

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT II, MUMBAI BENCH**

**INTERLOCUTORY APPLICATION NO.
1160 OF 2021**

IN

CP(IB) NO. 1980/MB/2018

*Application u/s 35(1)(b) of the Insolvency and
Bankruptcy Code, 2016*

In the matter of:

Mr. Santanu T. Ray ...Liquidator/Applicant

Versus

Mr. Pavan Vikram Sahjwani ...Respondent

In the matter between

Shanaya Fashions ...Operational Creditor

v/s

Oneworld Industries Private Limited

...Corporate Debtor

Order pronounced on 04.01.2024.

Coram:

Shri. Kuldip Kumar Kareer : **Member Judicial.**

Shri. Anil Raj Chellan : **Member Technical.**

Appearances (Hearing in physical mode)

For the Applicant: Counsel Mr. Rohit Gupta a/w Prashansa Agarwal and
Mohammad Varawala i/b Fortis India Law.

For the Respondent: Adv. Jayom Shah.

ORDER

Per: Shri. Kuldip Kumar Kareer, Judicial Member.

1. This is an application filed by the Applicant under Section 35(1)(b) of the Insolvency and Bankruptcy Code, 2016 ('Code') praying for the directions to the Respondent to vacate and handover peaceful possession of asset forming part of liquidation estate of the Corporate Debtor.

2. **Facts of the case** are briefly stated hereunder:

- i. The Hon'ble Tribunal ordered Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor on a petition filed by the Operational Creditor u/s 9 of the Code vide Order dated 16th November, 2018 in the above-captioned company petition.
- ii. Since the insolvency resolution process of the Corporate Debtor failed, the Committee of Creditors ('CoC') passed a resolution for liquidation of the Corporate Debtor and the Applicant herein was appointed as a Liquidator of the Corporate Debtor. Accordingly, an application for liquidation of the Corporate Debtor was filed which was numbered as Miscellaneous Application No. 2753/2019 and the same was allowed and an order for liquidation of the Corporate Debtor was passed by this Tribunal vide Order dated 15th November, 2019.

- iii. The Respondent entered into a registered Leave and License Agreement dated 02nd May, 2018 with the Corporate Debtor through Mr. Khushalani Manoj Uttam w.r.t the premises admeasuring 2785 sq.ft. situated at Survey No. 6/1629, AB01/B, AB01/C, AB01/D and AB01/E, Basement, Neelam Centre, 'A-Wing', Block Sector: Worli, Hind Cycle Road, City: Varali, District: Mumbai, Maharashtra-400025 (hereinafter referred to as "the licensed premises" for the sake of brevity) for a period of 60 months commencing from 01st April, 2018 and expiring on 31st March, 2023 for a monthly rent of Rs. 94,068/- for the first 36 months of the agreement and Rs. 98,771/- for the fourth and fifth year of the agreement on the terms and conditions mentioned therein. The said agreement is registered with the Joint Sub-Registrar, Mumbai City-3 vide Registration No. BBE3/4176/2018.
- iv. The Applicant/Liquidator vide his Notice dated 21st January, 2020 (hereinafter referred to as "the said notice") called upon the Respondent, inter-alia, to vacate the said premises and to peacefully handover the possession of the same to the Applicant/Liquidator within a period of 30 days of receiving the aforesaid notice. The said notice was sent by the Applicant/Liquidator to the Respondent vide Speed Post A.D. and the same was delivered to the Respondent on 01st February, 2020.
- v. The Respondent replied to the said notice through their Advocate vide Reply dated 07th February, 2020 denying that the Respondent owes any money to the Corporate Debtor and instead claiming that the promoters of the Corporate Debtor and the Corporate Debtor owe money to the Respondent and therefore, the Respondent refused to vacate the licensed premises. In the said reply, the Respondent further contended that he has a right to possession as well as lien on the said premises considering the

alleged debt due to him by Mr. Manoj Khushalani, the promoter of the Corporate Debtor.

- vi. On receipt of the aforesaid reply, the Applicant/Liquidator issued a rejoinder dated 19th February, 2020 through his Advocate addressed to the Respondent and his Advocate, informing them that the alleged debt due from the promoter of the Corporate Debtor does not create any right to lien or possession over the licensed premises which is a part of liquidation estate and that it is the duty of the Applicant/Liquidator to take custody and hold it for benefit of all the creditors of the Corporate Debtor and thus, once again called upon the Respondent to vacate the licensed premises and handover the possession of the same to Liquidator. The rejoinder sent to the Advocate of the Respondent has been delivered on 21st February, 2020; whereas as regards the Respondent, the same has been returned back with remarks “Left without instructions”.
- vii. That in spite of receipt of the aforesaid notice and the rejoinder, the Respondent has failed and neglected to handover vacant and peaceful possession of the licensed premises to the Applicant/Liquidator. The lock-in period of 36 months expired on 01st April, 2021. Thereafter, the Liquidator had terminated the Leave and License Agreement vide his Notice dated 04th May, 2021 addressed to the Respondent calling upon the Respondent to handover the possession within one month of the receipt of the aforesaid notice. In the wake of Covid-19 pandemic, the Government of Maharashtra had announced a five-fold unlock plan easing the restrictions imposed due to the pandemic. Therefore, in furtherance of the Termination Notice dated 04th May 2021, the Liquidator vide his Notice dated 11th June, 2021 called upon the licensee

to vacate the licensed premises and handover the possession of the same to the Liquidator within one month of the receipt of the aforesaid notice.

viii. However, despite multiple notices, the Respondent has failed and neglected to handover vacant and peaceful possession of the licensed premises to the Applicant/Liquidator. Hence, this application.

3. Submissions of the Applicant:

- a. The period of the license is defined as 60 months from 01/04/18 till 31/03/23. In view of the expiration of the license, the Respondent is in any case bound to vacate the premises without any delay as per Clause 11 of the Leave and License Agreement.
- b. Section 35 of the Insolvency and Bankruptcy Code, 2016 ('the Code') clearly provides that the liquidator shall have powers to take into his custody all the assets, property, effects and actionable claims of the Corporate Debtor. There is no limitation/restriction with respect to the properties in third party possession by way of license or otherwise. Therefore, the leave and license agreement at hand cannot come in the way of the liquidator taking possession of the subject assets which admittedly belong to the Corporate Debtor.
- c. The Respondent being only a licensee does not have any right to continue in possession of the subject Premises by virtue of lien or otherwise. A licensee does not have any rights or interests in the premises and is only provided permission to use an immovable property without creating any tenancy or any other right, title or interest in favour of the licensee. In this regard, the learned Counsel for the Applicant has drawn our attention to the provision of Section 52 of the Easements Act, 1882 which defines license. Further, the

Counsel for the Applicant submits that Clause 1 of the Agreement records the rights of the Respondent which is reproduced as follows:

“(1) Period: That the Licensor hereby grants to the Licensee herein a revocable leave and license to occupy the Licensed Premises, described in Schedule I hereunder written without creating any tenancy or any other rights, title or interests in favour of the Licensee for a period of 60 months commencing from 1/04/2018 and ending on 31/03/2023.” (Emphasis Supplied).

- d. It is therefore abundantly clear that the licensee being the Respondent does not have any right/ interest in the subject Premises nor does he enjoy statutory protection, more so on account of a leave and license agreement which is void ab initio and is even otherwise expiring on 31.03.23.
- e. Further, the Respondent is claiming right of lien on the premises to continue in possession for the dues allegedly recoverable from the promoter. The same is baseless as the Corporate Debtor and promoter are separate entities and the Corporate Debtor cannot be held liable for the alleged debt of the promoter. In fact, the Respondent cannot even claim lien on the premises for dues, if any recoverable from the Corporate Debtor as well.
- f. NCLT has the sole jurisdiction u/s 60(5)(c) of the Code to adjudicate upon the leave and license agreement and no civil court can have jurisdiction in respect thereto. This issue is no more res integra. It has been decided by the Hon'ble NCLAT in the matter of Adinath Jewellery Exports v. Mr. Brijendra Kumar Mishra, Company Appeal No. 748 of 2020 wherein it was held that once a property was part of the liquidation estate of the Corporate Debtor under liquidation, the provisions of IBC were applicable regarding the assets which were in the ownership of the Corporate Debtor and Section 238 of the IBC prohibited the applicability of any other law which was inconsistent with the IBC. The Hon'ble Appellate Tribunal further held: *“In*

the light of the above-stated discussion, we are of the opinion that the NCLT possesses the correct jurisdiction for considering an application for vacation of the premises in question in the circumstances of the present case, and the NCLT was correct in passing the Impugned Order which would be necessary to place the custody of the premises in question with the Liquidator pending the final disposal of I.A. No. 1635 of 2020 so that the liquidation process is completed timely and in accordance with legal provisions. We are, therefore, of the clear view that the Impugned Order does not need any intervention. The Appeal is, therefore, dismissed with no order as to costs.”

- g. To say that the Applicant is required to approach the civil courts for reliefs against the Respondent would be contrary to Sections 63 and 231 of the Code which clearly stipulate that no civil court shall have jurisdiction in respect of any matter in which the Hon'ble NCLT has jurisdiction and is empowered to pass any order. In addition to the specific bar laid on the jurisdiction of the civil courts and the exclusive jurisdiction vested with the Hon'ble NCLT, under the provisions of the Code, section 238 of the Code which is a non-obstante clause, clearly and unambiguously provides that the provisions of the Code override all the other laws.

4. Submissions and Reply of the Respondent

The Respondent has filed his Affidavit-in-Reply and Additional Affidavit dated 14th October, 2021. The pleadings and submissions of the Respondent in his reply are briefly covered hereunder:

- i. The issue involved in the present application is admittedly a dispute between the Licensor and the Licensee in respect of the Licensed Premises relating to the recovery of possession of the Licensed Premises. Section 41 of the Presidency Small Causes Court Act gives exclusive jurisdiction to the Hon'ble Small Causes Court to entertain and decide

the disputes relating to the Licensed Premises between the Licensor and the Licensee. The said Act also bars the jurisdiction of any other Civil Court or the Tribunal to decide the said issue. Hence, this Hon'ble Tribunal does not have the jurisdiction to try and entertain the above Application and to grant any relief in favour of the Applicant. Therefore, the Application deserves to be dismissed with heavy compensatory cost.

- ii. The Respondent denies that premises were licensed by the Corporate Debtor to the Respondent without obtaining any permission or consent or no objection from the lenders with whom the licensed premises has been mortgaged, with a sole and malafide intention of defeating and delaying the claim of lenders and stall the sale of the said premises. The Applicant/Liquidator has failed to produce single documentary evidence before this Hon'ble Tribunal to prove the alleged contention of mortgage of the licensed premises. The alleged contention of mortgage of the licensed premises to the consortium of banks is an afterthought to create a false ground to seek reliefs claimed in the application. The said contention is made in order to divert the attention of the Hon'ble Tribunal while deciding the instant application on merits. The Respondent states that the agreement was duly executed between the Respondent and the Corporate Debtor for a period of 5 years commencing from 01.04.2018 to 31.03.2023. Therefore, the leave and license agreement is legal, valid, subsisting and binding between the parties to the said Agreement.
- iii. The Respondent states and submits that to seek the vacant possession of the licensed premises and/or to seek any relief pertaining to the licensed premises against the Respondent on the basis of the said Registered Leave and License Agreement, the Applicant/Liquidator is required to adopt due process of law, that is to say by filing appropriate proceedings under

the provisions of Section 41 of the Presidency Small Causes Court Act. By filing the present proceedings before the Hon'ble Tribunal also, the Applicant/Liquidator has grossly abused and violated the provisions and procedure of law.

- iv. The Respondent states that, thereafter, surprisingly, the Applicant/Liquidator addressed an email dated 08.07.2021 to the Respondent intimating that the Applicant/Liquidator shall be coming on 10.07.2021, to take the vacant possession of the Licensed Premises. Thereafter, the Respondent immediately filed L.D. Suit No. 97 of 2021 in the Court of Small Causes, Mumbai for a declaration that the registered Leave and License Agreement dated 02.05.2018 executed between the Respondent and the Corporate Debtor is valid, legal, subsisting and binding between the parties to the said Agreement. The Respondent had also moved an interim application for injunction in the Court of Small Causes seeking protection against the eviction by the Respondent without following the due process of law. The Hon'ble Small Causes Court, Mumbai was pleased to allow the injunction application vide Order Below Exhibit 10 dated 06.10.2021 and restrained the Liquidator from dispossessing the Respondent herein without following the due process of law till disposal of the suit.
- v. As the Hon'ble Small Causes Court is presently seized of the matter and has granted injunction against the Liquidator in favour of the Respondent herein protecting his possession of the licensed premises until the disposal of the suit, and also the fact that the Hon'ble NCLT has no jurisdiction to evict the licensee/Respondent from the licensed premises, it is humbly prayed before the Tribunal to dismiss the application of the Applicant with heavy compensatory costs.

FINDINGS AND ANALYSIS

5. We have heard the learned Counsels for the Applicant/Liquidator and the Respondent and we have carefully gone through their pleadings, submissions and the documents and materials placed on record.
6. By way of this application, the Liquidator is seeking possession of the licensed premises belonging to the Corporate Debtor from the Respondent so that the same can be sold in auction in order to clear the dues of the creditors, thereby completing the liquidation process of the Corporate Debtor.
7. The Liquidator had first sent eviction notice dated 21st January, 2020 to the Respondent to clear the GST dues from April, 2019 to December, 2019 amounting to Rs. 1,52,388/- and to vacate the licensed premises and handover its vacant and peaceful possession to the Liquidator. The Respondent cleared the GST dues of Rs. 1,52,388/- but however refused to vacate the licensed premises and handover its possession on the ground that the amount due to the Respondent by the Corporate Debtor and its promoter Mr. Manoj Khushalani have not been cleared and therefore, the Respondent replied through his Advocate vide Letter dated 07th February, 2020 that he has a right of lien over the licensed premises considering the debt recoverable from the aforementioned promoter. We find this plea of the Respondent to be frivolous, baseless and devoid of any merit in law. If at all the Respondent had any amount due from the Corporate Debtor, he could have submitted his claim to the Liquidator. The Respondent cannot resort to an arm-twisting tactic and coercive method of recovery by unlawfully withholding the possession of the licensed premises in order to recover its dues, if any. Furthermore, the Respondent cannot refuse to vacate the licensed premises and has no right of lien over the licensed premises

for the debts due by the promoter of the Corporate Debtor as the promoter and Corporate Debtor are two distinct persons in law.

8. The Liquidator had issued a Termination Notice dated 04th May, 2021 to the Respondent terminating the Leave and License Agreement dated 02.05.2018 for the reason that the lock-in period of 36 months had expired on 01st April, 2021 and as the Corporate Debtor was in liquidation, the Applicant was duty bound to take possession of the licensed premises with a view to include it in the liquidation estate of the Corporate Debtor. However, yet again, the Respondent failed to handover the possession and instead, he filed a License Declaration Suit vide L.D. Suit No. 97 of 2021 in the Court of Small Causes, Mumbai with a view to declare the Leave and License Agreement dated 02.05.2018 as legal, valid, subsisting and binding between the Respondent and the Corporate Debtor. In the said suit, the Respondent herein also obtained an injunction in his favour by restraining the Liquidator from dispossessing the Respondent without following the due process of law until the disposal of the suit.
9. We observe that despite numerous notices and reminders and despite being given ample amount of time to vacate the licensed premises, the Respondent has repeatedly failed to handover the possession in favour of the Liquidator. The Respondent has never claimed any title over the licensed premises. The Respondent has also never raised a plea that the licensed premises is not owned by the Corporate Debtor. We also observe that the eviction notice dated 21st January, 2020 and the Termination Notice dated 04th May, 2021 were valid and as such, the Respondent ought to have vacated and handed over the possession of the licensed premises to the Applicant/Liquidator by now.

10. As regards the question of jurisdiction, the Respondent has objected to the jurisdiction of this Tribunal to evict him from the licensed premises. According to the learned Counsel for the Respondent, the Hon'ble Small Causes Court is vested with the exclusive jurisdiction u/s 41 of the Presidency Small Causes Courts Act, 1882. Therefore, this Hon'ble Tribunal has no jurisdiction to entertain the eviction application by the Liquidator. We have carefully examined the aforesaid submission made on behalf of the Respondent. The issue of Adjudicating Authority passing eviction orders in respect of the immovable properties forming part of the liquidation estate of the Corporate Debtor despite injunction orders passed by a civil court is no more res integra. The Hon'ble NCLAT in the matter of Adinath Jewellery Exports v/s. Brijendra Kumar Mishra & Anr vide Judgment dated 24.04.2023 in Company Appeal (AT) (Insolvency) No. 748 of 2022 has delineated the scope of Adjudicating Authority to pass eviction orders against the licensee despite the injunction obtained by the licensee from a civil court. In the above-quoted judgment, the Hon'ble NCLAT had clearly held that the NCLT possesses the necessary jurisdiction for considering an application for vacation of premises and that the NCLT was correct in passing the impugned order which would be necessary to put the liquidator in possession of the premises in question and the same does not need any intervention. In that matter too, the appellant therein had obtained an injunction from Small Causes Court, while the Liquidator had moved an application for eviction of the appellant before the Adjudicating Authority. Therefore, the law laid in Adinath Jewellery Exports (Supra) squarely applies to the facts of this case.

11. The Liquidator, subject to the directions of the Adjudicating Authority, shall have the powers and duties u/s 35(1)(b) of the IB Code, 2016 to take into his custody or control all assets, property, effects and actionable claims of the Corporate Debtor. Under Section 35(1)(d) of the Code, the Liquidator is entitled to take such measures to protect and preserve the assets and properties of the Corporate Debtor as he considers necessary. As per the provisions of Section 36(3)(a) read with Sec.36(3)(b) of the Code, the Liquidation Estate shall be comprised of any asset over which the Corporate Debtor has ownership rights, which may or may not be in possession of the Corporate Debtor. The Adjudicating Authority has a residuary jurisdiction u/s 60(5)(c) of the Code to entertain or dispose of any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code. Eviction of the Respondent from the licensed premises belonging to the Corporate Debtor under liquidation has direct nexus with the liquidation proceedings of the Corporate Debtor and therefore, this Tribunal has jurisdiction u/s 60(5) to entertain and dispose of the application for eviction of the Respondent.

12. As regards the suit filed by the Respondent in the Small Causes Court vide L.D. Suit No. 97 of 2021, we wish to add that the jurisdiction of a civil court is barred u/s 63 of the Code from entertaining any suit or proceedings in respect of any matter on which NCLT has jurisdiction. For the reasons stated above, since NCLT has jurisdiction to evict the Respondent from the licensed premises of the Corporate Debtor under liquidation, we are of the view that the aforementioned suit is barred u/s 63 of the Code. We also wish to add that by virtue of Section 238 of the Code, the provisions of the Code override other

laws notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Further, it is also not out of place to mention that by virtue of Section 33(5) of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor when a liquidation order has been passed. In the instant case, the Liquidation Order dated 15th November, 2019 was passed by the Adjudicating Authority u/s 33 of the Code; whereas the Suit was instituted by the Respondent against the Liquidator of the Corporate Debtor in 2021 after the Liquidation Order was passed. Therefore, ex-facie, it appears that the above suit is barred by Section 33(5) of the Code.

13. On perusal of the Leave and License Agreement executed between the Corporate Debtor and the Respondent on 02nd May 2018, we find that the Licensee (i.e. the Respondent herein) was permitted to use the licensed premises for a period of 60 months commencing from 01/04/2018 and ending on 31/03/2023. Clause 11 of the said Agreement states that immediately on expiration, termination or cancellation of this agreement, the Licensee shall vacate the said premises without any delay with all his goods and belongings. Therefore, even otherwise, as the tenor of the Leave and License Agreement dated 02.05.2018 has expired, the Licensee/Respondent is legally bound to vacate the licensed premises and handover its peaceful possession to the Applicant/Liquidator.
14. The Applicant has also prayed for declaring the Leave and License Agreement as void on the ground that the Corporate Debtor failed to obtain permission from the consortium of lenders with whom the licensed premises was mortgaged. This fact remains unsubstantiated as it is not backed with any evidence. No document has been brought on record to show that the licensed

premises was mortgaged and the terms of mortgage required prior permission of the lenders for the letting out the premises to the Respondent on leave and license basis. Therefore, we are not inclined to declare the Leave and License Agreement as void. Further, it is Liquidator's duty to form an estate of assets u/s 36(3) of the Code which shall be called the liquidation estate in relation to the Corporate Debtor. This duty cannot be shifted upon the Tribunal by the Liquidator.

15. In view of the above discussions, we are of the considered opinion that this application deserves to be allowed and it is ordered accordingly. Hence, we pass the following orders:

ORDER

- i. **I.A. No. 1160 of 2021 is partly allowed.**
- ii. Prayer in terms of Clause 17(a) of the application is hereby rejected.
- iii. The Respondent is hereby directed to handover vacant and peaceful possession of the licensed premises to the Applicant/Liquidator within 15 days from the date of this Order.
- iv. If the Respondent fails to handover the vacant and peaceful possession of the licensed premises to the Applicant/Liquidator within 15 days from the date of this Order, then the Applicant shall be at liberty to move a suitable application for seeking the police protection or the help of district administration to take possession of the licensed premises.
- v. Registry is directed to communicate the copy of this Order to the Respondent forthwith by way of Speed Post within 2 days from the date of this order.

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 1160 OF 2021
IN
CP(IB) NO. 1980(MB)/2018

vi. Accordingly, I.A. No. 1160 of 2021 stands disposed of.

Sd/-

**ANIL RAJ CHELLAN
(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
(MEMBER JUDICIAL)**