

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

06.04.2026

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)
ARUN BAROKA, MEMBER TECHNICAL
INDEVAR PANDEY, MEMBER (TECHNICAL)

Company Appeal (AT) (Ins) No. CA 965 of 2023

**M/s Rose Constructions,
Through Its Partner Mr. Vipin Kackar**

...Appellant

Vs

**Mr. Atul Kumar Kansal
Resolution Professional**

...Respondent

(Arising out of Order dated 23.05.2023 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench, Court II) in IA No.1298/2023 in CP (IB) No.456(ND)/2018)

For Appellant: Mr. Nitesh Jain, Advocate

For Respondent: Mr. P. Nagesh, Mr. Harshal Kumar, Advocates for R-2

JUDGEMENT

Per Justice N. Seshasayee, Member (Judicial)

This appeal is filed challenging an Order of the Adjudicating Authority in I.A. 2738 of 2020 dated 13.03.2023 as well as I.A. No.1298 of 2023 dated 23.05.2023.

2. The brief facts relevant for the current purpose may be stated as below:-
 - a. According to the appellant, it is a partnership firm and it was awarded certain civil contract work on 31.12.2014 by the CD. There arose some dispute over payment of money to the appellant and the appellant claims that it was resolved through a settlement deed dated 20.04.2017.
 - b. On 20.12.2017, CD executed a lease deed in favour of one of the partners of the appellant. According to the appellant, this lease deed was executed on the basis of the settlement dated 20.04.2017 (but this issue is not very genuine for the current purpose).
 - c. On 03.07.2018, CIRP was initiated against the CD. On 09.09.2019, the RP took out I.A. 1197 of 2019 against the appellant under Section 45 of the IBC and the appellant has filed its reply and the matter is still pending.
3. During the pendency of I.A. 1197 of 2019, RP took out another application in I.A. 2738 of 2020 alleging that the appellant, which is arrayed as second respondent in this application along with the first respondent, had encroached into certain asset of the CD and had put up a sample flat. Apparently, the appellant has not filed any reply and vide the Order dated 13.01.2023, I.A. 2738 of 2020 was allowed, and the respondents to that application which included the appellant herein were directed to be vacated. The appellant then took out I.A. 1298 of 2023 contending that the appellant was not served with the notice of I.A. 2738 of 2020 and also challenged the said Order on the merit. On 23.05.2023, this Order came to be dismissed by the Adjudicating Authority on the ground that the appellant's plea as to non-service of notice in I.A. 2738 of 2020 cannot be accepted.

4. Heard all the parties. The learned Counsel for the appellant would contend that the RP did not dispute that the appellant is in possession of the property in covering an extent of 1,830 sq. mt., and this is a subject matter of I.A. 1197 of 2019. Until I.A. 1197 of 2019 is decided by the Adjudicating Authority, to seek appellant's eviction vide I.A. 2738 of 2020 may not be appropriate.

5. Be that as it may, sometime in 2021, COC had approved the resolution plan and on 07.03.2025, the Adjudicating Authority too has laid its approval to the same. In terms of the plan, the SRA is required to prosecute I.A. 1197 of 2019.

6. Per contra, the learned Counsel for the RP submits that while the appellant claims a right over extend of 1,380 sq. mt., it has allowed the first respondent in I.A. 2738 of 2020 to occupy and use it as for the latter's office purposes, whereas the purpose for which the appellant had obtained the said property was for running the nursery school. It is submitted that the RP was constraint to file I.A. 2738 of 2020. He also submitted that the appellant had come out with two addresses, one at Agra and another at Faridabad and notices were duly taken on the Agra address of the appellant and hence it would be wrong for the appellant to contend that no notice was issued.

7. The learned Counsel for the SRA would submit that it is difficult to demarcate the 1,380 sq. mt. which is the subject matter of the alleged lease, and contended that the very plea of the appellant will go counter to plan as approved by the Town Planning Authority.

8. The learned Counsel for the appellant would now submit that so far as the issue of legitimacy of appellant's occupancy and its intended continuation thereof is concerned, the appellant is negotiating with the SRA. The learned Counsel for the SRA fairly stated that some settlement process is underway but added that the SRA's right to prosecute I.A. 1197 of 2019 may have to be protected.

9. We weigh the submission of all. There are two aspects: (a) I.A. 1197 of 2019 which is premised on the legitimacy of the lease deed dated 20.12.2017 and other is I.A. 2738 of 2020. As long as I.A. 1197 of 2019 is pending, it may be difficult to hold that the present appellant would be an encroacher of the same property. It may be that the appellant might not have contested I.A. 2738 of 2020 diligently, but inasmuch as I.A. 1197 of 2019 is pending on the file of the Adjudicating Authority, any decision to evict the appellant during the pendency of the I.A. 1197 of 2019 cannot be reconciled with the allegation of unlawful occupation of the property in question.

10. Barring the property covered by the lease deed dated 20.12.2017, the SRA has taken possession of the rest of the properties. And we are also given to understand that some settlement talks are on foot between the appellant and the SRA. But that can still be considered pending in I.A. 1197 of 2019.

11. In conclusion, this appeal is allowed and the Order passed in I.A. 1298 of 2023 is set aside and the same is remanded back to the Adjudicating Authority, who will now consider it along with I.A. 1197 of 2019. Till the disposal of these applications, appellant's possession of the property covered under the lease deed dated 20.12.2017 will continue with it. The Adjudicating Authority is required

to bestow best endeavour to dispose of both I.A. 1298 of 2023 and I.A. 1197 of 2019 at the earliest, preferably within a period of three months from today. Any issue regarding settlement between the appellant and the third respondent can be pursued before the Adjudicating authority. No cost.

[Justice N. Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

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