to question right of title of the Applicant in the said property.

5.11 Ld. Counsel states that information memorandum contains incorrect facts and the said property should not have included in the resolution assets.

5.12 Ld. Counsel further submits that from the admission of the Corporate Debtor into CIRP, the sums payable by the Corporate Debtor to the Applicant should be



treated as CIRP cost. A computation¹⁴ of the same is set out in a schedule attached in the rejoinder.

6. Analysis and Findings

6.1 We have gone through the case file carefully and perused the pleadings of the parties and documents placed on record by the parties and heard the arguments put forth by learned Counsels for the parties; and after hearing the learned counsels for the parties, we shall now proceed to consider the present application on its merits, specifically within the ambit of points involved in the instant application.

6.2 At the outset, it is required to be examined whether such reliefs fall within the limited jurisdiction of this Adjudicating Authority under the IBC, 2016 and whether the Applicant has established a crystallised legally enforceable claim.

6.3 It is not in dispute that the relationship between the Applicant and the Corporate Debtor originated from a lease executed in the year 1958, which admittedly expired in the year 1978. It is also not in dispute that eviction proceedings were initiated and ultimately a decree for delivery of khas possession

¹⁴ Annexure- E of Applicant's Rejoinder



was upheld upto the stage of the Hon'ble Supreme Court. However, equally undisputed is the fact that, in appeal, the decree relating to mesne profit was set aside and remanded for fresh adjudication by the Civil Court. Consequently, as on date, there is no final adjudication or determination of mesne profit by any competent civil forum. Further, the ownership of the said property is in dispute and adjudication is still pending before the competent forum according to the facts and circumstances presented before us.

6.4 This Adjudicating Authority observes that the prayer for the exclusion of the land from the resolution assets, it is borne out from the records that the physical possession of the land has continued with the Corporate Debtor since 1958 and also as on the CIRP commencement date as submitted by the RP. The execution proceedings themselves proceed on the admitted premise that possession has not yet been recovered by the applicant. The issue of vesting of the said land in the State of West Bengal is admittedly pending before the West Bengal Land Reforms and Tenancy Tribunal, where a status quo order is operating. The Hon'ble Supreme Court in **Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka**



MANU/SC/1661/2019, has unequivocally held that the jurisdiction of the NCLT does not extend to adjudicate title, ownership, state vesting or matters arising under special statutes, and that such issues must be determined by the competent statutory fora. The Supreme Court in above mention case has categorically held that the NCLT is creature of statute and cannot assume wide civil court powers outside the IBC. Relevant para of the order is extracted below:

“29. NCLT is not even a Civil Court, which has jurisdiction by virtue of Section 9 of the Code of Civil Procedure to try all suits of a civil nature excepting suits, of which their cognizance is expressly or impliedly barred. Therefore, NCLT can exercise only such power within the contours of jurisdiction as prescribed by the statute, the law in respect of which it is called upon to administer.”

In view of this binding principle, this Adjudicating Authority cannot venture into the question of ownership or vesting of the subject land while exercising jurisdiction under the IBC.

6.5 We note that the jurisdiction under Section 60(5) is not plenary and cannot be expanded to matters dehors



CIRP. We further place reliance on Gujarat Urja Vikas Nigam Vs Amit Gupta (Civil Appeal 9241/2019) and TATA Consultancy Services Ltd. Vs Vishal Ghisulal Jain (Civil Appeal 3045/2020) to held that contractual and civil disputes predating CIRP fall outside the scope of this Adjudicating Authority as the present dispute, being a pre-CIRP title and possession dispute, is beyond the Tribunal's jurisdiction.

6.6 It is observed that, during hearing, the Applicant asserted ownership over the said property. However, despite such assertion, the Applicant failed to place on record any cogent documentary evidence, such as a registered sale deed, deed of conveyance, or any other title document, to substantiate its claim of ownership. In the absence of such foundational documents establishing title, this Adjudicating Authority is unable to accept the Applicant's claim of ownership merely on the basis of oral submissions or bare assertions. Such omission assumes significance, particularly in view of the disputed nature of the property and the pending litigations, and constrains this Adjudicating Authority to treat the claim with due caution.



6.7 We further observe that no asset of a Corporate Debtor can be craved out from the CIRP or the resolution plan once it forms part of the corporate debtor's estate. Hon'ble Supreme Court in Jaypee Kensington Boulevard Apartments Welfare Association Vs. NBCC (India) Ltd., (2021) ibclaw.in 63 SC, has held that once the CoC has approved a resolution plan and such plan contemplates treatment of assets of the corporate debtor as a whole, individual stakeholders cannot seek exclusion of any particular asset by raising disputes at a belated stage. Accepting such a position would result in uncertainty and derailment of the resolution process.

6.8 Regarding claim of mesne profit arising out of arrears of rent, first let us examine various provision about Mesne Profit under Code of Civil Procedure ("CPC"). Section 2(12) of Code of Civil Procedure, 1908 defines mesne profits which reads as under:-

"Mesne Profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include



profits due to improvements made by the person in wrongful possession.”

6.9 Mesne profits involve complex assessments (rental value, damages, etc.) on a case-by-case basis, often requiring a full inquiry under the CPC, particularly Order XX Rule 12 which is best suited for civil courts. Order XX Rules 12 talks about Decree for possession and mesne profits which reads as under:-

“(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree—

(a) for the possession of the property;

[(b) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent.

(ba) for the mesne profits or directing an inquiry as to such mesne profits;]

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until—

(i) the delivery of possession to the decree-holder,



(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or

(iii) the expiration of three years from the date of the decree, whichever, event first occurs.

(2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.

Plain reading of the above order reveals that no mesne profits could be paid without any final adjudication under the provisions of Order XX Rule 12 of the Code of Civil Procedure, 1908. The mesne profit is akin to damages and without proving the same in a Civil Court, no person is entitled to the same.

6.10 The Contention of the Applicant that he is entitled to mesne profit, even without adjudication, cannot be accepted. Under settled principles of civil law, a claim for mesne profit necessarily requires judicial determination upon evidence, particularly after the appellate court has expressly set aside the earlier direction and remanded the issue. The RP, being a facilitator of the CIRP process, has no adjudicatory jurisdiction to quantify or determine mesne profits.



Any admission of such a disputed and unadjudicated claim would amount to usurping the jurisdiction of the Civil Court. We observe that the RP, while examining claims under the IBC, performs only a verification and collating function and does not possess adjudicatory powers to determine mesne profit

6.11 The calculation of Rs 68.72 crores placed by the Applicant in page no 81 to 83 of the application is based on self-assumed escalation and estimation, further, the alleged “new lease periods”, which is ex-facie inconsistent with the Applicant’s own stand in the eviction proceedings where the Corporate Debtor has been treated as a trespasser. Such contradictory pleas substantially weaken the credibility and legal sustainability of the claim. A unilateral computation, unsupported by any decree or final adjudication, cannot be treated as a “claim” capable of admission under the IBC.

6.12 In the matter of *Vijayalakshmi Enterprises v. Malabar Hotels Pvt. Ltd.* (2020) ibclaw.in 362 NCLAT) the Hon’ble NCLAT held as follows:

*“3. ***** Adjudication has to be, in respect of the claim, by a Civil Court and other adjudicatory mechanism like Arbitral Proceedings.*

Proceedings under Insolvency and Bankruptcy Code, 2016 are only meant to resolve the insolvency issues and not adjudge a claim.”

Proceedings under IBC, 2016 are only meant to resolve the insolvency issues and does not adjudge a claim arises out of unadjudicated mesne profit.

6.13 Thirdly, the applicant has claimed unpaid rent arrears arising out of the lease agreement dated 09.01.1958. To determining the admissibility and treatment of such claims under the IBC, 2016, it is necessary to draw a clear distinction between arrears accruing prior to the CIRP commencement date and those accruing post CIRP commencement date.

6.14 Regarding arrears of rent post CIRP commencement date, what does emerge from the record is the contractual rent under the original lease deed of 1958 of Rs. 675 per month, which formed the last agreed and paid rate during the subsistence of the lease period. To the extent that rent was contractually payable up to 31.12.1978, and to the extent such arrears stand established on the basis of contractual terms- that portion constitutes a crystallised liability within the meaning of the IBC.



6.15 The Code mandates that costs incurred during CIRP shall be treated as Insolvency Resolution Process Costs (CIRP Costs) and shall be paid in priority. Where the Corporate Debtor continues to occupy leased premises during CIRP, rent payable for such period is not a past liability but a current operational necessity, without which the Corporate Debtor cannot lawfully retain possession or continue its operations.

6.16 Therefore, rent accruing after the insolvency commencement date, so long as the Corporate Debtor continues in possession of the premises, constitutes a cost incurred for preserving the Corporate Debtor as a going concern and squarely falls within the ambit of CIRP costs, payable in priority, as required under the Code.

6.17 Regarding arrears of rent for pre CIRP commencement date, we observe that Rent which fell due and payable prior to the insolvency commencement date constitutes a claim within the meaning of Section 3(6) of the IBC, 2016 and is required to be dealt with in accordance with the distribution mechanism under the Code.

6.18 Such pre-CIRP rent arrears, however, are admissible only to the extent and strictly in terms of the original lease agreement of 1958 and at the last



admitted contractual rate. Any claim for escalated rent, mesne profit, interest or damages, being unadjudicated, cannot be admitted in CIRP.

6.19 Accordingly, the Applicant's claim towards pre-CIRP rent arrears shall be limited strictly to contractual rent payable under the lease agreement and shall rank as an operational debt under the Code.

6.20 Lastly, the reliefs sought by the Applicant would necessary requires this Adjudicating Authority to adjudicate (i) title and vesting of land (ii) legality of possession (iii) quantification of unadjudicated mesne profit. All these are pure civil disputes and already pending before the competent judicial and statutory forum.

6.21 It is also noted that the RP has duly disclosed the pendency of litigation in respect of the said property. The successful resolution applicants have, therefore, been made aware of the existing disputes, and the CIRP is being conducted with full disclosure of material facts.

7. In view of the foregoing discussion and settled legal position, this Adjudicating Authority holds that:

I. The monetary claim of the Applicant regarding mesne profit is not a crystallised or legally determined



debt and is, therefore, not capable of admission in the CIRP.

- II. The prayer for exclusion of the land from the resolution assets involves serious and complex disputed questions of title, possession and vesting, which are beyond the jurisdiction of this Adjudicating Authority under IBC.
- III. We direct the RP of the Corporate Debtor to pay the arrears of rent as per the terms of the original lease deed of 1958, to the Applicant from the CIRP commencement date till the approval of the Resolution Plan as CIRP cost.
- IV. We direct the RP to admit Pre-CIRP arrears of rent after verification, as an operational debt only to the extent of contractual rent payable under the original lease deed of 1958 from 01.01.1979 till commencement of CIRP date. The same shall be dealt in resolution plan in accordance with the provisions of the Code.
8. The Applicant is at liberty to pursue its remedies for recovery of possession and for determination of mesne profit before the competent Civil Court and the appropriate Statutory Forum in accordance with law. However, no interference is warranted in the conduct of the CIRP at this stage.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT NO.-II)
KOLKATA

I.A.(IB) No.198/KB/2025
C.P (IB) No.730/KB/2019



9. For the reasons discussed above, the present application I.A (IB) No. 198/KB/2025 is partly allowed and disposed of.
10. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
11. Let the certified copy of the order may be issued, if applied for, upon compliance of all requisite formalities.

(Rekha Kantilal Shah)
Member (Technical)

(Labh Singh)
Member (Judicial)

Order signed on the 22th day of January 2026

S.T. LRA