

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT – 1

ITEM No. 301- IA/63(AHM)2022 in C.P.(IB)/59(AHM)2019 and
ITEM No. 302- IA/94(AHM)2022 in C.P.(IB)/59(AHM)2019

Order under 65(5) r.w 18(F) & 25 IBC

In the matter Of: 301- IA/63(AHM)2022

Mr.Bijay Murmuria Authorized Professional of Sumedha Applicant

Management Solution Parivat Limited Liquidator of
Doshion Pvt Ltd

.....Respondent

V/s

Ashit Dhirajlal Doshi & Ors

And

Order Under Section 60(5) IBC

In the matter of: 302- IA/94(AHM)2022

Mr.Bijay Murmuria Authorized Professional of Sumedha
Management Solution Parivat Limited Liquidator of
Doshion Pvt Ltd

V/s

.....Applicant

Ashit Dhirajlal Doshi & Ors

.....Respondent

Order delivered on: 21/06/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

(Hybrid Mode)

The case is fixed for the pronouncement of the order. The order is pronounced
in the open court, vide separate sheet.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-I, AHMEDABAD**

**IA/63(AHM)2022 with
IA/94(AHM)2022 in
CP(IB) 59 of 2019**

In the matter of

IA/63(AHM)2022

[An application under Section 60(5) read with Section 18(f) and Section 25 of the Insolvency and Bankruptcy Code, 2016, and Rule 11 of the NCLT Rules, 2016]

Mr. Bijay Murmuria

Authorized representation of
Sumedha Management Solution
Private Limited,
having address at:
8B, Middleton Street, 6A Geetanjali
Apartments, Kolkata, West Bengal- 700071
Liquidator of Doshion Private Limited.

... Applicant/Liquidator

VERSUS

1. **Mr. Ashit Dhirajlal Doshi**
Suspended Management of
M/s Doshion Pvt. Ltd.
Having Address at:
A-103-10 Tirth Bhoomi,
Law Garden, Ellisbridge,
Ahmedabad-380006.
2. **Mr. Rakshit Dhirajlal Doshi**
Suspended Management of
M/s Doshion Pvt. Ltd.
Having Registered address at:
27, Ramila Baug, Basant Bahaar.

3, Homeopathic Medical College
Parul University,
Bopal-Bhuma Road,
Bopal, Ahmedabad-380058.

3. **Fivebro Water Services Pvt. Ltd.**

Lessee to the Corporate Debtor
GF 9-10, Sigma Corporate,
near Courtyard Opp. Pakvan-2,
S.G. Highway, Bodakdev,
Ahmedabad-380054.

... Respondents

IA/94(AHM)2022

*[Application under Section 60(5) read with Section 18(f) and
Section 25 of the Insolvency and Bankruptcy Code, 2016 read
with Rule 11 of NCLT Rules, 2016]*

Mr. Bijay Murmuria

Authorized representation of
Sumedha Management Solution
Private Limited,
having address at:
8B, Middleton Street, 6A Geetanjali
Apartments, Kolkata, West Bengal- 700071
Liquidator of Doshion Private Limited.

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1. **Mr. Ashit Dhirajlal Doshi**
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Having Address at:
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2. **Mr. Rakshit Dhirajlal Doshi**
Suspended Management of

M/s Doshion Pvt. Ltd.
Having Registered address at:
27, Ramila Baug, Basant Bahaar.
3, Homeopathic Medical College
Parul university,
Bopal-Bhuma Road,
Bopal, Ahmedabad-380058.

3. **Gondwana Engineers Limited.**
Licensee to the Corporate Debtor
82, Abhyankar Nagar,
Park Road, Nagpur,
Maharashtra-440010.

... Respondents

Order Pronounced on: 21.06.2024

CORAM:

MR. SHAMMI KHAN, MEMBER (JUDICIAL)

MR. SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance:

For the Applicant/Liq. :Mr. Kunal Vaishnav, Advocate

For the Respondents :Mr. Arpit Singhvi, Adv. for R-No.1 & 2

:Mr. Arjun Sheth, Adv. for R- No.3.

C O M M O N O R D E R

[PER: BENCH]

1. **IA/63(AHM)2022** is filed under Sections 60(5) read with
Section 18(f) and section 25 of Insolvency and Bankruptcy
Code, 2016 ("IBC, 2016") read with Rule 11 of the NCLT
Rules, 2016 seeking the following prayers: -

*a. Your Lordship may be pleased to allow the present
application;*

- b. Your Lordship may be pleased to direct the Respondents to handover the possession of premises of the Corporate Debtor peacefully situated at Sigma 9, Corporate Park, behind Rajpath Club, Bodakdev, Ahmedabad to the Applicant herein i.e. Resolution Professional of Corporate Debtor.*
- c. Your Lordship may be pleased to direct Respondent No.-3 to release licence fees Rs. 3,78,000- towards the pending rent amount for the month from October 2021 till January, 2022 for possessing the property situated at Sigma 9, Corporate Park, behind Rajpath Club, Bodakdev, Ahmedabad having built area 659.61 sq. mt. and Plot area 290.13 sq. mt. to the Applicant herein i.e. Resolution Professional of Corporate Debtor.*
- d. Your Lordship may be pleased to grant any other relief or relief as may deem fit in the interest of justice.*

The Application was filed in the capacity of Resolution Professional in the CP(IB)59 of 2019. Later amendment was sought for the substitution of Resolution Professional by Liquidator post the Liquidation order dated 03.10.2023 which was allowed on 21.11.2023 and these application were pursued by the Liquidator.

2. **IA/94(AHM)2022** is filed under Sections 60(5) read with Section 18(f) and Section 25 of the Insolvency and

Bankruptcy Code, 2016 ("IBC, 2016") read with Rule 11 of the NCLT Rules, 2016 seeking the following prayers: -

- a. Your Lordship may be pleased to allow the present application;*
- b. Your Lordship may be pleased to direct the Respondents to handover the possession of premises of the Corporate Debtor peacefully situated at Office No. 203, 2nd floor, unit No. 3. Wing-A "Godrej Coliseum" located at Lokmanya Pan Bazar, Behind Everard Nagar, Sion (East) Mumbai to the Applicant herein i.e. Resolution Professional of Corporate Debtor.*
- c. Your Lordship may be pleased to direct the Respondent No.-3 to release licence fees Rs. 2,51,648/ towards the pending rent amount for the month from September 2021 till January, 2022 for possessing the property situated at situated at Office No. 203, 2nd floor, unit No. 3, Wing-A "Godrej Coliseum" located at Lokmanya Pan Bazar, Behind Everard Nagar, Sion (East) Mumbai to the Applicant herein i.e. Resolution Professional of Corporate Debtor.*
- d. Your Lordship may be pleased to grant any other relief or relief as may deem fit in the interest of justice.*

The Application was filed in the capacity of Resolution Professional in the CP(IB)59 of 2019. Later amendment was sought for the substitution of Resolution Professional by Liquidator post the Liquidation order dated 03.10.2023 which was allowed on 21.11.2023.

Facts in IA/63(AHM)2022

3. It is stated in the application that: -

I. It is stated that one of the financial creditor i.e. M/s IDBI Bank Limited had filed an application under Section 7 of the Code seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against 'M/s. Doshion Private Limited' ("Corporate Debtor"). Further this Tribunal vide its order ("admission order") dated 31.08.2021 (copy received on 10.9.2021) passed in CP (IB) No. 59/7/NCLT/AHM/2019 was pleased to admit the petition filed by the financial creditor therein and appointed applicant, i.e. Mr Ramchandra Dallaram Choudhary' as the Interim Resolution Professional ("IRP") for the Corporate Debtor. A copy of the admission order dated 31.08.2021 passed by this

Hon'ble Tribunal is annexed herewith and attached as "Annexure-A" to the present application.

II. It is stated that the applicant herein made Public Announcement as contemplated under the provision of Section 15 of the Code and called for claims from all creditors. The Applicant submits that the said announcement was published in the newspaper Times of India (English Edition) and Sandesh (Gujarati Edition) on 12.09.2021 wherein the last date of submission of claims was 24.09.2021. The applicant begs to annex a copy of the public announcement dated 12.09.2021 at "Annexure-B" to the present application.

III. Subsequent to that the Applicant herein in accordance with Section 21 of the code had constituted the Committee of Creditors ("CoC") and the report certifying the said constitution of CoC was filed before this Hon'ble Tribunal on 02.10.2021, however the applicant had received several claims from the creditors after submitting Constitution of CoC, the applicant had Re-constitute the Committee

of Creditors herein compliance with Regulation 17 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 CIRP Regulations") A copy of the report certifying the re-constitution of CoC dated 22.11.2021 is placed at "Annexure-C of the application.

- IV. It is stated that the corporate debtor has one premises in the states of Gujarat, the description of the premise of the corporate Debtor is as under: -

"Sigma 9, Corporate Park, Behind Rajpath Club, Bodakdev, Ahmedabad having built up area 659.61 sq. mtr. and Plot area 290.13 sq. mtr."

- V. It is stated that the applicant vide Electronic Mail dated 15.09.2021 served to the respondents to Handover the possession of assets of the corporate Debtor. A copy of the E-mail dated 15.09.2021 is place at ANNEXURE-E of the application.
- VI. It is submitted that the Applicant had not received any response from respondents vide letter dated 15.09.2020, the applicant had once again through Electronic Mail informing to the Respondents that

"Mr. Rojer Choudhary is Authorising for taking possession of Assets of the Corporate Debtor on 21.10.2021, on the same day, the applicant had received response from the Respondents, the wording of the respondents are "Now its ok with this mail so we are informing Bombay officer for allowing him to take necessary actions as per your mail. However, in reference, to custody & control of the asset as informed in our meeting & also in earlier mail this asset is mortgaged to bank of another company".

- VII. It is stated that the applicant had served an E-mail and Letter Correspondences to the respondents on 11.11.2021 to handover the possession of the assets of the Corporate Debtor.
- VIII. It is stated that the applicant had received reply from the respondents through E-mail as well as Letter Correspondences on 16.11.2021.
- IX. It is stated that the applicant was showed to know from the aforesaid letter, the Respondents, had already given the said premises to the Respondent No. 3 i.e., M/s Fivebro Water Services Private Limited,

through registered rent agreement for the tenure of 10 years commencing from 01.07.2021 for the monthly rent of Rs. 1,00,000/- (Rupees One Lakh only) plus applicable taxes, however after scrutinizing the details of the Respondent No.-3, it was found that Respondent No-3 was a subsidiary company of the Corporate Debtor. The wording of the said letter is "In view of above, we regret to inform our inability to hand it over the subject property as it is not free from any encumbrance and mortgaged to some other banks, who are, we believe legitimate owners".

X. It is stated that under Lease Agreement dated 31.08.2021 in IA No. 63 of 2022 the termination of lease agreement on default by lessee which is reproduced as below:

"8. Termination:

(b) If the lessee commits any default in observance and performance of the terms and conditions mentioned in this Deed on its part, including regular payment of monthly rent on account of which, the Lessor shall be required to vacate and handover the possession to the Lessor. This will be without prejudice to other rights of the Lessor."

XI. It is stated that the applicant had served a letter correspondence to the Respondent No. 3 i.e., Fivebro Water Services Private Limited for the remittance of

monthly rent of the premises of the Corporate Debtor from Sept-2021 onwards, to deposit the said amount to the separate bank account of the Corporate Debtor, as maintained by the Applicant, however the applicant had neither received any licence fees nor any response received from the Respondent No.-3. A copy of the letter dated 24.11.2021 is annexed here and marked as ANNEXURE I to the present application.

XII. It is stated that the applicant had served an E-mail to the Respondents for remittance of the monthly rent of the premises of the Corporate Debtor on 13.12.2021 however the applicant had neither received license fees nor received any response from the respondents. A copy of the E mail served by the applicant to the respondents on 13.12.2021 is annexed here and marked as ANNEXURE J to the present application.

XIII. It is stated that despites of the several reminders and numerous phone calls to the respondents, the Respondent No. 3 had release license fees of Rs. 1,62,000/- (Rupees One Lakh Sixty-Two Thousand

only), the applicant came to know from the received E-mail from the respondent No-1 & 2.

XIV. It is stated that the applicant had also served an E-mail to the Respondents for remittance of the monthly rent of the premises of the Corporate Debtor on 08.01.2022, however the applicant had neither received license fees nor received any response from the respondents.

XV. It is stated that the respondents are not entitled to give the premises of the Corporate Debtor for more than 3 years, as per the Transfer of Properties Act 1882 are reproduce as under:

Section 65A of the Transfer of Properties Act 1882: -

Mortgagor's power to lease:-

(2)(e):-

"In the case of a lease of buildings, whether leased it or without the land on which they stand, the duration of the lease shall in no case exceed three years, and the lease shall contain a covenant for payment of the rent and a condition of re-entry on the rent not being paid within a time therein specified."

XVI. The applicant states that, it is the settled law in the matter of **Agme Marketing Private Limited vs Canara Bank and 9 Others Writ Petition No. 16516**

of 2019 Before The Allahabad High Court, the verdict of the High Court are as under:-

Para O: "*Once it is held that **the lease violated the restrictions imposed by clauses (a) and (e) of Section 65A(2), it ceases to bind the mortgagee and does not protect the possession of the petitioners***". The contention of a monthly tenancy being created would undisputedly result in violation of the mandatory provisions engrafted in Section 13(13) of the 2002 Act. On both counts, therefore, the petitioners can neither be recognised in law to be in lawful occupation nor can they thwart the action of the Bank initiated under the 2002 Act.

Reply

4. The Respondents No. 1 and 2 have filed a reply to the IA 63 of 2022 under inward Diary No. D4738 on 29.11.2023 stating that: -

- I. That the preliminary objection by Respondent No.1 and 2 is that the present application is not maintainable before this Tribunal. This Tribunal cannot order reliefs of eviction of the licensee and alleged recovery of the rent from the licensee.
- II. It is stated that the premises in Question is already mortgaged to the Secured Creditor.
- III. With reference to Para (I) to (III), it is submitted that the Hon'ble Adjudicating Authority has no jurisdiction to grant reliefs as prayed for by the Applicant.

- IV. With reference to para IV (1) to (4) of the application, it is submitted that the suspended management of Doshion private Limited has already filed an appeal under Section 61 of the Code against the impugned order dated 31.08.2021 passed by the Hon'ble NCLT, Ahmedabad in C.P. (I.B.) 59 of 2017. It is stated and submitted that the said appeal being Company Appeal (A .T.) 295 of 2022 is currently pending before the Hon'ble NCLAT. The Respondents crave leave to produce the record of appeal as and when required during the hearing of the captioned application.
- V. With reference to Para 5 of the captioned application, it is submitted that without prejudice to the submission that the captioned application is not maintainable, as the premises in question is already mortgaged to Bank of Maharashtra to secure the debt of M/s. Gondwana Engineers Private Limited and proceedings under the RDDB Act, 1993 are also pending before the Hon'ble DRT, Nagpur wherein the Hon'ble DRT, Nagpur has passed an order restraining the parties from dealing/transferring the premises in question.

- VI. With reference to Para 6 to 10. it is submitted that the Respondents herein have categorically stated before the Applicant herein that the premises in question have already been leased in favour Respondent No. 3 vide registered lease agreement and further that the premises in question are already mortgaged in favour of Bank of Maharashtra.
- VII. With reference to Para 11 to 14 of the captioned application, the contents thereof are denied in toto. It is denied that Respondent No. 3 has not deposited any license fee. It is further denied that the Respondents did not reply to the Applicant as regards outstanding licensee fees. It is submitted that the Respondent No.3 has paid rent as per the license agreement. It is submitted that Respondent No. 3 has paid maintenance charges of the premises in question as well as property tax to the Corporation apart from paying rent of the premises in question. Further, it is stated and submitted that the Applicant in its minutes of meeting dated 17.03.2022 has also acknowledged receipt of rent from Respondent No. 3. Further, it is

stated and submitted that the Applicant cannot file the captioned application for recovery of rent before this Adjudicating Authority as the same is not within the jurisdiction of this Adjudicating Authority and is dehors the provisions of the Code.

VIII. With reference to Para 15 to 20 of the captioned Application, the contents thereof are denied in toto. At the outset, it is reiterated that the captioned application is not maintainable as the same seeks eviction of lessee and recovery of rent from the lessee. It is denied that the premises in question has been illegally occupied by Respondent No, 3. It is denied that this Hon'ble Tribunal has jurisdiction to deal with the captioned application. It is stated and submitted that the provisions of law as well as judgments as relied by the Applicant are not applicable to the facts of the present case. It is stated and submitted that the provisions of the Insolvency and Bankruptcy Code, 2016 do not empower the this Hon'ble Tribunal to grant reliefs in the nature of eviction of lessee as well as recovery of rent as the same falls within the domain of the Court

as empowered under the Gujarat Rents, Hotel and Lodging House Rates Control Act, 1947 .It is stated and submitted that the power to order eviction as well as order recovery of rent falls within the exclusive domain of Gujarat Rents, Hotel and Lodging House Rates Control Act, 1947 and the Applicant cannot take recourse to the Insolvency and Bankruptcy Code, 2016 in order to seek eviction of lessee and order recovery of rent from the lessee.

5. The Respondent No. 3 filed an additional Affidavit in reply to the application on 09.04.2024 under inward diary no. D3074 which states as under:-

- a) It is stated that the Respondent No.3 is the bona fide lessee and in the possession of the land whose possession is under question in the present matter.
- b) It is stated that the R-3 was initially incorporated as limited liability partnership and thereafter subsequently converted into a Private Limited Company on 05.05.2021.
- c) It is stated that the business of the Respondent No. 3 was growing rapidly, the deponent herein had decided

to acquire an additional space which is in question in present matter through a lease agreement executed between the corporate debtor and respondent No. 3 on 29.09.2020 which became effective with effect from 15.08.2020 for a period of 24 months. A copy of the said lease deed dated 29.09.2020 is placed at Annexure B to the Additional Affidavit in Reply of R-3.

- d) After the conversion of R-3 from LLP to a Company as per the provisions of the Companies Act, 2013, the management of the R-3 made a strategic decision to increase the duration of the lease agreement dated 29.09.2020 wherein it proposed to increase the duration of the lease agreement for a further period of ten years.
- e) The said proposal was further accepted by the Respondent No. 1 Corporate Debtor. Since, the lease agreement was being extended for a further period of 10 years, it was mutually agreed between the Corporate Debtor and the Respondent No. 3 that the said lease deed shall be officially registered at the registrar's office at S.R.O., Memnagar, which had the jurisdiction of the

Superintendent of Stamps and Inspector General of registration in Ahmedabad.

- f) That in accordance with the same, the Respondent No. 3 had initiated that execution process of the lease agreement by approaching the registrar's office and a stamp duty of Rs. 22,900/- was paid by the Respondent No. 3 on 25.08.2021 itself. The date as assigned by the registrar for the execution of the sale deed was 31.08.2021. A copy of the receipt from the registrar's office dated 25.08.2021 is annexed hereto and marked as Annexure C to the present Additional Affidavit in Reply.
- g) Thereafter, on 31.08.2021, lease deed between the Respondent No. 3 and the Respondent No. 1 was duly executed. A copy of the fully executed/ registered sale deed is annexed hereto and marked as Annexure D to the present Affidavit in Reply.
- h) That it is on the same day i.e. on 31.08.2021, the Corporate Debtor went into the CIRP. However, the lease deed was executed between the Respondent No. 3 and 1 was bona-fide as the said process was initiated

much prior to the CIRP admission order and there was no malafide intention on the part of the Respondent No.3.

- i) That the Respondent No. 3 is a bonafide lessee who has duly taken on lease the said premises to the carry out its business and the lessee is carrying on the said business till the present date from the said premises.
- j) To substantiate the same the Respondent No.3 is placing on record the electricity bill of the said premises which also supports the contention of the Respondent No. 3 that the business is carried on from the premises of the Corporate Debtor. Copy of the electricity bill is annexed hereto and marked as Annexure E to the present Additional Affidavit in Reply.
- k) It is submitted that the list of employees working at the premises is annexed hereto and marked as Annexure F to the present Additional Affidavit in Reply. Copies of the photograph taken of said premises to show that the Respondent No. 3 is carrying on business from the said premises is annexed hereto and marked as Annexure G to the present Additional Affidavit in Reply.

- l) The deponent is further placing on record the audited financial statements on record of the Respondent No. 3 to show that the business is being conducted at the leased premises at Annexure H to the present Additional Affidavit in Reply.
- m) Further, the Respondent No. 3 was duly paying the rents to the Corporate Debtor and further to the designated account of the Corporate Debtor which was provided by the erstwhile liquidator. Ledgers enunciating the payment of the rent by the Respondent No. 3 is annexed hereto and marked as Annexure I to the present Additional Affidavit in Reply.
- n) It is stated that some amount of rent was not paid by the Respondent No. 3 as there was dispute between the Corporate Debtor and the Respondent No. 3 in relation to the municipal tax pending by the Corporate Debtor regarding the leased premises. As per the clause 1 (b) of the lease agreement, the lessor was obligated to deliver the leased premises in its actual, vacant, and in peaceful possession of demised premises. However, the Corporate Debtor had failed to pay the property tax of

Rs.25,94,389/- prior to the execution of the lease agreement, which resulted in AMC sealing the one side of the entrance of the leased premises on 03.11.2023. Hence the Respondent No. 3 is holding Rs. 8,28,925/- on account as the total amount of pre-CIRP dues of the municipal taxes. Copy of the receipt from the AMC website which shows the due on behalf of the Corporate Debtor is annexed hereto and marked as Annexure J to the present Additional Affidavit in Reply.

- o) It is further stated that the Corporate Debtor did not deposit on the GST portal amount charged as the GST amount by the Corporate Debtor of Rs.4,32,000/- till the present date. Therefore, the Respondent No. 3 could not claim input credit tax on the same. Therefore, the Respondent No. 3 had further withheld an amount of Rs. 4,32,000/-. A chart enunciating the amount paid by the Respondent No. 3 and the total amount pending is annexed hereto and marked as Annexure K to the present Additional Affidavit in Reply.

- p) The Respondent No. 3 further undertakes to pay the said amount if the Respondent No. 3 is allowed to carry on its business activities from the said premises.

Rejoinder

6. Applicant has filed its rejoinder on 19.09.2023 under inward diary no. D3617 by the erstwhile RP but later the Liquidator appointed by this Tribunal filed rejoinder to the reply of the respondents on 11.03.2024 under inward diary no. D2110 which states as under:

- i. That the Original Application was initially filed by the Erstwhile Resolution Professional Mr. Ramchandra Dallaram Chaudhury against the members of the Suspended Board of Directors of the Corporate Debtor as an application under section 60(5) read with section 18(F) and section 25 of the Insolvency and Bankruptcy Code, 2016 in the matter of M/s Doshion Private Limited. That the above-mentioned Original Application was listed for admission before this Tribunal at Ahmedabad Bench on 31-01-2022 and this Tribunal directed the Applicant to issue notice to

the respondents and file an affidavit of service. The respondents were directed to file an affidavit in reply.

- ii. That in the meanwhile, the Corporate Debtor M/s Doshion Private Limited went into Liquidation vide Order of this Tribunal dated 03.10.2023 in IA/769 of 2021 in CP(IB)59 of 2019.
- iii. It is submitted that as per the correspondence between respondent no. 3 and the Erstwhile Resolution Professional Mr. Ramchandra Dallaram Chaudhury, in letter dated 19.11.2022 addressed to the Erstwhile Resolution Professional, it is incorrectly mentioned by that they have been paying the rents of INR. 1,00,000/- (Rupees One Lacs Only) "regularly" in favour of Doshion Private Limited (In Liquidation), Corporate Debtor for the referred property as per the lease Agreement dated 31.08.2021. As per the Lease Agreement dated 31.08.2021, a sum of INR 1,00,000/- per month is payable to the Corporate Debtor by the Respondent No. 3 on or before the 7th day of each month for the premises being Sigma House-9, Sigma Corporate Park, Behind Rajpath

Club, Off Sindhu Bhavan Road, Bodakdev, Ahmedabad 380054 having build up area 659.61 sq. mtrs. And plot area 290.13 sq. mtrs. It is pertinent to mention that as per the said agreement the Respondent No. 3 is required to make payments towards maintenance charges and Municipal Taxes over and above the rent amount as agreed between the Corporate Debtor and the Respondent No. 3. However, as per the attachment mentioned in the said letter, respondent no. 3 have been deducting an amount of INR 6,49,980/- (Rupees Six Lacs Forty-Nine Thousand Nine Hundred Eighty Only) incurred towards the maintenance charges, Advocate's Bill and Municipal taxes from the said rent payable. It is imperative to state that the amounts deducted by the Respondent No. 3 from the rent payable to the Corporate Debtor is breach of the terms of the agreement dated 31.08.2021 as entered between the parties. Furthermore, no clause in the agreement dated 31.08.2021 provides for adjustment of Advocate's Bill/Legal Expense from the rent payable

to the corporate debtor. It is submitted that the application was filed by the Applicant herein on account of non- receipt of rental dues from the Respondent No. 3 and erroneous deductions of amounts resulting in breach of the terms of the Lease Agreement and that any expense incurred towards litigation expenses shall be borne solely by the parties. The Copy of the letter dated 19.11.2022 is placed at Annexure R-1 of the said Rejoinder.

- iv. It is submitted that as per clause 3 of the Lease Agreement dated 31.08.2021, the license fee amounting to INR 1,00,000/- (Rupees One Lacs Only) shall be paid to the Licensor (Doshion Private Limited, In Liquidation, Corporate Debtor) by the Licensee (Fivebro Water Services Private Limited, Respondent no. 3) every month on or before the 7th day of each succeeding calendar month. Therefore, respondent no. 3 claim of paying the fees regularly is mistaken.
- v. Further as per Clause No. 4(i) (ii) (iii) (Other Charges) of the Lease Agreement dated 31.08.2021, all statutory taxes, costs, charges and expenses for

electricity consumed including meter rent and costs and charges and expenses for telecommunication or otherwise utilities and services use, enjoyed or consumed is to be borne by the Licensee being the Respondent No. 3.

- vi. It is stated that as per the Lease agreement dated 31.08.2021 Clause 3: RENT "The Lessee shall pay the sum of Rs.1,00,000.00 (Rupees One Lac Only) as Monthly rent, exclusive of GST, which is to be paid Monthly on or before 7th day of each Succeeding calendar month subject to occupancies availed, if in future date occupancy is increasing than rent will be increased with mutual consent in agreed manner.

Failure on the part of the Lessee to effect the payment of rent in time will entail, without prejudice to other rights and remedies of the Lessor, its having to pay interest @ 18% p.a. calculated on day to day basis and will also result in breach of this agreement."

- vii. The Applicant states that the market value of the rent of impugned property is much higher than the actual rent receivable by the Corporate Debtor as provided

in the purported lease agreement dated 31.08.2021 between the Doshion Private Limited (In Liquidation), Corporate Debtor and Fivebro Water Services Private Limited, Respondent no. 3 being related parties of the Corporate Debtor as an associate group company. The Market value for rent at present of the said Sigma 9 property is approx. Rs. 50/- per Sq. Ft as per the present market survey conducted by the authorised representative of the applicant. As per the Lease Agreement dated 31.08.2021 entered between the Respondent No. 3 and the Corporate Debtor the value of rent is calculated at approx. INR 14/-per sq. ft per month resulting in a substantial loss of the Corporate Debtor of approx. INR 2,55,000/-per sq. ft. per month.

viii. In view of the above-mentioned clauses from the Lease Agreement dated 31.08.2021, the following are the violation of the terms of the said agreement dated 31.08.2021:

a. Payment of license fee as on the due date being on or before 7th of each succeeding Calendar month

in advance as per clause 3 of the Lease agreement dated 31.08.2021 not paid.

- b. Outstanding Rent of Rs. 22,33,980/- (Rupees Twenty-Two Lakhs Thirty-Three Thousand Nine Hundred Eighty Only) is due for the period starting from October 2021 to February 2024. Copy of the rent calculations chart is attached herewith and marked as "Annexure R-2".
- c. Deduction of maintenance charges, municipal taxes and Advocate's bill in violation of clause 4 of the lease agreement dated 31.08.2021.
- d. Deposit of interest @ 18% p.a. along with the outstanding rent for the period starting from October 2021 to February 2024. Interest calculation on the outstanding rent could not be calculated due to the unavailability of FORM 16A or 26AS for the FY 2022-2023 and 2023-2024. FORM 16A TDS Certificate has been requested from Respondent No. 3 vide email dated 01.02.2024, 05.02.2024 and 13.02.2024 respectively.

e. Difference in the market value of the rent and the actual rent receivable i.e., approx. Rs. 50/- per square feet having total Build up area of 659.61 Sq. Mtr (7099.98 Sq Ft) and total plot area of 290.13. Sp Mtr (3122.93 Sq. Ft), which amounts to approx. Rs. 3,55,000/- (Rupees Three Lacs Fifty-Five Thousand Only) Build up area and approx. Rs. 1,56,146/- (One Lacs Fifty-Six Thousand One Hundred Forty-Six Only) Plot area respectively.

7. It is stated that Respondent No. 3 filed Sur Rejoinder on 29.04.2024 under Inward Diary No. D3629 to the Rejoinder dated 08.03.2024 filed by Liquidator which is stating as under:

- a. It is stated that the liquidator has acknowledged and accepted the contract of lease between the CD and the R3 dated 31.08.2021 but effectively complains of alleged breach of the same on part of R3.
- b. It is submitted that Dispute between the Applicant and R-3 on account of alleged breach of the terms of the lease deed dated 31.08.2021. A matter of

dispute to be decided as per the dispute resolution mechanism agreed between the parties.

c. It is submitted that that the lease between the CD and the R-3 is genuine and in place long before the initiation of the Corporate Insolvency Resolution Process (CIRP).

d. Further it is stated that withholding of rent on account of non-payment of AMC dues by the CD for duration prior to commencement of lease in August, 2020.

e. It is stated that suppression of material fact by applicant in relation to non-payment of rent on account of prior breach on the part of the resolution professional with regard to issue of AMC dues.

8. It is stated that Respondent No. 1 and 2 filed an Additional Affidavit on 29.04.2024 under Inward Diary No. D3604 to place on record the appeal filed before the Hon'ble Supreme Court. It is further stated that vide impugned order dated 08.02.2024, the Hon'ble NCLAT has dismissed the Appeal filed by the Appellants seeking to set aside the Liquidation Order dated 03.10.2023 passed by this Tribunal in

Corporate Insolvency Resolution Process (CIRP). A copy of the impugned order dated 08.02.2024 is placed at Annexure-B of the above-mentioned Affidavit.

9. The applicant has filed a Rebuttal Affidavit on 09.05.2024 under Inward Diary No. D3896 to the sur-Rejoinder and Additional Affidavit filed by the Respondent which stated as under:

- i. It is submitted that the Erstwhile Resolution Professional in its Rejoinder dated 18/09/2023 in Part B Para 11 to 13, noted that during the subsistence of the Moratorium period, the Suspended Board of Corporate Debtor has consciously and deliberately executed the purported Lease Agreement dated 31st August 2021 of the subject property in favor of its associate company with a mala fide intent of occupying the assets of the Corporate Debtor beyond the reach of person who are entitled to make a claim against the Corporate Debtor thereby consciously and deliberately making an attempt to transgress the object of the Code of protecting the interest of the Stakeholders. It is further imperative to

note that the purported Lease Agreement becomes effective on 01.09.2021 meanwhile the Moratorium under the provisions of Section 14 of the Code was imposed by this Tribunal vide its order dated 31.08.2021 and powers of the Board of Director are suspended. Therefore, the purported lease agreement between the Corporate Debtor and its Associate company is void-ab-initio and cannot be enforced under the purview of Law.

- ii. It is further submitted that despite being fully aware of the ongoing proceedings under IBC as well as of the fate of the Company petition, the Suspended Board of Directors of the Corporate Debtor have consciously and knowingly passed Board Resolution dated 26.07.2021 thereby allowing the suspended board of Directors to execute the said purported Lease Agreement dated 31st August 2021 of the subject property in favor of its associate company with mala fide intension of transferring the assets of which the Corporate Debtor has absolute and complete legal ownership.

- iii. It is further submitted that the purported Lease Agreement stands terminated in accordance with Clause 8 of the said purported Lease Agreement, wherein the lessor is empowered to terminate the agreement if the lessee commits default in performance of the terms and conditions, including the regular payment of the monthly rent. That the Erstwhile Resolution Professional in compliance with his duties had issued numerous letters/follow-up communications/reminders upon the Respondent to remit the outstanding rental dues, however, to the utter dismay of the Applicant, the Respondent has failed to remit the outstanding rental dues for substantial period in the account of the Corporate debtor.
- iv. It is submitted that the Respondents cannot pay the dues of Ahmedabad Municipal Corporation (AMC) during the ongoing Moratorium under section 14 of IBC initiated against the Corporate Debtor. It is imperative that AMC shall file its respective claim as per the Code, 2016 for the recovery of the said dues

pertaining to the period in the prescribed form either before the Erstwhile Resolution Professional or the Liquidator after the commencement of CIR Process and continuation of Liquidation Process of the Corporate Debtor.

10. The Respondent No. 3 has filed an additional affidavit on 14.05.2024 under Inward No. I1018 to the Rebuttal Affidavit in rejoinder filed by the Liquidator on 09.05.2024.

It is stated as under:

- a. With regards to the contents of paragraph 13, the same are vehemently and out rightly denied that the Applicant is the associate company of the Corporate Debtor. Further, this stand of the associate company is taken for the first time and cannot be accepted at this stage in the rejoinder.
- b. With regards to the contents of paragraph 14, the same are out rightly and vehemently denied. There is no divergence as initially the deponent possessed the adjacent building on its own which was subsequently sold to accommodate its evolving business

requirements. Currently, it operates only from this office space.

- c. With regards to the contents of paragraph 15 and 16, the same are out rightly and vehemently denied. The deponent has been paying its rent as per the agreement prior to the CIRP as well as after the CIRP period till the time the AMC issues had arose. The AMC issue has been dealt by the deponent in detail in its earlier affidavit which may be considered as part and parcel of the present affidavit.
- d. With regards to the contentions of paragraph 17, the same are vehemently and out rightly denied. The deponent has nowhere contended that the statutory dues are payable by the deponent but the same is applicable for the time period after entering into the lease deed. The issue with the AMC in in relation to the earlier statutory dues of the Corporate Debtor for which the Respondent No. 3 is not responsible.
- e. With regards to the contentions of paragraph 18, the same are denied and the deponent herein is having

proof in relation to all the employees and could be produced if required by this Adjudicating Authority.

- f. With regards to the contents of paragraph 19-22, the same are vehemently and out rightly denied. The legality and validity of the lease deed in question cannot be decided by the Hon'ble NCLT under Section 60(5) of the Code. Further, the contentions in relation to the validity of the lease deed have been raised for the first time in the rejoinder which is impermissible as per the settled provisions of law.

11. The Applicant filed a synopsis on 09.05.2024 under Inward Diary No. D3896. The Respondents has filed a Written Submissions on 31.01.2024 under inward Diary No. D749.

Facts of IA/94(AHM)2022

12. It is stated in the application that: -

- I. It is stated by the Applicant that the corporate debtor has one premises in the states of Maharashtra, the description of the premise of the corporate Debtor is as under: -

***"Office No. 203, 2nd floor, Unit No. 3, Wing -A
"Godrej Coliseum" located at Lokmanya Pan***

***Bazar, Behind Everard Nagar, Sion (East),
Mumbai- 400022 admeasuring 1305 sq. fts.”***

- II. It is stated that the applicant vide Electronic Mail dated 15.09.2021 served to the respondents to handover the possession of assets of the corporate Debtor.
- III. It is stated that the applicant had not received any response from respondents vide letter dated 15.09.2020, the applicant had once again through Electronic Mail informing to the Respondents that "Mr. Rojer Choudhary is Authorising for taking possession of Assets of the Corporate Debtor on 21.10.2021, on the same day, the applicant had received response from the Respondents, the wording of the respondents are "Now its ok with this mail so we are informing Bombay officer for allowing him to take necessary actions as per your mail. However, in reference, to custody & Control of the asset as informed in our meeting & also in earlier mail this asset is mortgaged to bank of another company". The

applicant states that, the respondents had not informed about the aforesaid premises on the rent.

- IV. It is stated that the applicant had served an E-mail and Letter Correspondences to the respondents on 11.11.2021 to handover the possession of the assets of the Corporate Debtor.
- V. It is stated that the applicant had received reply from the respondents through E-mail as well as Letter Correspondences on 16.11.2021.
- VI. It is stated that the applicant was showed to know from the aforesaid letter, the Respondents, had already given the said premises to the Respondent No. 3 i.e., M/s Gondwana Engineers Limited, through unregistered rent agreement for the tenure of 5 years commencing from 20.07.2021 for the monthly rent of Rs. 50,000/- (Rupees Fifty Thousand only) plus applicable taxes, however after scrutinizing the details of the Respondent No.-3, it was found that Respondent No-3 was a subsidiary company of the Corporate Debtor. The wording of the said letter is "In view of above, we regret to inform our inability to

hand it over the subject property as it is not free from any encumbrance and mortgaged to some other banks, who are, we believe legitimate owners".

VII. It is stated that the applicant had served a letter correspondence to the Respondent No. 3 i.e., Gondwana Engineers Ltd for the remittance of monthly rent of the premises of the Corporate Debtor from Sept-2021 onwards, to deposit the said amount to the separate bank account of the Corporate Debtor, as maintained by the Applicant, however the applicant had neither received any license fees nor any response received from the Respondent No.-3.

VIII. It is stated that the applicant had served an E-mail to the Respondents for remittance of the monthly rent of the premises of the Corporate Debtor on 13.12.2021 however the applicant had neither received license fees nor received any response from the respondents.

IX. It is stated that despites of the several reminders and numerous phone calls to the respondents, the Respondent No. 3 had release license fees of Rs.

18,352/- (Rupees Eighteen Thousand Three Hundred and Fifty-Two only) instead of Rs. 54,000/- (Rupees Fifty-Four Thousand only), the applicant came to know from the received E-mail from the respondent No-1 & 2.

X. Under Lease Agreement dated 20.07.2021 in IA No. 94 of 2022:

“10. Termination

a) Right to Terminate: Subject to whatsoever has been stated in clause 10 (b) herein below, if the LICENSEE fails to pay the License Fee for Three (03) consecutive months or violates any of the material terms stated herein, in that event the LICENSOR shall serve a Notice giving the LICENSEE to remedy such breach / make the payment as the case may be within the Opportunity Period of Sixty (60) days and if the LICENSEE does not remedy such breach / does not make the payment as the case may be within Sixty (60) days of receiving written notice in that behalf from the LICENSOR, the LICENSOR shall be entitled to terminate the License executed on expiry of such notice period and the said agreement shall come to end automatically as well as the LICENSOR shall by giving a notice of 15 days in writing, shall take the possession of the said premises by entering in the demises premises on as it is where it basis and the LICENSEE in that event shall neither resist nor raise any dispute regarding same.

c) It has been specifically agreed by the LICENSEE that if the License is terminated by the LICENSEE during the initial period of one year or the LICENSEE commits any material default in observance of the terms and conditions on its part, on account of which the LICENSOR terminates this License during the initial period of one year, then the LICENSEE shall without prejudice to the other rights and remedies available to the LICENSOR, be liable to pay License Fee for the balance period out of one year and the Security Deposit so paid under this Agreement shall stand adjusted provided that such failure of the LICENSEE should not occur due to any reason pertaining to the LICENSOR.”

- I. The applicant states that, the applicant had also served an E-mail to the Respondents for remittance of the monthly rent of the premises of the Corporate Debtor on 08.01.2022, however the applicant had neither received license fees nor received any response from the respondents.
- II. The applicant states that, the respondents are not entitled to give the premises of the Corporate Debtor for more than 3 years, As per the Transfer of Properties Act 1882 are reproduce as under:

Section 65A of the Transfer of Properties Act 1882: -

Mortgagor's power to lease:-

(2)(e):-

"In the case of a lease of buildings, whether leased it or without the land on which they stand, the duration of the lease shall in no case exceed three years, and the lease shall contain a covenant for payment of the rent and a condition of re-entry on the rent not being paid within a time therein specified."

- III. The applicant states that, it is the settled law in the matter of **Agme Marketing Private Limited vs Canara Bank and 9 Others Writ Petition No. 16516**

of 2019 Before The Allahabad High Court, the verdict of the High Court are as under:-

Para O: "*Once it is held that **the lease violated the restrictions imposed by clauses (a) and (e) of Section 65A(2), it ceases to bind the mortgagee and does not protect the possession of the petitioners***". The contention of a monthly tenancy being created would undisputedly result in violation of the mandatory provisions engrafted in Section 13(13) of the 2002 Act. On both counts, therefore, the petitioners can neither be recognised in law to be in lawful occupation nor can they thwart the action of the Bank initiated under the 2002 Act.

- IV. The Applicant submits that it is the duty of applicant to take control and custody of any asset over which the Corporate Debtor has an "ownership right" including assets which may or may not be in the possession of the Corporate Debtor. The Applicant submits that similar issue has been discussed in *Goa Auto Accessories v. Suresh Saluja*, MM.A. No. 130 of 2019 in C.P. (I.B) No. 3863/MB/2018, before the Hon'ble Adjudicating Authority, National Company Law Tribunal, Mumbai Bench and by Hon'ble National Company Law Appellate Tribunal in *Encore Asset Reconstruction Company Private limited vs. Ms. Charu Sandeep Desai & Ors.*, Company Appeal

(AT) (Insolvency) No. 719 of 2018 is placed **Annexure-M** of the Application.

Reply

13. The Respondents No. 1 and 2 have e-filed a reply to the IA 94 of 2022 on 19.04.2022 stating that: -

- I. That the preliminary objection by Respondent No.1 and 2 is that the present application is not maintainable before this Tribunal. This Tribunal cannot order reliefs of eviction of the licensee and alleged recovery of the rent from the licensee.
- II. It is stated that the premises in questionp is already mortgaged to the Secured Creditor.
- III. With reference to Para (I) to (III), it is stated and submitted that the captioned application is not maintainable. It is stated and submitted that the Hon'ble Adjudicating Authority has no jurisdiction to grant reliefs as prayed for by the Applicant.
- IV. With reference to para IV (l) to (4) of the application, it is submitted that the suspended management of Doshion private Limited has already filed an appeal under Section 6I of the Code against the impugned

order dated 31.09 .2021 passed by this NCLT, Ahmedabad in C.P. (LB.) 59 of 2017. It is stated and submitted that the said appeal being Company Appeal (A.T.) 295 of 1t022 is currently pending before the Hon'ble NCLAT. The Respondents crave leave to produce the record of appeal as and when required during the hearing of the captioned application.

- V. With reference to Para 5 of the captioned application, it is stated and submitted that without prejudice to the submission that the captioned application is not maintainable, it is stated and submitted that the premises in question is already mortgaged to IL&FS Trust Company Limited, being the security trustee, in order to secure the loan availed by Doshion Veolia Water Solutions Private Limited from the BoB Consortium and proceedings under the RDDB Act, 1993 are also pending before the Hon'ble DRT, Ahmedabad wherein the Hon'ble DRT, Ahmedabad has passed an order restraining the parties from dealing/transferring the premises in question.

- VI. With reference to para 6 to 10, it is stated and submitted that without prejudice to submission that the captioned application is not maintainable, it is stated and submitted that the Respondents herein have categorically stated before the Applicant herein that the premises in question have already been leased in favour Respondent No. 3 vide lease agreement and further that the premises in question are already mortgaged in favour of IL&FS Trust Company Limited in order to secure the loan availed by Doshion Veolia Water Solutions Private Limited from the BoB Consortium.
- VII. With reference to Para 11 to 14 of the captioned application, the contents thereof are denied in toto. It is denied that Respondent No. 3 has not deposited any license fee. It is further denied that the Respondents did not reply to the Applicant as regards outstanding licensee fees. It is stated and submitted that the Respondent No. 3 has paid rent as per the license agreement. It is stated and submitted that Respondent No. 3 has paid maintenance charges of

the premises in question apart from paying rent of the premises in question. A copy of the payment slip evidencing payment of rent as well as maintenance receipts are annexed hereto and marked as Annexure L (Colly).

VIII. Further, it is stated and submitted that the Applicant in its minutes of meeting dated 17.13.2022 has also acknowledged receipt of rent from Respondent No. 3. Further, it is stated and submitted that the Applicant cannot file the captioned application for recovery of rent before this Hon'ble Adjudicating Authority as the same is not within the jurisdiction of this Hon'ble Adjudicating Authority and is de hors the provisions of the Code.

14. It is submitted that Respondent No.3 filed an additional affidavit on 26.10.2023 under diary no. D4205 states as under:

- i. At the outset, it is submitted that Respondent No. 3 executed a lease Agreement with Doshion Private Limited on 20.07.2021 in respect of: Office No. 203, 2nd floor, Unit No.3, Wing-A "Godrej Coliseum"

located at Lokmanya Pan Bazar, Behind Everard Nagar, Sion (East), Mumbai 400 022 admeasuring 1305 sq. fts. (hereinafter referred to as 'the property']

- ii. Pertinently, as per clause no: 6 (f) of the lease agreement: "The LICENSEE paying License Fee hereby reserved and observing and performing the terms and conditions hereof, on the part of the Licensee to be observed and performed, shall and may peaceably hold and enjoy possession of the said premises during the term or duration of the License, without disturbance or interruption from the Licensor or any person claiming under it."
- iii. Thereafter, Corporate Insolvency Resolution Process was initiated against Doshion Private Limited vide this Hon'ble Tribunal's order dated 31.08.2021 in CP (IB) 59 of 2019. It is pertinent to state that the said order was received on 13.09.2023.
- iv. It is submitted that approximately Rs.9,11,230/- (Rs.7, 85,839/- towards maintenance charges, Sinking Fund + Rs.1,25,391/-towards Property Tax) was pending in respect of the leasehold property as

on July 2021, i.e. before the commencement of the lease period. The Society through a legal notice dated 02.06.2021 has also threatened to recover the said dues, with further interest at 21% per annum on failure to pay.

- v. It is stated that the Respondent No. 3 has duly sent the invoices towards unpaid maintenance, sinking fund, repairs and maintenance charges to the Resolution Professional 25-02-2022 through R.P.A.D.
- vi. It is submitted that rent in respect of the said property was paid till February 2023.

Rejoinder

15. Applicant has filed its rejoinder on 19.09.2023 under inward diary no. D3619 by the erstwhile RP but later the Liquidator appointed by this Tribunal filed Rejoinder to the reply of the respondents on 11.03.2024 under inward diary no. D2111 which states as under:

- a. Payment of license fee as on the due date being on or before 7th of each succeeding Calendar month in advance as per clause 3 of the Lease agreement dated 20.07.2021 not paid.

- b. Interest free Refundable Security Deposit of Rs. 1,50,000/- as per clause no. 8 of Lease agreement dated 20.07.2021 not paid.
- c. Outstanding Rent of Rs. 13,98,385/- (Rupees Thirteen lakhs Ninety Eight Thousand Three Hundred Eighty Five Only) is due for the period starting from July 2021 to February 2024. Copy of the rent calculations chart is placed at "Annexure R-2" of the Rejoinder.
- d. Deduction of maintenance charges, municipal taxes and Advocate's bill in violation of clause 3 of the lease agreement dated 20.07.2021.
- e. Deposit of interest @ 18% p.a. along with the outstanding rent for the period starting from July 2021 to February 2024. Interest calculation on the outstanding rent could not be calculated due to the unavailability of FORM 16A or 26AS for the FY 2022-2023 and 2023-2024. FORM 16A TDS Certificate has been requested from Respondent No. 3 vide email dated 01.02.2024, 05.02.2024 and 13.02.2024.

f. Difference in the market value of the rent and the actual rent receivable i.e., Rs. 145 per square foot having total of 1305 Sq. Ft., which amounts to Rs. 1,89,225/- (Rupees One Lacs Eighty-Nine Thousand Two Hundred Twenty-Five Only).

16. It is stated that Respondent No. 3 filed Sur Rejoinder on 29.04.2024 under Inward Diary No. D3628 to the Rejoinder filed on 11.03.2024 by Liquidator which is stating as under:

- a. It is stated that the liquidator has acknowledged and accepted the contract of lease between the CD and the R3 dated 20.07.2021 but effectively complains of alleged breach of the same on part of R3.
- b. It is submitted that Dispute between the Applicant and R-3 on account of alleged breach of the terms of the lease deed dated 31.08.2021. A matter of dispute to be decided as per the dispute resolution mechanism agreed between the parties. it is further stated that the subject matter of the present application is a matter not arising out of or in relation to the liquidation proceedings of the CD and hence

beyond the scope Sec. 60(5) of the Insolvency & Bankruptcy Code, 2016, but it is a matter arising out of or in relation to the leave and license agreement dated 20.07.2021 executed between the CD and the R3.

- c. It is submitted that that the lease between the CD and the R-3 is genuine and in place long before the initiation of the Corporate Insolvency Resolution Process (CIRP).
- d. Further it is stated that withholding of rent on account of non-payment of Society dues by the CD for duration prior to commencement of lease in July,2021.
- e. It is stated that suppression of material fact by applicant in relation to non-payment of rent on account of prior breach on the part of the resolution professional with regard to issue of Society dues.

- 17. It is stated that Respondent No. 1 and 2 filed an Additional Affidavit on 29.04.2024 under Inward Diary No. D3610 to place on record the appeal filed before the Hon'ble Supreme Court. It is further stated that vide impugned order dated

08.02.2024, the Hon'ble NCLAT has dismissed the Appeal filed by the Appellants seeking to set aside the Liquidation Order dated 03.10.2023 passed by this Tribunal in Corporate Insolvency Resolution Process (CIRP).

18. The applicant has filed a Rebuttal Affidavit on 09.05.2024 under Inward Diary No. D3897 to the sur-Rejoinder and Additional Affidavit filed by the Respondent which stated as under:

- i. It is stated that despite being fully aware of the ongoing proceedings under IBC as well as of the fate of the Company petition, the Directors of the Corporate Debtor have consciously and knowingly executed the said purported Lease Agreement dated 20th July 2021 of the subject property in favour of its associate company with mala fide intension of transferring the assets of which the Corporate Debtor has absolute rites and complete legal ownership.
- ii. It is submitted that the purported Lease Agreement stands terminated in accordance with Clause 10 of the said purported Lease Agreement, wherein the lessor is empowered to terminate the agreement if the

lessee commits default in performance of the terms and conditions, including the regular payment of the monthly rent. That the Erstwhile Resolution Professional in compliance with his duties had issued numerous letters/follow-up communications/reminders upon the Respondent to remit the outstanding rental dues, however, to the utter dismay of the Applicant, the Respondent has failed to remit the outstanding rental dues for substantial period in the account of the Corporate debtor.

- iii. It is submitted that the Suspended Board of Directors vide its email dated 25-12-2023 informed the Applicant that they have received a notice regarding "Godrej Coliseum maintenance" however, the Notice from the Advocate of Coliseum Co-Op. Premises Society Ltd was addressed to Doshion Water Solutions Pvt. Ltd. dated 6th December 2023. The Applicant has accordingly intimated the said Coliseum Co-Op. Premises Society Ltd through email dated 20/01/2024 about the initiation of the

Liquidation Process of the Corporate Debtor and imposition of Moratorium and that they are ought to submit their respective Doshion Private Limited, the Corporate Debtor.

- iv. It is submitted by Respondent No. 3 that they have paid the rents till 15-04-2023. However, as per the CIRP Bank Account opened by the Erstwhile Resolution Professional and maintained with IDBI Bank (Ahmedabad Branch), the Applicant has received rent only uptill 24th February 2023 for the period which is not clarified by the Respondent No. 3 in its Rent Ledger Account. The Applicant has also requested to share FORM 16A or 26AS from the Respondent vide email dated 01.02.2024, 05.02.2024 and 13.02.2024 however, they have not provided the said information till date.
- v. It is stated that the section 41 of the Arbitration and Conciliation Act talks about the course of action to be undertaken if the parties to an arbitration agreement become insolvent. This section goes hand in hand with provisions of the Insolvency and Bankruptcy

Code (IBC). In this case, the arbitration agreement shall be void. Once the company is declared insolvent, then the arbitration clause cannot have a binding effect on the receiver.

19. The Respondent No. 3 has filed an additional affidavit on 14.05.2024 under Inward No. I1019 to the Rebuttal Affidavit in rejoinder filed by the Liquidator on 09.05.2024. It is stated as under:

- a) That the ground for seeking the possession of the property in question is by virtue of alleged breaches of the leave and license agreement dt. 20.07.2021.
- b) This tantamount to a dispute between the applicant and the CD, which is required to be addressed as per the dispute resolution mechanism agreed between the CD and the R3. There cannot be selective application of the terms of the leave and license agreement dt. 20.07.2021, where for example, for the purpose of payment of license fee, the said agreement is acknowledged by the applicant, but for the purpose of resolution of disputes, the same is ignored by the applicant.

c) That the dispute resolution clause of the said leave and license agreement dt. 20.07.2021 is reproduced herein below as follows:

That the CD was having financial difficulties and in order to generate income and meet expenses of salaries of staff etc. the CD executed the leave and license with R3 on 20.07.2021 on stamp paper of 14.07.2021 for a period of 5 years.

That the R3 had been paying license fee from time to time, society maintenance payments, ledger of which is hereto annexed and marked as Annexure A. The deponent craves leave to place on record the relevant bank entries to substantiate the ledger entries.

d) It is stated that by the virtue of the dispute on account of alleged non-payment of license fee on the part of the R3, the present application has come to be filed seeking to take possession of the premises in question and seeking payment of license fee. It is submitted that this issue squarely falls in the ambit of dispute between the parties to the license agreement and is

not a question arising out of or in relation to liquidation of the CD.

20. The Applicant filed a synopsis on 09.05.2024 under Inward Diary No. D3897. The Respondents has filed a Written Submissions on 31.01.2024 under inward Diary No. D837.
21. We have heard the Learned counsels in both IAs and perused the documents placed before us.
22. The observations of the Tribunal are as follows:

a) The Application filed the IA No. 63 of 2022 and IA No. 94 of 2022 seeking vacation of the property mentioned in both the applications and seeking to release licensee fee towards the pending rent amount of both the properties.

b) Dates and Events:

Dates	Events
20.07.2021	License Agreement between CD and Gondwana Engineers Limited (IA 94 of 2022) which is unregistered agreement.

31.08.2021	Lease Agreement between CD and Fivebro Water Services Private Limited (IA63 of 2022) which is registered on 31.08.2021.
31.08.2021	Corporate Insolvency Resolution Process (CIRP) order was passed against M/s Doshion Private Limited
12.09.2021	Public Announcement
15.09.2021	Email to handover the possession of assets of the Corporate Debtor served on Respondents.
11.11.2021	Email and Letter Correspondences on Respondent to handover the possession of the assets

22.11.2021	Report Certifying the Re-Constitution of CoC.
13.12.2021	Email to Respondents for remittance of the monthly rent of the premises of CD.
08.01.2022	Again Email to Respondents for remittance of the monthly rent of the premises of CD.
03.10.2023	Liquidation Order against CD
03.11.2023	AMC Sealing the one side of the entrance of leased premise of IA 63 of 2022.

c) Undisputed Facts of both the IA's:

i. the description of the premises in question of the

Corporate Debtor is as under:

***"Sigma 9, Corporate Park, Behind Rajpath Club,
Bodakdev, Ahmedabad having built up area 659.61***

sq. mtr. and Plot area 290.13 sq. mtr.” in IA 63 of 2022.

"Office No. 203, 2nd floor, Unit No. 3, Wing –A “Godrej Coliseum” located at Lokmanya Pan Bazar, Behind Everard Nagar, Sion (East), Mumbai- 400022 admeasuring 1305 sq. fts.” in IA 94 of 2022.

ii. Rental lease flow is as under:

For IA 63 of 2022 it is stated that the Lease agreement dated **31.08.2021** was executed between Corporate Debtor and Respondent No.3 for the **Tenure of 10 years**, in which it is stated that the said Agreement is effective from 1st September 2021 for the monthly rent of **Rs. 1,00,000/-** (Rupees One Lakh only).

For IA 94 of 2022 it is stated that that the Said premises was given to the R-3 i.e. M/s Gondwana Engineers Limited by the Corporate Debtor through rent agreement for the **Tenure of 5 years** commencing from **20.07.2021** for the monthly rent of **Rs. 50,000/-** (Rupees Fifty Thousand only).

iii. The Corporate Debtor was admitted to the Corporate Insolvency Resolution Process (CIRP) on 31.08.2021 and later the Liquidation order was passed by this Tribunal on 03.10.2023. The Liquidation order dated 03.10.2023 was challenged before Hon'ble NCLAT which upheld the Liquidation order. Then the said order was challenged before the Hon'ble Supreme Court of India which is pending and there is no stay order passed in the proceedings yet.

d) Determination of the payment of Lease Rent:

- The amount of the lease Rent in IA 63 of 2022 from oct 2021 to Feb 2024 is bifurcated below:

➤ Service Sale excluding GST:

Rs.29,00,000(monthly Rs. 1,00,000)

➤ IGST Total: Rs. 2,61,000 (monthly Rs. 9000)

➤ Total Outstanding Amount: Rs. 34,22,000
(monthly Rs. 1,18,000)

➤ Total TDS Amount: Rs. 2,90,000 (Monthly Rs. 10,000)

- Total Receivable Amount after deducting of TDS:
Rs. **31,32,000** (Monthly Rs.54000)
- Total **Amount Received: Rs. 8,98,020**
- Final **Outstanding Amount** after deduction of
TDS and receivable amount: **Rs. 22,33,980**
- In relation to the **AMC dues** it is seen that that
amount is approximately **Rs. 16.21 Lacs.**
- The amount of the lease Rent in IA 94 of 2022 from
July 2021 to Feb 2024 is bifurcated below:
 - Service Sale excluding GST:
Rs.15,50,000(monthly Rs. 50,000)
 - IGST Total: Rs. 2,79,000 (monthly Rs. 9000)
 - Total Outstanding Amount: Rs. 18,89,000
(monthly Rs. 59000)
 - Total TDS Amount: Rs. 1,55,000 (Monthly Rs.
5000)
 - Total Receivable Amount after deducting of TDS:
RS **16,74,000** (Monthly Rs.54000)
 - Total **Amount Received: Rs. 2,75,615**
 - Final **Outstanding Amount** after deduction of
TDS and receivable amount: **Rs. 13,98,385.**

➤ In relation to the **Society dues** it is seen that it is seen that the amount is approximately **Rs. 9,11,230/-**(Rs. 7,85,839/- towards maintenance charges, Sinking Fund + Rs. 1,25,391/- towards Property Tax)

- e) It is seen that the Respondents herein have raised the objection that this Tribunal does not have jurisdiction over the matters related to the recovery of rents and eviction of the premises. The lease agreement qua IA 63 of 2022 was executed on the date of pronouncement of CIRP order which is an admitted fact and also the premises were occupied by Respondent No.3 of both the IA's. whether the jurisdiction of this Tribunal in such matters is applicable or not is conferred by the Judgment of the **Hon'ble NCALT** in the matter of **Nitin Jain Vs. Universal Tutorial Private Limited (Company Appeal(AT)(Insolvency)No. 337 of 2021)** which relies on the matter of "**Arcelor Mittal India Private Limited Vs. Satish Kumar Gupta (2019) 2 SCC 1**" where the **Hon'ble Supreme Court** held that:

"83. The non-obstante Clause in Section 60(5) is designed for a different purpose: to ensure that the NCLT alone has jurisdiction when it

comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings.”

- f) We need to peruse Section 60(5) of the IBC. The said section read as hereunder:

“60(5). Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of (a) any application or proceeding by or against the corporate debtor or corporate person; (b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and (c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this code.”

- g) Section 238 also needed to be relied upon which is reproduced as under:

“238. The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

It is made clear by the NCLT, Mumbai Bench in the matter of **Alchemist Assets Reconstruction Company Limited v Precision Fasteners Ltd. [CP. No. (IB) 1339 (MB)/2017]** in which it was directed to vacate the possession of the liquidation estate on a similar occasion where certain occupants continued to occupy the subject property. Section 238 of the IBC and the underlying non-obstante clause, its widest amplitude

would override anything inconsistent contained in any other enactment and it would not be unreasonable to hold that provisions of the Code will have overridden effect over the other provisions of rent legislation for the time being in force and shall supersede over any other right guaranteed under the rent legislations

- h) With respect to the jurisdiction in the matter over the eviction of the premises, Section 231 of the Insolvency & Bankruptcy Code, 2016, states as under:

“Bar of Jurisdiction

Section 231: *No civil court shall have jurisdiction in respect of any matter in which the Adjudicating Authority or the Board is empowered by, or under, this Code to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such Adjudicating Authority or the Board under this Code.”*

- i) It is seen from the pleadings that the Rent is outstanding against both the premises which is in the matter of IA 63 of 2022 is about 22,33,980 and in the matter of IA 94 of 2022 is about 13,98,385.
- j) The company was ordered for liquidation by the order of this Tribunal on 03.10.2023. The Liquidation order was challenged before the Hon’ble NCLAT which upheld the Liquidation order. Hence the Liquidator appointed who also is the applicant herein filed the present application

to fulfil his duties as the Liquidator as provided under Section 35 of the IBC, 2016. Section 35 of IBC enumerated the powers and duties of the liquidator. Section 35(1) which is relevant for the present case is as follows:

“35. Powers and duties of liquidator. - (1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely: -

(a) to verify claims of all the creditors;

(b) to take into his custody or control all the asserts, property, effects and actionable claims of the corporate debtor;

(c) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;

.....

(n) to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board; and

(o) to perform such other functions as may be specified by the Board.”

k) The property in question is part of the Liquidation estate which makes the duty of the Liquidator to take custody or control of all assets, property, effects, and actionable claims of the Corporate Debtor as per the Section 35(1)(b) of the IBC which is stated above.

l) The Liquidator is pursuing these applications for the eviction of the premises. There is no dispute with regards to the ownership of the premises which is owned by the Corporate Debtor. in the case of the **“Jhanvi Rajpal**

Automotive Pvt. Ltd. v R.P. of Rajpal Abhikaran Pvt. Ltd. & Anr. [Company Appeal (AT) (Insolvency) No. 1417 of 2022, decided on 05.01.2023]” the Hon’ble **NCLAT** laid down following on the above background in paragraph 21:

“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 cannot be accepted. We thus, in view of the foregoing discussions are of the considered opinion that 19 Company Appeal (AT) (Insolvency) No. 337 of 2021 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.”

m) The aforesaid case was challenged before the Hon’ble Supreme Court in **Civil Appeal No(s). 736/ 2023 (Jhanvi Rajpal Automotive Pvt. Ltd. v R.P. of Rajpal Abhikaran Pvt. Ltd. & Anr.)** and the Hon’ble Supreme Court upheld the order dated 05.01.2023 passed by this Tribunal in **Company Appeal (AT) (Insolvency) No. 1417 of 2022 (supra)** vide order dated 10.02.2023. The Hon’ble NCLAT in the case of **Nitin Jain Vs. Universal Tutorial Private Limited (Company Appeal (AT)(Insolvency)No. 337 of 2021)** affirms the above mentioned case.

- n) The Lease Agreement which is subject matter of IA 63 of 2022 seems to be eye wash and with ulterior motive to avoid possession. The possession of the leased premise is with Respondent No. 3 of the respected IA's which is due to the lease agreement executed just before the admission of the Corporate Debtor or on the same day of the admission order of Corporate Insolvency Resolution Process (CIRP) which are 31.08.2021 and 20.07.2021 for the IA 63 of 2022 and IA 94 of 2022 respectively. It is clear from the pleadings that both Lease Agreements between the Corporate Debtor and R-3 of the respective IA's were duly executed with the full knowledge that the CIRP proceedings were going on with this Tribunal and still the Respondents herein executed the Agreements which makes their intentions very clear.
- o) With respect to the IA 94 of 2022 it is seen that the Respondent No. 3 executed a License Agreement which was never registered. The leave and License agreement given special legal status pursuant to the Maharashtra Rent Control Act 1999. In Maharashtra a leave and License Agreement is compulsory required to be

registered, irrespective of the tenure of the agreement.

Hence, the Agreement is void-ab-intio and non-est factum in terms of law.

p) Vacation of premises on Non-payment clause in the lease agreements in both IA's which is reproduced as under:

Under Lease Agreement dated 31.08.2021 in IA No. 63 of 2022

"8. Termination:

(b) If the lessee commits any default in observance and performance of the terms and conditions mentioned in this Deed on its part, including regular payment of monthly rent on account of which, the Lessor shall be required to vacate and handover the possession to the Lessor. This will be without prejudice to other rights of the Lessor."

Under Lease Agreement dated 20.07.2021 in IA No. 94 of 2022

"10. Termination

a) Right to Terminate: Subject to whatsoever has been stated in clause 10 (b) herein below, if the LICENSEE fails to pay the License Fee for Three (03) consecutive months or violates any of the material terms stated herein, in that event the LICENSOR shall serve a Notice giving the LICENSEE to remedy such breach / make the payment as the case may be within the Opportunity Period of Sixty (60) days and if the LICENSEE does not remedy such breach / does not make the payment as the case may be within Sixty (60) days of receiving written notice in that behalf from the LICENSOR, the LICENSOR shall be entitled to terminate the License executed on expiry of such notice period and the said agreement shall come to end automatically as well as the LICENSOR shall by giving a notice of 15 days in writing, shall take the possession of the said premises by entering in the demises premises on as it is where it basis and the LICENSEE in that event shall neither resist nor raise any dispute regarding same.

c) It has been specifically agreed by the LICENSEE that if the License is terminated by the LICENSEE during the initial period of one year or the LICENSEE commits any material default in observance of the terms and conditions on its part, on account of which the LICENSOR terminates this License during the initial period of one year, then the LICENSEE shall without prejudice to the other rights and remedies available to the LICENSOR, be liable to pay License Fee for the balance period out of

one year and the Security Deposit so paid under this Agreement shall stand adjusted provided that such failure of the LICENSEE should not occur due to any reason pertaining to the LICENSOR.”

23. Accordingly, the Respondent No. 3 of both the IA's are directed to vacate the premises in question and handover the possession of the said premises within seven days to the Applicant/Liquidator herein. Regarding the payments of rent due against both of the premises, it is pertinent to note that the rent due is also payable to the Applicant. With respect to the Dues of AMC and Society dues as per the clauses of the Lease Agreement the lessee will be liable to pay the charges after the signing of the said agreement. Charges for period prior to agreement, if any, will be paid by the Applicant as per the scheme of Insolvency & Bankruptcy Code, 2016.
24. In view of the above observations and averments, we hereby Allow the prayers in both Interlocutory Applications being IA No. 63 of 2022 and IA No. 94 of 2022. Hence, IA No. 63 of 2022 and IA No. 94 of 2022 in CP(IB)59 of 2019 is Allowed and Disposed of.

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SAMEER KAKAR
MEMBER (TECHNICAL)
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SHAMMI KHAN
MEMBER (JUDICIAL)