

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH

Company Appeal (AT) (Insolvency) No. 748 of 2022

[Arising out of Order dated 06.07.2022 passed by the Adjudicating Authority/National Company Law Tribunal, Mumbai Bench in I.A. 1635/2022 in C.P. (IB) – 190 (MB)/2018]

IN THE MATTER OF:

Adinath Jewellery Exports

G38 Gems & Jewellery Comtrex III,
Andheri East, Mumbai - 400096

...Appellant

Versus

**1. Mr. Brijendra Kumar Mishra, Liquidator
of Shrenuj & Co. Ltd.**

C-405, Dharam Palace,
1100/103, N.S. Patkar Marg,
Mumbai – 400007.

...Respondent No.1

**2. Rexnord Electronics And Controls
Limited**

92-D, Govt Ind Estates, Charkop
Kandivali (W)
Mumbai – 400067.

...Respondent No.2

Present:

**For Appellant : Mr. Krishnendu Dutta, Sr. Advocate,
Mr. Abhijeet Sinha, Mr. Anish Agarwal, Mr.
Palash Singhai, Mr. Tejas Agarwal and Ms.
Vanshika Gupta, Advocates.**

**For Respondents : Mr. P Nagesh, Sr. Advocate, Mr. Kaustubh
Prakash, Mr. Akshay Sharma, Ms. Meghna Rao,
Mr. Yahya Batatawala, Ms. Hita Sharma,
Ms. Kirti Gupta, Ms. Uma Chatterjee,
Mr. Santosh Kumar and Mr. Shakti Kant
Pattanayak, Advocates for R-1. Mr. Anand
Varma, Ms. Apoorva Pandey and Mr. Ayush
Gupta, Advocate for R-2.**

J U D G M E N T

(Dated: 24.4.2023)

DR. ALOK SRIVASTAVA, MEMBER (TECHNICAL)

1. The present appeal has been filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (in short '**IBC**') assailing the order dated 06.07.2022 (in short '**Impugned Order**') passed by the Adjudicating Authority [National Company Law Tribunal, Mumbai] in I.A. No. 1635 of 2022 in C.P. (IB) No. 190(MB)/2018, by which Respondent No. 1 has been directed to put lock and seal on the Plot No. A7, MIDC, Andheri (E), Mumbai – 400093.

2. Briefly, the facts of the case as stated and argued by the Appellant are that the Appellant entered into a Leave and Licence Agreement (in short '**Agreement**') for taking the premises located at Plot No. A-7, MIDC, Andheri (E), Mumbai – 400093 admeasuring approximately 6000 sq. ft. (built up area) at 1st and 2nd Floor for house for a period of three years commencing from 03.08.2016 to 02.08.2019 (both days inclusive). The Appellant has further stated that Corporate Insolvency Resolution Process (in short '**CIRP**') was initiated against the Corporate Debtor Shrenuj & Co. by an order of the Adjudicating Authority on 12.03.2019 and during the subsistence of the moratorium the Resolution Professional ('**RP**') extended the Leave and Licence Agreement from 03.08.2019 to 02.07.2020 on requirement of the Corporate Debtor.

3. It is further stated by the appellant that an order for liquidation of the Corporate Debtor was passed on 12.07.2021, whereafter the Liquidator-Respondent No. 1 (in short '**R-1**') started proceedings for liquidation of the Corporate Debtor.

4. During the on-going liquidation proceedings, the Liquidator started the e-auction of the said premises and sent letter dated 04.01.2022 through his legal counsel to the Appellant asking for vacation of the licensed premises and payment of outstanding licence fee within 7 days of the vacation of the said premises, whereafter, the Appellant paid an amount of Rs. 18,83,520/- through a Cheque No. 199479 dated 08.02.2021 as rent for the period of June 2021 to January, 2022, which amount was duly received and the fact of receipt of this amount was acknowledged by the Liquidator vide his e-mail dated 24.03.2022.

5. The Appellant has further stated that he again received a notice dated 13.04.2022 for vacation of the said premises from the Liquidator referring to an early e-mail dated 24.03.2022 sent by the Liquidator asking the Appellant to vacate the said premises on or before 22.05.2022 and also stating that the e-auction of the said premises took place on 06.04.2022 and that the property has been successfully auctioned. The Appellant has submitted that another letter dated 13.04.2022 was sent by the legal counsel of the Liquidator stating that the e-auction was duly concluded and the said premises has been successfully auctioned regarding which the Liquidator had intimated the Appellant earlier, and again calling upon the

Appellant to vacate the said premises and handover peaceful and vacant possession on or before 22.05.2022 to the Liquidator.

6. The Appellant has further stated that he sent letter dated 27.05.2022 addressed to the Liquidator stating that the Appellant was the lawful tenant of the said premises and is in uninterrupted and peaceful use of auction on the premises and therefore he is not required to vacate the said premises. The Appellant further stated that he appeared before the Adjudicating Authority in Interlocutory Application No. 1635/2022 filed by the Liquidator primarily with a prayer for direction to the Appellant to handover the peaceful and vacant possession to the Liquidator.

7. The Appellant has further stated that since it was the tenant of the said premises and continued in uninterrupted possession and occupation of the same since the year 2016, it filed R.A.D Suit No. 259 of 2022 in the Small Causes Court at Mumbai, since the jurisdiction to give directions for vacation or eviction lay with the Small Causes Court. This suit was taken up by the Small Causes Court, Mumbai on 28.06.2022, whereupon an order was passed by the Court directing both the parties to maintain 'status-quo' till the next date which was fixed as 06.07.2022. The Appellant has stated that despite this order dated 28.06.2022 passed by the Small Causes Court, the Learned Adjudicating Authority went ahead and passed the Impugned Order dated 06.07.2022 without taking into account the 'status quo' order passed by the Small Causes Court, Mumbai and it is Appellant's contention that the Learned Adjudicating Authority (National Company Law Tribunal,

Mumbai) did not possess the necessary jurisdiction to pass the Impugned Order but the vacation/ eviction from the said premises could have been done by the Small Causes Court, Mumbai which possessed jurisdiction under the Maharashtra Rent Control Act, 1999.

8. We heard the arguments of both the parties and perused the record. The Learned Senior Counsel for the Appellant has initiated his arguments by submitting that the National Company Law Tribunal, Mumbai does not possess jurisdiction in relation to matters relating to landlord and tenant viz. tenant by eviction and payment of rent which are matters to be dealt under the Maharashtra Rent Control Act, 1999 for which jurisdiction vests only with the Court of Small Causes. He has further referred to Section 33 of the Maharashtra Rent Control Act, 1999 to clarify the aspect of jurisdiction of the Small Causes Court, Mumbai and has also referred to Section 47 of this Act to clarify that no other authority can grant any injunction which relate to issues that are within the jurisdiction of Small Causes Court. He has submitted that the Leave and Licence Agreement was signed between the Appellant and the Corporate Debtor for renting the said premises located at Plot No. A-7, MIDC, Andheri (E), Mumbai – 400093 for the period of 03.08.2016 – 02.08.2019 and further after the onset of moratorium during the insolvency resolution of the Corporate Debtor consequent to the initiation of the CIRP on 12.03.2019, the said agreement was extended for the period of 03.08.2019 to 02.07.2020.

9. The Learned Senior Counsel for Appellant has referred to Sections 25(2)(b) and 35(k) of the IBC to point out that it is the duty of the Resolution Professional/Liquidator to represent the Corporate Debtor in judicial, quasi-judicial or arbitration proceedings and therefore the Liquidator has to contest the suit filed by the Appellant in the Small Causes Court. He has further referred to Section 18 (f) (5) to point out that it is the duty of the IRP to take control and custody of any asset of the Corporate Debtor in which the Corporate Debtor has ownership rights and therefore it was incumbent on the Corporate Debtor to get the possession of the premises after lawful eviction of the tenant/ Appellant.

10. He has cited the judgment of the Hon'ble Supreme Court in the matter of ***Embassy Properties Developments Pvt. Ltd. vs. State of Karnataka and Ors. [(2020) 13 SCC 308]*** wherein it is held that the custody of the assets of the Corporate Debtor is subject to determination by the competent court or authority, which in this case is the Small Causes Court and not the Adjudicating Authority. Further, he has referred to the Judgment in the matter of ***K.L. Jute Products Pvt. Ltd. vs. Tirupati Jute Industries Ltd. [(2020 SCC Online NCLAT 426)]*** wherein this tribunal has held that the Adjudicating Authority is not empowered to pass an order for eviction and it is for the aggrieved party to move the appropriate forum for redressal of its grievances in accordance with law.

11. The Learned Senior Counsel for Appellant has also cited the Judgment of Hon'ble Supreme Court in the matter of ***Vishal N. Kalsaria vs. Bank of***

India and Ors. [(2016) 3 SCC 762] to claim that Hon'ble Supreme Court has gone into the issue of primacy between the SARFAESI Act and Rent Control Laws and held that the provision of SARFAESI Act cannot override the provisions of Rent Control Law in the matter of taking possession of an asset.

12. The Learned Senior Counsel for Appellant has referred to the e-mail dated 14.02.2022 of the Liquidator wherein he has confirmed payment of 'Rent' for the period of June 2021 to January 2022. He has further referred to the e-auction notice issued by the Liquidator dated 16.03.2022 to point out that the subject property was to be auctioned on "As Is Where Is", "As Is What Is" and "Whatever There Is Basis" and therefore the bidders were advised to satisfy themselves about the title and occupation and physically verify the site and subject property prior to bidding, which means that the Liquidator was well aware that the Appellant was a tenant under whose lawful and peaceful possession the subject property continued to be in. He has also referred to the e-mail dated 24.03.2022 of the Liquidator to the successful bidder to say that after noticing the conditions of the e-auction document and the fact that the subject property was in the possession of the Appellant as a tenant, the successful bidder decided to bid and deposited the EMD with the Liquidator. He had said that in such a situation the e-auction was carried out and was the Bidder (R-2) has declared as the successful bidder, then it was the responsibility of the successful bidder or the Liquidator to get back the possession of the subject property from the Appellant after following the due process of law and they should subject

themselves to the lawful authority of the Small Causes Court which has the jurisdiction under Maharashtra Rent Control Act, 1999.

13. The Learned Senior Counsel for Appellant has further submitted that the Respondent No. 1/ Liquidator filed I.A. No. 1635 of 2022 before the Adjudicating Authority which did not have jurisdiction to adjudicate upon the matter regarding handing over of vacant and peaceful possession of the said premises by the Appellant. He has further submitted that since the Appellant is a 'tenant' and any dispute or action for eviction has to take place under the Maharashtra Rent Control Act, 1999, the Appellant filed a R.A.D. Suit No. 259 of 2022 before the Small Causes Court, Mumbai on 27.06.2022, wherein by an order dated 28.06.2022 the Small Causes Court directed that the status quo be maintained between the parties. He has further claimed that the NCLT, Mumbai passed the Impugned Order on 06.07.2022 while the order dated 28.06.2022 was subsisting and any challenge to the 'status quo' order passed by the Small Causes Court should have been done before the relevant Appellate Authority, and therefore aggrieved by the Impugned Order passed by NCLT, the Appellant has filed the present appeal.

14. The Learned Senior Counsel for Appellant has referred to the Judgment in the case of **Jhanvi Rajpal Automotive Pvt. Ltd. vs. R.P. of Rajpal Abhikaran Pvt. Ltd. & Anr.** to contend that the judgment of this Tribunal in that case does not apply in the facts the present case since in the Jhanvi Rajpal case a settlement proposal given by the tenant which was

accepted and also because the property in Jhanvi Rajpal case was the only property and therefore it was relevant for insolvency resolution of the corporate debtor. He has further contended that in the Jhanvi Rajpal case, the CIRP proceedings were going on and moratorium under Section 14 of the IBC was in operation, whereas in the present case liquidation has been initiated since no successful resolution could be achieved and moreover the renewed Leave and Licence Agreement in the present case came to an end on 02.07.2020, and therefore tenancy of the Appellant commenced on 03.07.2020 which has continued till the time of e-auction.

15. The Learned Senior Counsel for Appellant has also claimed that since the Appellant has admittedly paid “rent” and the Liquidator had received and accepted the said rent when there was no Leave and Licence Agreement subsisting between the parties, the Appellant is a tenant fully covered under the Maharashtra Rent Control Act, 1999. He has further claimed that the Respondent No. 2, the Successful Bidder, was aware of the rights and claims of the Appellant by virtue of the conditions set out in the e-auction document, and the subject property was put to auction on “as is where is”, “as is what is” and “whatever there is basis” and therefore under the provisions of the letter of intent and Transfer of Property Act the Successful Bidder was aware of the Appellant is a tenant in possession of the subject property.

16. The Learned Senior Counsel for Appellant has also cited the judgment of Hon’ble Supreme Court in the matter of **Tata Consultancy Services Ltd.**

vs. Vishal Ghisulal Jain, Resolution Professional, SK Wheels Private Limited (Supreme Court Appeal No. 3045 of 2020, Judgment dated 23.11.2021) wherein it is held that the NCLT and NCLAT should bear in mind the narrow exceptions crafted by Hon'ble Supreme Court in the matter of ***Gujarat Urja*** even while examining the interim relief and there should be a clear analysis on how determination of any agreement would put the survival on the corporate debtor in jeopardy.

17. The Learned Senior Counsel for Respondent No. 1 (Liquidator) has referred to the Leave and Licence Agreement signed between the Appellant and Respondent No. 1, whereby the Appellant was given the permission to use the said premises situated at Plot No. A7, MIDC, Andheri (E), Mumbai – 400093 and for the use and occupation of the premises the licensee agreed to pay to the licensor a sum of Rs. 2 Lakh per month. He has further clarified that Clause 23 of the said Agreement made it very clear that the Agreement did not create any tenancy, sub-tenancy or any other right, title or interest in favour of the licensee in the said premises and the licensor only permit the use of premises on the terms stated in the Agreement and further according to Clause 28 no alteration, amendment or modification of any of the terms of the agreement shall be possible unless it is signed by or on behalf of both the parties. He has further submitted that after the initiation of the CIRP of the Corporate Debtor on 12.03.2019, the Resolution Professional renewed the Leave and Licence Agreement for a period of 11 months starting from 03.08.2019 which is mentioned in Reply of the Liquidator at paragraphs 11 and 12. He has further claimed that the Appeal

Memo itself in Paragraph 7.6 very clearly states that the said Leave and Licence Agreement was renewed and executed by the Erstwhile Resolution Professional in favour of the Appellant on 20.08.2019 and thus the Appellant continued to be in use, possession and occupation of the said premises for further period of 11 months starting from 03.08.2019 to 02.07.2020 on the terms & conditions that were set out in the Agreement and thereafter from July 2020 till date Appellant has continued to be in illegal possession of the said premises.

18. The Learned Senior Counsel for Respondent No. 1 has referred to the notice dated 04.01.2020 sent by the Legal Counsel of Respondent No. 1 to the Appellant, whereby the Appellant was asked to handover the peaceful possession of the said premises to the Respondent No. 1 within 7 days of the receipt of the notice and also make outstanding payment of the 'Licence Fees' that was overdue and to be paid by the Appellant.

19. The Learned Senior Counsel for Respondent No. 1 has further submitted that the Appellant paid the outstanding dues as it was required to do through a cheque of an amount of Rs. 18,83,520/- only along with the covering letter dated 04.02.2022 and very fairly the R-1/ Liquidator sent an e-mail on 24.03.2022 to the Appellant informing that the Leave and Licence Agreement was extended for a period of 11 months i.e. from 03.08.2019 to 02.07.2020 and it was also stated that the Appellant had paid the licence fee upto May 2021 and no payments were paid by him from June 2021 onwards. He has further submitted that he had only repeated the words

“rent” used in a loose manner by the Appellant in its letter dated 14.02.2022 by which the Appellant had sent the cheque regarding outstanding dues and it was quite clear from his e-mail dated 24.03.2022 that the Appellant was occupying the premises by virtue of Leave and Licence Agreement and the payments to be made by him were also related to the licence fee. He has further claimed that through various communications thereafter dated 13.04.2022, 30.04.2022, 18.05.2022 the Liquidator had consistently made it clear that the Appellant has to vacate the subject premises and the question of the Appellant being a tenant under a Rent Agreement was nowhere mentioned but it was made clear that the Appellant was occupying the premises on the basis of the Leave and Licence Agreement.

20 The Learned Senior Counsel for Liquidator/ Respondent No. 1 has referred to a letter dated 26.04.2022, which was sent by the Appellant, after he was informed that the said premises had been e-auctioned successfully and the letter of intent dated 13.04.2022 had been issued by the Liquidator to the successful bidder, by which the Appellant requested the Liquidator to extend time to vacate upto 31.07.2022 but the said request for extension of time was not acceded to by the Liquidator and the Appellant was told to locate alternate accommodation and not seek any additional time from the Liquidator and it was only on humanitarian ground that the Appellant had been granted additional time of 45 days upto 22.05.2022 to vacate the said premises.

21. The Learned Senior Counsel for Liquidator/ Respondent No. 1 has further referred to Section 33 (5) of the IBC to claim that once a Liquidation order has been passed, no suit or other legal proceedings can be instituted by or against the Corporate Debtor and any suit or legal proceeding may be instituted by the Liquidator on behalf of the Corporate Debtor with the prior approval of the Adjudicating Authority. He has thus clarified that the Liquidator filed I.A. No. 1635 of 2022 before the Adjudicating Authority in accordance with the requirement of Section 33 (5) since it was the duty and responsibility of the Liquidator to take into custody and control the assets of the Corporate Debtor.

22. The Learned Senior Counsel for Liquidator/ R-1 has shown the notice dated 04.01.2022 sent by Legal Counsel of the Liquidator addressed to the Appellant, wherein it was clearly stated that an initial agreement was executed for three years commencing from 03.08.2016 to 02.08.2019 and the consideration for use and occupation of the premises i.e. the licence fee was Rs. 2 Lakhs per month. He has also shown that an interest fee deposited of Rs. 6 Lakhs was to be paid as per the Agreement and the limit was further renewed by executing a new Leave and Licence Agreement dated 20.08.2019 for a period of 11 months commencing from 03.08.2019 to 02.07.2020. He has further submitted that through this notice, the Liquidator called upon the Appellant to provide proof of payment of interest fee deposit of Rs. 6 Lakhs and pay the outstanding licence fees and vacate the licensed premises within 7 days from the receipt of the notice whereupon the Appellant sent a cheque for an amount of Rs. 18,83,520/- as

per the outstanding amount communicated by the Liquidator through its notice dated 04.01.2022. He has further referred to an e-mail dated 24.03.2022 wherein the Liquidator reiterated the fact of the existence of Leave and Licence Agreement and that the said property is going to be put to e-auction on 31.03.2022 and that after successful completion of the e-auction, the Appellant shall have to vacate the premises within a period of 45 days after receipt of vacation notice by the Appellant. He has further referred to notice dated 13.04.2022, wherein the fact of successful completion of e-auction on 06.04.2022 was mentioned and the Appellant was called upon to vacate the said premises within 45 days from 08.04.2022 i.e. by 22.05.2022. He has also referred to the Letter of Intent dated 13.04.2022 issued by the Liquidator to Rexnord Electronics And Controls Limited who is the successful bidder for the said property and referred to his letter dated 13.04.2022 wherein the successful completion of e-auction and request for handing over the possession of the premises has been noted.

23. The Learned Senior Counsel for Liquidator/ R-1 has referred to letter dated 26.04.2022 sent by the Appellant to the Liquidator, wherein the receipt of an e-mail and notice from the Advocate of the Liquidator is acknowledged and also the fact that the said premises are occupied by the Appellant on Leave and Licence basis. He has submitted that this letter from the Appellant mentions that the Appellant is looking for an alternate place to shift to vacate the property and sought time till 31.07.2022 to enable shifting and vacation of the property. The Learned Senior Counsel for Liquidator/ R-1 has contended that by this letter dated 26.04.2022 the

Appellant has admitted that he has occupying the said premises on Leave and Licence basis and that they are looking for an alternate place to shift in order to vacate the said property and there is no mention of the alleged claim of the Appellant that he is a ‘tenant’.

24. The Learned Senior Counsel for Liquidator/ R-1 has further referred to a letter dated 25.05.2022 sent by the Legal Counsel for the Appellant, wherein for the first time the Appellant has been mentioned as being ‘tenant’ and paying ‘rent’ in respect of the said premises which is a complete misstatement of the facts as is borne out by letter dated 26.04.2022 of the Appellant and argued that the Appellant has incorrectly referred to himself as tenant. He has further stated that in the light of the fact that the Appellant was not ready to vacate the said premises for handing over to the Successful Bidder, the Liquidator, in accordance with the requirement of Section 33(5) of the IBC, filed I.A. No. 1635 of 2022 seeking direction to the Appellant by the Adjudicating Authority for vacation of the said premises so that the property could be handed over to the Successful Bidder and the liquidation proceedings could be concluded in a timely manner.

25. The Learned Senior Counsel for Liquidator/ R-1 has further argued that after the Appellant appeared before the Adjudicating Authority in I.A. No. 1635 of 2022 on 26.06.2022, the Appellant sought time to file Reply which was subsequently filed by the Appellant on 22.06.2022, and while the Adjudicating Authority was considering I.A. No. 1635 of 2022, the Appellant went ahead to file R.A.D Suit No. 259 of 2022 in the Small Causes Court at

Mumbai, wherein the fact of the existence of I.A. No. 1635 of 2022 filed by the Liquidator before the Adjudicating Authority for vacation of the said premises was concealed and in such a circumstance, the Appellant obtained a 'status-quo' order from the Small Causes Court on 28.06.2022. He has contended that once proceedings under the IBC for vacation of the said premises after successful conclusion of e-auction was underway, there was no reason for the Appellant to approach the Small Causes Court because it had obtained possession of the said premises on Leave and Licence basis and was not a tenant. He has further submitted that in the proceeding in I.A. No. 1635 of 2022 the Adjudicating Authority was made aware of the fact that the Appellant had obtained 'status-quo' order from Small Causes Court by concealing certain facts and without making the Liquidator as necessary party in the proceedings before the Small Causes Court, and thereafter the Adjudicating Authority was pleased to pass the Impugned Order on 06.07.2022 directing that the said premises be put under lock and seal by the Liquidator, pending further consideration of I.A. No. 1635 of 2022.

26. The Learned Senior Counsel for Liquidator/ R-1 claimed that he had placed letter dated 26.04.2022 before the Adjudicating Authority in I.A. No. 1635 of 2022 much before the suit was brought before the Small Causes Court by the Appellant but for reasons best known to the Appellant, he did not produce this letter either before the Small Causes Court or in this Appeal and therefore he has not come with clean hands before this Appellate Tribunal. He has further argued that the NCLT passed the Impugned Order after the Appellant had filed Reply on 22.06.2022 and this order was a bi-

parte order. He has further claimed that the plaint filed before the Small Causes Court was on 27.06.2022 and the Appellant got an ex-parte injunction order in the form of Status-quo Order on 28.06.2022 when neither the correct and complete facts were placed before the Small Causes Court nor the Liquidator had been given an opportunity to submit correct facts through his Reply before the Court.

27. The Learned Senior Counsel for Liquidator has cited the judgment in the matter of **Jhanvi Rajpal Automotive** (Supra) to point out that moratorium under Section 14 which was operative during the CIRP continues even during liquidation and Liquidator has similar rights under Section 35 as the IRP's rights under Section 18(1)(f). He has also claimed that the Appeal against the Judgment of NCLAT in the matter of **Jhanvi Rajpal Automotive** (Supra) before the Hon'ble Supreme Court was dismissed and therefore the Judgment of NCLAT has attained finality. The Learned Senior Counsel for Liquidator has also referred to the Judgment in the matter of **Hemal Ishwarbhai Patel vs. Veer Narmad South Gujarat University [(2016) SCC OnLine Guj 10037]** wherein the powers and duties of the Liquidator have been clarified and it is held that the Liquidator is bound by Section 35(1)(d) of the IBC. The Learned Senior Counsel for Liquidator has also referred to the Judgment in the matter of **Parineeta Chaudhary vs. Mohammed Hussain A. Furniturewalla [(2008) SCC OnLine Bom 858]** in support of his contentions. The Learned Senior Counsel for Liquidator has referred to the Judgment in the matter of **Vijisan**

Jewels Pvt. Ltd. vs. Cimme Jewels Ltd. [Company Appeal (AT) (Insolvency) No. 204 of 2021] which is given on similar facts as this case where the corporate debtor was in liquidation and the Adjudicating Authority has allowed the Liquidator to proceed with e-auction and the occupier was asked to vacate the said premises. The matter went on Appeal before the Hon'ble Supreme Court and the Civil Appeal was dismissed and therefore the order of the Adjudicating Authority was upheld. Further, he has referred to Section 35(1)(b) where the duties of the Liquidator have been listed to point out that it is the duty of the Liquidator to take in custody the assets of the corporate debtor and by Section 35(1)(d), the Liquidator has to adopt measures to protect and preserve the assets of the Corporate Debtor. He has also claimed that the suit before the Small Causes Court was filed on 27.06.2022 which was almost one year after passing of the liquidation order and such a delay cannot give any right to the Appellant to take recourse to the issue of his tenancy before the Small Causes Court.

28. The Learned Senior Counsel for Respondent No. 2/ Successful Bidder has referred to Section 60(5) to claim that the Liquidator was fully entitled to file an application before the NCLT. He has also referred to Section 33 (5) of the IBC to strongly argue that once the liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor, and proviso to this Sub-Section (5) of Section 33 gives the right to the Liquidator to file a suit or legal proceeding with the prior approval of the Adjudicating Authority. He has thus contended that the

Liquidator took the correct step by approaching the Adjudicating Authority through I.A. No. 1635 of 2022 for vacation of the premises under illegal occupation of the Appellant. He has also referred to Section 238 of the IBC to contend that the provisions of IBC shall have over-riding effect during the proceedings during CIRP and in liquidation and will override any inconsistency contained in any other law.

29. The Learned Senior Counsel for Respondent No. 2 has referred to the Judgment of Hon'ble Supreme Court in the matter of **Gujarat Urja Vikas Nigam Limited vs. Amit Gupta [(2021) 7 SCC 209]** wherein the jurisdiction of NCLT and NCLAT is upheld in case of any contractual dispute which relates to insolvency resolution and liquidation of the Corporate Debtor. He has referred to the Judgment of the Hon'ble High Court of Gujarat in the matter of **Biotor Industries Limited vs. Gujarat Industrial Development Corporation [Special Civil Application No. 3688 of 2022]** to point out that the NCLT possesses jurisdiction to consider and dispose of any question of law or facts arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor under the IBC. He has also pointed out that this Judgment of Hon'ble High Court of Gujarat considers the Judgement in **Gujarat Urja Vikas Nigam Limited (Supra)** and **Tata Consultancy Services Ltd. (Supra)** and takes the view that the residuary jurisdiction of NCLT is correctly invoked by the Respondent Gujarat Industrial Development Corporation in that case. He has also referred to the Judgment of Hon'ble Supreme Court in the matter of **Ranjan Kumar & Ors. vs. State of Bihar & Ors. [(2014) 16 SCC 187]**, wherein it

is held that, if necessary, parties are not impleaded, the writ petition would be defective and no relief could be granted in such writ petition. He has sought support from this Judgement in his contention that the successful bidder was a necessary party since it had been given a Letter of Intent in its favour by the Liquidator and the possession of the said premises was to be handed over to the successful bidder and the Appellant was well aware that the Letter of Intent had been issued to the successful bidder. He has vehemently argued that in such a situation the plaint before the Small Causes Court was defective and relief of 'status-quo' in this matter could not have been granted.

30. In Rejoinder, the Learned Senior Counsel for the Appellant has clarified that he had earlier submitted that the NCLT did not possess jurisdiction to consider any dispute relating to insolvency during liquidation of the Corporate Debtor and the Judgment in ***Jhanvi Rajpal Automotive (Supra)*** related to proceedings during CIRP. He has also referred to various sections of the Maharashtra Rent Control Act, 1999 to claim that the Appellant had rights to approach the Small Causes Court as licensee is a party as defined in Section 7(5) of this Act who has the right to approach to Small Causes Court. He has also referred to the Judgement of Madras High Court in the matter of ***DGFT vs. RP and Sons & Anr. [(2004) 5 CTC 696]*** whereby the issue of a 'question of law being left open' would be available to any other Court and not only the Hon'ble Supreme Court even if the question of law is left open by an order of Hon'ble Supreme Court. He has also cited Judgment in the case of ***Faujdar Singh vs. State of Uttar***

Pradesh & Ors. [(2016) SCC OnLine All 3877] where also the Hon'ble Allahabad High Court has held that when a question of law is kept open by an order, that question of law can be looked into by the High Court. He has also referred to the Judgment in the matter of **Vishal N. Kalsaria** (*Supra*) to reiterate the point that the jurisdiction under the SARFAESI Act would not be the correct jurisdiction and the provisions of SARFAESI Act will not override the provisions of the Rent Control Act.

31. The issues that arise for consideration in this Appeal are two-fold, which are as follows: -

- (i) Whether the Appellant was a 'tenant' or a 'licensee' or an 'illegal occupant' and whether the jurisdiction for deciding on the eviction vested with the Small Causes Court or the NCLT where liquidation was underway?
- (ii) Whether the NCLT was correct in passing the Impugned Order for putting the said premises in Plot No. A-7, MIDC, Andheri (E), Mumbai – 400093 under lock and key of the Liquidator once a status-quo order has been passed by the Small Causes Court, Mumbai on 28.06.2022?

32. We first notice the relevant provisions of the IBC that are relevant to this matter, which are as follows: -

“33. Initiation of liquidation. - (1) Where the
Adjudicating Authority, -

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(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

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60. Adjudicating Authority for corporate persons. –

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(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.

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238. Provisions of this Code to override other laws. –

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

33. We also note the provisions in the Maharashtra Rent Control Act, 1999, that have been cited by the Learned Senior Counsel for the Appellant which are as hereunder :-

“7. Definitions.

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(5) *"Licensee", in respect of any premises or any part thereof, means the person who is in occupation of the premises or such part, as the case may be, under a subsisting agreement for licence given for a licence fee or charge; and includes any person in such occupation of any premises or part thereof in a building vesting in or leased*

to a co-operative housing society registered or deemed to be registered under the Maharashtra Co-operative Societies Act, 1960; but does not include a paying guest, a member of a family residing together, a person in the service or employment of the licensor, or a person conducting a running business belonging to the licensor or a person having any accommodation for rendering or carrying on medical or para-medical services or activities in or near a nursing home, hospital, or sanatorium or a person having any accommodation in a hotel, lodging house, hostel, guest house, club, nursing home, hospital, sanatorium, dharmashala. home for widows, orphans or like premises, marriage or public hall or like premises, or in a place of amusement or entertainment or like institution, or in any premises belonging to or held by an employee or his spouse who on account of exigencies of service or provisions of residence attached to his or her post or office is temporarily not occupying the premises, provided that he or she charges licence fee or charge for such premises of the employee or spouse not exceeding the standard rent and permitted increase for such premises, and any additional sum for service supplied with such premises or a person having accommodation in any premises or part thereof for conducting a canteen, creche, dispensary or other services as amenities by any undertaking or institution; and the expressions "licence", "licensor" and "premises given on licence" shall be construed accordingly;

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CHAPTER VII

**PROVISIONS REGARDING JURISDICTION OF COURTS,
SUITS, APPEALS, PRACTICE AND PROCEDURE**

33. Jurisdiction of courts.

(1) Notwithstanding anything contained in, any law for the time being in force, but subject to the provisions of Chapter VIII, and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdictions,-

(a) in Brihan Mumbai, the Court of Small Causes, Mumbai,”

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34. We further note that ‘tenant’ has been defined in Section 7 (15) of the Maharashtra Rent Control Act, 1999 as “any person by whom or on whose account rent is payable for any premises” and ‘licensee’ has been defined separately in Section 7(5) of this Act as a person who is in occupation of the premises or such part, as the case may be, under a subsisting agreement for licence given for a licence fee or charge. Further, the various references to ‘rent’ in the Maharashtra Rent Control Act, 1999 are between the ‘landlord’ and ‘tenant’ but when it is in respect of any premises given to licensee, the term ‘licence fee’ or ‘charge’ is used. Thus it is clear that while the term ‘rent’ is used for payment or of use of premises by a tenant, the term ‘licence fee’ is used in respect of use of any premises given under licence agreement by a licensee.

35. Admittedly, the Leave and Licence Agreement for the said premises was entered into for a period of 3 years from 03.08.2016 to 02.08.2019, and thereafter CIRP was initiated vide order of the Adjudicating Authority on 12.03.2019 against the corporate debtor. During the subsistence of the CIRP, the Resolution Professional renewed the Leave and Licence Agreement from 03.08.2019 to 02.07.2020 and no further extension or renewal of the Leave and Licence Agreement took place after expiry of the agreement of 02.07.2020. It is noted by us that the Appellant remained in position of the subject premises and continued to pay licence fees for use of the premises. It is also noted that the Liquidator, through his legal counsel, sent a notice dated 04.01.2022 (attached at Page No. 46 to 49 of the Appeal Paper Book) for vacation of the licensed premises and payment of outstanding licence fee. In particular, Para- 8 of this notice is relevant, wherein the Liquidator has asked the Appellant to provide proof of interest fee deposit of Rs. 6 Lakhs and asked the Appellant to pay the outstanding 'licence fees' of an amount of Rs. 18,00,680/- plus the amount that is to be calculated on the date of vacation which is mentioned as outstanding licence fees, and has also called upon the Appellant to vacate the licenced premises i.e. Plot No. A-7, MIDC, Andheri (E), Mumbai – 400093. In reply to this notice, the Appellant submits a Cheque No. 199479 dated 08.02.2022 for an amount of Rs. 18,83,520/- but makes the mention that this payment is being made for rent for the period of June 2021 to January 2022 which to us appears to be an incorrect term 'rent' used by the Appellant.

36. The Learned Senior Counsel for the Appellant has sought support from the reply dated 24.03.2022 sent by the Liquidator to the Appellant, wherein the word 'rent' has been used twice. A closer look at this e-mail makes it clear that the Liquidator uses the word 'licence fee' that is demanded from the licensee/ Appellant but repeats the word 'rent' when it refers to the contents of Appellant's letter dated 14.02.2022. Thus, it is quite clear that even though the Appellant uses word of 'rent' while sending the overdue outstanding payment of licence fee by its letter dated 14.02.2022, the Liquidator has all along in his letters/e-mails dated 04.01.2022, 24.03.2022, 13.04.2022, 30.04.2022, 18.05.2022 and in its I.A. No. 1635 of 2022 used the word 'Leave and Licence Agreement' extensively while referring to the arrangement for use of the sub premises by the Appellant. It is, therefore, not clear as to how after admitting that the said premises were used on 'Leave and Licence' basis by the Appellant in accordance with the Leave and Licence Agreement, the Appellant does a complete turnaround and mentions that the subject premises were being used and occupied by him as lawful tenant in its letter dated 27.05.2022 and again in its letter dated 10.06.2022 and 11.06.2022.

37. While noting the above, we are conscious of the fact that the Appellant vide its letter dated 26.04.2022, (which has been mentioned by the Appellant in passing in the Appeal, but the copy is not attached with the Appeal Memo) states that the subject premises located at Plot No. A-7, MIDC, Andheri (E), Mumbai – 400093 belonging to Shrenuj and Co. is being occupied by them on 'Leave and Licence' basis and acknowledged that since

the said premises had been sold through auction and they have to vacate it before 22.05.2022, they are looking for an alternate place to shift in order to vacate the property, further seeking time till 31.07.2022 to vacate the property.

38. Admittedly, the original Leave and Licence Agreement between the Appellant and Corporate Debtor was for 3 years from 03.08.2016 to 02.08.2019 and this Agreement was extended by the Resolution Professional during the currency of the Moratorium from 03.08.2019 to 02.07.2020. Thereafter, as per the Agreement terms as included in Clause 28, no alteration, amendment or modification of the Agreement could have been done in writing and signed by both the parties. Quite clearly the Agreement was not extended beyond 02.07.2020 and this fact was brought to the notice of the Appellant by the Liquidator through communication dated 04.01.2022, whereby the Appellant was intimated that the Leave and Licence Agreement was only valid up to 02.07.2020 and that the Appellant was required to vacate the licensed premises within 7 days from the date of receipt of the notice. Further, the Appellant was communicated that the e-auction of the said property was to take place on 06.04.2022 and by an e-mail dated 08.04.2022 the Liquidator communicated as follows to the Appellant :-

“Dear Sir,

As you are aware that the E-Auction notice was published for sale of assets of the Corporate Debtor including A7-MIDC property and during the E-Auction held on 06.04.2022, MIDC A-7 property has been successfully auctioned. In this regard, you are requested to kindly vacate the premises of MIDC A-7 within a period of 45 days from today's mail.

Kindly acknowledge the receipt of this mail and do the needful.”

39. Further, we note that the Liquidator issued a Letter of Intent to the successful bidder on 13.04.2022. The Appellant sent a letter dated 26.04.2022, whereby it took note of the e-mail and notice from the Advocate of the Liquidator for the vacation of the premises and admitted that he was looking for an alternate place to shift in order to vacate the property and requested for time till 31.07.2022 to vacate the property. In the light of the fact that the Leave and Licence Agreement terminated on 02.07.2020 and that the Liquidator continued to inform the Appellant that the said premises were being e-auctioned as part of the liquidation proceedings of the Corporate Debtor, it is abundantly clear that the Appellant was in illegal possession and occupation of the said premises and was consciously aware that it had to vacate the said premises, as is evident from the Appellant's letter dated 26.04.2022 addressed to the Liquidator.

40. Thus, in the light of the Leave and Licence Agreement entered between the Appellant and Resolution Professional and a series of communications

sent by the Liquidator and in particular the letter dated 26.04.2022 (attached in Reply of R-1, Page-22) sent by the Appellant to the Liquidator admitting that the said premises have to be vacated after having been sold through e-auction. We are of the clear view that the relationship that existed between the Appellant and the corporate debtor is that of a 'licensee' and 'licensor' and not that of 'tenant' and 'landlord'.

41. We now peruse section 18(1)(f) of the IBC which imposes a duty on the Resolution Professional to take control and custody of any asset over which the corporate debtor has ownership rights. Therefore, the Resolution Professional had to take ownership of the sub-property and he decided to extend the Leave and Licence Agreement till 02.07.2020 in accordance with the requirements of the corporate debtor. On the same lines, the powers and duties of the Liquidator are enumerated in Section 35 of the IBC, and the relevant clause (f) of sub-section (1) 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: -

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(f) subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body

corporate, or to sell the same in parcels in such manner as may be specified:

[Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant.]”

42. Further, Section-35(1)(d) imposes a duty on the Liquidator to take such measures to protect and prevent the asset and property of the Corporate Debtor as he considers necessary, and Section 35(1)(n) gives the power to the Liquidator to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the Corporate Debtor. It is clear that the said premises at Plot No. A-7, MIDC, Andheri (E), Mumbai – 400093 were in the ownership of the corporate debtor and it was a duty of the Liquidator to protect and preserve this asset of the Corporate Debtor pending its disposal in the liquidation process and further clause (n) of sub-Section (1) of Section (35) gave powers to the Liquidator to the apply to the Adjudicating Authority for such orders as may be necessary for the liquidation of the Corporate Debtor.

43. Sub-Section (5) of Section 33 puts a bar on the institution of any suit or other legal proceeding against the corporate debtor which is apparently to ensure that the liquidation process, once started, is completed in a time bound manner without the process getting entangled in any unnecessary litigation. The provision to Sub-Section (5) of Section 33 allows the

Liquidator to institute a suit or any other legal proceeding on behalf of the corporate debtor with the prior approval of the Adjudicating Authority.

44. Further, Clause (c) of Sub-Section (5) of Section 65 empowers the NCLT to entertain or dispose off any question of law or facts arising out of or in relation to the liquidation proceeding of the Corporate Debtor under IBC. The Learned Senior Counsel for the Appellant has relied upon the judgment Hon'ble Supreme Court of India in the matter of **Jhanvi Rajpal Automotive Pvt. Ltd. vs. R.P. of Rajpal Abhikaran Pvt. Ltd. & Anr.** which is as follows:-

“Heard Learned counsel for the appellant.

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.”

This judgment has been cited in support of the contention that the **Jhanvi Rajpal** (Supra) case cant be a definitive support for the case of the Liquidator as the question of law was kept open therein. This judgment is distinguishable as in the matter of **Jhanvi Rajpal**, there was tenancy in question and also a settlement between the parties whereas the present case of Leave and Licence and the Appellant was in occupation after the expiry of licence period.

45. In addition the Learned Counsel for Liquidator has also cited the judgment in the matter of **Hemal Ishwarbhai Patel vs. Veer Narmad South Gujarat University [(2016) SCC OnLine Guj 10037]**, which is as follows :-

“18. The bone of contention turned out was that when the Supreme Court did not interfere, but kept the question of law open, whether it was permissible for this Court to take a different view. It was attempted to contend by learned advocate for the University in a naive way that the Supreme Court had not dismissed the SLP, but used the words 'not inclined to interfere'. One fails to fathom, what differentiation learned advocate wanted to establish thereby. It was harped that because of clarification by the Supreme Court about keeping the question of law open, this Court can take different view and may take a departure in light of facts of the present case.

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26. When the Apex Court does not entertain any Special Leave Petition while observing that it was keeping the question of law decided to be kept open, such question would be treated to have been left open for the Supreme Court only. As far as the High Court is concerned, it would be bound by the judgment not interfered with in the Special Leave Petition as per the law of precedence. In the subsequent case with similar facts and identical issue, the decision not interfered with by the Supreme Court would bind and the different view would be prohibited to be taken on the spacious ground that the question of law kept open, which was the liberty reserved by the Supreme

Court for itself only. Therefore, in the instant case when Division Bench judgment in Siddharth Ashvinbhai Parekh (supra) was left untouched by the Supreme Court but the question of law was kept open, in the subsequent case considered by this Court where the facts were even otherwise found to be similar and the issue identical, this Court is bound by the decision in Siddharth Ashvinbhai Parekh (supra)."

46. The Learned Counsel for Liquidator has placed reliance on this tribunal's judgment in the matter of **Vijisan Jewels Pvt. Ltd. vs. Cimme Jewels Ltd. [Company Appeal (AT) (Insolvency) No. 204 of 2021]** .

"3. xx xxx xx

c. The Appellant had moved the application before the Adjudicating Authority to allow it to purchase the premises and also sought directions to allow appellant to continue to occupy the premises till the sale of premises is not finalised....

5. xx xxx xx

The Liquidator has sent them email on 21.12.2019 for handing over the said premises to the Liquidator but the Appellant vide letter dated 21.12.2019 had sought two months time from the Liquidator to vacate the said premise which they have still not done.

6. xx xxx xx

b. The Appellant was supposed to vacate the premises in April 2019 and inspite of agreeing to vacate in two months' time in December, 2019

has not yet vacated the same either one pretext or another.

c. *Liquidation process is governed by Chapter III Part - II of the Code. The Regulation governing Liquidation process providing elaborate provisions on “Realizations of Assets” vide Chapter – VI of IBBI (Liquidation Process) Regulations, 2016. The Appellant is forcing the Liquidator to sale the property to them only which is not permissible under the provisions of the Code and Regulations.*

d. *It is undisputed fact that Appellant has no locus standi and accordingly he cannot seek the sale of the property to the Appellant only. The Appellant is reagitating the same matter in different rounds before the Adjudicating Authority. The Code provides for time bound resolution and if such frivolous actions are allowed, it will be never ending process to complete the liquidation.*

This judgment provides clear support to the case of Liquidator in that the jurisdiction of NCLT under IBC has been held to be the correct jurisdiction for dealing with issues during liquidation of a Corporate Debtor.

47. The Liquidator approached the Adjudicating Authority in the light of Section- 33(5) and Section- 60(5)(c) of the IBC for vacation of the premises which in our view was the correct thing to do. We note that I.A. 1635 of 2022 was preferred by the Liquidator before NCLT, Mumbai on 15.06.2022,

and the Appellant filed his Affidavit in Reply on 22.06.2022. The Affidavit in Reply of the Appellant in I.A. 1635 of 2022 is attached at Page- 99 to 108 of the Appeal Paper Book, wherein the Appellant raised the question of it being a tenant of the Corporate Debtor, objecting to the jurisdiction of NCLT to decide the application for vacation of the said premises. In the facts of the case the Appellant, by virtue of signing the Leave and Licence Agreement which was operational till 02.07.2022, was in illegal occupation of the subject premises on the date I.A. No. 1635 of 2022 was instituted. While the Appellant filed the Reply in I.A. No. 1635 of 2022 on 27.06.2022 but without waiting for NCLT, Mumbai to give its decision in the matter, the Appellant went ahead and filed R.A.D Suit No. 259 of 2022 in the Court of Small Causes at Mumbai on the basis of the understanding raising the issue of that he was a tenant of the Corporate Debtor. Whose eviction could be considered only under the Maharashtra Rent Control Act, 1999. It appears surprising that when Appellant was aware that the said premises had been in e-auctioned and the Successful Bidder- Rexnord Electronics and Controls Limited had been issued a 'Letter of Intent', why it failed to maintain these reasons based known to the facts in his Affidavit in support of application for interim relief nor did it implead the successful bidder as a party in the suit before the Small Causes Court.

48. We are therefore, convinced that once a property was part of the liquidation state of the Corporate Debtor under liquidation, the provisions of IBC were applicable regarding the assets which were in the ownership of the

Corporate Debtor and Section-238 of the IBC prohibited the applicability of any other law which was inconsistent with the IBC.

49. The Learned Senior Counsel for Appellant has placed reliance on the judgement of Supreme Court in the matter of **Gujarat Urja Vikas Nigam Limited vs. Amit Gupta** [(2021) 7 SCC 209] which is as follows :-

“69. The institutional framework under 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 reorganisation 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 Innoventive³⁴ this Court observed that: (SCC p. 422, para 13).

"13. 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 ArcelorMittal³⁵ where this Court held that: (SCC p. 88, para 84).

“84... The non obstante clause in Section 60(5) is designed for a different purpose : to ensure that 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 Provisions in other insolvency related statutes, NCLT 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 a 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.”

50. Learner Senior Counsel for the Appellant placed on the Judgement of Hon’ble Supreme Court in the matter of **Embassy Properties**

Developments Pvt. Ltd. vs. State of Karnataka and Ors. (Supra) which is as follows:-

“ 39. But the said argument cannot be sustained for the simple reason that the duties of a resolution professional are entirely different from the jurisdiction and powers of NCLT. In fact Section 20(1) cannot be read in isolation, but has to be read in conjunction with Section 18(1)(f)(vi) of the IBC, 2016 together with the Explanation thereunder. Section 18(1)(f)(vi) reads as follows:

"18. Duties of interim resolution professional.-(1) The interim resolution professional shall perform the following duties, namely :-

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including

(vi) assets subject to the determination of ownership by a court or authority;

xxx xx xxx

*Explanation.-For the purposes of this section, the term *assets shall not include the following, namely –*

(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

40. *If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(1)(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. In fact an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term "assets" under the Explanation to Section 18. This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word "assets", while Section 20(1) uses the word "property" together with the word value". Sections 18 and 25 do not use the expression "property". Another important aspect is that under Section 25(2)(b) of the IBC, 2016, the resolution professional is obliged to represent and act on*

behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Sections 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 (1), the resolution professional shall undertake the following actions:

(a) xxx xx xxx

(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."

(emphasis supplied)

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).

41. *Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that*

wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such right.”

51. The Learned Senior Counsel for Appellant has also placed Judgement of the Hon’ble Supreme Court in the matter of **Tata Consultancy Services Ltd. vs. Vishal Ghisulal Jain, Resolution Professional, SK Wheels Private Limited (Supreme Court Appeal No. 3045 of 2020)**, which is as follows

*“28. While in the present case, the second issue formulated by this Court has no bearing, we would like to issue a note of caution to the NCLT and NCLAT regarding interference with a party's contractual right to terminate a contract. Even if the contractual dispute arises in relation to the insolvency, a party can be restrained from terminating the contract only if it is central to the success of the CIRP. Crucially, the termination of the contract should result in the corporate death of the Corporate Debtor. In **Gujarat Urja** (supra), this Court held thus:*

"176. Given that the terms used in Section 60(5)(c) are of wide import, as recognised in a consistent line of authority, we hold that NCLT was empowered to restrain the appellant from terminating PPA. However, our decision is premised upon a recognition of the centrality of PPA in the present to the success of CIRP, in the

factual matrix of this case, since it is the sole contract for the sale of electricity which was entered into by the corporate debtor. In doing so, we reiterate that NCLT would have been empowered to set aside the termination of PPA in this case because the termination took place solely on the ground of insolvency. The jurisdiction of NCLT under Section 60(5)(c) of IBC cannot be invoked in matters where a termination may take place on grounds unrelated to the insolvency of the corporate debtor. Even more crucially, it cannot even be invoked in the event of a legitimate termination of a contract based on an ipso facto clause like Article 9.2.1(e) herein, if such termination will not have the effect of making certain the death of the corporate debtor. As such, in all future cases, NCLT would have to be wary of setting aside valid contractual terminations which would merely dilute the value of the corporate debtor, and not push it to its corporate death by virtue of it being the corporate debtor's sole contract (as was the case in this matter's unique factual matrix).

177. *The terms of our intervention in the present case are limited. Judicial intervention should not create a fertile ground for the revival of the regime under Section 22 of SICA which provided for suspension of wide-ranging contracts. Section 22 of the SICA cannot be brought in through the back door. The basis of our intervention in this*

case arises from the fact that if we allow the termination of PPA which is the sole contract of the corporate debtor, governing the supply of electricity which it generates, it will pull the rug out from under CIRP, making the corporate death of the corporate debtor a foregone conclusion."

(emphasis supplied)

29. *The narrow exception crafted by this Court in Gujarat Urja (supra) must be borne in mind by the NCLT and NCLAT even while examining prayers for interim relief. The order of the NCLT dated 18 December 2019 does not indicate that the NCLT has applied its mind to the centrality of the Facilities Agreement to the success of the CIRP and Corporate Debtor's survival as a going concern. The NCLT has merely relied upon the procedural infirmity on part of the appellant in the issuance of the termination notice, i.e., it did not give thirty days' notice period to the Corporate Debtor to cure the deficiency in service. The NCLAT, in its impugned judgment, has averred that the decision of the NCLT preserves the 'going concern' status of the Corporate Debtor but there is no factual analysis on how the termination of the Facilities Agreement would put the survival of the Corporate Debtor in jeopardy.*

30. *Admittedly, this Court has clarified the law on the present subject matter in Gujarat Urja (supra) after the pronouncements of the NCLT and NCLAT. Going forward, the exercise of the NCLT's residuary powers should be governed by the above decision."*

52. We note that in the matter of **Embassy Properties Developments** (Supra), the Hon'ble Supreme Court has held that *"if asset owned by a third party in possession of the Corporate Debtor held under contractual arrangements, is specifically kept out of the definition of the term "assets"* Further, in a situation where a contractual arrangement is ongoing, the Resolution Professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5). These judgements are distinguished on the basis of the fact that no contractual arrangement existed between the Appellant and the Corporate Debtor after 02.07.2020, when the extended Leaves and Licence Agreement expired and therefore the ratio in these judgements cannot provide support to the case of the Appellant.

53. The Learned Senior Counsel for Appellant has also referred to the judgment in the matter of **K.L. Jute Products Pvt. Ltd. vs. Tirupiti Jute Industries Ltd.** [(2020 SCC Online NCLAT 426)] which is as follows, to claim that the Adjudicating Authority did not possess jurisdiction to pass order regarding eviction:-

"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 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'.

54. The above judgment is in a case where a lease agreement was signed by the corporate debtor after the section 13(2) notice had been issued and further the resolution plan was subject to the termination of all the existing lease agreement. It was held by the NCLAT that such a condition imposed in the resolution plan was not correct and the eviction should have been dealt with under the correct law. On the contrary, in this case, the Appellant had occupied the subject premises under a Leave and License Agreement as a licensee and the agreement had expired when the e-auction took place. Furthermore, the Liquidator had all along, before conducting the e-auction apprised the appellant that it had to vacate the subject premises regarding which the appellant had agreed to as is evident by his letter dated 26.4.2022.

55. The Learned Senior Counsel for Appellant has also cited Judgement in the matter of **Vishal N. Kalsaria vs. Bank of India and Ors. [(2016) 3 SCC 762]** wherein the following has been held:-

“37. It is a settled position of law that once tenancy is created, a tenant can be evicted only after following the due process of law, as prescribed under the provisions of the Rent Control Act. A tenant cannot be arbitrarily evicted by using the provisions of the SARFAESI Act as that would amount to stultifying the statutory rights of protection given to the tenant., A non obstante clause (Section 35 of the SARFAESI Act) cannot be used to bulldoze the statutory rights vested in the tenants under the Rent

Control Act. The expression "any other law for the time being in force" as appearing in Section 35 of the SARFAESI Act cannot mean to extend to each and every law enacted by the Central and State 38, Interpreting the non obstante clause in Section 35 of the SARFAESI Act, a three Legislatures. It can only extend to the laws operating in the same field.

39. If the interpretation of the provisions of the SARFAESI Act as submitted by the learned Senior Counsel appearing on behalf of the Banks is accepted, it would not only tantamount to violation of the rule of law, but would also render a valid rent control statute enacted by the State Legislature in exercise of its legislative power under Article 246(2) of the Constitution of India useless and nugatory. The Constitution of India envisages a federal feature, which has been held to be a basic feature of the Constitution, as has been held by the seven-Judge Bench of this Court in *S.R. Bommai v. Union of India*¹², wherein K. Ramaswamy, J. in his concurring opinion elaborated as under: (SCCp. 205, paras 247-48)

247. Federalism envisaged in the Constitution of India is a basic feature in which the Union of India is permanent within the territorial limits set in Article 1 of the Constitution and is indestructible. The State is the creature of the Constitution and the law made by Articles 2 to 4 with no territorial integrity, but a permanent entity with its boundaries alterable by a law made by Parliament. Neither the relative importance of the legislative entries in Schedule

VII Lists I and II of the Constitution, nor the fiscal control by the Union per se are decisive to conclude that the Constitution is unitary. The respective legislative powers are traceable to Articles 245 to 254 of the Constitution. The State qua the Constitution is federal in structure and independent in its exercise of legislative and executive power. However, being the creature of the Constitution the State has no right to secede or claim sovereignty. Qua the Union, State is quasi-federal. Both are coordinating institutions and ought to exercise their respective powers with adjustment, understanding and accommodation to render socio-economic and political justice to the people, to preserve and elongate the constitutional goals including secularism.

248. *The Preamble of the Constitution is an integral part of the Constitution. Democratic form of Government, federal structure, unity and integrity of the nation, secularism, socialism, social justice and judicial review are basic features of the Constitution."*

(emphasis supplied)

40. *In view of the above legal position, if we accept the legal submissions made on behalf of the Banks to hold that the provisions of the SARFAESI Act override the provisions of the various Rent Control Acts to allow a bank to evict a tenant from the tenanted premises, which has*

become a secured asset of the bank after the default on loan by the landlord and dispense with the procedure laid down under the provisions of the various Rent Control Acts and the law laid down by this Court in a catena of cases, then the legislative powers of the State Legislatures are denuded which would amount to subverting the law enacted by the State Legislature. Surely, such a situation was not contemplated by Parliament while enacting the SARFAESI Act and therefore, the interpretation sought to be made by the learned counsel appearing on behalf of the Banks cannot be accepted by this Court as the same is wholly untenable in law.”

56. Insofar as above judgement in case of **Vishal N. Kalsaria** (Supra) is concerned, it is distinguishable since in the facts of that case tenancy was the issue and, therefore the tenant could have been evicted only after following the due process of law as prescribed under the Rent Control Act. In the present case there is no existence of tenancy in favour of the Appellant and the Applicant it was only a licensee till 02.07.2020, whereafter he was in illegal occupation and possession of the said premises. Therefore, the Judgement in **Vishal N. Kalsaria** (Supra) case cannot also provide support to the case of the Appellant.

57. The Learned Counsel for the Respondent No. 1/ Liquidator relied upon the following few judgment in the matter of **Parineeta Chaudhary vs. Mohammed Hussain A. Furniturewalla [(2008) SCC OnLine Bom 858]** . We note that this judgment supports the contention of the Liquidator that

mere payment of some amount, which the Appellant incorrectly calls 'rent' cannot create the right of tenant in favour of the Appellant :-

“11. In the present case, however, the licence period expired in January 2005. Indeed, respondent did not file application under section 24 with immediate despatch but waited till December 2005. It is also true that the respondent accepted the monthly compensation offered by the petitioners from time to time. That alone cannot be the basis to infer that the Respondent agreed for change of relationship between the parties from one of licensor and licensee to that of landlord and tenant in relation to the suit premises. In the present case, the Courts below have Considered the defence of the petitioners in this behalf and rejected the same. That is the finding of fact which would bind this Court. Merely because another view is possible or that there is some error here or there in the judgement under challenge, cannot be the basis to exercise writ jurisdiction under Article 227 of the Constitution of India. In so far as the finding recorded by the two courts below on the material issue as to whether the petitioners are liable to be evicted from the suit premises, I have no hesitation in upholding the same as just and proper and in accordance with the legal requirement.”

58. The Learned counsel for Respondent No. 2 has placed reliance on the following judgment in the matter of **Biotor Industries Limited vs. Gujarat Industrial Development Corporation [Special Civil Application No. 3688 of 2022]** to contend that the residuary jurisdiction in relation to issues during CIRP lie with the Adjudicating Authority insofar as insolvency

resolution of the corporate debtor is concerned. The relevant part of this judgment is as hereunder:

*“7.14 While in the case of **Gujarat Urja** (supra) and **Tata Consultancy Services Limited** (supra) the contract was central to the success of CIRP. Reading paras 84 to 91 of the judgment in **Gujarat Urja** (supra), what is evident is that the residuary jurisdiction of NCLT under Section 60(5)(c) of the IBC provides a wide discretion to adjudicate questions of law or fact arising from or in relation to the insolvency resolution proceedings. Reading the relevant paragraphs in **Tata Consultancy Services Limited** (supra) as cited by the respondent, the NCLT can intervene when, it is even the case of the petitioner that there is an embargo under the IBC. In the application filed by the respondent which is pending before the NCLT, it is open for the petitioner to take all the contentions raised in this petition. The residuary jurisdiction of the Tribunal therefore to decide this issue had already been invoked by the respondent and the petition therefore, at the hands of the petitioner company which seeks the protective umbrella under the IBC itself can oppose the prayers made in that application.*

8. For all the aforesaid reasons therefore, the petition is dismissed. Rule is discharged.”

59. We are of the view that the residuary jurisdiction is relevant during the CIRP when the insolvency resolution of the corporate debtor is taking place, whereas in the present case the liquidation of the corporate debtor is being considered and the liquidator has taken recourse to its powers under section 33(5) to get control and custody of the asset of the corporate debtor.

60. We now note the order of NCLT in I.A. 1635 of 2022 passed on 06.07.2022 which is as follows :-

“ **ORDER**

The Court is taken up through Virtual Hearing (VC).

IA-1635/2022 - *This IA is filed by Brijendra Kumar Mishra Liquidator of Shrenuj & Company Co. Ltd. seeking permission to affix a lock and seal at the premises situated at Plot No. A7, MIDC, Andheri (E), Mumbai-400 093. The Liquidator further sought order from this Bench to provide the assistance of police in case of any resistance while putting the lock and seal by the Liquidator on the said property.*

The Counsel appearing for the Liquidator further brought to the notice of this Bench that it is quite necessary to secure the property which is (under Liquidation). It is contended by the Liquidator that the Respondent No. 1 had obtained status quo order from the Learned Small Causes Court, by suppressing facts and without making Liquidator as necessary party in the proceeding pending at Small Causes Court.

Having considered the submissions and on perusal of the averments made by the Liquidator in the Application, this Bench directs the Liquidator to put the lock and seal on the Plot No. A7, MIDC, Andheri (E), Mumbai-400 093. The Senior Inspector of the concerned Police Station is directed to render all kinds of police assistance in securing the possession and to put the lock on the above stated property. The Liquidator is further directed to place on record the compliance of the Order within 2 days. Registrar of this Tribunal is directed to send copy of this

order to concern Police Station for its compliance. List IA No. 1635/2022 for compliance and IA No. 2328/2021 for further hearing on 15.07.2022. (To be placed High on Board.) Rest of the IAs are listed for hearing on 05.08.2022.”

61. It is noted that during the hearing in I.A. No. 1635 of 2022 the Liquidator/ Respondent No. 1 was present before the NCLT when the above-mentioned order was passed. The NCLT order notes the contention of the Liquidator that Respondent No. 1 had obtained status-quo order from the Small Causes Court, Mumbai by suppressing facts and without making the Liquidator as a necessary party. We therefore, are of the opinion that the ‘status- quo’ order was obtained from the Small Causes Court by the Appellant without placing full and complete facts regarding its occupation and possession of the said premises and without impleading the Liquidator as a necessary party. It is also a fact that the Appellant claimed to be a ‘tenant’ covered under the Maharashtra Rent Control Act, 1999 when it had neither signed any tenancy agreement with the Corporate Debtor and further the Leave and Licence Agreement had also expired on 02.07.2020. We are of the opinion that the NCLT possesses the correct jurisdiction in considering an application for vacation of the premises in question and that the NCLT was correct in passing the Impugned Order which would be necessary to put the premises in question with the Liquidator and pending the final disposed of I.A. No. 1635 of 2020. Therefore, we are clear that the Impugned Order does not need any intervention.

62. In the light of the above-stated discussion, we are of the opinion that the NCLT possesses the correct jurisdiction for considering an application for vacation of the premises in question in the circumstances of the present case, and the NCLT was correct in passing the Impugned Order which would be necessary to place the custody of the premises in question with the Liquidator pending the final disposal of I.A. No. 1635 of 2020 so that the liquidation process is completed timely and in accordance with legal provisions. We are, therefore, of the clear view that the Impugned Order does not need any intervention. The Appeal is, therefore, dismissed with no order as to costs.

[Justice Rakesh Kumar]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

New Delhi
24th April, 2023

Simran/gc