

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 524 of 2024 & I.A. No. 1835, 1836, 1837 of 2024

(Arising out of the Order dated 29.02.2024 passed by the National Company Law Tribunal, Mumbai Bench-IV in Interim Application No. 5065(MB) of 2023 in Company Petition (I.B) No. 543/MB/2022]

IN THE MATTER OF:

Wakai Hospitality Private Limited

Through the Authorised representative
C-3, Koregaon Park,
Sangam Wadi, Pune,
Maharashtra, India – 411001.

...Appellant

Versus

1. Ms. Palak Desai

Liquidator in the matter of Rajmal Lakhichand
Jewelers Private Limited
IBBI Registration No. IBBI/IPA-001/IP-
P01517/2019-20/12515
Office No. 1, Tower No. 5, World Trade Centre,
Cuffe Parade, Mumbai-400005.

...Respondent

2. ASREC India Limited

Having address at:
Solitair Corporate Park, Bldg No. 201-202A &
200-202B, Ground Floor, Andheri Ghatkopar
Link Road, Chakala, Andheri East Mumbai-
400093.
Branch Office at : 917-18, Hemkunt Chamber, 89,
Nehru Place, New Delhi-110019.

Present

For Appellants:

Mr. Aditya Shukla, Samsher Garud, Sonali Jain,
Vignesh Iyer, Vinayak Sharda, Adv.

For Respondent: Ms. Honey Satpal, Aniruth Purusothaman, Pooja Singh, Akash Agarwalla, Adv. for R1.
Mr. Amit Mahaliuan, Adv. for R2

J U D G E M E N T

(28.05.2025)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed by the Appellant i.e. Wakai Hospitality Pvt. Ltd. under Section 61 of the Insolvency and Bankruptcy Code, 2016 (**Code**), challenging the Impugned Order dated 29.02.2024 passed by the National Company Law Tribunal, Mumbai, Bench-IV (hereinafter referred to as ‘**Adjudicating Authority**’) in the Interim Application No. 5065(MB) of 2023 in Company Petition (IB) No. 543/MB/2022.

2. Ms Palak Desai, who is the Liquidator of Rajmal Jewelers Private Limited, is the Respondent herein.

ASREC India Limited, who is an ARC and assignee of the debts of the Corporate Debtor, is the Respondent No.2 herein.

3. The Appellant submitted that it has been operating a restaurant under the trade name ‘Wakai’. Pursuant to a Leave and License Agreement (LLA) dated 14.07.2022, the Appellant was granted a license by the Corporate Debtor, Rajmal Lakhichand Jewelers Private Limited, in respect of commercial premises situated at Ground Floor, B Wing, along with the adjacent covered garage in ‘Mangal Sandesh Building’, admeasuring approximately 2853.62 sq.ft. (“licensed

premises”), five years, commencing from 12.07.2022 with a monthly license fee of Rs. 7,50,000/- subject to a yearly escalation of 5%, and a security deposit of Rs. 30,00,000/- paid by the Appellant. The agreement also stipulated a lock-in period of three years for the Appellant and five years for the Corporate Debtor from the date of commencement of the license.

4. The Appellant submitted that in compliance with the LLA, he commenced renovation works on the licensed premises. However, the Appellant received a notice dated 07.09.2022 from the Municipal Corporation of Greater Mumbai (MCGM) under Sections 337, 342, and 347 of the Mumbai Municipal Corporation Act, 1888, which restrained the Appellant from continuing renovation activities and consequently, the Appellant was statutorily barred from proceeding with the fit-out works until requisite permissions were secured which was the obligation for the Corporate Debtor, as the owner of the premises.

5. The Appellant submitted that, in these circumstances, he sent a letter to the Corporate Debtor on 11.10.2022 and subsequently as per mutual discussion, the Corporate Debtor agreed to resolve the issues and the costs to be incurred by the Appellant regarding the same would be deducted from the license fees. Further it was also agreed that the LLA tenure would be correspondingly extended from the date of obtaining the OC and excise license. The Appellant submitted that, in response to its letter dated 11.10.2022, the Corporate Debtor, by its reply dated 01.11.2022, agreed to and requested the Appellant to inform the

Corporate Debtor of the expenses incurred and specifically requested that such expenses be kept below Rs. 1 crore.

6. The Appellant submitted that it pursued the requisite licenses and permissions from the concerned government authorities and MCGM granted the completion certificate/occupation certificate on 28.03.2023. The Appellant submitted that, in order to make the licensed premises suitable for its commercial operations, it incurred substantial renovation costs amounting to Rs. 2,50,00,000/-. The Appellant was granted the requisite license from the Health Department of the MGCM on 12.04.2023, and the necessary excise license on 17.05.2023.

7. The Appellant submitted that, pursuant to the grant of the necessary permissions and licenses from the relevant government authorities, it addressed a letter dated 23.06.2023 to the Corporate Debtor, duly informing it of the same. In the said letter, the Appellant specifically set out the costs and expenses incurred towards obtaining these licenses and permissions, and further intimated that such amounts would be adjusted against the license fees payable. The Appellant also clarified that the license tenure would commence from 01.07.2023.

8. The Appellant submitted that it received a letter dated 12.07.2023 (communicated via email on 18.07.2023) from the Respondent No.1, informing the Appellant for the first time about the commencement of the corporate insolvency resolution process (CIRP) against the Corporate Debtor pursuant to an order dated 09.02.2023 passed by Adjudicating Authority as well as the public

announcement dated 13.03.2023. In the said correspondence, the Respondent No.1 also sought payment of rentals under the LLA from the Appellant and requested further details in relation thereto.

9. The Appellant submitted that, in response, he addressed a letter dated 19.07.2023 to the Respondent No.1, wherein he clarified that, as per the arrangement under the LLA and the correspondence exchanged between the parties-read in conjunction with the fit-out clause-the obligation to pay license fees would arise only after 01.07.2023. The Appellant reiterated that the expenses incurred towards obtaining the necessary licenses and permissions were to be deducted from the future license fees, and only the balance, if any, would be payable thereafter. The Appellant submitted that on 02.08.2023, he addressed an email to the Respondent No.1, wherein it set out its proposal and for amicable resolution of the matter however, by email dated 09.08.2023, the Respondent No.1 rejected the Appellant's offer and instead demanded payment of license fees at the rate of Rs. 7,50,000/- per month for the period from 13.09.2022 to 31.07.2023, after accounting for the 60-day fit-out period.

10. The Appellant submitted that subsequently on 02.09.2023, the Advocates for the Respondent No.1 issued a legal notice to the Appellant, demanding payment of alleged outstanding license fees amounting to Rs. 87,25,000/- for the period from 13.09.2022 to 31.08.2023. The notice further invoked Clause 12.1 of the LLA, granting the Appellant a period of 30 days to remedy the alleged default, failing which the Respondent No.1 threatened to initiate appropriate legal

proceedings for recovery of the said license fees and for eviction of the Appellant from the licensed premises. The Appellant submitted that, in response to the aforesaid legal notice, he sent letter to the Respondent on 18.09.2023, wherein it reiterated its position as consistently set out in the earlier correspondence, particularly in its letter dated 19.07.2023.

11. Subsequently, on 26.10.2023, the Respondent filed an Interim Application against the Appellant under Section 18(f) of the Code seeking directions for the handover of vacant and peaceful possession of the licensed premises by the Appellant within one calendar month, as well as payment of alleged outstanding license fees aggregating to Rs. 1,14,84,348/- (inclusive of 18% interest) for the period from 13.08.2022 to 24.10.2023, purportedly under Clause 6.2.1(iv) of the LLA.

12. The Appellant submitted that the Impugned Order failed to consider any of the contentions raised by the Appellant including that the Respondent, even if it had any cause of action, was required to seek reliefs before an appropriate forum like Small Cause Court and that the Adjudicating Authority lacked the jurisdiction to adjudicate upon the reliefs sought in the Interim Application. The Appellant also stated that the Adjudicating Authority did not take into account the nature and effect of the pre-CIRP correspondence exchanged between the Appellant and the Corporate Debtor, which remains binding on the Respondent No.1. The Adjudicating Authority completely overlooked the fact that the Respondent had not adhered to the termination procedure stipulated under the

LLA. The Appellant submitted that the Impugned Order disregards the settled legal position that the Adjudicating Authority lacks jurisdiction to adjudicate issues pertaining to the interpretation of agreements or contracts that arose prior to the initiation of the CIRP.

13. The Appellant submitted that, by way of the Impugned Order, the Adjudicating Authority directed the Appellant to vacate the premises and pay arrears of rent amounting to Rs. 1.14 Crores to the erstwhile Resolution Professional in respect of the premises owned by the Corporate Debtor. The Appellant submitted that upon filing an appeal, this Appellate Tribunal, vide order dated 15.03.2024, granted a stay on the operation of the Impugned Order, subject to the condition that the Appellant deposit 50% of the amount directed by the Adjudicating Authority and continue to pay the license fee on a monthly basis with effect from 01.04.2022. The Appellant has duly complied with the said order dated 15.03.2024 by depositing 50% of the dues as per the Order of this Appellate Tribunal and has continued to pay the license fee.

14. Concluding his arguments, the Appellant requested this Appellate Tribunal to set aside the Impugned Order and allow his appeal.

15. Per contra, the Respondent No.1, the main contesting Respondent, denied all averments made by the Appellants as misleading and baseless.

16. The Respondent No. 1 submitted that he, as Resolution Professional of the Corporate Debtor, validly invoked the termination clause under the LLA, and the Appellant never challenged this termination before the Adjudicating Authority

and by failing to file any application to contest the Respondent No.1's action at the relevant time, the Appellant has effectively accepted the termination. Consequently, the Appellant cannot now, by way of appeal, challenge the termination that was never disputed before the Adjudicating Authority.

17. The Respondent No. 1 submitted that the Corporate Debtor entered into a LLA with the Appellant on 14.07.2022, stipulating a monthly license fee of Rs. 7.5 lakhs, subject to a 5% annual increment. despite this, the Appellant failed to pay any license fees from the commencement of the agreement. The Respondent No.1, as Resolution Professional, was informed of the existence of the Agreement only in May 2023, and accordingly, by letter dated 12.07.2023, he called upon the Appellant to make payment of the outstanding license fees.

18. The Respondent No. 1 submitted that the Appellant, in its reply dated 19.07.2023, relied upon several documents. However these documents, clearly indicate that the nature of the expenses incurred by the Appellant falls within the clauses of the LLA and were to be borne by the Appellant.

19. The Respondent No. 1 submitted that, during the 6th meeting of the Committee of Creditors (CoC) held on 25.08.2023, it was discussed and resolved that all expenses the Appellant seeks to adjust against the outstanding rent are, as per the terms of the LLA, to be borne by the Appellant himself. The CoC accordingly instructed the Respondent No.1 to issue a demand notice to the Appellant in accordance with the LLA, and to take appropriate action to protect the interests of the Corporate Debtor in case of non-payment. Pursuant to these

instructions, and due to non-receipt of rent for the period from 13.09.2022 to 31.07.2023, the Respondent No.1 issued a legal notice dated 02.09.2023 invoking the termination clause of the lease deed, upon the Appellant's failure to surrender vacant and peaceful possession of the premises and pay the outstanding license fees, the Respondent No.1 filed I.A. No. 5065/2023 under Section 18(f) of the code read with Rule 11 of the NCLT Rules, 2016, seeking appropriate reliefs. The Respondent No. 1 submitted that the Adjudicating Authority, passed the Impugned Order allowing the Interim Application, and the Adjudicating Authority correctly found that the unauthenticated communications between the Appellant and Corporate Debtor, lacking the company seal and board authorization, are contrary to the terms of the LLA and therefore have no detrimental bearing on the LLA.

20. The Respondent No. 1 submitted that, at the outset, this is not a case where the Resolution Plan proposes automatic termination of the contract upon its approval, nor is it a case where the Resolution Professional has failed to follow the due process as prescribed in the LLA. The Respondent No.1 stated that there is no express bar under Section 14 of the Code preventing the Resolution Professional from terminating contracts during the moratorium period. What is specifically prohibited under the Code is the action by third parties to (a) recover any property occupied by or in possession of the Corporate Debtor, and (b) terminate, interrupt, or suspend the supply of critical goods and services to the Corporate Debtor during the CIRP. These restrictions are intended to ensure that

the Corporate Debtor remains a going concern during the CIRP, thereby maximizing the value of its assets and securing better realization for stakeholders.

21. The Respondent No. 1 submitted that, under Section 25(2)(a) and (b) of the Code, the Resolution Professional is not only required to take control and custody of the assets of the Corporate Debtor, but is also mandated to represent and act on behalf of the Corporate Debtor in dealings with third parties. Further, Section 17(2)(a) of the code empowers the Resolution Professional to act and execute all deeds, receipts, and other documents in the name and on behalf of the Corporate Debtor, while Section 23 of the code requires the Resolution Professional to manage the operations of the Corporate Debtor. The Resolution Professional, therefore, performs all functions and duties that would otherwise be carried out by the management, always acting in the best interests of the Corporate Debtor. The Respondent No.1 elaborated that in the present case, the Licensee/Appellant failed to pay the license fees from the very commencement of the LLA and was already in breach at the time of initiation of CIRP. Accordingly, the CoC directed the Resolution Professional to take appropriate action in the best interests of the Corporate Debtor, including issuing a notice for termination of the Agreement. The Resolution Professional, has thus acted on behalf of the Corporate Debtor, strictly in accordance with the terms of the LLA.

22. The Respondent No. 1 submitted that the Resolution Professional was obligated to uphold the terms of the Agreement and could not have ignored the Appellant's breach. The termination of the Agreement under Clause 12 was valid

and well within the Resolution Professional's authority. The letter from Corporate Debtor dated 01.11.2022 was issued without proper authorization and, therefore, is not binding on the Corporate Debtor. The Respondent No.1 submitted that reliance placed by the Appellant, on *Rajendra K. Bhutta v. MHADA*, (2020) 13 SCC 208, is misplaced in the present context, as the cited judgment restricted MHADA from terminating a contract during the moratorium under Section 14(1)(d) of the Code. Such protection under Section 14 is intended to benefit the Corporate Debtor, ensuring its continued viability, maximizing asset value, and enhancing the prospects of successful insolvency resolution, which is not the case in present appeal.

23. The Respondent No. 1 submitted that both the Adjudicating Authority and this Appellate Tribunal possess the necessary jurisdiction to adjudicate all matters impacting the insolvency process, particularly those relating to core value maximization and the facilitation of resolution. The Respondent No.1 further submitted that the arrangement between the parties is the LLA and not a tenancy and this Appellate Tribunal, in the matter of *Adinath Jewellery Exports v. Mr. Brijendra Kumar Mishra & Anr.*, Company Appeal (AT) (Insolvency) No. 748 of 2022, has held that the Adjudicating Authority and this Appellate Tribunal have residuary jurisdiction to decide upon the termination of contracts that affect the survival of the Corporate Debtor.

24. The Respondent No. 1 submitted that, in a similar case, this Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 508 of 2020, by its judgment

dated 08.04.2021, held that the Adjudicating Authority and this Appellate Tribunal have jurisdiction to adjudicate questions relating to disputes and recovery of property. This position was subsequently affirmed by the Hon'ble Supreme Court in Civil Appeal No. 1743/2021, vide judgment dated 14.03.2023, thereby confirming that such matters fall within the scope of the Adjudicating Authority's powers under the Code.

25. The Respondent No. 1 submitted that there should be no distinction in the powers of the Adjudicating Authority when it comes to addressing the termination of a contract, irrespective of whether such termination is initiated by a third party or by the Corporate Debtor itself. Furthermore, it is significant to note that Section 14(1)(d) of the Code, along with its explanation, restricts only the Central or State Government or any authority from terminating licenses during the moratorium. Therefore, if any other party terminates a contract, the Adjudicating Authority retains the appropriate jurisdiction to adjudicate such matters, as they directly pertain to the insolvency proceedings of the Corporate Debtor.

26. The Respondent No. 1 submitted that the Appellant's right to approach any other court is expressly barred under the provisions of the Code. Given that the agreement in question is in the nature of a lease, the validity of its termination falls squarely within the jurisdiction of the Adjudicating Authority. The Respondent No.1 submitted that the Appellant has already presented evidence, which was duly examined and considered by the Adjudicating Authority while passing the Impugned Order. Furthermore, the Resolution Professional cannot be

compelled to initiate proceedings before the Small Causes Court and be subjected to its uncertain timelines, which are inconsistent with the specific and expedited timeframes prescribed under the Code.

27. The Respondent No. 1 submitted that the LLA expressly provided a 60-day fit-out period, which was extendable only in the event of Covid-related restrictions and the responsibility and cost of obtaining all necessary approvals for renovation or repair work, as well as securing the requisite licenses, rested solely with the Appellant.

28. Concluding his pleadings, the Respondent No.1 requested this Appellate Tribunal to dismiss the appeal.

29. The Respondent No. 2 submitted that it is a company incorporated under the Companies Act, 1956, and is registered as an Asset Reconstruction Company with the Reserve Bank of India.

30. The Respondent No. 2 submitted that, in the year 2014, the Corporate Debtor, M/s Rajmal Lakhichand Jewellers Pvt. Ltd., availed credit facilities from Jalgaon People's Co-op Bank Ltd. These credit facilities are secured by the several assets including Mortgage of piece and parcel of land or ground, together with the building known as "Mangal Sandesh," comprising Wing "A" (constructed up to the 10th floor) and Wing "B," situated at Khar Danda, Bombay side of the 17th Road. The Respondent No. 2 submitted that he subsequently acquired the account of M/s Rajmal Lakhichand Jewellers Pvt. Ltd. from Jalgaon

People's Co-op Bank Ltd. pursuant to an Assignment Agreement dated 26.03.2020.

31. The Respondent No. 2 submitted that, thereafter, State Bank of India filed an application bearing CP No. 543/MB/2022 under Section 7 of the Code before the Adjudicating Authority against the Corporate Debtor for initiation of CIRP, which was duly admitted by order dated 09.02.2023. In compliance with the CIRP process, Respondent No. 2 filed its claim on 28.02.2023.

32. The Respondent No. 2 submitted that the Appellant has claimed that the property known as "Mangal Sandesh," Khar (which is exclusively mortgaged to the present applicant, ASREC India Limited) was let out by the Corporate Debtor to the Appellant under a LLA dated 14.07.2022.

33. The Respondent No. 2 submitted that, during the pendency of the present appeal, the Adjudicating Authority vide its order dated 11.06.2024, directed the commencement of liquidation proceedings in respect of the Corporate Debtor and appointed Ms. Palak Desai as the Liquidator under the provisions of the Code. Subsequently, by letter dated 11.07.2024, Respondent No.2/ASREC India Limited issued a notice of non-relinquishment of its security interest under Section 52 of the Code, asserting its exclusive charge over the secured assets to the Liquidator.

34. The Respondent No. 2 submitted that issues raised by the Appellant are untenable under the provisions of the Code and the mortgage over the subject property was created on 15.01.2015, whereas the purported LLA was registered

much later, on 14.07.2022-almost seven years after the creation of the mortgage. In view of this chronology and in accordance with Section 48 of the Transfer of Property Act, 1882, Respondent No. 2-ASREC India Limited-holds a prior and overriding charge on the said property.

35. Concluding his pleadings, the Respondent No.2 requested this Appellate Tribunal to dismiss the appeal.

FINDINGS

36. We note that there is no dispute regarding title of the licensed premises and the title vest only with the Corporate Debtor. It is also a fact that the licensed premises was indeed given to the Appellant to run his restaurant based on LLA utilising the licensed property of the Corporate Debtor.

37. We note that the Corporate Debtor had obtained certain financial facilities from Jalgaon People's Co-op Bank Ltd, who later assigned the debts to Respondent No. 2/ ASREC India Limited. It is suffice to note that SBI initiated Section 7 application against the Corporate Debtor which was admitted and CIRP proceeding was initiated vide order dated 09.02.2023 by the Adjudicating Authority and now the same has been ordered for liquidation by the Adjudicating Authority vide order dated 11.06.2024.

38. It is the case of the Appellant that there was proper contractual agreement between the Appellant and the Corporate Debtor and based on terms and

conditions of LLA, it was responsibility of Corporate Debtor to complete the formalities before the fit out period of 60 days came into effect.

39. It is the case of the Appellant that due to non compliance of the Corporate Debtor of various regulations, the Appellant had to incur huge cost in order to obtain necessary licenses from MCGM, excise department, health department etc and thereafter it was agreed between the Appellant and the Corporate Debtor that the tenure of LLA would be suitable enhanced and the cost incurred by the Appellant would be adjusted against the licensed fee payable, keeping upper limit of Rs. 1 Crore. On the other hand, the Respondent No. 1, who is liquidator of the Corporate Debtor brought out to our notice that the Appellant never paid any license fee since inception. The Respondent No. 1 also brought out that when it came to the notice of liquidator that for the said property no, payment has been made by the Appellant, he wrote to the Appellant but the Respondent No.1 did not receive any suitable response including money. Thereafter, the Respondent No. 1 was compelled to file an application before the Adjudicating Authority seeking the Adjudicating Authority's directives to the Appellant for handover of the said property along with outstanding amount which was granted by the Adjudicating Authority.

40. The Appellant has raised following issues in the present appeal

Issue No. (I) There was no money payable i.e. License fee by the Appellant to the Corporate Debtor since it was agreed between the Appellant and the

Corporate Debtor that the cost incurred by the Appellant would be settled against License fee.

Issue No. (II) Another issue of the Appellant is that it is not within jurisdiction of the Adjudicating Authority to adjudicate inter-se disputes between the parties and for any remedy, the Respondent No. 1 was required to approach the appropriate suitable judicial forum like the small cause court.

Issue No. (III) As per Section 14 of the Code, the moratorium period started and the Respondent No. 1 could not have initiated any proceedings against the Appellant or terminated the LLA.

We shall deal issues raised by the Appellant in subsequent discussion

41. Issue No. (I) There was no money payable i.e. License fee by the Appellant to the Corporate Debtor since it was agreed between the Appellant and the Corporate Debtor that the cost incurred by the Appellant would be settled against License fee.

(i) In this connection we would like to take into consideration relevant portion of the LLA which reads as under:-

4. **TERM OF LICENSE.** The license granted herein by the Licensor shall be a limited license for a period of sixty months which shall commence from 12th July 2022 (the "License Commencement Date") and shall expire on 11th July, 2027 by efflux of time unless earlier terminated in accordance with the terms hereinafter contained (the "License Term"). At the end/ expiry of the License Term, the license shall automatically come to an end and/or in the event of earlier termination, the Licensee shall handover quiet, vacant and peaceful charge of the Premises to the Licensor.

5. **FIT-OUT PERIOD.** For a period of 60 days from the from the date of commencement of its operation from the Premises, whichever is earlier (the "Fit-Out Period"), the Licensee shall not be required to pay the License Fees, to enable the Licensee to carry out interiors works/ fit-outs to the Premises. Immediately on the expiry of the Fit-Out Period, the Licensee shall commence payment of the License Fees as mentioned in this Agreement irrespective of whether or not the Licensee completes the interior works/ fit-outs or whether or not the Licensee commences its business operations for any reason/s whatsoever. In the event, on account of the pandemic, the authorities declare a lockdown or impose restrictions which result in a stoppage in carrying out the fit-out works, there will be a corresponding extension of the Fit-Out Period to the extent of such lockdown/ restriction.



- (ii) From above, it is clear that the license was to commence from 12.07.2022 (license commencement date) for the period upto five years. The LLA provided for a grace period i.e., fit out period to the Appellant of 60 days from the date of commencement, within which

the Appellant was supposed to commence the business and pay the license fee as per the LLA.

- (iii) We observe that only in the event on account of pandemic and if the authority declare a lockdown or imposed restrictions which result in stoppage of carrying fit out works, corresponding extension of fit out period was to be extended in sync with such extended lockdown period. Hence, it is crystal clear that the extension of fit out period was available to the Appellant only on the ground of covid pandemic related restrictions and not otherwise. Thus, we are unable to accept the contentions of the Appellant that due to alleged non compliance by the Corporate Debtor, the appellant could not obtain the requisites licenses from MCGM, excise department, health department etc., and therefore he could not commencement the business. The Appellant's pleading is that since he incurred more than Rs.1 Crore to obtain such license, therefore he was not supposed to pay to the Corporate Debtor as per their mutual understanding. We find that this pleading is not legally tenable in view of clause 5 of LLA. We observe that the Appellant was duty bound to pay the license fee after the fit out period of 60 days was over.
- (iv) As regard issue that it was mutually agreed between the Appellant and the Corporate Debtor that the expenses incurred by the Appellant would be reimbursed to the Appellant subject to limit of

Rs. 1 Crore and also that the tenure of LLA would be enhanced suitable by the correspondence period, we would like to look into the correspondence exchanged between the Appellant and the Corporate Debtor which was brought to our notice by the Appellant.

The letters are reproduces as under :-

Dated 11.10.2022

Date: 11th October 2022

To,
Rajmal Lakhichand Jewellers Pvt. Ltd.
Johari Bazar,
Jalgaon-425001

Kind Attn: SHRI. MANISH ISHWARLAL JAIN

Re: Leave & Licence Agreement dated 14th July 2022 in respect of premises measuring about 2853.62 sq ft situated at MANGAL SANDESH BUILDING, 'B wing', Plot No.490, Bearing CTS No. E-72, Village Khar, 17th Road, Khar, Mumbai and Letter dated 12.09.2022

Dear Manish Ji,

In view of the above agreement, we were given the premises on a Leave and Licence basis for five years and till 11.7.2027. The fit-out period as per the agreement was for a period of 60 days from the date of the agreement thereafter the licence fees were to start. An interest-free deposit of Rs.30 lakhs was also deposited with you.

As you are aware after signing the agreement with you, and during our fit-out period we had several objections from the BMC due to which our excise licence was also delayed. These issues pertained to FSI and the entire premises not having OC, due to which our restaurant could not be functional. On discussing the same with you, it was agreed that we would apply on your behalf to the BMC to sort out the FSI and OC-related issues for the entire premises under the L&L Agreement and all costs would be borne by us. It was also agreed

WAKAI MANAGEMENT BANDRA LLP

C-3/5 Rakshalekha co-op Society, Lane no.6, Koregaon Park, Pune – 411 001

*RECEIVED
10/10/22*

and understood that these costs would then be deducted from the rentals payable from the date we get the OC and the excise licence from the government authorities.

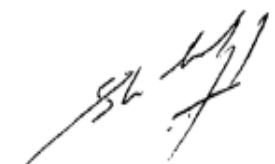
Accordingly, we met you in October 2022 and discussed objections being raised by building residents and so-called activists regarding the functioning of a commercial restaurant on the premises which was delaying the OC and consequential Excise Licence. We informed you that there are several inherent problems in the premises due to which we will have to deploy an architect and incur heavy charges from BMC, Liaisoning, Architect fees, Civil costs and other miscellaneous expenses which could be anywhere in the range of 75 lakhs to 1.25 crores.

You had then mentioned that since there was a defect in the premises as OC was not there, we would bear the costs for the same and the same would be adjusted from the licence fees which would be payable from the date the OC and the Excise Licence is obtained. Accordingly, the L&L tenure would also be correspondingly extended from the date of obtaining the OC and the Excise Licence.

Kindly confirm the same so we can continue to pursue the required permissions and make expenses for the same. After receiving the OC and Excise License for the property, we will begin to adjust these expenses against our L&L fees payable. Meanwhile, please also pay the dues and taxations of the BMC.

Yours Faithfully,

WAKAI HOSPITALITY PRIVATE LIMITED



(Authorised Signatory)

WAKAI MANAGEMENT BANDRA LLP

C-3/5 Rakshalekha co-op Society, Lane no.6, Koregaon Park, Pune – 411 001

LETTER DATED 01.11.2022

 **Rajmal Lakhichand**
JEWELLERS PVT. LTD.
Regd. Office : 169, Johari Bazar, Jaipur - 302001 (M.S) India. Tel : +91 - 257 - 2226681 - 83, email : contact@rljewels.com, www.rljewels.com

Date: 1st November 2022

To,
Wakai Hospitality Pvt Ltd,
24A Raj Bahadur Mention,
Mumbai Samachar Marg, Fort,
Mumbai

Dear Shardul,

Re: Your letter dated 11.10.2022 regarding the L&L Agreement dated 14th July 2022.

We agree and acknowledge the commitments made by us and confirm the contents of the letter. Kindly inform us of the amount of expenses incurred by you as and when the permissions arrive. We request you to kindly try and keep the expenses below Rs.1 crore.

Yours Sincerely,

Rajmal Lakhichand Jewellers Pvt. Ltd


Director

LETTER DATED 23.06.2023

Date: 23rd June 2023

To,
Rajmal Lakhichand Jewellers Pvt. Ltd.
Johari Bazar,
Jalgaon-425001

Dear Manish Ji,

Re: Leave & Licence Agreement dated 14th July 2022 in respect of premises admeasuring about 2853.62 sq ft situated at MANGAL SANDESH BUILDING , 'B'wing , Plot No.490, Bearing CTS No. E-72, Village Khar, 17th Road, Khar, Mumbai. And Our Letter dated 11.10.2022 And Your letters dated 1.11.2022 and 11.09.2022 .

This is to inform you that we have obtained the BMC OC on 28.3.2023, the BMC Licence for eating house on 12.4.2023 and the excise licence on 17.5.2023, post which we can finalize the bar design in the restaurant and will able to start commercially operations from 1st July 2023. Accordingly, our licence tenure would start from 1.7.2023.

We have further incurred the following expense which will be adjusted in the rentals from 1.7.2023; the expenses are as followed:

BMC-Rs.28,14,486/-

Misc Charges-Rs.200,000/-

Architect-Rs.10,00,000/-

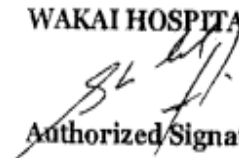
Liasoning Fees-Rs.10,00,000/-

Civil Changes-Rs.50,00,000/-

Total Costs-1,00,14,486/-

Yours Faithfully,

WAKAI HOSPITALITY PRIVATE LIMITED


Authorized Signatory

WAKAI MANAGEMENT BANDRA LLP

C-3/5 Rakshalekha co-op Society, Lane no.6, Koregaon Park, Pune - 411 001

- (v) We note that there was no authorisation from the Corporate Debtor to the suspended director of the Corporate Debtor to issue such letters to the Appellant regarding issuance of such correspondence as per record made available to us and also that the letter do not bear the seal/stamp of the Corporate Debtor.
- (vi) In this connection, we would also like to look into the relevant portion of the Impugned Order which reads as under :-

“12.2. The Respondent, per its Reply dated 09.01.2024, contends that the purported adjustment of expenses is in consonance with L&LA dated 14.07.2022. We find that the same is devoid of any merits and place reliance hereto upon Clause (5) of the said L&LA pertaining to the ‘FitOut Period’. The said clause expressly warrants for extension of the FitOut Period only in the eventuality/ on account of pandemic. Further, the correspondences relied upon by the Respondent with a member of the suspended Board of Directors of the Corporate Debtor, are contrary to the terms and conditions set out in the afore-stated L&LA dated 14.07.2022 and the said correspondences would thus have no detrimental bearing upon the same.”

(Emphasis Supplied)

- (vii) The Adjudicating Authority has categorically recorded that the correspondence relied upon by the Appellant with the suspended board of directors is contrary to the terms and conditions of LLA.

(viii) In view of this, the contentions of the Appellant on this ground is also not accepted.

42. Issue No. (II) Another issue of the Appellant is that it is not within jurisdiction of the Adjudicating Authority to adjudicate inter-se disputes between the parties and for any remedy, the Respondent No. 1 was required to approach appropriate suitable judicial forum like the small cause court.

(i) In this connection, we note that in the judgment delivered by this Appellate Tribunal *in Encore Asset Reconstruction Company Pvt. Ltd. vs. Ms. Charu Sandeep Desai (RP of Calyx Chemicals & Pharmaceuticals Ltd.) & Ors.*, Company Appeal (AT) (Insolvency) No. 719 of 2018, it was held that that an asset owned by the corporate debtor but is in the possession of a third party or creditor, such party is obligated to hand over possession to the Resolution Professional under Section 18 of the Code, so long as the title remains with the corporate debtor. The aforementioned judgment was challenged before the Hon'ble Supreme Court of India and was duly upheld. The facts are similar to present case and thus we find the same to be applicable.

(ii) The Appellant has also pleaded that the Respondent No. 1 should have initiated case under small cause court. We note that the CIRP was ordered 09.02.2023 more than two years ago and since then the Corporate Debtor has even been ordered for liquidation on

11.06.2024. We observe that the timelines as stipulated in the code have been stipulated with the objection for maximisation of value of the Corporate Debtor. Recently in the case of Kalyani Transco v. Bhushan Power & Steel Ltd., 2025 SCC OnLine SC 1010, the Hon'ble Supreme Court of India has reiterated the importance of timeline.

- (iii) The Respondent No. 1 is duty bound to act in accordance with code and according to which the liquidator is supposed to take over the assets of the Corporate Debtor in terms of section 25 (2) (a) & (b) of the Code. We have already noted that the Respondent No. 1 gave due notice to the Appellant for termination of LLA after obtaining approval of the CoC since the Appellant failed to make payment as per notice by the Respondent No.1.
- (iv) It is also noted that Respondent No 1 initiated the IA No. 5065 of 2023 before the Adjudicating Authority who passes the Impugned Order asking the Appellant to vacate the said property and to pay the necessary dues to the Respondent No.1.
- (v) As such we do not find any merit in the argument of the Appellant that the Adjudicating Authority erred in passing the Impugned Order or it is only small cause court is competent to adjudicate such matters. We hold that Impugned Order has been correctly passed by the Adjudicating Authority.

43. Issue No. (III) As per Section 14 of the Code, the moratorium period started and the Respondent No. 1 could not have initiated any proceedings against the Appellant or terminated the LLA.

- (i) We note that the Resolution Professional after taking approval of the CoC wrote a letter to the Appellant to make the payments and after reasonable time period he invoked the termination notice period of 30 days as per LLA.
- (ii) We have already noted that even after laps of termination notice period the Appellant neither vacated premises nor repaid money to the Corporate Debtor. Hence, the Resolution Professional i.e., the Respondent No. 1 initiated IA before the Adjudicating Authority seeking directions of the Appellant which were granted by the Adjudicating Authority in the Impugned Order.
- (iii) The objective of section 14 of the code is intended to protect Corporate Debtor from legal hassels during resolution period and it was never intended to give the protection of moratorium to third party like the Appellant herein and therefore the contention of the Appellant that during moratorium the Respondent No. 1 could not have initiated any action against the Appellant is not convincing. We must understand that the protection to the Corporate Debtor under Section 14 of the Code is given so that the Resolution Professional can try to resolve the Corporate Debtor under guidance of the CoC.

- (iv) It is an obligation as well as the right of the Resolution Professional to protect the interest of the Corporate Debtor and take necessary action including realising recoverable dues from third party like the Appellant on behalf of the Corporate Debtor as well as take legal action in accordance with law to take possession of property in given circumstances. In the present case the Appellant has not paid the license fee on certain assumptions which we have already discussed in earlier paragraphs.
- (v) As such we do not find any merit in the contentions of the Appellant that during moratorium period the Respondent No. 1 could not have terminated the LLA.
- (vi) We note that the Corporate Debtor is the owner of the subject property and the Appellant continued to occupy the premises under the LLA without payment of the requisite license fees and without challenging the termination before the Adjudicating Authority. The Appellant acknowledged that this Appellate Tribunal, by order dated 15.03.2024, granted a stay on the Impugned Order subject to two conditions: (a) payment of 50% of the amount directed by the Adjudicating Authority, and (b) payment of Rs. 7.5 lakhs per month with effect from 01.04.2024 The order dated 15.03.2024 reads as under:

“Learned counsel for the Appellant submits that the application filed by the Resolution Professional seeking recovery of possession and payment of outstanding license fees along with interest, was not maintainable since the question of Leave and Licence Agreement could not have been brought for consideration before the Adjudicating Authority. It is submitted that the Appellant has already paid more than Rs.1 Crore to the different authorities with respect to building in question and Appellant could start commencing his business only from July, 2023. Shri Ravi Raghunath, learned counsel appearing for the Respondent submits that the application was fully maintainable and the Adjudicating Authority has rightly relying on the judgment of this Tribunal in M/s. Jhanvi Rajpal Automotive Pvt. Ltd. v. R.P. of Rajpal Abhikaran Pvt. Ltd. & Ors. decided the application. It is submitted that the amount due is Rs.1.5 Crores and Leave and Licence Agreement was terminated on 03.10.2023 and even thereafter no payments have been made. Learned counsel for the Respondent has refuted the date of commencement as contented by learned counsel for the Appellant. Submissions raised by learned counsel for the parties need consideration. Issue notice. Let Reply be filed by the Respondent within two weeks. Rejoinder be filed within two weeks thereafter.

List this Appeal on 29.04.2024.

In the meantime, the effect and operation of the impugned order shall remain stayed subject to (i) Appellant depositing 50% of the amount directed by the Adjudicating Authority within 30 days from today; (ii) shall pay amount

of Rs.7.5 Lakhs w.e.f. 01.04.2022 as use and occupation charges to the Resolution Professional.

This is without prejudice to the rights and contentions of both the parties.”

- (vi) It has been brought to our notice by the Respondent No.1 that the Appellant even breached of these conditions and has been in default for more than two months in payment of license fee. We have also taken into consideration the submission made by the Respondent No.2 that the Appellant has since then vacated the license property and has also filed his claim before the liquidator i.e., the Respondent No. 1 herein.

44. We also note that this Appellate Tribunal, in Company Appeal (AT) (Ins) No. 63/2024, in the matter of ***Deepak Sakharam Kulkarni & Anr. vs. Manoj Kumar Agarwal, Resolution Professional of DS Kulkarni***, has recognized the power of the Resolution Professional to terminate agreements, and observe that, while it is impermissible to deprive third parties of their rights solely on the basis of the initiation of insolvency proceedings, there is no prohibition on terminating agreements in accordance with the contractual terms during the CIRP or even thereafter.

45. Thus, we hold that during moratorium the respondent could terminate the LLA and also was entitled to take legal action against the Appellant. We reject arguments of the Appellant on this ground.

46. Based on above detailed observations, we do not find any error in the Impugned Order. The Appeal devoid of any merit stand rejected. No cost. I.A., if any, are closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indavar Pandey]
Member (Technical)

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