

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

**IA -1121/2023 IN**

**CP (IB) No.760/MB-IV/2021**

Under Section 60(5) of the IBC, 2016

**Ms. Vineeta Maheshwari**

Resolution Professional of

M/s Aaj ka Anand Paper Limited

... Applicant

Versus

**M/s Kwaliti Catering Services & Ors.**

... Respondent

*In the matter of*

**State Bank of India**

...Financial Creditor

Versus

**M/s Aaj ka Anand Paper Limited**

...Corporate Debtor

Order Pronounced on: **18.07.2023**

***Coram:***

Mr. Prabhat Kumar

Mr. Kishore Vemulapalli

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Applicant:

Mr. Doctor Mustafa Ld. Senior  
Counsel a/w Mr. Amir Arsiwala,  
Adv.

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For the Corporate Debtor

/Respondent:

Mr. Baldevsingh Bhogala a/w Mr.  
Pramod Patil and Mr. Saurabh Patil  
Adv.

For Suspended Board of Directors:

Mr. Mayank a/w Nidhi Chheda and  
Mr. Chintan Cheeda, Adv.

### **ORDER**

*Per: Prabhat Kumar, Member (Technical)*

1. This is an application i.e. IA -1121/2023, filed by the Resolution Professional Ms. Vineeta Maheshwari in the matter of M/s Aaj Ka Anand Papers Limited, the Corporate Debtor, in C.P. (IB) 760/2021 under section 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of the National Company Law Tribunal Rules 2016 to seek directions to M/s Kwaliti Catering Services, the licensee of the premises owned by the Corporate Debtor, to pay outstanding rent of Rs. 38,19,200/- (Thirty Eight Lacs Nineteen Thousand and Two Hundred Only) and to vacate the licensed premises, in case such dues are not paid.
2. The Brief facts of the case are as under –
  - 2.1.M/s Aaj Ka Anand Papers Limited is a company incorporated under the Companies Act, 1956 having its registered office at 365 Shivaji Nagar, Aaj Ka Anand Building, Pune, Maharashtra, India-411005 was admitted to CIRP process vide order dated 31.3.2022 passed by the Mumbai Bench of this Tribunal, and the applicant acted as Resolution Professional in the matter. Thereafter, the Corporate Debtor was ordered to be liquidated vide order dated 12.04.2023 and Mr. Jitender Jain, the Insolvency Professional

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was appointed as Liquidator to carry out the liquidation of the Corporate Debtor.

2.2. During CIRP process, the applicant came to know that the Corporate Debtor had entered into a Leave and License Agreement with M/s. Kwality Catering Services (“Licensee”) on 06/11/2020, registered before the Sub-Registrar of Haveli-III at Pune bearing registration no. 6717, to allow the licensee to use the Restaurant and Lodging premises, with built-up area admeasuring 688.49 sq. mtrs. together with exclusive right of user of the basement/ Lower Ground/ Upper Ground Parking and all the passages, open space in all that piece and parcel of land or ground admeasuring 521 sq. mtrs. bearing CTS No. 364+365/14 bearing plot no. 713+714/14 situated, lying and being at Bhamburda, Shivajinagar within the Registration Sub-District of Taluka Haveli, District Pune.

2.3. The said Leave and License Agreement was entered for a period of 5 (Five) years commencing from 01/03/2021 to 28/02/2026 and the Corporate Debtor didn’t have right to terminate the agreement before expiry of this period. However, the breach of any condition by either party to the contract, entails early termination by the licensor, subject to fulfilment of conditions contained in the agreement in this relation.

2.4. The License fees payable, by the Licensee to the Licensor, under the agreement is Rs. 2,75,000/- (Rupees Two Lakh Seventy-Five Thousand Only), plus GST as applicable thereon, per month for first 12 months i.e. 01/03/2021 to 28/02/2022 and thereafter 5% escalation after every 12 months from 01/03/2021 onwards. Further, clause 1.6 of the Agreement stipulates that *the Licensee shall pay the License fees +GST regularly to the Licensor on or before 10th day of every subsequent/next month.*

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- 2.5. The Licensee paid interest free Security Deposit of Rs. 30,00,000/-, and the same was refundable at expiration of period of the agreement or upon handing over the possession of the licensed premises by the licensee under clause 1.7 of the Agreement.
- 2.6. Clause 21.1 of the agreement stipulates that “In the event of default in payment of the Licensee fees of any consecutive 3 months license fees, the Licensor shall give notice of such default by the Licensee and the Licensee must, within 7 days of the receipt of such notice, rectify such default failing which the Licensor shall be entitled to terminate this Leave and License upon a notice in writing of Seven Days”. The Applicant claims that, upon failure of the licensee to pay the outstanding license fees despite numerous notices & correspondences from the Applicant, the said leave & license agreement came to be terminated vide notice dated 27.01.2023, and the Licensee was asked to remove all belongings furniture, fixture, movable, articles/items and to handover and deliver vacant possession of the Schedule Premises to the Licensor vide said Notice.
- 2.7. It is also stated in the clause 21.1 that after termination of Leave and License agreement for default in payment of monthly license fee, the use and occupation of the licensee shall be treated as a sheer trespasser and the licensee shall be liable for the consequences and damages as contemplated under the Maharashtra Rent Control Act, 1999.
3. It is the case of Applicant that if the evacuation is done timely then RP/Liquidator shall be able to give the property on rent to other people, and the said rental income will become a support system and further expenses of liquidation can be taken from these Rental Income of CD; and the property, in

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question, will be subject matter of auction in near future, thus the property needs to be evacuated for smooth liquidation process and is foremost important at this juncture alongwith the outstanding License Fee in the CIRP account of CD. Ld. Counsel also placed reliance on the Hon'ble NCLAT decision in the case of "*Adinath Jewellery Exports Vs. Mr. Brijendra Kumar Mishra (2023) ibclaw.in 262 NCLAT*", and also submitted that the Leave and Licence Agreement came to be terminated in pursuance to Clause 21 of leave and licence Agreement.

4. The Respondents submitted that the applicant can not terminate the said agreement before the mandatory lock in period of 5 years; invocation of clause 21.1 by the applicant is not permissible as no notice was issued to the licensee; this Bench has no power to adjudicate on the dispute between Licensor and Licensee; the Leave and License Agreement came in existence prior commencement of CIRP; the Liquidator, instead of liquidating other assets in priority, is targeting the premises occupied by the Respondent just to harass him; and, even if it is admitted for the sake of argument that Leave and License Agreement came to be terminated, the Applicant has still not made determination of amount refundable or receivable from the Respondent. It was further submitted that the Respondents have invested huge amounts in furnishing the licensed premises, and if they are asked to evict from the premises, it shall cause huge loss to them; and the license fee could not be paid in time on account of impact of COVID-19 on the Hospitality sector.
5. This Bench heard the Counsel and perused the material available on record.
  - 5.1. It is not in dispute that a sum of Rs. 38,19,200/- is outstanding and the same is payable in accordance with the terms of Leave & License Agreement; the licensee has not paid rent since February, 2022; the said

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agreement has a lock in period of 5 years, barring the Licensor to terminate the said Agreement except in accordance with Clause 21 of the said Agreement; the licensee is still in occupation and possession of the licensed premises; and the licensee may have invested sufficient amounts in the furnishing of the licensed premises.

5.2. It is noticed that the Resolution Professional/Liquidator, from time to time, asked the Licensee to pay the outstanding dues, however, the Licensee fails to pay the same. Further, vide interim-order dated 4.5.2023 passed by this Bench, *the licensee was directed to clear all dues owed to the Corporate Debtor and evict from the license premises immediately*, however, no payment was made by the licensee.

5.3. Vide interim-order dated 21.6.2023, this Bench asked both the parties whether compliance to Clause No. 21 of the leave and licence agreement was made in the manner prescribed therein. In compliance to said directions, the Counsel for the Applicant placed on record the proof of service of notice of eviction in terms of Clause 21 of the Agreement.

5.3.1. It is seen from such proof that the notice of eviction was served vide e-mail at e-mail address, being in use for communication by the licensee with the Applicant, however, no notice in terms of clause 21.1 was served specifically informing the licensee to pay the outstanding arrears within seven days, failing which the licensor shall be entitled to terminate the agreement. The text of the notice, claimed to be a notice in terms of clause 21.1 of the agreement is reproduced hereunder –

*“Further, the undersigned has asked you to deposit the total outstanding rent for the period from April 2022 to December 2022*

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*through multiple reminders via email. But even after repeated reminders your good office has not cleared the dues. This is a case of default and you have committed a material breach of clause 1.6 of the agreement.*

*Hence, as per clause 21 of the leave and license agreement, which is reproduced hereunder:*

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*Considering the above-mentioned reasons, the undersigned is constraint to issue the eviction notice and directs you to pay all the dues in respect of the licensee fees accrued amounting to Rs.31,37,750/- in the designated CIRP ban account details as under within 7 days:*

.....”

5.3.2. From the perusal of aforesaid text, it can be seen that the said notice sought eviction of the premises, without first terminating the agreement. The Applicant/Liquidator stated that a show cause notice dated 17.05.2022 by email was issued, prior to this eviction notice, to the Corporate Debtor, which stated that *“as the rent is due for three months, hence we against request you to deposit the pending amount within the next five days, otherwise we will be forced to comply with the terms and conditions mentioned in the agreement.”*

5.3.3. This Bench feels that the eviction can follow from the termination of the agreement, and the termination of the agreement in terms of clause 21.1 is not automatic in case of breach on account of non-payment, but entitles the licensor to terminate the agreement, and in the absence of exercise of such right to terminate the agreement, the

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notice seeking eviction is not tenable. Hence, this Bench does not find any merit in the contention of the Applicant that the notice, as mandated in Clause 21.1 of the Agreement was served to them, and such notice has the effect of termination of the Leave & License Agreement. In view of this, this Bench is of the considered view that there exists a dispute on facts whether the Agreement came to be terminated pursuant to notice dated 27.01.2023.

5.4. The Respondent have objected to the jurisdiction of this Tribunal to decide on the rights and obligations under the said Leave & License Agreement, contending that it is a civil dispute, which has to be adjudicated by the Civil Court of competent jurisdiction. This Bench feels that the following issues emerge for consideration –

- (i) Whether the NCLT can exercise its residuary jurisdiction under Section 60(5)(c) of the IBC to adjudicate upon the contractual dispute between the parties; and
- (ii) Whether in the exercise of such a residuary jurisdiction, it can hold that the license agreement came to be determined, and consequently, direct the respondent to evict the licensed premises.

5.4.1. This Bench finds that Under section 60(5)(c) of IBC, the tribunal has been conferred with the jurisdiction to entertain and dispose of any question of law or facts “*arising out of or in relation to the Insolvency resolution or liquidation process of Corporate Debtor*”.

5.4.2. In the case of in ***Gujarat Urja Vikas Nigam Ltd. Vs. Mr. Amit Gupta (2021) ibclaw.in 44 SC***, the Hon’ble Court held that -

“91. *The residuary jurisdiction of NCLT under Section 60(5)(c) of IBC provides it a wide discretion to adjudicate questions of law or*

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*fact arising from or in relation to the insolvency resolution proceedings. If the jurisdiction of NCLT were to be confined to actions prohibited by Section 14 of IBC, there would have been no requirement for the legislature to enact Section 60(5)(c) of IBC. Section 60(5)(c) would be rendered otiose if Section 14 is held to be exhaustive of the grounds of judicial intervention contemplated under IBC in matters of preserving the value of the corporate debtor and its status as a “going concern”. We hasten to add that our finding on the validity of the exercise of residuary power by NCLT is premised on the facts of this case. We are not laying down a general principle on the contours of the exercise of residuary power by NCLT. However, it is pertinent to mention that NCLT cannot exercise its jurisdiction over matters dehors the insolvency proceedings since such matters would fall outside the realm of IBC. Any other interpretation of Section 60(5)(c) would be in contradiction of the holding of this Court in *Satish Kumar Gupta [Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443]*.”*

5.4.3. The issue in present case is similar to the issue dealt with in matter of ***Tata Consultancy Services Ltd. Vs. Vishal Ghisulal Jain, RP, SK Wheels Pvt. Ltd. (2021) ibclaw.in 167 SC***, wherein the Hon’ble Supreme Court held that –

*“While the duty of the RP and the jurisdiction of the NCLT cannot be conflated, in Gujarat Urja (supra), this Court has clarified that the RP can approach the NCLT for adjudication of disputes which relate to the insolvency resolution process. But when the dispute*

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*arises dehors the insolvency of the Corporate Debtor, the RP must approach the relevant competent authority (para 72).”.*

5.4.4. The Hon’ble Supreme Court, in *Tata Consultancy Services Limited (Supra)* further held that *“There is nothing to indicate that the termination of the Facilities Agreement was motivated by the insolvency of the Corporate Debtor. The trajectory of events makes it clear that the alleged breaches noted in the termination notice dated 10 June 2019 were not a smokescreen to terminate the agreement because of the insolvency of the Corporate Debtor. Thus, we are of the view that the NCLT does not have any residuary jurisdiction to entertain the present contractual dispute which has arisen dehors the insolvency of the Corporate Debtor”.* Further, the Hon’ble Supreme Court in this matter also said that *“we would like to issue a note of caution to the NCLT and NCLAT regarding interference with a party’s contractual right to terminate a contract. Even if the contractual dispute arises in relation to the insolvency, a party can be restrained from terminating the contract only if it is central to the success of the CIRP. Crucially, the termination of the contract should result in the corporate death of the Corporate Debtor”.*

5.4.5. In the case of *SICOM Ltd. Vs. Kitply Industries Ltd. : (2023) ibclaw.in 236 NCLAT*, it was held that *“On the point of jurisdiction of NCLT or NCLAT in respect of interpretation of agreement/contract which had already occurred prior to initiation of CIRP it has been held that neither NCLT nor NCLAT is having jurisdiction to adjudicate.”*

5.4.6. From the above judicial decisions, it emerges that –

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- i. Section 60(5)(c) grants residuary jurisdiction to the NCLT to adjudicate any question of law or fact, arising out of or in relation to the insolvency resolution of the Corporate Debtor;
  - ii. The residuary jurisdiction can be exercised to adjudicate disputes which arise solely from or which relate to the insolvency of the corporate debtor i.e. the nexus with the insolvency of the corporate debtor must exist, as held in Gujarat Urja (Supra).
  - iii. Even if the contractual dispute arises in relation to the insolvency, a party can be restrained from terminating the contract only if it is central to the success of the CIRP. Crucially, the termination of the contract should result in the corporate death of the Corporate Debtor.
  - iv. An Agreement is an instrument having an effect virtue of law can be overridden u/s 238 of the Code.
  - v. The existence of a clause for referring the dispute between parties to arbitration does not oust the jurisdiction of the NCLT to exercise its residuary powers under Section 60(5)(c) to adjudicate disputes relating to the insolvency of the Corporate Debtor.

5.4.7. In the light of above discussion, this bench finds that, issue of termination of the agreement arose subsequent to commencement of CIRP in this case i.e. 31.3.2022. Accordingly, this Tribunal has power to decide on the dispute, even though there exists an Arbitration clause i.e. Clause 31 in the said agreement, as held in the case of *Indus*

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***Biotech Pvt. Ltd. Vs. Kotak India Venture (Offshore) Fund & Ors.  
(2021) ibclaw.in 52 SC.***

5.4.8. Now, the question arises whether the dispute, in question, arises from the insolvency and is central to the success of the CIRP, as held in case of Tata Consultancy Services Limited (Supra). In the present case, it is not in dispute that the Corporate Debtor is in liquidation, and it is the case of the applicant that the rentals from property, in question, will facilitate in meeting CIRP/liquidation costs; and the Applicant filed this application to seek eviction on the ground that the property can be licensed to a new licensee, thus fetching rentals to the Corporate Debtor. Accordingly, it can not be said that the eviction from the premises is central to the success of the CIRP.

5.5. Since, after filing of present application, the Corporate Debtor was admitted to Liquidation Process, and the liquidator drew our attention to Para 59 of the decision in the matter of Adinath Jewellery Exports (supra), which reads as follows

*“59. We are of the view that the residuary jurisdiction is relevant during the CIRP when the insolvency resolution of the corporate debtor is taking place, whereas in the present case the liquidation of the corporate debtor is being considered and the liquidator has taken recourse to its powers under section 33(5) to get control and custody of the asset of the corporate debtor.”*

5.5.1. This Bench finds that the facts in case of Adinath Jewellery Exports (Supra) are distinguishable, as in that case, the license agreement came to an end by efflux of time, and there was no further extension of the license agreement so as to entitle the licensee to occupy the premises

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owned by the Corporate Debtor. In the present case, the licensee has disputed the adherence to procedure in clause 21.1 of the Agreement to content that it can not be said that the License agreement came to be terminated on account of breach in payment of rent for three consecutive terms, and accordingly the licensor is precluded from the terminating the agreement before expiry of the lock in period contemplated in the said Agreement.

- 5.6. It is not in dispute that the Licensee has failed to pay the rent under the License agreement for more than three consecutive months. This Bench had also given an opportunity to the Respondent to clear such outstanding dues, vide its interim-order dated 4.5.2023, and it failed to pay such dues even then also. This Bench feels that the Respondents are relying heavily on the lock-in-period of 5 years, which excludes the licensor to terminate the agreement, but the said stipulation of lock in period of 5 years is to be read in conjunction and subject to clause 21 of the same agreement. The Respondents can not read the clause(s) of the agreement in isolation or in pieces.
6. This Bench directs the Respondents to pay the outstanding rent, having become due upto the date of this order, immediately to the Corporate Debtor, and not to cause any obstruction to the liquidation process.
7. However, as pointed out at Para 5.3.2 above, it can not be said that the procedure contemplated in Clause 21.1 of the Agreement was followed in the manner stated therein. From the perusal of the prayers, it is noticed that the applicant has sought eviction from the premises if the total outstanding rent is not paid immediately in the CIRP account of CD. Accordingly, this bench is of the considered view that the Applicant Corporate Debtor be directed to

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issue a notice to the Respondents, specifically intimating the Respondent the consequence of non-payment payment of outstanding dues, as are due and payable upto the date of this order, within 7 days, in terms of the clause 21 of the Leave and License Agreement. Thereafter, upon such failure, the Applicant Corporate Debtor shall be at liberty to exercise its right to terminate the said Agreement in terms of Clause 21.1 and evict the Licensee in consequence thereof. In case, the Agreement stands terminated on such failure, the consequences stated in clause 21.1, 21.3 & 21.4 of the Agreement shall follow, and the Licensee shall be a trespasser, liable to be evicted forthwith. Upon such termination of the Agreement, the Police Station Incharge, exercising jurisdiction over the area where the Premises in question is situated, shall assist the Liquidator to take vacant possession of the said premises upon production of this Order.

8. With aforesaid directions in Para 6 & 7, this IA-1121/2023 is **partly allowed**.

Sd/-

**Prabhat Kumar**  
**Member (Technical)**  
**18.07.2023**

Sd/-

**Kishore Vemulapalli**  
**Member (Judicial)**