

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

Company Appeal (AT) (Insolvency) No. 474 OF 2026

(Arising out of Order dated 22.01.2026 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench (Court No.-II), Kolkata, in I.A. (IB) No.198/KB/2025 in C.P. (IB) No.730/KB/2019)

IN THE MATTER OF:

Calcutta Pinjrapole Society

Registered office at 34 Armenian Street
Kolkata – 70001
Email: cps1885@gmail.com;
debarshi.nlu@gmail.com

.... Appellant

Vs

1. Pratap Mukherjee

Resolution Professional of RSI Private Limited
Having office at 27A Bhattacharjee Para Road
P.O. Thakurpukur, Kolkata – 700063
Email: pratapmukherjee62@gmail.com;
ashishchoudhuryadv@gmail.com

2. Merc Infra India Private Limited

Registered office at Narayani Building, 27,
Brabourne Road, 6th Floor, Suite #602A,
Kolkata – 70001, West Bengal
Email: mercindia@gmail.com

.... Respondents

Present:

For Appellant: Mr. Abhijeet Sinha, Sr. Advocate with Mr. Debarshi Chakraborty, Mr. Shivam Singhanian, Mr. Aridaman Raghav and Ms. Heena Kochar, Advocates.

For Respondent: Mr. Mitra, Mr. Ashish Choudhury and Mr. Pratap Mukherjee, Advocates of Respondent No.1.

Mr. Krishanan Venugopal, Sr. Advocate with Mr. Sanjay Kapur, Ms. Surya Prakash, Mr. Anand Komal and Ms. Tanvi Luhariwala Advocates for Respondent No.2.

Cont'd.../

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal has been filed by the Appellant challenging the order dated 22.01,2026 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench (Court No.-II), Kolkata, in I.A. (IB) No.198/KB/2025 in C.P. (IB) No.730/KB/2019. The facts and sequence of events of the present case reveal a glaring example of continuance of unlawful and illegal possession by the judgement deter, “the Corporate Debtor in the present case is continuing illegal / unlawful possession of immovable property consisting two storied building and other structures together with 14 bigha land in District Howrah for last 48 years after leasehold right held in favour of the Corporate Debtor for 21 years came to end on 31.12.1978.” We need to notice brief facts and sequence of events giving rise to this appeal:

- i. Appellant is a registered society within meaning of Societies Registration Act, 1860. Appellant is owner of two storied building and other structures together with a land containing in area of 14 bigha situated at 30, Goshala Road in Mauza Lillooah Thana Bally in the district of Howrah, State of West Bengal. Appellant executed a lease deed dated 05.01.1958 in favour of R.S. Iron Industries Private Limited for the above building and land for a period of 21 years at a monthly rent of Rs.675/-. The lease came to an end on 31.12.1978. Even after

lease came to an end, the company did not handover the possession of the assets of the Appellant.

- ii. Under the Land Reforms Act, 1955, the above assets claimed to be vested in the State of West Bengal. Challenging the vires of the provision of Land Reforms Act, 1955 and action of the State of West Bengal, Writ Petition No.7588 of 2001 was filed by the Appellant before the Calcutta High Court where the order of status quo was passed.
- iii. After expiry of the lease period, Appellant was constraint to file Title Suit No.101 of 2004 against the company for recovering the khas possession of the said property and claim mesne profits from 01.01.1979 till delivery of possession. The learned Civil Judge (Senior Division) 1st Court, Howrah vide judgment dated 21.05.2005 decreed suit and directed eviction of the Corporate Debtor from the said property within six months along with mesne profits at a rate of Rs.700/- per month from 01.01.1979 till the date of getting possession of the said property.
- iv. Challenging the decree of the Trial Court, first appeal was filed by the Corporate Debtor before the Additional District Judge, 5th Court, Howrah being Title Appeal No.78 of 2010. A cross objection was also filed by the Appellant against the order of the Trial Court with respect to mesne profits. The Additional District Judge, 5th Court, Howrah vide judgment dated 30.06.2010 upheld the decree of eviction of the

company, however, remanded the limited issue to the Trial Court for determination of quantum of mesne profits for fresh adjudication.

- v. The company challenged the order of the Additional District Judge before the High Court by second appeal being SAT No.431 of 2010. The High Court by order dated 17.10.2012 dismissed the second appeal and upheld the decree as well as the judgment of first Appellate Court.
- vi. An SLP, being SLP(Civil) No. 19628 of 2013 before the Hon'ble Supreme Court was filed by the Company challenging the order of the High Court which SLP came to be dismissed by the Hon'ble Supreme Court by judgment dated 12.08.2013.
- vii. The Appellant after decree of the Trial Court has initiated proceeding for execution by filing Execution Proceeding No.4 of 2005 before the Court of Civil Judge. In Execution Proceeding No.4 of 2005, the Company/Corporate Debtor filed objection under Section 47 raising objection with respect to the decree passed by the Trial Court by judgment dated 21.05.2005. In the objection the Company/Corporate Debtor has pleaded vesting of the land with the State of West Bengal which objection were rejected by the Trial Court by order dated 21.02.2014.
- viii. The Company filed an O.A. No.1081 of 2014 before the West Bengal Land Reforms and Tenancy Tribunal praying that decree obtained by the Appellant against the Company be declared as nullity, which having been obtained without disclosing the vesting of land in the State of West

Bengal. The West Bengal Land Reforms and Tenancy Tribunal by its order dated 02.05.2014 held the decree of eviction passed against the Company, which was upheld upto the Hon'ble Supreme Court, as nullity. Appellant challenged the order dated 02.05.2014 before the High Court by filing WPLRT No.160 of 2014.

- ix. The WPA No.7588 of 2001 filed by the Appellant challenging the vesting proceeding was disposed of on 02.08.2022 by the High Court with liberty to the Appellant to approach the West Bengal Land Reforms and Tenancy Tribunal. In TA No.01 of 2022, the Appellant filed a MA No.1240 of 2022 where the West Bengal Land Reforms and Tenancy Tribunal vide its order dated 12.05.2023 granted injunction directing parties to maintain complete status quo as of the date.
- x. Vide order dated 14.09.2023, the High Court has set aside order dated 02.05.2014 passed by West Bengal Land Reforms and Tenancy Tribunal holding that decree of eviction passed against the Company cannot be declared as nullity.
- xi. The Company in the year 2019 had filed an application under Section 10 of the IBC before the NCLT, Kolkata.
- xii. The High Court vide its order dated 14.09.2023 in WPLRT No.160 of 2014 has directed the Company to handover the possession the Appellant within six months.
- xiii. Section 10 application which was filed by the Company was admitted by NCLT vide order dated 24.04.2024 declaring moratorium and

appointing Shri Pratap Mukherjee as Interim Resolution Professional who as subsequently confirmed as Resolution Professional. Appellant after coming to know about initiation CIRP wrote a letter dated 09.09.2024 to the Resolution Professional to release the arrears of rent/occupier charges of Rs.69,46,81,006/-. The Resolution Professional informed the Appellant about moratorium and informed that execution proceeding be kept in abeyance in view of moratorium. Resolution Professional asked the Appellant to submit claim in appropriate form. Appellant submitted Claim Form B claiming amount of Rs,68,72,94,678. The Resolution Professional vide letter dated 22.10.2024 informed the Appellant that claim cannot be accepted.

- xiv. Appellant filed I.A. (IB) No.198/KB/2025 on 09.12.2024 seeking relief for exclusion of the property (land and building) from the CIRP of the Corporate Debtor. The application filed by the Appellant was objected by the Resolution Professional by filing a reply to which a rejoinder affidavit was also filed by the Appellant. By the impugned order dated 22.01.2026, the Adjudicating Authority rejected the application filed by the Appellant. The Adjudicating Authority in the impugned order observed that ownership of the said property is in dispute and adjudicating is still pending before the competent forum. Adjudicating Authority observed that the Applicant/ Appellant failed to place on record any cogent documentary evidence such as a registered sale deed, deed of conveyance, or any other title document, to substantiate its claim of ownership. The Adjudicating Authority by the impugned order

refused to grant the prayer of the Appellant to exclude the property from CIRP of the Corporate Debtor. The Adjudicating Authority, however, directed the Resolution Professional to admit the claim as operational debt to the extent of contractual rent payable under the original lease deed. Aggrieved by the order dated 22.01.2026, this appeal has been filed.

2. We have heard Shri Abhijeet Sinha, learned senior counsel appearing for the Appellant. Shri Shaunak Mitra, learned counsel has appeared for the Resolution Professional. Shri Krishnan Venugopal, learned senior counsel has appeared for the Respondent No.2 (Successful Resolution Applicant).

3. Shri Abhijeet Sinha, learned senior counsel for the Appellant submits that the immovable property admeasuring approx 14 bigha at 30, Goshala Road in Mauza Lillooah Thana Bally in the district Howrah is owned by the Appellant. Leasehold right granted in favour of the Corporate Debtor on 05.01.1958 for 21 years came to an end on 31.12.1978 and the Corporate Debtor having not handed over the possession, Suit was filed by the Appellant before Civil Court for eviction of the Corporate Debtor, which Suit was decreed by the Trial Court on 21.05.2005 which decree was affirmed by first and second Appellate Court as well as by the Hon'ble Supreme Court. Decree of eviction having been upheld upto the Hon'ble Supreme Court, the observation of the Adjudicating Authority that Appellant has failed to file document to prove its ownership is wholly erroneous and incorrect. With respect to the Appellant and the Corporate Debtor there was relationship of landlord and

tenant which lease having come to an end on 31.12.1978 and decree of eviction having been passed against the Corporate Debtor, it is not open for the Corporate Debtor or Adjudicating Authority to make any observation regarding ownership by the Appellant. Decree of eviction passed and affirmed by Hon'ble Supreme Court, ownership of the Appellant is unquestionable and could not be subject of any determination or adjudication by the Adjudicating Authority. Adjudicating Authority which is a judicial tribunal has committed error in making observation ignoring eviction decree which is affirmed upto Hon'ble Supreme Court. It is submitted that the leasehold right of the Corporate Debtor came to an end and a decree of eviction already being passed immovable property is not asset of the Corporate Debtor to be included in the CIRP process. No right of the Corporate Debtor existed in the assets so as to include in the Information Memorandum or in resolution process. Application filed by the Appellant I.A. (IB) No.198/KB/2025 has wrongly been rejected by the Adjudicating Authority refusing to exclude the property from the CIRP process. When the Corporate Debtor has no existing right in the immovable property, the said assets were liable to be excluded from the CIRP process. The possession of the Corporate Debtor has become unlawful after expiry of period of lease and after eviction decree having been passed. The possession of the Corporate Debtor was unlawful and illegal. An unlawful and illegal possession can never be treated to be assets of the Corporate Debtor. It is submitted that filing of Section 10 application is another attempt by the Corporate Debtor to somehow continue its illegal possession of the assets whereas the creditors of the Corporate Debtor are only Customs

Department and no other creditor shown to be there. It is submitted that the proceeding under West Bengal Land Reforms and Tenancy Tribunal Act is immaterial to the Corporate Debtor. Appellant who is owner of the asset of the immovable property has already initiated proceeding against the State of West Bengal questioning illegal vesting where an order of status quo has already been passed by Land Reforms and Tenancy Tribunal, which status quo is between Appellant and the State of West Bengal and the Corporate Debtor has nothing to do with status quo granted by West Bengal Land Reforms and Tenancy Tribunal on 12.05.2023. The Corporate Debtor whose lease came to an end on 31.12.1978 and is continuing illegal possession has no jurisdiction to file an application before the Land Reforms and Tenancy Tribunal. The application which was filed by the Corporate Debtor before Land Reforms and Tenancy Tribunal where an order dated 02.05.2014 was passed declaring the eviction decree as nullity has already been set aside by the High Court by judgment and order dated 14.09.2023. The Corporate Debtor has no right to file application before Land Reforms and Tenancy Tribunal or make an application with respect to issue of vesting of land in the State of West Bengal. Order dated 12.05.2023 passed by the High Court protect the Appellant as owner of the property against the action of State of West Bengal which status quo is misinterpreted by the Corporate Debtor to perpetuate its illegal possession. It is submitted that the immovable property being asset owned by the Appellant, in which the Corporate Debtor had no statutory right, the same could neither be included in the Information Memorandum or in the resolution process. The immovable property being not asset of the Corporate

Debtor its inclusion in the resolution plan is erroneous and cannot affect the right of the Appellant. Claims of arrears and mesne profit were wrongly rejected. The issue of mesne profits was remanded back by the judgment dated 30.06.2010 of the Additional District Judge, Howrah in first appeal, only to the extent of calculation of mesne profits, the entitlement to mesne profits was not reversed. It is submitted that the order of the Adjudicating Authority is wholly erroneous and need to be set aside.

4. Shri Shaunak Mitra, learned counsel appearing for the Resolution Professional submits that the Resolution Professional in the information memorandum has disclosed entire series of litigation. It is submitted that property was never mentioned in the information memorandum as asset of the Corporate Debtor rather the Resolution Professional in due discharge of its duty has mentioned Corporate Debtor's actual possession of the asset and details of all litigation. The Resolution Professional has never mentioned the asset as asset of the Corporate Debtor. The prayer of the Appellant was infructuous. The Resolution Plan of the Corporate Debtor has been approved on 22.01.2026. In the Resolution Plan as well as the SRA has not claimed to be owner of the property. The pending proceedings including the Execution Case are preserved and the Corporate Debtor/Successful Resolution Applicant shall abide by the final result in the pending legal proceedings. If CD cannot continue in possession of the land because of final decision in the pending litigations, it shall shift to an alternate location. In the Appeal, the Appellant has made prayer to handover the possession of the property which prayer was not made in the application I.A. (IB) No.198/KB/2025. The

Appellant cannot claim execution of its decree in the CIRP process, Appellant having already filed application for execution before the Trial Court where presumption is that Appellant is not in possession. It is submitted that the property stood vested in State of West Bengal, hence, the Appellant cannot claim ownership of the property. Denial of admission of the claim of the Appellant as arrears of the lease rent is in accordance with the law, First Appellate Court having remanded the question of determination of mesne profits before the Trial Court, till said determination is made, no claim can be admitted. Appellant has concealed proceedings regarding vesting of land in the eviction proceeding.

5. Shri Krishnan Venugopal, learned senior counsel appearing for the Successful Resolution Applicant submitted that prayer made in the application I.A. (IB) No.198/KB/2025 by the Appellant to exclude the subject land from the pool of assets of the Corporate Debtor has become infructuous. In the approved Resolution Plan, the SRA has only undertaken to diligently proceed and prosecute the litigations/proceedings with respect to the property on behalf of the Corporate Debtor and to abide by the final decision/outcome of such litigation which includes appeals, revision, review or like proceedings. In the approved resolution plan the rights of Appellant are duly protected. The CIRP proceeding having come to end by approval of resolution plan, the Appellant is free to prosecute its execution of decree. The High Court and Hon'ble Supreme Court having ordered that possession of property be dealt with in the execution proceeding, this Tribunal ought not direct for handing over possession to the Appellant. Prayer seeking

possession of the property is beyond scope of the present appeal. NCLT and NCLAT do not have jurisdiction to deal with issue relating to the title/possession of the property. Claim of mesne profits/arrears remains unadjudicated and are beyond the jurisdiction of NCLT and NCLAT. Execution proceedings have not reached fruition. The direction of the High Court dated 14.09.2023 is to continue execution proceeding, which are still pending and the proceeding being pending, the Appellant cannot be held to be in possession of the property.

6. Learned counsel for the parties in support of their respective submission have relied on judgments of this Tribunal and Hon'ble Supreme Court, which we shall notice hereinafter.

7. We have heard learned counsel for the parties and perused the record. From the submissions of learned counsel for the parties following issues arise for consideration:

- (i) Whether the ownership of Appellant to the subject property can be allowed to be questioned by the Corporate Debtor in proceeding initiated by the Corporate Debtor under Section 10 of the I&B Code?
- (ii) Whether the interim injunction granted by the West Bengal Land Reforms and Tenancy Tribunal dated 12.05.2023 directing parties to maintain status quo could ensure to the benefit of the

Corporate Debtor to continue in possession of property in question?

- (iii) Whether the Corporate Debtor has any subsisting right in the immovable property which was leased out to the Corporate Debtor by the Appellant on 05.01.1958?
- (iv) Whether the immovable property (two storied building and land admeasuring 14 bigha) is asset of the Corporate Debtor to be included in the information memorandum and to be dealt in the CIRP process?
- (v) To what relief, if any, the Appellant is entitled in this appeal?

Question No.(i)

8. The Corporate Debtor which was earlier known as RS Iron Industries Pvt. Ltd. Was granted a lease of the immovable property by lease deed dated 05.01.1958 for a period of 21 years. The lease was granted to the Company - RS Iron Industries Pvt. Ltd for a period of 21 years w.e.f. 01.01.1958. The period of 21 years came to an end on 31.12.1978, when the leasehold rights in favour of the Corporate Debtor came to an end, the Corporate Debtor having not handed over possession of the property to the Appellant, the Appellant filed Suit for eviction in the Court of Civil Judge (Senior Division) 1st Court, Howrah being Title Suit No.101 of 2004, Calcutta Pinjrapole Society vs. R.S. Iron Industries Private Limited. In the Suit which came to be decreed

by the Trial Court by the judgment and decree dated 21.05.2005, the Trial Court decreeing the Suit directed as follows:

“That the suit be and the same is decreed on contest with costs. The plff. do get a decree of ejectment and recovery of khas possession of the suit schedule property from the defdt. Within six months from the date of the order. The defdt is sume directed to vacate possession of the suit schedule property within the said period failing which the plff shall be at liberty to execute the decree in accordance with the law.

The plff. do also gets a decree for mesne profit at a rate of Rs.700/- per month from January, 1979 till getting the possession of the suit schedule property.”

9. Against the judgment of Trial Court dated 21.05.2005, first appeal being Title Appeal No.78 of 2010 was filed by the Company - R.S. Iron Industries Private Limited before the First Appellate Court. First Appellate Court affirmed the decree of the Trial Court regarding delivery of khas possession, however, decree with regard to mesne profit was set aside. The order of the First Appellate Court is as follows:

“ORDERED

that the appeal preferred by the defendant is allowed in part on contest and the cross appeal/cross objection filed by the plaintiffs is allowed on contest, considering the circumstances without any cost. The judgement & decree passed by Ld. Court below regarding delivery of khas possession are hereby

affirmed, but the judgement & decree in respect of mesne profits are set aside.

The matter relating to mesne profits is sent back on remand directing the Ld. Court below to determine the same in accordance with the law after giving opportunity to both the parties of hearing.”

10. The decree of First Appellate Court thus clearly affirm the eviction decree passed against the Company and decree for mesne profits was set aside and matter was remanded to the Trial Court for determination of mesne profits in accordance with law. Against the order of First Appellate Court dated 30.06.2010, Second Appeal - SAT No.431/2010 was filed by the Company before the High Court. The High Court dismissed the second appeal by judgment and order dated 17.10.2012. R.S. Iron Industries Pvt. Ltd. Further filed Special Leave to Appeal (Civil) No.19628 of 2013 before the Hon'ble Supreme Court, which SLP came to be dismissed on 12.08.2013. Hon'ble Supreme Court while dismissing the appeal passed following order:

“O R D E R

We find no reason to entertain this Special Leave Petition, which is, accordingly, dismissed.

The execution proceedings shall proceed further in accordance with law as soon as possible.”

11. The relationship of the Appellant and the Corporate Debtor was that of a landlord and tenant. Eviction decree against the Corporate Debtor having been affirmed upto the Hon'ble Supreme Court, it is not open for the

Corporate Debtor to question the ownership of the Appellant in the CIRP process which commenced on application under Section 10 filed by the Corporate Debtor. The Corporate Debtor has not claimed any ownership right in the immovable property rather has relied only on the leasehold right granted by lease deed dated 05.01.1958.

12. Decree of eviction in favour of the Appellant having been affirmed upto the Hon'ble Supreme Court, we fail to see any justification in the observation made by the Adjudicating Authority in the impugned order regarding ownership of the property of the Appellant. In Para 6.3 following has been observed by the Adjudicating Authority:

“6.3..... Further, the ownership of the said property is in dispute and adjudication is still pending before the competent forum according to the facts and circumstances presented before us.”

13. Further in Para 6.6, the Adjudicating Authority observed that *the Applicant failed to place on record any cogent documentary evidence, such as a registered sale deed, deed of conveyance, or any other title document, substantiate its claim to ownership.* The above observation made by the Adjudicating Authority are wholly erroneous and not appropriate. In the CIRP of the Corporate Debtor where the Corporate Debtor has claimed only leasehold right, which leasehold right already came to an end and decree of eviction confirmed upto Hon'ble Supreme Court, there is no occasion to the ownership of the property of the Appellant either by the Corporate Debtor or by the Adjudicating Authority. The observation of the Adjudicating Authority

that Appellant has failed to place on record any cogent documentary evidence such as a registered sale deed, deed of conveyance, or any other title document were uncalled for and shows complete non-application of mind by the Adjudicating Authority in making such observation. When the Corporate Debtor was a Lessee, who has already suffered a decree of eviction confirmed upto Hon'ble Supreme Court, the submission came ill from the Corporate Debtor that ownership of the Appellant is questionable.

14. We may also notice the submissions advanced by learned counsel for the Resolution Professional that land is vested in the State of West Bengal and in the application filed by the Corporate Debtor, West Bengal Land Reforms and Tenancy Tribunal has held the decree of eviction as nullity vide its order dated 02.05.2014. With regard to vesting of land in the State of West Bengal, the Appellant had already filed a Writ Petition in the Calcutta High Court being WPA No.7588 of 2021 where vires of the provision of Section 14T of the Land Reforms Act, 1955 was challenged. The Writ Petition remained pending till 2022 where an order of status quo was passed. The Writ Petition was withdrawn with liberty to approach the Tribunal and on an application filed by the Appellant, the Tribunal has passed an interim injunction on 12.05.2023 in favour of the Appellant. It is useful to notice the order dated 12.05.2023 passed by the Tribunal in M.A. No.1240 of 2022. M.A. was filed by the Appellant and only party to the application was the State of West Bengal. The Tribunal heard the Appellant as well as the State of West Bengal and on 12.05.2023 while granting interim order made following observations:

“Ld. Government Representative raised strong objection in such prayer and submits that no ad interim injunction should be granted. Besides that prima facie case is lacking. Moreover in between the State and applicants several cases are pending. So, prayer for ad interim be refused.

Considered the submission of both sides with regard to prayer for ad interim injunction only. Peruse the case record. On analysing and synthesizing the submission as to expected foreseeable threat of dispossession consequent injury thereto, we find applicant has a bonafide contention. In view of the urgency of the situation and as an exceptional measure we feel applicants need a cool whiff of preventive order to preserve the nature, character and possession of the property as particularised in this proceeding otherwise if the appellant made to wait till the disposal of injunction petition, which will be heard after filing of affidavit-in-opposition and reply by the parties, then appellant may have to face disastrous consequence as it is under imminent threat of dispossession.

In such event, delay may defeat the object and purpose of injunction and make this proceeding infructuous. So absolutely for a limited period we direct a rule of injunction be issued at once asking the parties to maintain complete status quo as its stands today in respect of the property as involved in this proceeding till next date.”

15. As far as the order which was obtained by the Corporate Debtor dated 02.05.2014 from the Land Reforms and Tenancy Tribunal, the said order has

already been set aside by the High Court vide its judgment and order dated 14.09.2023. The judgment of the High Court is at Annexure 15 to the appeal. The order dated 02.05.2014 obtained by the Corporate Debtor was set aside and in Para 22 to 25 following was directed:

“22. The issue of nullity on the ground of alleged vesting had been decided between the petitioner and the private respondent in the execution proceedings with the dismissal of the application under Section 47 of the Code of Civil Procedure, 1908 on February 21, 2014. The private respondent would not have invited the Tribunal to decide on such issue. The decision under Section 47 had been rendered prior to the private respondent approaching the Tribunal the issue therefore, had been settled by a Civil Court and could not have been reopened by the Tribunal in a collateral proceeding or in any proceeding between the same parties.

23. The Tribunal had prejudged the issue as to the validity of the vesting order by the impugned order particularly when there was a challenge thereto pending.

24. In such circumstances, we set aside the impugned order of the Tribunal. We direct the executing Court to comply with the order dated August 12, 2013 passed by the Supreme Court in SLP No. 19628 of 2013 as expeditiously as possible and preferably within 6 months from the date of communication of this independent order.

25. WPLRT 160 of 2014 is allowed without any order as to costs.”

16. Whether the immovable property is vested in the State of West Bengal is issue which is pending consideration before the West Bengal Land Reforms and Tenancy Tribunal in TA No.01 of 2022, where an order of status quo dated 12.05.2023 in favour of the Appellant has been granted by the Land Reforms and Tenancy Tribunal, which relief is in operation and the order is between the Appellant and the State of West Bengal. The submission on behalf of the Resolution Professional/Corporate Debtor that land is vested in State of West Bengal is completely out of place with respect to proceeding under I&B Code. The Corporate Debtor was only Lessee of which admittedly the Appellant was landlord/owner. The issue of vesting is between the Appellant and the State of West Bengal and no benefit can be claimed by the Corporate Debtor, who claimed only leasehold right from the Appellant which has long expired.

17. We, thus, are satisfied that the Appellant was owner of the assets/immovable property and observation made in the impugned order regarding ownership of the Appellant are misplaced and unsustainable. We, thus, hold that Appellant is owner/landlord of the assets qua Corporate Debtor and the issue of status of the Appellant and Corporate Debtor has become final in the eviction decree confirmed upto the Hon'ble Supreme Court.

Question No. (ii)

18. The order dated 12.05.2023 was passed by the West Bengal Land Reforms and Tenancy Tribunal on an application filed by the Appellant with respect to the proceeding TA No.01 of 2022 pertaining to vesting of the land in the State. Interim order was passed on 12.05.2023, as extracted above. Order dated 12.05.2023 was between the parties who were relevant i.e. owner of the asset and State of West Bengal, who is claiming vesting of the land to the State under Land Reforms Act, 1955. The issue between the Appellant and the State of West Bengal pending in said TA No.01 of 2022 in which MA No. 1240 of 2022 was filed in which interim injunction was passed in favour of the Appellant to protect the interest of the Appellant. Status quo which was directed by order dated 12.05.2023 is status quo between the Appellant and the State of West Bengal. The Appellant cannot claim any benefit of that order of status quo in its favour and the order dated 12.05.2023 does not inure to the benefit of Corporate Debtor.

Question No. (iii) & (iv)

19. In application which was filed by the Appellant being I.A. (IB) No.198/KB/2025, the Appellant has prayed for following reliefs:

“i) To direct the Resolution Professional to set aside the property measuring in area 14 Bighas and 1 Cottah more or less situated at 30, Goshala Road in Mauza Lillooah Thana Bally in the district of Howrah out of the resolution assets as the said property is completely owned and controlled by the Applicant i.e. Calcutta Pinjrapole Society, a society registered under the

Societies Registration Act, 1860 registered on 25th March, 1889;

ii) To direct the Resolution Professional to pay a sum amounting to Rs.68,72,94,678/- (Rupees Sixty-Eight Crores Seventy-Two Lakhs Ninety-Four Thousand and Six Hundred Seventy-Eight only) towards the arrears of rent and mesne profit liable to be paid by the Corporate Applicant;

iii) Such further order or orders and/or direction or directions as this Hon'ble Tribunal may deem fit and proper in the give facts and circumstances.”

20. The question which arise for consideration as to whether the above property is asset of the Corporate Debtor and Corporate Debtor has any statutory right on this asset. Learned counsel for the Resolution Professional as well as learned counsel for the Successful Resolution Applicant in their submission has not claimed that said property was asset of the Corporate Debtor, however, it is not denied by the Resolution Professional that all details of the asset including litigations have been mentioned in the Information Memorandum and asset has also been dealt in the resolution process and the said asset will be taken over by the SRA to continue the litigation and to abide by the result of the litigation. Section 3(27) of the I&B Code defines ‘property’, which is as follows:

*“(27) “**property**” includes money, goods, actionable claims, land and every description of property situated in India or outside India and every description of interest including present or future or vested or*

contingent interest arising out of, or incidental to, property;”

21. Under Section 18(1)(f), the Interim Resolution Professional is obliged to take control and custody of any assets over which Corporate Debtor has ownership right. Section 18(1)(f) is as follows:

“18. *The interim resolution professional shall perform the following duties, namely:—*

.....x.....x.....x.....

(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;”

22. Explanation to Section 18(1) provides that the term “assets” shall not include assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment. We have already held that the Appellant was landlord/owner of the immovable property, which is subject matter of the consideration in the present appeal. The property was leased out to the Corporate Debtor for 21 years by lease dated 05.01.1958, which lease came to an end on 31.12.1978. The Corporate Debtor did not handover the possession to the Appellant. Appellant filed a Suit for eviction which was decreed by the Trial Court on 21.05.2005, which decreed was affirmed upto the Hon’ble Supreme Court. The Hon’ble Supreme Court had occasion to consider the meaning of ‘asset’ in its judgment in **“Victory Iron Works Ltd. vs. Jitendra Lohia and Anr, (2023) 7 SCC 227”**. The Hon’ble Supreme Court noted in the said judgment that word ‘asset’ is not defined in the I&B Code. In Para 23 following has been laid down:

“23. It may be noticed from Sections 18 and 25 that the word “asset” and not the word “property” is what is used in these provisions, though the word “property” is defined in Section 3(27). But the said word “asset” used in Sections 18 and 25 is not defined in the IBC. We have seen from Section 3(37) that it makes a reference to seven different enactments, to which one can take recourse, for finding the definition of words and expressions used but not defined in the Code. Therefore, let us find out whether those seven enactments will be of any assistance to find out the meaning of the word “asset” used, but not defined in IBC.”

23. The Hon'ble Supreme Court, however, noticed that expression 'asset' is defined in the IT Act, 1961. In Para 27 following as laid down:

“27. As we have pointed out earlier, the word “asset” is not defined, either in IBC or in any of the seven enactments referred to in Section 3(37) of the Code. But the word “asset” is defined in Section 102(2) of the Income Tax Act, 1961 to include “property or right of any kind”. Though Section 102 applies as such to Chapter X-A of the Income Tax Act, the definition throws light on the fact that property or right of any kind is considered to be an asset.

24. In the facts of the above case, there was a development agreement in favour of the Corporate Debtor i.e. Avani Towers Private Limited and there were bundle of rights and interests created in favour of the Corporate Debtor. The Hon'ble Supreme Court held that right was created in favour of the Corporate Debtor within the meaning of Section 3(27). In Para 38 following was laid down:

“35. From the sequence of events narrated above and the terms and conditions contained in the Agreements entered into by the parties, it is more clear than a crystal that a bundle of rights and interests were created in favour of the Corporate Debtor, over the immovable property in question. The creation of these bundle of rights and interests was actually for a valid consideration. But for the payment of such consideration, Energy Properties would not even have become the owner of the property in dispute.

Therefore, the development rights created in favour of the Corporate Debtor constitute “property” within the meaning of the expression under Section 3(27) of IBC. At the cost of repetition, it must be recapitulated that the definition of the expression “property” under Section 3(27) includes “every description of interest, including present or future or vested or contingent interest arising out of or incidental to property”. Since the expression “asset” in common parlance denotes “property of any kind”, the bundle of rights that the Corporate Debtor has over the property in question would constitute “asset” within the meaning of Section 18(f) and Section 25(2)(a) of IBC.”

25. Word ‘asset’ is defined in P. Ramanatha Aiyar Advanced Law Lexicon Sixth Edition in following words:

“Something that belongs to a person or company and which has value, an economic resource (for example buildings, plant, stock and accounts receivable). There are several types of assets for business purposes, and they are usually classified in terms of their availability for exchange. Examples include tangible and intangible assets, and long-term (US long-lived or non-current) and short-term (or current) assets”

26. The Hon’ble Supreme Court had occasion to define expression ‘asset’ in **“(1980) 2 SCC 410, D.G. Gose and Co. (Agents) Pvt. Ltd. vs. State of Kerala and Anr.”** where it held that word asset means property in general that one owns. The relevant portion is as follows:

“7. Now the word “assets” has been defined in the Century Dictionary (which is an encyclopaedic lexicon of the English language) as follows:

“Property in general; all that one owns, considered as applicable to the payment of his debts As a singular: Any portion of one's property or effects so considered.”

So if a tax is levied on all that one owns, or his total assets, it would fall within the purview of Entry 86 of List 1, and would be outside the legislative competence of a State legislature, e.g. a tax on one's entire wealth. That entry would not authorise a tax imposed on any of the components of the assets of the assessee. A tax directly on one's lands and buildings will not therefore be a tax under Entry 86.”

27. Thus, asset as defined and explained by the Hon'ble Supreme Court in above judgment is any land or property which is owned by a person.

28. We now need to find out as to whether the subject property can be said to be asset of the Corporate Debtor. The Corporate Debtor admittedly had only leasehold right, which leasehold right came to an end on 31.12.1978. The Corporate Debtor, thus, on the date of commencement of CIRP was not owner of the asset or has any leasehold right or has any other right and Corporate Debtor was clearly in unauthorised possession of the asset.

29. Learned counsel for the Appellant has relied on the judgment of the Hon'ble Supreme Court in **“(2005) 1 SCC 705, Atma Ram Properties Ltd. vs. Federal Motors (P) Ltd.”**. The Hon'ble Supreme Court in the above case

had occasion to consider the status of a tenant against whom eviction decree has been passed. The judgment of Madhya Pradesh High Court holding that on passing of decree of eviction the possession of the tenant becomes unlawful has been affirmed. In Para 11 of the judgment following was laid down:

“11. Under the general law, and in cases where the tenancy is governed only by the provisions of the Transfer of Property Act, 1882, once the tenancy comes to an end by determination of lease under Section 111 of the Transfer of Property Act, the right of the tenant to continue in possession of the premises comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord could have let out the premises on being vacated by the tenant. In the case of Chander Kali Bai³ the tenancy premises were situated in the State of Madhya Pradesh and the provisions of the M.P. Accommodation Control Act, 1961 applied. The suit for eviction was filed on 8-3-1973 after serving a notice on the tenant terminating the contractual tenancy w.e.f. 31-12-1972. The suit came to be dismissed by the trial court but decreed in first appeal decided on 11-8-1975. One of the submissions made in this Court on behalf of the appellant tenant was that no damages from the date of termination of the contractual tenancy could be awarded; the damages could be awarded only from the date when an eviction decree was passed. This Court took into consideration the definition of tenant as contained in Section 2(i) of the M.P. Act which included "any person continuing in

possession after the termination of his tenancy" but did not include "any person against whom any order or decree for eviction has been made". The Court, persuaded by the said definition, held that a person continuing in possession of the accommodation even after the termination of his contractual tenancy is a tenant within the meaning of the M.P. Act and on such termination his possession does not become wrongful until and unless a decree for eviction is passed. However, the Court specifically ruled that the tenant continuing in possession even after the passing of the decree became a wrongful occupant of the accommodation. In conclusion the Court held that the tenant was not liable to pay any damages or mesne profits for the period commencing from 1-1-1973 and ending on 10-8-1975 but he remained liable to pay damages or mesne profits from 11-8-1975 until the delivery of the vacant possession of the accommodation. During the course of its decision this Court referred to a decision of the Madhya Pradesh High Court in Kikabhai Abdul Hussain v. Kamlakars wherein the High Court had held that if a person continues to be in occupation after the termination of the contractual tenancy then on the passing of the decree for eviction he becomes a wrongful occupant of the accommodation since the date of termination. This Court opined that what was held by the Madhya Pradesh High Court seemed to be a theory akin to the theory of "relation back" on the reasoning that on the passing of a decree for eviction, the tenant's possession would become unlawful not from the date of the decree but from the date of the termination of the

contractual tenancy itself. It is noteworthy that this Court has not disapproved the decision of the Madhya Pradesh High Court in Kikabhai Abdul Hussain case but distinguished it by observing that the law laid down in Kikabhai Abdul Hussain cases was not applicable to the case before it in view of the definition of "tenant" as contained in the M.P. Act and the provisions which came up for consideration of the High Court in Kikabhai Abdul Hussain cases were different."

30. Further the Hon'ble Supreme Court in **"(1977) 4 SCC 1953, Shyam Sharan Vs. Sheoji Bhai & Anr."** held that the tenant continuing in occupation of the tenancy premises after the termination of tenancy is an unauthorised and wrongful possession. To the same effect is another judgment of Hon'ble Supreme Court in **"(2022) 18 SCC 233, Heera Traders vs. Kamla Jain"**, where the Hon'ble Supreme Court in Para 69 has laid down that a decree of eviction having been passed, the tenant ceases to be tenant and he would become an unauthorised occupant. Further in Para 86 and 89 following was laid down:

"86. In the case of a contractual tenant, upon the expiry of the lease, he is under the Transfer of Property Act and, in accordance with the contract, duty-bound to vacate the premises and deliver possession to the landlord. Failure on his part to do so, would expose him to an action for mesne profits, on the basis that his continuance after the period and contrary to the contract, would be wrongful.

89. This position is self-evident from the decision in Atma Ram. The judgment in Atma Ram makes it clear that the erstwhile statutory tenant would become an unauthorised occupant upon the passing of the order by the original forum. This Court has further held that fact that the order of eviction has been challenged in an appeal or revision and it is confirmed at a later point, will not enable the erstwhile tenant to contend that he would remain a tenant even after the decree/order of eviction.”

31. The above judgments clearly lay down that the right of the leasehold when came to an end its possession becomes unauthorised. In the present case, eviction decree has been passed against the Corporate Debtor by Trial Court on 21.05.2005, which was affirmed upto the Hon'ble Supreme Court, the Corporate Debtor's possession is unauthorised and illegal possession. A person who has unauthorised or illegal possession of a property cannot claim that it has any right in the property nor said property can be asset of said person. In the property in question, in which the Corporate Debtor has no subsisting right could not have been included in the CIRP process and nor could be dealt with in the CIRP process.

32. The Appellant has clearly made out a case before the Adjudicating Authority to exclude the subject property from the CIRP process and the Adjudicating Authority committed error in rejecting the said prayer made by the Appellant. When the Corporate Debtor had no subsisting right in the property in question, that cannot be offered in the Information Memorandum nor any resolution plan could have been invited in respect to said land. The

entire process conducted by the Resolution Professional was thus wholly illegal and unauthorised. The Resolution Professional being well aware that the Corporate Debtor has no subsisting right could not have included it as asset of the Corporate Debtor. An asset may include any kind of property which is owned by a company but a property in which the Corporate Debtor has no right or subsisting right could not be part of the CIRP process.

33. The explanation to Section 18(1) clearly provides that the Resolution Professional shall not take possession of any asset which is owned by a third party which are in possession of the Corporate Debtor under trust or under contractual arrangements including bailment. On the date when CIRP commenced no contractual arrangement was continuing on which the Corporate Debtor could have permitted to be in possession. No law including I&B Code could be said to promote illegality. Unauthorised possession and illegal occupancy cannot be recognised in CIRP nor could be made subject of CIRP process.

34. We have already noticed that both the Hon'ble Supreme Court and Calcutta High Court in their judgment, as noted above, has directed the eviction of the Corporate Debtor through execution proceeding. Calcutta High Court on 18.09.2023 has directed for handing over possession within six months, however, on 24.04.2024, CIRP commenced in which property was also included by the Resolution Professional. The Resolution Professional's submission that it has not treated as property of the Corporate Debtor is wholly erroneous and incorrect. When the Resolution Professional has

included the said property in the CIRP process and has offered possession of the property to go to the SRA, it cannot be said that property is not dealt with in the CIRP process.

35. We may also notice in this context the judgment of Hon'ble Supreme Court in ***"A A Estates Pvt. Ltd. v. Kher Nagar Sukhsadan Co-operative Housing Society Ltd., Civil Appeal No.120 of 2025 decided on 28.11.2025"***. The question which arose for consideration in the above case was whether the development agreement and supplementary agreements constitute assets or property. Question No.(ii) was framed to the following effect:

"(ii) Whether the aforesaid Development Agreement and the Supplementary Agreements constitute "assets" or "property" of the corporate debtor so as to attract the protection of moratorium under Section 14 of the IBC."

36. The said question was answered by the Hon'ble Supreme Court holding that protection of Section 14 is confined to existing, subsisting and enforceable rights as on the date of commencement of the CIRP. In para 16.4 of the judgment following was laid down:

"16.4. The above exposition clarifies that whether a development agreement constitutes an "asset" of the corporate debtor depends on whether it creates a proprietary, possessory or enforceable right in its favour at the relevant time. Not every executory or

conditional contract amounts to an asset. The protection of Section 14 is confined to existing, subsisting and enforceable rights as on the date of commencement of the CIRP.”

37. Hon'ble Supreme Court in the judgment has noted that the development agreement and supplementary agreement having already been canceled prior to initiation of CIRP, the said cannot be included in the assets of the Corporate Debtor. The about judgment fully supports the submission of the Appellant that when Corporate Debtor has no subsisting right in the asset in question, the same could neither be included in the Information Memorandum nor in the resolution process.

38. Learned counsel for the Respondent has relied on judgment of this Tribunal in “**Company Appeal (AT) (Ins) No.574-575 of 2026, Jasmeet Singh Marwah vs. Nuway Organic Naturals (India) Ltd. & Ors.**” decided on 25.03.2026. It is submitted that in the above case the Adjudicating Authority has rejected the application filed by the Appellant to exclude property from the CIRP of the Corporate Debtor which order of the Adjudicating Authority was affirmed by this Tribunal in the above judgment. In the judgment of this Tribunal, Para 17 of order of the Adjudicating Authority was noted. Para 9 and 10 of the judgment is as follows:

“9. In Paragraph 17 of the judgement, Adjudicating Authority directed as follows:

“17. Having considered the overall facts and circumstances, we are of the view that the disputes raised by the Applicant, insofar as they

relate to the ownership of the disputed Chhatarpur property which is already sub-judice before the Hon'ble High Court of Delhi, cannot be adjudicated by this Adjudicating Authority in exercise of jurisdiction under the Code and require determination before the appropriate civil forum. The Applicant, in the present Application, has not sought any adjudication on the validity of the sale deed as such, but has confined the relief to a direction for exclusion of the said property from the scope and ambit of the Resolution Plan. It is further noted that upon approval of the Resolution Plan by this Adjudicating Authority, the management and control of the Corporate Debtor shall vest in the Successful Resolution Applicant, who has undertaken to pursue and continue the pending litigation concerning the said disputed property and to abide by its ultimate outcome. The Resolution Plan, duly approved by the CoC under Section 30(5) and presently pending approval before this Adjudicating Authority in IA(PLAN) 10 of 2025, expressly records the pendency of CS (OS) No. 7948 of 2015 before the Hon'ble Delhi High Court and provides that the said proceedings shall be pursued by the Resolution Applicant after approval of the Plan. In such view of the matter, this Adjudicating Authority cannot grant the relief of exclusion as sought, particularly when the Resolution Plan itself duly records the pendency of the civil litigation and the Successful Resolution Applicant has undertaken to pursue the same and abide by its final outcome, thereby safeguarding the Applicant's interest and leaving the rights of the parties to be determined by the competent civil court."

10. When the litigation, with respect to immovable property situated in Delhi, is pending adjudication before the Delhi High Court, the said issues cannot be adjudicated by the Adjudicating Authority, and we are of the view that rights of the Appellant are amply protected by observations and findings as Paragraph 17 of the order. Hence we are of the view that Adjudicating Authority did not commit any error in

rejecting the Application, which however as stated in Paragraph 17, shall be subject to ultimate decision in the pending litigation to which SRA has undertaken to be bound by.”

39. In the above case, the litigation with respect to immovable property was pending in the Delhi High Court, which issue cannot be adjudicated by the Adjudicating Authority, hence, said asset was not excluded. The above case is not applicable in the facts of the present case. Once the Suit for eviction of the Corporate Debtor filed by the Appellant has been decreed upto Hon’ble Supreme Court and leasehold right in favour of the Corporate Debtor stood terminated, no litigation between Appellant and the Corporate Debtor pertaining to the ownership of the asset is pending, hence, above judgment does not help the Respondent in facts of the present case.

40. Learned counsel for the Respondent has further submitted that the Appellant cannot seek recovery of possession from the Resolution Professional and has relied in support of said submission on judgment of Hon’ble Supreme Court **“1964 SCC Online SC 322, Chittoori Subbanna vs. Kudappa Subbaana & Ors.”** as well as judgment of Hon’ble Supreme Court in **“2024 SCC Online SC 4083, Rama Kt. Barman (Died) Thr. Lrs. v. Md. Mahim Ali and Others.”**

Question No. (v)

41. In view of our foregoing discussion and conclusions, we are of the view that the Adjudicating Authority committed error in rejecting I.A. (IB)

No.198/KB/2025 filed by the Appellant praying for exclusion of subject property from the assets of the Corporate Debtor. The Corporate Debtor having no subsisting right in the above asset, the said asset could not have been dealt in the CIRP process. In view of the foregoing discussion, we are of the view that Appellant has made out a case for granting of relief as prayed in I.A. (IB) No.198/KB/2025 and the prayer (i) made in the application, as noted above, deserve to be allowed.

42. In result, Company Appeal (AT) (Ins.) No.474 of 2026 is allowed. The order dated 22.01.2026 passed in I.A. (IB) No.198/KB/2025 in C.P. (IB) No.730/KB/2019 is set aside. I.A. (IB) No.198/KB/2025 in so far as prayer (i) is concerned is allowed. The property measuring in area 14 Bighas and 1 Cottah more or less situated at 30, Goshala Road in Mauza Lillooah Thana Bally in the district of Howrah is excluded from the CIRP process of the Corporate Debtor. All subsequent actions taken with respect to above asset are declared non-est. Appeal is allowed accordingly.

43. As submitted by learned counsel for the Appellant in I.A. (IB) No.198/KB/2025, the prayer was to exclude the property from the CIRP of the Corporate Debtor, which prayer having been allowed by us in this appeal, it is open for the Appellant to obtain direction from the executing court to obtain possession as already been directed by the Hon'ble Supreme Court and the Calcutta High Court.

44. In so far as claim of mesne profits from the Corporate Debtor on wrongful occupancy of the premises, it is open for the Appellant to press for

such relief before the Trial Court, which has already been remitted for reconsideration from the first Appellate Court, as noted above.

Parties shall bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

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

NEW DELHI

30th June, 2026

Archana