

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL****PRINCIPAL BENCH****NEW DELHI****COMPANY APPEAL (AT)(Ins) No. 166 of 2024**

(Arising out of judgement and order dated 04.01.2024 passed by the National Company Law Tribunal, Court II, Mumbai Bench in Interlocutory Application No.1160/2021 filed in CP(IB) No. 1980/MB/2018)

**In the matter of:**

Mr. Pavan Vikram Sajhwani,  
AB01/B, Abo1/C, AB01/D & AB01/E, Basement  
Neelam Centre, 'A' Wing,  
Hind Cycle Road, Worli,  
Mumbai 400025

Also at:

Flat No.44,  
Khanna Construction House,  
Abdul Gaffar Khan road,  
Worli, Mumbai 400018

Appellant

Vs

Mr. Santanu T Ray,  
Liquidator of Oneworld Industries Pvt Ltd  
AAA Insolvency Professionals LLP,  
A-301, 'A" Wing,  
BSEL Tech Park,  
Sector 30A, Opp Vashi Railway Station,  
Vashi,  
Navi Mumbai 400705

Respondent

For Appellant: Mr Deeptakirti Verma, Ms Neha Sharma, Advocates  
For Respondent: Mr. Rohit Gupta, Ms Rubina Khan, Mr Prashansha Agarwal,  
Ms Abha Patel, Ms Neha Agarwal, Mr Siddharth Chapalgaonkar, Advocates.

**JUDGEMENT****JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)**

This appeal is against an impugned order dated 04.01.2024 passed by the National Company Law Tribunal, Court II, Mumbai Bench in an Interlocutory Application No.1160 of 2021 filed in CP No.1980/MB/2018

wherein the Learned NCLT had directed appellant to handover vacant and peaceful possession of the premises licensed to the Appellant by the Corporate Debtor within 15 days.

2. The impugned order has been challenged on the ground that the issue of eviction vests with the Learned Court of Small Causes under Section 41 of the Presidency Small Causes Courts Act, 1882 and though the Learned NCLT has placed reliance upon a judgement dated 24.04.2023 passed by this Tribunal in Company Appeal (AT)(Insolvency) No. 748/2022 titled **Adinath Jewellery Exports V. Mr. Brijendra Kumar Mishra & Anr** but the facts of the said case were materially different from the present case and hence the said judgement is inapplicable to the facts stated herein. Further it is argued the Learned NCLT had failed to heed and apply *the note of the caution* expressed by the Hon'ble Supreme Court in the case of **Gujarat Urja Vikas Nigam Limited V. Amit Gupta (2021 7 SCC 209** and reiterated in the judgement of **Tata Consultancy Services Ltd V. Vihal Gisulal Jain (Civil Appeal No.3045 of 2020** that the Learned NCLT and this Tribunal ought not to ordinarily usurp the legitimate jurisdiction of other Courts, tribunals and in exercise of residuary functions under Section 60(5) of the IBC.

3. It is argued the Learned NCLT had even failed to note that despite five attempts being made to carry out auction sale of the said premises, the Respondent was unable to conclude the same and the Appellant himself had conveyed he intends to make a bid as and when the property is put to auction during the liquidation process. Further the Appellant is paying a substantial amount as a licensee and if is evicted, the liquidation estate would not get

benefit from the vacant premises and would suffer a loss of substantial amount.

4. Lastly it was argued the Learned NCLT had failed to consider there was a subsisting status quo order issued by the Learned Court of Small Causes in inter-parties proceedings between the Appellant and the Respondent and a Writ Petition bearing No.11069/2022 filed by the Ld. Liquidator against the order of the Learned Court of Small Causes is still pending.

5. In support of his submissions the Learned counsel for the Appellant has referred to an order dated 06.10.2021 passed in LD Suit No.**97/2021** in the Court of Small Causes at Mumbai wherein it had restrained the Liquidator from dispossessing the plaintiff or obstructing his vacant and peaceful possession of the suit premises either by himself or through any other person, ***without following due process of law*** till disposal of the suit. It is argued that the appellant went in Writ Petition but did not get any favourable order and deliberately not disclosed the pendency of Writ to the NCLT.

6. Heard.

7. Before proceeding further, we would like to refer to some relevant paras of the impugned order:-

*“10. As regards the question of jurisdiction, the Respondent has objected to the jurisdiction of this Tribunal to evict him from the licensed premises. According to the learned Counsel for the Respondent, the Hon'ble Small Causes Court is vested with the exclusive jurisdiction u/s 41 of the Presidency Small Causes Courts Act, 1882. Therefore, this Hon'ble Tribunal has no jurisdiction to entertain the eviction application by the Liquidator We have carefully examined the aforesaid submission made on behalf of the Respondent. The issue of Adjudicating Authority passing eviction orders in respect of the immovable properties forming part of the liquidation estate of the Corporate Debtor despite injunction orders passed by a civil court is no more res integra. The Hon'ble NCLAT in the matter*

*of Adinath Jewellery Exports v/s. Brijendra Kumar Mishra & Anr vide Judgment dated 24.04.2023 in Company Appeal (AT) (Insolvency) No. 748 of 2022 has delineated the scope of Adjudicating Authority to pass eviction orders against the licensee despite the injunction obtained by the licensee from a civil court. In the above-quoted judgment, the Hon'ble NCLAT had clearly held that the NCLT possesses the necessary jurisdiction for considering an application for vacation of premises and that the NCLT was correct in passing the impugned order which would be necessary to put the liquidator in possession of the premises in question and the same does not need any intervention. In that matter too, the appellant therein had obtained an injunction from Small Causes Court, while the Liquidator had moved an application for eviction of the appellant before the Adjudicating Authority Therefore, the law laid in Adinath Jewellery Exports (Supra) squarely applies to the facts of this case.*

*11. The Liquidator, subject to the directions of the Adjudicating Authority, shall have the powers and duties u/s 35(1)(b) of the IB Code, 2016 to take into his custody or control all assets, property, effects and actionable claims of the Corporate Debtor. Under Section 35(1)(d) of the Code, the Liquidator is entitled to take such measures to protect and preserve the assets and properties of the Corporate Debtor as he considers necessary. As per the provisions of Section 36(3)(a) read with Sec. 36(3)(b) of the Code, the Liquidation Estate shall be comprised of any asset over which the Corporate Debtor has ownership rights, which may or may not be in possession of the Corporate Debtor. The Adjudicating Authority has a residuary jurisdiction u/s 60(5)(c) of the Code to entertain or dispose of 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. Eviction of the Respondent from the licensed premises belonging to the Corporate Debtor under liquidation has direct nexus with the liquidation proceedings of the Corporate Debtor and therefore, this Tribunal has jurisdiction u/s 60(5) to entertain and dispose of the application for eviction of the Respondent.*

*12. As regards the suit filed by the Respondent in the Small Causes Court vide LD. Suit No. 97 of 2021, we wish to add that the jurisdiction of a civil court is barred u/s 63 of the Code from entertaining any suit or proceedings in respect of any matter on which NCLT has jurisdiction. For the reasons stated above, since NCLT has jurisdiction to evict the Respondent from the licensed premises of the Corporate Debtor under liquidation, we are of the view that the aforementioned suit is barred u/s 63 of the Code. We also wish to add that by virtue of Section 238 of*

*the Code, the provisions of the Code override other laws notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Further, it is also not out of place to mention that by virtue of Section 33(5) of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor when a liquidation order has been passed. In the instant case, the Liquidation Order dated 15th November, 2019 was passed by the Adjudicating Authority u/s 33 of the Code; whereas the Suit was instituted by the Respondent against the Liquidator of the Corporate Debtor in 2021 after the Liquidation Order was passed. Therefore, ex-facie, it appears that the above suit is barred by Section 33(5) of the Code.”*

8. We have perused the above order of the Learned NCLT, Mumbai. The argument of the Learned counsel for the Appellant that there exists a *status quo* order passed by Court of Small Causes and hence the NCLT has no jurisdiction to entertain, does not hold good since the Court of Small Causes itself in para 12 of its order dated 06.10.2021 had noted the said order is passed *without encroaching upon the jurisdiction of the NCLT*. Further, Section **33(5)** of the IBC Code runs as under:-

*“(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.”*

9. The Learned counsel for the appellant has failed to explain why he by passed the provisions of Section **33(5)** of the IB Code when was fully aware of the liquidation proceedings going on, as admittedly, quoted in para 12 itself of the Order dated 06.10.2021 of the Court of Small Causes at Mumbai

(supra). Since such civil suit was filed after the commencement of liquidation proceedings, it could not have been filed, even otherwise, without approval of the Tribunal.

9. Though the Learned counsel for the Appellant had tried to distinguish Adinath Jewellery (supra) to say the Hon'ble tribunal cannot ordinarily usurp legitimate jurisdiction of other Courts in exercise of its residual functions under Section 60(5) of the IBC Code, but section 60(5)(c) rather notes:-

*“(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.”*

10. Even otherwise, the issue of passing an eviction order *qua* immovable properties forming part of assets of Corporate Debtor, despite injunctions, have been discussed in various judgements. In *Jhanvi Rajpal Automotive Pvt Ltd versus RP of Rajpal Abhikaran Pvt Ltd & Anr Company Appeal No.1417 of 2022*, this Hon'ble Tribunal has taken a view in case of *M.P. Accommodation Control Act, 1961* that where the Corporate Debtor has ownership right over the premises, the premises can be taken in control by IRP/.RP. This Hon'ble Tribunal was of the view that the suit is not contemplated in the statutory scheme contained in the IBC. The order of this Hon'ble Tribunal was challenged before Hon'ble Supreme Court and the petition was dismissed. This issue once again came up for consideration before this Tribunal in the case of *Nitin Jan V, Universal Tutorial Pvt Ltd, COMPANY Appeal No.337 of 2021* where the NCLT refused to grant orders for taking possession and eventually this Hon'ble

*Tribunal has allowed the application in view of the orders passed by this Hon'ble Tribunal.*

11. This issue in identical facts also came up for consideration before this Hon'ble Tribunal in *Adinath Jewellery Exports Vs. Brijendra Kumar Mishra Company Appeal No.748 of 2022* wherein it was contended that there is a suit which is pending before the Small Causes Court and injunction order is granted. This Hon'ble tribunal after framing issues with a regard to whether such an order can be passed in paragraph 31 and after taking into consideration Section 33, 60 and 238 of IBC has rejected the contention that pendency of the suit will in any manner affect the jurisdiction of the Tribunal and the Tribunal has jurisdiction to decide the same.

12. An attempt was made by the Appellant to distinguish Adinath's (Supra) by contending in the facts of that case the premises was sold and/or the proceedings were at different stage. However, the issue is not qua the stage of the proceedings but is whether the Tribunal has jurisdiction to entertain such an application and it was conclusively held the Tribunal has jurisdiction and the liquidator is not required to file a suit and can approach the Ld. Tribunal.

13. The argument that despite five attempts Respondent has been unable to carry out auction sale is also not convincing as it may be due to appellant being in possession, as no intending purchaser may purchase premises in an auction, which is in possession of someone else and may land such intending purchaser(s) in litigation. Even the subsisting *status quo* as was issued by the Learned Court of Small Causes, only restrained the Liquidator from

dispossessing the appellant *without following due process of law*, but admittedly the Respondent had invoked the jurisdiction of NCLT, *per* Section 60(5) of the Code, hence this argument of appellant too lacks merit.

14. Thus considering the law above made there could be no challenge to the powers of the NCLT to pass an eviction order in the factual matrix.

15. The Appeal thus is devoid of merit and is dismissed.

**(Justice Ashok Bhushan)**  
**Chairperson**

**(Justice Yogesh Khanna)**  
**Member (Judicial)**

**(Mr. Barun Mitra)**  
**Member (Technical)**

**Dated:01-03-2024**

**BM**