

2025 LiveLaw (SC) 774

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

SANJAY KUMAR; J., SATISH CHANDRA SHARMA; J.

CIVIL APPEAL NO. 12812 OF 2024; August 05, 2025

Sincere Securities Private Limited & Ors. *versus* Chandrakant Khemka & Ors.

Insolvency and bankruptcy Code, 2016 - Section 62 – Appeal - Section 14 - Moratorium - IBC Moratorium doesn't bar voluntary surrender of corporate debtor's leased property to lessor if retaining the asset is deemed unviable and the Committees of Creditors (CoC) endorses decision - Held that commercial wisdom of the CoC should be given primacy during CIRP (Corporate Insolvency Resolution Process) - this case was distinguished from a simple recovery of property barred by Section 14(1)(d) of the IBC, as the CoC and Resolution Professional themselves desired to return the property due to adverse financial implications of retaining it - The respondent was stalling the process for "undisclosed and extraneous reasons" - 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 - Set aside NCLAT's order and restored NCLT's order. [Paras 9, 10]

For Appellant(s) Mr. Siddharth Bhatnagar, Sr. Adv. Mr. Ashish Choudhury, AOR Mr. Aditya Sidhra, Adv. Mr. Akash Agarwal, Adv. Ms. Sulekha Agarwal, Adv. Mr. Abhishek Arora, Adv. Ms. Prachi Grover, Adv.

For Respondent(s) Ms. Arundhati Katju, Sr. Adv. Mr. Aman Gupta, AOR Mr. Anup Kashyap, Adv. Mr. Shambo Nandy, AOR Mr. Partha Sil, AOR Mr. Utkarsh Dwivedi, Adv. Mr. Srijit Datta, Adv.

J U D G M E N T

SANJAY KUMAR, J

1. This appeal, under Section 62 of the Insolvency and Bankruptcy Code, 2016¹, calls in question the order dated 12.11.2024 passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi², allowing Company Appeal (AT) (Insolvency) No. 1064 of 2023 filed by Chandrakant Khemka, respondent No. 1, and setting aside the order dated 07.08.2023 of the National Company Law Tribunal, Kolkata Bench³, in CP(IB) No. 1377/KB/2020. Thereby, the NCLT had directed delivery of possession of the property in question to the appellants herein.

2. Facts, relevant to this adjudication, need recounting at some length. On 13.02.2019, a Memorandum of Understanding was executed by and between Nandini Impex Private Limited, which became a corporate debtor under the IBC thereafter, represented by its Director, Chandrakant Khemka, on the one hand, and Noble Dealcom Private Limited along with Jodhpur Properties and Finance Private Limited, appellant Nos. 2 and 3 herein, on the other hand, whereby Nandini Impex Private Limited availed financial assistance to the tune of 3₹ crores from them and secured the same through deposit of the title deeds relating to the rear portion of the ground floor of White House, 1/18-20, Rani Jhansi Road, New Delhi. Another Memorandum of Understanding was executed by Nandini Impex Private Limited on 15.02.2019 with Sincere Securities Private Limited, appellant No.1

¹ for short, "IBC"

² for short, "NCLAT"

³ for short, "NCLT"

herein, for availing a loan of 3 crores from it and the same was secured ₹ through deposit of the title deeds of the front portion of the ground floor of White House. As Nandini Impex Private Limited failed to repay the loans, separate conveyance deeds were executed by it on 27.02.2020 transferring the title over the front and rear portions of the ground floor of White House to the appellants respectively. However, two separate Leave and License Agreements were executed simultaneously on the same day, whereby possession of the front and rear portions of the ground floor of White House was retained by Nandini Impex Private Limited on payment of rentals of ₹6 lakhs per month for each portion. Owing to the default in payment of the rentals, the appellants terminated the Leave and License Agreements on 08.05.2020. Eviction suits were also instituted by the appellants for regaining possession of the subject ground floor portions along with other reliefs.

3. While so, UCO Bank, respondent No. 3 herein, filed a petition under Section 7 of the IBC against Nandini Impex Private Limited. The same was admitted on 20.09.2022 by the NCLT, initiating corporate insolvency resolution process⁴ against Nandini Impex Private Limited, the corporate debtor. Significantly, UCO Bank was the sole member of its Committee of Creditors⁵. The appellants, as operational creditors, filed their respective claims before the Interim Resolution Professional appointed for the corporate debtor and the said claims were accepted *in toto*. At that stage, UCO Bank, constituting the CoC, deputed the Resolution Professional to visit the subject property on the ground floor of White House and decide whether there was any need to retain the same by paying huge rentals. Thereafter, at its meeting held on 06.04.2023, the CoC decided that there was no requirement to hold on to the subject property and requested the Resolution Professional to hand over the possession thereof to the appellants. Chandrakant Khemka, being a suspended director of the corporate debtor, raised objections to this move. Interlocutory Applications came to be filed by the appellants in 2023 seeking a direction from the NCLT to return the subject property to them. By order dated 07.08.2023, the NCLT noted the decision of the CoC that the subject property was not required and directed the Resolution Professional to deliver possession of the same to the appellants. Aggrieved thereby, Chandrakant Khemka filed an appeal before the NCLAT. By way of the impugned order dated 12.11.2024, the NCLAT allowed his appeal and set aside the order dated 07.08.2023 passed by the NCLT, observing that Section 14(1)(d) of the IBC barred recovery by an owner of property during the CIRP, when such property was occupied by the corporate debtor. The NCLAT remanded the matter to the NCLT to consider the issue afresh.

4. By order dated 25.11.2024, this Court permitted the proceedings before the NCLT to continue, subject to the final outcome of this appeal. This Court also noted that UCO Bank, constituting the CoC, supported the appellants in so far as return of possession of the subject property was concerned. Further, this Court noted that the learned counsel appearing on advance notice for Chandrakant Khemka, respondent No. 1, conceded that he was not willing to pay the current rent or the arrears of rent, post initiation of the CIRP. This Court also recorded that the Resolution Professional did not wish to retain possession of the property in question.

5. Thereafter, on 14.07.2025, upon being informed that a new Resolution Professional was appointed for the corporate debtor, this Court required him to make known his stand by way of a written affidavit. Pursuant thereto, Pratim Bayal, the new Resolution

⁴ for short, "CIRP"

⁵ for short, "CoC"

Professional, filed affidavit dated 17.07.2025. Therein, he categorically stated that, given the extremely limited operations of the corporate debtor at present and the extremely high rent of the White House property, it was not feasible and was totally unnecessary for the corporate debtor to continue to hold on to the said property. He, therefore, reiterated the statement made by his predecessor before the NCLT to the effect that the property could be returned to the appellants.

6. Given the aforestated facts, it is clear that except for Chandrakant Khemka, respondent No. 1, who is a suspended director of the corporate debtor, all other parties are at consensus that the property in question need not be retained by the corporate debtor, as it is not required by it and imposes a huge financial burden on it, in terms of the lease/license rentals payable therefor. It is, however, the case of Chandrakant Khemka that the erstwhile Resolution Professional of the corporate debtor made a factually incorrect statement before the NCLT, leading to the passing of the unreasoned order dated 07.08.2023 and, therefore, the NCLAT was justified in remanding the matter for a comprehensive adjudication afresh. It is his further case that the property in question is essential for the functioning of the corporate debtor and Section 14(1)(d) of the IBC barred its return to the appellants.

7. Despite all others involved in the CIRP being in favour of doing so, Chandrakant Khemka alone opposes the return of the subject property to the appellants. His lofty claim that the rent due to the appellants would stand secured by the provisions of the IBC does not stand to reason. Further, Chandrakant Khemka is himself not willing to bear the expenditure for retaining the possession of the subject property.

8. UCO Bank, constituting the CoC, echoed the stand of the Resolution Professional, by filing separate written submissions. Reference was made therein to the decision of this Court in **K. Sashidhar v. Indian Overseas Bank and others**⁶. Paragraph 52 of the decision reads as follows:

52. As aforesaid, upon receipt of a “rejected” resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of the Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject-matter expressed by them after due deliberations in CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the “commercial wisdom” of

⁶ (2019) 12 SCC 150

the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable.

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. It appears that Chandrakant Khemka, respondent No. 1, who is not willing to personally bear the expenditure for such retention, is bent upon stalling that process for some undisclosed and extraneous reasons.

11. This was, therefore, not a situation which warranted an order of remand in the context of Section 14(1)(d) of the IBC. The order dated 12.11.2024 passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi, in Company Appeal (AT) (Insolvency) No. 1064 of 2023, is accordingly set aside and the order dated 07.08.2023 passed by the National Company Law Tribunal, Kolkata Bench, in CP(IB) No. 1377/KB/2020, is restored. The Resolution Professional shall act upon and implement the said order expeditiously.

The appeal is allowed, in the aforesaid terms.

Pending application(s), if any, shall stand disposed of.