



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

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Adinath Jewellery Exports Vs. Mr. Brijendra Kumar Mishra, Liquidator of Shrenuj & Co. Ltd. & Ors.
Company Appeal (AT) (Insolvency) No. 748 of 2022
Date of NCLAT Judgements: April 24, 2023

Facts of the Case: -

The Present appeal is filed by Adinath Jewellery Exports (hereinafter referred as 'Appellant') after being aggrieved by the impugned order dated 06.07.2022 by AA.

The Appellant entered into a Leave and License Agreement with Shrenuj & Co. Ltd. (hereinafter referred as 'Respondent') for the premises located at Plot No. A-7, MIDC, Andheri (E), Mumbai – 400093 for a period of three years commencing from 03.08.2016 to 02.08.2019.

The CIRP was initiated against the Respondent by the AA's order dated 12.03.2019 and accordingly, Leave and License Agreement was renewed by the RP during the moratorium. Later, the AA passed the Liquidation order dated 12.07.2021 and the Liquidator started the e-auction of the said premises. The Liquidator, via letter dated 04.01.2022 sought the Appellant to vacate the licensed premises and to clear the outstanding license fee within 7 days. The Appellant paid an amount of Rs. 18,83,520/- as rent, which was duly received and acknowledged by the Liquidator vide e-mail dated 24.03.2022.

The Appellant received multiple communications from the Liquidator asking him to vacate the premises in 'subject' for successful auction, however, the Appellant stated that he was the lawful tenant of the said premises and is not required to vacate as the jurisdiction to give directions for vacation or eviction lay with the Small Causes Court. A suit was taken up by the Small Causes Court, Mumbai and by order dated 28.06.2022, the Court directed both the parties to maintain 'status-quo' till the next date i.e. 06.07.2022. Despite the above order passed by the Small Causes Court, the AA went ahead and passed the judgement in the favor of Respondent via Impugned Order dated 06.07.2022.

The main issues raised for consideration before Appellate Tribunal are:

- (i) Whether the Appellant was a 'tenant' or a 'licensee' or an 'Illegal occupant'?
- (ii) Whether the jurisdiction for deciding on the eviction vested with Small Causes Court or the AA?
- (iii) Whether the AA was correct in passing the Impugned Order dated 06.07.2022?



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NCLAT Observations:

The Appellate Tribunal in the light of the Leave and License Agreement and communications exchanged between the Appellant and RP, upheld that the Appellant was in illegal possession and occupation of the said premises.

Further the Appellate Tribunal held that the relationship between the Appellant and the Respondent is that of a 'licensee' and 'licensor' not of 'tenant' and 'landlord'. The Appellate Tribunal while placing reliance on the judgment given in '*Vijisan Jewels Pvt. Ltd. vs. Cimme Jewels Ltd.*' held that the jurisdiction of AA under IBC is the correct jurisdiction for dealing with issues during liquidation of a CD.

The Appellate Tribunal while stating judgment delivered by the Apex court in '*Parineeta Chaudhary vs. Mohammed Hussain A. Furniturewalla*' held that the AA possesses the correct jurisdiction for considering an application for vacation of the premises in question in the present case, and the AA was correct in passing the Impugned Order.

Order/Judgement: Impugned order dated 06.07.2022 does not need any intervention.

Case Review: The Appeal is dismissed with no order as to costs.