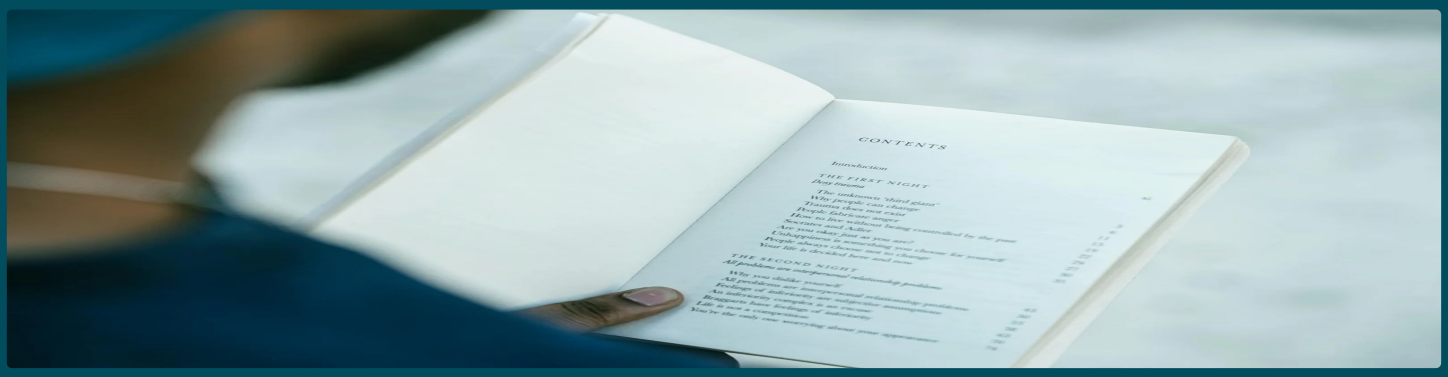
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INSOLVENCY & BANKRUPTCY

Moratorium Under the IBC and the Commercial Wisdom of the CoC: Lessons from Davani Silks

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G. Vinayan v. C.S. Narendar Reddy Banala (IRP of Davani Silks Pvt. Ltd.) | NCLT Kochi Bench | IA(IBC)/75/KOB/2026 | Decided: 08 May 2026

The National Company Law Tribunal ("NCLT"), Kochi Bench, in its order dated 08 May 2026, rendered a significant pronouncement on the intersection of moratorium provisions under Section 14 of the Insolvency and Bankruptcy Code, 2016 and the commercial discretion vested in the Committee of Creditors ("CoC") in matters concerning leased premises occupied by a corporate debtor. The case arose from a dispute between a property owner and the Interim Resolution Professional of Davani Silks Pvt. Ltd. (Corporate Debtor) and offers instructive guidance on the extent to which moratorium protections may be applied to premises no longer in active commercial use.

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Background and Facts

The applicant, G. Vinayan, is the registered owner of commercial premises measuring 3,500 sq. ft. situated at Building Nos. 7/128 to 7/138, Muvattupuzha Municipality, Ernakulam. The premises were leased to the Corporate Debtor under a lease deed dated 18 September 2020, at a monthly rent ultimately fixed at Rs. 2,27,740/- inclusive of GST. The Corporate Debtor defaulted on rent payments from April 2023. Following repeated demands, both parties executed a written mutual termination agreement dated 17 July 2023, whereunder the Corporate Debtor undertook to vacate the premises by 15 November 2023, adjust rent arrears against the security deposit, and discharge all statutory liabilities, including electricity charges.

The applicant thereafter instituted proceedings before the Rent Controller, Muvattupuzha, under the Kerala Buildings (Lease and Rent Control) Act, 1965. However, by order dated 30 May 2024, this Adjudicating Authority admitted CP(IBC)/5/KOB/2024 and initiated the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, simultaneously imposing a moratorium under Section 14 of the IBC. The IRP appeared before the Rent Controller and brought the moratorium to the court's notice, consequent to which the rent control proceedings were stayed by order dated 03 December 2025. By the time the application was filed before the NCLT, the premises stood locked and abandoned by the Corporate Debtor, KSEB arrears had accumulated in the applicant's name, and revenue recovery proceedings had been initiated against him. A formal application for handing over possession, submitted by the applicant to the IRP on 06 January 2026, remained unaddressed.

Issues in Contention

Three principal questions fell for determination before the Tribunal. First, whether the scheduled premises, having been the subject of a mutual termination agreement executed prior to the commencement of CIRP, constitute assets of the Corporate Debtor protected under the moratorium. Second, whether the IRP was competent to direct vacation of the premises independent of CoC approval. Third, whether this Adjudicating Authority was competent to exercise its jurisdiction under Section 60(5) of the IBC to compel the handing over of possession, notwithstanding the subsisting moratorium.

Rival Contentions

The applicant contended that the lease had stood mutually terminated prior to the commencement of CIRP, that the scheduled premises do not constitute assets of the Corporate Debtor, and that possession retained by the Corporate Debtor was merely nominal or symbolic, thereby falling outside the protective ambit of Section 14 of the IBC. The applicant further submitted that since the CoC had resolved to pursue liquidation and no resolution plan had been received, no purpose was served by withholding the premises, which was simultaneously causing grave financial hardship through KSEB arrears and attendant recovery proceedings. The applicant expressed willingness to cooperate in enabling removal of any assets of the Corporate Debtor from the premises.

The IRP, on the other hand, submitted that the premises, irrespective of the lease subsisting or having been terminated, remained in the physical possession of the Corporate Debtor and contained furniture, fittings, and stock of garments belonging to the company. It was submitted that the moratorium under Section 14 prohibited coercive recovery of possession of any property occupied by the Corporate Debtor. The IRP further contended that the removal of assets would require financial sanction from the CoC and that the CIRP being at its final stage, any decision on vacation was contingent on the CoC's determination and this Tribunal's orders in the pending liquidation application.

Legal Framework and Precedent

The Tribunal placed considerable reliance upon the Supreme Court's judgment in Sincere Securities Pvt. Ltd. & Ors. v. Chandrakant Khemka & Ors., (2025) 296 SC, wherein the Apex Court had examined the relationship between the moratorium under Section 14(1)(d) of the IBC and the CoC's commercial wisdom. The Supreme Court had held that while Section 14(1)(d) prohibits recovery of property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor, the decision as to whether retention of such property is necessary for the CIRP is squarely within the domain of the CoC's commercial judgment. Where the CoC itself concludes that retention of leased premises is financially untenable, that decision must be accorded primacy and respected by all stakeholders.

Analysis and Decision of the Tribunal

The NCLT observed that the facts before it were undisputed in material respects: the applicant was the indisputable owner of the property; the original lease had been mutually terminated; no resolution plan had been received; and the CoC had already taken a decision to proceed towards liquidation. The Tribunal further noted that under the amended provisions of the IBC, the Corporate Debtor could not be sold as a going concern during liquidation, and that rent payable during the CIRP constitutes CIRP cost, while during liquidation it forms part of the liquidation cost, both of which must be accorded priority in payment. Any decision on continuation of leased premises, accordingly, directly impinges upon the financial resources of the estate and the recoveries available to creditors.

The Tribunal held that the decision to retain or relinquish possession of the scheduled premises fell squarely within the commercial wisdom of the CoC, and that it was not appropriate for either the IRP unilaterally or the Adjudicating Authority through a direction under Section 60(5) to substitute their judgment for that of the CoC in such commercially sensitive matters. The application was accordingly disposed of with a direction to the CoC to convene a meeting within 15 days from the date of the order and take a considered decision on whether to retain or relinquish the scheduled premises, having regard to the financial position of the Corporate Debtor and the interests of all stakeholders. The Registry was further directed to forward a copy of the order to the IBBI as mandated under Section 115(3) of the IBC.

Conclusion

This judgment reinforces the foundational principle that commercial decisions during insolvency proceedings must reside with the CoC, which is best placed to evaluate the financial consequences of such choices. The NCLT has correctly declined to short-circuit the CoC's deliberative process even in circumstances that plainly operate to the hardship of a third party. At the same time, the order implicitly recognises that where premises are no longer in productive commercial use and where retention generates only recurring liabilities without any corresponding benefit to the estate, the CoC's commercial wisdom ought to tilt decisively in favour of vacation.

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