

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

**I.A. NO. 1573 OF 2021**

**IN**

**C.P./IB/1118/MB/2019**

Filed by

**Samith R. Arasa**

**...Applicant/Creditor**

**Vs.**

**Bijendra Kumar Agarwal**

**...Respondent/Liquidator**

**In the matter of**

Bank of India

**...Petitioner/Financial Creditor**

**Versus**

Suvarnsparsh Gems and Jewellery

**...Corporate Debtor**

**Reserved for order on: 01.08.2022**

**Order Pronounced on: 04.10.2022**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

**Appearance:**

**For the Applicant:** Mr. Vikas Singh i/b Sarthak P. Shetty, Advocate

**For the Liquidator:** Mr. B. Gopalkrishnan, Advocate

**Per:** *Shri H.V. Subba Rao, Member (Judicial)*

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**ORDER**

1. This Interlocutory Application is filed by Samith R. Arasa, Applicant against Resolution Professional Mr. Birendra Kumar Agrawal of

Suwarnsparsh Gems & Jewellery Ltd. Are praying the following reliefs:

- a. The interlocutory Application for mentioning the company Petition may be allowed;*
- b. The Hon'ble Tribunal be pleased to direct the Liquidator to forthwith accept the claim of the Applicant to the extent of Rs. 3,13,58,500/- (Rs Three Crores Thirteen Lakhs Fifty Eight Thousand Five Hundred only).*
- c. The Hon'ble Tribunal be pleased to direct the Liquidator to forthwith accept the claim of the Applicant to the extent of Rs. 87,25,000/- (Rupees Eighty Seven Lakhs Twenty Five Thousand only) i.e. the rent due and payable to the Applicant from the date of the moratorium till 05.11.2020 may be included in the insolvency Resolution Process Cost;*
- d. The Hon'ble Tribunal be pleased to direct the Liquidator to make the payments of the amounts as mentioned in (b) and /or (c) due to the Applicant; at the earliest;*
- e. Pending the hearing and final disposal of this application, the Liquidator may be directed to pay the admitted claim of Rs. 23,73,500/- to the Applicant;*
- f. Pending the hearing and final disposal of this application, the Liquidator may be directed not to proceed with the liquidation process;*

*g. To pass any such Order or Orders as this Hon'ble Tribunal may deem fit and expedient;*

2. Brief submissions of the Applicant are as follows:

- i. The Applicant submitted that, The Applicant and CD had entered into Leave and License Agreement on 16<sup>th</sup> December 2015 to use and occupy the Shop Nos. 11 and 11A situated at Rajhans Hotel Bldg, 15/16, N.G. Acharya Marg, Chembur, Mumbai – 400 071 for the period from 01.04.2015 to 04.04.2017 for a compensation of Rs. 75,000/- per month. Further, Clause 17 of the said Leave and Licence Agreement also stipulates a compensation of Rs. 25,000/- per day to be paid to the Applicant by the CD on the failure to vacate the premises on 04.04.2017.
- ii. The Applicant states that Company Petition was admitted on 22.10.2019 and thus CIRP was initiated against the CD.
- iii. The Applicant further submits that his claim was filed before the IRP of Rs. 2,26,33,500/-. The IRP was pleased to accept the claim of the Applicant to the extent of Rs. 16,73,500/- vide letter dated 04.02.2020.
- iv. The Applicant states that despite the expiry of the term of the leave and licence on 04.04.2017, the CD continued to be in

unlawful and illegal occupation of the Shop No. 11 till the Applicant moved this bench vide IA No. 856 of 2020 in the present company Petition subsequent to which the said Shop No. 11 was vacated by the RP on 05.11.2020. As a result of this the Applicant has faced huge losses and irreparable harm.

- v. The Applicant also mentions that on the Application filed by the RP, this bench was pleased to initiate the Liquidation Process vide Order dated 15.02.2021.
  - vi. The Applicant further contented that on requesting the Liquidator to accept full claim of the Applicant including the amount of Rs. 25,000/- per day from 05.04.2017 till 05.11.2020, however the said claim has not been accepted by the Liquidator. The Liquidator has only accepted the claim to the extent of Rs. 23,73,500/- being the rent amount of Rs. 75,000/- per month not paid to the Applicant.
3. The Liquidator has filed a detailed reply as well as written submissions, strongly opposing the above Application.
4. Heard the arguments on both sides and examined the relevant record.
5. After hearing the submissions and upon examining the relevant record this Bench observes that the Petitioner and the Corporate

Debtor have entered into a registered Lease Agreement dated 16.12.2015 for a period of two years commencing from 01.04.2015 to 04.04.2017 on a monthly rent of Rs. 75,000/- per month in respect of two shops bearing no. 11 and 11A situated in Rajhans Hotel Building, 15/16, M.G. Acharya Marg, Chembur, Mumbai. Belonging to the Petitioner and there is no dispute between the parties with regard to the ownership, duration of lease and the amount of rent.

6. It is also observed that the Corporate Debtor himself vacated shop bearing no. 11A much prior to the expiry of the license period under the agreement and was using only shop bearing no. 11 till it was vacated by the Resolution Professional on 05.11.2020.
7. This Bench also observes that the Resolution Professional has admitted the claim to an extent of Rs. 16,73,500/- against the net claim of Rs. 2,26,33,500/- put forth by the Petitioner during the course of CIRP period.
8. It has been also observed that the Petitioner has subsequently submitted a claim of Rs. 3,13,58,500/- claiming compensation to damages at the rate of Rs. 25,000/- per day after passing Liquidation Order of the Corporate Debtor out of which an amount of Rs. 23,73,500/- was accepted by the Liquidator.
9. Since the Petitioner is claiming liquidated damages at the rate of Rs. 25,000/- per day, the only question that needs to be decided is

1. *Whether the Petitioner is entitled to claim liquidated damages at the rate of Rs. 25,000/- per day before this tribunal through the above Interlocutory Application?*
10. It has been observed that the Respondent did not take any legal action before the commencement of CIRP against the Corporate Debtor before any appropriate Court even though the license period was expired on 04.04.2017 by efflux of time.
11. As rightly contended by the learned Liquidator this Tribunal has no jurisdiction or power to grant liquidated damages to the Respondent as a Civil Court and the appropriate remedy available to the Petitioner is to approach a competent legal forum. It is also appropriate to observe here that the Corporate Debtor has taken two shops on lease and had vacated shop bearing no. 11A much prior to the completion of license period and therefore the Corporate Debtor is entitled for proportionate reduction of rent for the unexpired license period in respect of the shop vacated by the Corporate Debtor. However, the Liquidator has allowed the entire amount of admitted rent till the date of vacation as per the agreement without deducting proportionate rent for shop no. 11A.
12. The Petitioner is claiming the above amount of Rs. 3,13,58,500/- on the ground that the similar size shops in the same premises are usually let out and earned approximately Rs. 1,00,000/- per month and due to illegal possession of the Corporate

Debtor well beyond the expiry of period of leave and license the Applicant has incurred heavy opportunity cost and financial losses without any fault on his part. All the above issues have to be raised by the Petitioner before a competent Civil Court by letting proper oral and documentary evidence and this Tribunal being not a Civil Court is not empowered to decide all the above contentions of the Petitioner in an Application of this nature.

13. Therefore, for the aforesaid reasons, this Bench is of the considered view that there is no illegality or irregularity committed by the Liquidator in rejecting the claim of the Petitioner beyond the admitted rent and the above Application is nothing but an afterthought and is liable to be rejected.
14. Accordingly, the above Interlocutory Application is dismissed by confirming the action of the Liquidator.

**Sd/-**

**ANURADHA SANJAY BHATIA**  
**MEMBER (TECHNICAL)**

**Sd/-**

**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**