



**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-II), CHANDIGARH**

IA(I.B.C.)/877(CH)2022

IN

**CP(IB) No.41/Chd/Hry/2019
(Admitted Matter)**

[An Application under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016]

IN THE MATTER OF :

IA(I.B.C.)/877(CH)2022

Anil Arora,

Resolution Professional of SRS Entertainment India Ltd.

Reg. No. IBBI/IPA-001/IP-P00729/2017- 2018/11224

Address: SCO 139, 2nd Floor, Chotti Baradari,

Patiala, Punjab – 147001

...Applicant/ Resolution Professional

Versus

The Commissioner,

Municipal Corporation Faridabad,

Address: B.K. Chowk, NIT Faridabad,

Faridabad (Haryana) - 121001

...Respondent

IN THE MAIN MATTER OF :

CP(IB) No.41/Chd/Hry/2019

(An application under Section 9 of the Insolvency and Bankruptcy Code, 2016)

Raj Pal Theatre

...Operational Creditor

Versus

SRS Entertainment India Ltd.

...Corporate Debtor

Order delivered on: 12.05.2026

**Coram: SHRI KAUSHALENDRA KUMAR SINGH, MEMBER (TECHNICAL)
SHRI KHETRABASI BISWAL, MEMBER (JUDICIAL)**



Present:

For the RP

: Mr. Nahush Jain, Advocate

For the Respondent

: Mr. Prateek Mahajan, Advocate

ORDER

1. The present Application bearing No. IA(I.B.C.)/877(CH)2022 has been filed by **Anil Arora, Resolution Professional** (hereinafter referred to as “RP”/ “Applicant”) for **SRS Entertainment India Ltd., Corporate Debtor**, under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**Code**”) read with Rule 11 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for seeking directions to the Commissioner, Municipal Corporation, Faridabad (hereinafter referred to as “Respondent”) to handover physical possession of the registered office of the Corporate Debtor situated at SRS Multiplex, 2nd Floor, City Centre, Sector-12 Faridabad, Haryana and also of all books of accounts, ledgers and other records, computers and equipment of the Corporate Debtor lying in the premises and allow free access to the premises.

FACTS AND SUBMISSIONS OF THE APPLICANT

2. The averments made by the Applicant in its Application and as narrated by the learned counsel for the Applicant are summarized hereunder:

- (i) The petition under Section 9 of the IBC, 2016 titled as M/s Raj Pal Theatre Vs. SRS Entertainment India Limited was admitted by this Tribunal vide Order dated 21.12.2021 and the Applicant was appointed as Interim Resolution Professional.



(ii) On 24.12.2021, the Applicant visited the registered office of the company which is situated at SRS Multiplex, 2nd Floor, City Centre Faridabad, Haryana-121007 and found that the SRS Multiplex is under the lock and key of the Respondent. The Applicant was told that the SRS Multiplex is owned by M/s SRS Limited, which is 100% holding Company of the Corporate Debtor and the books of account and other documents of the Corporate Debtor are lying in this building. It is specifically submitted by the Applicant that M/s SRS Limited, holding Company of the Corporate Debtor, is itself in liquidation under Section 33 of the Code by virtue of the Orders of this Tribunal.

(iii) Further, Applicant found a public notice pasted on the main gate of SRS Multiplex stating therein that this building has been sealed by Respondent on 12.10.2021 on account of arrears of property tax on this unit. Copy of public notice dated 12.10.2021 pasted in Hindi along with its English translation is enclosed as Annexure A-3 to the Application. Photograph of the sealing of main entrance of the building is also enclosed as Annexure A-4 to the Application. Also, another public notice was found pasted on the main gate of SRS Multiplex in which it was stated that this building has been sealed by Respondent on 28.10.2021 on account of arrears of Advertisement fee. Copy of public notice dated 28.10.2021 pasted in Hindi along with its English translation is enclosed as Annexure A-5 to the Application.



(iv) The Applicant requested the officers of Respondent to handover the possession of registered office of the Corporate Debtor and the books of account and documents lying therein, but the request was not acceded to.

(v) On 27.01.2022, the Respondent submitted its claim in Form B as Operational Creditor demanding Rs. 52,80,000/- plus GST on account of its dues recoverable from the holding company of the Corporate Debtor. Copy of the claim submitted by the Respondent is annexed as Annexure A-6 to the Application. But the claim of the Respondent was rejected by the Applicant vide his email dated 16.02.2022 on the ground that the claim does not pertain to the Corporate Debtor. In the email dated 16.02.2022, the Applicant again requested the Respondent to handover the possession of the registered office of the Corporate Debtor immediately.

(vi) On 10.03.2022, the Applicant again sent an email to the Respondent and requested to release the possession of registered office of the Corporate Debtor to the Applicant immediately and also release the books of account, ledger and all the records of the corporate debtor as required under the Code. On 27.04.2022, the Applicant again sent an email to the Respondent for release of possession. But the Respondent has not sent any reply to the emails of the Applicant.

(vii) The Applicant personally visited the office of Respondent on 26.05.2022 and met Additional Commissioner, Municipal Corporation, Faridabad who promised to look into the matter. The



Applicant delivered a letter dated 26.05.2022 which was duly received by the Respondent vide dairy No. 2032 dated 26.05.2022.

(viii) Another submission of the Applicant is that under the orders of the Hon'ble High Court of Delhi, Arbitration Proceedings are continuing between the Corporate Debtor and M/s Omaxe Limited. Justice V.K. Shali (Retd.) is sole arbitrator and he is holding the arbitration proceedings at Delhi. The Corporate Debtor has claim of Rs. 21 Crores against M/s Omaxe Limited. This Arbitration cannot be effectively pursued without the books of account, ledgers and supporting vouchers, documents, etc.

(ix) Applicant finally submitted that due to seal, lock and key of the Respondent, he is not able to take further steps in the Insolvency Resolution Process and it will be in the interest of Insolvency Resolution Process of the Corporate Debtor that the Respondent be directed to handover physical possession of the registered office of the company and also of all books of accounts, ledgers and other records, computers and equipment lying in the premises and allow free access to the premises.

SUBMISSIONS BY THE RESPONDENT

3. The Application has been opposed by the Respondent by filing a Reply dated 24.03.2023. The defense as taken in the reply and as narrated by the learned counsel for the Respondent are briefly summarised as under:- That a few properties of the Corporate Debtor, SRS Entertainment India Ltd. i.e., (1) SRS Edelco Mall, Sector 12, Faridabad, (2) Pristine Mall, Sector 31,



Faridabad, (3) SRS, Shubham Tower, NIT, Faridabad and (4) SRS World City Centre, Faridabad had not been paying its due advertisement fee and accordingly the Commissioner, Municipal Corporation, Faridabad issued several notices, the last one of them dated 18.11.2019 for personal hearing and directing it to pay the outstanding amount of Rs.52,80,000/- plus 18% GST calculated upto October, 2019 in exercise of his powers under Section 130 of Haryana Municipal Corporation Act, 1994.

(ii) Since the amount was not paid, the demised property was sealed vide order dated 28.10.2021 for recovery of Advertisement Fee as per orders of Commissioner, Municipal Corporation, Faridabad. The appeal against the said order lies to the Divisional Commissioner as per the provisions of Section 138 of the Haryana Municipal Corporation Act, 1994. Since a specific statutory remedy is available to the Applicant as per the provisions of Section 138 of the Haryana Municipal Corporation Act, 1994, it is therefore submitted that the present application is not maintainable and is liable to be dismissed on account of alternate and equally efficacious remedy being available to the Applicant under the concerned statute i.e. under Section 138 of the Haryana Municipal Corporation Act, 1994.

(iii) The registered office of Corporate Debtor is situated in SRS Multiplex, which has been sealed by the orders of Commissioner, Municipal Corporation, Faridabad vide orders dated 12.10.2021 and 28.10.2021. Although the arrears of property tax were cleared without interest under the policy of the government subsequently, the arrears



of advertisement fee was not paid and thus the sealing order dated 28.10.2021 still exists. The petition for initiation of CIRP was admitted and moratorium was applied vide order of this Tribunal dated 21.12.2021, which was after the property has been sealed, therefore the order of sealing is legal and valid and is not affected by Section 17 of the Insolvency and Bankruptcy Code. Hence, the present Application is not maintainable before this Tribunal.

(iv) Further, as far as the claim filed as Operational Creditor before Resolution Professional demanding Rs. 52,80,000/- plus GST on account of its dues recoverable from the holding company of the Corporate Debtor is concerned, it is submitted that the rejection of claim by Resolution Professional is of no relevance since the insolvency resolution process has not been successful and application IA No. 1428/2022 has already been filed for liquidation of Corporate Debtor.

(v) Moreover, it is admitted by the Applicant that the SRS Multiplex, Second floor, City Centre, Faridabad, Haryana, which has been sealed by Municipal Corporation, Faridabad is owned by M/s SRS Ltd. Therefore the Multiplex has indeed been rightly sealed on account of arrears of advertisement fee payable by the said company that is M/s SRS Ltd. Moreover the said company is the 100% holding company of the Corporate Debtor i.e. SRS Entertainment Ltd. and therefore it is clear that both the companies have been formed in a manner so as to deliberately avoid the payment of dues such as advertisement fee



payable towards statutory corporations like the Municipal Corporation, Faridabad. Therefore it is a fit case where the corporate veil should be lifted and both companies should be held liable to pay the amount of advertisement fee. Reference in this context is being made to judgment of Hon'ble Supreme Court in ***Commissioner of Income Tax Madras V. Sri Meenakshi Mills Ltd., Madurai, 1967 AIR (SC) 819.***

OBSERVATIONS AND ANALYSIS

4. We have considered the submissions made by the learned counsels of Applicant as well as the Respondent and have gone through the material available on record carefully, along with the extant provisions of the Code and the settled position of law on the subject issue.

5. From the averments made by both the parties, this Tribunal notes the following issues which are required to be deliberated to decide the present case. The main issues are as follows:

- (A) Whether the present application is maintainable under the provisions of the Code, 2016, despite the availability of an alternative statutory remedy under Section 138 of the Haryana Municipal Corporation Act, 1994?
- (B) Whether the Applicant is entitled to physical possession of the registered office of the Corporate Debtor and the assets and records of the Corporate Debtor?



(A) Whether the present application is maintainable despite the availability of an alternative statutory remedy under Section 138 of the Haryana Municipal Corporation Act, 1994?

6. Section 138 of the Haryana Municipal Corporation Act, 1994 reads as under:

*“(1) An appeal against the levy or assessment of any tax under this Act, shall lie to the Divisional Commissioner, and every such appeal shall subject to the provisions of this Act, be received, heard and disposed of by him.
(2) In every appeal, the cost shall be in the discretion of the appellate authority.
(3) Costs awarded under this section to the Corporation shall be recoverable by the Corporation as an arrear of tax due from the appellant.
(4) If the Corporation fails to pay any costs awarded to an appellant within ten days after the date of the order for payment thereof, the appellate authority may order the Commissioner to pay the amount to the appellant.”*

7. It is observed that the Applicant has approached this Adjudicating Authority in his capacity as the Interim Resolution Professional (IRP) seeking assistance in discharge of his statutory duties under the IBC. The relief sought is intrinsically connected with the conduct of the Corporate Insolvency Resolution Process (CIRP).

8. The contention of the Respondent that the Applicant has an alternative remedy under Section 138 of the Haryana Municipal Corporation Act, 1994 is misplaced. The said provision pertains to an appeal against the order of sealing; however, the present application is not in the nature of a challenge to the legality of the sealing order per se, but is filed to enable the IRP to take control and custody of the assets and records of the Corporate Debtor in terms of provisions of the Code, 2016.

9. It is well settled that the IBC is a **special and overriding statute**, and by virtue of Section 238 of the Code, its provisions shall have effect



notwithstanding anything inconsistent contained in any other law for the time being in force. A similar view has been taken by the Hon'ble NCLAT in the matter of ***The Directorate of Enforcement v. Sh. Manoj Kumar Agarwal, Company Appeal (AT) (Insolvency) No. 575/2019*** in para 41 of the Judgement.

“41.....Although it is argued that PMLA is a special statute and has an overriding effect still Section 238 of IBC is also a special statute and which is subsequent statute. IBC has specific object, which is to consolidate and amend laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximization of value of assets of such persons and to promote entrepreneurship, availability of credit and balance the interest of all stakeholders including alteration in the order of priority of payment of Government dues.”

Moreover, applying the *maxim generalia specialibus non derogant*, the special law (i.e., the Code) shall prevail over general laws or conflicting provisions in other enactments. Moreover, by virtue of the non-obstante clause in Section 238 of the Code, the provisions of the Code will override any claim for priority under any other law. Hence, the jurisdiction of this Adjudicating Authority is therefore not ousted merely because an alternative remedy exists under another statute.

10. Further, once CIRP has commenced, the IRP is under a statutory obligation to take control and custody of all assets, records, and operations of the Corporate Debtor under Section 18 of the Code. Any impediment in discharge of such duties falls squarely within the jurisdiction of this Tribunal. In view of the above, the objection regarding maintainability is rejected.



(B) Whether the Applicant is entitled to physical possession of the registered office of the Corporate Debtor and the assets and records of the Corporate Debtor?

11. As observed by this Tribunal, it is not in dispute that the CIRP of the Corporate Debtor commenced vide order dated 21.12.2021 and the Applicant was appointed as IRP. Upon commencement of CIRP, Sections 17 and 18 of the IBC mandate that the management of the affairs of the Corporate Debtor vests in the IRP and he is required to take control and custody of all assets, records, and documents.

12. In the present case, the registered office of the Corporate Debtor is situated in premises which have been sealed by the Respondent prior to commencement of CIRP. While the sealing action may have been taken in exercise of statutory powers for recovery of dues, the continued denial of access to the IRP has the effect of frustrating the CIRP.

13. This Tribunal is of the considered view that statutory dues and recovery proceedings cannot override the objective of resolution under the IBC. The IRP cannot effectively carry out his duties, including collation of claims, verification of records, and conduct of ongoing proceedings (including arbitration), without access to the books of account and documents.

At the same time, it is clarified that this order does not extinguish or adjudicate upon the dues claimed by the Respondent. The Respondent is at liberty to lodge its claim in accordance with law before the IRP, if admissible.



The legislative intent of the Code is further evident from the Long Title of the Code, which expressly states that:-

*“...to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including **alteration in the priority of payment of Government dues...**”*

It is thus manifest that the Code contemplates a comprehensive and exclusive framework for insolvency resolution, including a statutory reordering of the priority of claims, wherein government dues are subordinated as per the distribution waterfall under Section 53 of the Code. In the present case, the Respondent has placed its lock and seal over the assets of the Corporate Debtor and thereby retained possession of certain property of the Corporate Debtor, asserting priority over other creditors. However, such retention is contrary to the provisions and the scheme of the Code.

14. Accordingly, in furtherance of the objectives of the Code, and to ensure that the Corporate Insolvency Resolution Process is conducted effectively and in a time-bound manner, the Respondent is directed to:

- (a) allow the Applicant/IRP to enter the premises and take physical access to the registered office of the Corporate Debtor;
- (b) hand over or permit retrieval of books of account, records, documents, electronic data, and other assets belonging to the Corporate Debtor;
- (c) extend necessary cooperation to the IRP in discharge of his functions under the IBC.



15. Accordingly, IA(I.B.C.)/877(CH)2022 in CP(IB)No.41/CHD/Hry/2019
is **allowed** and **disposed of**.

Sd/-
Khetrabasi Biswal
Member (Judicial)
Inderjeet

Sd/-
Kaushalendra Kumar Singh
Member (Technical)