NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 794 of 2021

IN THE MATTER OF:

Supriyo Kumar Chaudhuri, **Liquidator of JVL Agro Industries Limited,** **BDO Restructuring Advisory LLP,** **C/o BDO India LLP, 4th Floor,** **Duckback House, 41, Shakespeare Sarani,** **Kolkata-700017**	**...Appellant No. 1**
JVL Agro Industries Limited, **Through its Liquidator,** **Village Tilmapur Ghazipur Road,** **Ashapur, Varanasi, U.P. - 221007**	**... Appellant No. 2**

Versus

Jhunjhunwala Oil Mills Ltd., **Ashapur, P.O. Sarnath,** **Varanasi. Uttar Pradesh-221007**	**... Contesting Respondent No. 1**
Standard Chartered Bank, **Crescenzo, 7th floor, c/28/29,** **G Block Bandra Kurla,** **Complex (East) – Mumbai-51.**	**... Proforma Respondent No. 2**

Present:

For Appellants	**:**	Ms. Swati Dalmia, Mr. Palzer Moktan, Mr. Indranil Ghosh, Advocates
For Respondents	**:**	Mr. Gautam Singh, Advocate.

With

Company Appeal (AT) (Ins) No. 04 of 2022

IN THE MATTER OF:

Jhunjhunwala Oil Mills Ltd. **...Appellant**
Ashapur, P.O. Sarnath,
Varanasi. U.P. 221007.

Versus

JVL Agro Industries Ltd. **...Respondent No. 1**
Through Liquidator (erstwhile RP)
Village Tilmapur Ghazipur Road,
Ashapur, Varanasi. U.P. 221007.

Supriyo Kumar Chaudhuri, **... Respondent No. 2**
Liquidator of JVL Agro Industries Limited,
BDO Restructuring Advisory LLP,
C/o BDO India LLP, 4th Floor,
Duckback House, 41, Shakespeare Sarani,
Kolkata-700017

Present:

For Appellants : Mr. Gautam Singh, Advocate

For Respondents : Ms. Swati Dalmia, Mr. Palzer Moktan, Mr. Indranil Ghosh, Advocates.

Judgment
(Date: 23.1.2023)

[Per.: Dr. Alok Srivastava, Member (Technical)]

These appeals, namely, (i) Company Appeal (AT) (Ins) No. 794 of 2021 and (ii) Company Appeal (AT) (Ins) No. 04 of 2022 have been filed under section 61 of Insolvency and Bankruptcy Code, 2016 (in short 'IBC') by the Appellants, who are aggrieved by order dated 6.8.2021 (hereinafter called 'Impugned Order') in CA (IB) No. 58/2022 respectively, passed in the three interlocutory applications filed in CP (IB) No. 223/ALD/2019 by the Adjudicating Authority (National Company Law Tribunal, Allahabad Bench). The Adjudicating Authority has dealt with the three applications, namely, IA No. 199/2020, C.A. No. 57/2020 and CA No.58/2020 through the common order, which is the Impugned Order.

2. CA NO. 57/2020 and CA No. 58/2020 were filed by Jhunjhunwala Oil Mills Limited (in short 'JOML') praying for direction to the Resolution Professional (in short 'RP') of the corporate debtor JVL Agro Industries Pvt. Ltd. (in short 'JVL Agro') to pay the rent alongwith interest of the premises owned by JOML which was used by JVL Agro and also to vacate the premises of JOML. IA No. 199/2020 was filed by the liquidator of JVL Agro with prayer for direction to Respondents No. 1 to 5 in IA No. 199/2020 to open the padlocks inserted at the entry gate of the office premises of the corporate debtor situated at Village Tilmapur, Gazipur Road, Ashapur, Varanasi and further to restore the physical possession of the said office to the liquidator.

3. Shorn of unnecessary details, the facts of the case are that the corporate debtor is undergoing liquidation process pursuant to order dated 19.8.2021 passed by the Adjudicating Authority. The Appellant/Liquidator has stated that the corporate debtor has been in possession of the premises, situated at Village Tilmapur, Gazipur Road, Ashapur, Varanasi (hereinafter called 'said premises') since the year 2007. The Appellant/Liquidator has further stated that the corporate debtor shifted its registered office to the 'said premises' on 14.2.2018, which was purely an arrangement between two companies belong to the same group of companies and therefore no rent agreement was signed between the corporate debtor JVL Agro and JOML, and on the basis of no objection certificate was granted by JOML to use its premises. Further, there was no indication of any rent to be paid regarding the use of the 'said premises' by the corporate debtor. He has further stated that the corporate debtor filed an intimation with the Registrar of Companies in Form INC-22, which was signed by S.N. Jhunjhunwala, who is the promoter/shareholder/director of the corporate debtor JVL Agro and also a shareholder of JOML holding 47,600 shares in JOML. In addition, Shri S.N. Jhunjhunwala's father also holds 16,500 shares in JOML.

4. The Appellant/Liquidator has further stated that after commencement of the Corporate Insolvency Resolution Process (in short 'CIRP') of the corporate debtor JVL Agro vide order dated 25.7.2018, and appointment of Shri Supriyo Kumar Chaudhuri as Resolution Professional (in short 'RP') on 10.9.2018, two applications, namely, CA No. 57/2020 and CA No. 58/2020 were filed by JOML seeking payment of rent in respect of the 'said premises' by the corporate debtor and vacation of the 'said premises' and thereafter, while these two applications were pending and moratorium regarding the corporate debtor's assets was in operation, the officers of JOML placed padlocks on the 'said premises' on 28.7.2020 without any authority. He has added that the RP filed an application being CA 199 of 2020 on 31.7.2020 seeking removal of padlocks placed illegally on the 'said premises' by the officers of JOML and action against JOML and its directors including restoration of physical possession of the 'said premises' to the corporate debtor/RP. He has further added that in its reply to IA 199/20, JOML for the first time brought on record an undated and unstamped letter purportedly indicating acceptance for payment of rent for the 'said premises' by the corporate debtor, which, it is alleged, is a manufactured document created as an afterthought to show purported rent agreement between JVL Agro/corporate debtor and JOML, whereupon Impugned Order

was passed on 6.8.2021, leading to the filing of appeal being CA(AT)(Ins) No. 794/2021 by the Appellant JVL Agro..

5. The Appellant JOML with regard to its appeal CA (AT) (Ins) No. 04/2022 has claimed that the corporate debtor JVL Agro shifted is registered office in the said premises in the year 2018, when a monthly rent of Rs. six lakhs plus GST was orally agreed for payment by the corporate debtor, with an understanding that an agreement would soon be entered into between the two parties to this effect. The Appellant JOML has further stated that JVL Agro had earlier issued an acceptance letter in February 2018, whereafter its registered office was shifted in the 'said premises', but a formal rent agreement could not be executed and even payment of monthly rent was postponed on some pretext or the other. He has further stated that after CIRP was initiated against the corporate debtor JVL Agro in July 2018, JOML sent an e-mail dated 28.8.2018 to the corporate debtor/RP to enter into an agreement regarding renting of the 'said premises', inter alia, demanding payment of overdue rent. It has claimed that it followed up this e-mail with remainder e-mails, but did not get any response from the RP. The Appellant has added that since JOML was facing financial difficulty and an application under section 7 of IBC had been filed by State Bank of India against JOML, the

Appellant/JOML arranged for a 'one time settlement' with the State Bank of India and also entered into registered sale agreement for the 'said premises' and property with a party Rudra Realtech Private Limited in order to clear its dues with the State Bank of India and, therefore, sought vacant possession of the 'said premises' from the corporate debtor, and since the corporate debtor did not accede to Appellant/JOML's request, it filed two applications being No. CA 57/2020 and CA 58/2020 before the Adjudicating Authority for payment of rent and vacation of the 'said premises', and these two applications alongwith IA 199/2020 were disposed of by order dated 6.8.2021 (the Impugned Order) passed by the Adjudicating Authority. The Appellant/JOML has further stated that it is aggrieved by the part of the order whereby vacant possession of the said premises has not been directed to be handed over to JOML and further the rent directed to be paid is as per the assessment done by the District Magistrate and not the amount of Rs. six lakhs plus GST per month, which was agreed to between the two parties.

6. We heard the arguments of the Learned Counsels for both the parties and perused the record.

7. The Learned Counsel for the Appellant has started her arguments by pointing out that the appellant had filed IA No. 199/2020 before the Adjudicating Authority as the corporate debtor/RP was locked out of the 'said premises' where the registered office of the corporate debtor was located and where the records and other documents of the corporate debtor were stored. Referring to the Impugned Order, she has claimed that the prayers made in IA 199/2020 were not adequately considered and adjudicated upon by the Adjudicating Authority, and the Impugned Order, without assigning any reason, has disposed of the Appellant's IA No. 199/2020. She has pointed out in particular to the fact that IA No. 199/2020 specifically sought order for restoring the possession of the 'said premises' to the corporate debtor/Resolution Professional since the 'said premises' was in possession of the corporate debtor at the time of initiation of CIRP, and no recovery of the 'said premises' could have been made as per the provisions of section 14(1)(d) of the IBC. She has further argued that the corporate debtor has continued to be in procession of the 'said premises' since the year 2007 and the registered office of the corporate debtor was shifted there in February 2018 as per an arrangement between the two companies viz. JVL Agro and JOML belonging to the same group of companies.

8. The Learned Counsel for Appellant has further argued that the arrangement between the two companies JVL Agro and JOML regarding the use of 'said premises' was in accordance with a 'no objection' granted by JOML regarding use of JOML's premises situated at Village Tilmapur, Gazipur Road, Ashapur, Varanasi and the no objection letter also admitted that the 'said premises' had been used by JVL Agro for its administrative office from past. She has further referred to the statutory filing in Form No. INC-22, whereby the corporate debtor JVL Agro intimated that its registered office is in the 'said premises' w.e.f. 14.2.2018 and the Board's resolution of JVL Agro regarding shifting of its registered office from Jhunjhunwala Bhawan, Nati Imli, Varanasi-221001 to the 'said premises' in Village Tilmapur, Ghazipur Road, Ashapur, Varanasi was approved by the Board of Directors, JVL Agro in its meeting on 14.2.2018.

9. The Learned Counsel for Appellant has further claimed that after the Appellant/corporate debtor was illegally locked out of the 'said premises' , the RP, before filing IA No. 199/2020, made a complaint dated 28.7.2020 to the Officer Incharge, Sarnath Thana, Varanasi and complaint dated 30.7.2020 to the Senior Superintendent of Police, Varanasi District, wherein the

Appellant/RP clearly pointed out that the act of putting padlocks in 'said premises' is coercive, unlawful and in contravention of moratorium declared after initiation of CIRP of the corporate debtor. The Learned Counsel for Appellant JVL Agro has referred to the undated letter which is purported by JOML to have been issued by Director, JVL Agro accepting to pay rent of Rs. six lakhs plus GST per month, and claimed that such a letter is of dubious origin as it has no date of issue nor the name of the director JVL Agro written therein, who has purportedly signed the letter. Further, she has pointed out that the letterhead on which this purported NOC regarding payment of rent of Rs. six lakhs plus GST per month is claimed is different from the letter head used by JVL Agro in its complaint to Officer In-charge, Sarnath Thana and to the SSP, Varanasi and also on which the minutes dated 14.2.2018 of the Board of Directors of JVL Agro have been issued, and therefore there is a serious doubt about the authenticity and genuineness of the NOC purportedly issued by JVL Agro regarding payment of monthly rent.

10. The Learned Counsel for Appellant JVL Agro has lastly argued that she is relying on section 14(1)(d) of the IBC, which provides that 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 during the moratorium period. She has also contended that if there is a contractual dispute regarding payment of rent and vacation of 'said premises', the Adjudicating Authority had no jurisdiction to pass an order related to the contract (even though there was none), which is not directly related to insolvency resolution of the corporate debtor. In this connection, she has referred to the judgment of Hon'ble Supreme Court in the matter of **Rajendra K. Bhutta vs. Maharashtra Housing and Area Development Authority and another, [(2020) 13 SCC 208]** to claim that if there is any conflict between a state legislation (MHADA Act in the Rajendra K. Bhutta case) and the IBC, the provisions of IBC must prevail. She has further referred to para 28 of the judgment in **Rajendra K. Bhutta case (supra)** to contend that recovery of property occupied by the corporate debtor does not refer to rights or interests created in property but only actual physical occupation of the property. The Learned Counsel for appellant has also referred to the judgment of Hon'ble Supreme Court in **Tata Consultancy Services Ltd. v. SK Wheels (P) Ltd. [(2022) 2 SCC 583],** wherein it is clearly held that the residuary jurisdiction of NCLT cannot be invoked if the termination of a contract is based on grounds unrelated to the insolvency of corporate debtor, and therefore, in the absence of jurisdiction, NCLT could not have passed the Impugned Order directing payment of rent during the CIRP period and inter alia, allowing the possession of the 'said premises' to remain with JOML which was coercively taken over by JOML in the moratorium period.

11. The Learned Counsel for Respondent/JOML in CA (AT) (Ins.) No. 794/2021 has argued that Mr. Ashutosh Jhunjhunwala is not the son of Mr. S.N. Jhunjhunwala, but his nephew and therefore, JVL Agro and JOML are not sister concerns belonging to the same group of companies but two separate legal entities which operate on the basis of their own interests. He has claimed that the Appellant/JVL Agro has not filed any document to show that the corporate debtor has been using the said premises since 2007 and the said premises started getting used as registered office of the corporate debtor only from 14.2.2018. He has referred to the NOC issued by JVL Agro to claim that an agreement to pay rent of Rs. six lakhs plus GST per month was accepted by the JVL Agro and a proper rent agreement was to have been executed between the parties, but for various reasons such agreement could not be executed. He has referred to e-mail dated 28.8.2018 sent by JOML to the RP of the corporate debtor to claim that JOML informed about the signing of the rent agreement with effect from 1.8.2018 at an agreed rent of Rs. six lakhs plus GST and a one month's security deposit of Rs. six lakhs plus GST in advance. He

has further referred to e-mail reminders dated 31.8.2018 and 24.9.2019 to claim that despite repeated reminders, the RP did not respond to his request. He has referred to the provision under section 14(2-A) that the provision of the 'said premises' on rent was akin to supply of services critical to protect and preserve the value of the corporate debtor and manage the operations of the corporate debtor as a going concern and the supply of such services were to be continued during the period of moratorium. Therefore, the rent accrued on the basis of renting of the 'said premises' should be paid to the landlord JOML.

12. Regarding the question of jurisdiction of Adjudicating Authority in looking at a dispute relating to payment of rent, he has contended that section 60 (5)(b) of the IBC gives jurisdiction to the Adjudicating Authority to entertain or dispose of any claim made by or against the corporate debtor, which is the present case.

13. In connection with CA No. CA(AT)(Ins.) No. 04/2022, wherein JOML has raised the issue of the quantum of rent payable, the Learned Counsel for JOML has pointed out that the calculation made by the District Magistrate in assessing the rental value is not correct as the assessment was made by the officials of

the Public Works Department and not by the District Magistrate. He has further pointed out that since the monthly rent of Rs. six lakhs plus GST was agreed to be paid by the corporate debtor, there is no question of any reassessment of the rental value and furthermore he has presented assessment of rental value done by an independent valuer, wherein the present fair rental valuation of the property as Rs.4,46,000/- per month is assessed and the assessment report has been submitted by him in the rejoinder to corporate debtor's reply filed by JOML in CA NO. 04/2022. He has referred to the judgment of Hon'ble Supreme Court in the matter of **Tata Consultancy Services Ltd. (supra)** to claim that NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the corporate debtor, which is the case in the present appeal.

14. The issues that arise for consideration in the present appeal are two-fold:-

(i) Whether the 'said premises' of JOML being used as Registered Office of the corporate debtor JVL Agro could be 'recovered' by the landlord JOML during the subsistence of moratorium after the initiation of CIRP, and

(ii) Whether any monthly rent was agreed upon and is payable to the landlord JOML by the corporate debtor JVL Agro whether before the imposition of moratorium or during the moratorium period?

15. We first look at the issue whether 'said premises' owned by JOML, situated at Village Tilmapur, Gazipur Road, Ashapur, Varanasi were being used by the corporate debtor prior to the initiation of CIRP of JVL Agro. We note that JVL Agro started using the 'said premises' belonging to JOML since 14th February, 2018. In this regard, a letter expressing no objection, which is undated and signed by Ashutosh Jhunjhunwala, Director of JOML, is produced by the RP (attached at pg.43 of the appeal paperbook, vol.I). This letter is not disputed by JOML. It records that the JOML has 'no objection' to the use of the 'said premises' as the registered office of the corporate debtor JVL Agro and these premises have already been used by JVL Agro as its administrative office premises since past. We further note the filing by the corporate debtor in form No. INC-22 on the website of Ministry of Corporate Affairs, wherein it is stated the Registered Office of the corporate debtor is situated at Village Tilmapur, Gazipur Road,

Ashapur, Varanasi since 14.2.2018. Further, we also note that the Board of Directors of JVL Agro resolved in its meeting on 14.2.2018 that the registered office of JVL Agro is being shifted from Jhunjhunwala Bhawan, Nati Imli, Varanasi-221001 to Village Tilmapur, Gazipur Road, Ashapur, Varanasi. We also note that the complaint dated 28.7.2020 to Officer In-charge, Sarnath Thana and another similar complaint dated 30.7.2020 addressed to SSP, Varanasi by the RP states very clearly that JVL Agro has continued to hold possession of the said premises prior to the commencement of CIRP and it is presently in actual possession of the 'said premises'. We also note the letter containing no-objection issued by Mr. Ashutosh Jhunjhunwala stating that JOML has no objection to the 'said premises' being used as registered office of JVL Agro. Both these letters have not been disputed by the Appellant, JOML.

16. Therefore, on the basis of above stated letters, we are of the clear view that the 'said premises' were definitely in possession of JVL Agro from 14.2.2018, if not earlier, and was definitely in the possession of the corporate debtor on 25.7.2018 when the CIRP of the corporate debtor was initiated.

17. We now consider the issue whether the insertion of padlocks on the gates of the 'said premises' was permitted in view of moratorium which was in force. For better appreciation of the issue, relevant provision in section 14 of the IBC is reproduced below:-

> ***"14. Moratorium. –*** *(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-*
>
> *Xx xx xx xx*
>
> *(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor*
>
> *Xx xx xx xx*
>
> *(2-A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified."*

18. Section 14(1)(d) of the IBC stipulates that during the period of moratorium, recovery of any property by an owner or lessor, where such property occupied by or in the possession of the corporate debtor is prohibited. We also note that the provision in

section 14(2-A)which stipulates that where the Interim Resolution Professional considers the supply of goods and services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except when the corporate debtor has not paid dues arising from such supply of services during the moratorium period.

19. In the first instance case, we have already noted that the 'said premises' owned by JOML were in possession of the corporate debtor JVL Agro at least from 14.2.2018 which is about five months prior to the date of initiation of CIRP of the corporate debtor. Therefore, the recovery of any property by the owner was expressly prohibited under section 14(1)(d) of the IBC during the period when moratorium was in force. The insertion of padlocks by JOML at the 'said premises' happened on 28.7.2020, which is as is stated in the complaint made by the RP to the Officer In-charge, Sarnath Thana, Varanasi and later to SSP, Varanasi and hence complaints are not disputed by JOML. Thus, this recovery which was done by the owner JOML of the 'said premises' on 28.7.2018, is clearly after the initiation of CIRP on 25.7.2018 and

therefore, during the period of enforcement of moratorium and thus, such a recovery is a clear infringement of section 14(1)(d) of the IBC. We do not think that section 14(2-A) is attracted in the present case as the RP had not considered the renting of the 'said premises" critical to protect and preserve the value of the corporate debtor nor had made any request to JOML to continue renting of the 'said premises' to the corporate debtor. The 'said premises', therefore, should have lawfully been with the RP/ corporate debtor and continue in its lawful possession during the continuation of the CIRP of the corporate debtor.

20. The second issue to be considered is whether any rent was payable to the owner of the 'said premises' JOML by the corporate debtor during the period of subsistence of moratorium.

21. In this connection, we note the following no objection certificate given by JOML regarding the use of this premises to the corporate debtor, JVL Agro:-

> *"It is hereby confirmed that we have no objection to the use of our premises situated at Village Tilmapur, Ghazipur Road, Ashapur, Varanasi - 221007 (U.P.) India as the registered office of the Company JVL Agro Industries Limited. Varanasi which has already been used by the M/s JVL Agro*

Industries Limited as its administrative office premises since past."

We further note that this NOC does not mention payment of any monthly rent to the owner of the premises.

22. We also notice the e-mail dated 28.8.2018 of JOML, which is also referred in the context of payment of rent, which is as follows:-

> *"Dear Sir,*
>
> *JVL. Agro Industries is using its office in our campus that is Jhunjhunwala Oil Mills Lid., Ashapur, Varanasi, UP. Total office space of JVL is 7000 Sqft. Carpet area and apart from this we have given an area for its D.G set. As our Ashapur plant unit is shut down therefore it is in your kind notice to come in a rent agreement initially for 6 months which will start from 1st August 2018. The following term & condition is below mentioned:-*
>
> *1. Rs. 5 Lakhs+GST as against monthly rent of JVL office carpet area of 7000 Sqft. Which will be paid in advance in our account.*
> *2. In addition, we are providing security services, parking & water to JVL Agro Industries; in that account Rs. 1 Lakh+GST has to be paid monthly in advance.*
> *3. 3. One month Security deposit in advance of Rs. 6 Lakhs (against Rent & Additional services).*
>
> *You are requested to take prompt action on this issue and if the need be discussed with our management."*

23. Quite clearly this e-mail, which was sent by JOML to the RP during the moratorium period accepts that the premises of JOML are being used by JVL Agro and it calls upon the RP to enter into rent agreement initially for six months from 1.8.2018 on certain terms and conditions, which mainly relate to payment of monthly rent of Rs. 6 lakhs plus GST. This e-mail is followed up by two more e-mails dated 31.8.2018 and 24.9.2018 (all three e-mails attached at pp. 210-212 of appeal paperbook vol.II), but notably the Appellant JOML has not attached or referred to any document or evidence in support of its contention that there was any agreement regarding payment of rent starting from 14.2.2018 or if such rent was paid or any demand for payment of rent was made prior to the initiation of CIRP.

24. We further peruse the NOC which is claimed to be issued by JVL Agro addressed to JOML (attached at pg. 246 of appeal paperbook Vol.II). Evidently, this NOC is undated and the letterhead is also different from the letterhead used by JVL Agro, which is attached at pg. 48 of the appeal paperbook, Vol.I). Further, the letter does not disclose the name/identity of the director, who has signed this NOC. In the face of such uncertainties, this NOC appears to be of doubtful origin and does not inspire confidence to place reliance upon it. Further e-mail

dated 28.8.2018 and reminder e-mails dated 31.8.2018 and 24.9.2018 sent by the JOML to RP do not indicate if any rent was being paid prior to date of sending of these e-mails. Therefore, on the basis of documents submitted both the parties, we are of the view that no rent was agreed upon to be paid by the corporate debtor to JOML nor any such payment was made for any period starting from 14.2.2018. It is clear that the issue of payment of rent was created by JOML only after the corporate debtor went into CIRP.

25. Thus, we are convinced by the arguments of the corporate debtor JVL Agro/RP that no rent was agreed upon to be paid for use of 'said premises' when the 'said premises' were offered to be used as registered office of the corporate debtor nor any rent was paid prior to the initiation of the CIRP of the corporate debtor. We also take note of section 14(2-A) of the IBC, which the landlord JOML has placed reliance upon regarding payment of rent during the moratorium period. A plain reading of this provision makes it clear that supply of certain goods and services has to be considered critical by IRP/IP to protect and preserve the value of the corporate debtor. Quite clearly in this case, the IRP/RP has neither recorded such a need nor requested the landlord JOML for continuing the supply of rental services to the corporate debtor.

Therefore, we are of the view that section 14(2-A) is not attracted in the present case. Moreover, we have already seen how the present case is covered under section 14(1)(d) of the IBC, whereby the recovery of the 'said premises' in the possession of the corporate debtor, though owned by JOML, is expressly prohibited during the moratorium period.

26. We now consider the argument of the Learned Counsel for Appellant JVL Agro (corporate debtor) that NCLT does not have any residuary jurisdiction to adjudicate contractual disputes, which are not directly connected with the insolvency resolution of the corporate debtor and the opposing argument of the Learned Counsel for JOML rebutting the same. In this connection, the following extract from the **Rajendra K. Bhutta judgment (supra)** is relevant:-

> *"25.......... However, when it comes to any clash between MHADA Act and the Insolvency Code, on the plain terms of Section 238 of the Insolvency Code, the Code must prevail. This is for the very good reason that when a moratorium is spoken of by Section 14 of the Code, the idea is that, to alleviate corporate sickness, a statutory status quo is pronounced under Section 14 the moment a petition is admitted under Section 7 of the Code, so that the insolvency resolution process may proceed unhindered by any of the obstacles that would otherwise be caused and that are dealt with by Section 14. ......*

Xx xx xx xx

28. …….. As we have pointed out hereinabove, it is clear that Section 14(1)(d) of the Insolvency and Bankruptcy Code, when it speaks about recovery of property "occupied", does not refer to rights or interests created in property but only actual physical occupation of the property.'

27. We also take note of the observations of Hon'ble Supreme Court in the matter of the **Tata Consultancy Services Ltd. (supra)**, wherein the following is held:-

"28. In Gujarat Urja, the contract in question was terminated by a third party based on an ipso facto clause i.e. the fact of insolvency itself constituted an event of default. It was in that context, this Court held that the contractual dispute between the parties arose in relation to the insolvency of corporate debtor and it was amenable to the jurisdiction of NCLT under Section 60(5)(c). This Court observed that: (SCC pp. 262-63, para 69)

"69. … NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of corporate debtor... The nexus with the insolvency of corporate debtor must exit."

(emphasis supplied)

Thus, the residuary jurisdiction of NCLT cannot be invoked if the termination of a contract is based on grounds unrelated to the insolvency of corporate debtor.

29. It is evident that the appellant had time and again informed corporate debtor that its services were deficient, and it was falling foul of its contractual obligations. There is nothing to indicate that the termination of the facilities agreement was motivated by the insolvency of corporate debtor. The trajectory of events makes it clear that the *alleged breaches noted in the termination notice dated 10-6-2019 were not a smokescreen to terminate the agreement because of the insolvency of corporate debtor. Thus, we are of the view that NCLT does not have any residuary jurisdiction to entertain the present contractual dispute which has arisen dehors the insolvency of corporate debtor. In the absence of jurisdiction over the dispute, NCLT could not have imposed an ad interim stay on the termination notice. NCLAT has incorrectly upheld the interim order of NCLT.*

xx xx xx xx

31. The narrow exception crafted by this Court in Gujarat Urja must be borne in mind by NCLT and NCLAT even while examining prayers for interim relief……"

28. A perusal of the above stated relevant extracts of the judgments of the Hon'ble Supreme Court in **Rajendra K. Bhutta (supra)** and **Tata Consultancy Services Ltd. (supra)** make it clear that the residuary jurisdiction of NCLT can only be invoked after the termination of a contract is based on grounds that are relevant to the insolvency resolution of the corporate debtor. We further note that the judgment of **Tata Consultancy Services Ltd. (supra)** makes it clear that NCLT does not have any residuary jurisdiction to entertain contractual dispute which has arisen in insolvency of the corporate debtor.

29. On the contention of the Learned Counsel of JOML that NCLT does have jurisdiction to adjudicate and dispose of any claim made by or against the corporate debtor as per section 60(5)

of IBC, we are of clear view that such claim can be looked into if it is circumscribed by the conditions enumerated by the Hon'ble Supreme court in the matter of **Rajendra K. Bhutta (supra)** and **Tata Consultancy Services Ltd. (supra).** We, therefore, follow the observations of the Hon'ble Supreme Court in the above two judgments in so far as the circumstances of the present case are concerned and hold that insofar as any dispute between the rental contract of the corporate debtor is concerned, the NCLT could not have adjudicated upon it, and thus the direction for assessment of rental value by District Magistrate and payment of rent accordingly are beyond the jurisdiction of the Adjudicating Authority.

30. We are, therefore, of the clear view that no rent is payable to the owner JOML of the 'said premises' by the corporate debtor during the period of moratorium as claimed by JOML.

31. We also take note of the arguments presented by the Learned Counsel for JOML claiming that JOML is in financial distress and in order to relieve such distress, it proposed a one-time settlement to its bank State Bank of India and, in order to honour the one-time settlement, it proposes to sell of the 'said premises' to Rudra Realtech Limited. While the arguments made

by the Learned Counsel for JOML could be correct insofar as any financial distress of the JOMC is concerned, we are of the clear view that while the insolvency resolution of the corporate debtor is going on and the moratorium is in force, the provision of section 14(1)(d) will be applicable and the owner cannot forcibly or otherwise recover the premises, which are in possession of the corporate debtor from a date prior to the date of initiation of CIRP.

32. In view of the detailed discussion on the issues framed by us, we hold the clear view that the Adjudicating Authority has gone beyond its jurisdiction in ordering payment of rent by the corporate debtor during the period of moratorium. We also find that the Adjudicating Authority did not adjudicate on the prayer made by the RP in IA No. 199/2020 for restoration of the possession of the 'said premises', which it should have done to settle the dispute early. In view of the fact that liquidation order with respect to the corporate debtor has already been passed by the Adjudicating Authority, no orders are now necessary in connection with IA 199/2020 in the present appeals.

33. We thus hold that the Impugned Order is erroneous, and therefore, liable to be set aside. We set aside the Impugned Order. The appeal is disposed of accordingly.

34. There is no order as to costs.

[Justice Rakesh Kumar]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

New Delhi
23rd January, 2023

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