



S.No.3

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
09-08-2024 AT 10:30 AM**

**CP (IB) No. 325/7/HDB/2020
AND
IA (IBC) 788 & 643/2022, IA (IBC) 1127 & 1493/2023,
Cont. A (IBC) 15/2023, IA (IBC) 51/2024, IA (IBC) 1653/2024 & IA (IBC)
(Liq) (Progress Report) 24/2024 in CP (IB) No. 325/7/HDB/2020
u/s. 7 of IBC, 2016**

IN THE MATTER OF:

LIC Housing Finance Ltd

...Financial Creditor

AND

M/s. Butta Infrastructure Pvt Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

O R D E R

IA (IBC) 788/2022

Orders deferred till 29.08.2024.

IA (IBC) 643/2022

Learned Counsel Ms Sarvani Desiraju, for respondent present through Video Conference and stated that there is stay by NCLAT. Call on 29.08.2024.

IA (IBC) 1127/2023

Orders pronounced. In the result, **this application is allowed, Corporate Debtor** is directed to vacate the premises and hand over the vacant physical position of the property prescribed in the order within 60 days from the date of receipt of this order

Let the liquidator show what steps he has taken as regards the movable properties of the Corporate Debtor from the date of appointment of Liquidator. Matter passed over.

Matter called again. It is represented by the liquidator that in the 16th SC meeting that LIC housing corporation which is having 99% the stay has resolved not to seek extension of the liquidation period.



IA (IBC) 1493/2023

Orders deferred till 12.09.2024.

Cont. A (IBC) 15/2023

Liquidator and learned senior counsel Mr B Chandrasen Reddy, for alleged contemnors present physically.

learned counsel for the liquidator present and states that the information that this Tribunal directed the alleged contemnors to submit vide the order dated 26.07.2024, has not been furnished and therefore he could not file necessary memo from his end.

No record is placed by the respondents to show that the direction dated 26.07.2024 has been complied with.

Earlier we have heard this matter at length and posted for orders and at that stage learned senior counsel for the respondents represented that the respondents have completely co-operated with the liquidator by furnishing necessary information and also sought time to establish the same. Accordingly, this Tribunal granted time and opportunity. Call on 29.08.2024.

IA (IBC) 51/2024

Call on 29.08.2024.

IA (IBC) 1653/2024

Before passing orders in this application the Tribunal, intends to hear the Authorized representatives of LIC Housing Finance Limited, and the other members of SCC. Hence, let the Registry send notices to the following members of SCC directing them to be present on 12.09.2024 :-

1. To
The Regional Head,
LIC Housing Finance Limited
- Regional Office No 137,
HMG Ambassador, 9th Floor,
South Wing, Residency Road,
Bengaluru – 560025,
e-mail- s.padmavathy@lichousing.com.
2. To
The Deputy Director,
Employees State Insurance Corporation –
Regional Office, 5-9-23,
Hill Fort Road Hyderabad, 500063,
e-mail ID: rd-telangana@esic.nic.in

Call on 12.09.2024.



IA (IBC) (Liq) (Progress Report) 24/2024

This is an application to take 10th progress report on record. The same is taken on record.

Accordingly, **this application is allowed and disposed of.**

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-I, HYDERABAD**

**I.A. No.1127 OF 2023
in
CP (IB) No.325/7/HDB/2020**

In the matter of M/s Butta Infrastructure Pvt Ltd.

In the matter between:

Gonugunta Murali

Liquidator, Butta Infrastructure Private Ltd

House No.4/14, Butta House

KPHB Road, Madhapur

Hyderabad – 500081

Telangana.

**.. Applicant
Liquidator**

VERSUS

Meridian Educational Society

8-2-541, Road No.7

Banjara Hills

Hyderabad – 500034

Telangana.

.. Respondent

**APPLICATION UNDER SECTION 60(5) OF
THE INSOLVENCY & BANKRUPTCY
CODE, 2016 READ WITH RULE 11 OF
NCLT RULES, 2016.**



Coram:

DR.VENKATA RAMAKRISHNA BADARINATH NANDULA
HON'BLE MEMBER (JUDICIAL)

SHRI CHARAN SINGH
HON'BLE MEMBER (TECHNICAL)

Counsels present:

For the Applicant : Mr. Y. Suryanarayana, Mr. N. N. Sharma and
Mr. Sachin Sharma, Advocates.

For respondent : Mr. T. Niranjan Reddy, Senior Counsel with
Ms. Sarvani Desiraju, advocate on record.

Date of order : 9th August 2024

Per : Bench

ORDER

This application is filed by Liquidator of M/s Butta
Infrastructure Pvt Ltd/ Corporate Debtor with the
following prayers:

*“(1) to pass an order or direction to the respondent to
forthwith vacate the premises at:*

*(a) 8-2-541, 8-2-540/1, 8-2-540/2, 8-2-438/4, Road No.4 & 7,
Banjara Hills, Hyderabad – 500034.*

*(b) Plot Nos.4/20, 4/21. 4/36. 4/37. 4/22, 4/23, 4/34, 4/35, 4/26,
4/27, 4/31, 5/1, 5/2, /3, 5/4, 5/11, 5/19, 5/10 in SY No.11/4
and 11/5, Khanamet Village, Madhapur, Serilingampalli
Mandal, Rangareddy District – 500081, and*



(2) to handover peaceful possession of aforesaid premises to the applicant herein;”

2. The applicant is an Insolvency Professional bearing Registration No.IBBI/ IPA-001/ IP-P00654/ 2017-2018/ 11139, appointed as Liquidator of the Corporate Debtor, M/s Butta Infrastructure Private Limited vide order dated 24.02.2022 of this Tribunal. The respondent is in unlawful possession of the immovable properties owned by the Corporate Debtor, in which a school is run in the name of Meridian School.

3. FACTS :

3.1 Vide order dated 01.03.2021 in CP (IB) No.325/7/HDB/2020, this Tribunal has admitted the Corporate Debtor into CIRP and appointed Mr. Krishna Komaravolu as IRP, who was subsequently appointed as Resolution Professional.



3.2 Vide order dated 24.02.2022 in IA No.112 of 2022 in CP (IB) No.325/7/HDB/2020, this Tribunal has ordered liquidation of the Corporate Debtor and appointed the applicant as Liquidator of the Corporate Debtor.

3.3 Two lease deeds dated 23.02.2017 (ANNEXURE-1) were entered into between the *Corporate Debtor* and the respondent herein in respect of the following properties:

- (a) All that land and building premises bearing No. 8-2-541, 8-2-540/1, 8-2-540/2, 8-2-438/4, Road No.4 & 7, Banjara Hills, Hyderabad – 500034, admeasuring 7321.12 sq yards with a building thereon admeasuring 1,20,000 sq ft.
- (b) All that land in Plot Nos.4/20, 4/21. 4/36. 4/37. 4/22, 4/23, 4/34, 4/35, 4/26, 4/27, 4/31, 5/1, 5/2, /3, 5/4, 5/11, 5/19, 5/10 in SY No.11/4 and 11/5,



Khanamet Village, Madhapur, Serilingampalli
Mandal, Rangareddy District – 500081,
admeasuring 22,795 sq yards and building thereon
admeasuring ,20,000 sq ft.

4. Liquidator has filed the following IAs against the respondent:

- IA No.643 of 2022 for recovery of Rs.281,67,10,552/- towards lease rentals payable by the respondent. Respondent has filed Counter.
- IA No.1019/ 2023 for current lease rentals.

5. The *Corporate Debtor* has been converted from ‘Butta Infrastructure’ into ‘Butta Infrastructure Private Limited’. Consequently the following documents were filed:



- (i) Form URC-1 filed with RoC for such conversion (ANNEXURE-2)
 - (ii) Provisional Balance Sheet as on 31.12.2016 filed along with URC-1 (annexure-3) .
 - (iii) Reconstitution of Partnership Deed dated 02.01.2017 (Annexure-4)
 - (iv) Reconstitution of Partnership Deed dated 19.01.2017 (ANNEXURE-5).
 - (v) Financial Statements, viz. Balance Sheet, Notes to accounts, etc. of *Corporate Debtor* for FY 2016-17 to FY 2019-20 (ANNEXURE-6) showing that properties were transferred from the erstwhile company to the reconstituted company.
6. The *Corporate Debtor* had mortgaged the properties, created charge on 20.04.2018 and obtained loan of Rs.310



crores from LIC HFL. The respondent herein furnished undertaking that rents will be deposited in Escrow Account. The following are the loan documents:

- (i) CHG-1 filed by *Corporate Debtor* for Banjara Hills property – ANNEXURE-7.
- (ii) CHG-1 filed by *Corporate Debtor* for Madhapur property – ANNEXURE-8.
- (iii) MoU of deposit of title deeds dated 20.04.2018 with LIC HFL for Banjara Hills property – ANNEXURE-9.
- (iv) MoU of deposit of title deeds dated 20.04.2018 with LIC HFL for Khanamet property – ANNEXURE-10.
- (v) Sanction Letter issued by LIC HFL for Banjara Hills property – ANNEXURE-11.



(vi) Sanction Letter issued by LIC HFL for Khanamet property – ANNEXURE-12.

(vii) Undertaking issued by respondent/ Meridian School to LIC HFL -- ANNEXURE-13.

7. The applicant submits that according to respondent herein lease deeds dated 23.02.2017 were cancelled vide Cancellation Deeds bearing Documents No.5894/ 2019 and 15606/ 2019 dated 06.09.2019 (ANNEXURE-14).

8. The applicant challenges possession of the premises in question held by the respondent on the following grounds:

(A) The contention of the respondent that the Lease Agreements dated 23.02.2017 were cancelled is not true. In fact, the alleged Cancellation Deeds were never acted upon. Clause 3 of the Deed of Cancellation provides that



respondent has agreed to vacate the premises. Said clause reads as under:

Clause-3: “Whereas the **lessee decided to vacate** the demised premises by cancelling the above said lease deed which was entered on 23rd day of February 2017 and Modification of lease deed dated 07.01.2019 and lessor has agreed to the cancellation of the said lease deed.”

(B) Order dated 30.06.2022 in IA No.275 of 2022 in OS No.427 of 2022 passed by the City Civil Court, Hyderabad, ordering status quo, relates to only Banjara Hills property. Copy of the IA is at ANNEXURE-15. Copy of order is at ANNEXURE-16. Said IA is filed by a relative of suspended Director Said status quo order is subsisting as on date of filing this IA. Said status quo order is in respect of Banjara Hills property only. It does not apply to other properties. The present IA is filed for properties other than Banjara Hills.



(C) The applicant relied on order dated 05.01.2023 (ANNEXURE-16) in Jhanvi Rajpal Automotive Pvt Ltd v. Resolution Professional of Rajpal Abhikaran Pvt Ltd & another, Company Appeal (AT) (Ins) No.1417 of 2022, passed by the Hon'ble NCLAT, wherein the Hon'ble NCLAT held that Resolution Professional is empowered to take control and custody of any asset over which the corporate debtor has ownership rights u/s 18(1)(f)(ii) of the Code; to carry out duties entrusted to the him under Section 18 of the Code he can very well take recourse to Section 60(5) of the Code. Liquidator is empowered u/s 35(1)(d) and 35(1)(e) of the Code to take measures to protect and preserve assets of the *Corporate Debtor* and to carry on business of the *Corporate Debtor* for its beneficial liquidation.



9. The applicant states that he had issued Notice of Eviction dated 14.06.2023 (ANNEXURE-18) to the respondent. The respondent sent reply dated 29.06.2023 (ANNEXURE-19) thereto stating that lease rent is being paid as per Lease Deeds executed and are in force. Whereas, the applicant's contention is that the respondent is not paying lease rentals to the *Corporate Debtor* and is illegally occupying the properties of the *Corporate Debtor*. Hence the respondent is required to vacate the premises of the properties owned by the *Corporate Debtor*.

10. The respondent has filed COUNTER dated 11.08.2023, resolutely resisting the applicant's prayer for eviction as below:



10.1 The respondent contends that under section 60(5) of the IBC read with section 33(5) of the IBC and Explanation-II to section 11 of the IBC, the applicant cannot seek eviction of the respondent. The applicant can only pursue such claims before court of law/ quasi-judicial bodies having regards to nature of claim. In this regards the respondent placed reliance on embassy Property Developments Pvt ltd v. State of Karnataka & others, Civil appeal No.9171 of 2019, paras 36 & 37 of which read:

“36. 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).

37. 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 a right.”



10.2 The respondent further submitted that the question of eviction of respondent herein cannot be subject matter of adjudication before this Tribunal on the ground that –

- The respondent is in rightful possession of the schedule property and has been monthly rentals to the lawful owner of the schedule property.
- When liability of the respondent to pay rent and arrears itself is subjudice in IA No. 1019/ 2023 and IA No.643/ 2022. Before outcome of those IAs the present IA cannot be filed.
- The respondent is an educational society running a school, by name, Meridian School, since 1995. The school is manned by 700 teachers and employees and it is imparting education to about 3200 students.



Any order of eviction would directly affect the students, teachers and employees.

- The applicant seeks eviction of the respondent based on lease deeds of 2017, whereas this respondent has been running the school from the same premises since 1995, and obtained CBSE affiliation in 1999.
- The respondent has leasehold rights over the premises in Banjara Hills till 2029 by virtue of registered lease deeds executed with B. Naganna and others bearing:
 - (i) Documents No.613 to 616 of 1999 dated 11.03.1999;
 - (ii) Document No.644 of 1999 dated 12.03.1999.
- The respondent has leasehold rights over Khanamet village property till 2040 by virtue of registered lease



deed dated 20.03.2010 executed with B.S. Neelakanta, B.S. Renuka, B. Sivakumar and B. Nagaraju bearing Document No.1957 of 2010.

10.3 As regards restructuring of ownership of the properties, at the instance of the Corporate Debtor the respondent had entered into two lease agreements. However, the respondent being educational society could not bear lease rentals and said lease agreements have been cancelled by separate deeds as detailed below:

Details of documents by which lease agreements were entered between the Corporate Debtor and the respondent herein.	Details of documents by which the document in column (1) has been cancelled.	Remarks
(1)	(2)	(3)
Doc. No.1088 of 2017 dated 23.02.2017.	Cancellation Deed No.5894 of 2019 dated 06.09.2019	Thus, Agreements dated 23.02.2017 mentioned in Col.(1) are no longer in existence and



Doc. No.2532 of 2017 dated 23.02.2017.	Cancellation Deed No.15605 of 2019 dated 06.09.2019	respondent is in peaceful possession of the property in question.
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10.4 The possession of the respondent of the premises in question has not been challenged either by the Corporate Debtor or by the original lessors, after the Lease Agreements bearing Doc. No.1088 of 2017 dated 23.02.2017 and Doc. No.2532 of 2017 dated 23.02.2017 having been cancelled vide Cancellation Deed No.5894 of 2019 dated 06.09.2019 and Cancellation Deed No.15605 of 2019 dated 06.09.2019. Even if it is assumed that the Corporate Debtor is the owner of the schedule properties, by the conduct of the Corporate Debtor, post execution of cancellation deeds, under section 41 of the Transfer of Property Act, 1882, possession of the respondent herein is valid. Said section reads as below:



“41. Transfer by ostensible owner.—

Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be violable on the ground that the transferor was not authorised to make it:

Provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.”

10.5 The respondent submitted that the Corporate Debtor has never objected to the continued possession of the respondent of the schedule properties and payment of rents to the persons, whose names are shown as owners in revenue records. Thus, the leasehold rights held by the respondent herein cannot be negated or voided by the petitioner, much less through the summary proceedings.

10.6 Besides, the petitioner has demanded the following amounts by following documents:

- Rs.281,67,10.552/- by filing IA No.643/ 2022 and 1019/ 2023 in CP (IB) No.325/7/HDB/2020.



- Rs.127,84,69,750/- by way of Demand Notice dated 03.01.2022, towards lease rentals @ Rs.2.20 crores per month on account of lease deed dated 15.02.2017 being No.1088/ 2017; and Rs.127,84,69,750/- towards lease rentals @ Rs.2.20 crores per month on account of lease deed dated 15.02.2017 being No.2532/ 2017. Thus, totalling to Rs.255,69,500/-, towards outstanding lease rentals for 2/2017 to 12/2021.
- Rs.140,83,55,276/- by way of Demand Notice dated 24.05.2022, towards lease rentals @ Rs.2.20 crores per month on account of lease deed dated 15.02.2018 being No.1088/ 2017; and Rs.140,83,55,276/- towards lease rentals @ Rs.2.20 crores per month on account of lease deed dated 15.02.2018 being No.2532/ 2017. Thus, totalling to



Rs.281,67,10,552/- towards outstanding lease rentals
for 2/2017 to 5/2022.

10.7 The respondent sent Note dated 13.06.2022 stating that there is no lease deed dated 15.02.2017 with monthly lease rental of Rs.2.20 crores and requested to furnish certified copy if there is such lease ever registered.

11. In light of the contest as aforementioned, the **point** that emerges for our consideration is:

POINT :

- Whether the respondent/lessee upon determination of a registered lease can deny the title of the applicant/lessor and refuse to surrender the possession of the leasehold property to the applicant/lessor? *if so*, whether this Adjudicating Authority, has jurisdiction to direct the respondent/lessee to deliver vacant possession of the leasehold property to the applicant/lessor?



12. We have heard Mr. Y. Suryanarayana, learned advocate appearing with Mr. N. N. Sharma and Mr. Sachin Sharma, learned advocates for the applicant; and Mr. T. Niranjan Reddy, learned Senior Counsel appearing for Ms. Sarvani Desiraju, Advocate for the respondent. Perused the record, written submissions and the case law.

POINT.

- Whether the respondent/lessee upon determination of a registered lease can deny the title of the applicant/ lessor and refuse to surrender the possession of the leasehold property to the applicant/ lessor? *if so*, whether this Adjudicating Authority, has jurisdiction to direct the respondent/ lessee to deliver vacant possession of the leasehold property to the applicant/lessor?

The Contest.

13. The present interlocutory application has been filed in the *backdrop* of this Tribunal admitting M/s Butta Infrastructure Pvt Ltd., now *being* represented by the



applicant/ liquidator, into corporate insolvency resolution process, vide order dated 01.03.2021 passed in CP (IB) No.325/7/HDB/2020, in a petition filed under Section 7 of the IB Code 2016, by M/s LIC Housing Finance Limited. Since, the said Corporate Insolvency Resolution Process of M/s Butta Infrastructure Pvt. Ltd, did not *fructify*, an order directing *initiation* of liquidation process against the said M/s Butta Infrastructure Pvt. Ltd, and appointment of a liquidator to conduct the liquidation of M/s Butta Infrastructure Pvt. Ltd, herein after referred to as corporate debtor, has been passed. The said liquidator had filed the present application contending, *inter alia*, that the corporate debtor had entered into two Registered Lease Deeds dated 23.02.2017 (Registered as Document No.1088 and 2523 of even date) with the respondent for a period of 33 years in respect of its properties situated at



‘Banjara Hills’ and ‘Madhapur’, Hyderabad, and the said leases were later cancelled under two separate registered cancellation deeds dated 06.09.2019.

14. According to the applicant, despite the legal obligation and undertaking by the respondent that it would deliver vacant possession of the lease hold premises to the applicant/lessor consequent upon the determination of the Leases, the respondent failed to deliver the possession and continued to run an educational institution by name ‘Meridian School’. It is further stated that the respondent also *defaulted* in payment of the rent to the tune of Rs.281,67,10,552/- as on 31.05.2022 to the applicant, hence the applicant filed IA No.643 of 2022 for a direction to the respondent to forthwith pay the said outstanding lease rental/ damages.



The Submissions.

15. Mr. Y. Suryanarayana, Learned Counsel for the Applicant/ Liquidator, placing reliance on the two undisputed Registered Lease Deeds dated 23.02.2017, vehemently contended that consequent upon the takeover and “reconstitution” of the lessors of the leases dated 11.03.1999, 12.03.1999, 12.03.1999 and 23.10.2010 into a Private Limited Company under the name and style of M/s Butta Infrastructure Pvt. Ltd., (the applicant herein), the applicant herein has entered into two separate Registered Lease Deeds dated 23.02.2017, (registered as Document No.1088/ 2017 and 2523/ 2017) in respects of two its properties situated at “Banjara Hills” and “Madhapur”, Hyderabad, and inducted the respondent into the possession of the same. Ld. Counsel further submits that the said leases are for a period of 33 years,



effective from the date of the said leases. Learned Counsel further submits that both these leases were later “cancelled” under the Cancellation Deeds dated 06.09.2019 (registered as Document Nos.5894 and 15605 of 2019), consequently, both the above leases stood “determined” effective from 06.09.2019.

16. According to the Learned Counsel, the reason for cancellation of the lease deeds was the “*decision*” of the lessee to vacate the lease hold premises, as is evident from the “recitals” of the said Cancellation Deeds. Learned Counsel further submits that despite undertaking to vacate the demised premises the respondent failed in complying the same and continued to remain in possession of the property, without even paying any rent/damages, as such, the present application is filed for a direction to the respondent to *forthwith vacate* the



leasehold premises and to handover the vacant possession of the same to the applicant.

17. Learned Counsel submits that, the plea of the respondent that since it was “represented” that the *registered leases* entered on 23.02.2017 with the applicant are *invalid* and leases earlier *entered* on 11.03.1999, 12.03.1999 and 20.03.2010 with Smt. K. Lakshamma and others alone are *valid*, apart from being false and remained unsubstantiated, is *untenable* and *unsustainable* under law and also facts, hence the said plea is liable to be *rejected*. Learned Counsel submits that the leasehold property absolutely belongs to the applicant/ Corporate Debtor which fact can be verified not only from the undisputed registered lease deeds dated 23.02.2017 and the cancellation deeds but also from the Balance Sheets of the applicant/ Corporate Debtor for the



Financial Year 2017-18 copies of which are available on record. In this regard learned counsel referred to section 36 of the IBC, which is as below:

“Liquidation estate.

36 (1) For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the corporate debtor.

(2) The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.

(3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following:-

(a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;

(b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;

(c) tangible assets, whether movable or immovable;

(d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;

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

(f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;

(g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;



(h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and

(i) all proceeds of liquidation as and when they are realised.

(4) The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation: -

(a) assets owned by a third party which are in possession of the corporate debtor, including –

(i) assets held in trust for any third party;

(ii) bailment contracts;

(iii) all sums due to any workmen or employee from the provident fund, the pension fund and the gratuity fund;

(iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and

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

(b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;

(c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;

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

(e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.”

18. Ld. Counsel, *also* relied on section 35 of the IB Code, and contended that in terms of Section 35 IBC, the Liquidator is entitled to take control of all the assets



of the Corporate Debtor under Liquidation and also *control* the same. Therefore, the power to secure the possession of the property of the corporate debtor, situated at ‘Banjara Hills’ and ‘Madhapur’, Hyderabad, is well within the statutory power of the applicant/Liquidator.

19. Learned Counsel also placed reliance on the following rulings in support of the aforementioned submissions:

- Embassy Properties Developments Pvt. Ltd., vs State of Karnataka & others, SCC wherein it was held that,

“Section 60 of the Code is very broad in its sweep, in that it speaks about any question of law or facts arising out of or in relation to insolvency resolution. It is only when a decision taken by the government or a statutory authority in relation to a matter which is in the realm of public law, cannot be adjudicated by the NCLT”

- Indus Biotech (P) Ltd., Vs Kotak India Ventures (Offshore) Fund, SCC had held that,



“The position of law that the IB Code shall override all other laws as provided under Section 238 of the IB Code needs no Elaboration.”

- Sangam (India) Ltd., Vs Aarti Suitings Pvt. Ltd., SCC had held that,

“the respondent therein to handover the possession of the property to the Resolution Professional (Kindly refer table of case laws below). This clearly establishes that this Hon’ble Tribunal has ample powers under the provisions of the Code to pass such directions which are necessary for effective resolution/liquidation of the Corporate Debtor”.

- M/s. Jhanvi Rajpal Automotive Pvt. Ltd., Vs R.P. of Rajpal Abhikaran Pvt. Ltd and Anr, in Company Appeal (AT) (Insolvency) No. 1417 of 2022, by Hon’ble NCLAT, Principal Bench, wherein it was held that;

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

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

21. Thus, the contention of the Appellant that RP has to file a suit for eviction of the Appellant under the MP Accommodation Control Act, 1961 cannot be accepted. We thus, in view of the foregoing discussions are of the considered opinion that Adjudicating Authority has rightly allowed -21- Company Appeal (AT) (Insolvency) No. 1417 of 2022 the Application filed by the RP directing the Appellant to vacate from the premises so that Resolution Plan which has been



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

Thus, submitting learned counsel prayed for allowing the application.

20. Mr. T. Niranjan Reddy, Ld. Sr. Counsel for the respondent while strongly, refuting the above stated contentions of the learned counsel for the applicant, strenuously contended that, while the Lease under the registered lease deeds bearing Document Nos. 613 and 616 of 1999 dated 11.03.1999 and 644 of 1999 dated 12.03.1999 entered with *Mrs. Lakshamma and others*, were in *vogue* representing that there was some “restructuring of ownership” of the properties covered by the above leases, the applicant/ corporate debtor herein, had requested the Respondent to *enter* into “fresh lease deeds” for the very same leasehold properties with the



applicant, and pursuant thereto, on 23.02.2017 the respondent had entered into “fresh” leases, with the applicant/ corporate debtor, which were duly registered as document numbers 1088 and 2523 of 2017 respectively.

21. Ld. Sr. Counsel further contends that, the respondent is an educational society and *post entering* of the registered leases dated 23.02.2017, *supra*, expressed its ‘inability’ to bear the lease rentals payable under the said lease deeds due to severe financial & operational difficulties and requested the applicant for *waiver* of the lease rentals and accordingly the ***lease deeds*** dated 23.02.2017 were modified by making the lease rentals payable from 01.04.2021 only.

According to the Ld. Sr Counsel, while things thus stood, it was “realized” that the lease deeds earlier entered on 11.03.1999, 12.03.1999 and 20.03.2010 are alone valid



and enforceable the registered lease deeds entered on 23.02.2017, are unenforceable, hence the registered lease deeds dated 23.02.2017 were cancelled, through two cancellation deeds dated 06-09-2019 (registered as Document Nos.5894 of 2019 & 15605 of 2019), however the Respondent continued to remain in possession of the lease hold Properties by paying 'rent' to the 'lessors' of the lease deeds dated 11.03.1999, 12.03.1999 and 20.03.2010.

22. Therefore, according to the Ld. Sr. Counsel, the present application since filed without disclosing the above facts, despite being aware of the same as the above facts were "recorded" by this Tribunal in its admission order, and there being *no existing tenant landlord relationship* between the applicant and the respondent , the application is liable to be dismissed.



23. Learned senior counsel further contends that in view of the facts and circumstances stated as above, the applicant/ corporate debtor cannot seek *recovery of possession of the subject properties from the respondent* and the remedy, if any, of the applicant is to seek leave from this Adjudicating Authority to approach civil court or the Authority under the Rent Control Act, for recovery of possession, more especially, as the case on hand involves a “serious dispute” in respect of the “ownership” or “the rights” of the applicant over the Banjara Hills & Madhapur properties. Learned senior counsel reiterates that, this Tribunal cannot have jurisdiction to “adjudicate” upon the “title” or “ownership” of the applicant and render a finding on the same when the same is ‘in dispute’ or ‘disputed’ as the I&B Code, 2016 has *neither* expressly



nor impliedly conferred any “such” “jurisdiction” on the Adjudicating Authority.

24. Learned senior counsel submitted that reliance placed by the applicant on M/s. Jhanvi Rajpal Automotive Pvt. Ltd., Vs R.P. of Rajpal Abhikaran Pvt. Ltd and Anr, in Company Appeal (AT) (Insolvency) No. 1417 of 2022, by Hon’ble NCLAT, Principal Bench is misplaced.

25. Learned senior counsel also placed reliance on the decision of the Hon’ble Supreme Court in Embassy Property Developments Pvt Ltd v. State of Karnataka & others, Civil Appeal No.9171 of 2019.

Our analysis and findings.

26. Admittedly, the respondent has been in possession of both Banjara Hills & Madhapur properties *prior to* and *post cancellation* of the two registered lease deeds dated



23.02.2017 by running school therein. The undisputed registered lease deeds dated 23.02.2017, unequivocally state that,

‘M/s. M/s.Butta Infrastructure Pvt. Ltd’ (applicant) has been incorporated to take over the business of M/s Butta Enterprises, the Partnership firm, as a going concern without interruption. And the parties herein entered into fresh contract of lease’.

The respondent as a lessee under the registered lease deeds dated 23.02.2017, appears to have paid rent as per the terms of the above lease for a few months and later sought for *waiver* of lease rentals for a period of five years, i.e. up to 31.03.202. Pursuant thereto, a *modification* of lease dated 07.01.2019 was entered between the applicant and the respondent modifying the clause relating to date of payment of lease rentals. While it was so, both the applicant and the respondent have decided to cancel the above leases hence, on 06.09.2019



have entered into two separate deeds of cancellation of the leases dated 23.02.2017, and the same were duly registered as Document Nos. 5894 of 2019 & 15605 of 2019. The respondent, despite categorically undertaking in the afore stated registered cancellation deeds that it would vacate the leasehold premises and deliver the possession of the same to the applicant, continued to remain in possession of the leased premises.

Here we gainfully refer to section 108 (q) of the Transfer of Property Act, 1882, which is as below,

Section 108. Rights and liabilities of lessor and lessee.

“In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased: —

(A) Rights and Liabilities of the Lessor

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.”



Hon'ble Delhi High Court, in MEC India Pvt. Ltd. v. Lt.

Col. Inder Maira & Ors. 20 , 80 (1999) Delhi Law Times

held that:

“40. Section 108(q) thus ensures that a lessee continues to be liable to the lessor till possession has been actually restored to the lessor and a semblance of relationship subsists till that contingency takes place. His continuing in possession is expressive of his continuing stand that the tenancy, in whatever form, continues. It is said that he does not hold it adversely to the landlord only till he has unequivocally renounced his status as a tenant and asserted hostile title, but even that appears to be doubtful, for in law his possession remains permissive till it has been actually restored to the landlord.

41. In law there is presumption in favour of the continuity of the tenancy and against the possession of the tenant becoming adverse. Furthermore, the doctrine of tenant estoppel, which continues to operate even after the termination of the tenancy, debars a tenant who had been let into possession by a landlord, from disputing the latter's title or pleading adverse possession, without first openly and actually surrendering possession of the tenanted premises and restoring them to the landlord.

42. A tenant who upon determination of the tenancy does not deliver up possession to the landlord as required by Section 108(q), cannot be heard to say that he is not a tenant—be he one at sufferance or be he one from month-to-month. Therefore, unless the landlord is actually put into possession, the premises remain under a tenancy, which unless assented to by the landlord, has the character of one at sufferance.

43. Thus, a tenant at sufferance is one who wrongfully continues in possession after the extinction of a lawful title and that a tenancy at sufferance is merely a legal fiction or device to avoid continuance in possession from operating as a trespass. A tenant remaining in possession of the property after determination of the lease does not become a trespasser, but continues as a tenant at sufferance till possession is restored to the landlord. The possession of an erstwhile tenant is juridical and he is a protected from dispossession otherwise than in due course of law. Although, he is a tenant, but being one at sufferance as aforesaid, no rent can be paid since, if rent is accepted by the landlord he will be deemed to have consented and a tenancy from month-to-month will



come into existence. Instead of rent, the tenant at sufferance and by his mere continuance in possession is deemed to acknowledge both the landlord's title and his (tenant's) liability to pay mesne profits for the use and occupation of the property.

44. To sum up the legal position or status of a lessee whose lease has expired and whose continuance is not assented to by the landlord, is that of a tenant at sufferance. If, however, the holding over has been assented to in any manner, then it becomes that of a tenant from month-to-month. Similar, i.e. from month-to-month, is the status of a lessee who comes into possession under a lease for a period exceeding one year but unregistered. He holds it not as a lessee for a fixed term, but as one from month-to-month or year-to-year depending on the purpose of the lease. If upon a tenant from month-to-month (or year-to-year) and in either of the aforesaid two contingencies, a notice to quit is served, 29 then on the expiry of the period, his status becomes of a tenant at sufferance. Waiver of that notice, or assent in any form to continuation restores to him his status as a tenant from month-to-month, but capable, of once again being terminated with the expiry of any ensuing tenancy month.”

Hon’ble Supreme Court of India in R.V. Bhupal Prasad v.

State of A.P. and Ors., AIR 1996 SC 140, held that,

"Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it, by wrong after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him and a trespasser.”

27. Therefore, in view of the legal position as stated above, cancellation/determination of the registered leases dated 23.02.2017 has altered the ‘title’ of the respondent



herein, from ‘Tenant’ to that of a ‘Tenant at sufferance’ *effective* from 06.09.2019.

28. As regards the plea of the respondent that, ‘*post entering of the registered lease deeds dated 23.02.2017, it was realized that the lease deeds of the years 1999 entered with Mrs. Lakshamma and others, alone are valid and the lease deeds of the year 2017 are invalid and un enforceable, as such the registered lease deeds of the year 2017 were cancelled,*’, it may be stated that the said plea does not find place in the registered cancellation deeds of the registered leases dated 23.02.2017 and on the contrary in the cancellation deeds dated 06.09.2019 it was mentioned that,

“That notwithstanding the foregoing, if, on or before the expiration date, lessee vacates the demised premises and leaves such demised premises in reasonably good condition.”



Moreover, since the respondent unequivocally “accepted” the ownership of the applicant/ corporate debtor in respect of both Banjara Hills and Madhapur properties in the registered lease deeds dated 23.02.2017 and also in the registered cancellation deeds, besides having availed the benefit of “waiver” of the lease rentals for a period of five years, is *precluded* under law, from disputing the lessors title or ownership in respect of the leasehold property.

Hon’ble Supreme Court in Tej Bhan Madan vs. II Additional District Judge and Ors. (1988) 3 SCC, held that;

"This state of the law in reality tends to maintain right and justice and the enforcement of contracts which men enter into with each other - for so long as a lessee enjoys everything which his lease purports to grant how does it concern him what the title of the lessor ... is?" (Emphasis supplied)

In the same ruling it was further held that,



“After the creation of the tenancy if the title of landlord is transferred or devolves upon a third person the tenant is not estopped from denying such title. However, if the tenant having been apprised of the transfer, assignment or devolution of rights acknowledges the title of transferee either expressly or by paying rent to him, the rule of estoppel once again comes into operation for it is unjust to allow tenant to approbate and reprobate and so long as the tenant enjoys everything which his lease purports to grant how does it concern him what the title of the lessor is’. (Emphasis is ours)

In Anar Devi (Smt.) vs. Nathu Ram , (1994) 4 SCC 250, the Hon’ble Apex Court, considered the views of Jessel, M.R., who adverted to "doctrine of tenant's estoppel" in Stringer's Estate,

Shaw v. Jones-Ford, where it was held as under:

"Where a man having no title obtains possession of land under a demise by a man in possession who assumes to give him a title as tenant, he cannot deny his landlord's title, as, for instance, if he takes for twenty-one years and he finds that the landlord has only five years' title, he cannot after five years set up against the landlord the jus tertii, though, of course, the real owner can always recover against him. That is a perfectly intelligible doctrine. He took possession under a contract to pay rent so long as he held possession under the landlord, and to give it up at the end of the term to the landlord, and having taken it in that way he is not allowed to say that the man whose title he admits and under whose title he took possession has not a title. That is a well-established doctrine. That is estoppel by contract." (Emphasis is ours)

Hon'ble Supreme Court in Jaspal Kaur Cheema and another vs. Industrial Trade Links and others (2017) 8 SCC 592, held that:



“Section 116 of the Evidence Act deals with the estoppel of a tenant founded upon contract between the tenant and his landlord. It enumerates the principle of estoppel which is merely an extension of principle that no person is allowed to approbate and reprobate at the same time. The tenant who has been let into possession cannot deny his landlord's title. The principle of estoppel arising from contract of tenancy is based upon the principle of law and justice that a tenant who could not have got possession but for a contract of tenancy admitting the right of the landlord, should not be allowed to put his landlord in some inequitable situation taking undue advantage of the position that he got and any probable defect in the title of his landlord.

Now, the question is whether it is permissible for the respondent-tenant to deny his landlord's title having regard to Section 116 of the Indian Evidence Act. Section 116 of the Evidence Act reads as under:

"116 No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given."

In **Bansraj Laltaprasad Mishra v. Stanley Parker Jones**,

2006 3 SCC 91, Hon'ble Supreme Court, has enumerated the policy underlying **Section 116** as follows:

"13.The underlying policy of Section 116 is that where a person has been brought into possession as a tenant by the landlord and if that tenant is permitted to question the title of the landlord at the time of the settlement then that will give rise to extreme confusion in the matter of relationship of the landlord and tenant and so the equitable principle of estoppel has been incorporated by the legislature in the said section.

14. The principle of estoppel arising from the contract of tenancy is based upon a healthy and salutary principle of law and justice that a tenant who could not have got possession but for his contract of tenancy admitting the right of the landlord should not be allowed to launch his landlord in some inequitable situation taking undue advantage of the possession that he got and any



probable defect in the title of his landlord. It is on account of such a contract of tenancy and as a result of the tenant's entry into possession on the admission of the landlord's title that the principle of estoppel is attracted. Section 116 enumerates the principle of estoppel which is merely an extension of the principle that no person is allowed to approbate and reprobate at the same time."

In Keshar Bai v.Chhunulal, 2014 11 SCC 438, this Court has held that;

"a tenant is precluded from denying the title of the landlady on the general principle of estoppel between the landlord and the tenant and this principle in its basic foundation, means no more than that under certain circumstances law considers it unjust to allow a person to approbate and reprobate".

Hon'ble Supreme Court of India, in Nand Ram (died) through his Legal representatives and others, supra, wherein it was held that;

"The respondent has admitted the ownership of the appellants before the Reference Court. Such plea operates as estoppel against the respondent in respect of the title of the appellants"

In the case on and the respondent in categorical terms has admitted the ownership of the applicant in the registered leases and also in the cancellation deeds as well.



Indisputably, the balance sheets of the applicant/ Corporate Debtor M/s. Butta Infrastructure Pvt., Ltd., categorically state that all properties of the erstwhile partnership firm stood legally transferred in Company's name. Here it may be stated that the plea of the respondent that mutation of Company's name in the revenue/registration records since not done, and the subject properties continue to remain in the names of the erstwhile partners of M/s Butta Enterprise, the applicant cannot claim ownership right, is wholly unsustainable as it is well settled law that entries in the revenue records cannot confer 'ownership' or 'title' of property. The Tripartite Agreement dated 28.03.2018 (Stamp Paper date) among LIC Housing Limited, Meridian School (the respondent herein) and Butta Infrastructure Pvt. Ltd (the corporate debtor), the Memorandum Deposit of Title



Deeds MODT dated 20.04.2018, the undertaking by the respondent /Meridian Educational Society dated 21.03.2018, the letter dated 21.01.2017 by Mr. B.S. Neelakanta purportedly given at the time of conversion of the partnership firm into “Private Limited” company, stating, *inter alia*, that he (Mr. B.S. Neelakanta) is the “Secretary of M/s. Meridian Educational Society”, besides the “minutes of the Stakeholders Committee” meeting convened on 22.07.2022 by the applicant wherein Mr. Butta Neelakanta, who is one of the promoters of the Corporate Debtor unequivocally reaffirmed that the properties at “Banjara Hills and Madhapur” belong to the Corporate Debtor, estops the respondent from denying the applicant/ corporate debtor’s “ownership” right in respect of both Banjara Hills & Madhapur properties.



Therefore, in the light of our discussion as above, we hold that the respondent herein is “estopped” both on facts and also under law, from denying the “title” of the lessor in respect of the “Banjara Hills and Madhapur” properties which covered by the registered lease deeds dated 23.02.2017 and its registered cancellation deeds dated 06.09.2019.

Jurisdiction of the Adjudicating Authority:

29. While the Ld. Counsel for the petitioner firmly asserts that this Adjudicating Authority has jurisdiction to direct the tenant in occupation of the property of the lessor to vacate and deliver the same to the lessor, especially under the facts and circumstances of the present case, Ld. Sr. Counsel for the respondent *strenuously* contends that this Tribunal has no jurisdiction to dwell upon the issues relating to “Tenancy” as the same are specifically



governed by separate laws, more especially when there is a dispute as to the ‘ownership’ or ‘title’ of the party seeking eviction. Ld. Sr. Counsel for the respondent further submits that “Section 33(5) and Section 35 (1) (k) of IB Code, enables the Liquidator to obtain permission of the Tribunal, to initiate/pursue the action for eviction before a competent court of law in terms of the provisions of Transfer of Property Act, 1872, or the Rent Control Act, as the case may be , but cannot seek an order of eviction from the Adjudicating Authority, whose jurisdiction is only summary.

Ld. Counsel for the applicant in support of his submission that this Adjudicating Authority has Jurisdiction to direct the tenant to vacate and handover the vacant premises to the lessor, relied on the following rulings;



- M/s. Jhanvi Rajpal Automotive Pvt. Ltd., Vs R.P. of Rajpal Abhikaran Pvt. Ltd and Anr, in Company Appeal (AT) (Insolvency) No. 1417 of 2022, by Hon'ble NCLAT, Principal Bench, wherein it was held that;

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

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

21. Thus, the contention of the Appellant that RP has to file a suit for eviction of the Appellant under the MP Accommodation Control Act, 1961 cannot be accepted. We thus, in view of the foregoing discussions are of the considered opinion that Adjudicating Authority has rightly allowed -21- Company Appeal (AT) (Insolvency) No. 1417 of 2022 the Application filed by the RP directing the Appellant to vacate from the premises so that Resolution Plan which has been approved can be implemented. We thus do not find any merit in the Appeal; the Appeal is dismissed.

- Embassy Properties Developments Pvt. Ltd., vs State of Karnataka & others, wherein it was held that,



“Section 60 of the Code is very broad in its sweep, in that it speaks about any question of law or facts arising out of or in relation to insolvency resolution. It is only when a decision taken by the government or a statutory authority in relation to a matter which is in the realm of public law, cannot be adjudicated by the NCLT”

- **Indus Biotech (P)Ltd., Vs Kotak India Ventures (Offshore) Fund**, wherein it was held that,

“The position of law that the IB Code shall override all other laws as provided under Section 238 of the IB Code needs no Elaboration.’

- **Sangam (India) Ltd.,Vs Aarti Suitings Pvt., Ltd.**, wherein an NCLT coordinate Bench, at Jaipur, had held that,

“the respondent therein to handover the possession of the property to the Resolution Professional (Kindly refer table of case laws below). This clearly establishes that this Hon’ble Tribunal has ample powers under the provisions of the Code to pass such directions which are necessary for effective resolution/liquidation of the Corporate Debtor”.

Ld. Sr. Counsel placed Reliance on the following rulings:

- **Embassy Property Developments Pvt. Ltd. V. State of Karnataka & amp; Ors.** (Civil Appeal No. 9171 of 2019, wherein it was held that,



“37. It was argued by all the learned Senior Counsel on the side of the appellants that an Interim Resolution Professional is duty bound under Section 20(1) to preserve the value of the property of the Corporate Debtor and that the word “property” is interpreted in Section 3(27) to include even actionable claims as well as every description of interest, present or future or vested or contingent interest arising out of or incidental to property and that therefore the Interim Resolution Professional is entitled to move the NCLT for appropriate orders, on the basis that lease is a property right and NCLT has jurisdiction under Section 60(5) to entertain any claim by the Corporate Debtor.

38. 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(f)(vi) of the IBC, 2016 together with the Explanation thereunder. Section 18 (f) (vi) reads as follows:

“(f) assets subject to the determination of ownership by a court or authority”.

39. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority. 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 (f)(vi). Another important aspect is that under Section 25 (2) (b) of 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.”

“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 subsection (1), the resolution professional shall undertake the following actions:

(a).....

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings.”

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the



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

30. 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 a right. Ld. Sr. Counsel, relied on the rulings in:

- Gujarat Urja Vikas Nigam Limited v. Amit Gupta and Others, (2021) 7 SCC 2019 (Para 67 and 165 – it was held that,

“the jurisdiction under Section 60(5)(c) can only be extended to adjudicate disputes arising solely from or which relate to the insolvency of the Corporate Debtor”.



- Tata Consultancy Services Limited v. Vishal Ghisulal Jain, Resolution Professional, SK Wheels Private Limited MANU/SC/1118/2021 (Para Nos. 22 – 30),
- IVRCL v. Hindustan Copper Limited, MANU/ NC/ 0651/ 2022 (Para Nos. 11-14),
- Sumit Binani, Resolution Professional of KSK Mahanadi Power Company Limited v. V. Venkatachalam, Resolution Professional of KSK Water Infrastructures Private Limited (Para 65 Onwards), and
- Precision Fasteners Limited v. Siddhi Edibles Private Limited, NCLT Mumbai Bench (Para 21), wherein it was categorically held that:

“Tribunal’s jurisdiction does not extend to subjects such as recovery of money, specific performance, eviction proceedings etc., which were to be dealt with by



civil courts only, in and under the guise that the IBC which is a complete code, the adjudicating authority can neither enlarge or amplify its jurisdiction.”

- **Nand Ram v. Jagdish Prasad (2020) 9 SCC 393** at

Paras 29 and 38, wherein it was held that:

“29. The defendant was inducted as a lessee for a period of 20 years.

The lease period expired on 23rd September, 1974. Even if the lessee had not paid rent, the status of the lessee would not change during the continuation of the period of lease. The lessor had a right to seek possession in terms of clause 9 of the lease deed. The mere fact that the lessor had not chosen to exercise that right will not foreclose the rights of the lessor as owner of the property leased. After the expiry of lease period, and in the absence of payment of rent by the lessee, the status of the lessee will be that of tenant at sufferance and not a tenant holding over. Section 116 of the TP Act confers the status of a tenant holding over on a yearly or monthly basis keeping in view the purpose of the lease, only if the lessor accepts the payment of lease money. If the lessor does not accept the lease money, the status of the lessee would be that of tenant at sufferance. This Court in the judgments reported as Bhawanji Lakhamshi and Others v. Himatlal Jamnadas Dani and Others¹³, Badrilal v. Municipal Corpn. of Indore¹⁴ and R.V. Bhupal Prasad v. State of A.P and Others¹⁵ and also a judgment in Sevoke Properties Ltd. v. West Bengal State Electricity Distribution Company Ltd. examined the scope of Section 116 of the TP Act and held that the lease would be renewed as a tenant holding over only if the lessor accepts the payment of rent after the expiry of lease period. This Court in Bhawanji Lakhamshi held as under:

“9. The act of holding over after the expiration of the term does not create a tenancy of any kind. If a tenant remains in possession after the determination of the lease, the common law rule is that he is a tenant on sufferance. A distinction should be drawn between a tenant continuing in possession after the determination of the term with the consent of the landlord and a tenant doing so without his consent. The former is a tenant at sufferance in English Law and the latter a tenant holding over or a tenant at will. In view of the concluding words of Section 116 of the Transfer of Property Act, a lessee holding over is in a better position than a tenant at will. The assent of the land- lord to the continuance of possession after the determination of the tenancy will create a new tenancy. What the section contemplates is that on one side there should be an offer of taking a new lease evidenced by the lessee or sub-lessee remaining in possession of the property after his term was over and on the other side there must be a definite consent to the continuance of possession by the landlord expressed by acceptance of rent or otherwise.”



Paras 30 to 37 :

“38. Thus, the suit of the plaintiffs filed within 12 years of the determination of the tenancy by efflux of time is within the period of limitation. The defendant has not proved forfeiture of tenancy prior to the expiry of lease period. Mere non-payment of rent does not amount to forfeiture of tenancy. It only confers a right on the landlord to seek possession. The plaintiffs have filed a suit for possession against the defendant on the basis of determination of tenancy, such suit is governed by Article 67 alone.”

31. Referring to the ruling in re, M/s. Jhanvi Rajpal, *supra*, relied on by the Ld. Counsel for the petitioner, Ld. Sr. Counsel contended that, unlike in *Jhanvi Rajpal*, *supra*, in the case on hand, the *title of the lessors* of the leasehold property covered under the *leases dated 23.02.2017* since is *disputed* by the respondent, on facts the ruling *in re*, Jhanvi Rajpal is not applicable to the case on hand.

Our analysis and findings:

The law on the power of this Adjudicating Authority to direct the Liquidator to take possession of the Corporate Debtor's property, is no more *res integra*, as the Hon'ble



NCLAT, Principal Bench in M/s. Jhanvi Rajpal Automotive Pvt. Ltd. (supra) has firmly held that:

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

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

21. Thus, the contention of the Appellant that RP has to file a suit for eviction of the Appellant under the MP Accommodation Control Act, 1961 cannot be accepted. We thus, in view of the foregoing discussions are of the considered opinion that Adjudicating Authority has rightly allowed -21- Company Appeal (AT) (Insolvency) No. 1417 of 2022 the Application filed by the RP directing the Appellant to vacate from the premises so that Resolution Plan which has been approved can be implemented. We thus do not find any merit in the Appeal; the Appeal is dismissed.”

32. However, the learned senior counsel for the respondent would contend that the above ruling was rendered based on the fact that there was *no dispute* to the ownership/ right of the lessor in respect of the lease hold property therein, unlike the case on hand, where the title/ right of the lessor of the registered lease deed dated



23.02.2017 is disputed by the respondent. Hence the above ruling has no application to the case on hand.

33. Having heard both the learned counsels, on perusal of the ruling in Jhanvi Rajpal Automotive Pvt. Ltd. (supra), we wish to state that insofar as the case on hand is concerned, in our discussion in the preceding paras, relying on the case law which we have stated, firmly held that the respondent herein is precluded under the law from denying/ questioning the ownership/ right of the applicant/ lessor herein in respect of the leasehold properties. So much so, when the respondent is precluded under the law from raising any question/dispute relating to the title/ right of the lessor, the contention that as the respondent has raised a dispute, the Tribunal cannot order its eviction from the leasehold property , does not hold any water.



Moreover, except the *ipse dixit*, of the respondent, not even a semblance of basis for the claim that a *fresh* tenancy has emerged post determination of the registered leases dated 23.02.2017, between the respondent and Mrs. Lakshamma and others in respect of the leasehold properties has been pleaded or placed. There is not even whisper anywhere in the pleadings of the respondent as to the date of commencement of the so-called fresh tenancy, its terms such as the duration, or the quantum of rent etc. No proof of payment of rent under the alleged fresh lease has been filed. Above all, this belated claim of fresh tenancy between the respondent and Mrs. Lakshamma and others, is *unilateral and self-proclaimed*, as no record is placed to show that the so-called lessors Mrs. Lakshamma and others, have accepted a fresh tenancy



with the respondent in respect of the subject property post determination of the registered lease dated 21.07.2017.

34. Therefore, the contention that this Tribunal has no jurisdiction to direct the Liquidator to take possession of the leasehold property is hereby rejected.

The point is answered accordingly.

35. Before we part with, we wish to state that like resolution of the insolvency of Corporate Debtor, liquidation is also a time-bound process, and any delay in taking control of the assets of the Corporate Debtor by the Liquidator would certainly adversely impact the value maximisation. Insofar as the case on hand is concerned, the last of the registered lease deeds executed between the applicant and the respondent is dated 23.02.2017. Having executed lease cancellation deeds dated 06.09.2019, the respondent was under legal obligation to deliver vacant



physical possession of the leasehold property to the lesser. However, the same did not happen. The lease rentals payable in terms of registered lease deed dated 23.02.2017 are also not paid claiming waiver by the respondent.

36. As per the application filed under section 7 of the I&B Code, 2016 against the corporate debtor, the corporate debtor has defaulted a sum of Rs. 364,54,26,112/- as on 30.07.2020.

37. According to the Liquidator the subject assets are the only valuable immovable properties that the corporate debtor has. Therefore, the endeavour of the Liquidator is to secure vacant physical possession of these properties as early as possible for the purpose of the ongoing, already delayed liquidation process.



38. So much so, it is highly essential to secure custody or control of all the assets, properties, effects and actionable claims of the corporate debtor by the Liquidator., lest even the process of liquidation will suffer severely.

39. Therefore, in the light of our discussion and the finding on the point above, we are of the firm view that the applicant/liquidator is entitled to seek eviction of the respondent from the afore stated properties. Hence we hereby direct the respondent to vacate and handover the vacant possession of the properties of the applicant situate at Banjara Hills & Madhapur to the applicant. However, considering the fact that the educational institutions are being run in the subject premises, we grant 60 (sixty) days' time from the date of receipt of the copy of this order, for vacating the premises.



40. We further observe that in default of vacating and delivering vacant and peaceful physical possession of the above mentioned properties to the applicant/liquidator as directed above, the applicant is at liberty to approach this Tribunal, for necessary directions for enforcement of this order. This Application is accordingly allowed, however without costs.

In the result, this Application is accordingly allowed, however without costs.

SD/-

CHARAN SINGH
MEMBER (TECHNICAL)

karim

SD/-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
MEMBER (JUDICIAL)