

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 2023 OF 2021

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

M/s Sanghvi Metal Corporation Thr. Shri.
Lalit B. Sanghvi

...Applicant

V/s

Dilip Chhabria PVT LTD

... Respondents

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. Tejas Dande, a/w Mr.
Bharat Godhani, Advocates

For the Respondent : None

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This IA 2023_2021 is filed by M/s Sanghvi Metal Corporation through its Partner Sh. Lalit B. Sanghvi (“Applicant”) in the matter of M/s Dilip Chhabria Design Private Limited (“Corporate Debtor” or “Respondent No. 1”), Sh. Jitendrakumar Rambaran Yadav, the Resolution Professional (“Respondent No. 2”) for direction to vacate and hand over the peaceful possession of the leased premises; to consider the claim amounting to Rs. 14,15,55,018.29 (comprising of (i) Outstanding license fee from 1.3.2016 to 21.11.2016 amounting to Rs. 1,07,38,088/-; (ii) interest on outstanding license fees @ 2% from 1.3.2016 to 21.11.2016 amounting to Rs. 32,46,930.29; (iii) damages for each of default from 22.11.2016 to 16.9.2019 @ 1,30,000/- per day amounting to Rs. 13,37,70,000/-; and (iv) as reduced by Interest Free Security Deposit amounting to Rs. 62,00,000/-) in Form B filed on 3.12.2019 in CIRP; to quash and set aside the demand notice dated 27.11.2020 and 1.12.2020 issued by Respondent No. 2 against the Applicant in CIRP; to grant free and complete access sheds and locations stated in prayer (e); and interim reliefs in relation to these prayers.
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 licensed various Industrial Sheds/ Godown having approx.. 50,000 sq. ft. area along with administrative office, owned by it, to the Corporate Debtor for their business purpose for the period from 1.1.2014 to 31.12.2018 and in respect of certain Industrial sheds for the period from 15.04.2014 to 31.12.2018. Pursuant to this, it received Interest free Security Deposit amounting to Rs. 30,00,000/- and Rs. 32,00,000/- from the Corporate Debtor.

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- 3.1. As per clause 19 of the Leave and License Agreement, it was agreed that if the Licensee commits default in payment of the dues to the Licensor or commits breach of any of the terms and conditions of the agreement, then the Licensor shall be entitled to levy interest @ 2% per month on all outstanding or to terminate the said Agreement and revoke the permission after giving one month written notice to the Licensee to rectify such breach. On such termination or otherwise upon expiry of License by efflux of time, the Licensee shall remove itself and all its personnel and movable articles and things belonging to it and being in the Licensed premises without any damage and hand over the same to the Licensor failing which the Licensee shall be bound and liable to pay to the Licensor compensation/menses profits/damages at Rs. 60,000/- per day and Rs. 70,000/- per day totalling Rs. 1,30,000/- per day, for the period of default. The License fee was payable in advance on 5th of every month.
- 3.2. In view of breach of various conditions of the Leave and License Agreement, the Applicant had sent multiple written reminders to pay outstanding license fees. However, the Corporate Debtor failed to take any action and ignored such reminders. Therefore, the Applicant sent a legal notice dated 21.10.2016 through its Advocate and terminated the said Leave and License Agreement and asked the Corporate Debtor to immediately handover the vacant and peaceful possession of the said premises and also to pay Rs. 1,30,000/- per day towards damages till the time the vacant and peaceful possession of the Premises is handed over.
- 3.3. Due to persistent default, the Applicant approached the Hon'ble Small Causes Court, Pune and filed Civil Suit No. 59/2017 against the Corporate Debtor for Eviction/possession of the suit premises and also for recovery of license fees and damages, wherein the Hon'ble Court directed the Corporate Debtor to pay an amount of Rs. 1,22,17,638/- towards the outstanding License fees/damages amount. On account of failure of the Corporate debtor to abide by the directions, the Hon'ble Court struck off the defence of the Corporate Debtor in the matter.

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Since, the CIRP commenced on 17.09.2019 in the matter of the Corporate Debtor during the pendency of the Suit, no final order came to be passed and the Applicant lodged its claim for Rs. 14,15,55,018.29 (comprising of (i) Outstanding license fee from 1.3.2016 to 21.11.2016 amounting to Rs. 1,07,38,088/-; (ii) interest on outstanding license fees @ 2% from 1.3.2016 to 21.11.2016 amounting to Rs. 32,46,930.29; (iii) damages for each of default from 22.11.2016 to 16.9.2019 @ 1,30,000/- per day amounting to Rs. 13,37,70,000/-; and (iv) as reduced by Interest Free Security Deposit amounting to Rs. 62,00,000/-) in Form B on 3.12.2019 in CIRP.

- 3.4. Further, there have been certain damage to the Premises and structural alteration to licensed premises, which are in violation of clause 7 of the License Agreement.
- 3.5. It is also contended that the Applicant, though was invited to act as a representative of all Operational Creditors in the CoC, as its claim was more than 10% in value of claims under that class, however, the Respondent No. 2 never shared copy of minutes of the earlier 5 meetings. Further, no notice of 6th Meeting was given, so the applicant could not attend the same.
- 3.6. The Respondent No. 2 issued a demand notice vide email dated 27.11.2020 and 1.12.2020 asking the Applicant to refund the amount of Security Deposit within 48 hours failing which an interest @ 18% p.a. shall be levied. It was contended that the said Interest free Security deposit amount as mentioned in the demand notices cannot be made part of recovery in CIRP proceedings because the same amount was already adjusted by the Applicant against the arrears prior to commencement of CIRP in terms of clause 20 the Leave & License Agreement.
- 3.7. It is further contended that the Corporate Debtor had stopped complete manufacturing activity in the said premises, and the MSEB authority had disconnected the electricity connection inn the said premises. The Applicant has also placed on record photographs of the premises occupied by the Respondent No. 1.

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- 3.8. The Applicant has further sought to add Rs. 8,95,60,000/- to the claim as opportunity loss arising on account of loss of rent from December 2016 to July 2021 due to illegal occupation of the said premises by the Corporate Debtor even though no business is carried thereat.
4. We have heard the Counsel and perused the material available on record.
- 4.1. 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. The Applicant has claimed the Pre-CIRP dues, which includes Rent, Mesne Profits (for illegal occupation after determination of license agreement) Interest thereon, besides secondary claim for the rent for the period from December 2016 to July 2021.
- 4.2. We find that there had been breach of License agreement and the Corporate Debtor has defaulted on account of which the License agreement came to be terminated prior to commencement of CIRP, thus vesting right of appropriation of Security Deposit against the Arrears of rent receivable from the Corporate Debtor. Accordingly, we do not find any infirmity in such claim.
- 4.3. 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 find that claim of Outstanding license fee from 1.3.2016 to 21.11.2016 amounting to Rs. 1,07,38,088/- is tenable. Besides this, since the Corporate Debtor continued to be in occupation of the said premises, the Corporate Debtor is liable to pay rent for the period up to 16.9.2019 as Operational Debtor at the rate applicable to the month of termination of Agreement. Further, the Corporate Debtor is liable to pay rent for the period from 17.9.2019 till the occupation in terms of Regulation 31 (Insolvency Resolution Process for Corporate Persons) Regulations 2016, because the amounts due (rentals for the period) to an owner or lessor where such property is occupied by or in the possession of the corporate debtor, who was barred to recover his

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property on account of Moratorium u/s 14 of the Code is included in the definition of Insolvency Resolution Process Costs as held by us in IA 169 of 2021 filed in case of same Corporate Debtor.

- 4.4. 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, as evidenced from the photographs and disconnection of electricity connection. Accordingly, we direct the Respondent/Liquidator to hand over the physical possession of the premises within 15 days from the date of the order.
- 4.5. The dues of the Applicant shall be admitted in Liquidation Proceedings as per this Order and dues upto CIRP commencement date after appropriation of security deposit amount on the date of termination of agreement shall be dealt with as Operational Debt in terms of Section 53 of the Code and dues for the period from 17.09.2019 till the date of this Order shall be dealt with as Insolvency Process Resolution Cost for the purpose of Section 53 of the Code. Since, we have ordered payment of rentals for the period after termination of the License agreement, we do not deem fit to say that the Applicant can be awarded the damages @ 1,30,000/- per day for illegal occupancy. As regards payment of interest, we are of considered opinion that the Applicant is entitled to simple interest on the outstanding rent at the rates provided in the clause 17 of the license agreement @ 2% p.m. on the outstanding dues upto Pre-CIRP period upto 16.9.2019, whereafter the claim for interest shall stand frozen.
- 4.6. 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.
5. In view of the aforesaid, IA 2023 of 2021 is disposed of as partly allowed.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

V.G. Bisht
Member (Judicial)