

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,**  
**NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 337 of 2021**

[Arising out of order dated 10.02.2021 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench, Court 1) in IA/73(AHM)2021 in CP(IB) 37 of 2017 with IA/90(AHM)2021]

**IN THE MATTER OF:**

**Nitin Jain**

Partner

AAA Insolvency Professionals LLP

E 10A, Kailash Colony

New Delhi – 110048

**..... Appellant.**

**Versus**

**Universal Tutorial Private Limited**

301, Vardhaman Chambers, Plot No. 84

Sector 17, Vashi Navi Mumbai-400705.

**..... Respondent.**

**Present:**

**For Appellant:                    Mr. Amar Vivek, Mr. Abhinav Tyagi, Advocates.**

**For Respondent:-                Mr. Harsh N Gohhale, Mr. Jaidev Ali, Advocates.**

**J U D G M E N T**

***(23<sup>rd</sup> May, 2023)***

**Justice Anant Bijay Singh;**

The present Appeal is being preferred by Mr. Nitin Jain (*hereinafter to be referred to as Appellant/Liquidator*) under Section under Section 61 of the Insolvency & Bankruptcy Code, 2016 (***for short IBC***) against the impugned order

dated 10.02.2021 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench, Court 1) in IA/73(AHM)2021 in CP(IB) 37 of 2017 with IA/90(AHM)2021 whereby the Adjudicating Authority disposed of the Application i.e. IA/73(AHM)2021 filed by the Appellant, refused to grant the reliefs sought by the Appellant. In the said Application prayer sought by the Appellant is reproduced below:

- “a. Allow the present application*
- b. Direct the Respondent to vacate the premise E-1, E-2, E-3 Shiv Parvati Co-operative Housing Society Limited at plot no. 106-110 Sector-21, Nerul, Navi Mumbai.*
- c. Direct the Respondent to co-operate with the Liquidator to show the said premise to the prospective investors.*
- d. Pass any such order(s) that this Hon’ble Adjudicating Authority may deem fit in the interest of justice.”*

**2.** The facts giving rise to this Appeal are as follows:

**i)** The Corporate Debtor is a company incorporated on 24.08.1987, under the provisions of companies Act, 1956. The Corporate Debtor itself filed an application under Section 10 of the Code for initiation of corporate insolvency resolution process (“CIRP”) against the company, since it was unable to pay debts to its creditors. The Adjudicating Authority vide its order dated 15.02.2019 admitted their petition and initiated CIRP against the Corporate debtor and vide same order the Adjudicating Authority appointed Mr. Nilesh Sharma as the Interim Resolution Professional.

**ii)** The Appellant was appointed as Resolution professional of the Corporate Debtor vide order dated 30.08.2019. The Appellant filed an application under

Section 33(1)(a) for liquidation of the Corporate Debtor since 330 days of the CIRP period was over and no resolution plan was approved. The Adjudicating Authority vide order dated 11.09.2020 passed an order for liquidation of the Corporate Debtor and appointed as the Liquidator.

**iii)** Prior to the onset of CIRP, the Corporate Debtor and Universal Tutorial Private Limited Respondent herein had entered into a Leave and Licence agreement dated 19.12.2005 for premises E-1, E-2, E-3 admeasuring 2872 Sq. ft. of built-up area in Shiv Parvati co-operative Housing society Limited situated at plot no. 106-110 Sector-21, Nerula, Navi Mumbai. In terms of the agreement dated 19.12.2005, the Respondent made a security deposit of sum amounting to Rs. 7,75,440/-. Further, the parties mutually agreed to extend the period of the said leave and license. The Directors of the Respondent passed a resolution dated 26.12.2016 according approval for renewal of Leave and License Agreement between Corporate Debtor and Respondent, for a period of 33 months i.e. from 01.11.2016 till 31.07.2019. In pursuance of the afore-mentioned resolution dated 26.12.2016 executed a Leave and License Agreement dated 09.01.2017 in which Clause (a) of the said agreement specified the period of use of the premises by the Respondent.

**iv)** Meanwhile corporate insolvency resolution process was initiated against the Corporate Debtor vide Order dated 15.02.2019 passed by the Adjudicating Authority. The said Leave and License Agreement dated 09.01.2017 expired on 31.07.2019. Subsequently the Appellant was appointed as the Resolution professional vide Order dated 30.08.2019 of the Adjudicating Authority and later

on as the Liquidator vide Order dated 11.09.2020. Pursuant to his appointment as the Liquidator, the Appellant in order to take custody and control of the assets of the Corporate Debtor served a notice upon the Respondent dated 24.09.2020 to vacate the said premises. The said notice was done after the expiry of the period specified in the Leave and License Agreement dated 09.01.2017. The said Leave and Licence agreement was not renewed or extended either by the Resolution Professional and/or by the Liquidator. The Respondent while taking the said premise on Leave and License basis had given a security deposit of Rs. 7,75,440/- on 21.07.2005 to the Corporate Debtor. It is pertinent to mention that the Respondent was paying rent of the said premise @ Rs.1,90,080 from 01.08.2019 onwards (computed as 5% increase from monthly rent of Rs. 181,029/- payable till 31.07.2019).

v) The Appellant again sent a reminder notice through email dated 10.12.2020 to the Respondent for vacating the said premises. It is pertinent to mention that despite notices being served and having knowledge about the liquidation of the Corporate Debtor, the Respondent did not vacate the said premise and is continuing to illegally hold the possession of the subject premise which is part of the liquidation estate of the Corporate Debtor till now. The Respondent contrary to the agreed monthly rental in term so the Board Resolution dated 26.12.2016 and Agreement dated 09.01.2017 paid 50 percent of the agreed rent from April, 2020 to June, 2020. It is pertinent to mention that the similarly for months July 2020 to Feb 2021 the Respondents have made

payment of 75 percent of the agreed rent. The Respondents have not furnished any justification for the said reduction in the payment of the rent.

**vi)** Further case is that an outstanding fee to the tune of Rs. 7,32,301/- in regard to the Leave and License Agreement is pending from the Respondent on account of less fee paid to the Corporate Debtor as elucidated above. The said amount is due as per the General Ledger statement of Universal Tutorials held maintained by the corporate debtor. Despite receiving eviction notices dated 24.09.2020, 16.11.2020, and 10.12.2020 the Respondent instead of vacating the premise is paying rent without any direction from the Liquidator in this regard. The outstanding receivable has been duly adjusted from the security deposit paid by the respondent and a net amount to the tune of Rs. 43, 139/- is payable to the respondent after vacating the said premise. Therefore, it is submitted that the Respondent can file a claim with the Liquidator for the said amount after vacating the premise.

**vii)** The Appellant thereafter sent out two more eviction notices dated 16.11.2020, and 10.12.2020. However, to the utter dismay of the Appellant the respondent had not vacated the said premises which form part and parcel of the liquidation estate of the Corporate Debtor. Despite receiving several notices for vacating the said premise, did not respond to the said notices and continue to enjoy the possession over the said land without any authorization from the Liquidator. Instead of vacating the premise the Respondent is paying rent without any direction from the Liquidator in this regard that if the outstanding receivable is adjusted from the Security Deposit paid by the respondent a net

amount to the tune of Rs. 43, 139/- is payable to the Respondent after vacating the said premise for which the respondent can file claim with the Liquidator. Accordingly, the appellant filed an application before the Hon'ble Adjudicating Authority under Section 35 Sub-Section (1) (n) read with Section- 60 Sub-Section (5) of the Code seeking Order directing the Respondent to vacate the premise E-1, E-2, E-3 (*supra*). The application i.e IA No. 73 of 2021 was filed with prayer sought by the Appellant (*supra*) and after hearing the parties, the Adjudicating Authority has wrongfully and erroneously disposed of the said application which led to filing of this Appeal.

**3.** The Ld. Counsel for the Appellant during the course of argument and in his memo of appeal along with written submissions submitted that prior to commencement of CIRP of the Corporate Debtor, the Corporate Debtor had entered into a Leave and License agreement dated 19.12.2015 with the Respondent Company for E-1, E-2, E-3 admeasuring 2872 Sq. Ft. of built-up area in Shiv Parvati Co-operative Housing Society Limited situated at Plot no. 106-110 Sector-21, Nerul, Navi Mumbai (hereinafter to be referred to as the 'said premises'). It is pertinent to mention that in terms of the agreement dated 19.12.2005, the Respondent made a security deposit of Rs. 7,75,440/-. Further, the parties had mutually agreed to extend the period of lease for a period of 33 months i.e. from 01.11.2016 till 31.07.2019 vide agreement dated 09.01.2017. The agreement came to an end on 31.07.2019. The Appellant had served notice on 24.09.2020, 16.11.2020 and 10.12.2020 upon the Respondent to vacate the premises. It is pertinent to mention that the Respondent was paying rent of the

said premise @ Rs. 1,90,080 from 01.08.2019 onwards (computed as 5% increase from monthly rent of Rs. 181,029/- payable till 31.07.2019). The Respondent contrary to the agreed monthly rental in terms of the Board Resolution dated 26.12.2016 and Agreement dated 09.01.2017 paid 50 percent of the agreed rent from April, 2020 to June, 2020. That similarly for month of July 2020 to February 2021, the Respondents have made payment of 75% of the agreed rent amount. The Respondent has not provided any justification for the same. Further, the timelines of events that took place is hereunder:

Event	Date
Leave and License Agreement	19.02.2015
Modified Leave and License Agreement	09.01.2019
CIRP	15.02.2019
Leave and License Agreement came to an end	31.07.2019
Appellant appointed as the Resolution Professional	30.08.2019
Liquidation	11.09.2020

**4.** It is further submitted that the Respondent herein did not vacate the said premises irrespective of eviction notices being served upon them and continued to enjoy possession of the said premises without any authorization. Aggrieved by the same, the Appellant preferred an Application bearing IA No. 73 of 2021 before the NCLT seeking order against the Respondent to vacate the said premises. However, the NCLT vide order dated 10.02.2021 disposed off the said application with the direction that the Appellant may proceed to file eviction suit in the

proper Court. Further, vide the said order, the Tribunal surpassed its jurisdiction by delving into the question of title of the property. The said issue was never raised before the Tribunal and that there exists no dispute as to the title of the said premises and the same is registered in the name of the Corporate Debtor vide sale deed dated 02.06.1999. A perusal of Section 60(5) of the IBC shows that any application by or against the Corporate Debtor has to be heard only by the NCLT and not by any other forum which is reiterated by the Hon'ble Supreme Court in **“Arcelor Mittal India Private Limited v Satish Kumar Gupta (2019) 2 SCC 1”** held that:

*“83. .... 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.”*

5. Further, Hon'ble Supreme Court in **“Embassy Property Developments Pvt Ltd v State of Karnataka and others reported in 2019 SCC OnLine SC 1542”** has appropriately determined the jurisdiction of the Adjudicating Authority to decide all types of claims with property of the corporate debtor. It is pertinent to mention that only in wherever the corporate debtor has to exercise a right that falls outside the purview of through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right. The Ld. Adjudicating Authority is provided with a specific jurisdiction, the Civil Courts have no jurisdiction in respect of matters under Section 43, 44, 45 & 48 of the Code, etc. When these provisions are read in conjunction with other provisions

of the Code such as 18(f)(vi), 25(2)(b) and 35(1)(k) of the Code, the jurisdiction of the Adjudicating Authority does extend to subjects such as recovery of money, specific performance, eviction proceedings, etc. which were to be dealt with by Civil Courts only.

**6.** Further, Section 63 of the Code provides that no civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code. Therefore, as a suit for eviction can be brought through a civil court necessitates an interpretation that Section 60(5)(c) providing for any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceeding confers required jurisdiction over NCLT to adjudicate disputes concerning the corporate debtor the relief for which lies in personam.

**7.** It is further submitted that in case the Appellant sells the said property while the Respondents are occupying the premise, the same would not fetch the fair value and in fact, would fetch far less price which it would otherwise be able to fetch in a sale. The unauthorized occupied flats are part of the Liquidation estate, and the proceeds received from the same would be for the benefit of all the creditors of the Corporate Debtor. The such retention of the possession and refusal of handing over of the premise owned by the Corporate Debtor is likely to affect all the creditors of the Corporate Debtor who is by the distribution of asset under Section 53 of the Code, is entitled to the proceeds out of the liquidation.

8. The NCLT, Mumbai Bench in the matter of ***Alchemist Assets Reconstruction Company Limited v Precision Fasteners Ltd. [CP. No. (IB) 1339 (MB)/2017]*** has also directed to vacate the possession of the liquidation estate on a similar occasion where certain occupants continued to occupy the subject property. Section 238 of the IBC and the underlying non-obstante clause, its widest amplitude would override anything inconsistent contained in any other enactment and it would not be unreasonable to hold that provisions of the Code will have overridden effect over the other provisions of rent legislation for the time being in force and shall supersede over any other right guaranteed under the rent legislations. The validity of the said Section 238 has been upheld in ***Duncans Industries Ltd. V. A.J. Agrochem [(2019) 9 SCC 725]***.

9. The NCLAT in the matter of ***Jhanvi Rajpal Automotive Pvt. Ltd. v R.P. of Rajpal Abhikaran Pvt. Ltd. & Anr. [Company Appeal (AT) (Insolvency) No. 1417 of 2022, decided on 05.01.2023]*** a similar issue arose wherein the lease of the Respondent came to an end and the premises of the Corporate Debtor was not vacated. This Tribunal held that “..... 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.”*

**10.** It is further submitted that the Respondent has paid 50% against net receivable lease rent from April 2020 to June 2020 and has paid 75% against net receivable lease rent from July 2020 to February 2023. Therefore, up till 28.02.2023, the total amount payable by the Respondent is Rs. 21,47,325/-. The same is calculated after adjusting the same with Security deposit at Rs. 7,32,301/-. Based on these submissions, the impugned order be set aside and the Appeal be allowed.

**11.** The Ld. Counsel for the Respondent in his Reply Affidavit along with written submissions submitted that issue involves in the present case is that jurisdiction of National Company Law Tribunal. The Civil Court has no bar in adjudicating dispute which does not fall within ambit of the Code:-

a) The Appellant has taken plea that Section 63 of the Code restricts the Appellant to file eviction suit before Civil Court. However, Section 63 of the Code states that Civil Court will not have jurisdiction in matter which comes within the ambit of Adjudicating Authority.

b) The present dispute is civil in nature and Adjudicating Authority has rightly observed and held that as far as the dispute relating to title of the Corporate Debtor, permitted the liquidator to file eviction suit in the proper Court. The Adjudicating Authority admitted this fact that it does not have jurisdiction to adjudicate the matter. Therefore, Section 63 of the Code will not bar the Appellant from filing eviction petition before appropriate court.

c) The NCLT has in its judgment dated 27<sup>th</sup> October, 2020 in the matter of **Asset Reconstruction Company (India) Limited v. Precision Fasteners Limited [C.P. (IB) No. 1339/NCLT/MB/2017]** held that jurisdiction to grant reliefs of recovery of rent from tenant and the eviction of tenant from the property of the corporate debtor lies in the exclusive domain of the civil court, as a result, such issues cannot be dealt with by the Adjudicating Authority as defined under Section 5(1) of the IBC by invoking Section 60(5) of the IBC.

d) In the judgment of Hon'ble Supreme Court in the case of **Embassy Property Developments Private Limited v. State of Karnataka and others [2019 SCC OnLine SC 1542]** wherein it was held that *"If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority. .... Section 25(1) and 25(2)(b) reads as follows: 25. Duties of resolution professional – (1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor (2) For the purposes of Sub-section 91), the resolution professional shall undertake the following actions: (a) .... (b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution Professional*

*cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).*

e) The applicability of the above-mentioned precedents to the instant matter at hand, that is, whether the above judgments dealing with the powers and duties of resolution professional could be applicable to liquidator. The Section 35(1)(k) of the IBC provides that, subject to the directions of the Adjudicating Authority, the liquidator shall have the power to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of or on behalf of corporate debtor. Further, Section 63 of the IBC provides for 'Civil Court not to have jurisdiction' and Section 231 of the IBC provides for 'Bar of jurisdiction'. Therefore, when the Adjudicating Authority is provided with a specific jurisdiction under the IBC, the civil court has not jurisdiction in respect of those specific matters such as preferential transactions, undervalued transactions, etc. When the provisions of the IBC are read comprehensively, such as Section 18(f)(vi), Section 25(2)(b) and Section 35(1)(K), it can be inferred that 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 court only.

f) Further, in pursuance of the scheme of the Code, the NCLT has given the necessary permission to the liquidator to proceed and to take action and yet the Liquidator has not taken any steps. Thereby indicating that the claim and the sought-after objective of the liquidator is not serious and not necessary for the Corporate Debtor. The judgment of this Tribunal upholding the rejection of

resolution plan in the matter of ***K.L. Jute Products Private Limited v Tirupti Jute Industries Limited and Others [ Company Appeal (AT) (Ins.) No. 277 of 2019]***. The relevant portion is as follows: *“Insofar as, the eviction of 2<sup>nd</sup> 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...”* .

g) The IBC is a complete code in itself, the Adjudicating Authority can neither enlarge nor amplify its jurisdiction. Therefore, the recovery of rent from the tenant and the eviction of tenant from the Property of the Corporate Debtor is in the exclusive domain of the civil court and cannot be dealt with by the Adjudicating Authority under the IBC. The jurisdiction to deal with such matters lies exclusively with the civil court/rent control court only. Hence, the NCLT advised the parties to approach the appropriate jurisdictional civil court for the remedies sought.

h) Since the respondent paid rent and also continuously tried to pay rent for the Property, which is an admitted fact, the Liquidator was right in including this Property in the liquidation estate of the Corporate Debtor. Further, the Liquidator may proceed take steps to sale the Property so that there will be a clear title for the Property. Insofar as the sale of the Property by the Liquidator concerned. The Liquidator could do so after taking possession of the Property by due process of law or let the new title holder of property to decide whether the new owner want to continue with the leasing property to the Respondent or not.

i) It is submission of the Respondent that the powers of the liquidator and thereby in corollary interpreted the limited scope of the Adjudicating Authority under the IBC. By reading the various provisions of the IBC comprehensively and in view of the legislative intent, the power to grant the relief of recovery of rent from tenant and the eviction of tenant from the property of the corporate debtor lies with the appropriate jurisdictional civil court. It is important to note that a Civil Court has jurisdiction by virtue of Section 9 of the Code of Civil Procedure, 1908 to try all suits of civil nature excepting suits of which cognizance is either expressly or impliedly barred. However, the Adjudicating Authority under the IBC does not have jurisdiction to all suits since the various professionals working towards the resolution/liquidation of the corporate debtor have the power to approach other appropriate authorities for seeking reliefs. Therefore, the Adjudicating Authority can exercise only such powers within the contours of its jurisdiction, as prescribed by the statute, the law in respect of which, it is called upon to administer.

j) The Hon'ble Supreme Court in the matter of ***Gujrat Urja Vikas Nigam Ltd. v. Amit Gupta & Ors. [(2021) 7 SCC 209]*** and ***Tata Consultancy Services Ltd. v. SK Wheels Pvt. Ltd. [(2022) 2 SCC 583]***, matter has already considered the scope of Section 60(5) and concluded that the Hon'ble Tribunal has jurisdiction to adjudicate disputed, which arise solely form or which related to the insolvency of Corporate Debtor only. It is further submitted that purview of Insolvency is limited to the provisions of the Code.

**12.** It is further submitted that New Agreement was executed by mutual understanding between Corporate Debtor and Respondent:

a) The Respondent show his interest to continue tenancy in the Tenanted Premises, therefore, approached Corporate Debtor to extend the New Agreement. After discussion between the parties, New Agreement was extended wherein it was decided between the parties that no formal renewal is required. It was further decided that rent will be increased by 5% as stipulated in New Agreement. The internal communication of Corporate Debtor to extend New Agreement. The said internal communication email dated 31.07.2019 (*at page 106 of the Appeal*) of Corporate Debtor clearly stated that New Agreement will not be renewed and Corporate Debtor will raise invoice with 5% increase in monthly rent.

b) The Appellant averment in the Appeal that New Agreement was not extended is null and void. It is submitted that Resolution Professional was aware of extension of New Agreement. Further, Respondent is paying rent for the Tenanted Premises as per mutual understanding between the parties.

**13.** It is further submitted that 'eviction notice is void ab initio':

a) For the sake of argument, let assume that rent was not fully paid by Respondent. Even then Appellant cannot issue Eviction Notice to Respondent, as clause 9 of New Agreement states that Corporate Debtor had to give one month period to Respondent to rectify the breach before terminating the New Agreement. The Appellant neither terminated New Agreement neither give period of one month to Respondent to rectify the breach. However, directly issued Eviction Notice without given proper cause of it. The Appellant has issued

Eviction Notice without considering clause 9 of New Agreement, which amount to breach of contract from Appellant. Therefore, Eviction Notice and two reminder notice is null and void ab initio. Based on aforesaid submissions, the Appeal be dismissed with cost.

**14.** We have considered the submissions made on behalf of the parties and perused the record.

**15.** Section 35 of IBC enumerated powers and duties of liquidator. Section 35(1) which is relevant for the present case is as follows:

**“35. Powers and duties of liquidator.-** (1) *Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely:-*

*(a) to verify claims of all the creditors;*

*(b) to take into his custody or control all the asserts, property, effects and actionable claims of the corporate debtor;*

*(c) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;*

.....

*(n) to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board; and*

*(o) to perform such other functions as may be specified by the Board.”*

**16.** We need to peruse Section 60(5) of the IBC. The said section read as hereunder:

**“60(5).** *Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of-*

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this code.”

17. Hon’ble Supreme Court in **“Arcelor Mittal India Private Limited v Satish Kumar Gupta (2019) 2 SCC 1”** wherein it is held that:

**“83.** ..... 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.”

18. The Ld. Counsel for the Appellant has placed reliance on judgment passed by three Members Bench of this Tribunal in the case of **“Jhanvi Rajpal Automotive Pvt. Ltd. v R.P. of Rajpal Abhikaran Pvt. Ltd. & Anr. [Company Appeal (AT) (Insolvency) No. 1417 of 2022, decided on 05.01.2023]”**. In the above case, lease Agreement was not renewed and also no dispute that assets in question is owned by the Corporate Debtor and this Appellate Tribunal laid down following on the above background in paragraph 21:

**“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.”*

**19.** The aforesaid case was challenged before the Hon’ble Supreme Court in **Civil Appeal No(s). 736/ 2023 (Jhanvi Rajpal Automotive Pvt. Ltd. v R.P. of Rajpal Abhikaran Pvt. Ltd. & Anr.)** and the Hon’ble Supreme Court upheld the order dated 05.01.2023 passed by this Tribunal in **Company Appeal (AT) (Insolvency) No. 1417 of 2022 (supra)** vide order dated 10.02.2023.

**20.** In the present case also, Agreement was expired and further, Respondent is paying rent for the Tenanted Premises as per mutual understanding between the parties. The said internal communication email dated 31.07.2019 (*at page 106 of the Appeal*) of Corporate Debtor clearly stated that New Agreement will not be renewed and Corporate Debtor will raise invoice with 5% increase in monthly rent. Contrary to the above, the Tribunal noted the fact in the impugned order is of the dispute relating to title of the Corporate Debtor. Therefore, the Tribunal permitted the liquidator to file eviction suit in the proper Court.

**21.** Keeping in view the aforesaid facts and above discussions, we are of the view that the Adjudicating Authority has failed to notice the above judgment passed by three Member Bench of NCLAT which was upheld by Hon’ble Supreme Court. The three Member Bench of NCLAT judgment binding on us. In view of the fact, the impugned order dated 10.02.2021 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench, Court 1) in IA/73(AHM)2021 in CP(IB) 37 of 2017 with IA/90(AHM)2021 is hereby set aside

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and the matter is remanded back to the Adjudicating Authority with a request to pass afresh order in accordance with law at an early date.

**22.** Registry to upload the Judgment on the website of this Appellate Tribunal and send the copy of this Judgment to the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench), forthwith.

**[Justice Anant Bijay Singh]  
Member (Judicial)**

**[Naresh Salecha]  
Member (Technical)**

**New Delhi**

**23<sup>rd</sup> May, 2023**

*R. Nath.*