

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT – 2

ITEM No.303
IA/574(AHM)2022
in
CP(IB) 127 of 2017

Proceedings under Section 60(5) IBC

IN THE MATTER OF:

Amit Jain RP for Neesa Leisure Limited

.....Applicant

V/s

Gujarat Industrial Development Corporation(GIDC)

.....Respondent

Order delivered on: 31/07/2026

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

This case is fixed for pronouncement of order

The order is pronounced in open court vide separate sheet.

—SD—

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

—SD—

CHITRA HANKARE
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)**

**IA NO. 574 OF 2022
IN
CP (IB) 127 (AHM) 2017**

*(Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016,
read with Rule 11 of the National Company Law Tribunal Rules,
2016)*

IN THE MATTER OF:

Mr. Amit Jain

Resolution Professional of Neesa Leisure Limited
Having his office at
Building No. 10, Tower-B,
8th Floor, DLF Cyber City Phase-II,
Gurgaon- 122 022

...Applicant/Resolution
Professional

Versus

Gujarat Industrial Development Corporation (GIDC)

Through Regional Manager,
Having its office at CFC Building, Electronics Park- SEZ, K-6 to
Kolawada Road, Sector-26, Gandhinagar-382028

... Respondent

IN THE MATTER OF:

Asset Reconstruction Company (India) Limited

Having its office at
The Ruby, 10th floor 29, Senapati Bapat Marg Dadar (W),
Mumbai - 400028

...Financial Creditor

Sd/-

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Versus

Neesa Leisure Limited

Having its office at
Plot No. X-22, 23 & 24
GIDC Electronic Estate
Sector 25, Gandhinagar-382044
...Corporate Debtor

Order pronounced on 31.07.2026

Coram:

MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

Present:

For the Applicant : Mr. Amit Jain (RP)
For the RP : Mr. Nandish Chudgar, Adv.
For the Respondent : Mr. Pavan S Godiawala, Adv. for GIDC

JUDGEMENT

1. This application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016 by the Resolution Professional of Corporate Debtor M/s. Neesa Leisure Limited, admitted to CIRP vide order of this Tribunal dated 26.04.2019.

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2. The facts which are not further brought to the notice by the applicant in the petition is that COC had approved a resolution plan 24.10.2020 and the applicant had submitted an IA 851 of 2020 which was rejected and on an appeal before Honble NCLAT the plan was reverted back to this tribunal to pass consequential order which is also reserved by this Tribunal.
3. It is submitted that the CD under CIRP (approval of a resolution plan), was allotted a plot Nos. X/22, 23, 24 and 27 vide Lease Agreement and Lease Deeds executed by and between the CD and the respondent, situated at GIDC, Electronic Estate, Sector 25, Gandhinagar, Gujarat. The applicant in its affidavit dated 5 July 2022, submits that the erstwhile IRP had issued an email to the respondent about the initiation of CIRP process and the consequential moratorium under Sec 14 of the IBC. It is further submitted that the respondent had issued a Show Cause notice dated 18.10.2019 to the CD pursuant to the unpaid over dues by the CD and called upon the CD to remain present at its office to explain their case. Further, the respondent also issued an eviction notice on 13.12.2019

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to the CD ordering the CD to vacate the premises on or before 20.01.2019. It is also submitted that the applicant was appointed as RP by the COC which was confirmed by this tribunal vide order dated 17.12.2019. The respondent also issued a notice to the CD on 25.05.2021, pursuant to outstanding dues of the Plot Nos.X 27 up to 31.05.2021, threatening that if the over dues are not paid on time, the recovery proceedings will be initiated by the respondents. The applicant submits that pursuant to the notice he forwarded the said notice to the suspended board of directors and the operator (M/s Verina Hospitality LLP) who were/are managing and running the hotel and requested them to provide all documents. Further on 27.09.2021, his representative met the GIDC and explained the facts including the moratorium in terms of orders of this tribunal as the CD was under CIRP and also provided a link to send the claim form to the RM, of GIDC (Respondent). The respondent issued a communication pointing out dues in respect of the claim forms in respect of Plot Nos.X/22,23,24 and 27, GIDC Gandhinagar. The applicant vide letter dated 18.10.2021 sought from the

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respondent after pointing out that a moratorium was in existence u/s 14 of IBC and requested the respondent to file claims that may have arisen on or before 26.04.2019 and also the information about the dues that have arisen after 26.04.2019, so that the same can be considered as CIRP cost and paid as priority. Instead the respondent reiterated the same content of earlier letter and issued another letter on 12.10.2021. The applicant again issued a letter dated 24.11.2021 to submit the claim for those properties (leased) which are used by CD for the purpose of owning and operating hotels and resorts and a golf course. The respondent is stated to have subsequently filed a claim with RP on 22.02.2022 for the plot Nos.X22 and X 23 and in the month of April 2022 for Plot Nos. 24 and 27. It is submitted that inspite of explaining on moratorium, the respondent submitted the Form B late and also terminated the lease deed and license agreement for the stated plots X 22, 23, 24 and 27 vide letter dated 17.06.2022. It is submitted by the RP that this is not only illegal and contrary to provision of the IBC and to be quashed and set

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aside void ab initio and in violation of Sec 14 of IBC 2016 as well as order dated 26.04.2019.

4. The prayers sought by the applicant are:
 - a. Quashing and setting aside the stated termination order of respondent;
 - b. Respondent to be directed not to dispossess the CD from possession and occupation of the said land premises i.e. Plot Nos.X22,23,24 and 27 in the facts and circumstances of the case;
5. The respondent has vide his reply affidavit submitted that the application filed under Sec 60(5) of the IBC 2016 is not maintainable as the challenge is made for quashing and setting aside the termination order which is passed under Gujarat Public Premises (Eviction of Unauthorised Occupants) Act 1972 cannot be challenged before this Tribunal as necessary remedy is there within the Act. It is observed that the applicant had approached the suspended management and did not have the necessary data and hence the actual date of completion of construction and commencement, etc., are not known. But it is also submitted that the applicant should have done the due

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diligence needed regarding the plots situated in the premises of GIDC, which is owned by it, and the usage, if any, to the lessee and the licensee if restricted, it was an onerous duty on the part of applicant to know the tenure of the subject properties in question which were lease/license properties and will fall outside the liquidation estate. Hence any information of this in the information memorandum which is mandatory as per Regulation 36 of IBBI would be fatal and undertaken against the mandatory provisions of law, as it was duty of RP to state factual legal position of the subject property. The respondent denies having received the email dated 24.05.2019 on initiation of CIRP. It is also submitted that the respondent had issued SCN on 18.10.2019 and thereafter eviction notice on 13.12.2019 came to be issued before the applicant was appointed as RP. The applicant was misleading this tribunal and relying on communication and not addressed the issue pertaining to whether the license/lease property would fall within the assets of the CD or not, hence there is legally right to have terminated the agreement, whether claim is submitted or not. The respondent submits section 36(4)(iv) of IBC

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Regulations 2016 which states that "The following shall not be included in the liquidation estate assets and shall not be used for recovery in liquidation..... (iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; - This includes the licensed/leased property and is not to be included in liquidation estate, then properties cannot form part of CIRP.

6. The respondent further submitted that applicant having been aware of the provisions of IBC 2016, which does not disentitle the Respondent from undertaking the due process of law of terminating the lease deed or license agreement for the plots in question. Further, the applicant if aggrieved with the order dated 17.06.2022 could have preferred an appeal under Sec 7 the GPP Act which is a right but not exercised. Hence the applicant does not have any vested right over the subject property and a wrong interpretation of circular dated 21.07.2017 has been produced. Even, if the CIRP is in place, that does not give inherent right to breach the conditions of the license/lease agreements. As per the respondent letter Page Nos.125-

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126, it has been made amply clear that the outstanding dues shall be recovered from the successor and as per the policy in case if any changes in the shareholding pattern such auction purchaser shall also be liable for the payment of dues and the respondent also made clear that the industrial activity related to "Electronic Industry" will only be permitted in this particular estate. This is not a freehold property and was given to CD for a specific purpose and governed by policies of GIDC. Using the IB Code by the applicant, itself gives the protection to the respondent under Sec 36(4) and hence the submissions of applicant is contrary to the law. Hence it is submitted that the prayers are not to be granted.

7. The applicant filed his rejoinder by affidavit on 29.11.2022. Reiterating the same facts that the respondent has violated the moratorium, he has further submitted that clarifications are still awaited and no proceedings under GPP Act could have been initiated nor even now and the stated properties can be included in the information memorandum as they were on a 99 year lease.

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8. Written submissions have been filed by both the parties.

Applicant has filed with certain judgments, including the judgment passed by Honble NCLAT in the matter between MIDC vs Shantanu T Ray RP and another reported in 2022 SCC Online NCLAT 180 and the judgment passed by Hon'ble High Court of Gujarat in the matter between GIDC Vs Gujarat Hydrocarbons and Power SEZ Ltd. The respondent reiterates that the stated property falls outside the liquidation estate as it is a leased property, and the inclusion in Information Memorandum violates reg 36 of IBBI regulations pertaining to Information Memorandum.

9. Observations and Conclusions:

- i. We observe from the pleadings that the RP who stepped in after the IRP has filed this application but certain facts including the approval of resolution plan, facts placed in the information memorandum have not been placed. The maintainability of this petition under Sec 60 (5) of IBC 2016 has been questioned by the respondent who is the lessor who claims that the property in question does not form part of the estate of the CD as it is a leased asset. The resolution plan has

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been approved by COC on 24.10.2020 (when the litigation was in existence) and admittedly, the applicant appears to have been using the property of the CD as a going concern as he has marked a copy for information to the operator M/s Verina Hospitality LLP and the suspended management. Once having taken over the assets, it was the responsibility to ensure that the dispute on the asset, irrespective of whether a claim is made is sorted out and or accordingly prepared/mentioned in the Information Memorandum as the COC has consented to approve the resolution plan with a dispute on the leased property.

- ii. Apparently from the submissions and the acceptance by the applicant, this does not form part of the CD as owned property but a leased property on which the rights have been repelled/recalled by the lessor due to a failure to pay the lease rentals by the lessee. The applicant apparently has claimed that termination is illegal for both not paying the lease rentals prior to the CIRP and after that during CIRP period when the stated property was used as a going concern to decide

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the two part of the dispute. As the respondent submits, the applicant has given time for submitting claim even after the finalisation of information memorandum and approval of resolution plan on 24.10.2020. Hence it is not justified whether as per provisions of IBC 2016, without approval of this adjudicating authority any such extension of time to file claim can be given by RP. Even then, the RP did not decide the matter (claim filed on 22.02.2022 and April 2022) and the termination notice was issued which was follow suit of the SCN issued on 18.10.2019, eviction notice issued on 13.12.2019 and termination notice was issued on 17.06.2022. Apparently it appears that between April 2022 and 25.06.2022, the applicant did not convey to the respondent whether the claim was admitted and termination notice was issued.

- iii. There are more lapses on the part of RP and the fact whether the resolution plan includes the claim of the respondent. If so, the dispute could continue after the adjudication is made on the resolution plan in continuation of the Honble NCALT order. The

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respondent is open to the applicant approaching them under appropriate law of GIDC. There are two sets of claim, lease rentals prior to CIRP and second, the Applicant has been running the CD as going concern, and if so, the lease rentals to be paid from date of admission of CIRP, i.e. 26.04.2019.

- iv. Termination order is not in order as despite non consideration of the claim (offered to settle after the approval of resolution plan by RP), we are not aware whether the COC has considered the lease rentals due prior to acceptance as a claim from Operational Creditor and for the lease rental to be paid post admission to CIRP till date as the RP has continued CD as a going concern and also admittedly continues, till date (rejection of Resolution Plan and the orders passed by Honble NCLAT). We have gone through some of the judgment of the Honble Supreme Court and Honble NCLAT on the issue of termination of the lease by the respondent which violates the sec 14 of moratorium imposed in terms of provisions of IBC 2016.

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- v. Hon'ble Supreme Court observed that "residuary jurisdiction under Section 60(5)(c) would be rendered otiose if Section 14 is held to be the exhaustive of the grounds of judicial intervention contemplated under the IBC in matters of preserving the value of the corporate debtor and its status as a going concern".
- vi. Despite these facts, the respondent appears to be consenting to consider the case of termination subject to appeal. It also appears that there were no hindrances on the property by the respondent to allow this continue as a going concern. The respondent has well defined protection in IBC 2016, the matter of adjudication is the termination during moratorium. By laxity of applicant, if any, observed in this order, neither the respondent or any other successor could suffer on the rental dues which may be an operational debt or a financial debt based on its relationship. The lease rentals to be paid prior to CIRP by suspended management are to be claimed as Operational Creditor and if the CD was run on going concern the post CIRP lease rentals are to be paid as due as part of CIRP cost.

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- vii. Every time the matter was to be heard, the Ld Counsel for RP or RP himself had submitted on the appeal before Hon'ble NCLAT. We have not adjudicated the matter, as there was also lack of other documents/statements produced on the activities of the CD post appeal before Hon'ble NCLAT. The applicant has made clear whether the Applicant has passed on the appropriate title to the property to the SRA in his information memorandum or the due claim considered in the resolution plan. If the SRA approaches the respondent no reliefs can be granted as there was an underlying dispute and the provisions of IBC 2016 are clear in this aspect.
- viii. We rely on the judgment of Honble NCLAT in Sudha Apparels Limited Vs Mr ravi Sethia (2024) ibclaw.in 884. We also rely on the judgment by Learned NCLT Mumbai in Vijaykumar V. Iyer Vs. Union of India [MA-337/2018 in C.P. (IB)- 298/(MB)/2018.
- ix. Eviction and termination during moratorium does not comply with the relevant provisions of Sec 14 of IBC 2016, the lease rental dues as per provisions prc and

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post CIRP (going concern) should have been considered before approval of the Resolution Plan, as there was dialogue between applicant and the respondent even after the approval of plan by COC. Interest of the Respondent is thereby acknowledged by applicant who has possibly taken shelter under the stated order issued during moratorium. But during moratorium the CD was run as a going concern.

- x. We conclude that the RP having communicated to respondent to submit claim after the resolution plan was approved by COC, should have the mandate of COC or made provision for the dues payable to GIDC as per provisions of the Act in the resolution plan, if he has not been authorised, the onus is also on the COC and the prospective RA may not get a clean slate hand over of the leased assets unless the matter is resolved with respondent. Subject to the order being passed in the resolution plan, whoever has to pursue, those parties have to resolve this issue.
- xi. In view of the above, we pass the following order:

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ORDER

- I. Application is allowed.
- II. The Respondent to set aside the termination dated 17.06.2022,
- III. The applicant is directed to regularise himself/his agent/authority approved by COC, with respondent through appropriate procedure.
- IV. Respondent is directed not to dispossess the CD or its successor from the possession of leased land premises bearing Plot No. X22, 23, 24 and 27 situated at GIDC, Electronic Estate, Sector 25, Gandhinagar, Gujarat without following proper procedure.
- V. IA 574 of 2022 is disposed of.

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DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

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CHITRA HANKARE
MEMBER (JUDICIAL)