

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins.) No. 1518 of 2026

IN THE MATTER OF:

Middle East Management Services LLP & Anr.

...Appellants

Versus

Birendra Kumar Agarwal & Ors.

...Respondents

Present:

For Appellants : Mr. Abhishek Anand, Mr. Akash Chatterjee, Mr. Tejas Deshpandey & Mr. Laukik Palekar, Adv.

For Respondents : Mr. Malhar Zatakia & Mr. Alishay Jain, for R-1.

O R D E R
(Hybrid Mode)

[Per : Mohammad Faiz Alam Khan (Oral)]

18.08.2026 Heard Shri Abhishek Anand, Learned Counsel appearing for the Appellant as well as Mr. Malhar Zatakia for the Liquidator/ Respondent. Perused the record.

2. The instant appeal has been filed by the Appellant challenging the Impugned Order dated 09.07.2026 passed by the Learned Adjudicating Authority w.r.t., the application being IA (I.B.C)/1023/MB/2025 in CP (IB) NO. 93 of 2022 moved by the Liquidator, whereby certain directions to appoint independent architect/ surveyor to inspection and measure the A-2, premises in possession of the Appellant and for taking appropriate action for declaration of title in the name of the CD in respect of the Area in the Office 2, have been passed by the Learned Adjudicating Authority.

3. Learned Counsel for the Appellant at the outset submits that the Learned Adjudicating Authority even after recording in the Impugned Order that it is not having any jurisdiction to dwell into the ownership/ possession issue has gone ahead to pass an order for conducting inspection and measurement of the property of the Appellant without their being any basis, as the property in question is owned and possessed by the Appellant.

4. It is further submitted that the said premises were first sold by Mukti Infratech Pvt. Ltd. to one Mr. Sabu in 2012 and thereafter Appellant No. 2 entered into an Agreement to Sale with Mr. Sabu in 2016 and since then he is in possession of the same.

5. It is further submitted that the law is well settled that the Adjudicating Authority may only deal with the property which may belong to the Corporate Debtor and is in the liquidation estate. However, no other property which is not included in the liquidation estate may be touched upon by the Learned Adjudicating Authority.

6. It is further submitted that once the Learned Adjudicating Authority has observed and concluded that it may not interfere so far as the ownership and possessory rights are concerned, as the same falls under the jurisdiction of Civil Court, it was not proper for the Adjudicating Authority to have adjudicated the issue of possession and ordering inspection and measurement of the property of the Appellant when the title itself of the property of the CD was disputed.

7. Learned Counsel for the Appellant has relied upon the law laid down by this Appellate Tribunal in the matter of **SICOM Ltd. vs. Kitply**

Industries Ltd. & Anr. passed in Company Appeal (AT)(Insolvency) No.849/2021 specifically on internal paragraph no. 69 of the report in order to buttress his point that the Learned Adjudicating Authority has exceeded in its jurisdiction in passing the Impugned Order of inspection and measurement of the property, with consequential directions.

8. Learned Counsel for the Liquidator has however, submits that there is no impropriety or illegality in the Impugned Order passed by the Learned Adjudicating Authority and though various prayers were sought in the application moved before the Learned Adjudicating Authority, but the Learned Adjudicating Authority recorded that it is not going to interfere so far as the ownership/ possessory rights are concerned, but keeping in view the/ site plan/ map the Adjudicating Authority came to the conclusion that it would be in the interest of justice that the Appellant's property be inspected and measured so that the Liquidator may take possession of the property of the CD which has been included in the liquidation estate, in accordance with law. Thus, there is no contradiction in the findings of the Learned Adjudicating Authority.

9. Having heard Learned Counsel for the Parties and perused the record. We notice that the Liquidator has moved an application being IA (I.B.C)/1023/MB/2025 with the following prayers :-

“a. To allow the present Application:

b. To direct the Respondents to immediately hand over the possession of the said Property to the Applicant:

c. Direct the Superintendent of Police, Sakinaka Division to direct the concern police station to provide necessary

assistance to the Applicant to re-take physical possession of the said Property from the Respondent:

cl. That this Hon'ble Tribunal be pleased to appoint an independent architect / surveyor to inspect and measure the A-2 premises in possession with the Respondent No. 1 and 2 and to file a report before this Hon'ble Tribunal:

d. Pending the hearing and final disposal of the present application, to appoint a court receiver over the said Property:

e. Pending the hearing and final disposal of the present application, this Hon'ble Tribunal be pleased to restrain the Respondent from entering into or dealing with in any manner the said Property:

f. Cost of the present application: and

g. Any relief as may deem fit in the interest of justice.”

10. We also notice that since no Resolution Plan was approved by the CoC of the CD a decision to liquidate the same was taken by the CoC which was also approved by the Learned Adjudicating Authority and in this regard the Respondent Liquidator was appointed.

11. We also notice that it has been stated by the Learned Adjudicating Authority in Impugned Order in para no. 7 that the CD is the owner of the property situated at A-2 (Part 2), 2nd Floor, Trade Square Building, Andheri-Kurla Road, Sakinaka Mumbai, admeasuring 81.30 sq. mtrs by virtue of an Agreement for Sale dated 01.10.2009 executed with Respondent No. 4 for the said property and the said property forms part of the liquidation estate, however, the same is alleged to be in illegal encroachment caused by the Respondent No. 1 (Appellant).

12. We also notice that the Appellant is disputing the ownership of the CD so far as the aforesaid property is concerned.

13. We also notice that though, the Learned Adjudicating Authority in its order has recorded that the Tribunal has the residuary jurisdiction under Section 60(5) of the IBC and such jurisdiction is primarily intended to address issues arising out of or in relation to the insolvency resolution or liquidation process of the CD but the same cannot ordinarily be invoked to adjudicate, complex and disputed question of title and possession of the immovable property between the third parties. However, keeping in view that the property which according to the Liquidator is included in the liquidation estate of the CD be segregated it directed the inspection and measurement of the same only for the purpose that the Liquidator, in emergence of encroachment by the Appellant may take appropriate action in accordance with law.

14. We also notice that the main dispute between the parties was pertaining to the ownership, title and possession of unit A-2 situated in Trade Square building. The contention of the Liquidator was that CD owns a portion of the premises A-2 (Part 2) and the Appellants have claimed their ownership over the entire unit A-2 based on Agreement for Sell. In this regard Adjudicating Authority has perused the authenticated floor map/layout plan as per sanctioned plan and found discrepancy between the Area Reflected in the maintenance receipts and bills of the Appellant and contractual area emanating from Mukti Infrastructure to Mr. Sabu. It is also noted that none of the Registered documents described the boundaries and also that the office 2 at 2nd Floor was sold in two parts and

cumulatively, the sold area to Appellant exceeds the allotted area and also that Agreement to Sell dated 01.10.2009 does not describe office A2 as purchased in part and came to the conclusion that A-2 appears to have been sold twice.

15. It is also noted that the property office 2 is in occupation of Appellant No. 1 which is a partnership firm of Appellant No. 2 and thus, despite having ownership the CD was never given possession thereof, while it was sold to CD prior in time.

16. We having considered all facts and circumstances of the case are of the considered view that while passing the Impugned Order only the inspection and measurement of the property, which according to the Liquidator is the part and parcel of liquidation estate of the CD and which according to the Appellants are having a disputed ownership, is directed to be inspected and measured as the Appellants are possessing an adjacent property. Therefore, so far as the ownership or possessory rights of the Appellants are concerned that in our considered opinion are not affected by the Impugned Order as simpliciter the order of inspection and measurement has been passed with consequential direction of taking appropriate steps to liquidator. The appeal, in our opinion appears to have been filed prematurely.

17. Thus, keeping in view all the facts and circumstances of the case we do not find any merit in the Appeal and therefore, same is **dismissed**. There is No order as to costs. Pending I.A.'s, are also disposed of.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

Sim/mr