IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

IA-383/2026
in
Company Petition (IB) No. – 1680 (PB)/2019

(*Order under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)*

IN THE MATTER OF:

M/s VHV Beverages Private Limited (Under Liquidation)
...Corporate Debtor

AND IN THE MATTER OF IA-383/2026:

Mr. Vikas Chopra **... Applicant**

Versus

Mr. Vivek Parti
Liquidator Of M/s VHV Beverages Private Limited

.... Corporate Debtor / Respondent

ORDER PRONOUNCED ON: 03.09.2026

CORAM:
JUSTICE ANUPINDER SINGH GREWAL
HON'BLE PRESIDENT

SHRI RAVINDRA CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant :	Mr. Adarsh Tripathi, Mr. Vikram Singh Baid, Mr. Ajitesh Garg, Advs. in IA-383/2026.
For the Respondent:	Ms. Anju Jain, Mr. Hitesh Sachar, Advs. with Mr. Vivek Parti, Liquidator
For the Operator:	Mr. Milan Singh Negi, Mr. Nikhil Kumar Jha, Ms. Katyayani, Advs.

ORDER

The present Application has been filed by Mr Vikas Chopra ("**Applicant**") under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("**Code**"), seeking directions to Mr Vivek Parti, **the Respondent/Liquidator** of M/s VHV Beverages Private Limited ("**Corporate Debtor**"), for exclusion of the immovable property bearing Khasra Nos. 151//16/3, 24/2 and 25, situated at Village Roahd, District Jhajjar, Haryana, admeasuring 5412 sq. metres, including approximately 35,000 sq. ft. of constructed area ("**leased premises/land/plot**"), from the liquidation estate of the Corporate Debtor, and for restoration of vacant and peaceful possession thereof to the Applicant. The following prayers have been made in the application:

(I) *Allow the present Application directing the Respondent/ Liquidator to forthwith hand over vacant and peaceful possession of the said Land to the Applicant on an immediate basis as the leased land does not form part of the Liquidation Estate; and*

(II) *Pending disposal of the present Application, direct the Liquidator to pay usage charges for the Applicant's land at the rate calculated in Para 18 of the present Application, from the date of commencement of liquidation till the date actual vacant possession is handed over to the Applicant, along with appropriate penalty in case of delay in making the payments;*

(III) *Pass any other order this Hon'ble Court may deem fit in the facts and circumstances of the case.*

Brief facts of the case as stated in the application:

1. The Applicant is the lawful owner and landlord of the industrial plot situated in Khasra Nos. 151//16/3, 24/2, 25 located in Village Roahd, Distt. Jhajjar, Haryana, admeasuring 5412 Sq. Mtrs. including 35000 Sq. Ft. of constructed area. A Lease Deed dated 26.10.2012 was executed between the Applicant and the Corporate Debtor for this plot for a period of nine years commencing from 01.12.2012 (Annexure A-1 of the application.

2. The Corporate Debtor, M/s VHV Beverages Limited, was admitted into the corporate insolvency resolution process (**CIRP**) on 09.12.2021. Subsequently, as no feasible resolution plan was received, the Corporate Debtor was admitted into liquidation under section 33(2) of the IBC vide order dated 02.12.2025 passed by this Adjudicating Authority, and Mr Vivek Parti, IBBI/IPA-001/IP-P00813/2017- 2018/11376 was appointed as the liquidator.

Submissions made by the applicant:

3. According to the Applicant, the lease had expired by efflux of time in November, 2021, and no renewal, extension or fresh lease deed was granted thereafter; hence no subsisting contractual or legal right exists in favour of the Corporate Debtor to continue in occupation of the said Land.

4. Further, the lease deed expressly prohibited any sub-lease, assignment, or third-party occupation. The Applicant submits that notwithstanding the aforesaid prohibition, the Corporate Debtor in 2018 had sub-let the leased premises to M/s Crystal Beverages ("**Crystal Beverages**"), in breach of the terms and conditions of the Lease Deed.

5. On 27.12.2023 and 04.10.2024, the Applicant had communicated to the erstwhile Resolution Professional ("**RP**") its unwillingness to renew or continue the lease and had sought possession of the leased premises.

6. On 05.11.2024, the Applicant herein filed an application bearing IA-5389/2024 similar to the instant application wherein it prayed for vacant and peaceful possession of the leased premises (Annexure A-3 of the application).

7. Upon commencement of liquidation on 02.12.2025 and appointment of the Respondent as Liquidator, IA-5389/2024 was withdrawn by the Applicant with liberty to take appropriate steps in accordance with law. The same

has been recorded in the order dated 05.01.2026 passed by this Adjudicating Authority.

8. On 18.12.2025, the Applicant informed the Liquidator that the land belonged to the Applicant, the lease deed had expired, and that the same cannot form part of the liquidation estate of the CD Annexure A-5 of the application. Mails and written communications were also addressed to the RP addressing the same issue.

9. The Applicant has also filed a claim for outstanding rents in Form-G before the Liquidator/Respondent on 19.12.2025 amounting to Rs.1,85,99,370/- (Annexure A-7 of the application). The claim comprises outstanding lease rentals for the pre-CIRP period and amounts claimed for the CIRP period. Despite the same, no response was received from the Liquidator, and hence the present application was filed by the Applicant.

10. In this application, the Applicant submits that Section 36(4) of the Code expressly excludes from the liquidation estate assets owned by third parties which are in possession of the Corporate Debtor. According to the Applicant, since the subject land is admittedly owned by him, the same stands excluded from the liquidation estate and the Respondent has no authority to continue retaining possession thereof.

11. It is further contended that the powers and duties of the Liquidator under Section 35 of the Code extend only to the assets of the Corporate Debtor, and that the Liquidator cannot retain possession of an immovable property belonging to a third party merely on the ground that the property was earlier being used or occupied by the Corporate Debtor.

12. The Applicant further contends that the continued retention of the subject land by the Respondent amounts to unauthorised occupation under the guise of liquidation proceedings and has resulted in deprivation of the

Applicant's property. It is submitted that such continued occupation is contrary to the scheme of the IBC, and also infringes the Applicant's right to property under Article 300-A of the Constitution of India.

13. Lastly, the Applicant states that the present Application does not seek adjudication of any monetary claim. According to the Applicant, the limited grievance is against the continued withholding of possession of the subject land despite its alleged exclusion from the liquidation estate. It is stated that, having received no response from the Respondent, the Applicant has invoked the residuary jurisdiction of this Adjudicating Authority under Section 60(5) of the Code and has filed the present application.

14. The application was first listed on 27.01.2026 wherein the Applicant was directed to issue notice. The affidavit of service was uploaded on 06.02.2026 on the DMS e-portal, and on 11.03.2026 time was granted to the Respondent to file a reply. A reply to the application was uploaded by the Respondent on the DMS e-portal on 18.03.2036 under the column designated for the main petition. Nevertheless, the same has been taken into consideration by us while preparing this order.

Objections raised by the Respondent:

15. In its reply, the Respondent/Liquidator states that it does not dispute the fact that the leased premises fall outside the liquidation estate. It is stated that the subject land was never included as an asset of the Corporate Debtor either by the RP or the Liquidator and was also not treated as an asset of the Corporate Debtor in the Information Memorandum dated 11.03.2024. The Respondent, however, states that the liquidation estate comprises, inter alia, the plant and machinery, security and financial assets and the building/factory shed situated at the premises.

16. The Respondent further contends that the prayer for restoration of possession cannot be entertained at this stage in lieu of the moratorium in force under Section 33(5) of the Code, and to maintain the Corporate Debtor as a going concern.

17. The Respondent states that the Applicant had filed a claim of Rs.1,85,99,370/- during liquidation, out of which Rs.1,40,12,274/- has been admitted, while Rs.45,87,096/- has been rejected on the ground that the same pertains to the CIRP period and is to be considered as unpaid CIRP cost. It is further stated by the Respondent that the Applicant has not raised any objection to the decision regarding admission of the claim.

18. The Respondent accordingly submits that the present Application is not maintainable at this stage and deserves to be dismissed.

19. In response to the averments made in the reply, a rejoinder was filed by the petitioner on 02.04.2026 on the DMS e-portal.

Submissions made in the rejoinder

20. In the Rejoinder, the Applicant denies the averments and contentions raised by the Respondent and submits that the issue before this Adjudicating Authority is whether the Liquidator can continue to retain possession of an immovable property owned by a third party in the absence of any subsisting lease or legal right in favour of the Corporate Debtor.

21. The Applicant, further contends that the Respondent's own description of the liquidation estate is itself inconsistent. It is submitted that the plant and machinery installed at the premises is claimed by Crystal Beverages in Civil Suit No. CS 593 of 2025 to have been installed and developed by it at its own cost (Annexure A-8 of the rejoinder). The Applicant also contends that the factory shed was constructed by the Applicant itself, and relies upon the occupation certificate and photographs placed on record (Annexure A-10 of the rejoinder). On this basis, the Applicant disputes the

Respondent's assertion that the plant and machinery and factory shed constitute assets of the Corporate Debtor.

22. The Applicant further contends that since the Respondent has admitted that the land itself does not form part of the liquidation estate, the Liquidator cannot rely upon the concept of running the Corporate Debtor as a going concern to justify continued possession of the Applicant's property. It is submitted that the land, shed and machinery are claimed by the Applicant and Crystal Beverages and, consequently, the basis for retaining possession of the premises is not made out. The Applicant also disputes the Respondent's reliance upon Section 33(5) of the Code, contending that the provision cannot confer a substantive right to retain possession of property belonging to a third party.

23. The Applicant also relies upon the pleadings in Civil Suit No. CS 593 of 2025 filed by Crystal Beverages, the order passed therein, the occupation certificate, photographs of the shed, the eviction notice, the complaint and the application bearing no. 5274/2024 filed by the RP for eviction of Crystal Beverages to contend that the assets presently situated at the leased premises do not belong to the Corporate Debtor and that the occupation of the premises by Crystal Beverages is without the Applicant's consent.

24. Vide order dated 05.05.2026, the parties were given liberty to file written submissions. Written submissions were uploaded by the Applicant on 05.05.2026, and by the respondent/liquidator on 06.05.2026.

25. The Applicant, in its Written Submissions, further relies upon the alleged outstanding rent of Rs.1,85,99,370/- and contends that the continued occupation is without any compensatory arrangement. It reiterates that the land is not part of the liquidation estate and contends that the factory shed is also the Applicant's property, while the plant and machinery is

claimed by Crystal Beverages. The Applicant consequently submits that the Corporate Debtor has no asset at the premises which warrants continued retention of possession.

26. In the Written Submissions filed on behalf of the Respondent/Liquidator, it is reiterated that the subject land has never been included in the liquidation estate and was not treated as an asset of the Corporate Debtor in the Information Memorandum. However, the Respondent submits that the leasehold rights constitute an intangible asset of the Corporate Debtor capable of being dealt with during CIRP and liquidation.

27. The Respondent further submits that Sections 35(1)(e) and (f) of the Code empower the Liquidator to carry on the business of the Corporate Debtor and to take measures for value maximisation. According to the Respondent, the leased premises are integral to the operational unit comprising the plant, machinery and infrastructure and its loss would disrupt the business and diminish the value of the Corporate Debtor. Reliance has been placed upon, inter alia, *Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta* and *Manoj Gangwal v. M.P. Industrial Development Corporation*.

28. The Respondent also submits that the framework governing liquidation contemplates sale of the Corporate Debtor as a going concern and that schemes of compromise or arrangement under Section 230 of the Companies Act, 2013 are also pending consideration before the SCC. It is submitted that continued access to the operational premises is necessary for preservation and maximisation of value.

29. The Respondent further raises the plea of estoppel and acquiescence. It is submitted that although the Applicant claims to have knowledge of the alleged sub-letting since 2018, the Applicant approached the RP only in 2023 and thereafter continued to participate in the insolvency process. The Respondent relies upon the Applicant's claim of Rs.1,85,99,370/-, out of

which Rs.1,40,12,274/- was admitted, and submits that the Applicant accepted such admission without objection. It is further stated that the Corporate Debtor had made payments of Rs.1,38,15,725/- to the Applicant during the CIRP period and that the Liquidator continues to pay rent for the property and is willing to continue such payment until completion of liquidation.

30. The Respondent accordingly submits that the conduct of the Applicant amounts to acquiescence and active participation in the insolvency process and that the Applicant cannot simultaneously seek eviction while pursuing monetary claims in the liquidation process.

31. The Respondent further relies upon the judgment in *Shri N.R. Ravi v. Official Liquidator of M/s Sem India Systems Pvt. Ltd.* and submits that where leased premises are required for safeguarding assets and furtherance of liquidation proceedings, the Official Liquidator may continue in occupation subject to payment of rent. It is contended that the lease cannot be treated as automatically cancelled merely upon commencement of liquidation and that the Liquidator may continue occupation where the premises are necessary for maintaining the Corporate Debtor as a going concern.

32. On 18.08.2026, after hearing the parties, orders were reserved in the matter.

Analysis and Findings:

33. We have heard the learned Counsel for the Applicant and the learned Counsel appearing for the Respondent/Liquidator and perused the material placed on record. The issues arising for consideration are enlisted below:

A. Whether the present Application is maintainable in view of the pending civil proceedings already instituted by the parties in respect of the subject matter of the present Application?

B. Whether the non-disclosure of the aforesaid civil proceedings in the Application amounts to suppression/concealment of a material fact?

C. Whether this Adjudicating Authority can grant a direction for eviction/restoration of possession in respect of an immovable property which does not form part of the liquidation estate of the Corporate Debtor, in the present set of facts?

Issue A: Whether the present Application is maintainable in view of the civil proceedings already instituted by the parties in respect of the subject matter of the present Application?

34. From the material placed on record, it is evident that *Civil Suit No. 356 of 2021* titled *Vikas Chopra v. VHV Beverages Pvt. Ltd.* was instituted *before the Civil Court at Bahadurgarh*, concerning the leased premises. The said fact finds specific mention in the Rejoinder filed by the Applicant. It is further stated therein that the said civil suit is still pending adjudication and that no decree or substantive finding has been rendered therein.

35. In addition thereto, the record placed before us in the Rejoinder mentions *Civil Suit No. 593 of 2025*, titled *M/s Crystal Beverages v. Vikas Chopra*, pending before the Court of the Civil Judge (Senior Division), Jhajjar, Haryana. The said proceedings inter alia, also concern the leased premises in question and the rights of the parties in relation thereto.

36. The pendency of the aforesaid civil proceedings assumes significance since the controversy concerning the said land is thus already before a competent Civil Court. The present Application also seeks directions for restoration of vacant and peaceful possession of the said land to the Applicant.

37. Section 10 of the Code of Civil Procedure, 1908 embodies the principle of *res sub judice*. The provision mandates that no Court shall proceed with the trial of a subsequently instituted suit where the matter directly and substantially in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or parties claiming under them, litigating under the same title, provided the earlier Court is competent to grant the relief claimed. Section 10 of the Code of Civil Procedure, 1908 reads as follows:

> *"10. Stay of suit.—No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India have jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.*
> *Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action."*

38. The Hon'ble Supreme Court, in *National Institute of Mental Health & Neuro Sciences v. C. Parameshwara*, (2005) 2 SCC 256 has explained that the object underlying Section 10 is to prevent two courts of concurrent jurisdiction from simultaneously trying parallel proceedings concerning the same matter and to avoid conflicting findings. The Court held that the

essential test is whether the matter directly and substantially in issue in the subsequent proceeding is also directly and substantially in issue in the previously instituted proceeding and whether the decision in the earlier proceeding would operate as *res judicata* in the subsequent proceeding. The relevant portion of the judgement is provided below:

> *"The object underlying Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the -same matter in issue.* ***The object underlying Section 10 is to avoid two parallel trials on the same issue by two Courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit.*** *The language of Section 10 suggests that it is referable to a suit instituted in the civil Court and it cannot apply to proceedings of other nature instituted under any other statute.* ***The object of Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue****. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject matter in both the suits is identical. The key words in Section 10 are "the matter in issue is directly and substantially in issue" in the previous instituted suit. The words "directly and substantially in issue" are used in contra-distinction to the words "incidentally or collaterally in issue". Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of subject matter in both the proceedings is identical."*

39. The principle underlying Section 10 is therefore intended to prevent a party from simultaneously pursuing parallel adjudication before two competent forums in respect of a substantially same controversy. The provision is

founded upon the policy of avoiding multiplicity of proceedings and conflicting decisions.

40. The mere change in the forum or the description of the relief cannot permit a party to subject the same underlying dispute to parallel adjudication. Where the foundation of the relief sought remains the same, namely, the Applicant's alleged right to possession of the subject property, permitting simultaneous adjudication would defeat the very object underlying Section 10 of the CPC.

41. In view of the aforesaid, we are of the considered view that the dispute concerning the leased premises and the rights of the parties arising therein is already the subject matter of pending civil proceedings before the competent Civil Court. The Applicant, having already invoked the jurisdiction of the Civil Court in respect of the subject matter, cannot seek parallel adjudication of the same dispute before this Adjudicating Authority under Section 60(5) of the Code. The pendency of the aforesaid proceedings, particularly in view of the nature of the relief sought in the present Application, militates against entertaining the present Application and warrants its rejection. In view of our findings on maintainability and jurisdiction, it is not necessary for us to examine the rival contentions regarding estoppel, acquiescence, or the quantum of rent payable.

Issue B: Whether the non-disclosure of the aforesaid civil proceedings in the Application amounts to suppression/concealment of a material fact?

42. It is found that the Applicant did not disclose the aforesaid civil proceedings in the application. The said proceedings are a material fact and have a direct bearing upon the maintainability of the present Application and the jurisdiction of this Adjudicating Authority.

43. The factum of the civil suit came to be disclosed only in the Rejoinder filed by the Applicant. The significance of the non-disclosure is further evident from the Applicant's own verification appended to the Rejoinder, wherein the Applicant has affirmed that the factual contents are true and that "nothing material has been concealed" therefrom.

44. A party invoking the jurisdiction of this Adjudicating Authority is required to place all material facts relevant to the adjudication of the dispute before the Adjudicating Authority. A proceeding already instituted before a competent Civil Court concerning the same property and the Applicant's rights therein cannot be regarded as an irrelevant or collateral circumstance.

45. The subsequent disclosure of the civil proceedings only in the Rejoinder, particularly when the Respondent had raised objections concerning the Applicant's entitlement and the nature of the relief sought, cannot be treated as a mere insignificant omission. The existence of the civil suit had a direct bearing upon the question whether the present proceedings could be maintained before this Adjudicating Authority.

46. The Supreme Court has repeatedly emphasised that a litigant seeking discretionary or equitable relief must approach the adjudicating forum with complete disclosure of material facts. In the case of *Prestige Lights Ltd. v. State Bank of India*, (2007) 8 SCC 449, it was held that where a party suppresses relevant material or does not disclose the full facts, the Court may refuse to entertain the proceeding and dismiss the same without entering into the merits. The relevant excerpt of the judgment is extracted below for perusal:

> *"34. ....If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been*

evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. ....”

47. Such suppression assumes greater significance since the Applicant seeks to invoke the residuary jurisdiction of this Adjudicating Authority under Section 60(5) of the Code. The Applicant cannot, on one hand, pursue a remedy before the Civil Court in respect of the subject property and, on the other hand, seek substantially overlapping relief before this Adjudicating Authority without placing the earlier proceeding before the Tribunal.

48. We are therefore of the view that the non-disclosure of the pendency of the aforesaid civil proceedings in the original Application, despite the same being within the knowledge of the Applicant, amounts to suppression of a material fact having a direct bearing on the maintainability of the present proceedings. The subsequent disclosure of the said proceedings only in the Rejoinder does not cure the initial omission. Such conduct disentitles the Applicant from seeking relief from this Adjudicating Authority, particularly when the Applicant had already invoked the jurisdiction of the competent Civil Court in respect of the subject matter.

Issue C: Whether this Adjudicating Authority can grant a direction for eviction/restoration of possession in respect of the said land which admittedly does not form part of the liquidation estate of the Corporate Debtor?

49. In view of the discussion held under issue B, this issue, although for the sake of outcome need not be examined further, however, this Adjudicating Authority deem it appropriate to record its observation on merits hereinafter.

50. The principal relief claimed is for restoration of vacant and peaceful possession of the leased premises to the Applicant and for directions restraining its use by any unauthorised person.

51. It is not disputed by the Respondent that the subject land itself was not included in the liquidation estate of the Corporate Debtor. The Respondent has stated that the land was never treated as an asset of the Corporate Debtor and was not included in the Information Memorandum.

52. Section 36 of the Code sets out the scope of the liquidation estate. Sub-section (4) under the section expressly excludes certain assets from the liquidation estate, including assets owned by third parties which are in possession of the Corporate Debtor, subject to the statutory provisions contained therein. Section 36(4) of the Code is reproduced hereinunder:

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

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

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

(ii) bailment contracts;

(iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;[J1]

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

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

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

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

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

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

53. Further, Section 60(5)(c) of the Code empowers the Adjudicating Authority to entertain and dispose of questions of law or fact arising out of or in relation to the insolvency resolution or liquidation proceedings of the Corporate Debtor. Section 60(5) of the Code is reproduced as below:

"(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

***(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code**."*

The provision has to be understood within the scheme and object of the Code and does not vest the NCLT with unlimited civil jurisdiction over every dispute concerning the property of a Corporate Debtor or a third party.

54. The Hon'ble Supreme Court in *Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta*, (2021) 7 SCC 209, while examining the scope of Section 60(5)(c), held that the residuary jurisdiction of the NCLT extends to disputes which arise from or relate to the insolvency resolution process. At the same time, the Court recognised that disputes arising *dehors* the insolvency of the Corporate Debtor must be adjudicated before the forum otherwise competent in law.

55. In the present case, an undisputed lease deed as per the Applicant had expired in November 2021. This fact has not been specifically disputed by the Respondent. The CIRP has soon after commenced on 09.12.2021. As per the consistent stand taken by RP and Liquidator, the leased premises in question were necessary for the CD to run as a going concern and the Applicant seemed not to have allowed for renewal of lease. Therefore, in our view this Adjudicating Authority has the jurisdiction to decide the dispute on the merits, which however shall not be construed to have an effect on the findings rendered on the non-maintainability of this Application on account of res judicata in the previous issue.

56. Continuing with the discussion in the previous paragraph that the Applicant seems not to have renewed the lease, had availed legal remedies available to him and went on to file a civil suit as well as an application before this Adjudicating Authority for recovery and possession of the leased premises. However, on the contrary, the Applicant has also filed claims before the Liquidator comprising of not only the pre-CIRP dues but also for lease rentals arising during the CIRP. To this, the Respondent has not only admitted the pre-CIRP dues claims but also has paid lease rentals during CIRP and liquidation, the fact which neither has been disputed nor has

been challenged by the Applicant also. The Applicant, having accepted deposits of lease rental during CIRP as well as Liquidation, cannot challenge the legality of possession of leased premises by the corporate Debtor.

57. Furthermore, admittedly the leased premises have never been claimed as the property owned by the Corporate Debtor and as such it has been confirmed before us that the leased premises in question have been kept outside the liquidation estate of the Corporate Debtor; however, the same is being occupied only to run the CD as a going concern.

58. Furthermore, contention of the Applicant so far as sub-lease to Crystal Beverages is concerned the same in our view, cannot be raised before this Adjudicating Authority as the underlying purported fact of the sub – lease issue having arisen in 2018, much before commencement of CIRP is dehors the process of IBC and therefore this Adjudicating Authority has no jurisdiction to decide this use of sub-lease to Crystal Beverages.

59. Although the fact remains undisputed that it was the Applicant only who had originally leased out the premises to the Corporate Debtor in 2012 and in lieu of the same, lease rentals have been and are being paid. The larger civil dispute involving Crystal Beverages and its right under purported sub-lease of the lease premises is pending before the Civil Court, and this Adjudicating Authority does not have the jurisdiction to answer who has an immediate right to the possession of the leased premises, on account of ownership, lease or sub-lease. Notwithstanding the above, such a relief necessarily requires determination of the Applicant's enforceable right to possession vis-à-vis the person in occupation. Where eviction is sought in relation to an asset forming part of the liquidation estate, such relief may bear a direct nexus with the Liquidator's statutory duty to take custody and control of the assets of the Corporate Debtor. However, where the property in respect of which possession is sought is admittedly outside the

liquidation estate, the mere pendency of liquidation proceedings cannot, by itself, confer jurisdiction upon this Adjudicating Authority to adjudicate an independent claim of ownership or possession. In *Adinath Jewellery Exports v. Brijendra Kumar Mishra & Anr.*, Company Appeal (AT) (Insolvency) No. 748 of 2022, decided on 24.04.2023, the Hon'ble NCLAT recognised the jurisdiction of the Adjudicating Authority to pass an order for vacation of premises where the same was necessary to put the Liquidator in possession of the property forming part of the liquidation estate. The relevant portion of the judgement is reproduced hereinunder:

*"**48.** We are therefore, convinced that once a property was part of the liquidation estate of the Corporate Debtor under liquidation, the provisions of IBC were applicable regarding the assets which were in the ownership of the Corporate Debtor and Section-238 of the IBC prohibited the applicability of any other law which was inconsistent with the IBC."*

60. The said principle has also been followed by the NCLT in *Santanu T. Ray v. Pavan Vikram Sahjwani*, I.A. No. 1160 of 2021, decided on 04.01.2024.

61. The above cases are distinguishable on facts. In the present case, where the property itself falls outside the liquidation estate, and the dispute concerns an independent right of ownership or possession, the dispute does not become an insolvency dispute merely because one of the parties happens to be the Liquidator.

62. In the present matter, the parties have already approached the Civil Court concerning the subject property. Since the issue of possession from the records of the case seems to also involve a third-party right who has purportedly been sub-leased the premises, the issue at hand cannot be decided by this Adjudicating Authority.

ORDER

63. In view of the foregoing discussion and findings, we are of the considered view that the present Application is not maintainable before this Adjudicating Authority. The Applicant has already invoked the jurisdiction of the competent Civil Court in respect of the subject matter, involving the larger issue of validity of the sub-lease in favour of a third party, i.e Crystal Beverages and since this very sub-lease in question was purportedly executed before the commencement of CIRP, the issue involving right and obligations on account of the purported sub-lease, falls outside the purview of IBC and this Adjudicating Authority has no jurisdiction to answer such issues arising thereof.

64. Notwithstanding, since the fact remains admitted that it was the Applicant only who had leased out the premises in 2012, the Applicant in our view, may have the right to receive lease rentals and therefore, the instant decision shall not be construed to have prevented the Applicant from claiming lease rentals or availing remedy as per the law for the same. The observations made herein are confined to the adjudication of the present Application and shall not be construed as an expression of opinion on the merits of the rights and claims of the parties pending before the competent Civil Court.

65. Accordingly, **IA-383/2026** is dismissed. No order as to costs.

Sd/-
(ANUPINDER SINGH GREWAL)
PRESIDENT

Sd/-
(RAVINDRA CHATURVEDI)
MEMBER (TECHNICAL)