IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

IA(IBC)/75/KOB/2026
IN
CP(IBC)/5/KOB/2024

(under Section 60 (5) of the Insolvency and Bankruptcy Code 2016, r/w Rule 11 of the NCLT rules 2016)

Date of Institution: 10.03.2026.

Order Delivered on: 08.05.2026.

In the matter of:

M/s. Davani Silks Pvt. Ltd..

***Memo of Parties*:**

Mr. G. Vinayan,
Address : Pulari house, Kadathi Kara, Market P.O., Velloorkunnam Village, Muvattupuzha Taluk, Ernakulam District- 686673

..**Applicant.**

Vs.

Mr. C S Narendar Reddy Banala,
Interim Resolution Professional of Davani Silks Pvt. Ltd.
Address: Flat 204, Parkstone Apartments, Sirimalle Nagar Colony, Nalanda Nagar Hyderguda, Hyderabad-5000048.

... **Respondent**

Coram:

HON'BLE MEMBER (JUDICIAL) : SHRI. VINAY GOEL

Appearance:

For the Applicant : Mr. Aadithya S R, Advocate

IRP : CS, Mr. Narendar Reddy Banala

O R D E R

1. This application has been filed under Section 60 (5) of the Insolvency and Bankruptcy Code 2016 r/w Rule 11 of the NCLT rules 2016 with the following prayers: -

    a) *Direct the Respondent-Interim Resolution Professional to consider, decide and pass appropriate orders forthwith on Ann. A10 application seeking handing over of vacant and peaceful possession of Building Nos. 7/128 to 7/138, Muvattupuzha Municipality, in accordance with law;*

    b) *Consequent thereto, direct the Respondent-Interim Resolution Professional to hand over vacant and peaceful possession of Building Nos. 7/128 to 7/138, Muvattupuzha Municipality to the Applicant forthwith along with keys;*

    c) *Declare that Building Nos. 7/128 to 7/138, Muvattupuzha Municipality covered under Annexure Al do not form part of the assets of the Corporate Debtor and that continued retention of possession is not protected by the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016;*

    d) *Permit the Applicant to take possession of Building Nos. 7/128 to 7/138, Muvattupuzha Municipality along with keys and to deal with any abandoned articles lying therein, in accordance with law;*

    e) *Pass such other or further order(s) as this Hon'ble Adjudicating Authority may deem fit and proper in the interests of justice.*

Brief facts of the case are as follows: -

2. The Applicant submitted that he is the absolute owner of an extent of 3500 sq. ft. situated on the ground floor of the building bearing Nos. 7/128 to 7/138 of Muvattupuzha Municipality, Ernakulam.

3. The Schedule Premises were leased to the Corporate Debtor, Davani Silks Pvt. Ltd., as per the lease deed dated 18.09.2020, on a monthly rent of Rs. 1,68,300/-plus GST, which was subsequently revised from time to time.
4. Applicant further submitted that the rent was later enhanced to Rs.1,98,000/- plus GST, thereafter revised to Rs. 1,93,000/- plus GST with effect from 07.08.2021, and finally fixed at Rs. 2,27,740/-inclusive of GST.
5. The Corporate Debtor committed default in payment of rent from April 2023 onwards, despite repeated demands, and also failed to clear statutory dues, including electricity charges of the Schedule Premises.
6. It is further submitted that the applicant and the Corporate Debtor mutually determined the lease and entered into a written agreement with the Applicant on 17.07.2023, whereby the Corporate Debtor agreed and undertook to hand over vacant possession of the Schedule Premises on or before 15.11.2023, after removing all articles and furniture stored therein, and further agreed to adjust the rent arrears against the security deposit and to clear all statutory charges and damages before handing over possession.
7. Despite Annexure. A2, the Corporate Debtor failed to honor its undertaking and neither handed over vacant possession nor cleared the admitted arrears and statutory liabilities.
8. Left with no alternative, the Applicant filed RCP No. 4/2024 before the Rent Controller, Muvattupuzha, under Section 11(2) of the Kerala Buildings (Lease and Rent Control) Act, 1965, along with IA No. 3/2024 under Section 12 of the Act.
9. In the meantime, this Adjudicating Authority admitted CP (IBC) No. 05/KOB/2024 and appointed the Respondent as Interim Resolution Professional, declaring a moratorium under Section 14 of IBC,2016 of the Insolvency and Bankruptcy Code, 2016. Pursuant to the intimation sent by

the Respondent to the applicant, the Applicant submitted his claim on 28.06.2024 for an amount of Rs. 25,62,825/-towards arrears of rent.

10. The Respondent, in the meanwhile, had entered an appearance before the Rent Controller and filed objections on behalf of the corporate debtor, bringing to notice the moratorium order passed by this Adjudicating Authority Consequently, the Rent Controller, by order dated 03.12.2025 in IA No. 3/2024, kept the proceedings in abeyance solely on the ground of moratorium.
11. It is submitted that the Corporate Debtor has, in fact, abandoned the Schedule Premises by locking the same and discontinuing business operations, without handing over keys or vacant possession to the Applicant.
12. The Schedule Premises presently stand locked, unused and unproductive, yielding no rent to the Applicant, while the Applicant continues to be burdened with statutory liabilities.
13. Due to non-payment of electricity charges by the Corporate Debtor, arrears of KSEB dues have accumulated in respect of the Schedule Premises, resulting in Revenue Recovery proceedings against the Applicant, which he is now compelled to clear in instalments, despite not being in possession or enjoyment of the premises.
14. It is submitted that, there is no subsisting lease in respect of the Schedule Premises. The Corporate Debtor has no legal or contractual right to continue in possession and further the Premises covered under Annexure Al are not assets of the Corporate Debtor.
15. It is submitted that after submission of the claim and upon continued failure to restore possession of the Schedule Premises, the Applicant had submitted a detailed written application dated 06.01.2026 before the

Respondent-Interim Resolution Professional, specifically requesting him to hand over vacant and peaceful possession of the Schedule Premises in terms of the Agreement dated 17.07.2023, pointing out that the lease stood mutually determined, that the Premises do not form part of the assets of the Corporate Debtor, and that continued retention was causing grave hardship and statutory liability to the Applicant.

16. Despite receipt of the said application dated 06.01.2026, the Respondent has neither passed any order thereon nor communicated any decision or response to the Applicant till date, thereby leaving the Applicant remediless and compelling him to invoke the jurisdiction of this Adjudicating Authority under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

Reply affidavit filed by IRP

17. It is submitted that this Adjudicating Authority vide Order dated 30.05.2024 in CP(IBC)/5/KOB/2024, admitted M/s. Davani Silks Private Limited ("Corporate Debtor") into the Corporate Insolvency Resolution Process ("CIRP"). It is further submitted that the Resolution Professional is duty-bound to comply with the provisions of the IBC 2016 and the directions of this Adjudicating Authority. It is further submitted that the premises in which the company was doing its operation are not an asset of the company.
18. It is submitted that the showroom is in the possession of the Corporate Debtor with furniture, fittings (Air Conditioners), stock of readymade garments and Fabrics stored in the said premises. Since the Corporate Insolvency Resolution Process (CIRP) is at its final stage and the application seeking liquidation is pending adjudication before this this Tribunal, it is submitted that any decision regarding vacating the premises shall be subject to and contingent upon the orders to be passed by this this Adjudicating Authority , as well as the decision of the Stakeholders'

Consultation Committee / Committee of Creditors concerning the future course of action in relation to the assets Viz. Furniture, Fittings (Air Conditioners), stock of Readymade Garments and Fabrics of the Corporate Debtor.

19. It is further submitted that this Adjudicating Authority has granted a moratorium under Section 14 of IBC,2016 of the Insolvency & Bankruptcy Code 2016, which prohibits the initiation of any proceedings for vacation of the premises under the occupation of the Corporate Debtor, unless the premises are voluntarily handed over by the Corporate Debtor. As such, the request to hand over the possession of the premises needs approval of the Committee of Creditors. It is further submitted that said events had occurred before the Insolvency commencement date.
20. It is submitted that the default occurred prior to the commencement of the CIRP. The non-payment of rent from April 2023 is neither deliberate nor willful, but is attributable to the financial distress suffered by the Corporate Debtor since the onset of the COVID-19 pandemic, which led to reduced sales and adversely impacted its profitability. It is further submitted that, despite the infusion of funds by the Directors and shareholders in an effort to revive the Company, the anticipated sales could not be achieved, thereby resulting in continued losses.
21. It is submitted that the non-handing over of the premises is not deliberate. Upon examination of the available records, it appears that the agreement was executed with a bona fide intention to comply with its terms, on the expectation that sales would improve. However, as the anticipated increase in sales did not materialize, the financial position of the Corporate Debtor deteriorated, leading creditors to file an application under Section 7 of the IBC, 2016, for initiation of the CIRP against the Corporate Debtor.

22. It is further submitted by the IRP that filing of the RCP no 4/2024 before the Rent Control Court, Muvattupuzha, under Section 11 of the Kerala Buildings (Lease and Rent Control) Act 1965, this respondent offers no submission other than the fact that this Adjudicating Authority does not enjoy the jurisdiction to decide on such matters.
23. It is submitted that the on the commencement of the CIRP, has given the intimation to the Lessor about the commencement of the CIRP of the Corporate Debtor with a request to submit the claim. The last date for submission of the Claim was 13-06-2024. However, the claim was received by the Interim Resolution Professional on July 11, 2024, with a delay of 28 days. However, the Resolution Professional has sent emails on July 11, 2024, August 8, 2024, and August 14, 2024, seeking certain clarifications.
24. It is submitted that the Resolution Professional has filed a response informing of the moratorium granted by this Tribunal, pursuant to which the Rent Control Court has kept the proceedings before it in abeyance until the expiry of the moratorium period.
25. It is submitted that the showroom premises contain furniture, fittings (including air conditioners), stock of readymade garments, and other items owned by the Company. It would be difficult for the Corporate Debtor to dismantle, remove, and relocate these assets without obtaining financial approval from the Committee of Creditors.
26. It is submitted that, with respect to the locking of the premises, KSEB dues, and the revenue recovery proceedings initiated against the applicant, the Resolution Professional is making earnest efforts and is in discussion with the Committee of Creditors to arrive at an early decision in the best interests of both the Corporate Debtor and the Lessor. It is further submitted that the existence of KSEB dues or revenue recovery proceedings cannot constitute

a valid ground for vacating the premises presently under the occupation of the Corporate Debtor, particularly when the moratorium under Section 14 of IBC, 2016 remains in force.

27. It is submitted that, in view of the moratorium granted under Section 14 of IBC,2016 , irrespective of the subsistence of the lease or not, if the premises is in the possession of the Corporate Debtor, no coercive proceedings can be taken against the Corporate Debtor to vacate the premises in its possession.

28. It is submitted that the possession of the property by the Corporate Debtor is protected by the moratorium granted under Section 14 of the IBC, 2016, to enable the Corporate Debtor to revive the business or for liquidation, which is beneficial to all the stakeholders. Moreover, Section 238 of the IBC provides that the provisions of the IBC would prevail in instances of inconsistencies.

29. It is submitted that the premises is retained in possession for the revival of the Corporate Debtor, and it is not intended to retain the possession without doing any activity. It is further submitted that, when there is a clear direction of moratorium under Section 14 of IBC,2016, this Adjudicating Authority cannot invoke Section 60(5) to revoke the same when the CIRP is in place as on the date of this application. The events mentioned in the instant paragraph had happened for reasons beyond the control of the Corporate Debtor and the Resolution Professional. Admittedly, the CoC, in its commercial wisdom, decided that the business need not be carried on, as the same would require more infusion of funds. The respondent RP is an officer of the Court and is duty-bound to act according to the decision of this Adjudicating Authority and hence offers no other submissions.

Rejoinder

30. It is submitted that the moratorium under the Insolvency and Bankruptcy Code, 2016, does not bar the handing over of possession of premises that are not in actual occupation and where the possession retained is nominal or symbolic. The Applicant seeks restoration of possession of premises that are not being utilized for the operations of the Corporate Debtor.
31. The Applicant submitted that he is ready and willing to take appropriate steps, as may be directed by this Tribunal, to ascertain and verify whether any stock-in-trade or other assets of the Corporate Debtor are lying in the premises. It is further submitted that possession of the premises by the corporate debtor is only nominal or symbolic, which is not as intended by the Code.
32. It is submitted that the Committee of Creditors has decided to seek liquidation of the Corporate Debtor. In such circumstances, no purpose would be served by continuing to delay the handing over of the premises to the Applicant. It is submitted that the continued withholding of the premises without any activity would lead to further deterioration of the property, resulting in substantial loss and hardship to the applicant. It is further submitted that the future income that could otherwise be generated from the property would also be adversely affected. It is further submitted that , for the past four years, the applicant's property has remained unutilized and has not yielded any income.
33. The applicant is unable to utilize his premises that is able to fetch a reasonable income, on account of the failure of the corporate debtor to pay off the arrears of rent.
34. It is submitted that the applicant would extend his full cooperation to see that any such difficulty is not caused to the respondent in doing so.

35. It is submitted that the premises are not under the occupation of the corporate debtor anymore. Hence, the handing over of possession of the premises, which is not occupied, is not intended to be saved under the IBC. It is well within the jurisdiction of this Adjudicating Authority under Section 60(5) to interfere and pass appropriate orders in any such event.
36. It is submitted that the applicant's Annexure A10 request for handing over vacant possession has not been answered to his knowledge by the respondent. The alleged email reply referred to as Annexure-2 has also not been received by the Applicant at any point of time.
37. It is further submitted that no property of the corporate debtor is affected in the event that this application. It is submitted that the Annexure A2 agreement is not disputed. Since no resolution plan has been proposed in respect of the Corporate Debtor and in such a case, where the COC has decided to call for any further business to be run by the corporate debtor, the Applicant submitted that the Resolution Professional was competent to take an appropriate decision with regard to the handing over of possession, particularly when the premises is not being used for the purposes of the Corporate Debtor and when no prejudice would be caused to the insolvency process.

Findings:

38. This Adjudicating Authority has heard both sides and has also gone through the materials available on record. There is no dispute that the Applicant is the owner of the property in question and that the Corporate Debtor took the property on rent in 2020. Further, the Respondent has failed to dispute the termination of the original lease agreement dated 17.09.2023. There is no dispute that this Adjudicating Authority passed an order under Section

7 of IBC,2016 in CP(IBC)/5/KOB/2024 and initiated the CIRP process against the Corporate Debtor vide order dated 30.05.2024. There is no dispute that once the said order was passed by this Adjudicating Authority, Section 14 of IBC,2016 came into force and the Corporate Debtor and its assets were/are subject to a moratorium period as initiated under Section 14 of IBC,2016. There is no dispute that the Applicant filed RCP No. 4/2024 before the Rent Controller, Muvattupuzha, under Section 11(2) of the Kerala Buildings (Lease and Rent Control) Act, 1965, and the said proceedings have been kept in abeyance due to the moratorium under Section 14 of IBC,2016. It is alleged that prior to the initiation of CIRP, the Corporate Debtor was in arrears of rent. At present, the CoC is not paying any rent to the Applicant.

39. Each case turns on its own facts and circumstances and cannot be equated with others; even a slight variation may alter the entire scenario and adjudication. In the present case, the Corporate Debtor, prior to initiation of CIRP, was engaged in the business of garments, and upon commission of financial default, insolvency proceedings were initiated. From the records, it is evident that no resolution plan has been received for the revival of the Corporate Debtor, and the CoC has already taken a decision to go for liquidation.

40. As per the amended provisions of the Insolvency and Bankruptcy Code, 2016, during liquidation, the Corporate Debtor cannot be sold as a going concern. The goods and assets of the Corporate Debtor are lying in the premises. There are no documents on record about the value and valuation of such assets, but we can take notice of the liability on account of the monthly rent as per the agreement between the landlord and the Corporate Debtor. Under the given circumstances, the Committee of Creditors and

Resolution Professional are required and expected to invoke their commercial wisdom and take an appropriate decision. During the CIRP process, the Committee of Creditors and Resolution Professional are bound by certain obligations, if any premises is a rental property or the occupation of the Corporate Debtor is in view of some compensation.

41. This Adjudicating Authority places reliance on the judgment of the Hon'ble Supreme Court in ***Sincere Sincere Securities Pvt. Ltd. and Ors. v. Chandrakant Khemka and Ors.,*** **(2025) ibclaw.in 296 SC**., wherein it was held as follows: -

> *"The commercial wisdom of the CoC must, accordingly, be given primacy during the CIRP. When UCO Bank, constituting the CoC, decided that retention of the possession of the subject property was not in the interest of the CIRP, that decision must be given the respect that is lawfully due to it.*
> *9. Lastly, we may note that Section 14(1)(d) of the IBC states that once the adjudicating authority, by order, declares a moratorium, it would prohibit, amongst other acts, the recovery of any property by an owner or lessor where such property is occupied by or is in the possession of the corporate debtor. In the case on hand, the chronology of events manifests that, at its very first meeting held on 20.02.2023, the CoC discussed the issue of retention of the ground floor of White House. It asked the Resolution Professional to visit the said premises and decide as to whether holding on to the same was required, spending a huge amount towards rentals. Thereafter, at its third meeting held on 06.04.2023, the CoC took note of the Resolution Professional's report that it was not feasible to hold on to the subject property, as only 8 to 9 staff members were there and the revenue generated would not be sufficient to pay the lease/license rentals. The CoC recorded that the matter was duly discussed and the Resolution Professional was asked to hand over possession as early as possible, as there was no requirement to hold on to the said premises spending such a huge amount towards rentals.*
> *10. It was only thereafter that the appellants filed Interlocutory Applications before the NCLT praying for a direction to deliver possession of the subject property to them along with other reliefs. It is, therefore, manifest that this was not a simple case of the owner of the property seeking recovery of possession thereof from the corporate debtor, which would be barred by the express language of Section 14(1)(d) of the IBC. On the other hand, as already noted hereinbefore, it*

was the CoC and the Resolution Professional who were and still are desirous of returning the possession of the property in question to the appellants, keeping in mind the adverse financial implications of retaining the same."

42. From the above judgment, it is evident that while the moratorium under Section 14 of the Code restricts recovery of possession by the lessor, the decision as to whether the Corporate Debtor should continue to retain or relinquish possession of a leased premises squarely falls within the domain of the commercial wisdom of the Committee of Creditors. Where the Committee of Creditors, upon due consideration of the financial implications, forms an opinion that retention of such premises is not beneficial to the CIRP, such a decision deserves primacy and must be respected.

43. In the present case, it is not in dispute that the premises are not being actively utilised for running the business of the Corporate Debtor and that the Committee of Creditors has already resolved to proceed towards liquidation. It is further noted that the continued retention of the premises entails recurring financial burden by way of rent and other statutory dues.

44. It is a settled position of law that the rent payable during the CIRP period constitutes CIRP cost, and in the event of liquidation, such expenses form part of the liquidation cost, both of which are required to be paid in priority under the provisions of the Insolvency and Bankruptcy Code, 2016. Therefore, any decision to continue or discontinue such leased premises directly impacts the financials of the Corporate Debtor and, ultimately, the recovery available to the creditors.

45. Accordingly, since such expenditure is to be borne out of the assets of the Corporate Debtor and affects the stakeholders, this Adjudicating Authority is of the considered view that the decision as to whether the leased premises

are to be retained or vacated must be taken by the Committee of Creditors in exercise of its commercial wisdom.

46. In view of the above, the Committee of Creditors is hereby directed to convene a meeting within a period of 15 days from the date of this order and take a considered decision with regard to the continuation or relinquishment of the Schedule Premises, keeping in mind the financial position of the Corporate Debtor and the interest of all stakeholders.
47. Accordingly, **IA(IBC)/75/KOB/2026 IN CP(IBC)/5/KOB/2024** stands **disposed of.**
48. The Registry is hereby directed to forward a copy of this order to the Insolvency and Bankruptcy Board of India (IBBI) as mandated under Section 115(3) of the Insolvency and Bankruptcy Code, 2016. Additionally, the Registry is directed to send e-mail copies of this order forthwith to all the parties and their counsel for information and for taking necessary steps.
49. Further, certified copy of this order may be issued, if applied, upon compliance with the requisite formalities.
50. File be consigned to records.

Sd/-
VINAY GOEL
(MEMBER JUDICIAL)

Signed on this the 8th day of May,2026.

Reshma/Steno