

**IN THE COURT OF ADDL. DISTRICT JUDGE-IV, KOTTAYAM**

Present : Dr. Satheesh Kumar. V, Addl. District Judge-IV, Kottayam

Wednesday the 25<sup>th</sup> day of March, 2026/4<sup>th</sup> day of Chaithra 1948

**CMA No.81/2019**

(IA. No.1461/2018 in IP No.4/2018 of Sub Court, Kottayam)

Appellants :

- 1 Abraham Abraham @ Rogy, aged 61 years, S/o late P T Abraham, Residing at Prakkat House, Malloossery P. O., Malloossery Kara, Perumbaikkadu Village, Kottayam Taluk, Kottayam District.
- 2 Sophy Abraham, aged 56 years, W/o Abraham Abraham @ Rogy, Prakkat House, Building No.IV/467, Kumaranalloor Grama Panchayat, Malloossery P. O., Pin-686041, Malloossery Kara, Perumpaikkadu Village, Kottayam Taluk, Kottayam District, represented by the 1<sup>st</sup> Petitioner as her Power of Attorney Holder
- 3 Abraham Abraham, aged 33 years, S/o Abraham Abraham @ Rogy, Prakkat House, Building No.IV/467, Kumaranalloor Grama Panchayath, Malloossery P.O., Pin - 686 041, Malloossery Kara, Perumpaikkadu Village, Kottayam Taluk, Kottayam, represented by the 1<sup>st</sup> petitioner as his power of attorney holder.

By Adv. Jojo Thomas

Respondents :

- 1 Ramani Viswanathan, aged 66 years, W/o K V Viswanathan, Residing at Kunnathukalathil Jino Bhavan, Thekkumgopuram, Thirunakkara Kara, Kottayam P. O.-686001, Kottayam Taluk, Kottayam District, now residing at Krishnapriyam House, C/o. Dr. Sunil Babu, S/o Radhkrishna Babu, near Chingoli Panchayat Office, Chingoli P.O., Chingoli Muri, Chingoloi Village, Karthikappalli Taluk, Alappuzha District, Pin - 690 532.
- 2 Official Receiver for Kottayam District, Collectorate Complex, Collectorate P.O., Muttambalam Village, Kottayam Taluk, Kottayam District.

R1 - By Adv. Zakhier Huzzain

R2 - Adv. P Vinodji, Addl. Public Prosecutor

This appeal having been finally heard on 16.03.2026 and the court on 25.03.2026 delivered the following:

## JUDGMENT

1. This Memorandum of Civil Miscellaneous Appeal is filed under Section 79 of the Insolvency Act, 1955, challenging the interdependent orders dated 12.04.2019 passed by the Additional Subordinate Judge, Kottayam, in I.A. No.1461/2018 and I.A. No. 588/2019 in I.P. No. 4/2018.
2. The appellants are the licensors/owners of the building portions (Items 2 and 3) who filed the interlocutory applications seeking direction to the Official Receiver to remove the articles and hand over vacant possession of the licensed premises, after allowing them to set off the arrears of license fees and electricity charges from the security deposit.
3. The trial court, by the impugned order, allowed the entrustment of vacant possession to the appellants on the condition that they deposit the security amount after setting off the liability only up to the date of filing the Insolvency Petition (I.P.). The appellants are aggrieved by this restriction of set-off rights and the direction to deposit the balance with the Receiver.
4. **Case of the Appellants:** The appellants entered into license deeds dated 31.03.2010 with M/s Kunnathukalathil Jewellers and M/s Kunnathukalathil Financiers (represented by deceased K.V. Viswanathan as Managing Partner). A total security deposit of ₹25,00,000/- was paid. Following the filing of I.P. No. 4/2018 in June 2018, the Official Receiver took possession of the assets within the rooms. The appellants contend that the Receiver continued to occupy the premises for nearly 20 months to conduct auctions, for which license fees are due as administrative costs. They claim a right to set off all arrears (pre-petition and post-petition) under Section 47 of the Insolvency Act.
5. In IA 1461/2018, the appellants herein sought a direction to the Official Receiver to immediately remove, or auction and sell, the movable properties listed as "item four" which were located within the rooms

scheduled as items two and three; to direct the Receiver to hand over the keys and provide vacant possession of the rooms to the petitioners; to permit the appellants to deposit the remaining balance of a ₹25,00,000 security deposit into the court or the receiver's account; this balance is to be calculated after the petitioners appropriate the outstanding license fee arrears and pay the Kerala State Electricity Board (KSEB) arrears owed by the first and second respondents, which should occur immediately upon obtaining vacant possession of the rooms. On April 12, 2019, the petition was disposed of on the following terms: Vacant possession of scheduled items 2 and 3 rooms was to be entrusted to the Appellants; the Appellants must deposit a portion of the security amount after setting off liabilities as of the date the I.P. (Insolvency Petition) was filed, and the Appellants were required to undertake to participate in the I.P. proceedings.

6. In I.A. No. 588 of 2019, the appellants prayed that the Official Receiver be directed to hand over vacant possession of the scheduled rooms along with various unsold and obsolete movable articles. Specifically, the prayer sought authorisation for the appellants to take over the rooms, including wooden works and fixed cupboards that were more than ten years old and considered worthless, so they could remove, destroy, or dispose of these waste materials at their own expense to make the rooms usable. This application was prompted by the ongoing nature of the receiver's process and the fact that these specific items remained unsold after multiple auction attempts. On April 12, 2019, the trial court allowed the petition, but this order was made strictly subject to the appellants' compliance with the order passed on the same day in I.A. No. 1461 of 2018.

7. **Case of the Respondents:** The Official Receiver maintains that set-off is permissible only for debts existing at the time of the presentation of the

insolvency petition. It is argued that allowing a full set-off for the post-petition period would grant the appellants preferential treatment over other creditors.

8. **Arguments of the Appellants:** The learned counsel for the appellants contended that the trial court's order is legally unsustainable as it restricted the right of set-off only up to the date the insolvency petition was filed. It is argued that under Section 47 of the Kerala Insolvency Act, in cases of mutual dealings, an account must be taken of what is due from one party to the other, and only the balance should be paid. The appellants further assert that they are "secured creditors" as defined under Section 2(f) of the Act, holding a lien over the security deposit for future arrears. It is argued that since the Official Receiver continued to occupy the premises long after the I.P. was filed to conduct auctions and realize assets, the license fees for this "post-petition" period constitute "costs of administration" of the insolvent estate, which must be set off against the security deposit before any refund is made to the estate. The appellants rely on the dictum in *Mohan Pyari Sethi v. Official Liquidator* (1991 KHC 2087) and *Corob India Pvt. Ltd. v. Mr. Birendra Kumar* (2024 SCC ONLINE NCLAT 1267) to support their right to adjust the deposit against arrears.

9. **Arguments of the Respondents:** The Official Receiver (Respondent No. 2) maintained that for the purposes of insolvency proceedings, the mutual dealings account must be frozen at the date of presentation of the petition. It is argued that any arrears or liabilities incurred after the filing of the petition cannot be unilaterally set off by a creditor but must be proved and adjudicated within the insolvency process to ensure *pari passu* distribution among all creditors. The respondents contend that allowing a full set-off for the post-petition period would grant the appellants

preferential treatment over other creditors, diminishing the assets available for general distribution. Respondent 1 supported the above arguments.

**10. Subsequent Developments:** During the pendency of this appeal, on 23.01.2020, the appellants received the keys of the premises from the Official Receiver. To obtain possession, they deposited ₹22,16,640/- via Cheque No. 746437 under protest, subject to the outcome of this appeal. This amount was calculated after deducting ₹2,83,360/- towards arrears up to May 2018. Thus, the order of the trial court in IA 588/2019, that the relief granted should be strictly subject to the appellants' compliance with the order passed on the same day in I.A. No. 1461 of 2018, has already been complied with. So, the challenge against the order in IA 588/2019 becomes infructuous.

**11. Points for Consideration:**

(i) Whether the appellants are entitled to set off license fees and electricity arrears accrued during the Receiver's occupation (post-petition) against the security deposit?

(ii) Is the impugned order limiting the set-off to the date of filing the I.P. legally sustainable?

**12. Point No. (i) & (ii):** The primary legal question revolves around Section 47 of the Kerala Insolvency Act, 1955, which governs "Mutual dealings and set-off." It stipulates that where there are mutual dealings between an insolvent and a creditor, an account shall be taken of what is due from one party to the other, and only the balance of the account shall be claimed or paid.

**13.** The appellants' status as "secured creditors" under Section 2(f) of the above Act is significant, as the security deposit was held as a lien to secure payment of license fees. "Secured creditor" means a person

holding a mortgage, charge or lien on the property of the debtor or any part thereof as a security for a debt due to him from the debtor.

14. In *Mohan Pyari Sethi v. Official Liquidator (1991 KHC 2087)*, the Hon'ble Delhi High Court held that a landlord has a right to adjust a security deposit against arrears of rent upon the winding up of a company.

15. In *Corob India Pvt. Ltd. v. Mr. Birendra Kumar (2024 SCC ONLINE NCLAT 1267)*, the National Company Law Appellate Tribunal held;

21. From a plain reading of the above definition of "operational debt", it is clear that it must relate to a claim which is confined to either of the four categories viz. provision of goods, services, employment and Government dues. It may be pertinent to add here that the expression "services" has not been defined in the IBC<sup>1</sup> and has to be interpreted in a broad and purposive manner. The sum of Security Deposit made in the facts of the present case which was given in the form of advance by the Appellant to the Corporate Debtor for prospective occupation of the leased premises on rent, this deposit was in the nature of advance for use of the premises. For a debt to be classified as an 'operational debt', it must bear some nexus with the provision of goods or services, without specifying who is to be the supplier or the receiver of such goods or services as has been held by the Hon'ble Supreme Court in *M/s Consolidated Construction Consortium Ltd. Vs M/s Hitro Energy Solutions Pvt. Ltd. in Civil Appeal No. 2839 of 2020 (2022 SCC ONLINE SC 142—2022 SCC 7 164—2022 INSC 150)* . Hence the payment of Security Deposit as advance for use of the Leased premises is clearly included in the "provision of services" and therefore falls within the purview of operational debt. We are therefore of the considered opinion that impugned order in not treating the Appellant as an Operational Creditor suffers from legal infirmity and the same cannot be supported.

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<sup>1</sup> Insolvency and Bankruptcy Code, 2016.

16. Furthermore, the Official Receiver's occupation from June 2018 to January 2020 was for the benefit of the insolvent estate to realise assets through auctions. Arrears for this period constitute costs of administration, which must be satisfied in priority. It would be inequitable to force the licensors to deposit the full amount and wait for a dividend while their property was used by the Receiver to generate funds for the estate.
17. The memo filed by the appellants on 23.01.2020 details an aggregate rent due of ₹36,30,000/- and electricity arrears of ₹1,15,891/-. Since they have already deposited ₹22,16,640/- under protest to the Receiver, the reliefs must be moulded to reflect this payment.
18. **Conclusion:** The trial court erred in freezing the set-off account at the date of the petition. Under Section 47 of the Kerala Insolvency Act, set-off in mutual dealings is a substantive right. Holding a lien on the security deposit for license fees, the Appellants qualify as "secured creditors" under Section 2(f). Following *Mohan Pyari Sethi* and *Corob India* (Supra), licensors are entitled to adjust deposits against arrears. The Official Receiver's post-petition occupation, serving the estate's benefit, constitutes "costs of administration." Restricting set-off to the petition date allows unjust enrichment of the insolvent estate. Since total arrears far exceed the deposit, the Appellants were entitled to a full adjustment. Consequently, the ₹22,16,640/- paid under protest must be refunded, subject to TDS, if any. The appellants have a right to set off the security deposit against the total arrears accrued up to the date they received possession.
19. **In the result, the appeal is allowed in part, as follows:**
  1. *The challenge against the order of the trial court in IA 588/2019 stands dismissed.*

2. *The condition in the impugned order in IA 1461/2018 dated 12.04.2019 limiting the set-off to the date of filing the I.P. is set aside.*
3. *It is held that the appellants are entitled to set off the license fees due up to 23.01.2020 against the security deposit of ₹25,00,000/-.*
4. *Since the appellants have already deposited ₹22,16,640/- with the Official Receiver under protest, the Receiver is directed to take account of the total arrears due up to 23.01.2020.*
5. *₹22,16,640/- deposited by the appellants to the Official Receiver shall be refunded to them, in 30 days from today, with interest @ 7% P.A, after deducting TDS, if any, applicable.*
6. *The parties shall bear their respective costs.*

Pronounced in open court on this the 25<sup>th</sup> day of March, 2026.

Sd/-  
Dr. Satheesh Kumar V  
Addl. District Judge - IV

Appendix – Nil

Id/-  
Addl. District Judge - IV

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Copied by:  
Compared by:

Sd/-  
Dr. Satheesh Kumar V  
Addl. District Judge - IV