

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
(COURT NO. II)**

**IA No. 177 of 2021
IN
CP (IB) 482/9/NCLT/AHM/ of 2019**

(Under Section 60(5) read with Section 18(F) and Section 25 (2) (a) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal, 2016)

In the matter of:

**Mr. Dharit Kishorbhai Shah,
Liquidator of Maktel Power Ltd.**

...Applicant

Versus

I.P. Tutorial LLP

...Respondent

And

In the matter of:

Elcen Machines Pvt. Ltd.

...Operational Creditor

Versus

Maktel Power Ltd.

...Corporate Debtor

Order Pronounced on: 30/01/2023

Coram:

**DR. DEEPTI MUKESH,
HON'BLE MEMBER (JUDICIAL)
AJAI DAS MEHROTRA,
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

IA/178/2021

**Mr. Dharit Kishorbhai Shah,
Liquidator of Maktel Power Ltd,**

Having registered office at:
C/o. Bipin & Co., Chartered Accounts,
302, Centre Point, R.C. Dutt Road,
Alkapuri, Vadodara, Gujarat – 390007.

...Applicant

Versus

**I.P. Tutorial LLP,
204/ Shrusti Avenue, water tank road
Karelibaug, Vadodara,
Gujarat 390018.**

...Respondent

Present:

For the Applicant: **Mr. Atul Sharma, Adv.**

For the Respondent: **Mr. Aadit Sanjanwala, Adv.**

ORDER

1. The instant Application is filed by Mr. Dharit Kishorbhai Shah (hereinafter referred as ‘applicant’), Liquidator of M/s. Maktel Power Limited (hereinafter referred as ‘corporate debtor’), Under Section 60(5) read with Section 18(F) and Section 25 (2) (a) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal, 2016, seeking following directions against the I.P. Tutorial LLP (hereinafter referred as ‘respondent’):

- i. That this Hon'ble Tribunal may be pleased to admit and allow the present application;*
- ii. That this Hon'ble Tribunal may be pleased to direct the Respondent to handover peaceful possession of property of the corporate debtor situated at 101, Avishkar Complex, Old Padra Road, Vadodara to the Applicant herein i.e. liquidator of corporate debtor.*
- iii. That this Hon'ble Tribunal may be pleased to direct the Respondent to pay Rs. 7,10,808/- towards the pending rent amount for the month from July, 2019 till September, 2020 for possessing the property situated at 101, Avishkar Complex, Old Padra Road, Vadodara owned by Corporate Debtor;*
- iv. Your Lordship may be pleased to grant any other relief or relief as may deem fit in the light of the facts and circumstances of the case.*

2.The brief facts of the case are as under :-

- a) An Operational Creditor i.e. M/s. Elcen Machines Private Limited had filed the application under section 9 of the Code for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") of M/s. Maktel Power Limited which was admitted vide order dated 11.09.2020, and Mr. Dharit Kishorbhai Shah was appointed as the Interim Resolution Professional, who was later confirmed as Resolution Professional by the sole COC member, i.e., Indian Bank (erstwhile 'Allahabad Bank') on 28.10.2020.
- b) Resolution Professional published the Form-G on 25.11.2020 and there were no EOIs were received. Resolution Professional did not receive any plan so the COC in its 8th meeting held on 08.03.2021

passed the resolution to liquidate the corporate debtor and also passed the resolution in this very meeting to appoint Resolution Professional i.e., applicant as the liquidator of the corporate debtor and also authorized him to file an application for same.

c) The Resolution Professional filed an IA 268 of 2021 before the Adjudicating Authority for the liquidation of the corporate debtor, which was allowed vide order dated 05.05.2021 and also appointment of the applicant was confirmed as the liquidator of the corporate debtor.

3. This IA filed on 22.02.2021 by the Resolution Professional and on the request of Applicant, the Adjudicating Authority allowed to amend the cause title by replacing the Resolution Professional as liquidator, vide order dated 02.03.2022.
4. The applicant submitted that the applicant vide letter dated 18.09.2020 intimated to respondent about CIRP ('Corporate Insolvency Resolution Process') of corporate debtor and further requested to handover the possession of the property owned by the corporate debtor situated at 101, Avishkar Complex, Old Padra Road, Vadodara.
5. The applicant submitted that the applicant sent another letter to the respondent on 01.01.2020 and 02.10.2020 and informed that the license fee is not paid by the respondent after July 2019 till September 2020 therefore the leave and license agreement automatically stands terminated as per the

clause 8.3 of the leave and license agreement signed on 01.04.2018. It is further submitted that the applicant again directed the respondent to peacefully handover the possession of the property owned by the corporate debtor. A copy of notice sent by applicant dated 01.10.2020 and 02.10.2020 alongwith rent agreements dated 01.07.2013 and 01.04.2018 are annexed with this application.

6. The applicant submitted that the applicant received the reply from the respondent on 05.10.2020, wherein respondent admitted that no rent is paid from July, 2019 but did not handover the possession of the property owned by corporate debtor to the applicant. Respondent demanded from applicant to reimburse and adjust the expenses incurred by the respondent towards the development of the property owned by the corporate debtor against rent payable by it. Copy of reply annexed with the application.
7. The applicant submitted that due to continued possession of said property by respondent, the applicant filed a police complaint before Commissioner of Police, Vadodara on 24.10.2020. Copy of said complaint is annexed. No action was taken by Commissioner of Police, Vadodara thereafter, the applicant vide letter dated 08.12.2020 requested the Commissioner of Police, Vadodara to direct the concerned police station to assist the applicant in taking over the possession of the premises owned by the corporate debtor but no assistance was provided by the office of Commissioner of Police, Vadodara to the applicant. Copy of the said letter is annexed.

8. The applicant submits that it is the duty of applicant to take control and custody of all such assets over which the corporate debtor has an ownership right including assets which may or may not be in the possession of the corporate debtor.
9. The respondent filed his reply and raised following contentions:
 - i. That the respondent denied all the statements, averments and contentions raised by applicant.
 - ii. That the respondent also raised the preliminary objection against the maintainability of this application. This application is in the nature of eviction proceedings, would does not fall within the jurisdiction conferred upon the National Company Law Tribunal for proceedings under the IBC, 2016. Issue pertaining to eviction, recovery of rent and any other breach of license fall within the domain of civil courts/rent courts.
 - iii. That the respondent is a licensee of the corporate debtor's premises and all required payments including electricity charges, taxes and other governments dues have been paid from time to time without any default. The 1st time leave and license agreement was executed on 01.07.2013 and further extended from 01.04.2018 for a period of 5 years upto 01.04.2023.
 - iv. That at the time of executing the renewed leave and license Agreement, the Corporate Debtor had represented to respondent that

no encumbrance existed on the Subject Premises and the Corporate Debtor would not create any encumbrances on the Subject Premises. This representation given by the Corporate Debtor is also written in clause 5.2 of the renewed leave and license Agreement dated 01.04.2018. It is based on such representation and warranties that the renewed leave and license Agreement was executed. Respondent has invested significant amount of money to refurbish the subject premises and for its regular upkeep and maintenance over the years. After execution of the renewed leave and license Agreement, it was brought to the notice of respondent that a mortgage was created by the Corporate Debtor on the Subject Premises and to the best of respondent's knowledge, proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(SARFAESI Act) were / to be initiated by the mortgagee for the Subject Premises on account of default committed by the Corporate Debtor. The above-stated facts are suppressed in the application, which gives rise to a justifiable suspicion that the application is also an attempt to defeat provisions of the SARFAESI Act. The fraudulent misrepresentation of facts by the corporate debtor have affected the right, title and interest of the respondent.

- v. The respondent submitted that aforesaid dispute requires adjudication by an appropriate forum and/or inter se resolution between the parties.

10. The applicant filed its written submission and reiterated same averments and contentions which are made in the application. Respondent did not file written submission. The applicant relied upon the orders passed by the coordinate Benches, which were also filed with the written submission, which are as follows:

- i. That Hon'ble NCLT, Kolkata Bench in NICCO Corporation Limited and Ors. Vs. NICCO Engineering Services Ltd. (CA (IB) No. 1134/KB/2018, Misc. Application No. 1156/KB/2018, CA (IB) No. 801/KB/2019 and CP (IB) No. 3/KB/2017) dated 07.01.2020 has held that

"11.3 If the Licensee unreasonably delays or fails to hand over the said premises on the expiry and/or earlier termination of this Agreement the Licensor shall be entitled to take legal recourse for repossession and the licensee has to continue paying the license fee and other fees as agreed in this Agreement. The Licensor shall have the right to re-enter into possession of the said Premises by following due process of Law to prevent the Licensee and its employee from issuing and/or occupying the said Premises.

...

15. On a reading of the above said decision cited on the side of the liquidator, we are of the considered view that the respondent herein being a licensee continuing possession after termination of license became unauthorised occupant and in unauthorised possession who can be evicted and there is no prospective buyers having turned up despite publication, of sale with the encumbrance, continuing possession by the respondent would definitely defeat the very interest of maximisation of value of the assets of the corporate debtor who is undergoing liquidation".

...

...
 "19. In view of the above, the applications, CA (IB) No. 1134/KB/2018 and Misc. Application No. 1156/KB/2018 is perfectly maintainable and accordingly CA (IB) No. 801/KB/2019 is liable to be dismissed and CA (IB) No. 1134/KB/2018 and Misc. Application No. 1156/KB/2018 are liable to be allowed upon the following orders:-

- a) The respondent is directed to surrender vacant and peaceful possession of the premises to the liquidator within 15 days from the date of this order.
- b) The respondent to pay the agreed fee with cost of Rs. 1 lakh for continuing the unauthorised and unlawful possession of the premises till the date of surrender."

11. Heard submissions and perused the documents placed on records. The objection raised by the respondent about the maintainability of this application are not being considered as the corporate debtor was admitted under CIRP vide order dated 11.09.2020, and IRP and thereafter Resolution Professional are incharge of corporate debtor. During the period of CIRP the IRP/Resolution Professional took the control and management of the corporate debtor and as per the provisions of IB Code and regulations made thereunder, the IRP/Resolution Professional also intimated the respondent herein about the initiation of CIRP of corporate debtor vide letter dated 18.09.2020 and 01.10.2020. Also vide letter dated 02.10.2020, the IRP informed the respondent herein about the termination of leave and license agreement which was signed on 01.04.2018 by and between corporate debtor and respondent herein. The relevant clause 8.3 of leave and license agreement is reproduced below:

“clause-8.3. This Agreement shall terminate upon the expiry of the term, or a failure by the licensee to pay the licensee fees for 3(three) months consecutively”.

In view of above clause 8.3 the leave and license agreement was terminated w.e.f. 01.10.2019 for non-payment of license fees from July 2019 to September 2020. It is noted from the record that even after intimating about termination of leave and license agreement, the respondent failed to vacate the said property of the corporate debtor and failed to pay the balance rent amount payable towards occupying the premises from the July 2019 to September 2020. The applicant also filed a complaint against the respondent on 24.10.2020 and 08.12.2020 with the Commissioner of Police, Vadodara for assistance. During the pendency of the instant application the corporate debtor went into liquidation vide order dated 05.05.2021. As a result, this application is now pursued by the liquidator.

We also referred to the judgement dated 05.01.2023 of the Hon'ble NCLAT, Principal Bench, New Delhi in the case of M/s. Jhanvi Rajpal Automotive Pvt. Ltd., Versus R.P. of Rajpal Abhikaran Pvt. Ltd. & Anr.(Company Appeal (AT) (Insolvency) No. 1417 of 2022), relevant paragraphs are as follows:

“20. Accepting the contention of the Learned Counsel for the Appellant that RP is obliged to file a suit for eviction of the Appellant under MP Accommodation Control Act, 1961 even though lease in favour of the Appellant has expired shall be unduly prolonging the insolvency process

which is a time bound process. When the Corporate Debtor has the ownership rights over the premises which premises can be taken in control by IRP/RP, we are of the view that for eviction of the Appellant especially in event when lease in favour of the Appellant has come to an end, filing a suit is not contemplated in the statutory scheme contained in IBC.

21. Thus, the contention of the Appellant that RP has to file a suit for eviction of the Appellant under the MP Accommodation Control Act, 1961 can not be accepted. We thus, in view of the foregoing discussions are of the considered opinion that Adjudicating Authority has rightly allowed the Application filed by the RP directing the Appellant to vacate from the premises so that Resolution Plan which has been approved can be implemented. We thus do not find any merit in the Appeal, the Appeal is dismissed.”

We are of the view that holding possession of such type of property even after termination of leave and license agreement shall be considered illegal possession of the property by the respondent. Further, IRP/RP/Liquidator is duty bound to take custody of the assets belonging to the corporate debtor as per IB Code and do all the necessary acts to complete the liquidation process under the provisions of the IB Code. No doubt such acts of the respondent are obstructing the Liquidator to liquidate the assets of corporate debtor in a time bound manner. In view of above, we direct the respondent of this application to vacate the said premises within 15 days after receipt of this order. We further direct the local police to provide necessary assistance to the applicant in case of any failure.

12.As a sequel to the above discussion application is allowed and disposed of.

13. The registry is directed to communicate a copy of this order to the parties.

-Sd-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-Sd-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

Abhishek Singh
LRA