

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

**IA No. 2990 of 2023  
IN  
C.P. (IB) No. 527/MB/2022**

Under Section 60(5) of the Insolvency and Bankruptcy  
Code, 2016 read with Rule 11 of the National  
Company Law Tribunal Rules, 2016

**Mrs. Durdana Aabid Ali & Ors.**

**... Applicants**

V/s

**Vijay Kumar V Iyer**

**(Resolution Professional of Future Retail Ltd)**

**... Respondent**

*In the matter of*

**Bank of India**

**... Financial Creditor**

Versus

**Future Retail Limited**

**... Corporate Debtor**

**Order Delivered on :05.10.2023**

*Coram:*

**Hon'ble Member (Technical)**

**Mr. Anil Raj Chellan**

**Hon'ble Member (Judicial)**

**Mr. Kuldip Kumar Kareer**

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***Appearances:***

For the Applicants : Sr. Adv. Jayna Kothari a/w  
Adv. Nadeem Shama, Adv.  
Aparna i/b Adv. Hubab Sayyed

For the RP/Respondent : Adv. Rishabh Jaisani i/b Shardul  
Amarchand Mangaldas & Co.

**ORDER**

***Per: Anil Raj Chellan, Member Technical***

1. The instant application is filed by the Applicants seeking certain directions in respect of premises bearing unit G-1 admeasuring 1091 Sq.ft. carpet area of the building “Regent Point”, Shirdi Sai Baba Mandir Road, 3<sup>rd</sup> Main Someswarapuram, Ulsoor, Ward No. 75, Bangalore (Leased Premises) to the Resolution Professional (RP) of Future Retail Limited, the Corporate Debtor to withdraw the notice dated 29.03.2023 and to restrain the RP and his agents / servants in any way dealing with the Leased Premises.

***Brief facts leading to the present petition***

2. This Tribunal, pursuant to an application filed by Bank of India under Section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code), by its order dated 27.07.2022 initiated Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor and also appointed the Respondent as the Interim Resolution Professional

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(IRP) of the Corporate Debtor. By virtue of the CIRP order, this Tribunal has declared a moratorium on the Corporate Debtor during the CIRP period, in terms of Section 14 of the Code.

3. The Respondent upon reviewing the records of the Corporate Debtor came to know that a Lease Deed dated 19.07.2018 was entered into between the Applicants and M/s. Food World Super Markets Private Limited and the rights of the lessee were assigned to the Corporate Debtor vide Deed of Assignment dated 06.08.2018 (Deed of Assignment). The Respondent vide its letter dated 29.03.2023 intimated the Applicants regarding the commencement of CIRP and declaration of moratorium under Section 14 of the Code. By the said notice the Respondent stated that he was given to understand that the Applicants removed/disposed of the assets and inventory belonging to the Corporate Debtor from the Leased Premises and have leased out the Leased Premises to a third party and also advised the Applicants not to take any coercive action against the Corporate Debtor and/or its assets in violation of the provision of the Code. The Respondent also stated that in case of violation of the moratorium, he would be constrained to take necessary legal remedies including reporting the matter to NCLT.
4. The Applicants through their advocate replied to the said letter dated 29.03.2023 and admitted execution of the Lease Deed in favour of M/s. Food World Super Markets Private Limited but denied knowledge of assignment of leasehold rights in favour of the Corporate Debtor.

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5. The instant application was filed in the above background.

**Submissions of the Applicants**

6. As per the Lease Deed it was agreed between the parties that the lessee shall have exclusive right to transfer/assign its leasehold rights under the Lease Deed to the Corporate Debtor subject to giving prior written intimation to the Applicants. In support of the above, the Applicants relied on Clause 14.7 of the Lease Deed which provided, inter-alia, that the lessee shall give written intimation to the lessor on any such transfer/assignment of rights and any other documents as may be required for giving effect to such transfer/assignment. Since there was no intimation, it cannot be presumed that Food World had assigned / transferred their leasehold rights in favour of the Corporate Debtor.
7. The Applicant stated that the lease period under the Lease Deed executed between the Applicants and M/s. Food World Super Markets Private Limited expired/completed on 14.11.2021 and M/s. Food World Super Markets Private Limited peacefully vacated the premises. Since then the Applicants are in peaceful possession and occupation of the Leased Premises.
8. There was no written request of assignment/ transfer of the Lease Deed in favour of the Corporate Debtor and therefore, the Respondent acting for the Corporate Debtor cannot claim any right title or interest in the Leased Premises.

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9. The Applicants further denied inspection of the Leased Premises by the officers of the RP on 15.03.2023 and stated that no inventory was lying in the Leased Premises. The Leased Premises is very much in the possession of the Applicant and there cannot be any restraint on the Applicants in dealing with the Leased Premises as the Corporate Debtor has no right title or interest of any kind in the Leased Premises. The Applicants further stated that no inventory, fixtures or assets of the Corporate Debtor remain inside the premises and as such the Applicants are not required to be any party of the CIRP.

**Submissions of the Respondent**

10. The Respondent submitted that even prior to and since insolvency commencement date, most of the employees of the Corporate Debtor have left the Corporate Debtor. Due to the non-cooperation of the erstwhile directors / management and the promoters of the Corporate Debtors and non availability of information / documents the Respondent is not in a position to produce critical information/ data/documents of the Corporate Debtor to facilitate smooth running of the CIRP of the Corporate Debtor. The Respondent is still making efforts to get more information relating to the affairs of the Corporate Debtor.
11. As per the records available with the Respondent the rights of M/s. Food World Super Markets Private Limited under the Lease Deed were assigned to the Corporate Debtor vide Deed of Assignment dated 06.08.2018 (Deed of Assignment). The Deed of Assignment

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produced as Annexure 'A' to the reply stated that the lessor had consented and given their no objection for the assignment of all the Assigners right under the Lease Deed. Though the Petitioner disputed the consent for assignment the Respondent stated that he reached out to the suspended board of the Corporate Debtor but the reply is awaited.

12. As per the records of the Corporate Debtor the Leased Premises was in the possession of the Corporate Debtor and three active employees on the pay roll of the Corporate Debtor was mapped to the store of the Leased Premises upto the insolvency commencement date.
13. In order to discharge the duties and responsibilities of the Respondent while acting as RP/Liquidator, he made efforts to take control and custody of the assets of the Corporate Debtor and the notice dated 29.03.2023 issued to the Applicant was in exercise of the responsibilities contemplated under Section 25(2)(a) of the Code.

**Findings**

14. We have heard the counsels appearing for the parties and also perused the documents on record.
15. There is no dispute between the parties as regards execution of Lease Deed dated 19.07.2018 by the Applicants in favour of M/s. Food World Super Markets Private Limited and granting of rights to Food World to assign the Leasehold rights to the Corporate Debtor or any

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subsidiary/ holding/ affiliate/ group company of Corporate Debtor or to any third party companies of Food World. The only requirement for such assignment was that Food World had to give written intimation of such transfer/assignment of rights to the Applicants. In this connection it is observed that the Lease Deed neither requires fresh consent/ NoC for such assignment nor provides that failure to give such written intimation to Food World would make the assignment invalid.

16. The case of the Applicants in the Petition that the lease period under the Lease Deed expired / completed on 14.11.2021 and Food World peacefully vacated the premises and thereafter the Applicants are in peaceful possession of the Leased Premises. However, the reply dated 09.05.2023 issued by the advocate on behalf of the Applicants stated in para 4 that Food World had stopped paying the rent and were not operating their store nor were they using the Leased Premises and had vacated the same after taking all the equipment, Inventory and fixtures from inside. Therefore, a legal notice dated **24.05.2022 was sent on behalf of Applicants to Food World asking them to hand over vacant possession of the property** and also the rents that were due after the expiry of the lease. Thus it is evident that the possession of the property had not been handed over to the Applicants upto 24.05.2022. It is relevant to mention here that the Insolvency commencement date is 20.07.2022 and the Applicants have neither pleaded that the Leased Premise was handed over after 24.05.2022 nor brought on record any evidence to establish handing over possession of Leased Premise to the Applicants.

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17. By virtue of the CIRP Order, this Tribunal had declared a moratorium of the Corporate Debtor during the CIRP period, in terms of Section 14 of the Code whereby, inter alia, the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor is prohibited. The duties and responsibilities cast upon the IRP/RP include, inter alia, collection of information relating to the assets of the Corporate Debtor, preserving the value of the property of the Corporate Debtor and managing the operations of the Corporate Debtor as a going concern. The letter issued by the Respondent is apparently an effort in this regard. The Respondent, as stated in his reply, is faced with constraints with regard to availability of information/documents and would like to rely upon further communications between the Respondent and suspended board as and when received, and further sought the co-operation of the Applicants to provide the whereabouts and access to the assets of the Corporate Debtor which remained in their custody.
  
18. Considering the above we are of the opinion that the Applicants could not establish that the Leased Premise was in their possession on the Insolvency commencement date and that the notice dated 29.03.2023 issued by the Respondent is only an action in furtherance of his duties and responsibilities as Resolution Professional under the Code.

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19. In view of the above, IA.No.2990/2023 deserves to be dismissed.
20. Ordered accordingly.

**Sd/-**

**ANIL RAJ CHELLAN  
MEMBER (TECHNICAL)**

**Sd/-**

**KULDIP KUMAR KAREER  
MEMBER (JUDICIAL)**