

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

Company Appeal (AT) (Insolvency) No. 682 of 2025

[Arising out of Order dated 22.04.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-II in IA No.4820 of 2024 in CP (IB) No.211/MB/2023]

IN THE MATTER OF:

Harish Raghavji Patel & Anr.

...Appellants

Versus

**Ajit Gyanchand Jain,
IRP of Rajesh Cityspaces Pvt. Ltd. & Ors.**

...Respondents

Present:

For Appellants: Mr. Abhijeet Sinha Sr. Advocate with Ms. Aakshi Lodha, Advocates.

For Respondents: Mr. Krishnendu Dutta Sr. Advocate, Ms. Kritya Sinha, Mr. Yash Tondon, Advocates for RP/ R1.

**J U D G M E N T
(15th May, 2025)**

Ashok Bhushan, J.

This Appeal by two Suspended Directors of the Corporate Debtor has been filed challenging the order dated 22.04.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-II allowing IA No.4820 of 2024 filed by the Resolution Professional seeking a direction to provide assistance to the IRP in obtaining peaceful physical possession of the assets of the Corporate Debtor including Flat Nos. 601 and 1101 of Project Kailash Niwas.

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

2.1. On application filed under Section 7 by M/s. Assets Care and Reconstruction Enterprise Pvt. Ltd., CIRP against the Corporate Debtor- Rajesh Cityspaces Private Limited commenced on 15.01.2024. Mr. Ajit Gyanchand Jain- Respondent No.1 was appointed as Interim Resolution Professional (IRP). On 31.05.2024, the IRP has sent an e-mail to the Suspended Board of Directors including the Appellant requesting to handover the physical possession of the property admeasuring 20,881 sq. ft. at Nutan Kailash Nivas Co-operative Society, R.B. Mehta Road, Ghatkopar East, Mumbai. IRP thereafter filed an application being IA No.4820 of 2024 on 12.08.2024 seeking physical possession of the larger property. In the said application, notices were issued on 08.10.2024. A reply was filed in the IA No.4820 of 2024 by Respondent No.2- Mr. Rajesh Raghavji Patel, suspended Director of the Corporate Debtor stating that Flat Nos. 601 and 1101 are in possession of the Appellants based on the arrangement recorded in the Board Resolution dated 14.09.2017. No reply was filed by the Appellant to the application. The Adjudicating Authority heard the parties on several dates. Application under Section 19 filed by the Resolution Professional being IA No.4820 of 2024 was withdrawn on 06.03.2025 and the IA No.4820 of 2024 was directed to be listed on 11.03.2025. On 12.03.2025 parties were heard and by impugned order dated 22.04.2025, Adjudicating Authority has allowed IA No.4820 of 2024 directing the Appellant to handover the possession of the Flat Nos.601 and 1101 within

10 days from the date of the order. Aggrieved by this order, this Appeal has been filed by the Appellants.

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

4. Counsel for the Appellants challenging the impugned order submits that the Application IA No.4820 of 2024 was not maintainable before the Adjudicating Authority. Appellants who were in possession of the two flats by virtue of the Board Resolution could not have been directed to be evicted by the Adjudicating Authority on the application of the IRP. IRP was free to take normal process of law for evicting the Appellants. It is submitted that the Corporate Debtor is one of the family-controlled concerns where Appellant No.1 and Respondent Nos.2 & 3 were jointly engaged in the conduct of business. Appellants were permitted vide Board Resolution dated 14.09.2017 to occupy Flat Nos.601 and 1101 respectively for their personal use and the Appellants are residing in the said premises from 2017. Appellants are ready to submit undertaking to vacate the premises within 3 months or within 10 days from approval of the Resolution Plan whichever be earlier. Counsel for the Appellant submits that the Board Resolution contemplated 10 months' notice for vacation of the premises, hence, the Adjudicating Authority could not have directed for vacation of the said premises. Counsel for the Appellant in support of the said submission has

relied on various judgements of this Tribunal and the Hon'ble Supreme Court which we shall notice hereinafter.

5. Shri Krishnendu Datta, Learned Senior Counsel for the Respondents submits that the Appellant has no right to remain in possession of the assets which admittedly owned by the Corporate Debtor. Appellant does not claim any right in the assets Flat Nos.601 and 1101 nor they claim any lease or license from the Corporate Debtor. Appellant is continuing in possession of the said flats which is creating hurdle in successful resolution of the Corporate Debtor. It is submitted that certain Resolution Applicants have withdrew on the ground that there is no clarity with regard to possession of the Flats. It is submitted that the Appellants are not entitled to continue in the possession and the Adjudicating Authority at the time of reserving the order on 12.03.2025 has only observed that Appellants at best would have one month time to vacate the premises and when order was passed by the Adjudicating Authority on 22.04.2025, Adjudicating Authority noticed that more than 40 days' have been passed, when the matter was heard, Appellant has not handed over the possession, hence, direction was issued to handover the possession within 10 days. It is submitted that the Adjudicating Authority has jurisdiction to entertain the application filed by the IRP for taking possession of the assets of the Corporate Debtor. It is submitted that the IRP was duty bound to take possession of the assets of the Corporate Debtor. Counsel for the Respondents has also relied on various judgments of this Tribunal in support of the submission. It is submitted that the Appellant is not entitled for any further time for vacation

as prayed by the Appellant. Appellant has no right to continue. The IRP by e-mail dated 31.05.2024 has asked the Appellant to vacate the premises. It is submitted that the Board Resolution which is relied was never brought to the notice of the IRP and even as per the Board Resolution, Appellant were required to vacate the premises within 10 months and when e-mail was sent on 31.05.2024 for vacating the premises about more than 11 months have elapsed but the Appellant has not vacated the premises.

6. We have considered the submissions of the Counsel for the parties and perused the record.

7. There is no dispute between the parties that the assets i.e. two flats 601 and 1101 belong to the Corporate Debtor. Appellant who is ex-director of the Corporate Debtor are occupying the two flats. The Appellant has placed reliance on Board Resolution dated 14.09.2017 which is claimed to be passed prior to initiation of CIRP. With regard to two flats which are subject matter, the Board Resolution provides as follows:-

“RESOLVED FURTHER THAT Shri Harish Raghavji Patel and Shri Pratik Harish Patel further agreed to furnish an undertaking to the company that they shall vacate the said premises within 10 months of receipt of intimation from the company and further undertake not to create any encumbrance on the said premises in any manner whatsoever.”

8. Counsel for the Respondent although has submitted that the Board Resolution was never placed before the CoC and it was only in the reply filed

by the Respondent No.2 the extract of Resolution was annexed. He submits that even if the Resolution is considered at best the Resolution provides that Appellants have given undertaking that they shall vacate the premises within 10 months of receipt of intimation from the company. As noted above, the CIRP commenced against the Corporate Debtor by an order dated 15.01.2024. IRP issued an e-mail on 31.05.2024 requesting for possession of the assets of the Corporate Debtor. Both the Unit Nos.601 and 1101 were mentioned in the e-mail. E-mail has been brought on the record by the Appellant at pages 112-113 which is as follows:-

“Dear Sir,

I am writing to you in my capacity as the interim Resolution Professional appointed for Rajesh Cityspaces Private Limited under the corporate insolvency resolution process vide order dated 15.01.2024 passed by the Hon'ble National Company Law Tribunal Mumbai Bench

As you are aware, the corporate insolvency resolution process has been initiated for Rajesh Cityspaces Private Limited, and the management of its affairs now vests with the interim Resolution Professional as per the Insolvency and Bankruptcy Code.

While symbolic possession has been taken by the Financial Creditor, Assets Care & Reconstruction Enterprise Limited, prior to the initiation of CIRP, I am writing to seek your urgent cooperation in physically handing over the possession of all assets, properties, documents records and units/inventory pertaining to Rajesh Cityspaces Private

*Limited that are currently under your control or possession.
This includes but is not limited to*

Description of the Property

(Plot No. 353/4A) situated at Village Ghatkopar (East) Kiorl, District Mumbai Suburban together with all buildings constructed and to be constructed thereon comprising a minimum saleable carpet area of 20.880 square feet ("property")

Details of Unsold Units of Project Kailash Niwas

<i>S.No.</i>	<i>Unit Number</i>	<i>Saleable Area (in sq. ft.)</i>
<i>1</i>	<i>103</i>	<i>1,157</i>
<i>2</i>	<i>601</i>	<i>691</i>
<i>3</i>	<i>1101</i>	<i>2,445</i>
<i>4</i>	<i>12th Floor</i>	<i>6,831</i>
<i>5</i>	<i>13th Floor</i>	<i>5,389</i>
<i>6</i>	<i>14th Floor</i>	<i>4,368</i>
	<i>Total Area</i>	<i>20,881</i>

Please make the necessary arrangements to transfer the above assets documents, records and units to the Interim Resolution Professional within 7 days from the date of this email.

Your cooperation is crucial to ensure a smooth resolution process and to protect the interests of all stakeholders involved. Any non-compliance or obstruction in handing over the assets may attract punitive actions as per the law.

Please confirm the receipt of this email and provide details of the assets and units that will be handed over to the Interim Resolution Professional.

*IRP Team member
Urvi Parmar
On behalf of
CA Ajit Jain
Insolvency Professional”*

9. The submission which has been pressed by the Appellant is that the Adjudicating Authority has no jurisdiction to entertain the application filed by the IRP seeking possession of two flats. Section 18 of the IBC provides for duties of IRP. Section 18(1) (f) provides as follows:-

“18. Duties of interim resolution professional. -

The interim resolution professional shall perform the following duties, namely: -

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including –

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

- (v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;*
- (vi) assets subject to the determination of ownership by a court or authority;”*

10. The above provision empowers the IRP to take control and custody of any assets over which the Corporate Debtor has ownership rights. The present is a case where Appellants are not claiming any ownership rights in the assets nor any rights on the basis of lease/license. Counsel for the Appellant has referred to and relied on judgment of the Hon'ble Supreme Court in **“Victory Iron Works Limited vs. Jitendra Lohia and Anr.- (2023) 7 SCC 227”** and submitted that the order was passed by NCLT to protect the interest of Victory Iron who was in possession of the assets. In the above judgment, Appellant- Victory Iron has claimed possession by virtue of leave and license agreement. CIRP commenced against Avani Towers Pvt. Ltd. (developer) who had development rights in the assets. On an application filed before the NCLT where the activity of Victory Iron was on a piece of land, over which the possession was protected. Victory Iron has claimed by virtue of leave and license agreement which is noticed in paragraph 4 of the judgment is as follows:-

“4. M/s Victory Iron Works Ltd. (for short “Victory”) which is the appellant in CA No. 1743 of 2021, claims to be in possession of the property in entirety, partly by virtue of a leave and licence agreement and partly by virtue of an oral understanding.”

11. The Hon'ble Supreme Court in paragraph 52 has made following observations where interest of Victory Iron was protected:-

“52. The fact that there were security guards posted in the property is borne out by records. This is why NCLT as well as NCLAT have done a delicate act of balancing, by protecting the interests of Victory to the extent of the land permitted to be occupied. In fact, Victory does not even have the status of a lessee, but is only a licensee. A licence does not create any interest in the immovable property.

12. The above judgment in no manner supports the case of the Appellant who is neither lessee nor licensee of two flats which are in their possession. Admittedly, Appellants were suspended directors and according to them, they were permitted to occupy the premises by Board Resolution passed on 14.09.2017. The Board Resolution permitted the occupation as per the case of the Appellant which was subject to undertaking for vacating the premises as contained in the Resolution.

13. Another judgment relied by the Appellant is Company Appeal (AT) (Insolvency) No.884 of 2024- **“Sumati Suresh Hegde & Ors. vs. Anand Sonbhadra, RP of Champalalji Finance Pvt. Ltd. & Ors.”**. Counsel for the Appellant submits that in the said case, this Tribunal has held that the application filed by the Resolution Professional against the Appellant to take control and custody of the property was held not maintainable. In the above case, there was Civil Court decree in favour of the predecessor-in-interest of the Appellant. Predecessor in interest of the Appellants were monthly

tenants and suit was filed by the Corporate Debtor for eviction of the Appellant from property being Suit No.149 of 2011 and at the time of CIRP commenced suit was pending but was not pursued and Resolution Professional filed an application. This Tribunal in the above facts held that Resolution Professional could not short circuit the route of eviction of the Appellants. Following was laid down in paragraph 28 of the judgment:-

“28. There is no dispute to the fact that it is not a case either of lease or license rather it is a case where the civil court decree has been passed in favour of the predecessor in interest of the Appellants in RAD Suit No. 916 of 2005 declaring that the predecessor in interest of the Appellant was a monthly tenant in the property in question and the defendant therein were restrained from interfering in his possession otherwise in due process of law. It is also not in dispute that the suit property was purchased by the CD from the erstwhile landlord/owner of the property in question alongwith the tenant and RAE Suit No. 149 of 2011 was filed by the CD for seeking eviction of the Appellants from the property in question, who have stepped into shoes of the predecessor in interest after his death on inheriting the tenancy right in the property in question. It is also not in dispute that the CIRP was initiated on 17.03.2023 and by at that time Suit No. 149 of 2011 was pending but the IRP, having been appointed as such on 26.04.2023 did not pursue the suit for eviction which was a right procedure because the tenancy was continuing and eviction was sought only on the ground of bonafide need of the CD as an owner who wanted to demolish

the structure in possession of the present appellants as tenants for raising a new construction over the property in question. The RP rather filed an application under Section 60(5) r/w Section 25(2)(a) of the Code before the Tribunal by short circuiting the route of eviction of the present appellants under the garb of the provisions of the Code. The Tribunal has committed an patent error in passing the order of eviction considering the possession of the Appellants as of the lessee which is evident from the fact that in the impugned order itself a direction has been issued by the Tribunal that the RP is empowered to take custody of all the assets of the CD including the present property which is under the lease. There is a sharp difference between the lease and a tenancy. The lease is for a fixed period of time which can be terminated by issuance of notice under Section 106 of the Transfer of Property Act, 1882 whereas the tenancy continues until it is changed by contract or by operation of law. In the present case, there has been no change of the tenancy rights of the Appellants by way of a contract and the law which is to operate in respect of termination of tenancy are the provisions of the Act and not the Code. In this regard, judgments relied upon by the Appellants in the case of Raj Builders (Supra), K. L Jutes Products Pvt. Ltd. (Supra) and Devendera Padamchand Jain (Supra) supports the contention of the Appellants and the judgments relied upon by the Respondent in the case of Jhanvi Rajpal Automotive Pvt. Ltd. (Supra) and Adinath Jewellery Exports (Supra) are distinguishable on its own facts because the decisions in the case of in the

case of Raj Builders (Supra), K. L Jutes Products Pvt. Ltd. (Supra) and Devendera Padamchand Jain (Supra) are all pertaining to the tenancy whereas the decisions in the case of Jhanvi Rajpal Automotive Pvt. Ltd. (Supra) is pertaining to 11 months lease which had already come to an end and then the application for eviction was filed before the Court and in the case of Adinath Jewellery Exports (Supra) which was a case of license which was not renewed after its expiry and the application under Section 60(5) r/w Section 25(2)(a) has been found to be duly maintainable.”

14. The above judgment in no manner helps the Appellant. The above judgment was passed in facts where there was decree in favour of the Appellant not to evict except in accordance with law and suit was filed by the Corporate Debtor for eviction which was not proceeded any further after CIRP and Resolution Professional filed an application for eviction before the Adjudicating Authority which was held to be not maintainable.

15. Counsel for the Appellant has also relied on order of the Hon’ble Supreme Court in Civil Appeal No.4372 of 2024- **“Pavan Vikram Sahjwani vs. Santanu T. Ray”** to support his submission that even in several cases the Hon’ble Supreme Court has given time to vacate the premises on an undertaking given by the Appellant. The order passed by the Hon’ble Supreme Court dated 01.04.2024 relied by the Appellant in the above case was on the facts of the said case and on the said basis Appellant cannot claim a right to continue in the occupation for three months as claimed herein.

16. We, thus, do not find any substance in the submission of the Counsel for the Appellant that application filed by IRP was not maintainable before the Adjudicating Authority. Admittedly, the Flats were owned by the Corporate Debtor and IRP was under obligation to take possession of the assets of the Corporate Debtor. Counsel for the Resolution Professional submitted that the CIRP process is underway and Resolution Plan has been received and there being no clarity with regard to Flat Nos.601 and 1101 and Resolution Applicants are withdrawing. Reference of one of the emails received from Resolution Applicants dated 20.01.2025 has been made where one of the Resolution Applicants has expressed his intention to withdraw from the Resolution Process. Appellant himself has brought on the record the said e-mail dated 20.01.2025 along with Additional Affidavit which is as follows:-

“Dear Sir

We invite your kind attention towards the Resolution plan submitted for Rajesh Cityspaces Private Limited.

We wish to inform you that we would like to withdraw our resolution plan for the following reasons

1. There is no clarity on the possession of the flats which are under dispute and we believe it shall take inconsiderable time and lots of litigation for the same.

2. The process is taking too long and considering other opportunities we would like to invest our time and capital for the same

As mentioned above we would request you to kindly accept our withdrawal and release our EMD submitted against the plan

Please confirm and kindly advice us on the refund of the EMD amount of Rs 50 lacs submitted along with the plan.

*Best Regards,
Rahul Chhajed
+919820072911”*

17. In view of the above, submission of the Respondent has substance that due to non vacation of the Flats by the Appellants, Resolution Process is lingering. It is submitted by the Respondents that Adjudicating Authority while reserving the order in the application on 12.03.2025 observed that even if the Appellants are allowed a reasonable time to vacate there will be period of one month to vacate and Adjudicating Authority when passed an order in paragraph 37 of the order has made following observations:-

“37. Therefore, we hereby direct Respondent Nos. 2 and 4 to vacate the Flats Nos. 601 and 1101 within 10 days from the date of this order (as more than 40 days have already elapsed since the oral directions were given by this Bench to the parties at the time of hearing on 12th March, 2025) and hand over the physical possession of these properties to the Resolution Professional without any further delay. The RP is also directed to take necessary steps including seeking the help of local police to ensure

that the flats are handed over to him within the time granted above.”

18. The above order clearly indicates that the oral direction was given on 12.03.2025 to handover the possession.

19. Counsel for the Respondent has also relied on judgment of this Tribunal in **“Jhanvi Rajpal Automotive Pvt. Ltd. vs. R.P. of Rajpal Abhikaran Pvt. Ltd. and Another-2023 SCC OnLine NCLAT 1436”** where this Tribunal has held the application to be maintainable for vacation of the premises which was being occupied even after termination of the lease deed. Argument raised before the Tribunal that Adjudicating Authority had no jurisdiction to consider any application was noticed and rejected. In paragraphs 14, 19, 20 & 21 of the judgment, following was observed:-

“14. For effectuating the duties entrusted on the IRP under Section 18 recourse to adjudicating Authority by filing an Application under Section 60(5) is fully permissible. In the present case, we are considering the case where there is no dispute that assets in question is owned by the Corporate Debtor hence by virtue of Section 18(1)(f), Resolution Professional can take steps for taking possession of the assets. To resist the case taken by the RP, Appellant contends that under Section 60(5), no Application can be entertained for eviction of the Appellant and the only remedy available to the RP is to take proceedings under MP Accommodation Control Act, 1961. It is further relevant to notice that present is a case where renewal lease dated 17.09.2021 was executed by the

RP himself for a period of 5 months till 31st December, 2021. The Appellant thus was permitted by the RP to continue with the Lease for five months till 31.12.2021 and we have already noticed the conditions in the rent agreement as extracted above. Paragraph 11 and 16 which clearly stipulated that first party is to vacate the premises when 15 days notice is given in writing. Renewal of the lease to the Appellant was with the approval of the CoC as noted above, RP cannot create any right in favour of the Appellant with regard to the assets of the Corporate Debtor without prior approval of the CoC as contained in Section 28(1)(k) of the Code. We have noticed above that CoC has taken decision to issue Legal Notice to the Appellant to vacate from premises.

19. *The present is not a case where lease in favour of the Appellant is subsisting. The lease has come to an end on 31st December, 2021. Further the lease renewal in favour of the Appellant was by RP himself on 17.09.2021 (Fresh Lease) which lease contained specific clause for eviction by 15 days' notice.*

20. *Accepting the contention of the Learned Counsel for the Appellant that RP is obliged to file a suit for eviction of the Appellant under MP Accommodation Control Act, 1961 even though lease in favour of the Appellant has expired shall be unduly prolonging the insolvency process which is a time bound process. When the Corporate Debtor has the ownership rights over the premises which premises can be taken in control by IRP/RP, we are of the view that for eviction of the Appellant especially in event when lease in favour of the Appellant has come to an end, filing a*

suit is not contemplated in the statutory scheme contained in IBC.

21. *Thus, the contention of the Appellant that RP has to file a suit for eviction of the Appellant under the MP Accommodation Control Act, 1961 can not be accepted. We thus, in view of the foregoing discussions are of the considered opinion that Adjudicating Authority has rightly allowed the Application filed by the RP directing the Appellant to vacate from the premises so that Resolution Plan which has been approved can be implemented. We thus do not find any merit in the Appeal, the Appeal is dismissed.”*

20. The above judgment of the Adjudicating Authority fully supports the case of the Respondent. As noted above, IRP vide e-mail dated 31.05.2024 has already asked for possession of the assets of the Flats and the period for 10 months which according to the Appellant was to be given a notice for vacation is also over. When the undertaking was given by the Appellant to vacate the premises, intimation received from the Company which is part of the Resolution relied by the Appellant to following effect:-

“RESOLVED FURTHER THAT Shri Harish Raghavji Patel and Shri Pratik Harish Patel further agreed to furnish an undertaking to the company that they shall vacate the said premises within 10 months of receipt of intimation from the company and further undertake not to create any encumbrance on the said premises in any manner whatsoever.”

21. Intimation by the Resolution Professional after commencement of the CIRP is clearly intimation to the Appellant to vacate the premises and even for argument sake, it is accepted that they were entitled for 10 months notice that period is very well over. We do not find any error in the order of the Adjudicating Authority rejecting IA No.4820 of 2024.

22. This Appeal was filed by the Appellant within 10 days from passing of the order although no interim order was passed in the Appeal but Appellant has not vacated the premises till date as has been submitted during the course of the submissions. We, thus, direct the Appellant to vacate the premises within 10 days from today. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi
Anjali