

IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH,

KOLKATA

IA No. 781/KB/2020 in
C.P (IB) No.1512/KB/2018

In the matter of

An application under section 35(1)(b) and 60(5) of the Insolvency and Bankruptcy Code, 2016.

And

In the matter of:

PEC Limited

... Financial Creditor

Versus

In the matter of:

Skyrise Overseas Private Limited

...Corporate Debtor

And

Sanjit Kumar Nayak, Liquidator of Skyrise Overseas Private Limited (In Liquidation) for gain at 30E, Haremohan Ghosh Lane, Flat 2B, "Suryadeep" Beliaghata,Kolkata-700085.

...Applicant

Versus

1. **Nagreeka Exports Limited**, registered Office at 18, R.N. Mukherjee Road, Kolkata- 700001.

... Respondent No.1

2. **Sushil Patwari**, Director of Nagreeka Exports Limited. Email. sushil@nagreeka.com.

... Respondent No.2

Date of hearing : 15/11/2021

Order Pronounced on : 14 /12/2021

Coram:

Mr. Rohit Kappor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

- | | |
|-----------------------------------|---------------------------------|
| 1. Mr Sanjit Kumar Nayak. Adv. |] Self |
| 1. Mr. Joy Saha, Sr.Advocate |] For Respondent In IA/781/2020 |
| 2. Mr. Udit Agarwal, Advocate |] |
| 3. Mr. Vivek Mishra, PCS |] |
| 1. Mr. Deepnath Roy Choudhury,Adv |]For Niraj Khaitan, Respondent |
| 2. Mr. Ashoke Bhowmick, Advocate |] |
| 3. Mr. Dhiman Roy, Advocate |] |
| 4. Mr. Dip Chandra, Advocate |] |

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. This application has been filed by Mr. Sanjit Kumar Nayak, Liquidator of Skyrise Overseas Private Limited (in liquidation).
3. The Liquidator has received claims from the secured and unsecured Financial Creditors, Government Departments and Employee and the same could not be counter verified from the Corporate Debtor. The State Bank of India, a Secured Financial Creditor has lodged claim of Rs. 47,46,30,341.27 and the following were the security held by the State Bank of India.

1	Commercial Office space having 1489 Sq. ft. along with 1 Car parking space at 1 st Floor of Diamond Prestige at 41A, A.J.C. Bose Road, PS-Park Street, Kolkata-17 registered vide Deed No. 1339 of 2012 in the name of Saraf Impex Pvt. Ltd. which was changed to M/s Skyrise Overseas Private Limited.
2	Duplex Bunglow No. AD-02, Located within Vedic Village Complex

at PO. Bagu, PS- Rajarhat, Dist-24 Pargarns (North) Kolkata-700135 registered vide Deed No. 7618 of 2012 in the name of Saraf Impex Pvt. Ltd. which was changed to M/s Skyrise Overseas Private Limited.

A copy of the claim along with the documents showing proof of ownership of commercial office being item no.1 above is annexed to the petition as Annexure-C.

4. It is submitted that the Liquidator visited both the assets to take their possession on 17/06/2020 and 22/06/2020 and it was noticed that the said Commercial Office space along with the car parking is occupied by **“Oppo Lifestyle India Pvt. Ltd.”** and during discussions with the Director of that company, the Liquidator was informed that they are tenant in this office as they have been paying rent on regular basis to one Nagreeka Exports Limited, who claimed to be the owner of the said Commercial space. However, the Liquidator asked them to vacate the office space within 7 days.
5. It is further submitted that on 29/06/2020, the Liquidator received a letter from Nagreeka Exports Limited which claimed that pursuant to an award passed on 12/08/2014, passed by the Ld. Arbitrator appointed in Arbitration Proceedings held between M/s Saraf Impex Private Limited (now Skyrise Overseas Private Limited) and Nagreeka Exports Limited, the above mentioned property had come into their possession inter alia, to utilize the said office for their own purpose and /or to let out the same to interested party. It is submitted that the Liquidator asked Nagreeka Exports Limited to submit relevant documents mentioned in the letter dated 29th June 2020. Thereafter, Nagreeka Exports Limited sent a copy of the arbitration award vide Reference No. NEL/1176/2020 dated 6th July 2020 from which it appeared that they are an Operational Creditor of Corporate Debtor and the Liquidator informed them to submit

relevant documents in the matter including all the annexures as mentioned in the arbitration award through email dated 24/07/2020, and letter No. NEL/1114/2020 dated 29/06/2020 and Letter No. NEL/1176/2020 dated 06/07/2020 are annexed as Annexure-D.

6. It is further submitted that no reply was received from Nagreeka Exports Limited, therefore, the Liquidator again reminded them through email dated 06/08/2020 and all these emails have been annexed with the application as Annexure-E.
7. It is submitted that Regulations 44 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 provides the Liquidator to liquidate the Corporate Debtor within a period of one year from the commencement date and therefore, it was necessary to take possession of the Liquidation Estate and also sell or liquidate the moveable and immoveable property and actionable claims of the Corporate Debtor in liquidation by public auction or private contract, subject to section 52 and then distribute the proceeds so received to the Creditors.
8. It is submitted in the application that Nagreeka Exports Limited are intentionally avoiding to hand over the said property and not allowing to take possession of the said property by the Liquidator. Refusal to hand over the said property is likely to affect all the Creditors of the Corporate Debtor, who are entitled to the proceeds out of the liquidation estate under section 53 of the Code.
9. It is submitted that if the Liquidator sells the Commercial space while the respondent is occupying the flats, the same would not fetch the fair value and, it would be far less a price which it would otherwise be able to be sold.

10. This application has been filed under section 35(1)(b) of the Code because a lot of time has been given to the respondent herein to vacate the commercial space in its possession. The Liquidator has thus submitted that the respondent does not have any legal right to illegally possess the property in question of which it is not the owner. It has been prayed by the liquidator that M/s Nagreeka Exports Limited be directed to vacate the property and hand over the same to the applicant. It is submitted that the office comprises of More than 1489 sq.ft. along with one car parking space and the current market value of which is more than Rs.2.50 Crores if the property is sold by public auction. Therefore, the applicant submits that eviction of M/s Nagreeka Exports Limited is urgently required and has prayed that orders might be passed by this Adjudicating Authority to vacate the Office at Room No. 112 at first floor of Building No. 044 named "Diamond Prestige" Address: 41A, Acharya Jagadish Chandra Bose Road (formerly known as Lower Circular Road) along with one Car Parking Space, Police Station: Park Street, Kolkata.
11. In reply to this application filed by Respondent, Mr. Kedar Nath Bansal, Chief Executive Officer of Respondent No.1 who is duly authorised by the Respondent No.1 to file this affidavit, submitted that this application is not maintainable in law and is barred by the principles of estoppel, waiver and acquiescence and by the principles of law analogous thereto.
12. It is submitted that the applicant has got no cause of action against Respondent No.1. It is submitted that the application is barred by time. It is further submitted that the Creditor had entered into an agreement with Respondent No.1, dated 2nd April, 2013 and as per the said agreement Respondent No.1 had appointed the Corporate Debtor for securing export orders from the overseas market for and on behalf of Respondent No.1. It is submitted that in Clause IV of the said agreement dated 2nd April, 2013, Respondent No.1 would provide necessary finance to the Corporate Debtor for procuring materials from the domestic

market and in case of failure on the part of supplier to supply materials, the Corporate Debtor shall remain responsible for recovery of entire amount from the supplier and the Corporate Debtor shall make good the loss which may be suffered by Respondent No.1.

13. It is further submitted that Clause 9 of the said agreement dated 2nd April, 2013 also provides to refer any dispute between the Respondent No.1 and the Corporate Debtor to the Arbitration to be appointed by mutual agreement between Respondent No.1 and the Corporate Debtor and consequently, one Sri Uttam Kumar Mandal, Advocate was appointed as sole Arbitrator by a letter dated 29th April, 2014.
14. It is submitted that during the course of arbitration proceedings, the Corporate Debtor had admitted and confirmed the amount of Rs.76,19,140/- due and payable to Respondent No.1 by the Corporate Debtor. It is further submitted in the reply after deducting a sum of Rs.32,18,250/- i.e. due and payable to the Corporate Debtor by Respondent No.1, a sum of Rs.44,00,890/- became net due and payable to Respondent No.1 by the Corporate Debtor. It is further submitted that the sole Arbitrator in the arbitration proceedings held that a sum of Rs.44,00,890/- is due and payable by the Corporate Debtor on account of principal and that the aforesaid sum shall carry interest @ 12% per annum from 1st April, 2014 till final payment. In the Arbitration Proceedings, the Corporate Debtor further expressed its impecuniosity to pay the sum of Rs. 44,00,890/- to Respondent No.1 and proposed to liquidate its dues by agreeing to allow the Respondent No. 1 to utilize the office space till such time the dues of Respondent No.1 are liquidated.
15. It is further submitted that Respondent No.1 shall remain in peaceful possession of the said office till the time the dues of Respondent No.1 of Rs. 44,00,890/- along with interest calculated @ 12% per annum from 1st April, 2014 are not fully appropriated. Simultaneously, Award for

delivery of possession of the said office to Respondent No.1 by the Corporate Debtor is vague. It is submitted that the Corporate Debtor had chosen not to file any appeal against the said Arbitration Award dated 12th August, 2014. It is further submitted that out of the total principal dues of Rs.44,00,890/- plus interest @ 12% per annum to be calculated from 1st April, 2014, a sum of Rs.48,57,463/- is outstanding which still remains due, since rent received could not even cover up the outstanding interest portion.

16. It is submitted that there are numerous lacunae in the application filed by the applicant and that the same could be rejected. The respondent has denied that refusal to hand over the said commercial space owned by the Corporate Debtor is likely to affect all the creditors of the Corporate Debtor, who are by the distribution of the assets under section 53 of the Code entitled to the proceeds out of the liquidation.
17. Respondent No. 1 further submitted that they are in lawful possession of the office space by way of Arbitration Award dated 12th August, 2014 and that the Corporate Debtor was in debt to the sum of Rs.44,00,890/-, due to their impecuniosity to pay the sum. It is submitted that the Corporate Debtor had never challenged the Arbitration Award and also executed the award by handing over the possession of the office space in favour of Respondent No.1. It is submitted that the said Arbitration Award has created lawful rights upon Respondent No.1 to use office space till dues of the Respondent 1 are not fully appropriated.
18. In their Rejoinder to the reply of Respondent No.1, the Applicant has submitted that the statements made in the application are true and correct and other allegations made on behalf of Respondent No.1 might be treated as denied and disputed, and that the deponent should put to strict proof of his purported status as Chief Financial Officer of

Respondent No.1 and also regarding his authority and competence to make and affirm the affidavit on behalf of the Respondent No.1. The applicant has reiterated all the statements made in the application and denied various allegations made in the reply affidavit. It is submitted that Respondent No.1 does not have any ownership right over the said property being Commercial space of 1489 Sq.ft. together with one car parking space. It is submitted that the Arbitral award being relied on by Respondent no.1 does not grant any ownership right or the similar status to Respondent No.1 in respect of the said property in any manner whatsoever. It is submitted that on the contrary the arbitral award appears to be in the nature of interim arrangements whereby Respondent No.1 was allowed to utilize the said property for commercial purpose only till the time the dues of the Corporate Debtor were liquidated. It is further submitted that in view of the fact that liquidation proceeding have been instituted in respect of the Corporate Debtor under IBC, respondent no.1 and/or its main servant, agents etc. are not entitled to remain in possession of the property and on the contrary they are required to hand over and to ensure handing over of peaceful possession and custody of the same to the Liquidator. It is further submitted that the purported dues mentioned in the chart are clearly fabricated and in the claim form submitted by Respondent No.1 to the Liquidator, a different figure is purported to be claimed. It is further submitted that the intentions and claims of Respondent No.1 are mala fide and not supported by the facts. It is submitted that the allegations that there was no whisper of security with the State Bank of India during purported arbitration proceeding is totally irrelevant and immaterial. Since the present application has been filed by the Liquidator under the provisions of the Code it will have over-riding effect. It is denied that Respondent No.1 is in lawful possession of the commercial space. It is submitted that even assuming without admitting that the arbitral award was passed in the year 2014 as claimed by Respondent No.1, the same cannot permit or entitle Respondent No.1 to remain in occupation of the

said premises after liquidation order has been passed in respect of the Corporate Debtor. It is stated that it is undisputed that the said property is absolutely and exclusively owned by the Corporate Debtor.

19. During the course of arguments, Ld. Counsel for the Liquidator submitted that the Respondent Nagreeka Exports Limited was directed to vacate and hand over the peaceful possession of the flat of 1489 Sq.ft. with car parking space belonging to the Corporate Debtor (its earlier name was Saraf Impex Pvt. Ltd.). He submitted that it is an undisputed fact that the said property is owned by the Corporate Debtor and formed part of the Liquidation estate under section 36(3) of the IBC and the Liquidator is entitled to take possession thereof and to deal with the same in the liquidation proceedings.
20. It is submitted that liquidation order in this matter was passed on 11th February, 2020 and on 20th February, 2020 the first liquidator appointed by the Adjudicating Authority was replaced by the applicant, Sanjit Kumar Nayak as the Liquidator. Thereafter, public announcement was made on February 17, 2020 and the claim was received from State Bank of India which was a secured Financial Creditor and from the said claim form, the liquidator for the first time came to know that the property which was owned by the Corporate Debtor and in respect of which the security interest in favour of the Bank was relinquished by the Bank. It is submitted that the last available Balance Sheet of the Corporate Debtor was for 2015-16. On further enquiry, it came to the notice of the Liquidator, that Respondent No. 1 and its Director, Respondent No.2 were claiming some interest in the said property. When the Liquidator issued a notice on June 22, 2020 qua vacation of possession of the said property, a letter dated 29.06.2020 was received from Respondent No.1 alleging that it had been in possession of the said property since 2014 by virtue of an arbitral award dated 12.08.2014 passed in the arbitral proceedings between the Corporate Debtor and Respondent No.1 and therefore Respondent No.1 refused to hand over

the possession to the Liquidator. A copy of the arbitral Award dated 12.08.2014 was then forwarded to the Liquidator on July 6, 2020.

21. It is submitted that the Liquidator sought further documents from Respondent No.1 and issued several emails but there was no response from Respondent No.1. It is further submitted that from the purported arbitral Award dated 21.08.2014, the following information came to his notice:-

- i) R 1 had made claims against the Corporate Debtor in the arbitration ;
- ii) Such claims pertained to non-supply of food grains for which Corporate Debtor was liable to pay Respondent No.1 because the Corporate Debtor was rendering services to R 1 to obtain supplies from third parties on commission basis, meaning thereby that R 1 was an operational creditor qua the Corporate Debtor.
- iii) Corporate Debtor had given counter-claims against R1 on account of commission payable, which was not disputed by R1.
- iv) Corporate Debtor also admitted the amounts due to R1.
- v) Ultimately, a Terms of Settlement was executed whereby the parties agreed that after adjusting for Corporate Debtor's counter claims, a sum of Rs. 44,00,890/- was payable to R1;
- vi) Since the Corporate Debtor expressed its inability to pay under the settlement arrangement, R1 would be permitted to utilize the said property owned by the Corporate Debtor for commercial purpose till such time the amount owed by Corporate Debtor together with interest @ 12% per annum was liquidated, and the rent to be realized by R1 from letting out or commercially utilizing the said property would also be adjusted against the outstanding dues.
- vii) Final Award was passed on the basis of the Terms of Settlement.

22. It is submitted by the Ld. Counsel for the Liquidator that there has been

no transfer of any right, title or interest in the said property in favour of R1, and R1 only had the limited purpose to utilize the said property for recovery of its outstanding dues from the Corporate Debtor.

23. It is submitted that much after the last date of March 12, 2020 for submission of the claims to the Liquidator, on September 21, 2020, R1 filed its first claim as the Operational Creditor claiming a sum of Rs.3,70,06,157/-. The Liquidator duly informed R1 on September 24, 2020 that the claim could not be accepted because of the delay. On September 25, 2020, R1 filed yet another claim, this time claiming to be a Financial Creditor for Rs.48,93,341/-. 3rd claim was submitted by R1 on November 17, 2020 claiming to be Financial Creditor for Rs. 48,57,463/-. It is further submitted that till date none of the claims have been or can be considered by the Liquidator because they are all submitted beyond the time limit. R1 has not even chosen to apply to this Adjudicating Authority against rejection of its claims. The alleged claims are wholly bereft of supporting documents/ proof of receipt of monies from utilization of the said property and are also discrepant as to quantum and even the status of R1.
24. Ld. Counsel for the Liquidator further submitted that R1 has made several baseless and irrelevant allegations in its reply affidavit and it relies solely on the arbitral award to support its right if any to utilize the said property and surprisingly the alleged claims that Rs.48,57.463/- is still due from the Corporate Debtor.
25. Ld. Counsel for the Liquidator submitted that the R1 does not dispute the ownership right of the Corporate Debtor and that there is no transfer of any right to the property in favour of R1.
26. It is submitted that Under Section 36(3) of IBC, all properties owned by Corporate Debtor form part of liquidation estate and the Liquidator is entitled to take possession of the same, including the assets that are not

- in possession of the Corporate Debtor and even of encumbered assets under section 36(3)(b).
27. It is submitted that mere arrangement whereby R1 was allowed to utilize the said property for limited purpose of recovering dues is not a justification to refuse to hand over possession to the Liquidator. To support its argument, the Ld. Counsel for the Liquidator has relied upon the decision of Hon'ble NCLT Mumbai Bench in **Alchemist Asset Reconstruction Co.Ltd. vs. Precision Fasteners Ltd.**
28. Ld. Counsel further submitted that only bald and vague allegations have been made without giving any details or even explaining as to how, since 2014, the debt still remains unsatisfied. It is submitted that the stand of Respondent No.1 is totally mala fide, since no details or proof of rent received or even the name of the party from whom monies are received is mentioned.
29. Ld. Counsel for the Liquidator submitted that in this way, Respondent No. 1 will continue to use the said property in perpetuity by showing baseless figures without supporting evidence, which would lead to an absurd and pointless situation, having regard to the time bound liquidation process of the Corporate Debtor. It is submitted that for the first time only there is allegation made in the reply affidavit that security interest in respect of the property has been created in favour of Respondent No.1 under the Award and also that R1 is a secured Financial Creditor.
30. Ld. Counsel for the Liquidator has submitted that as on date, R1 is not even accepted to be a creditor of Corporate Debtor, let alone a Financial Creditor or secured Financial Creditor. It is submitted that the story of alleged security interest being created is baseless and only introduction as an afterthought.
31. It is submitted that the definition of "**Security interest**" is not satisfied in the present case for several reasons. Firstly, the arbitral award is an
-

unregistered document meaning thereby that no right, title or interest or claim to any immovable property in excess of Rs.100/- can be claimed by virtue of such unregistered Award.

32. Ld. Counsel has referred to **(1995) 5 SCC 709 @ paras 16 to 18, in the case of Bhoop Singh Vs. Ram Singh Major and others**, which are reproduced as under:-

“16- We have to view the reach of clause (vi), which is an exception to sub-section (1), bearing all the aforesaid in mind. We would think that the exception engrafted is meant to cover that decree or order of a court, including a decree or order expressed to be made on a compromise, which declares the pre-existing right and does not by itself create new right, title or interest in praesenti in immovable property of the value of Rs. 100 or upwards. Any other view would find the mischief of avoidance of registration, which requires payment of stamp duty, embedded in the decree or order.

17. It would, therefore, be the duty of the court to examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the court one party having right, title or interest therein agreed to suffered to extinguish the same and created right, title or interest in praesenti in immovable property of the value of Rs. 100 or upwards in favour of other party for the first time, either by compromise or pretend consent. If latter be the position, the document is compulsorily registrable.

18. The legal position qua clause (vi) can, on the basis of the aforesaid discussion, be summarized as below:

(1) Compromise decree if bona fide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not require registration. In a converse situation, it would require registration.

(2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs. 100 or upwards in favour of any party to the suit the decree or order would require registration.

(3) If the decree were not to attract any of the clauses of sub-section (1) of Section 17, as was the position in the aforesaid Privy Council and this Court's cases, it is apparent that the decree would not require registration.

(4) If the decree were not to embody the terms of compromise, as was the position in Lahore case, benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of the compromise in question.

(5) If the property dealt with by the decree be not the “ subject matter of the suit or proceeding”, clause (vi) of sub-section (2) would not operate, because of the amendment of this clause by Act 21 of 1929, which has its origin in the aforesaid decision of the Privy Council, according to which the

original clause would have been attracted, even if it were to encompass property not litigated” .

33. It is submitted that R1 has no right, title or interest or claim to the property, even according to the Award, it can only utilize the same for a limited purpose.
34. Ld. Counsel for the Liquidator further submitted that since R1 is not even recognized to be a creditor and thus, it cannot fall within the definition of secured creditor enjoying security interest. It is submitted that section 52(3) of IBC read with Regulation 21 of the Insolvency and Bankruptcy Board of India (Liquidation Process Regulations),2016 provides for only three ways to prove security interest:-
- (i) Records available with an information utility;
 - (ii) Certificate of registration of charge issued by Registrar of Companies under sections 77,78 of the Companies Act, 2013;
 - (iii) Proof of registration of charge with Central Registry of Securitization Asset Reconstruction and Security Interest of India.
35. It is submitted that none of these is complied with or satisfied by R1.
36. Ld. Counsel further submits that the corresponding provision in the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process Regulation), 2016 viz. Regulation 20 thereof , which provides an additional method to security interest i.e. “other relevant documents which adequately establish the security interest”. It is submitted that this is missing from Regulation 21 of the Liquidation Process Regulations, evidencing that Regulation 21 is exhaustive and not inclusive in nature. It is further submitted that IBBI has consciously not included the phrase “other relevant documents” in Regulation 21 of the Insolvency and Bankruptcy Board of India (Liquidation Process) 2016.
37. Ld. Counsel submitted that R1 does not have any security interest as claimed or otherwise, assuming without admitting that any such
-

security interest can be claimed to be in existence, Regulation 21A of the Liquidation Regulations re: Presumption of security interest” is also squarely against R1. The proviso to Regulation 21A(1) states that where a secured creditor does not intimate its decision either to relinquish or to realize security interest to the Liquidator within 30 days from liquidation commencement date, the assets covered under security interest shall be presumed to be part of the liquidation estate. Furthermore, where a secured creditor who wants to realize security interest fails to take steps mentioned in Regulation 21A(2), the asset in question shall become part of liquidation estate by virtue of Regulation 21A(3).

38. It is submitted by the Ld. Counsel for the Liquidator that in the Supplementary Affidavit , R1 has sought to introduce a whole new case in total contradiction of the stand taken by it earlier in its letters and also in the main Reply Affidavit.
39. It is further submitted that the main plank of the Supplementary Affidavit is the story of the so-called “tenancy” based on an alleged document dated 18.08.2014. The same is a sham, afterthought, defence invented and manufactured on the basis of an ex-facie **fabricated document. This alleged story of tenancy has been introduced for the first time in the Supplementary Affidavit dated 08.02.2021 and this story is** in clear contradiction of the stands taken by R1 earlier.
40. Ld. Counsel for the Liquidator submitted that R1 has no right to resist the application. R1 is not a creditor for the purpose of Section 53 of IBC since its claims have been rejected by the Liquidator and there is no challenge to the same. As such, there also cannot be any so called “security interest”.
41. It is further submitted by the Ld. Counsel for the Liquidator that there is absolutely no explanation given by R1 even in the course of oral submissions for the alleged tenancy document or as to how it surfaced at this stage, particularly since the same is falsified by and contradictory

to the following:-

- (i) Letters dated 29.06.2020 and 06.07.2020 issued to the Liquidator where only possession under the award is mentioned and there is no mention of tenancy.
- (ii) In R1's Main reply affidavit filed in the present application there is also no mention of any tenancy and the only mention is of arbitration award and alleged "security interest".
- (iii) Significantly at para 3 (xiii), page 5 and para 5(i), page 9 of the reply affidavit, it is alleged that it is "enjoining possession" only "by virtue of the Arbitration Award".
- (iv) At Para 5(vi), page 11 of Reply Affidavit, again there is reference only to Award qua possession.
- (v) These repeated admissions /stand destroy the false and afterthought case set up by R1 in the Supplementary Affidavit regarding alleged tenancy.
- (vi) At best and assuming without admitting that the right to utilize the premises under the Award is a Licence and, the very basis to utilize the premises under the Award has gone because by reason of rejection of R1's claims by the Liquidator (against which there is no challenge), R1 in law cannot have or continue any claims against R1.
- (vii) Under section 62(f) of the Easements Act, 1882, a licence is deemed to be revoked when the licence is granted for a specific purpose(in our case to utilize the premises to set off claims against Corporate Debtor) and the said purpose is abandoned or becomes impracticable.
- (viii) This Adjudicating Authority in the matter of **Nicco Corporation v. Nicco Engineering** in a similar case had passed suitable directions to enable liquidator to take possession of a premises.
- (ix) All three claim forms filed by R1 mentioned only arbitration award viz. security interest and there is no mention of any tenancy regarding possession. On the contrary, possession was

claimed solely and exclusively on the basis of arbitration award and it was alleged that R1 had “security interest”. Copies of the three claim forms submitted from time to time by R1 are collectively annexed to the petition as Annexure-“A” .

42. It further submitted by the Ld. Counsel for the Liquidator that the alleged tenancy document indicates that it has been manufactured solely to invent a baseless defence to the present application. Firstly, there was no reason for the so called tenancy letter to be issued in 2014 only a few days after the award and no reason has also been indicated. Secondly, no provision has been made in the alleged letter for rate of rent or other material terms of a tenancy. Thirdly, the alleged letter says that R1 shall be entitled to continue in possession even after all its dues are realized under the Award and that too, without any conditions or consideration. This is ex-facie absurd.
43. Ld. Counsel for the Liquidator submitted that R1 has allegedly sub-let the premises to some third party and is realizing payments and has purportedly placed on record documents to show this. This is an incorrect submission. It is stated that no verifiable documents at all have been produced. Self-serving and unilaterally prepared ledgers of R1 (without supporting proof) cannot be an evidence of R1’s allegations. Purported bank statements containing blacked out entries do not assist R1 in any way. Notably, there is not a single authentic paper produced by R1 to show that there is any alleged sub-letting of premises to anybody, let alone disclose the terms of any such alleged sub-tenancy. When the Liquidator visited the premises, he found the same to be under lock and key and was informed that premises was shut down by police due to illegal activities being conducted.
44. It is further stated by the liquidator that the so-called tenancy document ought to be totally disbelieved and disregarded. It is also relevant to take into account the effect of allowing such ex-facie

fabricated document to defeat the ends of justice. If R1's argument is accepted, it will lead to a situation where any person can just come along and produce a mere letter at any time alleging tenancy, thereby denuding this Adjudicating Authority to pass effective directions for speedy and meaningful liquidation. This cannot be the intent of the law. This would militate against the objectives of the IBC and would derail liquidation processes.

45. Ld. Counsel for the Liquidator submitted that R1 is in the habit of fabricating documents and is acting in collusion with ex-Directors of CD to derail the liquidation process is evident from the shocking fact that in the supplementary affidavit, R1 has produced alleged balance confirmation of CD with post liquidation date. These are without the knowledge of the liquidator and in the haste of cooking up a defence to the application, these alleged balance confirmations have been fabricated by R1.
46. The Ld. Counsel for the Liquidator has referred to various judgements in support of his case, which are as under:-
- i) Decision of NCLT, Kolkata Bench dated 07/01/2020 in Nicco Corporation vs. Nicco Engineering.***
 - ii) Decision of NCLT, Chandigarh Bench dated 08/01/2018 in Punjab National Bank vs. James Hotels.***
 - iii) The matter in James Hotels (supra) went up on appeal and the directions passed were not interfered with by the Hon'ble Supreme Court in fact, directions were also passed by Hon'ble Supreme Court in CA 9552/2018 on 25.09.2018 and in M.A. No. 873/2019 on 09/08/2019.***
 - iv) Decision of NCLT, Mumbai Bench in M.A.1007 /2018 and M.A. 751/2019 in Alchemist Asset vs. Precision Fasteners dated 08.05.2019.***
47. Ld. Counsel for the Liquidator further submitted that the judgment relied on by R1 are totally inapplicable and irrelevant.
48. In support of its pleadings, Respondent No.1 referred to its
-

Supplementary Affidavit filed by Kedar Nath Bansal, CFO of Respondent No.1 and referred to agreement dated 2nd April, 2013 between Nagreeka Exports Limited and the Corporate Debtor, which was earlier known as Saraf Impex Pvt. Ltd. He further submitted that in **Para '4'** of the Agreement, on page 13 of the Supplementary Affidavit, it is agreed between the parties "The First Party shall provide necessary finance to the second party for procuring materials from the domestic market and for effecting/ executing shipment in the name of First Party in terms of the export orders to be secured by the Second Party in favour of the First Party and in case of failure on the part of supplier to supply the materials the second party shall remain responsible for the recovery of entire amount from the supplier and the Second Party shall make good the loss which may be suffered by the first party in the matter". He submitted that the Corporate Debtor wanted to sell certain goods or export certain goods and they did not have the funds to do. So, the Respondent No.1 being financier, financed Corporate Debtor and on the basis of that finance provided by Respondent No.1 they were able to secure the material and they were able to export, this was the basically Agreement which was available. It is further argued that there was dispute between the parties and the matter was referred to arbitration and later on the Arbitration Award was passed. When the matter was pending in the arbitration, the parties entered into the Terms of Settlement. Para 6 of the Terms of Settlement is reproduced as under:-

" During the arbitral sitting the parties have entered into mutual settlement on the following :-

- (i) The respondent namely, M/s Saraf Impex Pvt. Ltd. admits that a sum of Rs.76,19,140.87 is due and payable to the claimant on account of principal;***
- (ii) The claimant namely M/s Nagreeka Exports Ltd. admits that a sum of Rs.32,18,250.00 is due and payable by it to the respondent namely, M/s Saraf Impex Pvt.Ltd.***
- (iii) After giving credit to the sum payable by the claimant to the respondent, a sum of Rs.44,00,890.00 is due and payable by the respondent to the claimant on account of principal and that the above sum of Rs.44,00,890.00 shall carry interest at the rate of 12% per annum from 1st***

May,2014 till final payment”.

49. In para ‘7’ of this Terms of Settlement respondent i.e. the Corporate Debtor herein expressed its incapacity to pay the above sum to the Claimant i.e. Respondent No.1 and proposes to liquidate its dues in the following manner:-

“(i) The Respondent is the owner of an office space measuring 1500 sq.ft. a little more or less lying and situated at Diamond Prestige building, 41A, A.J.C. Bose Road, Unit-112, 1st Floor, Kolkata-700017, (hereinafter referred to the said office) and hereby agrees to allow the claimant to utilize the same for commercial purpose till such time the dues to the claimant is liquidated.

(ii) For such purpose the claimant will be entitled to utilize the said office for its own purpose and/or let out the same to interested party without any interference /hindrance from the respondent or its agent, representative in any manner whatsoever.

(iii) The rent to be realized by the claimant for letting out/commercial usage of the said office shall be adjusted towards the claim of the claimant.”

50. It is further submitted that in Para-‘8’ of the Supplementary Affidavit “the Claimants” i.e. respondent herein, shall remain in peaceful possession at the said office till such time the dues of the Claimant of Rs. 44,00,890.00/- along with interest calculated @ 12% per annum from 1st April 2014 is not fully appropriated.

51. Ld. Counsel further referred to Clause 10 of the agreement which states that “Parties agreed to file the Terms of Settlement in the pending arbitral proceeding and pray for an Award to be passed pursuant to the Terms of Settlement. Ld. Counsel argued that the arrangement that was arrived at is that first there was reconciliation of account under which Respondent No.1 was to get Rs. 44,00,890.00/- and it was also agreed that this would be paid along with interest @ 12% per annum. Since the Corporate Debtor had no money, the Corporate Debtor offered that this flat would be put in the possession of Respondent No.1 Company, who would be entitled to let out the same and the money received from that letting out would be adjusted against this claim of Rs. 44,00,890/- and

till such time, this money was not adjusted, Respondent No.1 would be entitled to carry out this letting out of the said flats adjust the same in its account. Ld. Counsel further referred to the Arbitration Award and enclosed with the Supplementary Affidavit and read out from the Terms of Settlement. The Award also records the Terms of Settlement of Agreement dated 2nd April, 2013 because the same Terms of Settlement have been embodied in the Award in accordance with principles of Order XXIII of CPC. It is submitted that when the parties have settled the court merely puts its stamp of approval on the settlement. Therefore, the Award was passed in favour of the Claimant (Respondent No.1) herein for a sum of Rs. 44,00,890/- along with the interest thereon @ 12% per annum from 1st April, 2014. The Ld. Counsel further referred to letter dated 18th August, 2014 written to R1 Nagreeka Exports Limited by the Corporate Debtor wherein ,in last para whereof is as under:-

“ In the light of above, we hereby certify, confirm and place on record that we hereby deliver the vacant and peaceful possession of the said office space in your favour and induct you as our lawful tenant. You shall have all right and interest of the tenant and shall have also right to sub-let the office space and to collect the rent in your favour without any intervention from our side. The actual rent realization by you shall be adjusted against the dues of Rs. 44,00,890/-. That after fulfillment of the dues of Rs. 44,00,890/-, you shall remain tenant of the said office space till the same is decided otherwise”.

52. He submitted that by this document, the Corporate Debtor made over possession to Nagreeka Exports Limited with Nagreeka as a lawful tenant with right to sub-let the office to collect the rent without any intervention from the Corporate Debtor, and to adjust the same against its dues, and to remain tenant of the said office till the same is decided otherwise.
53. Ld. Counsel referred to the objection raised by Mr. Shaunak Mitra during the course of his submissions that the last line “You shall remain tenant of the said office space till the same is decided otherwise” and submitted that even if this line is ignored, with regard to future right of

Respondent No.1 to remain there as a tenant, the Corporate Debtor/ Liquidator will have to justify for the determination of the issue before the Adjudicating Authority, Ld. Counsel submitted that initially this office space was let out to a company and thereafter it was let out to a entertainment company **Hoppoo Lifestyle India Pvt. Ltd.**. He stated that there is no lease agreement because there is no lease, it is only a monthly tenancy and R-1 has given full particulars how much is being received. It is stated that it is a sort of licence and R-1 has given full particulars of how much, R1 is receiving from them after deducting TDS etc. Ld. Counsel further submitted that Respondent No.1 has given the confirmation of accounts dated 1st April 2014 from page 22 to 25 with the Supplementary Affidavit. He submitted that the payments are being made by Cheque through Kotak Mahindra Bank from Joy Travel Trip Club Pvt. Ltd. He submitted that these are the rents being paid, which include certain maintenance charges etc. till 2019 from Joy Travel Trip Club Pvt. Ltd. The Ld. Counsel referred to certain entries. He submitted that whatever they were giving was being credited. He submitted that July 2019 onwards **Hoppoo Lifestyle India Pvt. Ltd.** was the occupants and they were giving Rs. One Lakh per month.

54. Ld. Senior Counsel for the Respondent No.1 further argued on the question of law and submitted that his first point of argument is whether a tenant can be sought to be evicted by instituting proceedings before the Adjudicating Authority and the second point for consideration is as to whether the Tenancy Agreement was required to be registered. Ld. Counsel submitted that he has placed on record and referred to the relevant documents which would show agreement dated 2nd April, 2013 and Terms of Settlement on 2nd April 2013 followed by Arbitration Award and has also enclosed confirmation of accounts with relevant receipt entries which would indicate how much money R-1 has received month by month. The Ld. Counsel further submitted that Nagreeka Exports Ltd. is entitled to retain possession and its use in terms of the Award. Ld. Counsel submitted that there are only two propositions of law, the first

propositions tenant cannot be evicted by NCLT. He submitted that whether the tenant is a general tenancy or not a general tenancy, the question that calls for consideration of this Bench is whether this will be decided by NCLT. It is submitted that first the possession was with Respondent No.1 and thereafter with other tenants who are paying rent. The Ld. Counsel further submitted that a tenant can be evicted by this Tribunal and in support of his claim, the Ld. Senior Counsel has placed on record and relied upon the following two decisions (1) ***K.L.Jute vs. Tirupti Jute Industries Ltd., NCLAT, New Delhi in Company Appeal (AT)(INS) No. 277/2019.*** This order was delivered on 20th February 2020. It is submitted that in Para '65', the Hon'ble Appellate Tribunal has held as under:-

“ 65- Insofar as, the eviction of 2nd Respondent is concerned, the Adjudicating Authority is not empowered to pass an order of eviction and it is for an 'Aggrieved Party' to move the appropriate forum for redressal of its grievances in accordance with Law. In short, the Committee of Creditors had approved the Resolution Plan in utter disregard to the ingredient of Section 30(2)(e) of the I&B Code and as hence the same was rejected by the Adjudicating Authority. Moreover, the Adjudicating Authority had appointed a 'Liquidator' other than the 'Existing Resolution Professional'”.

55. Ld. Counsel further relied upon an order passed by ***NCLT Mumbai Bench in the matter of Liquidator of Precision Fasteners Limited vs Siddhi Edibles Pvt. Ltd. in MA 1512/2018 on 27th October, 2020.*** In this judgement also according to the Ld. Counsel in 'Para 22', the NCLT, Mumbai Bench has held as under:-

“22- In view of the ratio laid down by the Hon'ble Supreme Court and the Hon'ble NCLAT, this bench is of the view that recovery of rent from the tenant and the eviction of tenant from the property of the Corporate Debtor is in the exclusive domain of the Civil Courts and cannot be dealt with by the Adjudicating Authority by invoking section 60(5) of the Code and the jurisdiction lies with the Civil/Rent Control Court only”.

56. Ld. Senior Counsel appearing for the Respondent No.1 submitted that the Liquidator has not been able to show that the so called tenants who have been occupying the premises in question had any common Directors common shareholders or any other relationship with Respondent No.1. The only allegation according to the Ld. Counsel, is why in the letter of possession has he stated that the Tenancy will continue even after payment of Rs.44,00,890.00/- is adjusted. He submitted that this is the only doubt that has been cast on the basis of which rent paid month to month by them through Bank exceeding a sum of Rupee One Lakh is being sought to be distributed. He stated that in addition to these judgements, he has also relied upon ***Embassy Property Development Pvt. Ltd. vs. State of Karnataka & Ors (Civil Appeal No. 9170 of 2019)*** judgement which is a well known judgement. He has further relied on para 39-40 of the said judgement. In the ***Embassy Property Development Pvt. Ltd.***, the writ petition was entertained on the ground that section 60(5) cannot be a panacea for all forms of reliefs and that when it involves the question of public importance, then it has go out of the purview of NCLT and it must be adjudicated upon by the Writ Court. The Ld. Counsel further submitted in the present case this issue of eviction of tenant must be tried by the Rent Control Court and not by this NCLT. He submitted that in the present case the tenant cannot be evicted in the manner that is being sought in these proceedings.

57. Ld. Counsel further referred to Section 44 of the West Bengal Premises Tenancy Act and submitted that there are specified courts in West Bengal which alone have the jurisdiction to take up tenancy matters for example if there is a tenancy matter it cannot be filed for adjudication before the normal Civil Courts in West Bengal, for that, one will have to go before the Courts which are designated Rent Control Courts under section 44 of the aforesaid Act. He further submitted that it would automatically employ that the jurisdiction of other courts would be

excluded. This particular section will not fall foul of section 238 of IBC and that the IBC does not anywhere says that the issue with regard to eviction will also be tried by NCLT. The IBC does not say anything with regard to its power to tried matters such as this and therefore it is not in conflict with section 44 of the West Bengal Premises Tenancy Act. He argued that this act categorically states that matters of eviction are only to be heard by Rent Control Court. He submits that the Act specifies in its schedule exactly which are courts designated for its purpose and therefore by implication, it would exclude the eviction of a tenant by an order of NCLT.

58. Ld. Counsel further submitted that there is another aspect he would like to address this Bench on. He submitted that the award has not been challenged and has attained finality. He submitted that he would rely upon two definitions under the IBC one is definition of “ Claim” and the other is definition of “Creditor”. He submitted that under the definition of “Claim”, “Judgement” is included and definition “Creditor” in Section 3(10), we will find “a decree holder”. Therefore, according to the Ld. Counsel this is particular award which has now been passed, which is a judgement and a decree which is not challenged in any court of law under section 34 of the Arbitration Act. Therefore, it has attained finality and if an Award or Judgement has attained finality, then it cannot be rendered otiose by this kind of prayers being sought from the NCLT. He further submitted and referred to Section 36 of the Arbitration Act which says that once an Award is passed, and if it is not set aside, then it becomes final in the same manner as if it were a decree of court. So an Award of the Arbitrator which has not been set aside under section 34 after the period for setting aside has expired or if section 34 has been made and rejected, it becomes a decree of the Court. If it is a decree of court then that decree of court cannot be sought to be disregarded by seeking this type of relief from this Adjudicating Authority. The Ld. Counsel further argued that there is no requirement for a rent

agreement to be registered because registration is required if it is lease under section 107 of the Transfer of property Act only.

59. Ld. Counsel further submitted that if a tenancy is not registered it will not be a lease and it would be a monthly tenancy, for whatever period, from month to month.
60. Ld. Counsel referred to and relied upon order passed by Hon'ble Supreme Court in **Food Corporation of India and Others vs Babulal Agarwal 2004(2) SCC 712 in Civil Appeal No. 3484/1997**, head Note A and E , Paras 5,7,10, which are as under:-

“ A. Transfer of Property Act, 1882- Ss. 105, 107 and 106- Nature of lease in absence of lease deed or registered lease deed-Held, in such a case the nature of the lease would only be that of a monthly lease- Registration Act, 1908- Ss.17(1)(d) & 17(2)(v) & 2(7)- Nature of lease if not registered.

E- Registration Act,1908- Ss 17(2)(v), 2(7) & 17(1)(d)- Agreement for securing another agreement or deed in future for the creation of rights (lease in this case) in immovable property- Held, is not a document which compulsorily requires registration- It is an executory agreement by which no right in property created in praesenti- Such situation would arise if the agreement is such which may amount to a present demise even though the document may be contemplated to be executed later on- Evidence Act, 1872- S.92- Admissibility of documents not required to be registered.

“5. The case of the plaintiff was that the claim of the plaintiff for damages is based on breach of conditions of the agreement dated 12-2-1986 since the defendant instead of occupying the plinth/platform for a period of three years, vacated the same on 10-10-1998 after having taken the possession only on 24-1-1987. Therefore, the defendant was liable to damages at the same rate as the rent for the plinth. The case of the defendant has been that no registered lease deed, as envisaged in the agreement, was executed for a period of three years, hence it was only a tenancy for month to month and under the provisions of Section 106 of the Transfer of Property Act, it was legally open for the defendant to terminate the tenancy on fifteen days’

notice and vacate the premises. On the pleadings of the parties the court framed issues. We are concerned with only Issues 3 and 4 in respect of which arguments have been advanced before us, which are reproduced below:

“ 3. Whether in the absence of the registration of the alleged lease for three years the tenancy between the parties was monthly and it was liable to termination by notice?

4. Whether the defendants were bound to pay rent for three years on the principle of ‘promissory estoppel?’”

On both issues noted above, the trial court has recorded findings in the affirmative but in respect of Issue 3 it has been further held that there was a breach of contract on the part of the defendant. The trial court has made a detailed discussion while recording the finding as indicated above and came to a conclusion that once the plaintiff had performed his part of the contract and altered his position, namely, having construed the plinths according to specifications of the defendant, on a condition give out by the defendant that on completion of the construction they would hire the premises for a period of three years, the defendant could not later on back out from such a promise. It has been noted, and rightly so, that in the tender notice as well as in the correspondence it had been clearly given out time and against that the defendant would utilize the plinths constructed by the plaintiff for a period of three years. As a matter of fact, on completion of the construction the defendant did occupy the plinths and had been paying rent as agreed but terminated the tenancy by serving a notice of fifteen days as per the provisions of Section 106 of the Transfer of Property Act and vacated the premises on 10-10-1988. In connection with this point it may be worthwhile to notice that the defendant itself had admittedly written a letter dated 16-10-1986 to United Commercial Bank mentioning therein that the lease was for a period of three years and the rent payable to the plaintiff would be directly remitted to the bank as against the loan advanced to the plaintiff.

7. We may, however, point out that the learned Counsel for the defendant-appellant has laid much emphasis mainly on three points. The first point is that there being no registered lease deed, it was a monthly tenancy and could validly be terminated by giving fifteen days’ notice and since the tenancy was

terminated accordingly, there was no occasion to saddle the defendant-appellant with the liability of damages. In absence of a registered lease deed, it is contended that it could not be held that the property leased out to the defendant-appellant was for a period of three years”.

61. Ld. Counsel argued that nature of lease in absence of registered lease deed will be in the nature of a monthly lease.
62. While dealing with the objection raised by Mr. Shaunak Mitra, that this is a collusive arrangement between Respondent No.1 and the erstwhile Directors of the Corporate Debtor, Mr. Joy Saha, Ld. Senior Counsel submitted that even after the Corporate Debtor is going into CIRP, or liquidation under section 20-25, it is the duty on the part of the Liquidator to keep it as a going concern. He submitted that when Respondent No.1 is tendering the account of its receipts, why this should be construed as an Act of collusion.
63. On a question being asked by the Bench to Mr. Saha, as to how much has R-1 received till date and adjusted out of Rs. 44,00,890/-. He responded that R-1 is entitled to interest @ 12% per annum and i.e. coming to between Rs. 5 lakh to 6 Lakh in a year and after giving consideration to last confirmation account, the total dues would be about Rs. 70 to 80 Lakh. He submitted that this is not a point of dispute. The last claim filed was Rs. 48,57,000/- which is the closing balance.
64. Ld. Counsel for the Liquidator Mr. Shaunak Mitra while dealing with arguments of Mr. Joy Saha in rejoinder submitted that he is not accepting that any proper accounts have been either maintained or given to the Liquidator. He submitted that when Liquidator had visited the premises, it was under lock and key. He submitted that it is not correct and they are not admitting this arrangement whatever stated by the R-1. He submitted that tenancy letter and the arguments is contrary to 5

different chronological written documents issued by them, where the tenancy has not been mentioned. He submitted that there is no mention of any tenancy either in the letters written by R1 to the Liquidator or reply affidavit filed in these proceedings or the three claim forms where the only mention is that of Award. He submitted that R 1 has not till date disclosed any show called agreement with any tenant. He submitted that the **Hoppoo Lifestyle India Pvt. Ltd.** has been linked to this property without any evidence in this regard. There is no stamp paper purchase in the name of any of the parties. There is no execution of any agreement. Not a single letter from Hippo Life style has been produced and nothing has been disclosed as regards relationship of Hippo Life Style and R-1, except the unilateral ledgers nothing has been placed on record.

65. In response thereto Mr. Joy Saha, Ld. Senior Counsel once again submitted that the tenancy does not require any agreement it only requires payment of rent and so far as payment of rent is concerned, he has shown that the rent was being received by R-1. He submits that if a letter is produced from the tenant that will not create any tenancy by any stamp paper. Ld. Counsel further submitted that he has disclosed the Bank account, which shows that firstly Joy Travel Trip Club Pvt. Ltd. was given the premises by month to month and thereafter the account will show that Hippo life Style was paying some rent. He submitted that creation of tenancy does not require any agreement.
66. Since the only point left in issue is retention of the premises by R-1 for claiming its dues from the Corporate Debtor or for that matter from the Liquidator appointed in the case, it is not very difficult to solve the issue. R-1 has a right to claim if its claim is found genuine supported by all documents on merits that it can file with the Liquidator. The delay caused due to any confusion in filing its claim can be condoned which we consider doing so in these circumstances but once the latest claim deducting all the rents received by it from the occupants is filed, neither

R1 nor any of its representatives or so called tenants or licencees or occupants have any authority to stay in the said premises. The only claim it can raise is as regards its dues.

67. We have heard Ld. Counsel for the parties at length. It is very much clear that under section 35 (1)(b) of the Code, it is one of the duties of the Liquidator to take into his custody or control all the assets, property, effects and actionable claims of the Corporate Debtor.
68. Under section 36, the Liquidator has to form an estate of the assets mentioned in Sub section 3 which will be called the liquidation estate in relation to the Corporate Debtor. Section 36 (3)(a)(b) empowers the Liquidator to include the assets of the Corporate Debtor over which the Corporate Debtor has ownership right, including all rights and interest therein. The Liquidator can also include the assets of the Corporate Debtor even if the possession of the same is not with the Corporate Debtor.
69. In the present case after considering all the arguments of both the parties and documents placed on record including the Arbitration Award, we are of the considered view that Respondent No.1, who claims to be in physical possession on the basis of the Award passed by the Arbitrator and has been letting out the premises to the interested tenants from month to month basis and is presently receiving rent from them shall hand over the constructive possession of the flats/ office space to the Liquidator, and the occupant of the premises shall pay the user charges regularly i.e. month by month to the Liquidator at the existing rate. It is further directed that it will be the duty of Liquidator to have the said premises evaluated and included in the Liquidation estate. Respondent No.1 is given an opportunity to file its claim after adjusting all receipts of rent from 2014 onwards till date, with true account with evidence/ documents, with the Liquidator. It will be considered by the Liquidator on merits and the said claim will be treated as one of the Operational

Creditor. The present occupant shall be treated as a licensee of the Liquidator. The Liquidator shall have right to have it vacated at any time if the user charges are not paid or when the said property is required to be vacated and put on sale.

70. In these circumstances, the application filed by the Liquidator succeeds with the aforesaid directions, and is disposed of.
71. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on, this 14th day of December, 2021

Pj