



IN THE NATIONAL COMPANY LAW TRIBUNAL,  
COURT II, MUMBAI BENCH  
INTERLOCUTORY APPLICATION NO. 4147 OF 2023  
AND  
INTERVENTION PETITION NO. 27 OF 2024  
IN  
CP(IB) NO. 959(MB)/2022

*Application u/s 60(5) of the Insolvency and  
Bankruptcy Code, 2016 read with Rule 11 of the  
NCLT Rules, 2016.*

**In the matter of (I.A. No. 4147/2023):**

**Sudha Apparels Limited,**

A company having its registered office at: 2/5,  
Sarat Bose Road, Sukh Sagar, Flat No.8A, 08<sup>th</sup>  
Floor, Kolkata, West Bengal-700020.

**...Applicant**

Versus

**Mr. Ravi Sethia,**

The Resolution Professional of Future Lifestyle  
Fashions Limited

**...Respondent**

**Intervention Petition No. 27 of 2024**

**Praxis Home Retail Limited**

**...Intervenor**

Versus

**Sudha Apparels Limited**

**...Respondent**

**In the matter between**

**Bank of India**

**...Financial Creditor**

v/s.

**Future Lifestyle Fashions Limited**

**...Corporate Debtor**



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**Order pronounced on 01.10.2024.**

**Coram:**

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

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

**Appearances (in Virtual mode):**

For the Applicant & Intervenor: Adv. Karishma Mungekar i/b. Sahil Mahajan.

For the Respondent: Adv. Rahul Kalpatri for the Resolution Professional.

**ORDER**

***Per: Coram.***

1. **I.A. No. 4147 of 2023** is an application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 11 of the N.C.L.T. Rules, 2016 filed by the Applicant/Lessor seeking following reliefs against the Respondent/Lessee:

- a) Direct the Respondent/Resolution Professional of the Corporate Debtor to admit the claim dated 04.07.2023 of the Applicant amounting to INR 11,69,64,411.33/-;
- b) In view of the termination of the Lease Agreement and the consequent illegal occupation, the Tribunal be pleased to direct the Respondent/Resolution Professional of the Corporate Debtor, to hand over the vacant and peaceful possession of the immovable property being the Ground Floor, 01<sup>st</sup> Floor and 02<sup>nd</sup> Floor of Plot No.05, Block-BG, Action Area-IB, New Town, Rajarhat, Kolkata-700 015 (hereinafter referred to as “**Leased Premises**”) along with the arrears of occupation charges at the rate of INR 1,28,05,940/-



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per month for usage of the Leased Premises during the CIRP period to the Applicant;

- c) In the alternative to prayer clause (b), the Tribunal be pleased to direct the Respondent to pay occupation charges at the rate of INR 1,28,05,940/- per month for usage of the Leased Premises during the Corporate Insolvency Resolution Process ('CIRP') period to the Applicant;
- d) Direct the Respondent/Resolution Professional of the Corporate Debtor to keep the Leased Premises outside the purview of CIRP of the Corporate Debtor and not to deal with the same in any manner.

2. **Intervention Petition No. 27 of 2024** is an application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 11 of the N.C.L.T. Rules, 2011 filed by the Applicant/Intervenor seeking intervention in I.A. No. 4147 of 2023 on the ground that the Corporate Debtor had let out the second floor of the Leased Premises situated at Ground Floor, 01<sup>st</sup> Floor and 02<sup>nd</sup> Floor of Plot No.05, Block-BG, Action Area-IB, New Town, Rajarhat, Kolkata-700 015, on leave and license to the Intervenor by executing a Leave and License Agreement dated 01<sup>st</sup> April, 2021.

3. **Facts of the case pleaded by the Applicant in his application are briefly stated below (I.A. No. 4147 of 2023):**

- i. The Applicant is a public limited company carrying on the business of financing and investing. The Applicant is also the owner of the Leased Premises, which is a part of the larger premises owned by the Applicant.
- ii. Bengal Shrachi Housing Development Limited ('BSHDL') was the original owner of the larger premises including the Leased Premises. By an



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agreement for Lease dated 17.09.2008, BSHDL had leased the premises to Home Solutions Retail India Limited ('HSRIL') for a period of 21 years for carrying on the business of retail outlet under the name and style of Big Bazaar, Pantaloons, Home Town, Food Bazaar and/or any of its other future group retailing business. BSHDL conveyed the larger premises to the Applicant vide registered Conveyance Deed dated 11.10.2010 in favour of the Applicant pursuant to which the Applicant became the owner of the Leased Premises. On 01.02.2010, the business of HSRIL was acquired by Pantaloons Retail India Limited ('PRIL'). On or about 16.03.2013, PRIL changed its name to Future Retail India Limited ('FRIL'). As per clause 18(x) of the Lease Agreement, FRIL assigned its rights under the Lease Agreement dated 17.09.2008 in favour of the Corporate Debtor.

- iii. In light of the aforesaid facts, the Corporate Debtor stepped into the shoes of the original lessee and the Applicant stepped into the shoes of original lessor. The initial lease rent was fixed at Rs. 27/- per sq. ft. per month with rent escalation by 12% after the end of every three years. The Applicant has stated in its application that since February 2022, they have not received any payment of lease rent from the Corporate Debtor. Thus, the Applicant issued a defect rectification notice dated 09.03.2023 upon the Corporate Debtor under Clause 19(viii) of the Lease Agreement dated 17.09.2008, whereby the Corporate Debtor was, *inter-alia*, called upon to make payment of its outstanding lease rent along with interest @ 12% p.a. being a sum of INR 9,61,56,616/- within 30 days from the date of receipt thereof. The Applicant has pleaded that the said notice was received by the Corporate Debtor on 14.03.2023.
- iv. Since the Corporate Debtor failed to comply with the requisitions of the defect rectification notice dated 09.03.2023, the Applicant vide Letter dated



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14.04.2023, terminated the Lease Agreement dated 17.09.2008 and called upon the Corporate Debtor to handover peaceful and vacant possession of the Leased Premises to the Applicant forthwith. However, as the Applicant neither paid the rent nor handed over the possession despite the above-mentioned notice(s), an application u/s 9 of the Arbitration and Conciliation Act, 1996 came to be filed by the Applicant against the Corporate Debtor vide Misc. (Arb.) Case No. 36/2023 (CC) before the Hon'ble Commercial Court at Rajarhat for injunction, deposit of arrears of lease rent and for payment of monthly occupational charges of INR 1,28,05,940/-. Vide Order dated 29.04.2023, the learned Judge restrained the Corporate Debtor and/or its men, agents, assigns and/or servants from dealing with, disposing of, transferring, alienating, encumbering and/or creating any third-party rights in respect of the Leased Premises or any part thereof.

- v. By virtue of Order dated 04.05.2023 in the above-captioned Company Petition, the Corporate Debtor viz. Future Lifestyle Fashions Ltd, was admitted into the CIRP u/s 7 of the Code and the Respondent was appointed as the Interim Resolution Professional ('IRP') of the Corporate Debtor.
- vi. Pursuant to the appointment of IRP and public announcement, the Applicant filed its claim on 04.07.2023 in Form B before the IRP for an amount of INR 11,69,64,411.33/-. The said claim was sent to the IRP by speed post which was duly received by the IRP on 05.07.2023. In spite of the receipt of the said claim, the Respondent/RP has not intimated anything to the Applicant about the status of the Applicant's claim.
- vii. On account of operation of moratorium u/s 14 of the Code, the proceedings before the Commercial Court at Rajarhat by the Applicant against the Corporate Debtor were adjourned sine die. The RP through its letter dated 15.06.2023 replied to the termination notice terming it as illegal and by



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another letter dated 18.08.2023, the Respondent informed the Applicant that the termination of lease is in contravention of the provisions of the Code and the Applicant was bound to continue the lease at a rent of INR 64,02,970/-

viii. In the aforesaid circumstances, the Applicant is constrained to file this application so as to get its claim admitted by the Respondent as also for vacant, peaceful and lawful possession of the Leased Premises and for payment of lease rent @ Rs. 1,28,05,940/- per month to the Applicant for usage of the Leased Premises by the Corporate Debtor.

**4. Facts of the case in brief (Intervention Petition No. 27 of 2024):**

- i. In the intervention application, it is averred by the applicant/intervenor that a Leave and License Agreement dated 01<sup>st</sup> April, 2021 was executed between the Applicant and the Corporate Debtor. The Corporate Debtor allowed the Applicant to occupy the licensed premises (i.e. second floor of the Leased Premises referred to above) for running and operating its store in the name of "Home Town".
- ii. The Applicant has made the payments towards the electricity charges of the entire premises which are to be adjusted against the rent payable by the Applicant. The Applicant states that the original applicant is aware that the electricity charges have been paid by the Applicant herein and the same is evident from the exchange of emails between the original applicant and the Applicant herein. Even the electricity bills raised for the entire leased premises refers to service being done in "Hometown Mall" which is the brand of stores of the Applicant herein.
- iii. The original applicant despite having knowledge of the Applicant being in occupation of the licensed premises, has filed IA No. 4147 of 2023 without making the Applicant a party. The Applicant/intervenor submits that since



it has been in occupation of the licensed premises (i.e. the 2<sup>nd</sup> floor of the leased premises) since April 2021, any orders passed in IA No. 4147/2023 will affect the business and rights of the Applicant herein. Therefore, the Applicant should be permitted to be impleaded as a party in the aforementioned IA. Hence this application.

**5. Reply of the Respondent/RP in I.A. No. 4147/2023:**

The Respondent has filed his Affidavit-in-Reply dated 23<sup>rd</sup> November, 2023. The pleadings and submissions of the Respondent are encapsulated hereunder:

- i. The Corporate Debtor has retail supply chains carrying on the business under the brand names such as “CENTRAL” and “BRAND FACTORY”.
- ii. The Leased Premises is essential for the Corporate Debtor to run as a going concern, as the leased premises is the only premises operation amongst the other premises occupied by the Corporate Debtor. If the reliefs prayed for by the Applicant are granted, it will have a detrimental effect in managing the affairs of the Corporate Debtor as a going concern which is against the spirit and intent of the IB Code, 2016. The Respondent further states that more than 80% of the Corporate Debtor’s business comes from the leased premises and, thus, it is critical for survival of the Corporate Debtor.
- iii. The Applicant vide its Notice dated 09<sup>th</sup> March, 2023 only called upon the Corporate Debtor to pay the outstanding lease rentals and upon default thereof, the Applicant shall be left with no other alternative but to take steps as may be advised in accordance with the Lease Agreement. Therefore, there was no termination of lease by the aforesaid notice. Further, the Respondent submits that the Termination Notice dated 14<sup>th</sup> April, 2023 was never delivered to the Corporate Debtor and the Applicant has failed to show the proof of delivery of the said termination notice. Therefore, since the



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termination of lease is not as per the Lease Agreement, such termination is unlawful and the Corporate Debtor is still entitled as lessee to use the Leased Premises. Even otherwise, presuming that the Termination Notice is valid and binding, the Leased Premises is essential for running the Corporate Debtor as a going concern and the Respondent in consultation with the Committee of Creditors ('CoC') of the Corporate Debtor are treating the lease rentals as per the terms of the Lease Agreement as CIRP costs with utmost priority under the Code. Even otherwise, by virtue of moratorium u/s 14(1)(d) of the Code, the Applicant is prohibited in law from taking any action for seeking possession of the Leased Premises.

- iv. The Respondent/RP has further submitted that in view of the liquidity crunch, the Respondent requested the Applicant vide Letter dated 15<sup>th</sup> June, 2023 for the lease rent at the rate of INR 47.58/- per sq. ft. per month aggregating to INR 64,02,970/- and, therefore, the genesis of levying twice lease rent is not applicable. Further, it is submitted that the Respondent has inventory worth INR 20,80,34,435/- lying at the Leased Premises. Such inventories are an asset of the Corporate Debtor and the Respondent is duty bound to protect and preserve the same.
- v. It is further stated in the reply that the Applicant filed its claim in Form B with the Respondent on 04<sup>th</sup> July, 2023 in respect of the Leased Premises and the same is pending for verification. As the claim of the Applicant is still under verification, the directions to the Respondent sought by the Applicant to admit its claim is pre-matured.

**6. Rejoinder of the Applicant (IA No. 4147 of 2023):**

- a. After filing of this application, the Applicant has come to know that the Corporate Debtor is no longer in possession of 2<sup>nd</sup> Floor and has parted with





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the same to one M/s. Praxis Home Retail Limited ('Praxis'). The Applicant confirmed this by sending its representative to the Leased Premises who took the photographs showing that Praxis is in occupation of the Leased Premises and also by purchasing goods from the said premises for which the tax invoices were issued by Praxis. The Applicant pleads that this is illegal, as under Clause XIV of the Lease Agreement dated 17.09.2008, the consent of the lessor is essential for subletting or assigning the rights to a third party which was not done in the instant case. The Applicant submits that the unlawful possession of the second floor of the Leased Premises by Praxis is in clear breach of injunction order dated 29.04.2023 passed by the Learned Judge of the Commercial Court at Rajarhat, New Town, Kolkata.

- b. The Applicant is justified in levying twice the lease rent in terms of Clause 19(iii) of the Lease Agreement, as despite termination of lease, the Lessee continues to remain in occupation of the Leased Premises. The Applicant pleads that the termination notice was issued much before the insolvency commencement date and, therefore, the denial that termination of lease was not valid, is without any basis and substance.
- c. To rebut the denial by the Respondent that the notice dated 14.04.2023 was not served upon the Corporate Debtor, the Applicant has annexed the copy of postal receipt at Exhibit 'H' to the affidavit-in-rejoinder.

**7. Sur-rejoinder of the Respondent in IA No. 4147 of 2023:**

- i. After the management of the Corporate Debtor vested in the Respondent, the Respondent came to know that a Leave and License Agreement dated 01<sup>st</sup> April, 2021 was executed between Praxis and the Corporate Debtor, whereby the Corporate Debtor allowed Praxis to use and occupy 02<sup>nd</sup> floor of the Leased Premises on the terms and conditions mentioned therein.



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Therefore, in view of the said agreement existing prior to the commencement of CIRP of the Corporate Debtor, the operations of Praxis is continuing on the 02<sup>nd</sup> floor.

- ii. The Respondent further submits that since the Leave and License Agreement dated 01<sup>st</sup> April, 2021 was executed prior to the insolvency commencement date, the Respondent cannot be held liable for the actions of the Corporate Debtor prior to the CIRP period.
- iii. The Respondent reiterates that the Leased Premises is essential for the Corporate Debtor to run its operations as a going concern, as the Leased Premises is the only premises where the operation of “CENTRAL” is currently active.

**FINDINGS**

- 8. We have heard the counsels representing the Applicants and the Respondent, and have gone through the record
- 9. By way of this application, the Applicant is seeking directions to the Respondent to hand over vacant and peaceful possession of the Leased Premises back to the Applicant on the ground that the lease has been terminated vide Notice dated 14.04.2023, which was prior to the initiation of CIRP of the Corporate Debtor, due to non-payment of lease rent since February 2022. It is claimed in the termination notice that the Corporate Debtor had been paying lease rent to the Applicant until before February 2022. However, the Applicant has not produced any record to show that the Corporate Debtor had been paying lease rent at any time or ceased to pay rent only after February 2022. On the other hand, the Respondent/RP has claimed that (a) the possession of Leased Premises is critical for keeping the Corporate Debtor as a going concern;



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(b) the claim filed by the Applicant in respect of the lease rent accruing up to the insolvency commencement date is yet under verification; and (c) any action for recovery of possession of the Leased Premises, which is in occupation of the Corporate Debtor, is prohibited during the period of moratorium declared under Section 14(1)(d) of the Code.

10. The Applicant has pleaded in its application that the Original Owner i.e. Bengal Shrachi Housing Development Limited ('BSHDL'), had executed a registered Deed of Conveyance in favour of the Applicant on 11.10.2010 in respect of the larger property, which includes the leased premises situated at Ground, First and Second Floor of Plot No.05, Block-BG, Action Area-IB, New Town, Rajarhat, Kolkata-700156. However, the Applicant has not produced on record a copy of the registered Deed of Conveyance dated 11.10.2010 or any other deed or document to prove that the larger premises referred to above, including the Leased Premises, was conveyed to it by the Original Owner at any point of time or it has title and ownership over the said premises/property. In the absence of any title deed on record, it would be difficult to hold that the Applicant is the legal owner of the larger property including the leased premises and has legitimately stepped into the shoes of the previous owner/lessor, namely, BSHDL.
11. The case of the Applicant is that the Original Owner executed a Lease Deed on September 17, 2008, in favor of the Original Lessee, Home Solutions Retail India Ltd ('HSRIL') in respect of the leased premises for a period of 21 years on the terms and conditions contained therein and produced a copy of the Lease Deed. As per the terms of the Lease Deed, the Lessor shall be entitled to terminate the lease if the Original Lessee commits default in payment of rents



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for two consecutive months and fails to pay the arrears within 30 days of receiving written notice thereof. The Applicant further states that the business of the Original Lessee was acquired by Pantaloons Retail India Limited on February 1, 2010, which was later renamed Future Retail India Limited ('FRIL') on or around March 16, 2013. The Applicant claims that FRIL assigned its leasehold rights to the Corporate Debtor. We notice that there is no document on record to show the transfer of business by the Original Lessee to Pantaloons Retails nor any document is there on record to show that there was an assignment subsequently in favour of the Corporate Debtor. Thus, other than the mere assertion that the Corporate Debtor is in possession of the leased premises in the capacity of an assignee of the leasehold rights, there is absolutely nothing on record in terms of documents to prove the assignment of leasehold rights in favour of the Corporate Debtor.

12. Here it is also pertinent to observe that an Intervenor filed an application being Intervenor Application No. 27 of 2024 annexing therewith a copy of leave and license agreement executed for a portion of the leased premises by the Corporate Debtor in its favour. In the Leave and License Agreement dated 01.04.2021, the Corporate Debtor claimed to be absolutely seized and possessed or otherwise well and sufficiently entitled to the premises. In the said Leave and License Agreement dated 01.04.2021, the Corporate Debtor in Clause 5.3. (i) has claimed itself to be the owner of the premises in question. We note that the Leave and License Agreement referred-to-above is neither stamped nor registered even though as per Clause 2.4 of the said agreement, the term of leave and license is stated to be perpetual in nature. We fail to fathom as to how a lessee having limited rights to sub-lease and that too without the consent of the lessor, could grant or create a perpetual license in favour of the Intervenor (i.e.



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Praxis Home Retail Ltd). Therefore, the whole arrangement of leave and license seems to be dubious in nature and the possibility of the document having been executed ante dated cannot be ruled out. In the given circumstances, the real nature of possession of the Corporate Debtor is also unclear and the Respondent, being the RP of the Corporate Debtor, has no knowledge of the past transactions nor he is in custody of the records as the erstwhile management had refused to extend full co-operation with the RP and supply all the relevant documents to him.

13. We further observe that the applicant has not placed on record any invoices raised by it to the Corporate Debtor for in respect of the lease money/ rentals nor any bank statements, TDS Certificates, etc. evidencing payment of lease rentals, etc. by the Corporate Debtor to the Applicant. It is also pertinent to note that despite referencing the invoices in its claim filed before the Interim Resolution Professional (IRP)/Resolution Professional (RP) in Form 'B', the Applicant has not produced/annexed any of the invoices referred to in Form 'B'. This further casts a suspicion on the authenticity of the alleged lease arrangement between the Applicant and the Corporate Debtor.
14. The Applicant further claims that it issued a defect rectification Notice dated 09.03.2023 calling upon the Corporate Debtor to make payment of its outstanding lease rent along with interest at the rate of 12% p.a., being a sum of INR 9,61,56,616/- within 30 days from the date of receipt thereof. As per the Applicant, the rectification notice was accepted by the Corporate Debtor and the same was never challenged. Since the Corporate Debtor failed to comply with the requisitions of the notice dated 09.03.2023, the Applicant terminated the lease arrangement vide its Notice dated 14.04.2023. The Applicant further



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claims that the Corporate Debtor has been in wrongful possession and occupation of the leased premises since 14.04.2023.

15. On perusal of the copy of the Lease Deed dated 17.09.2008 annexed with the application, it is evident that the said lease deed, which is for a period of 21 years, is not a registered document. It cannot be disputed that as per Section 17 of the Registration Act, 1908, any lease of an immovable property for any term exceeding one year, is compulsorily registrable and Section 49 of the Registration Act, 1908 which deals with the effect of non-registration mandates that no document requiring registration as per section 17, if not registered, shall be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered. Even otherwise, the case of the Applicant is that the lease deed was terminated as per the terms of the Lease Deed after giving a Defect Rectification Notice dated 09.03.2023 followed by the Termination Notice dated 14.04.2023. However, the Applicant has not produced any document such as postal receipt, track report, etc. to establish that those letters were served upon the Corporate Debtor before the initiation of CIRP. In the circumstances, it would be arduous to hold at this stage that the purported Lease Deed was terminated any time prior to the initiation of CIRP.
16. The Applicant has not only failed even to prima facie demonstrate its right, title, and interest in respect of the leased premises but also has not established the existence of a valid lease arrangement with the Corporate Debtor prior to the insolvency commencement date. Undisputedly, the issues of ownership and possession are triable issues that require adducing of oral and documentary evidence which is not possible in a summary procedure followed by this Tribunal. On account of the above, without expressing any opinion with respect to the ownership and possession of the leased premises, we leave it open to the



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parties to file seek an appropriate remedy before a competent civil court/authority/ forum to establish their respective right, title, and interest in the Leased Premises once the statutory moratorium ceases to be effective as per the provisions of Section 14(4) of the Code.

17. Even otherwise, so far as the question of handing over possession to the Applicant is concerned, Section 14(1)(d) of the Code prohibits recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor, more so when it is being used for sustaining the corporate debtor as going concern. The Hon'ble NCLAT had an occasion to deal with a similar issue in *Company Appeal (AT) (Insolvency) No. 323 of 2018 in M/s Navbharat Castings LLP vs. M/s Moserbear India Ltd. & Anr*". In this matter, the Hon'ble NCLAT was dealing with the issue as to whether the order of moratorium will apply to the leasehold property of a landlord in which the corporate debtor is a tenant, particularly after the decree of eviction had been passed in favour of the landlord against the corporate debtor. It was held as under; -

*"3. On hearing, the learned counsel for the Appellant and in view of sub-clause (i) of clause (d) of Section 14 of the Insolvency and Bankruptcy Code, 2016, the recovery of the property by the owner occupied by the Corporate Debtor is not permissible during the period of moratorium."*

18. The findings recorded in the afore-cited case are unambiguous and lucid. The recovery of property by the owner/ landlord occupied by the Corporate Debtor is not permissible during the period of moratorium. The legislative intent of the moratorium is obviously to keep corporate debtors' assets together during the resolution process and to ensure that the corporate debtor continues



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as a going concern. Any unilateral termination of a lease deed during the moratorium period militates against the goal of keeping the corporate debtor as a going concern. In the present case, the Respondent in his reply has pleaded that over 80% of the Corporate Debtor's business is conducted from the Leased Premises, which is the only outlet where business is being run and that possession of these premises is vital for the Corporate Debtor's continued viability as a going concern. On this account also, we are not inclined to direct the Respondent to hand over possession of the Leased Premises.

19. The Applicant has pleaded in its application that the claim filed by it before the Respondent/RP in Form 'B' has not been verified as on the date of filing the captioned Application. The Respondent/RP too confirmed the same in his affidavit-in-reply. However, as per the written arguments submitted by the learned Counsel for the Respondent/RP, the claim filed by the Applicant was admitted to the tune of INR 10,00,39,996/- out of the total claim of INR 11,69,64,411.33/- on 18<sup>th</sup> March, 2024. In support of the above submission, the learned Counsel for the RP has annexed a copy of proof of admission of claims as Annexure 'A' to the copy of written arguments placed on record. The aforesaid annexure confirms the fact of admission of claim as narrated above. Since the claim submitted by the Applicant has already been verified and partially admitted by the Respondent, no direction in respect of the said claim needs to be given to the Respondent any more.

20. On the basis of the above discussion, we are of the view that the applicant has failed to concretely establish its the ownership qua the leased premises and also the arrangement of lease between the Applicant and the Corporate Debtor. Therefore, in the given circumstances, the possession of the premises in





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question cannot be ordered to be handed over. Even otherwise, possession of premises which is being used to keep the Corporate Debtor as a going concern cannot be disturbed in light of the moratorium u/s 14(1)(d) of the Code. However, looking at the facts and circumstances of this case, as discussed above, we feel it necessary to issue a note of caution to the RP to be circumspect enough while dealing with the property in question and must satisfy himself to the hilt with regard to the title of the leased premises as to whether the same legally and legitimately vests in the Applicant.

21. **Intervention Petition No. 27 of 2024-** The Intervener/applicant has filed this intervention petition seeking to be impleaded as a party in the IA No. 4147/2023 on the ground that the Corporate Debtor executed a Leave and License Agreement dated 01.04.2021 to grant a license to occupy and use a portion of the leased premises i.e. 02<sup>nd</sup> Floor of Plot No.05, Block-BG, Action Area-IB, New Town, Rajarhat, Kolkata-700 015 and the Intervenor is in occupation of the licensed premises. In support of the above contention, the Intervenor has submitted a copy of the Leave and License Agreement, Electricity Bill raised in October, 2022 for the entire leased premises and certain communications exchanged by and between the Applicant in IA No. 4147/2023.

22. During the course of arguments, the Counsel appearing for the Respondent/Original Applicant contended that the Corporate Debtor could sub-lease and assign the rights available to it under the Lease Deed only to its group companies or business associates and that too with the permission of the Lessor/Applicant but no such approval was ever taken by the Corporate



IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,  
MUMBAI BENCH

I.A. NO. 4147 OF 2023 &  
INTERVN. PETITION NO. 27 OF 2024  
IN  
CP(IB) NO. 959(MB)/2022

Debtor. The Original Applicant/Respondent even pleaded the ignorance of arrangement of sub-lease between the Corporate Debtor and the Intervenor.

23. Since we have already come to the conclusion that the applicant has not been able to prove its own title and further that even the nature and status of the possession of the leased premises has not been established cogently to enable us to record an unequivocal finding in this regard and having come to the above conclusion, we do not see any ground to allow the Intervenor to be impleaded or made a party in IA No. 4147/2023 especially when the relief of possession is not being granted to the original applicant in IA no. 4147/2023.

24. In result, we are of the view that since the Applicant has failed to make out a case for possession of the premises allegedly leased by to the Corporate Debtor, as even the ownership/title of the Applicant over the said premises has not been established. Even otherwise, the relief of possession cannot be granted in teeth of moratorium u/s 14(1)(d) of the Code. Therefore, the relief of possession is hereby declined. **Accordingly, I.A. No. 4147 of 2023 and Intervention Petition No. 27/2024 stand dismissed** with no order as to costs.

Sd/-

ANIL RAJ CHELLAN  
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER  
(MEMBER JUDICIAL)