THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

I.A. 942 OF 2021

Under Section 60(5) of the Insolvency & Bankruptcy Code, 2016.

Maharashtra Erectors Private Limited

…**Applicant**

In the matter of

C.P.(IB) No. 1967/MB/2019

Creative Garments PVT LTD

…Financial Creditor

V/s.

Dilip Chhabria Design PVT LTD

… Corporate Debtor

Order delivered on: 22/11/2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the Applicant : Mr. Ashish Karande, Advocate

For the Respondent : None

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This IA 942_2021 is filed by M/s Maharashtra Erectors Private Limited ("Applicant") in the matter of M/s Dilip Chhabria Design Private Limited ("Corporate Debtor"), Sh. Jitendrakumar Rambaran Yadav, the Resolution Professional ("Respondent") for direction to remove all objects, articles and materials lying on the said premises; hand over the physical possession of the said premises to the Applicant; and to bear the Cost of the present application.
2. The Corporate Insolvency Resolution Process ("CIRP") commenced on 17.09.2019, and the Applicant was confirmed as Resolution Professional on 6.11.2019.
3. It is the case of the Applicant that it had leased its premises on leave and license for business purposes since the year 2003 under various Leave and License Agreements. The last Leave and License Agreement was dated 13.10.2014 and was for a period of four years ending on 31.3.2019, accordingly, the period of license has ex facie expired. Since about 2016, the Corporate Debtor started defaulting in payment of the monthly license fee, the Applicant filed a Civil Suit No. 140 of 2018 in the Hon'ble Court of Small Causes, Pune. Thereafter, the Applicant and the Corporate Debtor entered into a settlement, which was reflected in Consent Terms resulting into a decree in Suit No. 140 of 2018 in terms of settlement terms by an Order dated 16.9.20219 by the 4th Additional Judge, Small Cause Court, Pune. The Decree stipulated that the Corporate Debtor shall make payment of Rs. 1,90,00,000/- on or before 25.09.2019 as full and final settlement, failing which the entire amount as prayed for in Civil Suit became payable. It further contemplated that the possession of the said premises was to be handed over to the applicant forthwith, and the Corporate Debtor had time

till 15.11.2019 to remove vehicles (of its customers) and other materials, articles and things lying in the Suit Premises.

3.1. In terms of the decree, legal / juridical/ constructive possession of the said premises was handed over to the Applicant, however, a short time was given to the Corporate Debtor to remove its vehicles and other materials etc., but CIRP commenced on 17.9.2019 and the Applicant submitted its claim of Rs. 7,57,68,283 on 23.10.2019, and IRP admitted only a sum of Rs. 1,90,00,000/- in terms of consent decree disregarding the fact that the said amount was payable only if the payment was made by the Corporate Debtor on or before 25.09.2019. Accordingly, the IRP has wrongfully rejected the claim for the whole amount, as whole of suit amount was claimable in case the Corporate Debtor fails to pay decretal amount on or before 25.09.2019.

3.2. Consequent upon imposition of moratorium w.e.f. 17.09.2019, the physical possession of the said Premises got impeded, and the Corproate Debtor was no longer the Licensee of the Applicant and the Applicant was ipso facto in legal / juridical possession of the said Premises and thus the said Premises are not covered by Section 14 of the Code. Even otherwise, the said premises are premises which were being used under a contractual arrangement and do not constitute an asset of the Corporate Debtor over which the IRP/RP (or even Liquidator) can claim any possession or other rights. It is contended that the IRP stands in the shoes of the Corporate Debtor and can claim no higher right than the Corporate Debtor.

4. The Respondent has filed the reply stating that the Premises was in occupation of the Corporate Debtor on date of commencement of CIRP. It is further stated that the Respondent has filed an application seeking liquidation of Corporate Debtor after expiry of maximum period permitted for completion of CIRP after CoC voted for it in its meeting held on 5.1.2021, and the said prayer is pending for adjudication in IA 144/2021. We find that this prayer has since been allowed by this Tribunal.

5. We have heard the Counsel and perused the material available on record.

5.1. It is undisputed fact that the Corporate Debtor is in physical occupation of the Premises of the Applicant on the date of commencement of CIRP and the articles and vehicles (of customers) are lying thereat, though the constructive possession of the said Premises was admittedly handed over to the Applicant. The Applicant has claimed the Pre-CIRP dues being the whole suit amount contending that the Consent Terms were breached and in terms of consent terms (the basis of decree), if the amount is not paid by 25.09.2019, the whole of suit amount becomes payable to the applicant.

5.2. We find that there had been breach of consent terms, however, said breach took place on account of commencement of moratorium on 17.09.2019, which is prior to the due date for payment of settlement amount of Rs. 1,90,00,000/-. Accordingly, we are of considered opinion that an amount of Rs. 1,90,00,000/- can only be said to payable on the date of commencement of CIRP i.e. 17.09.2019 when the due date for payment of settlement amount had not expired. Under the Code, the claims of the Creditors are collated and admitted after verification as is due from the Corporate Debtor as on the date of commencement of CIRP which is 17.09.2019 in the present case. Accordingly, we do not find any infirmity in the act of the Respondent in admitting claim of Rs. 1,90,00,000/- in the CIRP of the Corporate Debtor.

5.3. As regards claim for handing over of physical possession is concerned, we find that the leased premises was no longer required for the purpose of business of the Corporate Debtor because the Corporate Debtor had agreed to vacate the premises by 15.11.2019 indicating its intention to close down operations from the leased premises, Therefore, the said Premises ought to have been vacated forthwith. Accordingly, we direct the Respondent/Liquidator to hand over the physical possession of the premises within 15 days from the date of the order. The dues of the

Applicant shall be admitted in Liquidation Proceedings as per this Order and dealt with as Operational Debt in terms of Section 53 of the Code.

5.4. The Respondent/Liquidator shall make arrangements for lifting of the Articles/Vehicles (of the customers) within said 15 days without causing any further delay and the Applicant shall allow the removal of the same without any insistence for clearance of its admitted dues first as the same are to be settled in accordance with Section 53 of the Code.

6. In view of the aforesaid, IA 942/2021 is disposed of as partly allowed.

Sd/-	**Sd/-**
Prabhat Kumar	**V.G. Bisht**
Hon'ble Member (Technical)	Hon'ble Member (Judicial)