

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

Comp. App. (AT) (Ins) No. 884 of 2024

IN THE MATTER OF:

Sumati Suresh Hegde & Ors.

...Appellant

Versus

Anand Sonbhadra,

RP of Champalalji Finance Pvt. Ltd. & Ors.

...Respondents

Present:

For Appellant : Mr. Sanjiv Sen, Sr. Advocate alongwith Mr. Sumit Goel, Ms. Sonal Gupta, Ms. Ruchi Krishna Chauhan, Ms. Anjali Singh, Mr. Prahalad Balaji & Mr. Pragyan Mishra, Advocates.

For Respondents : Mr. Krishnendu Datta, Sr. Advocate along with Mr. Amar Vivek, Mr. Aditya Gauri, Ms. Damini Sreshtha, for R-1. Mr. Gaurav Sethi & Mr. Rahul Pawar, for SRA.

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This appeal is directed against the order dated 05.04.2024, passed by the National Company Law Tribunal, Mumbai Bench, C-IV by which an application bearing I.A No. 4632 of 2023 filed in CP (IB) No. 541/MB/2021, under Section 60(5) read with Section 25(2)(a) of the Insolvency and Bankruptcy Code, 2026 (in short 'Code') by the Resolution Professional (RP) of M/s Champalalji Finance Pvt. Ltd. (Corporate Debtor) against the present Appellants (Predecessor in interest of Late Shri Suresh Padmanabha Hegde) for a direction to handover the control and custody of the property bearing Villa Mohindra Outhouse, 13h Road, TPS III, CTS No. 543, Khar (W), Mumbai – 400052 (property in question) belonging to the CD, has been allowed.

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2. In brief, the CD slipped into Corporate Insolvency Resolution Process (CIRP) vide order dated 17.03.2023 and in the first meeting of the CoC held on 26.04.2023 the Respondent (IRP) was appointed as the RP of the CD.

3. The RP alleged to have visited the property in question owned by the CD and found that it was occupied by the present Appellants who have claimed their tenancy right over the same.

4. The RP filed I.A. No. 4632 of 2023 under Section 60(5) r/w Section 25(2)(a) of the Code for taking control and possession of the property in question owned by the CD by evicting the present Appellants from its occupation.

5. Whereas the case set up by the Appellants before the Tribunal is that the property in question was in occupation of Late Shri Suresh Padmanabha Hegde as a tenant, protected under Maharashtra Rent Control Act, 1999 (in short 'Act').

6. It is alleged that their predecessor in interest filed a RAD Suit No. 916 of 2005 before the Small Causes Court, Bandra Branch, Mumbai for declaration that he is a monthly tenant in the property in question.

7. The suit was decreed on 26.11.2009 with the following order:-

“Suit is decreed with costs.

It is hereby declared that Plaintiff is tenant of the defendant in respect of the suit premises viz Villa Mohindra Outhouse, 13th Road, TPS III, CTS No. 543, Khar (W), Bombay – 400052.

The Defendants are restrained from dispossessing and / or obstructing the use, occupation and possession of plaintiff in respect of the suit premises Villa Mohindra outhouse, 13th Road, TPS III, CTS No. 543, Khar (W), Bombay 400 052 without following due process of law”

8. The CD claimed to have purchased this property from original owner / landlord of the Appellants and filed a suit for eviction bearing RAE Suit No. 149 of 2011 in which the CD categorically averred that “the plaintiff predecessor in title let out to the defendant the premises” referring to the property in question but the eviction was sought on the ground of bonafide requirement by demolishing the existing structure for raising a new building. This suit was filed on 23.12.2016.

9. While the suit was pending, the application under Section 7 of the code filed by Edelweiss Asset Reconstruction Company Limited against the CD was admitted and CIRP was initiated on 17.03.2023.

10. The RP was appointed on 26.04.2023 and at that time suit no. 149 of 2011 was pending. The RP did not make any effort to pursue suit no. 149 of 2011 though he had stepped into the shoes of the CD by virtue of his appointment as the RP on 26.04.2023 rather he filed an application I.A No. 4632 of 2023 before the Tribunal under Section 60(5) and 25(2)(a) of the Code for taking control and custody of the property in question. It transpired before the Tribunal that Shri Hedge had expired on 11.10.2016 and the Appellants being the legal heirs inherited the tenancy rights. It was submitted before it by the Appellants that the tenancy rights are protected under the provisions of the Act and the application under Section 60(5) filed by the RP is firstly not maintainable and secondly the Adjudicating Authority has no jurisdiction to pass an order for eviction.

11. However, the Tribunal while referring to Section 18(1)(f) and Section 25 of the Code observed that it is the duty of the IRP/RP to take immediate custody of all the assets of the CD, therefore, the property in question has to

be repossessed by him after eviction of the present appellants and also held that the provisions of Section 238 shall prevail over and above the provisions of the Act by which the tenancy of the Appellants has been protected.

12. Aggrieved against the order passed in I.A No. 4632 of 2023 by which RP has held to be empowered to take custody of all the assets of the CD including the property which is under lease, the Appellant filed the present appeal in which the following order was passed on 28.05.2024 which read as under:-

“The Ld. Counsel for the appellant submits that the Adjudicating Authority by impugned order had directed the eviction of the appellant who was lawful tenant in whose favour the decree by the Ld. Small Causes Court at Bandra and it was after the decree the corporate debtor has filed a suit for eviction being Suit No. 149 of 2011 which is still pending for consideration. It is submitted in the said circumstances Adjudicating Authority could not had directed the eviction of the appellant.

Issue notice.

Let Reply Affidavit be filed within three weeks’. Rejoinder, if any, may be filed within two weeks, thereafter.

List this appeal on 30.07.2024.

In the meantime, in pursuance of the impugned order appellant shall not be evicted from the premises”

13. It is also pertinent to mention that after the impugned order was passed, the RAE Suit No. 149 of 2011 filed by the CD was dismissed for non-prosecution on 16.11.2024.

14. Counsel for the Appellant has argued that the Tribunal has committed a patent error in not understanding the difference between tenancy and lease because in para 18 of the impugned order, the Tribunal has held that “in view of the above the Bench holds that RP is empowered by the Code to take custody of all the assets of the CD including the present property which is under lease”.

15. It is submitted that the predecessor in interest of the Appellants was not a lessee on the property in question rather predecessor of the Appellant was inducted as a tenant by erstwhile owner, namely, Prem Mohindra and Dilip Mohindra from whom the CD had purchased the property in question with tenant which is evident from the decree dated 26.11.2009 in which it has been ordered that “it is hereby declared that plaintiff is tenant of the defendant in respect of the suit premises” (property in question). It is further submitted that while granting the decree to the predecessor in interest of the appellants, the Court had also restrained the defendants from dispossessing and or obstructing the use, occupation and possession of the plaintiff in respect of the property in question without following due process of law. It is further submitted that possession of the Appellant is predecessor in interest has been admitted in para 2 of the suit filed by the CD bearing RAE No. 149 of 2011 in which it has been averred that “the plaintiff predecessor in title let out to the defendant the premises”. It has also been averred in that suit that the property in suit was let out on monthly rent of Rs. 500. Counsel for the Appellant has thus submitted that if the property in question was let out to the predecessor in interest of the Appellants by original owners/landlord who have purchased the title of the property with tenant (predecessor in interest) then the predecessor in interest/Appellants being monthly tenant over the property in question are protected under the provisions of the Act as per which the Appellant cannot be dispossessed under the provisions of the Code much less Section 25(2)(a) of the Code otherwise than a suit for eviction filed in terms of the provisions of the Act. In this regard, he has relied upon a decision of this

Court in the case of Raj Builders Vs. Raj Oil Mills Limited and Anr., 2018 SCC

Online NCLAT 899 in which this Court has held as under:-

“3. In terms of Section 14 of the Insolvency and Bankruptcy Code, 2016, during the period of moratorium the Appellant cannot evict the Corporate Debtor from the premises in question, even if during period of moratorium they have agreed to vacate it. The period of moratorium has come to an end on 19th April, 2018 i.e. date of approval of resolution plan under Section 31, therefore, now it is open to the Appellant to get the Corporate Debtor evicted, if it is still in occupation, in accordance with law. However, as the Adjudicating Authority is not competent authority to pass any order for eviction, Adjudicating Authority rightly not passed any such order.”

16. He has also relied upon another decision of this Court in the case of Devendra Padamchand Jain Vs. Sandhya Prakash & Ors., 2018 SCC Online 578 in which the following observations have been made:-

“2. Learned counsel for the appellant referring to sub-section (f) of Section 18 of the Insolvency and Bankruptcy Code, 2016 submits that duty of insolvency resolution professional is to take over assets that may or may not be in possession of the Corporate Debtor. Though we accept the submission made above, that does not mean the insolvency resolution professional can remove the tenant though it is open to him to take over the possession of the assets of the Corporate Debtor. If the tenant is not paying the rent, it is also open to the insolvency resolution professional to move before the appropriate forum/court of law.”

17. The appellant has further referred to a decision of this Court in the case of K.L. Jute Products Pvt. Ltd. Vs. Tirupiti Jute Industries Ltd., 2020 SCC OnLine NCLAT 426 in which this Court has held that “In so far as, the eviction of 2nd respondent is concerned, the AA is not empowered to pass an eviction

and it is for an aggrieved party to move the appropriate forum for redressal of its grievances in accordance with law.”

18. Counsel for the Appellant has further submitted that it is well settled that once a tenant always a tenant unless his status is changed by contract or by operation of law. In this regard, he has relied upon a decision in the case of M.R. Sahni Vs. Doris Randhawa, 2008 (104) DRJ 246 and M/s Jagdambey Builders Pvt. Ltd. Vs. J. S Vohra, 2016 SCC OnLine Del 765 and Vishal N. Kalsaria Vs. Bank of India, (2016) 3 SCC 762. In the case of Vishal N Kalsaria (Supra), the Hon’ble Supreme Court has held as under:-

“29. When we understand the factual matrix in the backdrop of the objectives of the above two legislations, the controversy in the instant case assumes immense significance. There is an interest of the bank in recovering the Non Performing Asset on the one hand, and protecting the right of the blameless tenant on the other. The Rent Control Act being a social welfare legislation, must be construed as such. A landlord cannot be permitted to do indirectly what he has been barred from doing under the Rent Control Act, more so when the two legislations, that is the SARFAESI Act and the Rent Control Act operate in completely different fields. While SARFAESI Act is concerned with Non Performing Assets of the Banks, the Rent Control Act governs the relationship between a tenant and the landlord and specifies the rights and liabilities of each as well as the rules of ejection with respect to such tenants. The provisions of the SARFAESI Act cannot be used to override the provisions of the Rent Control Act. If the contentions of the learned counsel for the respondent Banks are to be accepted, it would render the entire scheme of all Rent Control Acts operating in the country as useless and nugatory. Tenants would be left wholly to the mercy of their landlords and in the fear that the landlord may use the tenanted

premises as a security interest while taking a loan from a bank and subsequently default on it. Conversely, a landlord would simply have to give up the tenanted premises as a security interest to the creditor banks while he is still getting rent for the same. In case of default of the loan, the maximum brunt will be borne by the unsuspecting tenant, who would be evicted from the possession of the tenanted property by the Bank under the provisions of the SARFAESI Act. Under no circumstances can this be permitted, more so in view of the statutory protections to the tenants under the Rent Control Act and also in respect of contractual tenants along with the possession of their properties which shall be obtained with due process of law.

37. It is a settled position of law that once tenancy is created, a tenant can be evicted only after following the due process of law, as prescribed under the provisions of the Rent Control Act. A tenant cannot be arbitrarily evicted by using the provisions of the SARFAESI Act as that would amount to stultifying the statutory rights of protection given to the tenant. A non obstante clause (Section 35 of the SARFAESI Act) cannot be used to bulldoze the statutory rights vested on the tenants under the Rent Control Act. The expression 'any other law for the time being in force' as appearing in Section 35 of the SARFAESI Act cannot mean to extend to each and every law enacted by the Central and State legislatures. It can only extend to the laws operating in the same field

19. Counsel for the Appellant has further submitted that Section 60(5) of the Code is not attracted because the dispute in respect of tenancy rights and eviction of the tenant is separate from the insolvency of the CD and is not related to insolvency resolution process. He has relied upon a decision of the Hon'ble Supreme Court in the case of Embassy Property Developments (P)

Ltd. Vs. State of Karnataka, (2020) 13 SCC 308 in which the Hon'ble Supreme Court has held that:-

“40. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority. In fact an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term “assets” under the Explanation to Section 18. This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word “assets”, while Section 20(1) uses the word “property” together with the word “value”. Sections 18 and 25 do not use the expression “property”. Another important aspect is that under Section 25 (2) (b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasijudicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

“25. Duties of resolution professional – (1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of subsection (1), the resolution professional shall undertake the following actions:

(a).....

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings.”

c. This shows that wherever the corporate debtor has to exercise rights in judicial, quasijudicial proceedings, the resolution professional cannot shortcircuit the same and bring a claim before NCLT taking advantage of Section 60(5).

d. Let us take for instance a case where a corporate debtor had suffered an order at the hands of the Income Tax Appellate Tribunal, at the time of initiation of CIRP. If Section 60(5)(c) of IBC is interpreted to include all questions of law or facts under the sky, an Interim Resolution Professional/Resolution Professional will then claim a right to challenge the order of the Income Tax Appellate Tribunal before the NCLT, instead of moving a statutory appeal under Section 260A of the Income Tax Act, 1961. Therefore the jurisdiction of the NCLT delineated in Section 60(5) cannot be stretched so far as to bring absurd results. (It will be a different matter, if proceedings under statutes like Income Tax Act had attained finality, fastening a liability upon the corporate debtor, since, in such cases, the dues payable to the Government would come within the meaning of the expression “operational debt” under Section 5(21), making the Government an “operational creditor” in terms of Section 5(20). The moment the dues to the Government are crystalised and what remains is only payment, the claim of the Government will have to be adjudicated and paid only in a manner prescribed in the resolution plan as approved by the Adjudicating Authority, namely the NCLT.)

41. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”

20. He has also relied upon another decision of the Hon'ble Supreme Court in the case of Gujarat Urja Vikas Nigam Ltd. Vs. Amit Gupta & Ors., (2021) 7 SCC 209 in which the Hon'ble Supreme Court has held that :-

“44. The primary issue upon which the outcome of this appeal would turn is the nature of the jurisdiction which is exercised by the NCLT under Section 60(5) of the IBC. The provision reads thus: —(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.

69(h) Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the Corporate Debtor. However, in doing do, we issue a note of caution to the NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the Corporate Debtor. The nexus with the insolvency of the Corporate Debtor must exist.

74. Therefore, we hold that the RP can approach the NCLT for adjudication of disputes that are related to the insolvency resolution process. However, for adjudication of disputes that arise dehors the insolvency of the Corporate Debtor, the RP must approach the relevant competent authority. For instance, if the

dispute in the present matter related to the non-supply of electricity, the RP would not have been entitled to invoke the jurisdiction of the NCLT under the IBC. However, since the dispute in the present case has arisen solely on the ground of the insolvency of the Corporate Debtor, NCLT is empowered to adjudicate this dispute under Section 60(5)(c) of the IBC

91. 87 The residuary jurisdiction of the NCLT under Section 60(5)(c) of the IBC provides it a wide discretion to adjudicate questions of law or fact arising from or in relation to the insolvency resolution proceedings. If the jurisdiction of the NCLT were to be confined to actions prohibited by Section 14 of the IBC, there would have been no requirement for the legislature to enact Section 60(5)(c) of the IBC. Section 60(5)(c) would be rendered otiose if Section 14 is held to be the exhaustive of the grounds of judicial intervention contemplated under the IBC in matters of preserving the value of the corporate debtor and its status as a going concern'. We hasten to add that our finding on the validity of the exercise of residuary power by the NCLT is premised on the facts of this case. We are not laying down a general principle on the contours of the exercise of residuary power by the NCLT. However, it is pertinent to mention that the NCLT cannot exercise its jurisdiction over matters dehors the insolvency proceedings since such matters would fall outside the realm of IBC. Any other interpretation of Section 60(5)(c) would be in contradiction of the holding of this Court in Satish Kumar Gupta (supra).”

21. Counsel for the Appellant has further submitted that the RP has failed to perform his duty under Section 25(2)(b) of the Code because at the time of initiation of CIRP on 17.03.2023, the RAE suit no. 149 of 2011 filed by the CD for eviction of the Appellants was pending. The RP was duty bound to represent and act on behalf of the CD and to carry forward the suit

proceedings in view of Section 25(2)(b) of the Code but he has tried to short cut the same by filing an application under Section 60(5) r/w Section 25(2)(a) of the Code which was not maintainable and now the said suit has been dismissed for non-prosecution.

22. In reply, Counsel appearing on behalf of Respondent has submitted that the CD is the lawful owner of the property in question and the Appellants are the tenants but the decree passed in favour of the predecessor in interest of the Appellants is of no relevance because the CD is under insolvency and the only forum to take appropriate action to protect the assets of the CD is the Tribunal.

23. He has further submitted that the present Appellants have neither prior to the commencement of the CIRP nor subsequent to the commencement of the CIRP paid any rent and are thus not protected under the provisions of the Act. He has referred to Section 15 of the Act which read as under:-

“15(1). A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act”

24. It is submitted that the tenants are in default of rent payment and were liable for eviction and because of their continuing non-payment of rent and breach of tenancy terms, cannot seek refuge under the Act and are liable to be evicted. He has relied upon a decision in the case Jhanvi Rajpal Automotive Pvt. Ltd. Vs. R.P of Rajpal Abhikaran Pvt. Ltd. & Anr., CA (AT) (Ins) No. 1417 of 2022 decided on 05.01.2023 and pressed para 20 and 21 of the said decision which read as under:-

“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 cannot be accepted. We thus, in view of the foregoing discussions are of the considered opinion that Adjudicating Authority has rightly allowed Company Appeal (AT) (Insolvency) No. 1417 of 2022 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.”

25. He has further relied upon a decision of this Court in the case of Adinath Jewellery Exports Vs. Mr. Brijendra Kumar Mishra, Liquidator of Shrenuj & Co. Ltd. & Ors., CA (AT) (Ins) No. 748 of 2022 dated 24.04.2023.

25. In rebuttal, Counsel for the Appellant has submitted that the decision in the case of Jhanvi Rajpal Automotive P. Ltd. (Supra) is distinguishable because it was a case of unregistered lease for 11 months which was renewed by RP and had already come to an end, therefore, lease holder was occupying the premises without any lease in its favour.

26. It is further submitted that in the case of Adinath Jewellery Exports (Supra) there was no tenancy but only a license agreement was entered into which was renewed by RP himself which had later expired, therefore, both the decision relied upon by the Respondent are of the lease and license and not of the tenancy which is still continuing.

27. We have heard Counsel for the parties and perused the record with their able assistance.

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.

29. It is also otherwise well settled that once a tenant always a tenant unless the status changes by contract or by operation of law and in this regard reference may be had to the decision of MR Sahni (Supra), M/s Jagdambey Builders Pvt. Ltd. (Supra) and Vishal N. Kalsaria (Supra). The Application under Section 60(5) of the Code is only maintainable if the issue involved is related to insolvency resolution process in view of the decisions of the Hon'ble Supreme Court in the case of Embassy Property Development P. Ltd. (Supra) and Gujarat Urja Vikas Nigam Limited (Supra).

30. Thus, looking from any angle, the decision of the Tribunal is found to be patently erroneous and thus the same is liable to be set aside.

31. In view of the aforesaid discussion, the present appeal is thus hereby allowed and the impugned order passed by the Tribunal is set aside. No costs.

Pending I.As, if any, are hereby closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

New Delhi
09th January, 2025
Sheetal