

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

19. IA 1153/2024 IA 1152/2024 In C.P. (IB)/527(MB)2022

CORAM:

SHRI ANIL RAJ CHELLAN
HON'BLE MEMBER (T)

SHRI KULDIP KUMAR KAREER
HON'BLE MEMBER (J)

**ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 16.04.2024**

NAME OF THE PARTIES: **IA 1153/2024 Vijaykumar V Iyer Vs.
The Court Receiver High Court of
Bombay**
**IA 1152/2024 Vijaykumar V Iyer Vs.
Committee of Creditors Through Bank
of India**

IN THE MATTER OF

Bank of India

V/s

Future Retail Limited

Section: 7, 60(5) of Insolvency and Bankruptcy Code, 2016

ORDER

IA No. 1152/2024:- Counsel, Mohana Nijhawan a/w Harit Lakhani appeared for the Resolution Professional. Adv. Sairam Subramanian a/w Ms. Saloni Shah, Ms. Akshika Jain appeared for the Respondent. List the IA No. 1152/2024 on **15.05.2024** for hearing.

IA No. 1153/2024:- Counsel, Mohana Nijhawan a/w Harit Lakhani appeared for the Resolution Professional. Counsel, Himalaya Chaudhari i/b. Manilal Kher Ambalal appeared for the Respondent No. 2. Adv. Sairam Subramanian a/w Ms. Saloni Shah, Ms. Akshika Jain appeared for the Respondent No. 3. This application is filed by the Resolution Professional (RP) to pass an order directing the Respondent No.3, the Committee of Creditors (CoC) to contribute to meet the vacation and warehousing costs of assets of the Corporate Debtor

housed at the Commercial premises in the complex known as "The Acropolis" on the lands bearing Re-survey Nos. 4, 6/1+2 and 7+7/2 allotted Final Plot No. 5/Part in the T.P. Scheme No. 38 of Village Thaltej Taluka Daskrol (Old), Ahmedabad, Gujarat ('Subject Premises') to an alternate location, which shall be construed as interim finance in the CIRP of the Corporate Debtor.

The Subject Premises, which is the subject matter of the Commercial Suit No.207 of 2022 and the Hon'ble Bombay High Court vide its interim order dated 12.09.2022 has appointed Court Receiver/Respondent No.1 to take possession of Subject Premises. Thereafter, this Tribunal by an order dated 15.01.2024 passed in IA.No.2468/2023, inter alia, directed the applicant/RP to handover the Subject Premises which presently houses certain inventories/assets of the Corporate Debtor to the Court Receiver/ Respondent No.1.

The Learned Counsel for the Applicant/RP has submitted that the Applicant does not have sufficient funds to carry out the process of vacating the said Premises and the warehousing of the assets of the Corporate Debtor lying at the Subject Premises. It is further submitted that the Applicant had approached the Respondent No.3/CoC for contribution of monies, inter alia, towards the expenses to be incurred for the vacation of the Subject Premises and warehousing of the inventories of the Corporate Debtor. Since no decision has been taken in relation to the cost of vacating the Subject Premises and also the warehousing the inventories, the Applicant has filed this IA seeking directions to CoC to bear the costs of vacating the Subject Premises and warehousing costs of the assets of the Corporate Debtor lying at the Subject Premises to an alternate location and further that such cost be construed as interim finance in CIRP.

The Counsel for the Applicant submitted that it would be requiring a minimum space of 8,000 to 15,000 sq. ft to store the inventories/assets of the Corporate Debtor depending upon the height of such rooms. The estimated cost that will be incurred towards vacating the Subject Premises is approximately Rs. 130 per sq. ft amounting to Rs. 54.95 Lakhs and the cost that will be incurred towards warehousing of the inventories /assets of the Corporate Debtor at an alternate location is approximately Rs. 5.91 Lakhs per annum.

The Ld. Counsel has also drawn our attention to the order of the Hon'ble High Court dated 01.03.2024 directing the Court Receiver to take possession of the Subject Premises on or before 05.03.2024 and preparation of inventory is dispensed with. RP has been given liberty to move this Tribunal for appropriate directions, as regards the moveable and furniture and the fixtures located in the Subject Premises. The RP would also at liberty to move Hon'ble Bombay High Court, in the event, any order is passed on such an Application, proposed to be filed before this Tribunal.

In the above backdrop, considering the urgency involved, this Tribunal vide order dated 01.04.2024 directed the Respondent No.3/CoC to take a call as to how the expenses with regard to shifting and warehousing the inventories lying at the Subject Premises are to be met or what other arrangement is to be made in the alternative. It is informed by the Learned Counsel for the Respondent No-3 that this issue was again discussed by the CoC at its meeting held on 08.04.2024 but no consensus with respect to funding the cost in relation to vacating Subject Premises and warehousing the assets could be reached.

An additional affidavit dated 16.04.2024 has been filed by CoC in this regard. Thus, CoC has not come up with any proposal to meet the expenses for shifting and warehousing the inventory lying at the Subject Premises.

In the circumstances, it becomes necessary for us to give a direction to the CoC to meet the expenses for shifting and warehousing of the inventories from the Subject Premises to an alternative location, and to enable the RP to handover vacant possession of the Subject Premises to the Respondent No1/Court Receiver within two weeks from this order. Accordingly, the members of CoC, being financial institutions (as defined in the Code) are hereby directed to contribute Rs.75 lakhs, in proportion to the financial debts owed to them by the Corporate Debtor for meeting the expenses of shifting and warehousing of inventory housed at the Subject Premises, and the same shall be treated as part of the CIRP cost. **IA No. 1153 of 2024 is allowed and disposed of** accordingly.

Sd/-

ANIL RAJ CHELLAN

Member (Technical)

16.04.2024

Sushil

Sd/-

KULDIP KUMAR KAREER

Member (Judicial)