

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 27 of 2024

& I.A. No. 89 of 2024

[Arising out of order dated 05.10.2023 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench, Court-II in I.A. No. 2990 of 2023 in CP (IB) 527/MB/2022]

IN THE MATTER OF:

- 1. Mrs. Durdana Aabid Ali**
Aged about 65 Years
W/o Late Syed Aabid Ali
R/o Flat 301, Fortune Heights Shantinagar,
Hyderabad-500028.
- 2. Mrs. Arjumand Seema Muqtadir**
Aged about 45 Years
W/o Mr. Mohammed Abdul Mujeeb Muqtadir
- 3. Dr. Syed Muhammad Ali**
Aged about 42 Years
S/o Late Syed Aabid Ali
Both Appellant Nos. 2 and 3 represented by their Power of
Attorney Holder Mrs. Durdana Aabid Ali.

...Appellants

Versus

Vijay Kumar V Iyer
(Resolution Professional of Future Retail Ltd.)
Having office at
Deloittee India Insolvency Professionals LLP
One International Centre, Tower 3,
32 Floor, Senapati Bapat Marg, Elphinstine Road

Maharashtra, 400013.

...Respondent

AND

In the matter of:

Bank of India

70/80, Mahatma Gandhi Road

Mumbai, Maharashtra 400001.

....Financial Creditor

Versus

Future Retail Limited

A Registered Company Having

ITS Head Office at

9th Floor, Tower C, 24 7 Park,

LBS Marg, Vikhroli West

Mumbai, Maharashtra 400083.

....Corporate Debtor

Present:

Appellant:

Ms. Jayna Kothari, Sr. Advocate with Mr. Rohit Sharma, Mr. Ms. Aparna Mehrotra, Mr. Raghav Gupta, Mr. Nikhil Purohit, Mr. J. Lalwani, Advocates.

For Respondents:

Mr. Vaijayant Paliwal, Ms. Charu Bansal, Advocates.

J U D G M E N T

[Per: Barun Mitra, Member (Technical)]

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 (**'IBC'** in short) by the Appellant arises out of the Order dated 05.10.2023 (hereinafter referred to as **'Impugned Order'**) passed by the Adjudicating Authority (National

Company Law Tribunal, Mumbai Bench, Court-II) in I.A. No. 2990 of 2023 in CP (IB) 527/MB/2022. By the Impugned Order, the Adjudicating Authority dismissed the I.A. No. 2990 of 2023 filed by the Appellant seeking the setting aside of the notice dated 29.03.2023 served upon them by the Respondent - Resolution Professional wanting to inspect and access certain premises belonging to the Appellant. Aggrieved by this impugned order, the present appeal has been preferred by the Appellant.

2. Giving the factual matrix of the present matter, Ms Jayna Kothari, the Learned Senior Counsel for the Appellant submitted that the Appellant is the registered owner of 'Regent Point' building at Bangalore (hereinafter referred to as '**subject property**'). A lease deed had been entered into by the Appellant with M/s Food World Super Markets Pvt Ltd (hereinafter referred to as '**FWSL**') on 19.07.2018 leasing out the subject property. The period of lease was deemed to have commenced on 01.06.2018 for a duration of 3 years and 5 months. The lease deed of the subject property had been allegedly assigned by FWSL to Future Retail Ltd (hereinafter referred to as '**FRL**') by a Deed of Assignment dated 06.08.2018. After FRL was subsequently admitted into CIRP vide orders of the Adjudicating Authority on 20.07.2022 following which the

Resolution Professional (**‘RP’** in short) appointed for the conduct of CIRP sent a notice to the Appellant on 29.03.2023 seeking inspection and access to the subject property and the assets lying therein. Since the original lease deed had expired and there was no subsisting lease agreement with the Corporate Debtor, the Appellant filed an IA 2990/2023 before the Adjudicating Authority to set aside the notice of the RP. However, the Adjudicating Authority refused to direct withdrawal of the notice of the RP and dismissed the IA 2990/2023. Aggrieved with the impugned order, the present appeal has been preferred.

3. The Learned Senior Counsel for the Appellant making further submissions vehemently contended that the lease was never assigned to FRL. It was contended that in terms of Clause 14.7 of the Lease Deed, any act of transfer or assignment of the lease deed could have been done by the FWSL only after providing prior written intimation to the Lessor. However, the Appellant was never kept informed of any such Deed of Assignment purportedly entered into between FWSL and FRL. Claiming that no assignment of the lease deed to the Corporate Debtor had occurred, it was asserted that Corporate Debtor therefore had no rights or interest in the said Lease Deed and the subject property. Furthermore, as the

Lease Deed in respect of the subject property with FWSL had already expired prior to the commencement of CIRP, the RP had no authority to issue any notice for inspection of any inventory or assets in the subject property. It was further claimed that the subject property was not the asset of the Corporate Debtor and that it was in the vacant possession of the Appellant in their capacity as the owners. FWSL had already vacated the store and cleared all inventory. In such circumstances, when the property had been vacated nearly four years back and the store being completely non-operational and the lease having lapsed prior to commencement of CIRP of FRL, the notice of inspection issued by the RP was not maintainable under Sections 14, 18 or 25 of the IBC and ought not to have been allowed by the Adjudicating Authority.

4. Rebutting the arguments advanced by the Appellant, the Learned Counsel for the Respondent submitted that the rights of FWSL under the Lease Deed had been validly assigned to the Corporate Debtor in terms of Clause 14.7 of the Deed of Assignment. The said Deed of Assignment clearly noted that the Appellant had provided NOC to the assignment of rights by the FWSL under the Lease Deed to the Corporate Debtor. Further, as

per the data/information received by the RP from the erstwhile management of the Corporate Debtor, the subject property was in the possession of the Corporate Debtor and this is substantiated by the fact that three active employees on the pay roll of the Corporate Debtor were mapped to the store of the Corporate Debtor located at the subject property. The RP had therefore rightly issued a notice on 29.03.2023 to the Appellant requesting for their cooperation in accessing the subject property and inspecting the inventory/assets/stock of the Corporate Debtor lying thereupon so as to ensure protection thereof as this was required to be done by the RP in the discharge of his statutory responsibilities in terms of the IBC. Given this background, the Adjudicating Authority had rightly rejected the IA No. 2990/2023 filed by the Appellant seeking withdrawal of the inspection notice issued of the RP.

5. We have heard the Learned Counsel of both parties and perused the records carefully.

6. Having heard the rival submissions of both parties, what we need to analyse from the material on record is whether the Deed of Assignment was disputed or not by the Appellant; whether the Lease Deed in respect of the subject property, consequent on its expiry on 14.11.2021, was further extended and whether the

Corporate Debtor was in clear possession of the same at time of commencement of CIRP. Since all these issues as delineated above are interconnected, we propose to club them together to make a holistic appraisal before we come to our findings on the propriety of the RP to issue notice to seek access to the subject property.

7. It is the contention of the Appellant that the Adjudicating Authority by allowing the inspection of the subject property to the RP had failed to appreciate that the subject property could not be included in the list of assets of the Corporate Debtor since there is no subsisting contract between the Appellant and Corporate Debtor which would entitle the RP to claim any right, title or interest in the subject property. The lease deed of the Appellant was with FWSL and not with FRL. It was also contended that the Adjudicating Authority had failed to appreciate that the lease period between FWSL and the Appellant had ended on 14.11.2021 and the subject property was in the peaceful possession of the Appellant. Hence, any demand by the RP for inspection of subject property and any inventory/stock lying therein was not permissible under the IBC.

8. On the other hand, it is the case of the RP that FWSL had assigned the lease to FRL and the assignment deed in respect of

the subject property leased by FSWL to the Corporate Debtor was valid. There was no requirement in terms of Clause 14.7 of the Lease Deed for the FSWL to take NOC from the Appellant before assigning of the lease by them to FRL. In any case, the Deed of Assignment contained a clear and categorical recital that NOC from the Appellants had been obtained towards the assignment of the Lease Deed by FSWL to FRL.

9. Before we dwell into the validity of the assignment of the lease deed, it may be useful in the first place, to have a look at the relevant clauses of both the Lease Deed executed on this 19.07.2018 as well as the Deed of Assignment of 06.08.2018 which are as follows:

Lease deed

“2. Period of Lease, Commencement of Lease, Possession and Renewal

2.1 The Period of lease shall be for a period of 3 Years 5 Months and deemed to have commenced from 01.06.2018 and expiring on 14.11.2021. The Possession of the Schedule Premises is given to the Lessee after fulfilling all the obligations. The lease may be renewed after expiry of the lease period specified herein at the option of both the parties on mutually accepted terms. Any extension of the Lease after expiry of the lease period shall be through a Lease deed executed between the parties herein. If no terms are agreed upon the lease period shall stand automatically expired at the end of the lease period.

14.7 It is agreed between the parties that the Lessee shall have exclusive right to transfer/ assign its leasehold rights and all obligations under this agreement to M/s. Future Retail Limited ("FRL"), a company incorporated under the Companies Act, 1956, to operate and continue the business of running a supermarkets/ retail outlet under its brand name of its choice or any subsidiary/ holding/ affiliate/ group company/ companies of "FRL" or to any Third Party company/ ies/ organization/ s of the Lessee (hereinafter referred to as the "transferee/ Assignee. The Lessee shall give written intimation to the Lessors on any such Transfer/ assignment of rights and any other documents as may be required for giving effect to such transfer/ assignment. Subsequent to any such transfer/ assignment as above said, all the payment of lease Rents and other payments shall be effected directly by such Assignee to the Lessors and the refund of Security Deposit shall be, as per the terms of this agreement, in the name of such Assignee.

Deed of Assignment

WHEREAS:

(D) The Assignor has represented to the Assignee that the Assignor has the power either under the Principle Agreements or pursuant to the no objection certificates obtained from the Lessors/Licensors and the Assignor has agreed to assign and/or transfer any and all its rights, interest, and privileges' under the Principle Agreements on the same terms and conditions, in favour of the Assignee."

(Emphasis supplied)

10. When we peruse the impugned order, we notice that the Adjudicating Authority has observed that the Appellant has not

disputed the deed of assignment between the FWSL and FRL as they had given their NOC. The findings recorded by the Adjudicating Authority is to the effect:

“There is no dispute between the parties as regards execution of Lease Deed dated 19.07.2018 by the Applicants in favour of M/s. Food World Super Markets Private Limited and granting of rights to Food World to assign the Leasehold rights to the Corporate debtor or any subsidiary/ holding/ affiliate/ group company of Corporate Debtor or to any third party companies of Food World. The only requirement for such assignment was that Food World had to give written intimation of such transfer/assignment of rights to the Applicants. In this connection it is observed that the Lease Deed neither requires fresh consent/NoC for such assignment nor provides that failure to give such written intimation to Food World would make the assignment invalid.”

(Emphasis supplied)

11. When we see the material on record, it is an undisputed fact that the RP had issued a notice to the Appellant on 29.03.2023 requesting for cooperation in accessing the subject property and inspecting the inventory/assets lying therein. Per contra, when we see the response to the notice as given by the Appellant on 09.05.2023, we find that the Appellant has categorically denied that any assignment of the Lease Deed in favour of FRL had taken place. At this stage, we would like to advert attention to the reply letter of the Appellant dated 09.05.2023 which is as follows:

09.05.2023

“To,

Mr. Vijaykumar V. Iyer

Resolution Professional for Future Retail Limited

Dear Mr. Iyer,

Subject: Reply to your notice dated 29.03.2023 in regard to the Corporate Insolvency Resolution Process of Future Retail Limited received on 03.04.2023.

Under the instructions and on behalf of my Clients (1) Mrs. Durdana Aabid Ali (2) Mrs. Arjumand Seema Muqtadir, and (3) Dr. Syed Muhammad Ali, all having their permanent address at Flat No. 301, Fortune Heights, Shantinagar, Hyderabad – 500028 (Clients”), we address you as follows:

1. My Clients had entered into a Lease Deed with M/s Food World Supermarkets Private Limited (“Food World”) on 19.07.2018, As per the said Lease Deed, their property bearing Unit No. G-001, on the Ground Floor of the building known as the “REGENT POINT” constructed on the property being Municipal No. 6, Shirdi Saibaba Mandir Road measuring 5000 square feet (“Leased Premises”) was given on lease to Food World for a period of 3 years and 5 months, which ended on 14.11.2021.

3. After the execution of this Lease Deed, there has been no written intimation given to my Clients at any time of any such transfer/assignment of rights. When no such written intimation for any transfer or assignment to FRL was given to my Clients, there was no assignment or transfer of the said Lease Deed in favour of FRL. Further, if any Business Transfer Agreement was executed on 21.05.2018, then even the Lease Deed could have easily been executed in favour of FRL as it was executed on 19.07.2018 much after the Business Transfer Agreement. However this was not done. Neither the Lease Deed was executed in the name of FRL, nor was any written request

sent to my Clients about the transfer of the leasehold rights to FRL. Hence, there has been no assignment/transfer of the Lease Deed for the Leased Premises in favour of FRL, and FRL has no right, title or interest of any kind over the Leased Premises in any manner.....”

(Emphasis supplied)

12. A plain reading of the above letter makes it abundantly clear that the Appellant has clearly stated that their Lease Deed was with FWSL and not with FRL-Corporate Debtor and had questioned the assignment of the lease deed in no uncertain terms. This letter clearly and emphatically states that neither the Lease Deed was executed in the name of FRL nor was any written request sent to them about the transfer of the leasehold rights to FRL.

13. Given such unambiguous reservations expressed by the Appellant to the assignment of the Deed of Lease in their reply, we are constrained to observe that the Adjudicating Authority has erred in overlooking these observations and in concluding that the assignment of the lease deed to FRL has not been disputed by the Appellant.

14. We also notice that that even prior to the receipt of the notice from the RP, the Appellant had sent a legal notice dated 24.05.2022 upon FWSL asking them to handover the possession

of the subject property to them and in return a response was received on 22.06.2022 from the successor entity of FSWL stating the transfer of lease hold rights to the Corporate Debtor. Even at that stage, the Appellant had in their counter-reply on 01.03.2023 reiterated that no such transfer of leasehold rights had taken place and no written intimation was received by them from FWSL. Thus, there has been consistency in the stand of the Appellant all along that their Lease Deed was with FWSL and not with FRL-Corporate Debtor and that they were not a party to the assignment of the lease. When the Appellant have denied that they had given their NOC to the Deed of Assignment and they are not even signatories to the said Deed, the onus of proof lay on the Corporate Debtor to show if any NOC was given by the Appellant. However, there is no such proof which has been placed on record. We are of the clear view that the assignment of the lease was disputed by the Appellant.

15. This brings us to the question as to whether the lease deed was extended and whether the possession was with the Corporate Debtor or with the Appellant. It is the case of the Appellant that the Lease Deed in respect of the subject property with FWSL had already expired prior to the commencement of CIRP. From the

terms of the lease deed, it is undisputed that the period of lease was deemed to have commenced on 01.06.2018 for a duration of 3 years and 5 months. This period of lease in terms of the lease deed came to an end on 14.11.2021.

16. Even if we go by the contention of the RP that the assignment of lease deed with FRL- Corporate Debtor did take place, the question that needs to be answered is whether the lease deed was extended after 14.11.2021 or any time prior to the Corporate Debtor being admitted into CIRP. We have already noted at Clause 2.1 of the Deed of Lease as placed at para 9 above that the Lease deed clearly stipulated that any extension of the lease after expiry of the lease period shall be through a Lease deed executed between the parties herein and that if no terms are agreed upon, the lease period shall stand automatically expired at the end of the lease period. It is pertinent to point out that the RP had sent a letter to the erstwhile management on 03.08.2023 seeking information on the arrangement under which the Lease Deed had been extended to the Corporate Debtor and whether the store in the subject property was in the possession of the Corporate Debtor as maybe seen at page 156 of Appeal Paper Book (**'APB'** in short). However, no response was admittedly received from the erstwhile

management. Neither have any proof of rental payments to the Appellant by the Corporate Debtor after the expiry of the lease has been placed on record to substantiate that the lease continued to subsist.

17. We therefore do not hesitate to add here that we do not find any documentation available on record which reliably establishes the extension of lease term beyond the original period.

18. Having said so, we now choose to dwell on the rival submissions made by the Appellant and the RP with regard to who was in actual possession of the subject property. It is the case of the RP that the subject property was a part of a common premises which was nomenclated as 'Cambridge Layout'. The RP was provided with the list of retail stores of the Corporate Debtor by the suspended management which included a store on the subject property and that three active employees on the pay roll of the Corporate Debtor stood mapped to this store at the Cambridge Layout premises as placed at page 158 of APB. Furthermore, it is the case of the RP that since a legal notice had been served on 24.05.2022 on FSWL by the Appellant demanding the handing over of the subject property, the legal notice implies that the possession of the subject property had not been relinquished until

that date and hence the Appellant could not be said to be in physical possession of the subject property. As the date of legal notice preceded the admission of the Corporate Debtor into the rigours of CIRP and the Appellant having failed to produce any evidence that the subject property had been vacated by then, it was reasonable for the RP to presume that the subject property remained in possession of the Corporate Debtor on the insolvency commencement date i.e. 19.07.2022.

19. When we take a look at the impugned order, we find that the Adjudicating Authority has also largely relied on the notice dated 24.05.2022 to hold that the subject property was not in the possession of the Appellant. The relevant extracts of the impugned order is as reproduced below:

“16. The case of the Applicants in the Petition that the lease period under the Lease Deed expired / completed on 14.11.2021 and Food World peacefully vacated the premises and thereafter the Applicants are in peaceful possession of the Leased Premises. However, the reply dated 09.05.2023 issued by the advocate on behalf of the Applicants stated in para 4 that Food World had stopped paying the rent and were not operating their store nor were they using the Leased Premises and had vacated the same after taking all the equipment, Inventory and fixtures from inside. Therefore, a legal notice dated 24.05.2022 was sent on behalf of Applicants to Food World asking them to hand over vacant possession of the property and also the rents that were due after the expiry of

the lease. Thus it is evident that the possession of the property had not been handed over to the Applicants upto 24.05.2022. It is relevant to mention here that the Insolvency commencement date is 20.07.2022 and the Applicants have neither pleaded that the Leased Premise was handed over after 24.05.2022 nor brought on record any evidence to establish handing over possession of Leased Premise to the Applicants.

17. By virtue of the CIRP Order, this Tribunal had declared a moratorium of the Corporate Debtor during the CIRP period, in terms of Section 14 of the Code whereby, inter alia, the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor is prohibited. The duties and responsibilities cast upon the IRP/RP include, inter alia, collection of information relating to the assets of the Corporate Debtor, preserving the value of the property of the Corporate Debtor and managing the operations of the Corporate Debtor as a going concern. The letter issued by the Respondent is apparently an effort in this regard. The Respondent, as stated in his reply, is faced with constraints with regard to availability of information/documents and would like to rely upon further communications between the Respondent and suspended board as and when received, and further sought the co-operation of the Applicants to provide the whereabouts and access to the assets of the Corporate Debtor which remained in their custody.”

20. At the outset, we like to make a prefatory observation that ownership of the subject property by the Appellant is not a bone of contention. What is contentious is the entity which happens to be in actual physical possession of the subject property. When we look at the legal notice of vacant possession which was served

upon the FSWL by the Appellant on 24.05.2022, the same was undisputedly addressed by them to FSWL and not to the Corporate Debtor. Thus, when this legal notice for vacating the subject property was addressed by the Appellant to the FSWL and not to the Corporate Debtor, it is clear that in the Appellant's mind the Corporate Debtor had no role or interface qua the subject property. We strongly feel that the Adjudicating Authority had therefore clearly misconstrued in holding this legal notice served upon the FSWL to be an implicit admission by the Appellant that the Corporate Debtor was in possession of the subject property. If Corporate Debtor was actually in possession and this fact was in the knowledge of the Appellant, it remains unexplained as to what prevented the Appellant from serving this notice upon the Corporate Debtor directly. Further it is the contention of the Appellant that the vacant possession of the subject property was already with the Appellant as FSWL had already vacated the store and cleared all inventory and the legal notice was issued to give a stamp of formality to the vacant possession. In support of their contention, it has been submitted that as per material placed on record at page 157 of the APB, the store located on the subject

property was non-operational as per the list of stores of the Corporate Debtor.

21. We also cannot be unmindful of the fact that besides the fact that the assignment of lease is clearly disputed, the original lease term had also expired. There is nothing on record to substantiate that there is any evidence of renewal/extension of lease. If we closely look at para 16 of the impugned order, the Adjudicating Authority has only held that there is no evidence to establish handing over of the subject property to the Appellant. We do not find any reason to differ with this factual position. But where the Adjudicating Authority has clearly gone wrong is in para 17 of the impugned order where it has proceeded to presume that since the subject property was not under the occupation of the Appellant, it was in the possession of the Corporate Debtor.

22. Given this backdrop, without going into the issue of whether the possession was with the Appellant or not, we are nonetheless convinced that there is no substantive evidence to establish that the property was in the possession of the Corporate Debtor in clearcut and precise terms. We are not persuaded to agree with the Adjudicating Authority that possession of any property can be decided by the RP based on assumptions and presumptions by

taking recourse to the sanctions and prohibitions contemplated under moratorium in terms of Section 14 of the IBC.

23. Now that we have answered the three questions by holding that the Deed of Assignment was clearly in dispute; that facts on record do not substantiate that the Lease Deed in respect of the subject property, consequent on its expiry on 14.11.2021, was further extended and was subsisting and that there is no cogent proof or evidence that subject property was in clear possession of the Corporate Debtor at time of commencement of CIRP, we now proceed to examine the propriety of the RP to claim access to the subject property to take into custody the inventory/stock/assets of the Corporate Debtor lying therein.

24. Before we dwell upon this issue at hand, we may notice the statutory provisions of IBC in the context of the Sections 18 and 25 which lay down the duties of interim resolution professional and the resolution professional in the conduct of CIRP proceedings after the imposition of moratorium under Section 14 of the IBC.

25. The relevant provisions contained in Sections 18 and 25 of the IBC reads as under:

“18. Duties of interim resolution professional.- (1)

The interim resolution professional shall perform the following duties, namely:-

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to-

- (i) business operations for the previous two years;*
- (ii) financial and operational payments for the previous two years;*
- (iii) list of assets and liabilities as on the initiation date; and*
- (iv) such other matters as may be specified;*

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

- (i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;*
- (ii) assets that may or may not be in possession of the corporate debtor;*
- (iii) tangible assets, whether movable or immovable;*
- (iv) intangible assets including intellectual property;*
- (v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;*
- (vi) assets subject to the determination of ownership by a court or authority;*

Explanation.- For the purposes of this [section], the term “assets” shall not include the following, namely:-

- (a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;*
- (b) assets of any Indian or foreign subsidiary of the corporate debtor; and*
- (c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.*

25. Duties of resolution professional.- *(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.*

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely:-

- (a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;*
- (b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;”*

26. From a bare reading of the above provisions, in terms of Section 18(1)(f) of the IBC, undoubtedly the RP is required to take control and custody of any asset belonging to the Corporate Debtor. However, it is significant to note that this provision is subject to the exclusion of assets owned by a third party as

provided for under the Explanation Clause. Further, Section 25(2)(a) of the IBC also mandates the RP to take immediate custody and control of all assets of the Corporate Debtor so as to determine the valuation of all the assets of Corporate Debtor. We have no doubts in our mind that the RP is entitled under the IBC framework to take custody of any property of the Corporate Debtor and to carry out inspection of the inventory of the Corporate Debtor lying therein so as to protect the assets/stock of the Corporate Debtor. We also have no doubt in our minds that with the declaration of moratorium, the prohibitions as envisaged in Section 14 of IBC come into force which includes prohibition of transferring, encumbering, alienating or disposing of by the Corporate Debtor of any of its assets. The legislative intent of IBC is that there should be a temporary freeze and prohibition of all actions against the Corporate Debtor to preserve the status quo as it exists on the date of initiation of CIRP so as to enable the Corporate Debtor to resolve its insolvency and bring it back from the throes of corporate death.

27. Be that as it may, the IRP/RP as officers of the Court are expected to take decisions depending on the factual matrix of each case but guided purely by the objectives of the IBC while remaining

within the four corners of the statutory provisions of IBC. What therefore needs to be seen is whether in the given facts of the case, the RP could have justifiably contended that the subject property was in the possession of the Corporate Debtor and that there was a requirement to carry out inspection of the subject property and assess the stock/assets/inventory of the Corporate Debtor lying therein.

28. The present is a case where CIRP was initiated on 27.02.2022. By virtue of the CIRP order, the IRP/RP was appointed and moratorium had kicked in w.e.f. 27.02.2022. The lease deed in respect of the subject property had been entered into by the Appellant with FSWL on 19.07.2018 for a duration of 3 years and 5 months. The lease deed of the subject property had been allegedly assigned by FWSL to FRL by a purported Deed of Assignment dated 06.08.2018 which is clearly disputed. The lease period between FWSL and the Appellant had ended on 14.11.2021 and documents regarding extension of lease period are not available before us. The notice of inspection of the subject property was issued by RP on 29.03.2023 which is well after the date of expiration of lease period. The Lease Deed expired prior to the commencement of CIRP of the Corporate Debtor. Furthermore, if

the RP was absolutely confident that the subject property was in the actual possession of the Corporate Debtor, then it defies logic as to why he still chose to serve notice upon the Appellant to allow inspection of the subject property.

29. Furthermore, the RP cannot be said to have the right to inspect the subject property of a third party at a time when the lease period had already expired. The subject property could not be included in the list of assets of the Corporate Debtor since there is no subsisting contract between the Appellant and Corporate Debtor which would entitle the RP to claim any right, title or interest in the subject property. Section 14(1)(d) will not come to the rescue of the RP, since what is prohibited therein, is only the right of the Corporate Debtor not to be dispossessed but not the right to have renewal of the lease of such property. Under Section 14(1)(d) of IBC, recovery of any property by any owner or lessor which is occupied by the Corporate Debtor is prohibited. The purpose of moratorium is only to preserve the status quo but not to create a new right. We have already expressed our considered opinion with underlying reasons at paras 21-22 above that the RP failed to establish beyond doubts that Corporate Debtor was in possession of the subject property at the time of issuing inspection

notice to the Appellant. Under such circumstances, the RP could not have taken possession of the leased property by virtue of Section 14(1)(d) of IBC. In fact, the right of the Corporate Debtor not to be dispossessed as contemplated in Section 14(1)(d) of IBC will have no bearing on the present facts of the case given that the subject property was not under the possession of the Corporate Debtor at the time of admission of the Corporate Debtor into CIRP. Additionally, we note that neither any factual analysis has been done either by the RP or any application of mind shown by the Adjudicating Authority on how the assets located on the subject property was central for the success of the CIRP and Corporate Debtor's survival as a going concern.

30. It will not be off the mark to state that the RP had hastily served the notice on the Appellant for inspection of the subject property without doing requisite ground work on the Deed of Lease Assignment and without finding out who was in actual occupation of the subject property. Assets owned by a third party in possession of the Corporate Debtor is excluded from the scope of CIRP and moratorium in view of Explanation (a) to Section 18 of the IBC. As the Appellant is a third party and undisputedly the subject property is owned by the Appellant and there is nothing

foolproof to show that the Corporate Debtor was in occupation of the same, the subject property clearly fell outside the scope of CIRP and consequently the moratorium. We find that no compelling reasons have been made out before the Adjudicating Authority by the RP to allow access into the subject property and inspection of stock/assets lying therein failing which the CIRP would have been jeopardised.

31. For the foregoing reasons, we allow the appeal and set aside the impugned order dated 05.10.2023 dismissing I.A. No. 2990 of 2023. The RP is directed to forthwith withdraw the notice dated 29.03.2023 seeking access to the subject property or dealing with assets lying inside the subject property premises. The RP and his staff are restrained in dealing with the subject property in any manner whatsoever. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi

Date: 23.04.2024

Ashok Kr.