

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT II, MUMBAI BENCH
INTERLOCUTORY APPLICATION NO. 4560 OF 2023**

**IN
CP(IB) NO. 527(MB)/2022**

*Application u/s 60(5) of the Insolvency and
Bankruptcy Code, 2016*

In the matter of:

Canon India Private Limited,

Having its registered office at:

Unit No. 214-218, 02nd Floor,

Narain Manzil, Barakhamba Road,

Connaught Place, New Delhi-110 001.

...Applicant

Versus

Mr. Vijay Kumar Iyer,

The Resolution Professional of

Future Retail Limited

...Respondent

In the matter of

Bank of India

...Financial Creditor

v/s.

Future Retail Limited ...Corporate Debtor

Order pronounced on 03.07.2024.

Coram:

Shri. Kuldip Kumar Kareer : **Member Judicial.**

Shri. Anil Raj Chellan : **Member Technical.**

Appearances (in physical mode)

For the Applicant : Adv. Shyam Kapadia a/w Ahsan Allana.

For the Respondent : Adv. Rishabh Jaisani.

ORDER

Per: Coram

1. This is an application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") filed by Canon India Private Limited ("Applicant"), an operational creditor of Future Retail Limited ("Corporate Debtor"), seeking an order directing the resolution professional of the Corporate Debtor ("RP"/ "Respondent") to facilitate the re-possession and return of equipment owned by the Applicant, that are presently lying in the possession of the Corporate Debtor.

2. Facts of the case as per the pleadings of the Applicant are briefly stated hereinbelow:

- i. The Applicant and the Corporate Debtor had entered into agreements whereby the Applicant had supplied equipments to the Corporate Debtor for a fixed period on hire basis and for providing maintenance services for the said equipments. Each of the Agreements make it clear that the equipments shall, at all times, remain the absolute property of the

Applicant, and the Corporate Debtor will not have any rights over or interest in any manner whatsoever in the equipments. Thus, the equipments were provided by the Applicant to the Corporate Debtor purely on a rental basis for a fixed period.

- ii. On account of default in payment by the Corporate Debtor, the Applicant terminated the Agreements by way of Termination Notices dated 10 May 2022. In these Termination Notices, the Applicant requested for repossession of the equipments, in terms of the termination clause under the Agreements. However, the Corporate Debtor failed to do so.
- iii. The Applicant herein has already addressed a notice dated 09 September 2022 ("Notice"), to the RP of the Corporate Debtor requesting him to facilitate the re-possession of the equipments belonging to the Applicant that are lying in possession of the Corporate Debtor. As the Applicant did not receive any response from the RP, in its subsequent letters, the Applicant enquired about the status of re-possession of the equipments. However, till date, the RP has not provided any response to the Notice or subsequent letters of the Applicant, leave aside taking any action for the re-possession of the equipments owned by the Applicant, which are presently lying in the possession of the Corporate Debtor. The Applicant has no knowledge of the status or condition of the equipments. The Applicant is, therefore, constrained to approach this Tribunal by way of the present Application for directions.

3. **Reply of the Respondent:** The Respondent/RP has filed his reply on affidavit dated 01st February, 2024. Thereafter, the Respondent has placed on record an Additional Affidavit dated 30th April, 2024. The pleadings and submissions of the Respondent are briefly covered hereunder:

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- i. The Respondent sent an email to the Applicant on 24.01.2024 whereby the Respondent informed the status of 867 machines of the Applicant that are purportedly in possession of the Corporate Debtor. The status of 867 machines is given below:

<u>Particulars</u>	<u>No. of Machines</u>	<u>Status</u>
Pre-CIRP		
Picked up by Applicant (Canon)	104	These machines have been picked up by the Applicant (Canon) prior to the initiation of CIRP
Post-CIRP		
At accessible stores	35	Details of SPOC have been shared with the Applicant so that the Applicant can pick up these 35 machines from the corresponding locations after due and proper notice to the SPOC.
At Reliance Warehouses	387	Respondent has requested the Reliance team to provide SPOC details. Several emails have been sent to the Reliance team towards the same and details are awaited.
At inaccessible stores	153	These stores remain inaccessible to the Corporate Debtor.
Details of locations not available	188	The Respondent has requested the erstwhile management of the Corporate Debtor to provide details pertaining to these stores on December 05, 2023 and has also sent reminders thereafter. The stores indicated by the Applicant does not reconcile with existing information available with the Corporate Debtor regarding its stores.
Grand Total	867	

- ii. The Respondent submits that 35 machines are lying at the accessible stores and the Applicant has already shared the details of the employees of Corporate Debtor (“SPOC”) with the Applicant and the Applicant is now required to pick up these 35 machines from the corresponding locations after due and proper notice to the SPOC.

- iii. The Respondent is facing various challenges considering the limited number of employees supporting him in addressing the various operational challenges during the CIRP of the Corporate Debtor. The Respondent has also filed the Liquidation Application vide I.A. No. 5293 of 2023, which was last listed on 14.12.2023 and the Bench has reserved the same for orders. Considering that the CIRP of the Corporate Debtor is at the last stage, the support to the Respondent is considerably less.
- iv. On the basis of information received from the Applicant, the Respondent understands that 387 machines of the Applicant are lying in these warehouses. The Respondent has reached out to Reliance seeking their support in the handover of 387 machines lying at certain warehouses where Reliance had shifted the assets after takeover of store from Corporate Debtor. Basis the discussion with the SPOC, it is understood that Reliance is identifying the machines at the warehouses and preparing the same for handover. It was also informed that schedule for handover of all machines shall be shared within a week from 01st February, 2024 to facilitate the removal of the assets by the Applicant.
- v. It has been observed by the Respondent that 153 machines are lying at stores inaccessible to the Corporate Debtor. The Applicant sent an email to the Respondent on 09.11.2023, whereby the Applicant had provided the details of locations where the machines of the Applicant may be located. However, the Respondent was unable to map the locations where Applicant claimed that certain such machines are located, with the details that were made available to the Respondent by the erstwhile management of the Corporate Debtor. The Respondent then reached out to the erstwhile management of the Corporate Debtor informing the erstwhile management that certain stores indicated by the Applicant do

not reconcile with existing information made available with the Corporate Debtor regarding its stores and accordingly sought details of 188 machines and their corresponding locations. The Respondent sent reminder email to the erstwhile management of Corporate Debtor but no response was received.

- vi. The Respondent after being appointed as RP of the Corporate Debtor, had written to the erstwhile management of the Corporate Debtor, seeking from them a detailed list of all assets belonging to the Corporate Debtor so as to take custody and control of all assets of the Corporate Debtor in accordance with his duties as IRP/RP u/s 18(1)(f) and Section 25(2)(a) of the Code. However, the erstwhile management did not provide complete details and with respect to the discrepancies in the information/data provided by them, the RP sought for necessary clarifications from them; however, again no response was received from the erstwhile management.
- vii. The Respondent had filed an IA u/s 19 of the Code against the erstwhile management vide IA No. 3463/2022. The said application was disposed off in view of the advocates of the erstwhile management representing to the court that all the information available with them was made available to the Respondent herein in the form of data tapes in which such information was recorded. However, the data tapes shared with the Respondent were corrupt and even after repeated attempts by the technical advisors hired by the Respondent to retrieve the data from the corrupt data tapes, the data contained in the corrupt data tapes could not be made available in readable format.
- viii. Therefore, as evident from the above-narrated facts, the Respondent has taken several steps to procure the information pertaining to the Corporate

Debtor, including the information pertaining to any third party assets in possession of the Corporate Debtor and their identification, however, the information has still not been made available. Thus, in compliance of the directions of this Tribunal issued vide Order dated 19.01.2024, the Respondent has coordinated with the Applicant and the erstwhile management of the Corporate Debtor and continues to take all requisite steps to handover the possession of the machines to the Applicant as early as possible.

Additional Affidavit on behalf of the Respondent:

- ix. The above captioned application was listed for hearing on 19.01.2024, wherein this Tribunal had directed that the counsel for the RP to place on record the latest position and try to handover the possession of rest of the machines to the Applicant as early as possible. Accordingly, the Respondent filed its first affidavit in reply, as detailed hereinabove. The present additional affidavit is being filed in furtherance to the First Affidavit to bring on record the status of handover of the machines to the Applicant.
- x. The current status of the 867 machines of the Applicant that are purportedly in possession of the Corporate Debtor is as below:

Particulars	No. of Machines	Status
Pre-CIRP		
Picked up by Applicant (Canon)	104	As highlighted in the First Affidavit, these machines have been picked up by Applicant (Canon) prior to the initiation of CIRP.
Post-CIRP		
At Accessible Stores	35	In the First Affidavit, it was submitted that details of SPOC have been shared with the Applicant so that Applicant can pick up these 35 machines from the corresponding locations after due and proper notice to the SPOC.

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		<p>Current Status - The Applicant has only picked up 12 out of these 35 machines, and the pick-up of remaining machines is pending due to reasons elaborated below.</p>
At Reliance Warehouses	387	<p>In the First Affidavit, it was submitted that Respondent has sent several emails to the Reliance team whereby the Respondent has requested the Reliance team to provide SPOC details and details were awaited. Since then, Reliance has provided SPOC details and 48 machines have been made available for pick up.</p> <p>Current Status - The Applicant has not yet picked up these machines stating that these machines were either leased or sold to Corporate Debtor and that the Applicant is in process of identifying and segregating these machines accordingly. Reliance has further made available 14 machines for pick up vide email dated 5 March 2024.</p>
At inaccessible stores	153	<p>In the First Affidavit, it was submitted that these stores remain inaccessible to the Corporate Debtor.</p> <p>Current Status - Despite directions of this Hon'ble Tribunal, several landlords have refused to cooperate with the Applicant. Pursuant to the continuous efforts made by the Respondent, in 16 stores, while landlords have agreed to cooperate, however, the Respondent has been unable to access these stores due to lack of funds and manpower.</p>
Details of locations not available	188	<p>In the First Affidavit, it was submitted that the Respondent had requested the erstwhile management of the Corporate Debtor to provide details pertaining to these stores as these stores indicated by the Applicant do not reconcile with existing information available with the Corporate Debtor regarding its stores.</p>

		Current Status - The Respondent has received an email from erstwhile management that they do not have the information pertaining to these locations and stores.
Grand Total	867	

- xi. **Machines at Accessible Stores**-The Respondent by way of the First Affidavit had submitted that 35 machines are lying at the accessible stores, and the Respondent has already shared the details of the employees of Corporate Debtor ("SPOC") with the Applicant and the Applicant was required to take pick up these 35 machines from the corresponding locations after due and proper notice to the SPOC. It was understood that certain SPOCs were not responding when Applicant tried reaching them, however, basis discussions and the email dated 28 January 2024. Applicant was duly informed that all the SPOC's are employees of the Corporate Debtor and the Respondent's team had accordingly connected the SPOCs with the Applicant.
- xii. It is humbly submitted that as on date, the Applicant has only picked up 12 out of the 35 machines. The status of pick up of remaining 23 machines is as follows:
- Pickup of machines from 6 stores is currently ongoing and the pick-up is scheduled tentatively between 11 March 2024 to 15 March 2024;
 - The Applicant is coordinating with the SPOC and is in the process of arranging logistics for pickup of machines from 5 stores;
 - For a pickup of another 6 stores, it is submitted that the stores have already been vacated basis directions of NCLT by Movers and Packers agency appointed by the Respondent and the assets of the Corporate Debtor are stored in their warehouses. However, the agency is not willing

to cooperate as their payments have not been made as the Corporate Debtor is facing liquidity crunch. As submitted in the First Affidavit, the Respondent had sought interim finance from the Committee of Creditors ("CoC") of the Corporate Debtor, which has been rejected by CoC as explained in detail hereinbelow;

d) With respect to the machines lying at the remaining 6 stores, the landlords are refusing to provide access or are not responding to the Respondent, thereby restricting access to the machines lying at these stores.

xiii. **Machines At Reliance Warehouses-** It is submitted that as on date, 48 machines have been made available by Reliance for pick up by the Applicant. It is pertinent to note that these machines were made available for pickup vide email dated 19 February 2024, however, the Applicant has not picked up these machines till date. Based on Respondent's discussions with the Applicant, it is understood that out of the 48 machines, 30 machines are leased to the Corporate Debtor, and 18 machines were sold to the Corporate Debtor prior to the CIRP. The Applicant is therefore in the process of ascertaining machines that are leased to the Corporate Debtor so that they can be picked up by the Applicant.

xiv. Further, while Reliance and Respondent continue to correspond with each other on the status of the machines, the Respondent vide mails dated 21 February 2024, 23 February 2024 and 4 March 2024 asked for status of remaining machines in Reliance warehouses. Reliance by way of email dated 23 February 2024 stated that they required manpower support to expedite the process and requested the Respondent for the same. Since

then, Reliance has also made available 14 machines for pick up vide email dated 5 March 2024.

- xv. **Machines at Inaccessible Stores:** Pursuant to the continuous efforts made by the Respondent, in 16 stores, while landlords have agreed to cooperate, however, the Respondent has been unable to take control/custody of these stores due to lack of funds and manpower. The Applicant had informed the members of CoC that the Corporate Debtor does not have adequate funds to support the vacation of stores and storage of assets in a warehouse and had put up an agenda for raising interim finance to be contributed by any of the members of CoC in 26th, 27th and 28th CoC meetings. However, the said agenda came to be rejected both times by the CoC. Therefore, the Respondent has filed an application before this Tribunal seeking contribution from the CoC members as interim finance to meet critical payments towards CIRP costs. The Respondent shall duly inform the Applicant and this Hon'ble Tribunal as and when these stores are accessed, and the Respondent shall hand over the machines lying at these stores.
- xvi. **Machines at stores where location of stores has not been made available:** The Respondent had followed up with the erstwhile management, and the erstwhile management of the Corporate Debtor has replied vide email dated 2 February 2024 stating that the entire assets related data would be available in repositories which have been maintained at Writers Business Services Private Limited and Riddhi Corporate Service Limited, however, since concerned persons are not working with the Corporate Debtor anymore, exact identification of the documents identifying location of these assets of Applicant cannot be provided by them.

FINDINGS

4. We have heard the learned Counsels for the Applicant and the Respondent. We have gone through the pleadings, the documents and materials placed on record.
5. On perusal of records, we find that the Applicant and the Corporate Debtor had entered into agreements whereby the Applicant had supplied the machines and equipment to the Corporate Debtor for a fixed period on hire basis and for providing maintenance services for the said machines/equipment. In terms of the agreements, the Applicant raised invoices for maintenance services and hire of equipment. The Agreements, *inter-alia*, provided that the Corporate Debtor was required to pay rental charges and maintenance charges on per click basis within 30 days and 7 days, respectively, from the generation of invoices. However, as there was a default in making the payment(s) in respect of the invoices issued by the Applicant, the Applicant was constrained to terminate the agreements vide Notice dated 10th May, 2022 on account of non-payment of dues. It is pertinent to note that the termination of the agreements took place prior to the commencement of CIRP of the Corporate Debtor.
6. We find that ever since the insolvency commencement date, the Corporate Debtor has neither paid the rents nor returned all the equipment belonging to the Applicant, which were under its possession. It is in this backdrop that the Applicant has approached this Tribunal to repossess its machines/equipment from the Respondent.
7. The CIRP of the Corporate Debtor commenced on 20.07.2022 pursuant to the order passed by this Tribunal u/s 7 of the Code. In pursuance of the public

announcement published on 23rd July, 2022, the Applicant submitted its claim in Form B vide e-mail dated 03rd August, 2022 for an amount of INR 2,35,37,995.11/-. The Applicant had categorically highlighted that the amount claimed is subject to return of equipment by the Corporate Debtor and reserved its right to revise the amount claimed in an event the equipment of the Applicant was not returned.

8. On perusal of the pleadings of both the parties to the case, it is evident that the Respondent as such has no objection in handing over the xerox machines belonging to the Applicant; however, due to the practical difficulties faced by the Respondent which have been narrated in his affidavit-in-reply and the additional affidavit, the Respondent is unable to finish the task of handing over all the xerox machines belonging to the Applicant. It was also mutually agreed between the parties herein that the Applicant shall pick-up its machines from the stores of the Corporate Debtor at its own cost and consequences.
9. Some of the difficulties faced by the Respondent are briefly stated below:
 - a. Some of the machineries are located at the stores which are inaccessible to the Corporate Debtor/RP, as the landlords have refused to co-operate. Further, in 16 stores where the Respondent has been able to convince the landlords, he has been unable to access these stores for want of funds and manpower;
 - b. the details of some locations, where the machines of the Applicant may be situated, is not available as there is no proper information and data available with the Respondent in that regard. Further, the data tapes given by the erstwhile management, pursuant to the directions of the Tribunal, were found to be corrupt and irretrievable. Also, the details of such stores given by the

Applicant do not correspond or reconcile with the existing information and data available with the Corporate Debtor regarding its stores.

10. It is not in dispute that out of 867 machines, the possession of 104 machines has already been taken over by the Applicant prior to initiation of CIRP of the Corporate Debtor. We also take notice of the fact that the Applicant is already in process of taking back possession of some of the equipment/machines after filing of this application, the details of which have been given by the Respondent in its Additional Affidavit dated 30th April, 2024 capitulated hereinabove. Further, it is not in dispute

11. Given the constraints faced by the Respondent in handing over the machines, we deem it appropriate to pass the following orders:

ORDER

- i. The Respondent is given two months' time from the date of this order to facilitate repossession and return of the remaining equipment/machines belonging to the Applicant, failing which the Applicant shall be at liberty to lodge or revise its claim before the Respondent in respect of such machines/equipment in accordance with the terms and conditions of the contract between the parties.
- ii. It is needless to state that in case the claims referred-to-above are filed by the Applicant, the Respondent shall consider and verify such claims on merits as per the law.

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- iii. Accordingly, the **I.A. No. 4560/2023 is allowed** and stands disposed of on above terms.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)