

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)**

IA No. 199 / 2024

in

Company Appeal (AT) (CH) (INS) No. 13 of 2024

(Filed under Rule 11 r/w. Rule 31 of the NCLAT Rules)

In the matter of:

CANARA BANK

Asset Recovery Management Branch,
Ground Floor, Circle Office Building,
MCH No. 10-3-163 & 10-3-163/A,
Plot No.85, Survey No. 628,
Beside Rail Nilayam,
Secunderabad – 500026

.... Petitioner / Proposed
Second Respondent

v.

M/s. BHAGYANAGAR HOTELS
PRIVATE LIMITED

A Company having its
Registered Office at
H. No.1-8-333 & 334, A Wane,
Begumpet, Opp: Police Lines,
Near HUDA Office,
Secunderabad – 500003

..... 1st Respondent /
Appellant

MR. KRISHNA MOHAN GOLLAMUDI
Liquidator of M/s. Sainath Estate Pvt. Ltd.
F-26, Raghava Ratan Towers,
Chirag Ali Lane, Abids,
Hyderabad – 500001

..... 2nd Respondent /
1st Respondent

Present:

For Petitioner : Mr. ML. Ganesh, Advocate
For Respondent No. 1 : Mr. E. Om Prakash, Senior Advocate
For Mr. Puneet Yadav, Advocate
For Respondent No. 2 : Mr. Avinash Desai, Senior Advocate
For Mr. Amir Bavani, Advocate for Caveator

ORDER
(Hybrid Mode)

Justice M. Venugopal, Member (Judicial):

IA No.199/2024 in Comp. App (AT) (CH) (INS) No.13/2024
(Impleadment Application):

Introduction:

The Petitioner / Bank / Intervenor, has filed IA No. 199 / 2024 (under Rule 11 r/w. Rule 31 of NCLAT Rules, 2016) in Comp. App (AT) (CH) (INS) No. 13 / 2024, seeking to 'Implead' in main 'Appeal', as Proposed 2nd Respondent.

2. It is the plea of the Petitioner / Bank / Proposed 2nd Respondent, that the details of 'Working Capital Facilities', sanctioned to the '1st Respondent / Appellant', is mentioned as under:

Amount Sanctioned:

Term Loan	Rs. 24,00,00,000/-
SODM	Rs. 6,00,00,000/-
Bank Guarantee	Rs. 1,00,00,000/-

Total	Rs.31,00,00,000/-

Amount Disbursed:

Term Loan	Rs. 24,00,00,000/-
SODM	Rs. 6,00,00,000/-
Bank Guarantee	Rs. 1,00,00,000/-

Total	Rs.31,00,00,000/-

3. According to the Petitioner / Bank (Proposed 2nd Respondent in main 'Appeal'), the Working Capital Facilities, were sanctioned to the '1st Respondent / Appellant', through Letter dated 30.03.2011 (vide Ref. No. RPR/3018/ADV/2011), and that the '1st Respondent / Appellant', had accepted the terms and conditions of the 'Sanction Letter'.

Petitioner / Bank's Submissions:

4. The Learned Counsel for the Petitioner / Bank / Proposed 2nd Respondent, submits that the '1st Respondent / Appellant', had entered into a 'Composite Hypothecation Agreement', on 31.03.2011, wherein, they had acknowledged the aforesaid 'Loan Liability', and in consideration of the 'Credit Facilities', the '1st Respondent / Appellant', had created an 'Equitable Mortgage', over the 'Superstructure', by way of 'Deposit of Title Deeds of Immovable Properties', on the 'Land', standing, in the name of 'M/s. Sainath Estate Private Limited' (under 'Liquidation'), backed by 'Corporate Guarantee'.

5. The Learned Counsel for the Petitioner / Bank, points out that the `1<sup>st</sup> Respondent / Corporate Debtor' and the `Corporate Guarantor', had executed the `Loan Security Documents', in confirmation of the `Loan Liability', which runs as follows:

- a). `Composite Hypothecation Agreement', dated 31.03.2011.
- b). `Guarantee Agreement', being executed by Shri. Kokkiralra Preemsagar Rao, Smt. Kokkiralra Surekha and Shri. S. Satyanarayana Rao dated 31.03.2011.
- c) Corporate Guarantee, as executed by M/s. Sainath Estate Private Limited dated 31.03.2011.
- d) Confirmation of Creation of second / subsequent equitable mortgage, executed by M/s. Sainath Estate Private Limited dated 31.03.2011.
- e) Acknowledgement of debt for all types of facilities by borrower / sureties, executed by M/s. Bhagyanagar Hotels Private Limited dated 01.03.2017.
- f) Acknowledgement of debt for all types of facilities by borrower / sureties, executed by M/s. Bhagyanagar Hotels Private Limited dated 17.12.2019.

g) Acknowledgement of debt for all types of facilities by borrower / sureties, executed by M/s. Bhagyanagar Hotels Private Limited dated 17.06.2021.

h) Acknowledgement of debt for all types of facilities by borrower / sureties, executed by M/s. Bhagyanagar Hotels Private Limited dated 20.01.2022.

i) Acknowledgement of debt for all types of facilities by borrower / sureties, executed by M/s. Bhagyanagar Hotels Private Limited dated 05.12.2023.

j) Acknowledgement of debt for all types of facilities by borrower / sureties, executed by M/s. Bhagyanagar Hotels Private Limited dated 09.12.2023.

6. It is the stand of the Petitioner / Bank / Proposed 2nd Respondent, that the `1<sup>st</sup> Respondent / Appellant`, had constructed `Manasarovar Fern Building` from and out of the `Credit Facilities`, which were extended by the `Petitioner / Bank`. Therefore, the `2<sup>nd</sup> Respondent`, cannot be permitted to enforce the `Exclusive Security`, which was furnished, by the `1<sup>st</sup> Respondent / Appellant`, to the `Petitioner / Bank`.

7. According to the Petitioner / Bank, the `1<sup>st</sup> Respondent / Appellant`, has from documents confirmed the utilisation of the `Term Loan Credit

Facility' of Rs.24 Crores, for the purpose of 'Construction of Parking Complex' and 'Completion of 100 Rooms Hotel', in the premises of 'Chiraan Fort Club' and Rs.600 Lakhs, towards 'Working Capital', for the existing club and the proposed Hotel and Rs.1 Crore, towards the 'Bank Guarantee Limit', for guaranteeing to various Departments, as and when required.

8. The Learned Counsel for the Petitioner, points out that the 1st Respondent / Appellant, had duly created a 'Charge' on the 'Assets', before the 'Registrar of Companies, Andhra Pradesh, on 30.04.2011 and had also created a 'Mortgage', on the 'subject property'.

9. It is the version of the Petitioner / Bank (Proposed 2nd Respondent in main 'Appeal'), that the 'Company' in 'Liquidation' ('M/s. Sainath Estate Private Limited), had also availed 'Credit Facilities', and the 'Outstanding Loan Amount', are (a) Principal Sum being Rs.6,34,06,773.66 (b) Interest Sum being Rs.27,97,29,610.98, Aggregating in all, Rs.34,31,36,384.64.

10. The contention of the Learned Counsel for the Petitioner, is that the 'Petitioner / Bank', had filed Form D, before the '2nd Respondent / Liquidator', in respect of the 'Liquidation' of 'M/s. Sainath Estate Private Limited', on 06.08.2022.

11. On behalf of the Petitioner / Bank, it is brought to the notice of this 'Tribunal', that the 'Bank', had filed OA No. 494 / 2019, before the 'Debt Recovery Tribunal – II, Hyderabad', against the '1st Respondent / Company', in 'Liquidation' and other 'Guarantors', which was allowed on 31.12.2019.

12. Furthermore, the Petitioner / Bank (in IA No. 199 / 2024 in Comp. App (AT) (CH) (INS) No. 13 / 2024), had filed a Section 7 Application, under the I & B Code, 2016, before the 'Adjudicating Authority' / 'NCLT', Hyderabad Bench, against the 1st Respondent / Appellant', which is pending for 'Adjudication'.

13. The Learned Counsel for the Petitioner, points out that the '2nd Respondent / Liquidator', had filed IA (IBC) No. 265 / 2023 in CP No. 651 / 7 / HDB / 2018', before the 'Adjudicating Authority' / 'NCLT', Hyderabad Bench, praying for a direction, to the '1st Respondent / Appellant', to handover the 'subject property', without 'impleading' the 'Petitioner / Bank', in the said 'Petition'. In fact, 'without the knowledge and information', of the 'Petitioner / Bank', the 'Impugned Order' in IA (IBC) No. 265 / 2023 in CP No. 651 / 7 / HDB / 2018, was obtained by the Liquidator'.

14. The forceful plea of the Learned Counsel for the Petitioner / Bank (Proposed 2nd Respondent in main 'Appeal') is that, since, the 'Land and

Superstructure', belong to the 'Company', under Liquidation', the 1st Respondent and the 2nd Respondent, cannot take physical possession of the same, to the detriment of the 'Bank's Interest'. Therefore, the 'Petitioner / Bank', is a 'Necessary' and 'Proper Party', to be impleaded in the main Comp. App (AT) (CH) (INS) No. 13 / 2024 and further that, the 'Balance of Convenience', is in favour of the 'Petitioner / Bank', and that the IA No. 199 / 2024 is to be allowed, in the interest of Justice.

1st Respondent / Appellant's Submissions:

15. The Learned Senior Counsel for the 1st Respondent / Appellant, submits that the 1st Respondent / Appellant, had invested huge amounts for the constructions of the Building and that the 'Greater Hyderabad Municipal Corporation', had also approved the Construction Plan, through BPS Proceedings dated 22.10.2010 and further, that the 'Memorandum of Understanding', dated 26.07.2012, was entered into between the '1st Respondent / Appellant', and the 'Corporate Debtor', clearly proves that all the 'Buildings', on the 'Lease Land', were constructed by the 'Appellant', at its own costs, which was to be refunded by the Respondent, before handing over of the possession by the 1st Respondent, to the 'Corporate Debtor'.

16. The stand of the 1st Respondent / Appellant is that, there was no 'Termination Notice', at any stage, given to the 1st Respondent / Appellant, in terms of Section 106 of the Transfer of Property Act, 1882. Further, the 'Lease Deed', dated 30.09.2017, was not 'terminated' or 'determined', before asking the 'Appellant', to vacate the premises.

17. According to the 1st Respondent / Appellant, it is a separate and distinct 'Legal Entity', than the 'Corporate Debtor'. It is not disputed that the 'Loan', was taken, by the '1st Respondent / Appellant', from the 'Bank', towards the 'Construction of Superstructures', over the 'Land' in question (belonging to the 'Corporate Debtor').

18. In respect of the 'Loan', taken by the 1st Respondent / Appellant, the 'Corporate Debtor', stood as 'Guarantor', and just because the 'Corporate Debtor', has acted as a 'Guarantor', which does not mean that the 'Superstructures', belong to the 'Corporate Debtor'. Thus, the 'Petitioner / Bank', has filed IA No. 199 / 2024, seeking 'Impleadment', as 'Proposed 2nd Respondent', in main Comp. App (AT) (CH) (INS) No. 13 / 2024.

2nd Respondent / Liquidator's Pleas:

19. The Learned Senior Counsel for the 2nd Respondent / Liquidator, submits that the 'Petitioner / Bank' ('Proposed 2nd Respondent in main

`Appeal'), does not enjoy any `Exclusive Charge', over the `Superstructures', built upon the `Land', of the `Corporate Debtor', rather, they have only a `Pari Passu Charge', on the `Superstructures', built on the `Land' of the `Corporate Debtor', as evidenced, by its own `Sanction Letter', dated 30.03.2011.

20. In this connection, it is pointed out on behalf of the 2nd Respondent / Liquidator that the Petitioner / Bank's own Form D dated 06.08.2022 (at Page 38 of IA No. 199 / 2024), reiterates that the `Bank', has only a `Pari Passu Charge' and has also relinquished the `Asset', subject to such `Security Interest', i.e. the subject matter of this `lis' into the `Liquidation Estate' of the `Corporate Debtor', by their own admission.

21. According to the 2nd Respondent / Liquidator, through a Letter dated 22.12.2010 (vide in proceeding No. BPS/198/C-18/NZ/GHMC/2008), the `Greater Hyderabad Municipal Corporation', had penalised and regulated the `Construction of Superstructures', built on the `Land' of the `Corporate Debtor', for being unauthorised, and in deviation, to the `Sanctioned Plan'. Also that, such `Penalty' for `Regularisation', was paid, through a `Demand Draft', on the `Petitioner / Bank' (formerly, Syndicate Bank). Therefore, it is the stand of the 2<sup>nd</sup> Respondent / Liquidator, that the `Superstructures', were erected on the `Land' of the `Corporate Debtor', before 22.12.2010, which

itself is much earlier to the sanctioning of the 'Loans', vide 'Sanction Letter' dated 30.03.2011. Hence, it is the contention of the '2nd Respondent / Liquidator', that the 'Petitioner / Bank', cannot claim that such 'Loans', were sanctioned for the 'purpose of Construction of the said Superstructures'.

22. The Learned Counsel for the 2nd Respondent / Liquidator, brings to the Notice of this 'Tribunal' that the alleged 100 year old 'Rental Deed', purportedly executed by and between the '1st Respondent Company', and the 'Corporate Debtor', on 14.12.1995 (being an 'Unregistered Document'), is absolutely 'devoid of', any 'legal binding effect'.

23. Continuing further, it is the submission of the Learned Counsel for the 2nd Respondent / Liquidator, if the 100 years old 'Rental Deed', was in fact, in vogue, for the 'subject Property', then, why an 'Unregistered Memorandum of Understanding', as it was executed on 30.09.2017, which had expired due to an efflux of time on 30.09.2022.

24. The clear cut stand of the 2nd Respondent / Liquidator is that the Petitioner / Bank, might have given 'Loans', in pursuance of the 'Superstructures', or for whatever purposes it may be, but, it does not qualify the Petitioner, to get itself 'Impleaded', in the instant 'Appeal', which deals squarely, with the 'issue of eviction' of the 1st Respondent / Appellant, owing to its 'illegal possession of the Land of the 'Corporate Debtor', despite, the

fact that the 'Lease Deed', dated 30.09.2017, expired on 30.09.2022. As such, the Petitioner / Bank, according to the 2nd Respondent / Liquidator, has not made out any case, seeking 'Impleadment', in the main 'Appeal'.

25. The Learned Counsel for the 2nd Respondent / Liquidator, had taken a stand that the main 'Company Petition', was filed under Section 7 of the I & B Code, 2016, between the 'Financial Creditor' and the 'Corporate Debtor'. Therefore, there is no requirement of 'any Third Party', to be 'Impleaded', in the main 'Company Petition'.

26. Added further, on behalf of the 2nd Respondent / Liquidator, it is brought to the notice of this 'Tribunal' that it had preferred a 'Fresh Petition', before the 'Adjudicating Authority' / 'Tribunal', in main 'Company Petition', in which, the 'Appellant', was arrayed as a 'Necessary Party'.

27. The Learned Counsel for the 2nd Respondent / Liquidator, comes out with a plea that the Petitioner / Bank in IA No. 199 / 2024 is a 'Member' of the 'Corporate Debtor's Stakeholders Consultation Committee' and IA 265 / 2023 in CP (IB) No. 651 / 7 / HDB / 2018, an 'Order', was passed on 04.12.2023, being 'Impugned', in the instant Comp. App (AT) (CH) (INS) No. 13 / 2024, was in fact, filed at the behest and with the consent and consideration of the 'Members' of the 'Stakeholders' Committee (including

the Petitioner / Bank), as evidenced by the `Minutes of 6<sup>th</sup> & 7<sup>th</sup> of SCC Meeting`.

28. The Learned Counsel for the 2nd Respondent / Liquidator, prays for dismissing the IA No. 199 / 2024 in Comp. App (AT) (CH) (INS) No. 13 / 2024 (filed by the Petitioner / Bank (Proposed 2nd Respondent in main `Appeal`), in the `interest of Justice` and `good conscience`.

Discussions:

29. The Petitioner / Bank, has filed IA No. 199 / 2024, seeking to `Implead` as `Proposed 2<sup>nd</sup> Respondent`, in main Comp. App (AT) (CH) (INS) No. 13 / 2024, based on the reason that it has an `exclusive charge`, over the `Superstructures`, built by the 1st Respondent / Appellant, on the `Land` of the `Corporate Debtor`.

30. At this juncture, this `Tribunal`, pertinently points out that the Petitioner / Bank, in its `Sanction Letter`, dated 30.03.2011, had stated that, it has a `Pari Passu Charge`, only, on the `Superstructures`, built on the `Land` of the `Corporate Debtor`. Even the Form D, dated 06.08.2022 of the Petitioner / Bank, furnished with the `Liquidator`, as a `Financial Creditor` of the `Corporate Debtor`, unerringly points out that the `Petitioner / Bank`, does

not have a 'Exclusive Charge', over the 'Superstructures', built upon the 'Land' of the 'Corporate Debtor'.

31. It cannot be brushed aside that the 'Asset', subject to such 'Security Interest', Viz. the 'subject matter' of the present 'Lis', was already relinquished by the 'Petitioner / Bank', in to the 'Liquidation Estate' of the 'Corporate Debtor', by their own admission.

32. One cannot remain in oblivion that the Petitioner / Bank is a member of the 'Corporate Debtor's Stakeholders Committee'. Just because the Petitioner / Bank, had given 'Loans', in pursuance of the 'Superstructures', it will not qualify the 'Bank', to get itself 'impleaded', in the main Comp. App (AT) (CH) (INS) No. 13 / 2024, in the considered opinion of this 'Tribunal'.

33. It is to be remembered that IA No. 265 / 2023 in CP (IB) No. 651 / 7 / HDB / 2018, was filed before the 'Adjudicating Authority' / 'Tribunal', 'on behalf of' and with the 'consent and consideration' of the 'Members of the Stakeholders Committee' (including the 'Petitioner / Bank'), and no steps, were ever taken by the 'Petitioner / Bank', to get itself 'Impleaded', before the 'Adjudicating Authority' / 'Tribunal', which is not a favourable circumstance, in favour of the 'Petitioner / Bank', as opined by this 'Tribunal'.

34. To bring a 'Person' as a 'Party Respondent / Defendant, in a given 'Legal Proceedings', is not a 'Substantive Right', but 'One of Procedure'.

35. A 'Proper Party', is one who is necessary for 'final decision' of a case. The 'Necessary Party', is one without whom, that 'No Order', can be passed by a 'Tribunal' / 'Appellate Tribunal' / 'A Court of Law', ofcourse, 'effectively and efficaciously', in a given case.

36. The 'issue', of 'Addition of Parties', is one of 'Judicial Discretion', to be exercised, by a 'Tribunal' / 'Appellate Tribunal', based on the facts and circumstances of the case, which float on the surface.

37. When the subject matter of the main Comp. App (AT) (CH) (INS) No. 13 / 2024, centres around the aspect of eviction of the '1st Respondent / Appellant', because of its illegal possession of the 'Land' of the 'Corporate Debtor', inspite of the fact, that the 'Lease Deed', dated 30.09.2017, had expired due to an efflux of time, on 30.09.2022, the 'Petitioner / Bank', is not a 'Necessary or a Property Party', to be 'Impleaded' as 'Proposed 2nd Respondent', in the main 'Appeal'.

38. Be that as it may, in view of the fact that the instant main Comp. App (AT) (CH) (INS) No. 13 / 2024), hovers around the 'Issue of Eviction', of the 1st Respondent / Appellant', from the 'Land' of the 'Corporate Debtor', even

though, the 'Lease Deed', dated 30.09.2017, which had expired on 30.09.2022, and further that, the Petitioner / Bank, has a 'Pari Passu Charge', in respect of the 'Superstructures', built on the 'Land' of the 'Corporate Debtor', and in any event, the 'Petitioner / Bank', nor the '1st Respondent / Appellant', cannot place reliance, on the alleged 'Rental Deed', for pressing the IA No. 199 / 2024 in Comp. App (AT) (CH) (INS) No. 13 / 2024, this 'Tribunal', comes to an 'irresistible' and 'inevitable' conclusion, that the 'Petitioner / Bank', is not a 'Necessary and Proper Party', to get itself 'Impleaded', in the main Comp. App (AT) (CH) (INS) No. 13 / 2024. Even, without the presence of the 'Petitioner / Bank' ('Intervenor'), this 'Tribunal', is of the earnest opinion that the main Comp. App (AT) (CH) (INS) No. 13 / 2024, with the 'available material on records', can be disposed of. Viewed in that perspective and looking at from any angle, the instant IA No. 199 / 2024 in Comp. App (AT) (CH) (INS) No. 13 / 2024, is devoid of any merits and it fails.

Disposition:

In fine, IA No. 199 / 2024 in Comp. App (AT) (CH) (INS) No. 13 / 2024 (filed by the Petitioner / Bank / Proposed Second Respondent) is dismissed. No costs.

[AND]

Company Appeal (AT) (CH) (INS) No. 13 of 2024
(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)
(Arising out of the 'Impugned Order' dated 04.12.2023 in
IA (IBC) 265 / 2023 in CP (IB) No. 651 / 7 / HDB / 2018, passed by the
'Adjudicating Authority', (National Company Law Tribunal',
Hyderabad Bench - I)

In the matter of:

M/s. BHAGYANAGAR HOTELS
PRIVATE LIMITED
Through Director
1-8-333 & 334, A - Wane,
Begumpet, Opposite Police Lines,
Near U.S. Consulate,
Secunderabad – 500003

..... Appellant

v.

MR. KRISHNA MOHAN GOLLAMUDI
(Liquidator of Sainath Estates Pvt. Ltd.)
F-26, Raghava Ratan Towers,
Chirag Ali Lane, Abids,
Hyderabad, Telangana – 500001

..... Respondent

Present:

For Appellant : Mr. E. Om Prakash, Senior Advocate
For Mr. Puneet Yadav, Advocate

For Respondent : Mr. Avinash Desai, Senior Advocate
For Mr. Amir Bavani, Advocate for Caveator

J U D G M E N T

(Hybrid Mode)

Justice M. Venugopal, Member (Judicial):

Comp. App (AT) (CH) (INS) No. 13 / 2024:

Preface:

The Appellant / Director of M/s. Bhagyanagar Hotels Private Limited (Respondent), has preferred the instant Comp. App (AT) (CH) (INS.) No. 13 of 2024, before this 'Tribunal', in respect of the 'Order', dated 04.12.2023 made in IA (IBC) No. 265 / 2023 in CP (IB) No. 651 / 7 / HDB / 2018 (under Section 60(5) read with Section 35 and 36 of the Insolvency and Bankruptcy Code, 2016, read with Regulation 9 of the Insolvency and Bankruptcy Board of India (Liquidation Regulations) 2016, and Rule 11 of NCLT Rules, 2016), passed by the 'Adjudicating Authority' / 'National Company Law Tribunal', Hyderabad Bench - 1).

2. The 'Adjudicating Authority' / 'National Company Law Tribunal', Hyderabad Bench - 1, in IA (IBC) No. 265 / 2023 in CP (IB) No. 651 / 7 / HDB / 2018, filed by the 'Respondent / Liquidator / Applicant', while passing the 'Impugned Order', dated 04.12.2023, among other things, at Paragraph Nos. 7.11 to 7.16, had observed the following and disposed of the said 'Application':

7.11 ``Therefore, from the afore mentioned authoritative pronouncements, and from the undeniable facts that the respondent is in occupation of the property of the corporate debtor despite expiry of

the lease deed dated 30.09.2022 it is overwhelmingly clear that, the possession of the respondent is wrongful, hence the respondent is not entitled under law to resist the present application. On the other hand, the respondent is liable to pay damages to the applicant.

7.12 In so far as the ruling in Vishal N. Kalsaria Case (supra), relied on by the respondent is concerned, it is to be noted that, Hon'ble Supreme Court of India, in Bajrang Shyamsunder Agarwal vs Central Bank of India, Criminal Appeal No. 1371 OF 2019 (Arising out of SLP (CRL.) NO. 9590/2015), having referred Vishal N. Kalsaria (supra), it was held that,

“the second case which dealt with the issue of tenants’ rights under the SARFAESI Act is Vishal N. Kalsaria Case (supra)”.

“This Court was concerned with the question Whether a “protected tenant” under the Maharashtra Rent Control Act, 1999 can be treated as a lessee and whether the provisions of the SARFEASI Act, will override the provisions of the Rent Act?”,

Therefore, it is clear that the said ruling has a limited application. Even otherwise, it has been specifically held in the above ruling that,

“In any case, if any of the tenants claim that he is entitled to possession of a secured asset for a term of more than a year, it has to be supported by the execution of a registered instrument. In the absence of a registered instrument, if the tenant relies on an unregistered instrument or an oral agreement accompanied by delivery of possession, the tenant is not entitled to possession of the secured asset for more than the period prescribed under Section 107 of the T.P. Act.”

“The lower Courts are correct in ordering delivery of possession to the respondent no. 1 bank as the tenancy stands determined”

7.13 We are therefore of the view that the ruling in Vishal N. Kalsaria, is helpful to the applicant rather than to the respondent.

7.14 Therefore, in the light of our discussion, we allow the application and the Respondent is directed to vacate and handover the vacant physical possession of premises bearing house no. 1-8-322 to

335, near American Consulate, Begumpet, Secunderabad, admeasuring 15092 sq. yards which is described in the petition, on or before 29.01.2024 and in default the petitioner is at liberty to approach this tribunal for necessary further directions.

7.15 It is further ordered that arrears of the rent payable till the date of handing over of physical possession shall also be paid by the Respondent to the Applicant/Liquidator.

7.16 The Liquidator upon taking delivery of the scheduled mentioned property shall proceed further in accordance with the provisions of the Code and complete liquidation process as expeditiously as possible.’’

Appellant's Contentions:

3. The Learned Senior Counsel for the Appellant submits that the 'Impugned Order', dated 04.12.2023, in IA (IBC) No. 265 / 2023 in CP (IB) No. 651 / 7 / HDB / 2018, passed by the 'Adjudicating Authority' / 'National Company Law Tribunal', Hyderabad Bench - 1, has passed the 'Impugned Order', as opposed to Law and facts of the instant case.

4. The Learned Counsel for the Appellant, points out that the 'Adjudicating Authority' / 'National Company Law Tribunal', Hyderabad Bench – 1, is not a 'Civil Court', and hence, it does not have 'Jurisdiction', to try 'Suits of a Civil Nature', as per the decision of the Hon'ble Supreme Court of India, in 'Embassy Property Developments (P) Ltd. v. State of Karnataka (2020) 13 SCC at Page 308.

5. It is represented on behalf of the Appellant that the 'Adjudicating Authority' / 'Tribunal', can exercise only such powers within the contours of Jurisdiction, as prescribed by the 'Statute', the 'Law', in respect of which, it is called upon to administer.

6. The Learned Counsel for the Appellant, takes a stand that in the present case, the Multi-storeyed Building was constructed by the 'Appellant', and as per 'Memorandum of Understanding', dated 26.07.2012, the 'Appellant', is entitled to stay for 30 years or in the event of 'Eviction', a quick Notice of three years and Refund of the 'Amounts spent' is 'Mandatory'.

7. According to the Appellant, the 'Property' in question of the Respondent, i.e. the Land was in occupation of it as 'Tenant', for almost three decades. In fact, the 'multistoried building', was constructed by this Respondent at its 'Costs', more than a decade back and 'Property', is being assessed in its name by the 'Greater Hyderabad Municipal Corporation'. That apart, the Respondent has not terminated the 'Lease Deed', dated 30.09.2017, before requiring the Appellant, to vacate the Premises.

8. The Learned Counsel for the Appellant, points out that a 'Memorandum of Understanding', dated 26.07.2012, was entered into, between the 'Appellant' and the 'Corporate Debtor', which proves that the entire 'Superstructures', Viz. 'All the buildings on the Leased Land are

constructed by the 'Appellant' at its own costs to be refunded by the Respondent before handing over of the possession by the Appellant, to 'Corporate Debtor'.

9. The Learned Counsel for the Appellant, submits that the 'Appellant', is a 'separate and distinct Legal Entity', than the 'Corporate Debtor', and further that, a 'Company', has a 'distinct entity', and is independent, of its 'Members' or people, controlling it.

10. To put it differently, a 'Company', is considered as a 'Single Juristic Person', distinct from its 'Members', who 'constitute', the 'Company'. As a matter of fact, the 'Separate Legal Entity Status', enables a 'Company', to own 'Property', and to deal with it, the way it likes, and as such, the 'Appellant', has right over the 'Assets', and 'Superstructures', constructed over the 'Land' of the 'Corporate Debtor'.

11. The Learned Counsel for the Appellant, comes out with a 'plea', that the Respondent has several times in the 'Reply', had stated that the 'Appellant', took 'Loan', for the 'Construction' and the 'Property', was kept as 'Mortgage', for availing the 'Loan / Borrowing', and further that, the 'Corporate Debtor', stood as a 'Guarantor', for the 'Loan', taken by the 'Company'. Also that, just because, the 'Corporate Debtor', has acted as a

`Guarantor`, it does not mean that the `Superstructures`, belong to the `Corporate Debtor`.

12. The Learned Counsel for the Appellant, contends that a combined reading of Section 63 & Section 231 of the I & B Code, 2016, makes it clear that when the `Adjudicating Authority`, is provided with a specific jurisdiction, the Civil Courts have no jurisdiction, in respect of those matters, such as Preferential transactions (Sections 43 and 44 of the Code), Undervalued transactions (Sections 45 to 48 of the Code), etc. Further, if these provisions are read in `conjunction`, with the other provisions of the `I & B Code` 2016, such as, 18(f)(vi), 25(2)(b) and 35(1)(k) of the `Code`, the jurisdiction of the `Adjudicating Authority`, does not extend to subjects such as recovery of money, specific performance, eviction proceedings, etc., which were to be dealt with by Civil Courts only.

13. The Learned Counsel for the Appellant, submits that the `Adjudicating Authority` / `Tribunal`, in a predetermined manner, had observed and held that the `Appellant`, cannot be allowed to even defend the `Application`.

14. Yet, another plea taken, on behalf of the Appellant is that, the `Impugned Order`, passed by the `Adjudicating Authority` / `Tribunal`, erroneously, records the `findings`, that the `Arrears of Rent`, payable, till the date of handing over of Physical Possession, shall also be payable by the

`Appellant', to the `Respondent', and the same, is liable to set aside in the interest of Justice.

15. The Learned Counsel for the Appellant, raises an argument that Section 60(5)(c) of the I & B Code, 2016, grants `Residuary Jurisdiction', to the `Adjudicating Authority' / `Tribunal', to adjudicate `any question of Law' or `Fact', arising `only out of' or `in relation', to the `Insolvency Resolution' of the `Corporate Debtor', and cannot delve in to the `Civil Disputes'.

16. The Learned Counsel for the Appellant, points out that the `Adjudicating Authority' / `Tribunal', had failed to follow the decision of the Hon'ble Supreme Court of India, in the matter of Guruashish Constructions (P) Ltd. (Resolution Professional) v. MHADA (2020) 13 SCC at Page 208, where there was a `Tripartite Joint Development Agreement', entered into between (a) a society representing a large number of persons occupying 672 tenements in the property; (b) Maharashtra Housing and Area Development Authority (for short ``MHADA''), which was the owner of the land; and (c) the Respondent and where, after initiation of CIRP against the Respondent, MHADA issued a notice for the Termination of the `Joint Development Agreement' and return of the land and this `Appellate Tribunal', refused to treat the `Property', as the `Asset' of the Respondent, the Hon'ble Supreme Court, reversed the said decision, by holding that Section 14(1)(d) stood

attracted in the facts and circumstances of the said case and that even a reference to Section 18 & 25, may not be necessary.

Appellant's Citations:

17. The Learned Counsel for the Appellant, cites the decision of the Hon'ble Supreme Court of India, in 'Embassy Property Developments Private Ltd. v. State of Karnataka & Ors.', in support of his plea that the 'Adjudicating Authority' / 'Tribunal', has no Jurisdiction to Order such eviction, reported in (2020) 13 SCC at Page Nos. 308 & 309, wherein, at Paragraphs 15 to 45 and 51 & 52, it is observed as under:

"..... the decision of the Government to refuse the benefit of deemed extension of Lease, is in the public law domain and hence the correctness of the decision can be called in to question only in a superior Court which is vested. Further, the NCLT, being a creature of a special statute to discharge certain specific functions, cannot be elevated to the status of a superior court, having the power of judicial review over administrative action.

(Paras 15 – 45)

"NCLT is vested with the power to inquire into : (i) fraudulent initiation of proceedings as well as (ii) fraudulent transactions – Further, S. 65(1) deal with a situation where CIRP is initiated fraudulently 'for any purpose other than for the resolution of insolvency and liquidation'" – Therefore, if, as contended by the Government of Karnataka, the CIRP had been initiated by one and the same person taking different avatars, not for the genuine purpose of resolution of insolvency or liquidation, but for the collateral purpose of cornering the mine and the mining lease, the same would fall squarely

within the mischief addressed by S. 65(1) – Thus, NCLT has jurisdiction to enquire into allegations of fraud and as a corollary, NCLAT will also have jurisdiction – Hence, fraudulent initiation of CIRP cannot be a ground to bypass the alternative remedy of appeal provided in S. 61, so as to permit direct recourse to writ jurisdiction of High Court – Constitution of India – Art. 226 – Efficacious alternative statutory remedy principle based on self-restraint – Statutory forum having the requisite jurisdiction – Non-bypassing of – Mines and Minerals (Development and Regulation) Act, 1957 – Ss. 19 and 8-A(6) – Courts, Tribunals and Judiciary – Courts, Tribunals and Special Courts – Tribunals.’’

(Paras 51 and 52)

18. The Learned Counsel for the Appellant, to justify the Appellant's continued possession, relies on the decision, of the Hon'ble Supreme Court of India, in 'Harshad Govardhan Sondagar v. International Assets Reconstruction Company Ltd. & Ors.', reported in (2014), 6 SCC at Page 1, whereby and whereunder, it is observed and held that ``as per Ss. 105 & 111 TPA so long as lease of immovable property, does not get determined, Lessee has a right to enjoy the property and this right is a right to property and this right cannot be taken away without the authority of law as provided, in Art. 300-A of the Constitution. Moreover, without determination of valid lease, the possession of Lessee is lawful and such lawful possession of a Lessee has to be protected by all Courts and Tribunals.’’

19. Apart from the above, it is further observed and held in the aforesaid decision that where before a Mortgage is created in respect of an Immovable Property and the Borrower, had already 'Leased out', the same, in 'favour of a Lessee', either as the 'Owner' or as a 'Person', 'competent' or 'authorised to transfer', the 'Immovable Property', in accordance with Section 7 of the Transfer of Property Act, if such a Lease is made, by virtue of Section 8 of the Transfer of Property Act, the Lessee will have the right to enjoy the Leased Property in accordance with terms and conditions of 'Lease', irrespective of whether a subsequent Mortgagee, has knowledge of such a 'Lease' or not.

20. Proceeding further, the Learned Counsel for the Appellant, refers to the decision of the Hon'ble Supreme Court of India, in 'Jhanvi Rajpal Automotive Private Ltd. v. R.P. of Rajpal Abhikaran Private Ltd. & Anr.', reported in (2023), SCC OnLine SC 1535 at Page 71, wherein, it is observed as under:

''We do not find any ground to interfere in the order impugned dated 05.01.2023 passed by the National Company Law Appellate Tribunal. The appeal is accordingly dismissed keeping the question of law open.''

21. The Learned Counsel for the Appellant, adverts to the 'Order' of this 'Tribunal', dated 27.02.2018, between 'Devendra Padamchand Jain

(Resolution Professional) v. Sandhya Prakash & Ors.’, reported in (2018)

SCC OnLine NCLAT, 578, wherein at Paragraph 2, it is observed as under:

2. ``Learned counsel for the appellant referring to sub-section (f) of Section 18 of the Insolvency and Bankruptcy Code, 2016 submits that duty of insolvency resolution professional is to take over assets that may or may not be in possession of the Corporate Debtor. Though we accept the submission made above, that does not mean the insolvency resolution professional can remove the tenant though it is open to him to take over the possession of the assets of the Corporate Debtor. If the tenant is not paying the rent, it is also open to the insolvency resolution professional to move before the appropriate forum / court of law.’’

22. The Learned Counsel for the Appellant, seeks in aid, of the ‘Order’ of this ‘Tribunal’, dated 18.03.2021 in Comp. App (AT) (CH) (INS) No. 16 / 2021, between ‘Kenington Industries Private Ltd. v. M/s. Siva Ram Yarns Pvt. Ltd.’, wherein, at Paragraph Nos. 3, 8 & 10, it is observed as under:

3. ``The Learned Counsel for the Appellant takes a plea that the powers of the ‘Adjudicating Authority’ under Section 60(5) and (6) of the Insolvency and Bankruptcy Code, 2016, is restricted because of the fact that it cannot assume the jurisdiction of a ‘Civil Court’.

8. In this connection, the Learned Counsel for the ‘Appellant’ adverts to Paragraph 66 of the aforesaid judgment in K.L. Jute Products Pvt. Ltd. which runs as under:

``66. In so far as, the eviction of 2nd Respondent is concerned, the Adjudicating Authority is not empowered to pass an order of eviction and it is for an ‘Aggrieved party’ to move the appropriate forum redressal of its grievances in accordance with Law. In short, the Committee of Creditors had approved the Resolution Plan in utter disregard regard to the ingredient of Section 30(2) (e) of the I & B

Code and as hence the same was rejected by the Adjudicating Authority. Moreover, the Adjudicating Authority had appointed a 'Liquidator' other than the 'Existing Resolution Professional'.

10. In the meanwhile, in IA No. 42 of 2021 in Comp. App (AT) (CH) (INS) No. 16 of 2021, on the file of National Company Law Appellate Tribunal, Chennai there shall be an 'Order of Stay', in regard to the implementation of the 'Impugned Order' dated 24.2.2021 in IA No. 168 / 2020 in CP(IB) 173 / 9 / HDB / 2018 and TCP(IB) No.22/9/AMR/2019 on the file of 'Adjudicating Authority' (National Company Law Tribunal, Amaravati Bench).''

23. The Learned Counsel for the Appellant, points out the 'Judgment' of this 'Tribunal' dated 20.02.2020, in 'K.L. Jute Products Private Ltd. v. Tirupti Jute Industries Ltd.', reported in (2020) SCC OnLine, NCLAT, 426, wherein, at Paragraph Nos. 66 – 70, it observed as under:

66. ``Insofar as, the eviction of 2nd Respondent is concerned, the Adjudicating Authority is not empowered to pass an order of eviction and it is for an 'Aggrieved party' to move the appropriate forum for redressal of its grievances in accordance with Law. In short, the Committee of Creditors had approved the Resolution Plan in utter disregard regard to the ingredient of Section 30(2)(e) of the I&B Code and as hence the same was rejected by the Adjudicating Authority. Moreover, the Adjudicating Authority had appointed a 'Liquidator' other than the 'Existing Resolution Professional'.

67. In regard to the issues framed by this Tribunal on 30.08.2019 (i) whether at the stage of Liquidation, the question of preferential transactions under Section 43 of I&B Code can be decided by an Adjudicating Authority? and (ii) Whether the Liquidator has jurisdiction to decide such issued?, this Tribunal is of the considered opinion that Section 43 of the Code can be invoked during the pendency of Resolution Process or Liquidation proceedings, if there

are genuine, reasonable grievances relating to 'preferential transactions' at a relevant time and in fact a Liquidator by filing an 'Application' can seek one or other order from the Adjudicating Authority as per tenor and spirit of Section 44 of the I&B Code. Section 35 of the Code showers 'powers and duties' of a Liquidator' and that he must act under the supervision of an Adjudicating Authority. Section 35 of the I&B Code is like Section 290 of the Companies Act, 2013 a Transfer must be made by a 'Debtor' in lieu of an operational 'Debt' or an antecedent financial 'Debt' or other liabilities saddled on him. As per Section 35(b) of the Code, a 'Liquidator' is to take into his custody or control all assets, property, effects and actionable claims of the Corporate Debtor. Section 35(L) of the Code enjoins upon the 'Liquidator' to investigate the Financial affairs of the 'Corporate Debtor' to determine undervalued or preferential transactions. One cannot remain oblivious that a 'Liquidator' keeps the 'Liquidation Assets' in fiduciary capacity for the benefit of the all creditors. Therefore, it can be safely and securely concluded that section 43 of the Code can be invoked during the pendency of 'Resolution Process' by a 'Resolution Professional' or 'Liquidator' for seeking necessary relief pertaining to a preferential transaction by filing an Application and that the Adjudicating Authority can pass orders under Section 44 of the Code. Further a Liquidator as per Section 35 of the I&B Code, a Liquidator has jurisdiction to investigate the financial affairs of the Corporate Debtor to determine undervalued or 'preferential transactions' subject to the supervisory jurisdiction of an Adjudicating Authority and these issues also answered As regards the ingredients of Section 240A of the Code it is to be pointed out that a Financial Creditor or an Operational Creditor of MSME may take it to Insolvency Proceedings before an 'Adjudicating Authority'. But the fact of the matter is that the MSME may not be pushed into liquidation thereby affecting the employees and workers of MSME and therefore, Section 240A (2) of the Code specifies that the Central Government may, in public interest by notification direct that any of the provisions of the IBC shall not apply to Micro, Small and Medium Enterprises or apply to them with such modifications as may be mentioned. The learned Adjudicating Authority in the impugned order had not entered

into the aspect of whether 8th and 9th Respondent are related to 1st Respondent/ Corporate Debtor or otherwise or whether the ingredient of section 29A of the Code applies or not because of the fact the said authority thought it fit that these aspects are irrelevant and while rejecting the plan ordered the liquidation of the 1st Respondent. The Adjudicating Authority in the impugned order, had also disposed of the Applications filed by the respective parties to the proceedings.

68. In regard to I.A No. 2976 of 2019 filed by the Intervener/Applicant (City Union Bank, to intervene in the main appeal i.e. CA(AT)(INS) No. 277 of 2019, on the basis that the Liquidator on 15.03.2019 had admitted its claim under the category of Secured Financial Creditor and since the Resolution Plan had not provided anything to the Applicant's claim was considered under the category of other creditor, it is to be pointed out that the plan of Resolution Applicant was rejected by the Adjudicating Authority and in the main case an order of liquidation was passed by the Adjudicating Authority on 13.02.2019, and as such it is open to the Applicant/Intervener Bank to stake its claim before the Liquidator for redressal of its grievance(s), in accordance with law if it so desires/advised. Accordingly, the said Interlocutory Application stands disposed of.

69. I.A No. 4285 of 2019 filed by the Applicant seeking Leave to place the judgment of Hon'ble Supreme Court dated 03.12.2019 in CA No. 9170-72 of 2019 M/s. Embassy Property Developments Pvt. Ltd v. State of Karnataka, is taken on record.

70. For the foregoing detailed discussions, and also this Tribunal taking note of the attendant facts and circumstances of the present case, in a conspectus fashion, comes to an irresistible consequent conclusion that the impugned order dated 13.02.2019 passed by the Adjudicating Authority in rejecting the Resolution Plan and appointing a Liquidator in respect of the 1st Respondent is free from any legal flaws.’’

Respondent's Submissions:

24. The Learned Senior Counsel for the Respondent contends, that the 'Impugned Order' of 'Eviction', passed by the 'Adjudicating Authority' / 'Tribunal', is well within its 'Jurisdiction', and further, that in the 'Judgment', in M/s. Jhanvi Rajpal Automotive Pvt. Ltd. v. R.P. of Rajpal Abhikaran Pvt. Ltd. & Anr. (vide Comp. App. (AT) (INS) No. 1417 of 2022), wherein, at Paragraph Nos. 19 to 21, it is observed as under:

19. "The present is not a case where lease in favour of the Appellant is subsisting. The lease has come to an end on 31st December, 2021. Further the lease renewal in favour of the Appellant was by RP himself on 17.09.2021 (Fresh Lease) which lease contained specific clause for eviction by 15 days' notice.

20. Accepting the contention of the Learned Counsel for the Appellant that RP is obliged to file a suit for eviction of the Appellant under MP Accommodation Control Act, 1961 even though lease in favour of the Appellant has expired shall be unduly prolonging the insolvency process which is a time bound process. When the Corporate Debtor has the ownership rights over the premises which premises can be taken in control by IRP/RP, we are of the view that for eviction of the Appellant especially in event when lease in favour of the Appellant has come to an end, filing a suit is not contemplated in the statutory scheme contained in IBC.

21. Thus, the contention of the Appellant that RP has to file a suit for eviction of the Appellant under the MP Accommodation Control Act, 1961 cannot be accepted. We thus, in view of the foregoing discussions are of the considered opinion that Adjudicating Authority has rightly allowed the Application filed by the RP directing the Appellant to vacate from the premises so that Resolution Plan which has been

approved can be implemented. We thus do not find any merit in the Appeal, the Appeal is dismissed.’’

25. The Learned Counsel for the Respondent, adverts to Section 35 and 36 of the I & B Code, 2016, which ‘empowers’ and ‘bestows’, a duty on the Liquidator to (i) Take into his custody all the ‘Assets’, ‘Property’, ‘Effects’ and ‘Actionable Claims’, of the ‘Corporate Debtor’ and (ii) To constitute the ‘Liquidation Estate’, of the Corporate Debtor.

26. The Learned Counsel for the Respondent, brings to the notice of this ‘Tribunal’ that Regulation 9 (c) of the Liquidation Regulations, in its ‘categorical terms’, it enjoins ‘cooperation’, from persons, for the conduct of the ‘Liquidation’, and in case, such ‘cooperation’, is not extended, the ‘Liquidator’, can make an ‘Application’, before the Ld. Adjudicating Authority under the ‘Aegis’, of the Regulations.

27. According to the Respondent / Liquidator, the Premises / Land usurped by the ‘Appellant’, is undisputedly an ‘Asset’ of the ‘Corporate Debtor’, and hence, falls into the ‘Liquidation Estate’, under Section 36 of the ‘I & B Code, 2016’.

28. The Learned Counsel for the Respondent, refers to the Judgment dated 08.03.2021 of the Hon’ble Supreme Court of India, in the matter of Gujarat

Urja Vikas Nigam Limited v. Mr. Amit Gupta & Ors. (vide Civil Appeal No. 9241 of 2019), wherein, at Paragraph No. 67, it is observed as under:

67. *“The institutional framework under the IBC contemplated the establishment of a single forum to deal with matters of insolvency, which were distributed earlier across multiple fora. In the absence of a court exercising exclusive jurisdiction over matters relating to insolvency, the corporate debtor would have to file and/or defend multiple proceedings in different fora. These proceedings may cause undue delay in the insolvency resolution process due to multiple proceedings in trial courts and courts of appeal. A delay in completion of the insolvency proceedings would diminish the value of the debtor’s assets and hamper the prospects of a successful reorganization or liquidation. For the success of an insolvency regime, it is necessary that insolvency proceedings are dealt with in a timely, effective and efficient manner. Pursuing this theme in Innoventive (supra) this court observed that “one of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process”. The principle was reiterated in Arcelor Mittal (supra) where this court held that “the non-obstante Clause in Section 60(5) is designed for a different purpose: to ensure that the NCLT alone has jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings”. Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the Corporate Debtor. However, in doing so, we issue a note of caution to the NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the Corporate Debtor. The nexus with the insolvency of the Corporate Debtor must exist.”*

29. The Learned Counsel for the Respondent, proceeds to point out that an alleged 'Unregistered Memorandum of Understanding', dated 26.07.2012, was entered into, between the 'Appellant' and the 'Corporate Debtor'. As a matter of fact, the said 'Memorandum of Understanding', was entered with an 'express intention', of executing a 'Formal and Legally Binding Lease Deed'.

30. The Learned Counsel for the Respondent, submits that in terms of Section 107 of the Transfer of Property Act, 1882, a 'Lease of Immoveable Property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument'.

31. The Learned Counsel for the Respondent, refers to Section 17 (d) of the Registration Act, 1908, which provides that 'leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a 'Registered Instrument'.

32. The Learned Counsel for the Respondent, points out that Section 49 (a) of the 'Registration Act, 1908', provides that 'an unregistered document shall not affect any immovable property comprised therein, if such document is required to be registered by any law'.

33. The Learned Counsel for the Respondent, submits that the 'Unregistered Memorandum of Understanding', dated 26.07.2012, being relied upon by the Appellant, cannot give it a 'Leasehold Right', over the

Property of the 'Corporate Debtor', for more than 11 months, from the 'Date of Execution'. Therefore, according to the Respondent, the 'Unregistered Memorandum of Understanding', dated 26.07.2012, does not survive beyond 26.06.2013, let alone, for 30 years.

34. It is the version of the Respondent that the subsequent 'Registered Lease Deed', dated 30.09.2017, entered into between the 'Appellant' and the 'Corporate Debtor', had expired on 30.09.2022, without any extension, novation, renewal or waiver.

35. The Learned Counsel for the Respondent, contends that a 'Formal Lease Deed' dated 30.09.2017, was executed between the 'Appellant', and the 'Corporate Debtor', for a subsisting period of 5 years and the said 'Lease Deed', expired, due to an 'efflux of time'.

36. It is represented on behalf of the Respondent, that the 'Appellant' after the 'Lease Deed', dated 30.09.2017, had expired, sought an extension of the same, from the 'Former Resolution Professional', and that the Appellant's Proposal, in this regard, was rejected by the erstwhile Resolution Professional.

37. The Learned Counsel for the Respondent, comes out with a plea that the 'Loans', availed by the 'Appellant', were taken from the Banks, by

mortgaging the Properties of the Corporate Debtor, illegally stating to the 'Bank' ('Lender') that the Property, belongs to the 'Appellant'.

38. The Learned Counsel for the Respondent, refers to the extract of the 'Financial Statement' of the 'Appellant' (Notes forming integral part of the Balance Sheet and Profit and Loss Account as at 31.03.2019, vide Vol. – II of the Appellant's Appeal Paper Book at Page 316, which reads as under:

''Term Loan from the Bank Viz. Syndicate Bank is secured by a pari passu first charge on immoveable properties (land and Building) of the Company situated at (1) H.N.1-8-322 to 1-8-329, 1-8-331 to 1-8-335, Devadi Iqbaluddolula, Begumpet, Secunderabad, and (2) land situated at Plot A/16, Nacharam Industrial Development Area, Nacharam Village, Ranga Reddy District, admeasuring 12099.32 Sq. Yards.'''

39. The Learned Counsel for the Respondent, contends that since the 'Appellant', had miserably failed to 'honour', its 'Financial Obligations', towards the 'Financial Creditor', culminating the 'Canara Bank', to prefer a Section 7 Petition (under I & B Code, 2016), in CP (IB) 08 / 2024, before the 'Adjudicating Authority' / 'Tribunal', against the 'Appellant'.

40. On behalf of the Respondent, it is pointed before this 'Tribunal', that the 'Financial Statement', very well reflects that the 'Corporate Debtor', had invested Rs.12 Crores approx., over the 'Superstructures', upon which, the 'Appellant', claims 'Ownership' of the same.

41. The Learned Counsel for the Respondent, refers to the extract of Financial Statement for the Year ending 31.03.2011 of the Appellant, under the Heading 'Schedule Annexed to and forming Part of Balance Sheet & Profit and Loss Account', vide at Page 241 of Vol. II of the Appellant's Appeal Paper Book, wherein under the Caption 'Loans from Others', it is mentioned as under:

Loans from Others:

Sai Krishnedaya Industries Pvt. Ltd	6,288,116
Sainath Constructions	33,198,877
Sainath Estates Pvt. Ltd.	120,310,850
Sri Venkata Sai Enterprises	4,960,000
Term Loan with India Bulls	17,148,718

42. The Learned Counsel for the Respondent, proceeds to point out that the 'Suspended Directors' of the 'Corporate Debtor' and the 'Directors' of the Appellant are similar i.e., as per the Corporate Debtor's Master Data as available on the Ministry of Corporate Affairs portal, Mr. Saini Satyanarayana Rao, Mr. Udaycharanrao Kokkiralala and Ms. Sylekhya Muddana amongst others are enlisted as Directors, whereas, the Appellant's Master Data as available on the Ministry of Corporate Affairs portal also lists

Mr. Saini Satyanarayana Rao, Mr. Udaycharanrao Kokkerala Raja Venkata and Ms. Sylekhya Muddana as Directors (vide Company Master Data – Annexure H at Pages 126 & 127 of Vol. I of Appellant’s Paper Book).

43. The Learned Counsel for the Respondent, emphatically submits that the ‘Suspended Management’ of the ‘Corporate Debtor’ and the ‘Appellant’ are one and the same and in reality, the ‘Appellant / Company’, cannot take the plea of ‘Ownership of Superstructures’ nor the ‘Investment’. In fact, the ‘Appellant’ is abusing the ‘Process of Law’, by raising ‘frivolous contentions’, to stall the ‘Liquidation Proceedings’ of the ‘Corporate Debtor’.

44. The Learned Counsel for the Respondent, while winding up, submits that the ‘Appellant’, has filed the instant ‘Appeal’, without Application of mind and with the sole view of stalling the ‘Due Process of Law’, whereby, the Respondent, is entitled to take control and possession of the ‘Property’, in question.

45. Furthermore, the ‘Appellant’, has failed to make out any case, in seeking the relief of setting aside the ‘Impugned Order’, dated 04.12.2023 in IA (IBC) 265 / 2023 in CP(IB)/651/7/HDB/2018, passed by the ‘Adjudicating Authority’ / ‘National Company Law Tribunal’, Hyderabad Bench, and thereafter, the instant ‘Appeal’, is liable to be dismissed, by this ‘Appellate Tribunal’, in the ‘interest of Justice’ and ‘good conscience’.

Respondent's Decisions:

46. The Learned Counsel for the Respondent, refers to the Judgment dated 11.08.1995 of the Hon'ble Supreme Court of India, in R.V. Bhupal Prasad v. State of Andhra Pradesh and Ors. (vide Civil Appeal Nos. 7701 – 7702 / 1995), reported in (1995), 5 SCC at Page 698 at Spl Pg.: 700, wherein, at Paragraph No.8, it is observed as under:

8. ``A tenant at sufferance is one who comes into possession of land by lawful title, but who holds it by wrong after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him and a trespasser. A tenancy at sufferance does not create the relationship of landlord and tenant. The expression "holding over" is used in the sense of retaining possession. A distinction should be drawn between a tenant continuing in possession after the determination of the lease, without the consent of the landlord and a tenant doing so with the landlord's consent. The former is called a tenant by sufferance in the language of the English law and the latter class of tenants is called a tenant holding over or a tenant at will. The lessee holding over with the consent of the lessor is in a better position than a mere tenant at will. The tenancy on sufferance is converted into a tenancy at will by the assent of the landlord, but the relationship of the landlord and tenant is not established until the rent was paid and accepted. The assent of the landlord to the continuance of the tenancy after the determination of the tenancy would create a new tenancy. The possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy, his possession is juridical.``

47. The Learned Counsel for the Respondent, refers to the Judgment dated 09.09.1998 of the Hon'ble Supreme Court of India, in the matter of Raptakos Brett & Co. Ltd. v. Ganesh Property (vide Civil Appeal No. 4657 / 1998), reported in (1998), 7 SCC at Page 184 at Spl. Page 202 to 204, wherein, at Paragraph No. 18, it is observed as under:

18. ``It is of course true that in para 2 of the plaint reliance is also placed on the non- delivery of vacant and peaceful possession of the suit premises to the plaintiff by the defendant as per the covenants which as we have noted are covenants being clauses 14 and 17 of the lease. As they are express covenants relied on by the plaintiff, it is not necessary for us to examine the wider question whether there is any implied covenant on the part of the lessee to hand over possession to the lessor on the expiry of the lease as tried to be suggested by learned senior counsel Shri Nariman placing reliance on a decision of the Division Bench of the Travancore High Court in Sivjnanam Abraham & Anr. v. Mathevan Pillai Bhoothalingam Pillai & Ors., AIR (1952) Travancore 359 and also on the decision of the Karnataka High Court in the case of Mrs. Thayarammal v. People's Charity Fund, AIR (1978) Karnataka 125, All the same, we may briefly deal with them. In the case of Sivjnanam Abraham & Anr v. Mathevan Pillai Bhoothalingam Pillai (supra), the Court was not directly concerned with the interpretation of Section 69 sub-section (2) of the Partnership Act. The question before the Court was whether on the determination of the lease erstwhile tenant was liable to restore the possession of the property to the plaintiff. Analysing the landlord's claim for recovery of possession on determination of tenancy, it was observed in para 7 that :

"7. The landlord's claim for recovery of possession of the properties from a tenant on the determination of tenancy need not be based on any contract expressly entered into in that behalf. The right of the landlord to get and the liability of the

tenant to surrender possession of the properties leased, on the determination of the tenancy, is inherent in the very relationship of landlord and tenant and will be implied by the law. This is known as the rule in Henderson v. Squire, (1869) 4 QB 170.

"The duty of the tenant upon the determination of the tenancy is simply to yield up peaceable and complete possession of the premises demised to him together with all fixtures except those which he is entitled to remove.... This duty will be implied in law if not expressed in the contract between the parties and the tenant will not discharge the duty by merely going out of possession unless he restores possession to the landlord' For on the Relationship of Landlord and Tenant, 6th Edn., p. 838.

"A lease usually contains a covenant on the part of the lessee to deliver up the premises on the determination of the term. In the absence of such a covenant or of any express stipulation, the tenant is under an implied contract to restore possession to the landlord". The Complete Law of Landlord & Tenant by Redman, edited by Hill, 8th Edn. (1939) p. 459.

See also Venkatesh Narayan v. Krishnaji Arjun, 8 Bom. 160, Section 108(q) of the Transfer of Property Act has recognised this obligation on the part of the tenant. Indeed one does not come across an instance of this plea having been ever seriously put forward. '

"We fail to appreciate how this decision can advance the case of the appellant. All that it says is that on determination of the tenancy, the tenant would be bound to restore the possession of the demised premises to the erstwhile landlord and if there is an express term / covenant in the lease to that effect, it would apply and if there is no express covenant the law will imply an obligation to that effect of the erstwhile tenant. As we have noted in the present case there is an express covenant in the lease which also was relied upon by the plaintiff. But in the absence of such an express covenant the law would imply a statutory obligation on the part of the ex-tenant to deliver and restore vacant possession of demised premises to the landlord on

*determination of the lease. That would obviously create a legal right in favour of the landlord and correspondent legal duty and obligation on the part of the ex-tenant. That is precisely what is being sought to be enforced by the plaintiff by basing its right to possession also on the law of the land. Similarly, the decision of the learned Single Judge, M. Rama Jois, in the case in *Thayarammal v. People's Charity Fund*¹¹ also cannot be of any avail to learned Senior Counsel for the appellant. The learned Judge in the said decision has taken the view following this Court's decisions that on the expiry of the lease, the erstwhile lessee cannot be said to be in lawful possession within the meaning of Rule 6 of the Karnataka Cinemas (Regulation) Act (23 of 1964). It is of course true that while referring to Section 108(q) of the Property Act it has been observed that on the expiry of the lease period, the lessee was bound to put the lessor into possession of the property and that it would be an implied term of the contract. It imposes an obligation in law on the erstwhile tenant to restore possession to the landlord. ''*

48. The Learned Counsel for the Respondent, seeks in aid, of the 'Judgment dated 11.09.2019' of the 'Hon'ble Supreme Court of India', in 'Bajarang Shyamsunder Agarwal v. Central Bank of India & Anr.' (vide Criminal Appeal No. 1371 / 2019 - Arising out of SLP (CRL.) No. 9590 / 2015), wherein, at Paragraph 21 & 25 (c), it is observed as under:

21. ``Before concluding, the Court in *Harshad Govardhan Case* (supra), distinguished the implications of a registered and an unregistered instrument/oral agreement, in the following manner:

36. We may now consider the contention of the respondents that some of the appellants have not produced any document to prove that they are bona fide lessees of the secured assets. We find that in the cases before us, the appellants have relied on the written instruments or rent receipts issued by the landlord to the tenant. Section 107 of the Transfer of Property Act provides that

a lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made “only by a registered instrument” and all other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. Hence, if any of the appellants claim that they are entitled to possession of a secured asset for any term exceeding one year from the date of the lease made in his favour, he has to produce proof of execution of a registered instrument in his favour by the lessor. Where he does not produce proof of execution of a registered instrument in his favour and instead relies on an unregistered instrument or oral agreement accompanied by delivery of possession, the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, will have to come to the conclusion that he is not entitled to the possession of the secured asset for more than a year from the date of the instrument or from the date of delivery of possession in his favour by the landlord.

(emphasis supplied)

25. In our view, the objective of SARFAESI Act, coupled with the T.P. Act and the Rent Act are required to be reconciled herein in the following manner:

x x x x x x x

x x x x x x x

(c) In any case, if any of the tenants claim that he is entitled to possession of a secured asset for a term of more than a year, it has to be supported by the execution of a registered instrument. In the absence of a registered instrument, if the tenant relies on an unregistered instrument or an oral agreement accompanied by delivery of possession, the tenant is not entitled to possession of the secured asset for more than the period prescribed under Section 107 of the T.P. Act.’’

Definition of Property:

49. This 'Tribunal', aptly points out the decision in National Province Bank v. Hastings Car Mart Limited, reported in (1965) CA 1175 12 at 1247 – 48, wherein, Lord Wilberforce, had defined 'Property', as 'Before a right or an interest, can be admitted into the category or of a right affecting Party, it must be definable, identifiable by third parties, capable in its nature of assumption, by third parties and have 'some degree of permanence' or 'stability'.

Insolvency Act, 1986 (United Kingdom):

50. Section 436 of the Insolvency Act, 1986 (United Kingdom), defines ``... Property includes, money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether, present or future or contingent, arising out of or incidental to property''.

Assessment:

51. Before the 'Adjudicating Authority' / 'Tribunal', the 'Respondent' / 'Liquidator', of M/s. Sainath Estates Private Limited, had filed IA (IBC) No. 265 / 2023 in CP (IB) No. 651 / 7 / HDB / 2018 (under Section 60(5), r/w. Section 35 & 36 of the I & B Code, 2016, r/w. Regulation 9 of the Insolvency

and Bankruptcy Board of India (Liquidation Regulations), 2016, and R.11 of the NCLAT Rules, 2016), wherein, the following reliefs, were sought for:

- (a) Allow the instant application.
- (b) To direct the Respondent to handover the possession of property mentioned herein to liquidator.
- (c) To direct the Respondent to pay the arrears of rentals till the date of handover.

52. The Appellant / Respondent, (before the 'Adjudicating Authority' / 'Tribunal'), in its Counter to IA (IBC) No. 265 / 2023 in CP (IB) No. 651 / 7 / HDB / 2018 (vide at Paragraph No. 3, at Page 165 of Vol. I of the Appeal Paper Book), had among other things, stated that the Appellant / Respondent's Company, 'has been in occupation of the Land', admeasuring 15092 Sq. Yards and the heritage building of the Corporate Debtor for the last 'thirty years', and the entire 'Land', 'Heritage Building', and the 'Buildings', constructed on the 'Leased Land', by the 'Respondent / Company', is known as 'Chiraan Fort Club & Hotels', including 'Manasarover Fern'.

53. According to the Appellant / Respondent / Company, the 'Corporate Debtor', had entered into an 'Agreement of Sale', with its 'Vendors', in the year 1993 and it was put in possession, by its 'Vendors', in the same year. As a matter of fact, the 'Chiraan Fort Club', was started in November 1993, and

the 'subject property', was on 'Lease', with the Respondent / Company, since then. Also that, the Appellant / Respondent / Company, is filing its 'Profit and Loss Statement', from the years, ending from 31.03.1994.

54. It transpires that in the year 2006-07, it was considered profitable, for both the 'Corporate Debtor' and the 'Respondent Company', to 'Construct various Buildings', in the 'open Land', which will increase the 'value', of the 'Subject Property'. Accordingly, it was decided that the Appellant / Respondent / Company, shall invest all the money, for the construction of all the 'Superstructure' and the 'Corporate Debtor', will 'refund', the 'Value of the Building', when the 'possession of the Lease Land', and the new Buildings, will be handed over by the Appellant / Respondent / Company, to the 'Corporate Debtor'.

55. The Learned Counsel for the Appellant / Respondent / Company, based on such 'undertakings', the Appellant / Respondent / Company, had invested huge amounts, for the construction of the Buildings and 'GHMC', also had approved the construction, as per 'BPS Proceedings', dated 22.10.2010.

56. Furthermore, the 'Appellant / Respondent / Company' and the 'Corporate Debtor', had entered into a 'Memorandum of Understanding', on 26.07.2012, and the 'Appellant', had filed the 'Audited Balance Sheets', from the year 2009 to 2013, during which period the 'Construction' took place and

the 'Investment', was 'capitalised', and the 'Appellant / Company', had also filed the 'Audited Balance Sheet', for the year 2018-19 dated 06.06.2019. All these, clearly prove that the entire 'Superstructure' Viz. all the Buildings on the 'Lease Land', were constructed by the 'Appellant / Company', at its own costs, to be refunded by the Corporate Debtor, before handing over of the 'possession', by the Appellant / Respondent to the 'Corporate Debtor'.

57. It is represented on behalf of the Appellant / Company, that the IA (IBC) No. 265 / 2023 in CP (IB) No. 651 / 7 / HDB / 2018, filed by the Respondent / 'Liquidator', seeking directions from this 'Tribunal', to direct the Appellant / Respondent / Company, to handover 'possession of the Property', is 'not maintainable', because of the fact that the various 'official documents', (including that of 'State and Central Governments' and the VAT Registration, TAN Registration, etc., issued by various Govt. Authorities, Licence for 'Sale of IMFL', 'Trade Mark Certificate', 'Food Licence Certificate', 'Professional Tax Registration Certificate' & 'Service Tax Registration', and these documents, were filed prior to the 'Written Agreement of Lease', being drawn up in the year 2017, will show that the 'Appellant / Respondent / Company', has been in occupation of the 'subject land', for nearly 30 years, and that 'All the Buildings', which were constructed after the 'Corporate Debtor', had purchased the Land, were constructed by the 'Appellant / Respondent / Company', based on an

`Agreement' that investment made herein, will have to be refunded, in case the `Buildings', are to be `taken over', by the `Corporate Debtor'. Therefore, a `plea', is taken that the Appellant / Respondent / Company, cannot be evicted summarily, and without refunding the money, invested by the `Appellant / Respondent / Company', for the construction of the Buildings.

58. The Learned Counsel for the Appellant / Respondent / Company, takes a `plea', that the letter dated 26.11.2012, addressed to `one of the Directors', of the Appellant / Respondent / Company, is not validly or legally issued to the Appellant / Respondent / Company.

59. Furthermore, the entire `new Buildings', which are in now existence, except the old Heritage Building, were constructed by the Appellant / Respondent / Company, out of its own `Funds', secured from the `Bank / Financial Institutions'. Also that, a `Memorandum of Understanding', was executed between the `Appellant / Respondent / Company', and the Corporate Debtor, in the year 2012, to place on record the understanding of the `Appellant / Respondent / Company', and the `Corporate Debtor', which is in `vogue', since 2006. As such, it is not factually correct to state on the part of the `Respondent / Liquidator', that the `Lease Deed', was `executed', in the year 2017, for a period of 5 years, which expired on 30.09.2022.

60. The Learned Counsel for the Appellant / Respondent / Company, contends that `Regulation 9 of the Liquidation Process`, has no relevance, to the `present Proceedings`, or to the facts of the present case, initiated by the Respondent / Petitioner. In fact, the Appellant / Respondent / Company, is ready and willing to pay `any arrears of rent`, payable to the `Corporate Debtor`, to the Respondent / Petitioner.

61. In the instant case, it must be borne in mind, that the request of the Respondent / Liquidator / Applicant, through letter dated 26.11.2022, to the Appellant / Respondent, to deliver the premises, bearing House No. 1-8-322 to 335 (admeasuring 15092 Sq. Yards), near American Consulate, Begumpet, Secunderabad, was refused to be handed over by the Appellant / Respondent / Company, on or before 29.01.2024.

62. In the present case, Regulation 9 (c) of the Liquidation Regulations, clearly mandates, `cooperation`, from persons, in regard to, the conduct of the `Liquidation`, and if such a `cooperation` / `assistance`, is not extended, the `Liquidator`, can prefer a `Petition / Application`, before the `Adjudicating Authority` / `Tribunal`, as per Regulations, praying for necessary reliefs.

Powers and Duties of Liquidator:

63. Section 35 of the I & B Code, 2016, is analogous to Sections 167, 168, 169 and 170 of the UK Insolvency Act, 1986. The ingredients of Section 167 (3) of the Insolvency Act, 1986 (United Kingdom), mentions, that the Powers showered by Section 167 are subject to the control of the 'Code' and any 'Creditor or Contributory', may 'apply', to the Court, in regard to any exercise or proposed exercise of those 'Powers'.

64. Not resting with the above, Section 168 (5) of the Insolvency Act, 1986 (UK), postulates that a 'Person Aggrieved', by an 'Act of Decision', of the Liquidator, may 'apply', to the 'Court', and the 'Court', may 'affirm', 'modify' or 'alter', the 'decision' or 'act' complained of, and pass such Orders, as it deems fit. However, a similar provision is not found in the Insolvency and Bankruptcy Code, 2016.

65. A cursory perusal of Section 35 of the I & B Code, 2016, employs the word 'Shall', in sub-section (1) which indicates that the 'Legislature', has intended the Powers and Duties of the 'Liquidator', to be 'Mandatory' in character.

66. No doubt, the Liquidator's actions in a given 'Legal Proceeding', before the 'Adjudicating Authority' / 'Tribunal', should be under the

supervision of the 'Adjudicating Authority' / 'Tribunal', and the sentence 'Subject to the directions of the 'Adjudicating Authority', ought to be given, a purposive interpretation, in the considered opinion of this 'Tribunal'.

67. If a Liquidator has not acted in 'Bona fide' manner or that he acted in a way that no reasonable Liquidator could have acted, then, the 'Court', can interfere. Ordinarily, the Court will not interfere with the 'Commercial Decision' of the 'Liquidator', as per decision Ram Lal Raja Ram v. G.D. Mehrotra (1958), reported in AIR 1958 All. 417.

Liquidation Estate:

68. In 'Liquidation', an 'Asset', for the aspect of 'Liquidation Estate', is inclusive of 'any Asset', that may be in 'Debtor's Possession' i.e. (i) 'Actual' and (ii) 'Constructive Possession'.

English Decision:

69. This 'Tribunal', worth recalls and recollects the decision in Swift v. Dairywise Farms Limited, reported in (2001) BCLS 672 (Court of Appeal), wherein, it is observed that 'where a 'Company's Asset', was comprised of 'Debts', on 'Loans', granted by the 'Company', for which, a 'Security', in the form of 'Milk Quotas', and held that the 'Security', was a 'Property', of the

`Company', irrespective of the fact that the `Quotas', were held by a `Subsidiary' of the `Company', on its behalf''.

70. As far as the present case is concerned, this `Tribunal', rightly points out that the premises / land in possession of the Appellant / Respondent / Company is the `Asset' of the `Corporate Debtor', which comes within the purview of `Liquidation Estate', as per Section 36 of the I & B Code, 2016.

71. It cannot be gainsaid that the `Adjudicating Authority' / `Tribunal', is clothed with the Jurisdiction, to entertain matters, where a nexus between the Insolvency / Liquidation Proceedings of the Corporate Debtor subsists, as opined by this `Tribunal'.

72. As per Section 107 of the Transfer of Property Act, 1882, if a `tenant', based on an `Unregistered Instrument' or an `Oral Agreement', coupled with the `delivery of possession', then, in `Law', he is not entitled, to be in `Possession' of a `Secured Asset', for more than the specified period.

73. It cannot be ignored that in the present case, the `Memorandum of Understanding', dated 26.07.2012, cannot survive beyond 26.06.2013, even if it is an `Unregistered' one. Even the `Registered Lease Deed', dated 30.09.2017, entered into between the `Appellant' and the `Corporate Debtor',

had expired on 30.09.2022, without `any renewal' / `extension' or `waiver', as the case may be.

74. It is well settled `Proposition of Law' that when the Appellant's Lease Deed dated 30.09.2017, had lapsed on 30.09.2022, the Appellant is not in `Lawful Possession' of the `Corporate Debtor's land. Indeed, the Appellant / Company, had addressed `a Letter dated 04.10.2021, to Dr. K. V. Srinivas (Resolution Professional) for M/s. Sainath Estates Private Ltd., pertaining to the 1st Lockdown and 2nd Lockdown, imposed due to Covid-19, seeking (waiver of rent), and also referred to several Government Orders, issued by Govt. of Telangana and India, in this regard, based on the reason that the `Appellant' / `BHPL', had to shut down activities, for around 251 days, due to the `force majeure' event of `Covid-19', and on the same ground the Govt. of Telangana, had provided `six months Waiver', to the Hospitality Sector'.

75. Further, the Appellant / Respondent / Company, wrote a Letter to the Resolution Professional in October 2021, for an extension from 01.10.2022 to 08.06.2023 and waiver of the Rent, etc.

76. The Respondent / Liquidator, through an Email dated 17.12.2022, addressed to the erstwhile Resolution Professional Dr. K.V. Srinivas, had

given a 'Reply', stating that the 'Request, was not considered favourably', before invoking any 'Legal Remedy'.

77. The Appellant / Respondent / Company, after the expiry of subsequent 'Registered Lease Deed', dated 30.09.2017, entered into, between the 'Appellant' and the 'Corporate Debtor', on 30.09.2022, is in 'Unlawful Possession' of the 'Subject Property', Viz. 'Vacant Physical Possession' of premises, bearing House No. 1-8-322 to 335, near American Consulate, Begumpet, Secunderabad, admeasuring 15092 Sq. Yards (mentioned in IA (IBC) No. 265 / 2023 in CP (IB) No. 651 / 7 / HDB / 2018), as held by this 'Tribunal'.

78. It cannot be brushed aside that filing of a 'Suit', is not 'visualised / conceptualised', under the I & B Code, 2016, when the Appellant / Respondent / Company's Lease period had expired.

79. After the lapse of Lease Period, when the Appellant / Respondent / Company's possession becomes 'Unlawful', in the 'subject property', then, it cannot be in 'Law', to oppose the IA (IBC) No. 265 / 2023 in CP (IB) No. 651 / 7 / HDB / 2018, filed by the Respondent / Liquidator (before the 'Adjudicating Authority' / 'Tribunal'), as held by this 'Tribunal', in an unequivocal term.

80. In the light of foregoing deliberations, this `Tribunal`, on a careful consideration of divergent contentions, advanced on respective sides, keeping in mind the surrounding facts and circumstances of the present case and also, on going through the `Impugned Order`, dated 04.12.2023 in IA (IBC) No. 265 / 2023 in CP (IB) No. 651 / 7 / HDB / 2018, passed by the `Adjudicating Authority` / `Tribunal`, comes to a consequent conclusion that the directions, issued to the `Appellant / Respondent / Company`, to vacate and handover the `Vacant Physical Possession of Premises`, bearing House No. 1-8-322 to 335, near American Consulate, Begumpet, Secunderabad (admeasuring 15092 Sq. Yards), as mentioned in Petition, on or before 29.01.2024 and that in `Default`, the `Respondent / Liquidator / Petitioner`, is at `Liberty`, to approach this `Tribunal`, for necessary further directions, and that the `Arrears of Rent`, is to be paid by the `Appellant / Respondent / Company`, to the `Respondent / Liquidator / Petitioner`, `till the date of Handing over of the Physical Possession`, are free from `Legal Errors`. Accordingly, the `Appeal`, fails.

Result:

In fine, the instant Comp. App (AT) (CH) (INS) No. 13 / 2024 is Dismissed. No costs. The `Appellant / Respondent / Company`, is directed to `vacate and handover the `Subject Property`, within one month, from `Today`

(i.e., `the date of Pronouncement of this Judgment'). The connected IA No. 52 / 2024 is Closed.

[Justice M. Venugopal]
Member (Judicial)

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

SR / TM

29 / 04 / 2024