

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

**Company Appeal (AT) (Insolvency) No.187 of 2026**

[Arising out of Order dated 12.01.2026 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-1 in IA (I.B.C) 1697(MB)2025 in CP(IB) 494/MB/2019]

**In the matter of:**

**Classic Marble Company Pvt. Ltd.**

**...Appellant**

**Vs.**

**Truvisory Insolvency Professionals Pvt. Ltd. & Anr.**

**...Respondents**

**For Appellant: Mr. Abhijeet Sinha, Sr. Advocate with Mr. Abhishek Prasad, Mr. Vedant Sharma, Advocates.**

**For Respondents: Mr. Krishnendu Datta, Sr. Advocate with Mr. Milan Singh Negi, Mr. Ashish Pyasi, Mr. Nikhil Kumar Jha, Ms. Katyayani, Mr. Yash Tandon, Mr. Utkarsh, Advocates.**

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

**27<sup>th</sup> March, 2026)**

**Ashok Bhushan, J.**

This Appeal has been filed by the Appellant challenging the order dated 12.01.2026 passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench-I in IA (I.B.C) 1697(MB)2025 filed by the Resolution Professional of the Corporate Debtor- 'Shree Ram Urban Infrastructure Ltd.' The Application filed by the Resolution Professional seeking eviction of the Appellant who was occupying the part of the premise of the Corporate Debtor has been allowed by the impugned order directing the Appellant to vacate and

handover possession within 30 days. Aggrieved by the said order, this Appeal has been filed.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:-

2.1. The Corporate Debtor- Shree Ram Urban Infrastructure Ltd. is a Real Estate Company engaged in infrastructure development. The Corporate Debtor in February/ March 2008 permitted the Appellant, who was supplying marbles and stones to the Corporate Debtor to set up a sales office at the premises to avoid transportation delays and minimise logistical costs. Appellant set up sales office on part of Plot No.9 situated at Shriram Mills premises. The Appellant was initially supplying the marbles and stones to the Corporate Debtor and was catering Corporate Debtor exclusively. However, from December 2008, Appellant was permitted to carry on its business operation from the premises by catering to other customers. A Winding-Up Petition No.1066 of 2015 was filed by Action Barter Private Limited against the Corporate Debtor before the Bombay High Court seeking winding up of the Corporate Debtor. On 05.10.2016, Bombay High Court passed an order appointing an Official Liquidator to take charge of the assets/ properties and records of the Corporate Debtor. Official Liquidator appointed by the Bombay High Court went to take possession of the premises from the Appellant who was working adjacent to Gate No.3, Plot No.9 on 04.06.2019. Representative of the Appellant informed that there is no prior intimation from the Official Liquidator to vacate the premises, he sought at least 30 days' time to vacate the premises. The liquidator on 25.06.2019 issued a letter to the Appellant to

vacate the premises. The date for handing over possession was fixed as 01.07.2019. Appellant filed a Company Application No.261 of 2019 in Company Petition No.1066 of 2015 before the Bombay High Court seeking restraint order from taking possession of the property and permitting Appellant to hold possession of property as agent of liquidator. No written order was passed by the Bombay High Court, however, the Advocate of Appellant sent an e-mail that Court has orally directed from not taking possession and 03.07.2019 is the date fixed in the application. In the application, no orders could be passed in favour of the Appellant by the Bombay High Court, however, Appellant continued to be in occupation of the premises. On an application under Section 7 filed by Srei Equipment Finance Ltd., CIRP against the Corporate Debtor commenced on 06.11.2019. The Respondent No.1 filed a claim before the Resolution Professional claiming principal amount of Rs.1,34,86,201/- and the interest @ of 18% totalling to Rs.3,06,51,041/- as outstanding against the Corporate Debtor. The Resolution Professional by letter dated 10.02.2023 informed the Appellant that they are in unauthorised and lawful occupation of part of the property. However, no response was received by the Resolution Professional and the Resolution Professional again sent an eviction notice dated 20.03.2025 to Appellant informing that occupation of Appellant is encroachment and unlawful as the property is owned by the Corporate Debtor, hence, the Appellant must vacate the premises. Appellant did not vacate the premises nor sent any response. IA No.1697 of 2025 was filed by the Resolution Professional seeking a direction in discharge of his duties to protect the

interest of the Corporate Debtor. Resolution Professional sought necessary co-operation /assistance of police personnel for taking back the peaceful and vacant possession to the property. In the application filed by the Resolution professional, reply was filed by the Appellant raising plea that Adjudicating Authority has no jurisdiction to evict tenant/lessee. There is no valid authorisation of assignment in favour of the RP and necessary facts have been suppressed by the Resolution Professional. The case of the Appellant was that it supplied marbles and stones from 2006 to 2013 and principal amount of Rs.1,34,86,201/- is due. It was pleaded that the Corporate Debtor permitted the Appellant was allowed to continue to occupy so as to settle the outstanding dues from the Corporate Debtor. The application filed by the Resolution Professional was fixed for hearing on 02.12.2025. Appellant filed a S.C. Suit No.2944 of 2025 on 01.12.2025 before City Civil Court at Bombay seeking perpetual injunction from interfering with the Appellant's possession of the premises. Hearing in application filed by the Resolution Professional being IA No.1697 of 2025 which was concluded on 02.12.2025 and parties were asked to file written submissions by 10.12.2025. On 09.12.2025, City Civil Court passed an interim order granting an ad-interim relief in terms of prayer clause restrained from disturbing and or interfering with the plaintiffs use, occupation, possession over the suit premises till next date, save and except by following due process of law. Appellant claimed to have mentioned the matter before the Adjudicating Authority on 09.01.2026 regarding ad-interim order passed by City Civil Court. On 12.01.2026, Adjudicating

Authority passed the impugned order allowing the application. Adjudicating Authority in paragraph 29 issued following directions:-

*“29. After consideration of the facts before us, we find that the assertions of Respondent No. 1 to justify its occupation of said occupation as legal are contradictory to the facts on record and are false as is revealed from the aforesaid analysis. Accordingly, we do not find any merit in the contention that the occupation of said premises by Respondent No. 1 is legal, thus, we have no hesitation to hold that the Respondent No. 1 is in unlawful and illegal occupation of said premises and it is obligated to vacate the same forthwith. Since, the Respondent No. 1 has stored its goods thereat, we consider it appropriate to allow a period of 30 days for handing over the peaceful and vacant possession of said premises to the applicant. Having said so, we request Respondent No. 2 to extend necessary assistance and co-operation to the Applicant for peaceful and vacant possession of the said premises from Respondent No. 1 as and when their assistance is requested by the Applicant herein.”*

2.2. Adjudicating Authority in the impugned order held that occupation and possession of Appellant is unlawful and illegal. The assertion of Appellant to justify its occupation are false and contradictory to the facts on record. Aggrieved by the order, this Appeal has been filed.

3. We have heard Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant and Shri Krishnendu Datta, Learned Senior Counsel for the Respondent No.1.

4. Learned Counsel for the Appellant challenging the order submits that the Adjudicating Authority erred in entertaining and allowing the eviction application despite the possession of the premises having no nexus with the CIRP of the Corporate Debtor. It is submitted that under Section 60(5)(c), Adjudicating Authority has no jurisdiction to entertain the application filed by the Resolution Professional for eviction of the Appellant. Adjudicating Authority does not have jurisdiction over matters which are *dehors* the insolvency proceedings. The Adjudicating Authority is not empowered to pass an order of eviction. It is submitted that the Adjudicating Authority failed to appreciate that the Appellant had an oral tenancy with the Corporate Debtor. It is submitted that oral lease with the Corporate Debtor is permissible under the provisions of the Transfer of Property Act, 1882. Oral understanding between the parties has not been correctly appreciated by the Adjudicating Authority. The Adjudicating Authority disregarded the oral direction passed by the Bombay High Court on 01.07.2019 as well as the interim order dated 09.12.2025 passed by the City Civil Court. It is submitted that the liquidator could not take possession due to oral order passed by the Bombay High Court in the application which was filed by the Appellant in the pending Company Petition before the Bombay High Court. Further interim injunction granted by City Civil Court on 09.12.2025 has been disregarded although fact of obtaining interim order on 09.12.2025 was brought into notice of the Adjudicating Authority but the same has not been dealt with. It is further submitted that the CIRP proceeding against the Corporate Debtor has been stayed since 2021 and possession of the premises is not essential for the CIRP.

Resolution Professional has not shown any reason or justification for asking for possession of the premises from the Appellant. When CIRP is stayed, there is no requirement of possession. Appellants are continuing in possession for last 17 years and carrying on business since 2008. Appellant has also obtained necessary registration from the statutory authorities and paying its bills and taxes. The order of the Adjudicating Authority directing for eviction of the Appellant is not in accordance with law. Learned Counsel for the Appellant has placed reliance on various judgments of the Hon'ble Supreme Court and this Tribunal which we shall refer to while considering the submissions in detail.

5. Shri Krishnendu Datta, Learned Senior Counsel appearing for the Respondent submits that the Appellant is in unauthorised occupation of premises of the Corporate Debtor. There is no written contract/agreement between the Corporate Debtor and the Appellant. The Appellant has also failed to prove any oral contract pertaining to any tenancy created in favour of the Appellant. Appellant was only permitted to occupy the part of premises for stocking its marbles and stones. Only written letter relied by the Appellant is letter dated 22.12.2008 of the Corporate Debtor permitting it to occupy the premises to stock its marbles. At no point of time Corporate Debtor granted any lease or license in favour of the Appellant. When the liquidation proceedings were initiated before the Bombay High Court in petition under Sections 433(e), 434 and 439 of the Companies Act, 1956 by order dated 05.10.2016, Provisional Liquidator went on the spot and took symbolic possession on 04.06.2019. Liquidator also issued letter on 25.06.2019 asking

the Appellant to give possession and 01.07.2019 was date fixed for taking physical possession. Company Application was filed by the Appellant being Company Application No.261 of 2019 in winding up petition in which no order was ever passed in favour of the Appellant. After initiation of CIRP against the Corporate Debtor on 06.11.2019, Resolution Professional twice issued letter to Appellant to vacate the premises which was not complied with leading to the Resolution Professional filing an application directing for eviction of the Appellant. Adjudicating Authority is the appropriate authority to decide the issue raised by the Resolution Professional in the application. It is the duty of the Resolution Professional to take possession of the property belonging to the Corporate Debtor under Section 18(1)(f) and Section 25 of the IBC. The submission of the Appellant that the Adjudicating Authority has no jurisdiction to direct for eviction of the Appellant is wholly erroneous. The submission of the Appellant relying on order of the City Civil Court dated 09.12.2025 also does not support the Appellant, Section 63 of the IBC clearly exclude the jurisdiction of any Civil Court. Further under the order dated 09.12.2025, only protection was that Appellant shall not be evicted without due process of law. Appellant is being evicted under due process of law, hence, the order of the Civil Court does not come to any rescue. Reliance placed on oral order passed by the Bombay High Court on 01.07.2019 also does not improve any case of the Appellant since in the application filed by the Appellant, no order was passed by the Bombay High Court protecting the Appellant. More so, CIRP has been commenced, it is the Adjudicating Authority which has all jurisdiction to entertain the application for eviction.

Learned Counsel for the Respondent has placed reliance on various judgments of the Hon'ble Supreme Court and this Tribunal which we shall refer to while considering the submissions in detail.

6. From the submissions of the Counsel for the parties and materials on the record, following are the issues which arise for consideration:-

(I) Whether the application filed by the Resolution Professional being IA No.1697 of 2025 praying for eviction of the Appellant from part of the premises of the Corporate Debtor was not maintainable and Adjudicating Authority has no jurisdiction to entertain and decide the application?

(II) Whether Corporate Debtor has given any tenancy right/ lease hold right/ license in favour of the Appellant and Appellant has been able to prove any such rights by any relevant materials before the Adjudicating Authority?

(III) Whether by virtue of interim injunction issued by the City Civil Court on 09.12.2025 Adjudicating Authority was precluded to pass the impugned order dated 12.01.2026?

**Issue No. (I)**

7. The first submission of the Learned Counsel for the Appellant is that the Adjudicating Authority has no jurisdiction to entertain the application filed by the Resolution Professional for eviction of the Appellant. It is submitted that the application was not maintainable under Section 60(5). It is submitted that the Adjudicating Authority does not have jurisdiction over

matters which are *dehors* the insolvency proceedings and it is imperative for the Resolution Professional to establish a nexus between the subject matter and the CIRP. In event, a party is purported in unlawful possession of the Corporate Debtor's premises, Resolution Professional must approach an appropriate forum for redressal of his grievances in accordance with law. Adjudicating Authority is not a Civil Court and if Corporate Debtor has to exercise its right, it cannot through Resolution Professional bypass the procedure and approach the Adjudicating Authority. As noted above, the above submissions are refuted by Counsel for the Respondent contending that the Adjudicating Authority has complete jurisdiction to entertain the application.

8. There is no dispute between the parties that the part of premises of the Corporate Debtor measuring 1701.3 sq. mtr. out of area 3046 sq. mtr. is in possession of the Appellant. It is an admitted fact that the Corporate Debtor is owner of the premises. It is the duty of the IRP under Section 18(1)(f) to take control and custody of any asset to which Corporate Debtor has ownership rights. Section 18(1)(f) is as follows:-

***“18. Duties of interim resolution professional. -***  
*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 –*

- (i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;*
- (ii) assets that may or may not be in possession of the corporate debtor;*
- (iii) tangible assets, whether movable or immovable;*
- (iv) intangible assets including intellectual property;*
- (v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;*
- (vi) assets subject to the determination of ownership by a court or authority;”*

9. Under Section 25 of the IBC, it is the duty of the Resolution Professional to preserve and protect the assets of the Corporate Debtor. Section 25(1) & (2)(a) are 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, namely: -*

- (a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;*
- (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 or arbitration proceedings;*
- (c) raise interim finances subject to the approval of the committee of creditors under section 28;*
- (d) appoint accountants, legal or other professionals in the manner as specified by Board;*
- (e) maintain an updated list of claims;*
- (f) convene and attend all meetings of the committee of creditors;*
- (g) prepare the information memorandum in accordance with section 29;*
- [(h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.]*
- (i) present all resolution plans at the meetings of the committee of creditors;*
- (j) file application for avoidance of transactions in accordance with Chapter III, if any; and (k) such other actions as may be specified by the Board.”*

10. The IBC thus, cast a duty and obligation on the IRP and the Resolution Professional to take control of assets of the Corporate Debtor. When the Corporate Debtor is admittedly owner of the assets which according to the

Corporate Debtor is in unlawful possession of the Appellant, we are of the view that Resolution Professional had every jurisdiction to file an application before the Adjudicating Authority for taking possession of the assets. Learned Counsel for the Appellant in support of the submission that the Adjudicating Authority has no jurisdiction to entertain the application has relied on the judgment of the Hon'ble Supreme Court in "**Gujarat Urja Vikas Nigam Ltd. vs. Amit Gupta- (2021) 7 SCC 209**", "**Tata Consultancy Services Ltd. vs. SK Wheels Private Limited- (2022) 2 SCC 583**" and "**Embassy Property Developments (P) Ltd. vs. State of Karnataka- (2020) 13 SCC 308**". The Hon'ble Supreme Court in a subsequent judgment "**Victory Iron Works Limited vs. Jitendra Lohia and Anr.- (2023) 7 SCC 227**" had occasion to consider the nature of jurisdiction of the NCLT in respect to an application filed by the Resolution Professional to protect its possession. In the said case, the Hon'ble Supreme Court has also occasion to consider the judgment of the Hon'ble Supreme Court in **Tata Consultancy Services Ltd.** and **Embassy Property Developments (P) Ltd.** (supra). In the above case, the Resolution Professional of the Corporate Debtor had filed an application before the Adjudicating Authority in the CIRP proceeding of the Corporate Debtor seeking direction to Respondent not to obstruct the sole and exclusive possession of the property. The Appellant- Victory Iron Works Limited claiming to be licensee objected to the application even questioning the jurisdiction of the NCLT to entertain the application. The application was allowed by NCLT against which order Appeal was filed which was dismissed and the matter was taken to the Hon'ble Supreme Court in the above case.

One of the questions which was framed by the Hon'ble Supreme Court for discussion and analysis in Paragraph 16.2 which is as follows:-

*“16.2. (2) Whether NCLT and NCLAT have exercised a jurisdiction not vested in them in law by seeking to recover/protect the possession of the corporate debtor?”*

11. The Hon'ble Supreme Court had considered the above question i.e. Issue No.2 in paragraphs 42 to 53. The Hon'ble Supreme Court had referred to Section 18 of the IBC and considered the said issue and has considered the judgment of the Hon'ble Supreme Court in **Gujarat Urja Vikas Nigam Ltd., Tata Consultancy Services Ltd.** and **Embassy Property Developments (P) Ltd.** (supra). In paragraphs 42 and 43, following was observed:-

*“42. But as rightly pointed out by the learned counsel for the resolution professional, the Explanation under Section 18 begins with a caveat, namely, “for the purposes of this Section”. Therefore, the exclusion of assets owned by a third party, but in the possession of the corporate debtor held under contractual arrangements, from the definition of the expression “assets”, is limited to Section 18. In other words, the Explanation under Section 18 does not extend to Section 25.*

*43. It must be mentioned here that the Explanation was originally limited to “the sub-section” but by Act 26 of 2018, the word “sub-section” was substituted by the word “section”. Therefore, the Explanation under Section 18 will not provide an escape route for the appellants. In any case, the bundle of rights and interests created in favour of the corporate debtor may*

*even tantamount to creation of an implied agency under Chapter X of the Contract Act, 1872 and such agency may not even be amenable to termination in view of Section 202 of the said Act, since the creation of the same in favour of the corporate debtor was coupled with flow of consideration.”*

12. Further, considering the earlier judgment of the Hon’ble Supreme Court in paragraphs 45, 46, 47 and 48 following was laid down:-

*“45. Embassy Property Developments [Embassy Property Developments (P) Ltd. v. State of Karnataka, (2020) 13 SCC 308] arose out of a case where, under the guise of preserving and protecting the interests of the corporate debtor, NCLT issued [Vasudevan v. State of Karnataka, 2019 SCC OnLine NCLT 681] a direction to the Government of Karnataka to grant renewal of a mining lease, in terms of the deeming provision in Section 8-A(6) of the Mines and Minerals (Development and Regulation) Act, 1957. Raising the question of jurisdiction of the NCLT to issue such a direction, the Government of Karnataka approached the High Court by way of a writ petition, instead of filing a statutory appeal to NCLAT. The jurisdiction of the High Court to entertain the said writ petition and also grant interim stay [State of Karnataka v. Tiffins Barytes Asbestos & Paints Ltd., 2019 SCC OnLine Kar 2463], was what was questioned before this Court in the said decision. The right to have a mining lease granted by the Government, was neither a statutory right nor a contractual right. A person applying for a mining lease may at the most be entitled to have his application considered along with the applications of others and to a fair treatment. Once a mining lease is granted, the terms*

*and conditions of such grant may be subject to the covenants contained in the grant as well as the statutory provisions. Therefore, the ratio laid down in Embassy Property Developments [Embassy Property Developments (P) Ltd. v. State of Karnataka, (2020) 13 SCC 308] may not go to the rescue of the appellants in a case of this nature where Energy Properties became the owner only on account of the money paid by the corporate debtor and a bundle of very valuable rights and interests in immovable property was created thereafter in favour of the corporate debtor.*

**46.** *The decision of this Court in Gujarat Urja Vikas Nigam [Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, (2021) 7 SCC 209 : (2021) 4 SCC (Civ) 1] may not also go to the rescue of the appellants, since the same arose out of a termination of power purchase agreement (for short “PPA”). In fact, this Court made a distinction in the said case, between*

*(i) a dispute that arose out of the termination of PPA solely on account of insolvency on the one hand; and*

*(ii) the other disputes relating to the PPA on the other hand.*

**47.** *The decision in TATA Consultancy [TATA Consultancy Services Ltd. v. SK Wheels (P) Ltd. (Resolution Professional), (2022) 2 SCC 583] , rather than helping the appellants, actually supports the case of the corporate debtor. In fact, the decision in Gujarat Urja Vikas Nigam [Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, (2021) 7 SCC 209 : (2021) 4 SCC (Civ) 1] was distinguished in TATA Consultancy [TATA Consultancy Services Ltd. v. SK Wheels (P) Ltd. (Resolution Professional), (2022)*

*2 SCC 583] (by the very same author), on the ground that if the termination was on an ipso facto clause i.e. the fact of insolvency itself, then NCLT will have jurisdiction, but that there was no residuary jurisdiction for NCLT, if the termination of a contract is based on grounds unrelated to the insolvency.”*

13. Hon’ble Supreme Court upheld the jurisdiction of the NCLT and has made following observations in paragraphs 51, 52 & 53:

*“51. As we have seen earlier, two applications were filed before NCLT. One was by the Resolution Professional and the other was by Victory. A careful look at the application filed by Victory in C.A. (IB) No.146 of 2020 would show that there was no whisper about Victory occupying any land in excess of what they were permitted to occupy under the Leave and License Agreement. Under the Leave and License Agreement, Victory was allowed to occupy only 10000 sq. ft. of land, upon payment of a monthly license fee of Rs.5,000/-. If at all, a vague averment was made in paragraph VII (c) of their application to the effect that inasmuch as the Corporate Debtor was unable to commence any development activity in the subject land, the owner and the developer, with their full consent, had decided to allow the applicant to run its business in the usual course from the subject land, because the subject land could not have been left vacant for any substantial period of time.*

*52. The fact that there were security guards posted in the property is borne out by records. This is why NCLT as well as NCLAT have done a delicate act of balancing, by protecting the interests of Victory to the extent of the land permitted to be occupied. In fact, Victory does not even have*

*the status of a lessee, but is only a licensee. A license does not create any interest in the immovable property.*

*53. Therefore, NCLT as well as NCLAT were right in holding that the possession of the Corporate Debtor, of the property needs to be protected. This is why a direction under Regulation 30 had been issued to the local district administration.”*

Ultimately, the Hon’ble Supreme Court dismissed the Appeal.

14. It was clearly held by the Hon’ble Supreme Court that the judgment relied in **Gujarat Urja Vikas Nigam Ltd., Tata Consultancy Services Ltd.** and **Embassy Property Developments (P) Ltd.** (supra) were not attracted. In the facts of the above case (**“Victory Iron Works Limited**), Resolution Professional has filed the application to protect its possession, the NCLT was held to have full jurisdiction and the said judgments fully support the Respondent.

15. Counsel for the Respondent has relied on judgment of this Tribunal in **“M/s. Jhanvi Rajpal Automotive Pvt. Ltd. vs. R.P. of Rajpal Abhikaran Pvt. Ltd.- Company Appeal (AT) (Ins.) No.1417 of 2022”** decided on 05.01.2023. In the said judgment, issue of similar nature came for consideration. One of the questions which was framed by this Tribunal in paragraph 8(i) was ‘whether the Adjudicating Authority had jurisdiction to entertain IA filed by the RP seeking direction to the Appellant to handover the possession of the premises which premises was owned by the Corporate Debtor?’. Question 8(i) is as follows:-

*“i. Whether the Adjudicating Authority had jurisdiction to entertain I.A. No. 200 of 2022 filed by the RP seeking direction to the Appellant to hand over the possession of the premises which premises was owned by the Corporate Debtor?”*

16. This Tribunal heard the parties, noticed Section 18, Section 25 as well as Section 60(5) of the IBC. In paragraph 14, it was held that when there is no dispute that assets in question is owned by the Corporate Debtor, Resolution Professional can take steps for taking possession of the assets of the Corporate Debtor. In the above case, this Tribunal had also noted one of the judgments relied by the Appellant. The submission of the Appellant that Resolution Professional has to file a suit to get eviction order was also considered and negated. In paragraphs 20 and 21, following was held:-

*“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 can not be accepted. We thus, in view of the foregoing discussions are of the*

*considered opinion that Adjudicating Authority has rightly allowed the Application filed by the RP directing the Appellant to vacate from the premises so that Resolution Plan which has been approved can be implemented. We thus do not find any merit in the Appeal, the Appeal is dismissed.”*

17. The above judgment was also affirmed by the Hon’ble Supreme Court by its judgment and order dated 10.02.2023 in **“Jhanvi Rajpal Automotive P. Ltd. vs. R.P. of Rajpal Abhikaran P. Ltd. & Anr.- 2023 SCC OnLine SC 1535”**.

18. There is one more reason due to which the submission of the Appellant that Adjudicating Authority has no jurisdiction to seek eviction of the Appellant cannot be accepted. Prior to initiation of CIRP against the Corporate Debtor, winding up proceeding under Sections 433(e), 434 and 439 of the Companies Act, 1956 were initiated in the Bombay High Court where Bombay High Court has passed an order on 05.10.2016 appointed a Provisional Liquidator. The Bombay High Court in above order had issued direction to the Provisional Liquidator to take charge of the assets/ properties and records of the Corporate Debtor. It is useful to notice direction issued in paragraph 9(v) which is as follows:-

*“(v) Pending the hearing and final disposal of the Company Petition, the Official Liquidator, High Court, Bombay, is appointed as Provisional Liquidator of the Respondent Company. The Provisional Liquidator shall forthwith take charge of the assets/properties and*

*records of the Respondent Company without awaiting any notification.”*

19. In pursuance of the said order of the Bombay High Court, Provisional Liquidator went to take possession of the assets and had taken symbolic possession on 04.06.2019 which was stated in the report submitted by the Provisional Liquidator dated 04.06.2019 which report of the liquidator is part of the record. Liquidator in the said report stated as follows:-

*“Thereafter, we went to Plot No. 9 and we found CMC (classical Marble Company) is working and manufacturing marbles and also that 10 staff and 18 workers are working.*

*Thereafter the representatives of the official liquidator proceeded for taking physical possession of the CMC (Classical Marble Company) manufacturing Marbles working adjacent to Gate No. 3A i.e. Plot No. 9 Shri Mashroot FoF, representative of CMC (classical Marble Company) informed the representative there is no prior intimation/letter from the official liquidator to vacate the aforesaid premises and he further informed that the Company Shree Ram Urban Infrastructure Ltd. has permitted classic Marble Impex Pvt. Ltd. to stock marbles at Shree Ram Mills Premises, vide their letter dated 22nd December 2008 issued by Shree Ram Urban Infrastructure Ltd. to Classic Marble Impex Pvt. Ltd. The copy of the letter dated 22nd December 2008 is annexed herewith to this minutes as Exhibit - "B".*

*Thereafter the representation of the Official Liquidator requested to Shri Mashrut FoF to vacate the aforesaid premises and remove the goods/materials belongs to*

*Classic Marble Company which are lying in the aforesaid premises. However he informed that there were huge and heavy material are lying in the aforesaid premises. And also he informed that they have not received any prior intimation from the official Liquidator to vacate the premises. However, Shri Mashrut FoF requested the representatives of the official Liquidator to allow one month time to remove the huge and heavy materials and vacate the aforesaid premises. The request received from Shri. Mashruf FoF not accepted and the representatives of the Official Liquidator proceeded for physical possession. However Shri Mashruf FoF has strongly objected to take physical possession of the aforesaid premises, since there is no specific court order or any intimation to take physical possession of classic Marble Company. Therefore the representative of the Official Liquidator taken symbolic possession of the classic Marble Company which is situated at Plot No.9 by pasting possession board of the Official Liquidator on main entrance of Classic Marble Company.”*

20. Subsequently, liquidator had also issued a written notice dated 25.06.2019 for taking possession which notice also mentioned that liquidator has taken symbolic possession. The notice dated 25.06.2019 to the Appellant reads as follows:-

“To,

*Classic Marble Impex Pvt Ltd  
(Classic Marble Company)  
Shree Ram Mills Premises,  
Ganpatrao Kadam Marg,  
Lower Parel, Mumbai-400013*

**IMMEDIATE/URGENT**

*Subject: In the matter of Shree Ram Urban Infrastructure Ltd (In Prov. Liqn).*

*Reference:- (1) Minutes dated 4.6.2019 at the time of taking Symbolic Possession of Classic Marble Company situated at Shree Ram Mills Premises (adjacent to Gate No.3A), Ganpatrao Kadam Marg, Lower Parel, Mumbai-400013 on 4.6.2019.*

*Sir,*

*With the reference the subject cited above, I am to state that by an order dated 5.10.2016 read with order dated 24.8.2016 and 22.3.2017 passed by the Hon'ble High Court, Bombay in Company Petition No.1066 of 2015, presented by Action Barter Pvt Ltd (the Petitioner), the Official Liquidator attached to the Hon'ble High Court, Bombay has been appointed as Provisional Liquidator of Shree Ram Urban Infrastructure Ltd., under the provisions of the Companies Act, 1956.*

*Further it is informed that the team of the Official Liquidator has visited the property of the Company (In Liqn) situated at Shree Ram Mills Premises, Ganpatrao Kadam Marg, Lower Parel, Mumbai 400013 for taking physical possession of the Classic Marble Impex Pvt Ltd (Classic Marble Company) on 4.6.2019. However your representative has not handed over physical possession of the aforesaid property. Therefore the representatives of the Official Liquidator have taken symbolic possession of the aforesaid premises on 4.6.2019. It appears that you are occupying and storing marbles in the aforesaid premises without any authority.*

*Therefore, the Official Liquidator shall take possession of the property i.e. Classic Marble Impex Pvt Ltd (Classic Marble Company) situated at Shree Ram Mills Premises (adjacent to Gate No.3A), Ganpatrao Kadam Marg, Lower Parel, Mumbai-400013 on 1.7.2019 at 11.30.a.m*

*Yours faithfully,*

*(V.P. KATKAR)*

*OFFICIAL LIQUIDATOR HIGH COURT, BOMBAY"*

21. Thus, liquidator has already taken steps in the winding up proceeding to take possession and symbolic possession was taken. Bombay High Court had subsequently noticed that Provisional Liquidator stand discharged. After initiation of the CIRP against the Corporate Debtor under the Insolvency and Bankruptcy Code, it is the Resolution Professional who has to take all steps

regarding the assets of the Corporate Debtor, the Liquidator having been discharged. It is relevant to notice that Appellant also filed an application before the Bombay High Court in the winding up petition being Company Application No.261 of 2019 on 01.07.2019 in which no order could be obtained by the Appellant except according to Appellant an oral order was passed on 01.07.2019 that till the next date i.e. 03.07.2019, liquidator not to take possession.

22. We thus, are of the view that Resolution Professional was fully entitled to file an application and application filed by Resolution Professional is fully maintainable and is within jurisdiction. The submission of the Appellant is that the Resolution Professional has to prove nexus with the insolvency with respect to the application filed under Section 60(5)(c). The nexus with regard to application is fully proved since the assets admittedly is owned by the Corporate Debtor and the Resolution Professional is statutory obliged to take steps to take possession and control of the assets. Thus, we do not find any substance in the submission of the Appellant that Resolution Professional has not proved any nexus. We thus, hold that application filed by the Resolution Professional is fully maintainable before the Adjudicating Authority and the submission raised by the Appellant regarding lack of jurisdiction of the Adjudicating Authority has no substance and are rejected.

**Issue No. (II)**

23. The Appellant has claimed that he was permitted to occupy the premises by the Corporate Debtor to stock its marbles and stones. Appellant

claimed to supply marbles and stones to the Corporate Debtor since 2006. Appellant has placed reliance on the letter dated 22.12.2008 issued by the Corporate Debtor to the Appellant which letter is on the record filed by the Appellant itself. It is useful to notice the letter dated 22.12.2008 issued by the company to the Appellant as claimed by the Appellant. Letter dated 22.12.2008 is as follows:-

*“22<sup>nd</sup> December, 2008*

**TO WHOMSO EVER IT MAY CONCERN**

*This is to confirm that we are the owners of Avadh, Shree Ram Mills Premises, G.K. Marg, Lower Parel, Mumbai 400 013 and we have permitted M/s. Classic Marble Impex Pvt. Ltd. to stock marble at our premises.*

*This certificate is issued as per the request made by Mis. Classic Marble Impex Pvt. Ltd. for the purpose of intimation of place for stocking of marbles to the VAT Department.*

*For Shree Ram Urban Infrastructure Ltd*

*Authorised Signatory”*

24. The letter mentioned that company is owner of Shree Ram Mills Premises and owners have permitted M/s. Classic Marble Impex Pvt. Ltd. to stock marble at our premises. No other letter or document is claimed by the Appellant for any kind of right in the premises. The case which was set up by the Appellant before the Bombay High Court in its Company Application No.261 of 2019 filed after liquidator issued a notice on 25.06.2019 to the Appellant to take possession of the premises where Appellant pleaded that

there were outstanding amount against the company due to supply of marbles. Appellant claimed to have continuously used the premises as against the outstanding amount which was due on the company. An additional-affidavit has been filed to the said application 261 of 2019 where Appellant has pleaded the relevant facts and the statement that company permitted the Appellant to occupy the property till payment of the outstanding dues. In paragraph 12 of the Affidavit, following was pleaded:-

*“12. In or about April 2013, the Respondent represented to the Applicant Company that due to financial difficulty, they were unable to pay off the Applicant Company's outstanding amounts against the materials supplied and invoices raised on the Respondent Company. The Respondent Company requested the Applicant Company to continue to occupy the said Property till payment of the outstanding dues. Further, the Respondent requested that the interest amount, on the outstanding amount payable by the Respondent Company shall be adjusted towards the compensation for the use of the said Property by the Applicant Company. It was agreed that neither the Respondent Company would be liable to pay any interest to the Applicant Company on the outstanding dues, nor would the Applicant Company be liable to pay any amounts to the Respondent Company for the use of the said Property till repayment of the entire outstanding dues. In an attempt to recover the outstanding dues, the Applicant Company accepted the offer of the Respondent Company and has continued to remain*

*in continuous, peaceful and vacant possession and use of the said Property.”*

25. According to the Appellant, amount of Rs.1,34,86,201/- with interest was due on the company which was stated in paragraph 13 to the following effect:-

*“13. I say that the interest amount itself payable on the outstanding dues of Rs. 1,34,86,201/- @ 18% p.a. works out to Rs.24,27,516/- p.a. and the said amount is being adjusted by the Respondent Company against the use of the said Property. In view of the said adjustment, the Applicant Company has also not demanded the said interest payment from the Respondent Company. The determination of the monthly rent/compensation at the relevant time was not computed as the interest amount was much more as compared to the monthly rent prevailing at the material time. The major portion of the said Property is surrounded interalia by trees and it is practically impossible for any other person to use the same. The copy of the Photographs of the said Property are hereto annexed and marked as Exhibit "D".”*

26. Appellant further pleaded that Appellant be allowed to continue in possession on such terms as the Court may deem fit and proper and Appellant cannot shift such bulky material within a short span of time. In paragraphs 15 and 16, following was stated:-

*“15. Much to the shock and dismay of the Applicant, the Applicant Company for the first time*

*became aware about the Respondent Company being in liquidation, when on June 4, 2019, personnel from the office of Official Liquidator, High Court, Bombay has visited the said Property for purportedly taking symbolic possession of the said property. Without prejudice to the Applicant Company's rights and contention, given the peculiar circumstances, it is submitted that if the Applicant Company is permitted to remain in possession of the said Property on such terms and conditions as may be determined by this Hon'ble Court, the same would help in maintaining the said Property and would ensure to the benefit of all parties and in particular the creditors. The Applicant has preferred this application at the earliest given opportunity without any delay or laches.*

*16. The Applicant Company's valuable materials are lying on the said Property. I say that it is practically not possible to shift such bulky material within a short span of time. We therefore humbly pray that this Hon'ble Court be pleased to permit the Applicant Company to remain in possession of the said Property, on such terms and conditions, as may this Hon'ble Court may deem fit and proper, in the facts and circumstances of the present case. The Applicant humbly submits that grave and irreparable harm, loss and prejudice would be occasioned to the Applicant Company, if the possession of the said Property is taken over by the Official Liquidator. On the other hand, no such harm or loss will be caused to the Official Liquidator and the parties involved, if the reliefs as sought for are granted. The balance of convenience tilts heavily in favour of the Applicant.”*

27. During submissions before the court, Learned Counsel for the Appellant submits that there was oral tenancy created in favour of the Appellant since the interest amount on the outstanding amount on the company was to be adjusted in the rent. However, neither details of any rent paid nor any pleading as to when tenancy was created has been pleaded or brought on record. As noted above, the pleading of the Appellant is that it has been occupying the premises since the company was not able to pay its outstanding dues of Rs.1,34,86,201/-. The pleading made before the Bombay High Court as noted above in the application filed by the Appellant itself clearly indicate that the ingredients of creation of any tenancy in favour of the Appellant was not even plead. Before Adjudicating Authority neither sufficient pleading nor any material has been brought on record to prove its case of oral tenancy. On record there is no material except letter of Company dated 22.12.2008. Learned Counsel for the Appellant has relied on Paragraph 30 of the judgment of the Hon'ble Supreme Court in **“Vishal N. Kalsaria vs. Bank of Baroda and Ors.- (2016) 3 SCC 762”** which is as follows:-

*“30. The issue of determination of tenancy is also one which is well settled. While Section 106 of the Transfer of Property Act, 1882 does provide for registration of leases which are created on a year-to-year basis, what needs to be remembered is the effect of non-registration, or the creation of tenancy by way of an oral agreement. According to Section 106 of the Transfer of Property Act, 1882, a monthly tenancy shall be deemed to be a tenancy from month to month and must be registered if it is reduced into writing. The Transfer of Property Act, however, remains silent on*

*the position of law in cases where the agreement is not reduced into writing. If the two parties are executing their rights and liabilities in the nature of a landlord-tenant relationship and if regular rent is being paid and accepted, then the mere factum of non-registration of deed will not make the lease itself nugatory. If no written lease deed exists, then such tenants are required to prove that they have been in occupation of the premises as tenants by producing such evidence in the proceedings under Section 14 of the SARFAESI Act before the learned Magistrate. Further, in terms of Section 55(2) of the special law in the instant case, which is the Rent Control Act, the onus to get such a deed registered is on the landlord. In the light of the same, neither can the landlord nor the banks be permitted to exploit the fact of non-registration of the tenancy deed against the tenant.”*

28. The Hon’ble Supreme Court in the above case held that if the two parties are executing their rights and liabilities in the nature of a landlord-tenant relationship and if regular rent is being paid and accepted, then the mere factum of non-registration of deed will not make the lease itself nugatory. There cannot be any dispute to the above proposition. Present is a case where neither there is a claim of payment of any rent by the Appellant to the Corporate Debtor nor there is even an iota of evidence of any payment of any rent. The claim of the oral tenancy by the Appellant is nothing but imagination of the Appellant to somehow justify its illegal occupation. It is the Appellant case itself that it supplied the marbles to the company till 2013 and according to the case of the Appellant, an amount of Rs.1,34,86,201/- is due on the

company, hence he was allowed to continue. Appellant has also placed reliance on the judgment of the Hon'ble Supreme Court in "**Madan Mohan Singh vs. Ved Prakash Arya- (2021) 5 SCC 456**" where Hon'ble Supreme Court held that the agreement of tenancy can be both by writing or oral and in the case of oral tenancy, the court has to look into the circumstances and intention of the parties and other material to determine the existence of tenancy. In paragraph 18, following was held:-

*"18. The categorical finding recorded by the trial court is that the defendant failed to prove any documents pertaining to the tenancy. The tenancy is a relationship which is created between two parties. The agreement of tenancy can be both by writing or oral. Even if there is oral agreement of tenancy, the court has to look into the circumstances and intention of the parties and other material to conclude as to whether there was any tenancy or not. The present is not a case where the defendant claimed any rent agreement. The defendant has come up with a case that he is paying rent at the rate of Rs 450 per month. The defendant in his written statement has stated that the plaintiff has never issued any rent receipt. Thus, present is not a case where there was any rent receipt filed by the defendant in support of his claim of tenancy. The defendant himself appeared as DW 2."*

29. There can be no dispute to the proposition of law as laid down but in the facts and circumstances of the present case clearly indicate that the Appellant was permitted to occupy the premises on the permission granted

by company to stock its marbles and materials. There are no materials or pleadings with regard to any kind of tenancy, lease or license on record.

30. In any view of the matter, the permission granted by the Corporate Debtor to occupy the premises shall be treated to have come to an end after winding up petition were initiated by the order of the Bombay High Court dated 05.10.2016 and liquidator was directed to take possession of the assets by the High Court and liquidator proceeded to premises on 04.06.2011 to take possession and symbolic possession was taken. After initiation of CIRP when the Resolution Professional has issued two notices to the Appellant to vacate, any permission to occupy the premises shall not continue and shall come to an end. Insofar as reliance of the Appellant on various registration including registration under MTNL, GST registration, Insurance Policy, shop registration are concerned, they were registrations obtained by the Appellant to carry out its business and the said registration in no manner help the Appellant to prove any kind of right in the premises. Registration Certificate dated 01.01.2017 under Maharashtra Shop and Establishment Act 2017 was filed by the Appellant before the Bombay High Court. The said registration certificate in paragraph 3 clearly provided as follows:-

**“नमुना- "व" Form-B**  
**नोंदणी प्रमाणपत्र Registration Certificate**  
**(नियम 5 (1) पहा) (See rule 5(1))**

१. नोंदणी क्रमांक

1. Registration Number : 820324974/GS Ward/COMMERCIAL II

२. आस्थापनेचे नाव

2. Name of the Establishment: CLASSIC MARBLE COMPANY PVT. LTD.

३. सदरचे नोंदणी प्रमाणपत्र अर्जदाराने ऑनलाईनद्वारे अर्जासोबत सादर केलेल्या (अपलोड) स्वयं-प्रमाणित दस्तऐवजाच्या प्रती व स्वयं-घोषणा पत्राच्या आधारे आणि अर्जामध्ये सविस्तर नमूद केलेल्या माहितीची आणि आस्थापनेच्या व्यवसायाची व आस्थापनेच्या जागेची प्रत्यक्ष पडताळणी न करता देण्यात आले आहे. सदरचे प्रमाणपत्र हे केवळ नोंदणी प्रमाणपत्र आहे व सदर नोंदणी प्रमाणपत्र कोणत्याही प्रकारे मालमत्ता हक्क किंवा मालमत्तेचा मालकी हक्क धारण करण्याचा अधिकार देत नाही.

3. This certificate is issued base on the application and the uploaded self-certified documents and declaration given by the applicant without physical verification of the existence of establishment the nature of business carried out and the details mentioned in the application. This is just a certificate of registration and does not give any right to property or possession or title of the rights of the premises or property.

४. व्यवसाय सुरु करण्यात आल्याचा दिनांक

4. Date of commencement of Business: 01.01.2017

५ मालकाचे नाव : MR. AMIT MAFATLAL SHAH

5. Name of the Employer

६. व्यवसायाचे स्वरूप

6. Nature of Business : BUILDING MATERIAL SUPPLIERS

७ आस्थापनेचा पत्ता : 03-A, SRIRAM MILL COMPOUND, GM BHOSALE MARG WORLI,

7. Address of Establishment : MUMBAI-400018

WHETHER THE BUSINESS PREMISES/ PROPERTY IS ASSESSED BY BMC: Yes

MY BMC BUILDING ID: GS0400540170000

ADDRESS AS PER PROPERTY TAY SYSTEM: GS-1125(3a) 338ab.worli Road. Ansal Height”

31. Thus, the reliance on various certificates which were obtained by the Appellant for carrying on business cannot give any right to the Appellant to remain in possession of the assets. We, thus, are satisfied that the Appellant has miserably failed to prove any kind of tenancy/lease/license having been given by the Corporate Debtor in favour of the Appellant, Appellant was only permitted to use the premises only to stack its marbles as proved by letter

dated 22.12.2008 which is the only letter filed on the record issued by the Corporate Debtor in favour of the Appellant. It is also relevant to note that before the Resolution Professional of the Corporate Debtor, Appellant has filed its claim of principal amount of Rs.1,34,86,201/- along with interest which has been admitted by Resolution Professional. The claim of entire interest was filed by the Appellant before the Resolution Professional and has been admitted. The claim of the Appellant that he was entitled to occupy the premises against the outstanding amount and on account of interest being not paid itself become contradictory and cannot be accepted.

**Issue No. (III)**

32. Appellant has placed reliance on injunction order passed by City Civil Court on 09.12.2025. It is submitted that in view of the judgment of the City Civil Court, the City Civil Court has granted injunction and in view of the interim injunction passed on 09.12.2025, Adjudicating Authority could not have proceeded to pass orders for eviction of the Appellant. We have noticed above that a suit before Civil Court was filed by the Appellant where date of hearing was fixed in the application on 02.12.2025. Application was filed by the Resolution Professional on 27.03.2025 and it was only on 01.12.2025 suit was filed. The IBC clearly bars jurisdiction of Civil courts with respect to any issue which is subject matter of insolvency process. Section 63 of the IBC provides as follows:-

***“63. Civil court not to have jurisdiction. - No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on***

*which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code. Civil court not to have jurisdiction.”*

33. In any view of the matter, copy of the order is brought on record as Annexure A-14 of the Appeal. The order of the City Civil Court dated 09.12.2025 directed as follows:-

*“In the event, there will be an ad-interim relief in terms of prayer clause a of the notice of motion and thereby the defendant or any other person claiming through or under him is temporarily restrained from disturbing and or interfering with the plaintiffs use, occupation, possession over the suit premises till next date, save and except by following due process of law. Both parties to take note of this order. Matter adjourned to 11.12.2025 for Writ of summons.”*

34. The above order, thus, clearly protected the possession of the Appellant ***save and except by following due process of law***. The asset is owned by the Corporate Debtor which is an admitted fact and we having held that Resolution Professional was entitled to file an application to take possession, the order of the Adjudicating Authority directing for taking possession of the assets is in accordance with law, hence, the order of the said City Civil Court in no manner could have any consequence on the order of the Adjudicating Authority.

35. In result of the aforesaid discussions, we are of the view that the Adjudicating Authority has rightly after considering all relevant aspects have

issued directions. The Adjudicating Authority has rightly issued direction in paragraph 29 as noted above.

36. In view of the foregoing discussions, we do not find any merit in the Appeal. The Appeal is dismissed. We direct that in event the Appellant does not handover the vacant possession within 30 days from today, it shall be open for the Resolution Professional to take possession of the premises with the assistance of police who shall extend all assistance to the Resolution Professional. No order as to costs.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**New Delhi**

***Anjali***