

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

IA.No.1635 of 2022

In

C.P. (IB) 190/MB/2018

Under section 60(5) of the Insolvency and
Bankruptcy Code, 2016

Mr. Brijendra Kumar Mishra

Liquidator of Shrenuj & Co. Ltd

..... Applicant

V/s

Adinath Jewellery Exports

G 38 Gems & Jewellery Comtrex III,
SEEPZ, Andheri East, Mumbai-400096

..... Respondent No.1

Rexnord Electronics and Controls Limited

92-D Govt Ind Estate, Charkop Kandivli (W)
Mumbai 400067 In

..... Respondent No.2

In the matter of

Bank of India

..... Petitioner/ Financial Creditor

Versus

Shrenuj & Co. Ltd

..... Respondent/Corporate Debtor

Order Delivered on :- 14.05.2024

Coram:

**Mr. Anil Raj Chellan
Member (Technical)**

**Mr. Kuldip Kumar Kareer
Member (Judicial)**

Appearances:

For the Applicant : Adv. Yahya Batatawala a/w Adv. Meghna
Rao a/w Adv. Uma Chatterjee
For the Respondent : Adv. Aman Agarwal (R-1)
Adv. Manoj Mishra (R-2)

ORDER

Per: - Coram

1. This application has been filed by the Applicant, the liquidator of Shrenuj and Company Ltd., to direct Respondent No.1 Adinath Jewellery Exports to hand over vacant and peaceful possession of premises located at Plot No. A-7, MIDC Andheri East Mumbai, 400093 admeasuring 6000 sq. ft (the 'said Premises'), to direct Respondent No.1 to pay the outstanding license fees till the date of vacation of the said Premises and to direct Respondent No.2, the successful bidder to pay the balance consideration amount for purchase of the said Premises.

Brief facts of the case as stated by the Applicant

2. Respondent No. 1 entered into a Leave and License Agreement with the Corporate Debtor for taking the said Premises for a period of 3 years commencing from 03.08.2016 to 02.08.2019. Before the expiry of the said term, the Corporate Insolvency Resolution Process [CIRP] under the Insolvency and Bankruptcy Code, 2016 ('the Code') was initiated

against the Corporate Debtor by an Order of this Tribunal on 12.03.2019, and during the CIRP process and subsistence of the moratorium, the Resolution Professional (RP) appointed in respect of the Corporate Debtor extended the Leave and License Agreement from 03.08.2019 to 02.07.2020 (11 months) on the requirement of the Corporate Debtor.

3. Subsequently, an Order of liquidation of the Corporate Debtor was passed on 12.07.2021 where the Applicant herein was appointed as the liquidator who started the proceedings for liquidation of the Corporate Debtor.
4. The Applicant on noticing that the Leave and License Agreement had expired on 02.07.2020 and that the license fees up to May 2021 only was paid by Respondent no-1, the Applicant through its Advocate issued a legal notice dated 04.01.2022 for vacating the said Premises and to make payment of the outstanding license fees which was followed up by issuing another notice dated 31.01.2022
5. In response to the above letters, Respondent No. 1 submitted a cheque for an amount of Rs.18,83,520/- towards payment of the outstanding license fees for the use and occupancy of the said Premises for the period from June 2021 to January 2022 and also paid license fees for the months of February and March 2022.

6. In the ongoing liquidation process, the Applicant initiated steps to sell the said Premises through e-auction and brought to the knowledge of Respondent no-1 vide his email dated 24.03.2022 that the Applicant had published e-auction notice dated 16.03.2022 for sale of the assets of the Corporate Debtor including the said Premises and that the Respondent No.1 will have to vacate the said Premises within a period of 45 days after receipt of the vacation notice.
7. The Applicant carried out a successful e-auction on 06.04.2022 and the Respondent no.2 was declared as the successful bidder for the said Premises. Respondent No.2 had also deposited the amount of One Crore Ten Lakhs as and by way of EMD and the Applicant issued a letter of intent on 13.04.2022 in favor of Respondent No.2.
8. The Applicant again vide his email dated 08.04.2022 intimated the Respondent No.1 about the successful auction of the said Premises and again requested to vacate the said Premises and hand over the possession of the said Premises within 45 days from the date of email i.e. on or before 22.05.2022. The Applicant, thereafter, issued a notice through his Advocate dated 13.04.2022 for vacation of the said Premises. However, Respondent No.1 vide its letter dated 26.04.2022 requested the Applicant to grant time up to 31.07.2022 to vacate the said Premises to which the Applicant rejected it by its Advocates letter dated 30.04.2022.

Again emails/ letters were issued on 16.05.2022 and 18.05.2022 calling upon Respondent No.1 to vacate the Premises on or before 22.05.2022.

9. Respondent No.1 through its reply dated 25.05.2022 raised a contention for the first time that Respondent No.1 is not required to vacate the said Premises as Respondent No.1 is a tenant of the said Premises. Since Respondent No.1 raised contention as above, the Applicant issued a further letter dated 26.05.2022, filed a written complaint with the MIDC Police Station on 27.05.2022, and a letter dated 02.06.2022. In response, Respondent No. 1 sent a letter dated 10.06.2022 along with 2 cheques for payment of outstanding license fees for the months of May and June 2022.
10. Meanwhile, Respondent No-2 the successful bidder vide his email dated 18.04.2022 intimated to the Applicant that they are ready with the entire consideration amount and willing to pay the same subject to immediate handover of vacant possession of the said Premises. Respondent No.2 again raised his concern about the handover of vacant possession of the said Premises vide his email dated 16.05.2022 and email dated 27.05.2022. Respondent No.2 also requested to hand over possession or else he would like to cancel the deal and requested for refund of EMD of Rs. 1,10,00,000/- (One Crore Ten Lakhs).

11. In the above background, the present application has been filed against the Respondents.

Submissions of the Respondent No-1

12 Respondent No.1 submitted its affidavit in reply on 22.06.2022 raising the following contentions:

(a) The Tribunal does not have the jurisdiction to try, entertain and /or dispose of the present application, as Respondent No.1 is a tenant of the said Premises. It is also stated that Respondent No.1 had been paying 'rent' to the Applicant since July 2020 which the Applicant and its predecessor have duly accepted and acknowledged. In respect of matters relating to tenancy, the Maharashtra Rent Control Act, 1999 applies and the Court of Small Causes shall have the jurisdiction to determine the arrangement between the Applicant and Respondent No.1.

(b) Respondent No.1 also submitted that the said Premises have been sold or are being sold on an "as is where basis and as is what basis". Hence, the purchaser/successful auction bidder is deemed to be aware of the rights of Respondent No.1.

(c) Even if it is assumed that Respondent No.1 is a licensee then also for eviction of Respondent No.1 from the said Premises only the Court of Small Causes Mumbai constituted under the Maharashtra Rent

Control Act, shall alone have jurisdiction to pass such Order, and or Decree.

13. Respondent No.1 based on the above contentions sought dismissal of the application.
14. Respondent No.1 also filed an additional affidavit dated 29.06.2022 to bring on record that the Respondent filed a Rent Act Declaration Suit No. 259 of 2022 ('said Suit') and an injunction application seeking injunctive reliefs against eviction from said Premises except through due process of law. Further, an order of status quo as on 28.06.2022 was passed until the next date. Respondent, therefore, requested to take cognizance of the aforesaid fact and dismiss the application.

Analysis and Findings:

15. We have heard the Counsel for the parties and perused the records.
16. It is admitted by the parties that Respondent No.1 came in possession of the said Premises under a Leave and License Agreement which expired on 02.08.2019 and thereafter the RP, during the CIRP renewed the Leave and License for a further period of 11 months which also expired on 02.07.2020. The Applicant vide Advocate notice dated 04.01.2022 called upon Respondent No.1 to vacate the said Premises and to make payment of the outstanding license fees which was followed up by

issuing notices, letters, emails etc. In response, the Respondent paid license fees up to June 2022 but thereafter stopped payment of license fee and raised a contention that he is in lawful possession of the said Premises as rent for the occupation has been accepted by the Applicant. In the above, circumstances, at the request of Applicant, this Tribunal in the same IA No.1635 of 2022 passed an order dated 06.07.2022 by which the Applicant herein was directed to put the lock and seal on the said Premises. The said order was carried to the Hon'ble NCLAT wherein all the issues and the contentions raised by Respondent no 1 in this IA were considered and disposed of vide order dated 24.04.2023.

17. The Hon'ble NCLAT in the aforesaid Order dated 24.04.2023 came to the finding that the relationship that existed between the Applicant and the Respondent No.1 is that of a licensor and licensee and not that of tenant and landlord and that the NCLT possesses the correct jurisdiction for considering an application for vacation of the premises in question in the circumstances of the present case.
18. It is noticed that Respondent No.1 has not handed over vacant and peaceful possession of the said Premises to the Applicant though the said Premise was sealed by the Applicant on 07.07.22 pursuant to the order of this Tribunal dated 06.07.2022. Furthermore, the sale of the said Premises could not be completed merely on account of the refusal of

Respondent No.1 to hand over possession the said Premises. It is pertinent to observe that no valid ground has been made out to retain possession of the said Premise after expiry of the term under the leave and license agreement and no issue remains to be decided by this Tribunal.

19. In view of the above, we direct Respondent No.1 to hand over vacant and peaceful possession of the said Premises to the Applicant and pay the pending license fee up to 07.07.2022 within 2 weeks from the date of this order. Considering the facts and circumstances of the case, no direction is warranted against Respondent No.2 at this stage. Thus, **IA.No.1635 of 2022 is partially allowed** as against Respondent No.1 with no order as to costs in the aforesaid terms.

Sd/-
ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
MEMBER (JUDICIAL)