

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**COURT - 2**

ITEM No.301

IA/220(AHM)2022 in CP(IB) 397 of 2018

**Order under Section 60(5) IBC**

**IN THE MATTER OF:**

Aditya Birla Fashion & Retail Ltd

.....Applicant

V/s

Kiran Chinubhai Shah RP of KSL & Industries

.....Respondent

**Order delivered on: 15/07/2024**

**Coram:**

**Mrs. Chitra Hankare, Hon'ble Member(J)**

**Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)**

**ORDER**

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

**Sd/-**

**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

**Sd/-**

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**AHMEDABAD (COURT - II)**

**IA No. 220 of 2022**

**In**

**CP(IB) No. 397 of 2018**

*(Filed under Section 60(5) of IBC, 2016 r.w Rule 11 of the NCLT Rules, 2016)*

**IN THE MATTER OF:**

Aditya Birla Fashion & Retail Ltd.  
Having its registered office at  
Piramal Agastya Corporate Park,  
Building A, 4<sup>th</sup> & 5<sup>th</sup> Floor,  
Unit Nos. 401,403, 501, 502,  
L.B.S. Road, Kurla  
Mumbai-400070

Also at: KH No.118/110/1, Building 2,  
Divyashree Technopolis, Yemalur Post  
Off Hal Airport Road,  
Bangalore-560037

... Applicant

**V/s**

Mr. Kiran Shah  
Resolution Professional  
of M/s. KSL And Industries Ltd.  
608, Sakar-1, Nr. Gandhigram Railway Station,  
Opp: Nehru Bridge, Ashram Road  
Ahmedabad-380009

... Respondent

Order pronounced on 15.07.2024

**Coram:**

**MRS.CHITRA HANKARE,  
MEMBER (JUDICIAL)**

**DR.VELAMUR G VENKATA CHALAPATHY,  
MEMBER (TECHNICAL)**

**Present:**

For the Applicant : Mr. Varun Sharma, Adv. a.w Mr. Akhil  
Kukreja & Sanchita Chamoli, Adv.  
For the Respondent : Mr. Arjun Sheth, Adv. a.w Mr. Kiran  
Shah, RP in person

**JUDGEMENT**

1. This application is filed under Sec 60(5) of the IBC 2016 seeking certain prayers against the Resolution Professional (respondent) of the corporate debtor presently under CIRP, admitted vide orders dated 06.09.2019 and the resolution plan submitted is pending adjudication. The applicant had an agreement whereby certain properties (3) at Empress City Mall at Nagpur were leased to the applicant for various terms and period. These arrangements expired on 03.09.2020 (two properties) and on 31.10.2020. In the interim period of stated agreement's validity period, on 27.06.2016 and 19.04.2018, there was another leave and license agreement between the corporate debtor and one

M/s. Devika Trading Private Limited, whereby the applicant was paying the rentals due under the agreement/arrangements to M/s. Devika Trading. On the expiry of the stated agreement, the applicant and the Corporate Debtor/Devika Trading tried various attempts to negotiate the revised terms of rentals and extended duration, however, it is stated that there was no response from the corporate debtor. The applicant vide letter dated 29.10.2021 sought permission/No objection from the respondent corporate debtor regarding the extended term as well as rental. Since there was no possibility of negotiation, the applicant served a notice for vacating and removing its stocks from the premises on 30.11.2021, but was not allowed to do the same or access the said premises by raising frivolous, wrong and illegal monetary claims. The applicant further stated that stocks worth Rs. 96.54 lakhs and Rs. 46.47 lakhs were stocked at the premises which are of Van Heusen and Peter England Brands and fears that the same might have been wrongly and illegally removed by the suspended directors or their agents or employees or wrongfully and illegally converted to their use.

2. The applicant issued a notice on 29.11.2021 which was not replied. Further, vide email/letter dated 09.12.2021, directed the applicant to approach Devika Trading for its concerns. In the intervening period, it is stated that the applicant was able to remove the stocks from the premise bearing Unit/Shop No. 150, First Floor at Empress City Mall pertaining to Louis Philippe brand but could not vacate the stock from the other premises. Further, he also in response to the email of respondent had duly supplied the requisite documents to the respondent on 25.01.2022. However, respondent has not allowed lifting of the stock or taken over the vacant possession.
  
3. From the documents submitted, there is stated to be a leave and license agreement between the respondent corporate debtor KSL and Industries Limited (Licensor) and M/s. Devika Trading Pvt. Ltd. (Licensee) on 27.06.2016. It states that the licensor had rented the first floor of the stated premises in the application, the applicant (licensee) has taken lease of two properties/shops from the corporate debtor (the lessor) to various vendors and of late had been

experiencing difficulty in collection of revenues many of which were on revenue sharing basis and he was unable to have effective control resulting in loss of revenue. Further, it is stated that certain loans were taken from the licensee (Devika Trading Pvt. Ltd.) and in the event of his failure to pay the same with interest, had discussions with the lessee who had certain expertise and capabilities to defer the repayment and in consideration entered in to this lease agreement with a revenue sharing model leased the stated property to the lessee for a period of 3 years with a minimum lock in period of 2 years. Further on expiry of the period of lease, it will be automatically extended with 10% escalation in consideration amount. Further, the licensee was entitled to raise a demand from all the existing vendors (applicant is one amongst) who will continue till the expiry of the lease agreement and also lease the property (part of it) to other vendors on expiry or on fresh agreement for which he was authorised to charge service fee and other such amounts including the rent amount, thereby the corporate debtor (respondent no.1) had granted lease rights of the

entire first floor of the stated Express Mall in favour of the licensee.

4. Further, the stated agreement was for an initial period of 3 years and will be renewed when the licensee shall inform the licensor of its intention to renew this agreement with the licensor 3 months before the expiry of the lease period, failing to which this agreement shall ipso facto come to an end and the effects of termination shall apply. However, the licensee shall have a right for further extension of the lease period of 3 years upon completion of initial period of 3 years with 10% increase in the consideration amount. The licensee and licensor (corporate debtor under liquidation) will have a profit sharing arrangement as per this agreement.
5. The stated agreement is between the corporate debtor and a third party with whom he had a separate arrangement, but has conveyed the rights through this agreement to collect revenue and pay and maintain the stated premises in which the applicant has been leased on rental basis the property for his business. Apparently from the agreement, the stated

terms now make the agreement an expired document and the physical possession now for any further activity reverts back to the licensor (lessor) and the licensee does not further have any rights. It is immaterial whether the applicant had paid any rent or was there any overdue to the licensee as the applicant now has a prayer to remove his stock (in which there seems to have been act of obstruction by the lessor and the licensee) and hand over the premises to the lessor with whom he had entered in to an original agreement. If at all any rental payments were due that is now not a receivable of the lessor (corporate debtor/resolution professional) and disputes if any between the licensor and licensee as per agreement are to be resolved through arbitration as per agreement.

6. The licensee (not a party to the application) has by an affidavit confirmed the terms of the agreement with the licensor (lessor corporate debtor), his rights under the agreement and also confirmed that the applicant who was an existing vendor when the agreement was signed between the two parties (sub lease of rights to share revenue) had



been paying the rent since 01.07.2016, but had discontinued to pay the rent from December, 2020 which amounts to Rs. 47,73,446/- for Unit no. 146 and Rs.15,29,023/- for Unit no. 120 for the period from December, 2020. It is also stated that an amount of Rs.22,31,595/- was liable to be paid up to Nov. 2020 (as has been paid) thereby a total amount of Rs.85,34,064/- was due to be paid to M/s. Devika Trading Pvt. Ltd. (licensee). However it is not clear as to whether the amount of Rs.22,31,595/- (stated to be rent up to Nov. 2020) which has been paid, was actually already paid to the lessor(corporate debtor) or is unpaid to the respondent no.2 (licensee) as there is a contradictory statement. Thereby the stated property which was on lease from 27.06.2016 which was further on 19.04.2018 is stated to have conferred all rights on the respondent to collect the dues and not take over the property till the dues are cleared.

7. As per the documents submitted by the applicant and mentioned by respondent no. 2 (licensee), the stated (referred) agreement between the licensor and licensee have

been renewed for 5 years with effect from 19.03.2018 to 18.03.2023. From the documents submitted it is inferred that a notice was issued by the applicant to the respondent corporate debtor (licensor) vide notice dated 29.11.2021 and removed the stocks from one of the units, further issued another notice on 25.01.2022 with certain documents after getting a reply from the respondent on 09.12.2021. Further, as per documents submitted by the applicant, the last renewal/revised commercial conveyed by way of letter dated 07.12.2019 conveyed by corporate debtor (respondent) states the revised commercials on the leave and license agreement dated 25.01.2011. A copy of this leave and license agreement is not submitted.

8. The applicant vide his notice letter dated 29.11.2021 issued to the Resolution Professional called upon the Resolution Professional to allow removal of stocks and other furniture and accept peaceful possession of the premises restraining any employees of the corporate debtor from obstructing such act of removal. The respondent had vide his letter dated 09.12.2021 replied to the notice served by the

applicant wherein he stated that the contract for lease with the applicant was last extended up to 30.09.2020 and 31.10.2020. He also sought relevant documents in support of his contention (which were subsequently provided by the applicant) and also mentioned that based on the agreement for a leave and licence between the corporate debtor with M/s. Devika Trading Pvt. Ltd. dated 27.06.2016 and 19.04.2018, who was entitled to recover the amounts of rental and the applicant having accepted the sub lease, the respondent Resolution Professional is not in a position to ascertain the liability either of the corporate debtor or the lessee and sought further emails/documents but stated that he could not ascertain the position to take any action. He also has admitted that the lease agreement expired on the dates 30.09.2020 and 31.10.2020. The applicant had not made the licensee a party.

9. The respondent Resolution Professional vide his affidavit stated that the applicant has already lifted the stocks and the agreement between the lessee of the corporate debtor namely Devika Trading Pvt. Ltd. has also expired on

18.03.2023 and accordingly, he can take back the possession of the property. Both the prayers of the applicant have been complied, as per the clarification affidavit.

10. In view of the affidavit of the Resolution Professional, the following orders are passed.

**ORDER**

The application I.A. no. 220 of 2022 is allowed. Resolution Professional is directed to take over the possession within 1 month of this Order.

**Sd/-**

**DR. V. G. VENKATA CHALAPATHY  
MEMBER (TECHNICAL)**

**Sd/-**

**CHITRA HANKARE  
MEMBER (JUDICIAL)**

GP-LRA