

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 798 of 2025

[Arising out of the Impugned Order dated 06.05.2025 passed by the
Adjudicating Authority, National Company Law Tribunal, Mumbai Bench,
Court-I in I.A. No.-3958 of 2023 in CP IB No. 4578/MB/2018]

In the matter of:

NAZRU S BASHEER

...Appellant

Versus

PANCARD CLUBS LIMITED

(THROUGH ITS SUCCESSFUL RESOLUTION

APPLICANT, CHEMHUB TRADELINK PVT. LTD.) & Anr.

...Respondents

Present:

For Appellant : Mr. Asav Rajan, Mr. Kashish Chadha, Mr. Akash Saxena, Mr. Derang Shrotriya & Mr. Aditya Shah, Advocates for Appellant.

For Respondent : Mr. Mahesh Agrawal, Mr. Abhijit Sinha, Sr. Adv., Mr. Shivam Shukla & Mr. Kaushtubh Singh, Advocates for Respondent.

ORDER
(Hybrid Mode)

Justice N. Seshasayee (Judicial)

The present appeal is laid against the order dated 06.05.2025 passed by NCLT Mumbai, in I.A. No. 3958 of 2023 in CP(IB) 4578/MB (herein after would be referred to as CD). In terms of the order now impugned in this appeal, the Adjudicating Authority had directed the appellant to hand over the possession of a certain hotel building that goes by the name 'MB International'.

The Facts:

2.1 The facts most relevant for the current purpose are few and are as below:

- a) The hotel building in question belonged to the CD against which was initiated a CIRP under Section 7. Today the Resolution Plan has been approved.
- b) Be that as it may on 03.07.2017, the CD had entered a Conduct Agreement with the appellant under which the appellant was given the right to run the hotel MB International, restaurant and a gift shop for a period of six years from the date of the agreement. The said agreement inter alia provided for payment of royalty etc.
- c) In the following year, in 2022 to be precise, CIRP against the corporate debtor which is the other party to the Conducting Agreement, was initiated in CP (IB) 4758 of 2018 before the NCLT, Mumbai. It is in this setting the Resolution Professional appointed during the CIRP, in exercise of the authority vested in his office issued few e-mails dated 14.12.2022, 19.12.2022 and 16.01.2023 to CD seeking information regarding the said property which was latter ignored. Eventually the CD shared a copy of the Conducting Agreement which it had entered into with the appellant. The RP would now issue a legal notice dated

08.04.2023 and 11.05.2023 requiring him to pay royalty and certain other amounts and also required the appellant to delivery vacant possession of the property 'Hotel MB International'. It may be added here that this property had earlier been attached under SEBI as well as in a proceeding initiated by the Economic Offences Wing of Maharashtra Police.

- d) The RP would then institute two applications. The first was I.A.3958 of 2023 against the appellant (against the order passed from which the present appeal arises) *inter alia* seeking a direction to the appellant to deliver vacant possession of the hotel property. The other prayers pertain to payment of certain amounts based on certain obligations created under the Conducting Agreement. The second application was I.A.4136 of 2023 under Sec.45 and 48 IBC which deal with avoidance of preferential transactions as relating to few transactions of the CD which included the Conducting Agreement in favour of the appellant.
- e) The appellant resisted I.A.3958 of 2023, and his principal contentions have been that even though the Conducting Agreement was executed on 03.07.2017, possession was handed over to the appellant only in 2021; that the appellant had invested huge sums in the project of running the hotel etc., in terms of the Conducting agreement; and that in terms of Clause 28 of the Conducting Agreement the owner viz., the Corporate Debtor retained to itself the right to extend the term of the agreement beyond the stipulated six years period and that the corporate debtor has not indicated its with five prayers, the basis of which flowed out of the Conducting Agreement.
- f) Even as I.A.3958 of 2023 was pending consideration by the Adjudicating Authority, on 25.04.2024 the Resolution Plan in the CIRP came to be approved,

following which the SRA replaced the RP and continued to prosecute I.A.3958 of 2023.

- g) When I.A.3958 of 2023 was taken up for hearing, the applicant thereof did not press the money-claims but persisted with the prayer requiring the delivery of the hotel property by the appellant.

2.2 The Adjudicating Authority vide the Order now impugned, allowed I.A.3958 of 2023. Its line of reasoning is that the time stipulated in the Conducting Agreement had expired and that nothing survives to treat the said agreement as surviving to keep the consequences flowing out of it to away from the purview of the Adjudicating Authority under Sec.60 IBC. This order is now challenged.

The Arguments:

3.1 The learned counsel for the appellants contended as below:

- a) The Conducting Agreement vide Clause 28 has provided that the owner of the property, *“will inform the Conductor, if the agreement period can be extended beyond the initial agreed period of six years”* and inasmuch as the unwillingness to continue to Agreement beyond the period originally agreed upon was not intimated to the appellant, it ought to be presumed that the Agreement continues.
- b) Secondly, when the money-claims made originally in I.A.3958 of 2023 as well as the demand for delivery of possession of the hotel property flew directly from the Conducting Agreement, inasmuch as the money claims were given up during hearing, necessarily the prayer for delivery of property should have also been visited with the same effect.

- c) Even though the Conducting Agreement was penned and inked on 03.07.2017, actual possession was handed over only in 2021. It therefore, leads to a question if the appellant was entitled to be in possession after 02.09.2023. Indeed, the appellant had invested substantial sum in running the hotel business and that needs to be reckoned. The issue therefore, involve a disputed question of fact and hence the Tribunal below lacked even the jurisdiction to entertain the prayer for delivery of possession.
- d) This apart, when once the resolution plan is approved, the jurisdiction of the Adjudicating Authority ceases and hence the very I.A.3958 of 2023 should have been held to have become infructuous.
- e) The Adjudicating Authority ought to have noted that I.A.4136 of 2023 was pending which relates to overlapping period and hence dealing with I.A.3958 of 2023 separately is flawed.
- f) At any rate under Sec.60 IBC, the Adjudicating Authority has no jurisdiction to entertain the application.

Reliance was placed on the ratio in *Ms/ Jhanvi Rajput Automotive Pvt. Ltd., Vs R.P. of Rajpal Abhikaran Pvt. Ltd.* [2023 SCC OnLineNCLAT 1436] and *Sumati Suresh Hegde Vs Sonbhadra*, [(2025)ibclaw.in 29 NCLAT] and *K.L Jute Products Pvt. Ltd., Vs Tirupti Jute Industries Pvt. Ltd.* [(2021) 15 Comp Cas-OL 663; 2020 SCC OnLine NCLAT 426]

3.2 Refuting the above arguments, the counsel for the respondent would content that in terms of sections 60 of IBC, the Adjudicating Authority as retains to itself the authority to deal with the issues emanating after termination of lease and this precisely is the ratio of *Janvi Rajput case*. On the other hand, in the case of *Harish Raghavji Patel & Another. Vs Ajit Gyanchand Jain, IRP of Rajesh Cityspace Pvt. Ltd. & Ors.* [Company Appeal (AT) (INS) No. 682 of 2025], it has been held that

where any premises which is a subject matter of resolution process is in occupation after the period during which there was an authorisation to occupy, such person in occupation is liable to be vacated. In the instant case whatever arrangements by which the appellant was in possession of the hotel property has expired by effect of the time on 02.09.2023, during the pendency of CIRP. Eventually there is no vested rights in the appellant to continue in possession.

(Discussion and Decision)

4. The submissions made on either side were carefully weighed. This Tribunal has little difficulty in spotting the fallacy of the arguments advanced on behalf of the appellant. Admittedly the Conducting Agreement was executed on 03.07.2017. And, the CIRP against the CD under whom the appellant claims right to be in possession of the hotel property, has commenced in 2022, and with it has become operational the moratorium under Section 14. Moratorium, per se imply that there shall be in place a status quo viz the affairs of corporate debtor. And, inasmuch as under Section 14 the property of corporate debtor after the commencement of moratorium, cannot be evacuated the very expectation, even if any, of the appellant that the agreement period would be extended in terms of clause 28 thereof, is both misplaced and misconceived. It is not in dispute that the term of the agreement has expired on 07.08.2023, wherein after the appellant ceased to have any lawful right to be in possession. Necessarily he is liable to be evicted and hence this Tribunal does not consider that the line of reasoning of the Adjudicating Authority is flawed.

5. Turning to the other contention of the appellant that the Adjudicating Authority was in error in dealing with I.A. No. 3958 of 2023 separately is concerned, this Tribunal considers it as a plea made in desperation. The scope of application in I.A. No. 4136 of 2023 operates entirely in a different sphere and it has little to do with the scope of the I.A. 3958 of 2023.

6. In a conclusion this Tribunal considers that the appeal is misconceived and is liable to be dismissed. Accordingly, this appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Justice N. Seshasayee]
Member (Judicial)**

**[Barun Mitra]
Member (Technical)**

**Place: New Delhi
Date: 30.05.2025
Shweta/Harshit(LR)**