

In the National Company Law Tribunal

Division Bench, (Court-II), Kolkata

IA (IB) No. 1952/ (KB) /2023

In CP(IB) No. 378/(KB) /2018

*Application under Section 60(5) of IBC, Code 2016 read with Rule 11
of the National Company Law Tribunal Rules, 2016;*

In the Matter of:

Devi Trading Holding Private Limited

...Financial Creditor

Vs.

*Avani Projects & Infrastructure Limited, having its registered office at
59A, Chowringhee Road, Kolkata – 700 020.*

...Corporate Debtor

And

In the matter of:

*Raj Sekhar Roy, son of Bishwanath Roy, Resident of 29, B.T. Road,
Kolkata – 700 002.*

Applicant ...

Vs.

*1. Avani Projects & Infrastructure Limited, having its registered
office at 59A, Chowringhee Road, Kolkata – 700 020;*

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2. Ajay Kumar Agarwal, Resolution Professional of Avani Projects & Infrastructure Limited having his office at Ambey Garden, Flat 3-C, 3rd Floor, Bangalaxmi Abasan, Dasadron Check post, PO-Gopalpur, Rajarhat Main Road, Kol- 700 136.

...Respondents

Date of Pronouncement of order: 10.04.2024

Coram:

Smt. Bidisha Banerjee : Member (Judicial)

Shri D. Arvind : Member (Technical)

Counsel appeared physically / through video Conferencing

Mr. Jishnu Chowdhury, Adv.] For Applicant in

IA(I.B.C)/1952(KB)2023

Ms. Ujjaini Chatterjee, Adv.]

Mr. Sidharta Basu, Adv.]

Mr. Soumya Roy, Adv.] For IRP Anupriya in

IA(I.B.C)/1291(KB)2023

Mr. Sourojit Das Gupta, Adv.] For Resolution Professional

Ms. Komal Singhi, Adv.

O R D E R

Per Bidisha Banerjee, Member (Judicial):

1. The Court convened through hybrid mode.
2. Ld. Sr. Counsels / Counsels for the parties were heard at length.
3. This application has been filed by Raj Sekhar Roy seeking the following reliefs:

- a. An order be made for delivery of vacant possession of the said premises situated at Flat 5B & 5C, at 59A Chiowringhee Road, Kolkata - 700 020, by the respondents herein;
- b. Direction be made upon the respondents to make payment of a sum of Rs. 23,48,225/- (plus applicable GST) as CIRP costs as pleaded in paragraph 18 above;
- c. Pending disposal of the application the Respondents be directed to make payment of a sum of Rs. 64,68,441/- along with interest @18% per annum per month from 14th March 2019 till the date of filing of this application and make further payments of a sum of Rs. 1,15,000/- per month till the delivery of possession of occupational charges;
- d. Interim orders in terms of prayers above;

4. The Applicant claims that it is the owner of a flat being premises No. 5B and 5C at 59A, Chowringhee Road Kolkata – 700 020 by virtue of title documents annexed as Annexure – A to the Application.
5. That by leave and license agreement dated 01st May, 2010, the said flat was licensed out to the corporate debtor Avani Projects & Infrastructure Limited (previously known as Avani Griha Nirman Pvt Ltd) for an initial period of 11 months taking effect from 1st May, 2010 subject to renewal for another two terms of 11 months each on the same terms and conditions. The terms expired on 31st January, 2013.
6. The license fee to be paid by the corporate debtor in the terms of the said agreement was fixed at Rs. 60,000/- per months payable by the 7th day of every month of the English Calendar. The corporate debtor was required to furnish a refundable security deposit of Rs. 1,80,000/- which was duly paid as in terms of agreement dated 01st May, 2010, marked as Annexure -B with the application.
7. That, further by leave and license agreement dated 01st May, 2010, the flat being No. 5C was leased out to the corporate

debtor Avani Projects & Infrastructure Limited for an initial period of 11 months taking effect from 01st May, 2010 subject to renewal for another two terms of 11 months each on the same terms and conditions and the same expired on 31st January, 2013. The license fee to be paid by the corporate debtor in the terms of the said agreement was fixed at Rs. 40,000/- per month to be paid by the 7th Day of every month of the English Calendar and a refundable security deposit of Rs. 1,20,000/- which was duly paid as in terms of agreement dated 01st May, 2010 marked as Annexure - C with this application.

8. That by Agreement dated 01st February, 2013 between the creditor and the said Avani Projects, the terms of aforesaid license was renewed for a period of 11 months subject to further renewal for another two terms of 11 months each on the same terms and conditions. It was also agreed that the license fee for Flat No 5B would be Rs. 69,000/- per month and license fee for Flat No. 5C would be Rs. 46,000/- per month and the renewal of the 3rd term would be subject to increase of 15% of the existing license fee. Further the Corporate Debtor

was required to furnish a refundable security deposit of Rs. 1,80,000/- and Rs. 1,20,000/- respectively for each flat which was duly paid by the corporate debtor. The said agreement expired on 31st October, 2015. By an agreement dated 01st November, 2015, the term was further extended for a further period of 11 months at a license fee for Flat No. 5B of Rs. 69,000/- per month and license fee for Flat No. 5C of Rs. 46,000/- per month. Renewal of the 3rd term would be subject to increase of 10% of the existing license fee etc. The said Agreement marked as Annexure – E with the application expired on 31st August, 2018.

9. By a letter dated 12.07.2018, the creditor made demand for payment of a sum of Rs. 13,80,000/- as outstanding license fee as on 31st August, 2018, on which day the agreement was due to expire. The Corporate Debtor was further asked to hand over vacant possession of the said flats upon payment of the outstanding dues and simultaneously expiry of the agreement vide letter dated 12.07.2018 and the same marked as Annexure – F with the application.

10. That the corporate debtor has made payment of the license fee as per the said agreements till June, 2017.

11. That by a letter dated 12.07.2018, the creditor made demand for payment of a sum of Rs. 13,80,000/- as outstanding license fee as on 31st August, 2018 on which day the agreement was due to expire. The Corporate Debtor was further asked to hand over vacant possession of the said flats upon payment of the outstanding dues and simultaneous expiry of the agreement vide letter dated 12.07.2018 marked as Annexure-F with the application. But the Corporate Debtor neither made payments nor did it vacate the premises upon expiry of the said term.

12. In the meanwhile, by letter dated 4th February, 2019 (Annexure-G), the creditor received a notice from the Avani Heights Residents Welfare Association of 59A, Chowringhee Road, Kolkata - 700 020 addressed to the creditor in his capacity of flat owner, demanding payment of Rs. 68,340/- as outstanding maintenance charges for the Flat Nos. 5B & 5C at the said premises. The said notice was also addressed to one Suman Shaigal in capacity of a tenant. It was evidently making

it clear that not only had the Corporate Debtor failed to vacate premises, clear the outstanding license fee due to the creditor herein, it had also failed to pay its maintenance charges and inducted a tenant by the name of Suman Shaigal in the said flats which were not permissible under the agreements.

13. Under such circumstances, the creditor issued a notice dated 4th March, 2019 to the occupier being Suman Shaigal illegally occupying Flat Nos. 5B & 5C at 59A Chowringhee Road, Kolkata – 700 020 seeking clarifications pertaining to her status and rights in respect of Flat Nos. 5B & 5C at 59A, Chowringhee Road, Kolkata – 700 020 as the said flats belong to the creditor.

14. The creditor received a notice through his lawyer dated 28th March, 2019 (Annexure-I) from DSP Law Associates on behalf of the said Suman Shaigal wherein, it was stated that the said Suman Shaigal is in lawful occupation of the said flats since May, 2010 on the basis of an agreement between Avani Projects & Infrastructure Limited and Suman Shaigal.

15. The applicant claims that its is entitled to receive a total sum of Rs. 88,16,666/- as occupational charges as set out in a

schedule (marked as Annexure-J with the application) and set the vacant possession of the flats.

16. That the corporate debtor has been admitted to undergo Corporate Insolvency Resolution Process by an order dated 13th March, 2019. The Applicant's claim in money as a creditor is for a sum of Rs. 23,48,225/- as on insolvency commencement date, for which a claim has been submitted before the Resolution Professional. However, as on date of filing of the proof of claim, the occupational charges stood at Rs. 82,57,000/-.

17. It is asserted that the said premises are not a property of the corporate debtor. Upon expiry of the said tenure of the agreements, and the corporate debtor has been in illegal occupation of the same since 2017, without payment of any occupation charges. Any contractual right, which the corporate debtor had, to occupy the said premises, has come to an end by the letter of termination dated 12th July, 2018.

18. The Applicant laments that it is unable to move a civil court of competent jurisdiction seeking a decree of eviction against the corporate debtor since the moratorium in terms of section 14

of the Code is still in effect. The only recourse is under Section 60(5) of the Code.

19. It is contended that upon failure on part of the corporate debtor to deposit the occupational charges in terms of Order XV-A of the code of Civil Procedure, 1908, it is obliged to hand over the peaceful vacant possession of the said premises to the applicant herein.

20. It is urged that there is extreme urgency in the matter in the facts and circumstances of the present case as the Resolution Professional has recently informed the applicant that the corporate debtor might soon undergo liquidation under the provisions of the Code, 2016 vide email dated 30th June, 2023 annexed as Annexure- M with the application.

21. Hence, the applicant prays that pending disposal of the application, by way of an interim order the RP be directed to make payment sum of Rs. 1,15,000 per month along with interest @ 18% per annum as CIRP Costs. That the balance of convenience is entirely in favour of the applicant herein.

22. In addition thereto, the Applicant would submit that the subject property is not needed to Corporate Debtor as a going concern.

23. Our inference:

- a. Moratorium under Section 14 of the Code shall not prevent recovery of possession from the unauthorized occupant. In view of the fact that the license period has expired on 31.08.2018 and has not been renewed thereafter.
- b. Further, the Corporate Debtor having failed to pay license fees since, 2017 and has lost its status as a licensee.

24. Resolution Professional shall deliver vacant possession of the said premises being Flat Nos. 5B & 5C, situated at 59A Chowringhee Road, Kolkata – 700 020 to the Applicant, after setting the same vacated from the possession of the current occupant Suman Shaigal, if required by way of notice to the said person providing appropriate time to vacate the premises as per law.

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25. The Applicant shall lodge his claim with the Resolution Professional regarding payment of any kind of license fees or any other dues.

26. In view of the above directions, IA (IB) No. 1952/(KB)2023 is disposed of.

27. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

28. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

*D. Arvind
Member (Technical)*

*Bidisha Banerjee,
Member (Judicial)*

Signed on this the 10th day of April, 2024

M. Jana (P.S.)