

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: SHRI DEEP CHANDRA JOSHI,**  
**HON'BLE JUDICIAL MEMBER**

**SHRI PRASANTA KUMAR MOHANTY,**  
**HON'BLE TECHNICAL MEMBER**

**IA (IBC) No. 332/JPR/2021**  
**CP No. (IB)- 01/9/JPR/2021**

**UNDER SECTION 9 OF IBC, 2016**

**IN THE MATTER OF:**

**SANGAM (INDIA) LTD. ...Operational Creditor/Petitioner**  
**Versus**

**ADIG JEMTEX PVT. LTD. ...Corporate Debtor/Respondent**

**MEMO OF PARTIES**

**Kamal Kumar Jain,**  
R/o 315-A, Road No. -2,  
Shanti Nagar, Gopalpura Bypass,  
Jaipur, Rajasthan- 302018

**...Applicant**

**VERSUS**

**Mr. Sadhu Ram,**  
R/o 2-D-22, Chandra Shekhar Azad Nagar,  
Bhilwara, Rajasthan- 311001

**...Respondent**

For the Applicant : Anant Kasliwal, Sr. Adv.  
Anubha Singh, Adv.  
Loknath Acharya, Adv.  
For the Respondent : Amol Vyas, Adv.

**Order Pronounced On: 29.09.2022**

## **ORDER**

**Per: Shri Deep Chandra Joshi, Judicial Member**

1. This Interim Application ('IA/ Application') has been filed by the resolution professional ('RP'), Mr. Kamal Kumar Jain ('Applicant'), of M/s Adig Jemtex Pvt. Ltd. ('Corporate Debtor') under Section 60 of Insolvency and Bankruptcy Code, 2016 (the 'Code'/ 'IBC') read with Rule 11 of National Company Law Tribunal Rules, 2016 ('NCLT Rules') seeking directions to be issued to the Respondent for vacating premises belonging to the Corporate Debtor.
2. This Adjudicating Authority *vide* Order dated 17.06.2021 admitted the application under Section 9 of the IBC, filed by the M/s Sangam (India) Limited ('Operational Creditor') against the Corporate Debtor in the matter mentioned above. The Applicant was appointed as the RP *vide* Order dated 05.08.2021.
3. The Applicant has moved the present application on the following set of facts:
  - a. That *via* Letter dated 10.08.2021, the Applicant has informed the suspended directors regarding his appointment as RP and sought the information and details of the Corporate Debtor as asked by the erstwhile RP in his Letter dated 19.06.2021. Copy of Letter dated 10.08.2021 is annexed as Annexure – A3 of the Application.

- b. The suspended directors, *vide* their responses dated 08.07.2021 and 27.07.2021 provided minuscule details and supplied the vital information in piecemeal that were asked by the Applicant. Copy of the responses through Letter dated 08.07.2021 and 27.07.2021 of the suspended director is annexed as Annexure – A4 and A5 of the Application, respectively.
- c. He has not received the latest annual financial statements, books of accounts and financial records, because of which he is not able to discharge his duties in the manner as prescribed under the Code effectively. Therefore, he has also filled an IA No. 266/JPR/2021 under Section 19 of the IBC seeking directions for the Corporate Debtor to provide cooperation and submit the requisite documents as required.
- d. The premises, including plant & machineries, and other manufacturing facilities of the Corporate Debtor, situated at E-372-375, RIICO Industrial Area, Hamirgarh Growth Centre, Bhilwara – 311001 (‘said property’) has been given on rent /lease to the Respondent *vide* Rent Agreement dated 07.11.2019, Lease and License Agreement dated 01.01.2021 and Deed of Rectification dated 09.04.2021. Copies of the same are annexed as Annexure – A6 (Colly) of the Application.
- e. RP made further communication *vide* Letter dated 11.08.2021 and Email dated 12.08.2021 to Respondent informing the commencement of Corporate Insolvency Resolution Process (‘CIRP’) against the

Corporate Debtor and request for furnishing other important information as mentioned in the correspondence within three days. Copy of the correspondence made *via* Letter and Email dated 11.08.2021 and 12.08.2021, respectively are annexed as Annexure – A7 of the Application.

- f. The Respondent *vide* its Email dated 20.08.2021, sought 15 days minimum time for taking appropriate legal opinion before submitting the documents to RP and the same was rejected on the grounds of strict timelines as prescribed under the IBC. Copy of Email and Reply of Email, dated 20.08.2021, is annexed as Annexure – A8 of the Application. Thus, the conduct of the Respondent shows that he is trying to evade the obligations and responsibilities as assigned under the IBC by not submitting the requisite documents on the instructions of the suspended board of directors of the Corporate Debtor.
- g. Bank of Baroda ('BOB') has emerged as the lead Financial Creditor having 100% of the voting share after admitting various claims of the Corporate Debtor. Further, BOB has the first charge on the Fixed, and Current Assets of the Corporate, including the said property and the Corporate Debtor neither informed the Bank about the rent/ lease agreement nor any prior permission was obtained before executing the deeds. The Committee of Creditors ('CoC') in its 2<sup>nd</sup> Meeting dated 23.08.2021, directed RP to take all the appropriate legal action against

- the lessee and erstwhile key managerial personnel ('KMP') for the protection of interests of all stakeholder and assets of Corporate Debtor. Copy of the minutes of 2<sup>nd</sup> CoC meeting dated 23.08.2021 is annexed as Annexure – A9 of the Application.
- h. Applicant through Legal Notice dated 31.08.2021 urged Respondent to vacate the said property and handover peaceful possession within 7 days. Copy of the Legal Notice dated 31.08.2021 is being annexed as Annexure – A10 of the Application. Respondent *vide* its Letter dated 08.09.2021 has denied to vacate the premises and handover the possession. Copy of the Letter-cum-Reply dated 08.09.2021 is annexed as Annexure – A11 of the Application.
- i. Moreover, in response to the Form G published in the newspaper on 27.08.2021, the Applicant has received the expression of interest ('EOI') from six prospective resolution applicant including one from Respondent. The wrongful possession of the said property would discourage the prospective resolution applicant in submitting a resolution plan. Thus, it is necessary for successful completion of CIRP that the said property should be vacated.
- j. The act of the Corporate Debtor acting through suspended board of directors is against the *ratio* laid down in the case of Vishal N Kalsaria v. Bank of India, AIR 2016 SC 530. The relevant portion of the judgment is being reproduced for ease of reference:

*'As far as granting leasehold rights being created after the property has been mortgaged to the bank, the consent of the creditor needs to be taken. We have already taken this view in the case of Harshad Govardhan Sondagar.'*

- k. As per the records, the demand notice dated 05.11.2020 under Section 8 of IBC was served upon Corporate Debtor, which was replied on 19.11.2020 wherein the Corporate Debtor had admitted its liability towards Operational Creditor. Corporate Debtor abjectly executed Lease and License Agreement together with Rectification Deed for a period of five years.
  - l. Once a property has been mortgaged with the mortgagee, the mortgagor is restricted from transferring/ selling/ leasing/ alienating or creating any third-party rights without obtaining the prior permission of the mortgagee. The transfer of property to the Respondent has been solely in order, to undermine the rights of the Creditors and to escape rigors of CIRP.
  - m. Section 17, 18, 20 and 25 of the Code empowers the RP/ IRP to amend and modify contracts/ agreements entered by the Corporate Debtor before commencement of CIRP, in the interest of keeping the affairs of the Corporate Debtor as going concern. Hence, Respondent has a mandatory obligation to handover the possession of the said property.
4. Respondent filed a reply *vide* Dairy No. 82/2022 dated 07.01.2022 stating the following:

- a. The IBC is a complete code, the jurisdiction of the Adjudicating Authority can neither be enlarged nor amplified to extend to eviction proceedings which are required to be dealt with by the Civil Courts only. The RP cannot bypass the due process of law to bring a claim before NCLT under Section 60(5) of the Code.
- b. The eviction of tenant from the property of the Corporate Debtor cannot be done by invoking Section 60(5) of the Code as held in the case of K L Jute Products Pvt. Ltd. v. Tirupati Jute Industries Ltd. & Ors., Company Appeal (AT)(INS) No. 277 of 2019. The relevant portion of the judgment is being reproduce for ease of reference:

*‘Insofar as, the eviction of 2nd Respondent is concerned, the Adjudicating Authority is not empowered to pass an order of eviction and it is for an ‘Aggrieved party’ to move the appropriate forum for redressal of its grievances in accordance with Law. In short, the Committee of Creditors had approved the Resolution Plan in utter disregard regard to the ingredient of Section 30(2)(e) of the I&B Code and as hence the same was rejected by the Adjudicating Authority. Moreover, the Adjudicating Authority had appointed a ‘Liquidator’ other than the ‘Existing Resolution Professional.’*

- c. RP has no authority to ask for information as the provisions of Section 19(2) are not applicable qua the Respondent. Further, there is no requirement of taking prior consent of the lead financial creditor before executing Lease and License Agreement as RP demonstrated that

Corporate Debtor cannot entered into such agreements without prior permission of the BOB.

- d. The execution of Lease and License Agreement is as per Contract Act, the execution neither undermine the rights of the creditors nor it can be considered as transfer of property under the Transfer of Property Act, 1882. Additionally, there is no requirement under the IBC, whereby the resolution plan cannot be invited without evicting Respondent.
5. The Applicant thereby filed a Rejoinder *vide* Diary No. 253/2022 dated 28.01.2022 and stated the following:
- a. That as per Section 65A(2)(a) of Transfer of Property Act, 1882, the mortgager shall have power to make lease only when *'every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom or usage.'* The suspended directors in their Letter dated 27.07.2021 has stated, 'The Company is engaged in weaving of fabric and is running on profitable lines since its inception.' Thus, the Lease and License Agreement was made to defraud its creditors as shutting down profitable factory by giving it on lease is not in ordinary course of management.
  - b. Further, on inspecting visitor's register(s) maintained by the security guards present at the gate of factory premises, entries in the name of the owner were mentioned in place of Respondent's name. Copy of Visitor's Register is annexed as Annexure – A12 of the Rejoinder. Additionally,



the suspended director entered into a registered lease with the Respondent in January, 2021 while the secured Financial Creditor issued notice under Section 13(2) of SARFESI Act on 03.12.2019. Copy of the notice under Section 13(2) of SARFESI is annexed as Annexure – A13 of the Rejoinder.

- c. The Hon'ble Supreme Court of India in *Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd. & Ors.*, (2014) 6 SCC 1 has noted that the defaulters after receiving SARFESI notices from banks had leased the properties in order to save them from the banks. It held that where the lease agreement has been entered after the issuance of notices under SARFESI there is no requirement to approach the civil court or rent tribunal; the secured creditor can directly approach the District Magistrate.
- d. An Application against any person not associated with the management of the Corporate Debtor for necessary directions to assist or cooperate can be filed by the RP as Section 19(2) of the Code. Unlike provided under Section 19(1)(iii) the phrase 'any other persons' is not followed by the words associated with the management of the Corporate Debtor, thereby enlarging the scope to include persons not associated with the management of the Corporate Debtor.
- e. The Adjudicating Authority can direct the personnel or other people to cooperate with the RP in the collection of information as power to give

directions under Section 19(3) is wider than duty to cooperate under Section 19(1) and 19(2) of the Code.

6. In its surrejoinder, *vide* Dairy No. 1483/2022 dated 13.05.2022, the Respondent stated that:

- a. The allegation of the RP that the suspended directors fraudulently entered into a lease agreement is not tenable given he has not impleaded suspended directors. They being necessary party ought to have impleaded as Respondent for ascertaining correct factual position.
- b. There are in total six gates in the factory premises, and the RP has appointed three to four security guard on two of such gates. The visitor register shows that none of those entries pertains to the employee of the lessee and same can be verified through attendance register maintained by lessee. The lessee is responsible for managing the affairs, consequently, he is not required to sign at the factory gate.
- c. Hence, the allegation of the resolution professional that the non-applicant is not managing the affairs is completely devoid of merit. Photographs showing gates of the factory premises and Copy of the attendance sheet maintained by the lessee is annexed as Annexure A-1 and A-2, respectively of the surrejoinder.

7. Applicant submitted its Written Submissions *vide* Dairy No. 2553/2022 dated 26.08.2022 and has relied on following:

- a. Report of Bankruptcy Law Reforms Committee ('BLRC') Volume I: Rationale and Design – November, 2015.
  - b. Committee of Creditors of Essar Steel India Limited v. Satish Kumar, (2020) 8 SCC 531.
  - c. Gujarat Urja Vikas v. Amit Gupta & Ors., (2021) 7 SCC 209.
8. The BLRC outlined its vision of the jurisdiction of NCLT *vis-à-vis* insolvency. It referred NCLT as the forum with jurisdiction over the winding up and liquidation of the companies including original jurisdiction over all insolvency matters for maintaining sanctity and efficiency. It further notes:
- 'The NCLT or DRT should also have jurisdiction to entertain and dispose of any pending or fresh suit or legal proceeding by or against the debtor company or individual; question of priorities or any other question, whether of law or facts, in relation to the liquidation or bankruptcy. By bringing all litigations that may have a monetary impact on the economic value of debtor firm or individuals' assets within the jurisdiction of the NCLT, the liquidation or bankruptcy process will be made streamlined and efficient. However, proceedings before the Supreme Court or the High Court must not be within the purview of this clause.'*
9. In the case of Essar Steel, the Hon'ble Supreme Court of India held that the *residuary jurisdiction of NCLT under Section 60(5) of the IBC, allows it to consider all questions of law or fact arising out of or in relation to the corporate debtor's insolvency resolution or liquidation under IBC.*
10. In Gujarat Urja (*Supra*), the Hon'ble Supreme Court has observed:

*‘91. The residuary jurisdiction of NCLT under Section 60(5)(c) of IBC provides it a wide discretion to adjudicate questions of law or fact arising from or in relation to the insolvency resolution proceedings. If the jurisdiction of NCLT were to be confined to actions prohibited by Section 14 of IBC, there would have been no requirement for the legislature to enact Section 60(5) (c) of IBC. Section 60(5) (c) would be rendered otiose if Section 14 is held to held to be exhaustive of the grounds of judicial intervention contemplated under IBC in matters of preserving the value of the Corporate Debtor and its status as a “going concern”.’*

11. The Non-Applicant *vide* Diary No. 2541/2022 dated 26.08.2022 filed its Written Submission and relied on following Judgments:
  - a. Liquidator of Precision Fasteners Limited v. Siddhi Edibles Pvt. Ltd., M.A. 1512/2018 & MA 47/2019 in C.P. (IB) No. 1339/NCLT/MB/2017.
  - b. K.L. Jute Products Private Limited v. Tirupti Jute Industries Ltd. & Ors., Company Appeal (AT) (INS) No. 277 of 2019.
  - c. TATA Consultancy Services Limited v. Vishal Ghisulal Jain, (2022) 2 SCC 583.
12. In the case of Liquidator of Precision Fasteners (*Supra*), NCLT Mumbai has relied on the K.L. Jute Products (*Supra*) and Embassy Property Developments Pvt. Ltd. v. State of Karnataka & Ors., Civil Appeal No. 9170 of 2019. It was held that recovery of rent from the tenant and the eviction of tenant from the property of the Corporate Debtor is in exclusive domain of the civil courts and cannot be dealt with by the Adjudicating Authority by

invoking Section 60(5) of the Code and the Jurisdiction lies with the Civil Court/Rent Control Court Only.

13. The Hon'ble NCLAT in K.L. Jute Products (*Supra*) on the aspect of the Civil Court's jurisdiction held that *Section 63 of the Code bars the jurisdiction of 'Civil Court' or an Authority to entrain any suit or proceedings in respect of any matter over which the 'NCLT' or 'NCLAT' has necessary jurisdiction under the Code. A cumulative reading of Section 63 of the Code and Section 430 of Companies Act, 2013 makes it clear that the 'NCLT' or 'NCLAT' have sole jurisdiction to determine the all issues pertaining to the IBC.*
14. TATA Consultancy (*Supra*), the Hon'ble Supreme Court of India stated that the residuary jurisdiction of the NCLT cannot be invoked if the termination of a contract is based on grounds unrelated to the insolvency of the Corporate Debtor. The nexus with the insolvency of the Corporate Debtor must exist, NCLT cannot exercise its jurisdiction over matters dehors the insolvency proceedings since such matters would fall outside the realm of IBC.
15. The main issue for consideration is whether this Adjudicating Authority has jurisdiction to direct the Respondent to evict the said property of the Corporate Debtor.
16. The act of the Respondent appears that he has conspired with the suspended director(s) to defraud the creditor of the Corporate Debtor in following ways:
  - a. The said property was mortgaged with the Financial Creditor BOB. The suspended director(s) entered into an unregistered rent agreement dated

07.11.2019 with the Respondent for a period of twenty-four months. The aforesaid Rent Agreement was notarized on 17.12.2019, after issuance of demand notice dated 03.12.2019 under Section 13(2) of SARFESI Act, 2002. This Agreement does not have any value in the eyes of law as per Section 17 of the Registration Act, 1908 an agreement for a term exceeding one year is mandatorily registrable and not a valid agreement under Section 49 of the Registration Act, 1908. Additionally, in view of Hon'ble Supreme Court's Judgment in Harshad Sondagar (*Supra*), the borrower (Corporate Debtor) cannot lease/rent any of his secured assets referred in the notice without prior written consent of the secured creditor. Thus, such agreement is *void-ab-initio*.

- b. The Lease and License Agreement dated 01.01.2021 was registered on 27.01.2021 after filing of insolvency application on 05.01.2021. The license fee payable to the licensor (Corporate Debtor) was fixed at Rs. 2,00,000/- (Rupees Two Lakh Only) for a factory of 11760 sq. mtrs. along with all machinery and equipment which is below the prevailing market standards. Further, the Clause 5 of the Lease and License Agreement, being reproduced for ease of reference read as follows:

*'5. The Second party shall adjust to the licensor rent for first 2 years from 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2022 for capital investment to be made to the extent of rent amount of 2 years, after expiry of 2 years rent paid by Second party should be credited as per mode decided at that time.'*

Furthermore, Para 12 of the Lease and License Agreement inserted via the unregistered Rectification Deed dated 09.04.2021 read as follow:

*'That, this agreement shall not to be terminated during the first two years of capital investment from 01<sup>st</sup> January 2021 to 31<sup>st</sup> December 2022, However this agreement may be terminated during the remaining three years of tenancy period from 01<sup>st</sup> Jan 2023 to 31<sup>st</sup> Dec 2025 by serving one month prior notice in writing of his intention by either party.'*

The Respondent has undertaken to do capital expenditure in the said premises in lieu of payment of rent for the period from 01<sup>st</sup> January 2021 to 31<sup>st</sup> December 2022 which grossly amounts to 2 years. From the said fact, it is clear that this clause was inserted to ensure that the tenant, being unable to pay the rent, is allowed to sustain and possess the premises under the garb of capital expenditure at the property.

- c. The fraudulent nature of the lease agreement is also made known when M/s Aarti Suitings Private Limited (*undergoing CIRP*), represented through same suspended directors, was also shut down and had entered into similar Lease and License Agreement on same dates with same discrepancies as that in the case of present Corporate Debtor.
- d. Moreover, the information given by Respondent and Mr. Girjesh Kumar Dalmia (Respondent in IA No. 333/JPR/2021 in CP No. 02/9/JPR/2021) had sent identical e-mails in response to Resolution Professional's Letter dated 27.07.2021. This clearly confirm that Mr. Sadhu Ram and Mr. Girjesh Kumar Dalmia are dummy candidates and the suspended

- directors of Corporate Debtor are running the affairs of the firm of the Respondent M/s Sai Tax Fab.
- e. The conduct of the Respondent by submitting a resolution plan and subsequently withdrawing it, illustrates the obstructing nature to delay and halt the IBC proceedings. Neither the transaction undertaken *via* Lease and License Agreement is genuine in nature nor the status of the Respondent is *bonofide*.
- f. Respondent in its Written Submission has submitted summary of last three years' capital expenditure incurred on looms & store item purchase, being Rs. 16,37,688 for the period 07.11.2019 – 31.03.2020, Rs 1,14,40,921 for financial year 2020-21 and Rs. 90,02,167 for financial year 2021-22. However, it is seen that no documentation, invoices or bills, to substantiate such immense expense have been provided either in the name of M/s Sai Tax Fab or in Respondent's name.
- g. The Financial Statement (including Profit & Loss Account and Balance Sheet) for financial year 2020-21 and 2019-20 of the M/s Sai Tax Fab does not showcase these aforementioned capital expenditures in long term/ fixed assets. Furthermore, mere perusal of the Financial Statements show that this is a story concocted to ensure that it could be given the characteristics of a *bonafide* alienation. The futile exercise done by the suspended director to keep the possession of the premises through Respondent is explicitly visible. Therefore, it is apparent that the



Respondent has fabricated a fictional story in collusion with the Suspended Directors to defraud its creditor and delay the legal process.

- h. The Respondent was directed to file a copy of Income Tax Returns ('ITR') from the year 2016-17 to 2021-22 *vide* Order dated 17.08.2022, whereas the Respondent has only placed on record the ITR for the year 2020-21 and 2021-22. It seems that the Respondent is trying to escape from the compliance of the Order dated 17.08.2022 which only confirms the act of the Respondent to postpone the process of CIRP of the Corporate Debtor.
  - i. The Respondent was summoned before this Adjudicating Authority on 17.08.2022 whereby he was questioned the reason for not vacating the said property of the Corporate Debtor. The Respondent was not able properly justify the reason for holding the possession of the said property. Thereafter, the Respondent undertook /agreed to vacate the said premises within a period of seven days.
17. In the present case, after the initiation of proceeding under this Code, if the creditors are still required to knock other doors, which is time consuming and financially deleterious, it would defeat the object of the IBC. The Applicant is having power under Section 20(2)(b) of the Code to amend and modify the terms of the contract entered before the commencement of CIRP.
18. It is pertinent to mention here that Section 238 of the Code expressly provides that the provisions of this Code shall have an overriding effect over

other laws. Furthermore, Section 63 of the Code read with Section 60 of the Code implies that at the time of enactment of a statute the parliament was aware of such circumstances. If the legislature does not want the non-obstante clause in a statute, then it would have not inserted such a clause.

19. The narrow exception crafted by the Hon'ble Apex Court in Gujarat Urja and TATA Consultancy (*Supra*) can be applied to cases where it is necessary to achieve the objectives of the Code, *inter-alia* ensuring continuation of the Corporate Debtor by protecting the Corporate Debtor from a corporate death by liquidation, for maximation of value of assets, promoting entrepreneurship, balancing the interest of the all stakeholders and matters incidentally connected therewith, we can exercise the residuary jurisdiction vested under Section 60(5) of the Code.
20. Consideration of the foregoing narrative leads to the inference that actions of Non-Applicant are in violation of letter and spirit of IBC. The action of the Respondent signifies that he is using and occupying the said property illegally. The said property is the only asset of the Corporate Debtor; any non-action on the part of this Adjudicating Authority would result into liquidation. Hence, we proceed to dispose of the IA under consideration.
21. In the light of the various judicial precedents and enactments, this Adjudicating Authority has the necessary jurisdiction to pass appropriate directions to the Respondent. In view of the aforesaid and after giving careful

consideration to the entire matter, hearing the arguments of the parties, and upon the appreciation of the documents placed on record to substantiate the claim, this Adjudicating Authority allow the present application.

22. We direct the Respondent to handover the possession of the said property along with the furniture, fixtures, and fittings (including plant and machinery, if any) attached with the said premises to the RP on or before 16.10.2022. The Applicant is directed to strictly act in accordance with the provisions of the Code and proceed with the CIRP of the Corporate Debtor as per the provisions of the Code. The RP is directed to file a compliance report with respect to the same.
23. Consequently, IA No. 332/JPR/2021, stands disposed of with the aforesaid observations. Copy of this Order be furnished to the parties.
24. The Registry is directed to list the other related matters of the CP on 02.11.2022.

**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**

**PRASANTA KUMAR MOHANTY,  
TECHNICAL MEMBER**