

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH-I, CHENNAI**

MA/1365/2019 in IBA/222/2018 filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 r/w Rule 11 of the NCLT Rules, 2016 and Regulation 29 of the Insolvency Resolution Regulation rules, 2016.

In the matter of **M/s. Dugar Housing Limited**

M/s. Gurudev Foundations Pvt. Ltd,
No.62, Audiappa Street,
Sowcarpet, Chennai-600 079

... Applicant

Vs.

- 1. Mr. Velli Paramasivam,**
Interim Resolution Professional,
IBBI/IPA-002/IP-N00311/2017-18/10940,
Priyadarshini Apartments,
#10/154, N.M.K.Street,
Ayanavaram, Chennai – 600 023.
- 2. The Sub-Registrar Office,**
Bharath Madha Street,
Tambaram East, Selaiyur – 600 059

... Respondents

CORAM:

R.VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Applicant : *Aashish Jain Lunia, Advocate*
IRP : *Velli Paramasivam, in person*

ORDER

Per: R.VARADHARAJAN, MEMBER (JUDICIAL)

Order pronounced on 20th January, 2020



1. This is an Application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (in short, I&B Code, 2016) read with Rule 11 of the NCLT Rules, 2016 and Regulation 29 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, seeking for the following reliefs.

- a. *To pass an interim order setting aside the Sale Deed dated 21.11.2019 registered as Document No.13926 of 2019 and Sale Deed dated 02.12.2019 registered as Document No.14418 of 2019 executed in exercise of right under the Power of Attorney to the extent of 55% of undivided share in land area executed after commencement of CIRP.*
- b. *To pass an interim order restraining the Respondent from alienating, selling or disposing off any manner any property of the Applicant by exercising right under the Power of Attorneys dated 29.06.2011, 10.10.2018 and 10.10.2018 since the extent of undivided share of land under the first two Power of Attorneys have already been sold as on 26.08.2019 and the Arbitration Award renders the third Power of Attorney unenforceable.*



- c. *To pass an interim order restraining the Respondent from alienating selling or disposing off in any manner any property of the Applicant by exercising right under the unenforceable Power of Attorney to the extent of 23% of undivided share in the land area as per terms of the Arbitration Award dated 27.09.2018.*
- d. *To pass any such orders as deemed fit and necessary by the Hon'ble Tribunal and thus render justice.*

2. The factual details as averred in the Application seeking for the above noted reliefs in a nutshell is as follows:-

i) Pursuant to the Joint Development Agreement (JDA) entered into between the Applicant and Corporate Debtor namely M/s. Dugar Housing Limited dated 29.06.2011 with respect to the project titled as "Glo Dugar" on the basis of Saleable Area Sharing Arrangement between the Applicant and the Corporate Debtor in the ratio of 45% and 55% respectively. Pursuant to the said JDA, a Power of Attorney (PoA) dated

29.06.2011 seems to have been executed by the Applicant in favour of the Corporate Debtor for 55% of the land area vide registered document before SRO, Selaiuyur. Two Supplementary Agreements dated 20.02.2014 and 30.06.2014 in relation to the same has also been entered in lieu of area sharing with profit sharing on the basis of 45% and 55% respectively as between the Applicant and the Corporate Debtor.

ii) It is further averred that since differences arose as between the parties, a dispute was referred to the Arbitrator and that certain interim reliefs were also obtained by the Applicant and the Hon'ble High Court referred the dispute to Arbitration vide common Order dated 27.07.2018 passed in OA No. 311/2018 and OP No.5050/2018, and pursuant to the said reference, the Learned Arbitrator vide Award dated 27.09.2018 held that a total sum of Rs.8,85,95,989/- was payable by the Corporate Debtor to the Applicant and in this regard a payment schedule was also contained in the Award.



Pursuant to the said Arbitral Award, two Power of Attorneys dated 10.10.2018 were also executed by the Applicant in favour of the Corporate Debtor, one for 22% of the land area and the other for remaining 23% of the land area and upon receiving the initial payments of Rs.50,00,000/-, the Power of Attorneys were duly executed in terms of the Award by the Applicant, however, in relation to the payments, the same has not been adhered to by the Corporate Debtor.

iii) It is the contention of the Applicant in the Application that originally, 55% of the saleable area as well as 22% of the area has been developed and completed by the sale of UDS in relation to the same. However, in relation to the balance 23% of the area, without complying with the terms of the Award, the Corporate Debtor, during pre Corporate Insolvency Resolution Process (CIR Process) has executed several sale agreements and the same also continues post



initiation of CIR Process. Hence, this Application seeking for the above noted prayers.

3. The documents in support of the above Application has been filed which are as follows: -

| Sl. No | Date | Particulars | Annexure | Page No |
|--------|------------|---|----------|---------|
| 12 | 21.11.2019 | Sale Deed No.13926 of 2019 executed by Dugar Housing in exercise of Power of Attorney | I | 750 |
| 13 | 02.12.2019 | Sale Deed No.14418 of 2019 executed by Dugar Housing in exercise of Power of Attorney | J | 768 |
| 14 | 27.11.2019 | Certificate of Encumbrance on Property | K | 784 |
| 15 | 27.09.2018 | Copy of Arbitration Award | L | 787 |
| 16 | 10.10.2018 | Copy of Power of Attorney for 23% land area | M | 801 |
| 17 | | List of flats sold by Dugar Housing under various Power of Attorneys | N | 826 |

From the annexure to the documents filed, it is also seen that the Applicant herein has preferred a claim before IRP in Form-B pursuant to the public announcement made by the IRP. It is also seen that the



IRP has admitted the claim of the Applicant in relation to the Corporate Debtor which is evident from the e-mails sent by the IRP to the Applicant dated 29.11.2019. Pursuant to the appearance by the IRP before this Tribunal, a reply has also been filed.

4. The main crux of the submissions/contentions on behalf of the Learned IRP seems to be that by virtue of the reliefs as sought for in the above Application and extracted as above, the Applicant is trying to enforce the Award passed by the Learned Arbitrator which cannot be done taking into consideration the provisions of Section 14 (1) (a) of the I&B Code, 2016. The said provision is also extracted which reads as follows:-

“14. Moratorium. - (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -



(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority; (b) transferring, encumbering, alienating or disposing off.

(b)”

5. It is further pointed out by the Learned IRP that the duration of the moratorium exists till the date of completion of the CIR Process by virtue of the Section 18 of the I&B Code, 2016, and in the said circumstance, since the CIR Process is still in vogue, the Applicant is not entitled to move this Application. It is further pointed out by the Learned IRP who is appearing in person that the Corporate Debtor is a Real Estate Developing Company, and in the circumstance, the sale which has been effected are nothing but stock in trade and disposal of the same cannot be considered as an Asset namely



Fixed Asset and since the onus is placed on the IRP to keep the concern as 'going concern", there is no bar on the IRP from selling those which are available as 'stock in trade' for the benefit of the Corporate Debtor or its creditors and sale transaction which has been effected only in the normal course of business of the Corporate Debtor. In the said circumstance, there cannot be a grievance on the part of the Applicant in relation to the sale of the stock in trade belonging to the Corporate Debtor by the IRP or his authorised persons.

6. From the records produced by the Applicant, it is evident that as between the Applicant and the Corporate Debtor in relation to the 23% of the saleable area, there has been a dispute which under the aegis of Hon'ble High Court of Madras has been referred to the Learned Arbitrator and the Learned Arbitrator has also chosen to pass an Award directing the Corporate Debtor to make the payment of a sum of Rs. Rs.8,85,95,989/- .



7. Clause V (d) and (e) (x) of the Award dated 27.09.2018 read as follows:-

d) The amount due and payable by the Respondent to the Claimant under the JDA dated 29.06.2011 along with the Supplementary Agreements I & II dated 20.02.2014 and 30.06.2014 are thus arrived at and fixed in a sum of Rs.8,85,95,989/- (Rupees Eight Crores Eighty Five Lakhs Ninety Five Thousand Nine Hundred Eighty Nine only). By effecting the said payment of Rs.8,85,95,989/- to the Claimant by the Respondent, the contractual terms between the parties as per the Joint Development Agreement dated 29.06.2011 and the Supplementary Agreements I & II dated 20.02.2014 and 30.06.2014 will get fully satisfied and the Respondent will derive absolute rights in respect of the property agreed to be developed under the JDA.



e) For the Respondent to derive the said benefit as per clause (d) of this Award, the Respondent should effect the payment of Rs.8,85,95,989/- (Rupees Eight Crores Eighty Five Lakhs Ninety Five Thousand Nine Hundred Eighty Nine only) as per the following schedule:

- (i)
- (ii)
- (iii)
- (iv)
- (v)
- (vi)
- (vii)
- (viii)
- (ix)

(x) It is on fulfillment of the above conditional payments to be effected by the Respondent to the Claimant, on the various dates fixed in clauses (i) to (ix), the rights as stipulated and provided for in clause (d) in favour of the Respondent will come into operation.

8. It is further required to note as per Clause 5 (e) (x), the payment to be effected by the Corporate Debtor to the



Applicant on the date fixed as per the schedule of payments, the rights provided for Clause (d) in favour of the Corporate Debtor will come into operation. So, the rights of the Corporate Debtor in relation to what has been mentioned in Clause 5 (d) comes to the effect only after the payment which is required to be made by the Corporate Debtor to the Applicant. That is, the right that can be exercised in relation to the property which is subject matter to the dispute as between the parties and several agreements which has been entered into from time to time and Power of Attorney in relation to which the Award has been passed. Thus, even though at first blush, the contention of the Learned IRP seems appealing that the Applicant, cannot seek to enforce the Award passed by the Learned Arbitrator against the Corporate Debtor, however, the Moratorium cannot be diversified from the provisions of Section 14 (1) (b) of the I&B Code, 2016 which reads as follows :-



“14. Moratorium. - (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -

(a)

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;”.

9. Further reading in conjunction along with explanation to Section 18 of I&B Code, 2016, it is seen that the Corporate Debtor cannot also include in its assets any of the assets owned by the 3rd party in possession of the Corporate Debtor held under Trust or under contractual arrangements including bailment. From the reading of the above provisions as well as taking in tandem from the Award passed by the Learned Arbitrator, it is seen that even though the Corporate



Debtor might have a legal right of beneficial interest in relation to the assets which according to the Ld. IRP to be treated as the stock-in-trade, but, however, subject to the conditions as imposed by the Learned Arbitrator and as against which no material has been brought forth by the IRP as to whether the same is under challenge under Section 34 of the Arbitration and Conciliation Act, 1996 as amended and as to whether any stay has been granted in relation to the enforcement of the same. The provisions of I&B Code, 2016 while on the one hand draws a line in relation to the properties and assets of the Corporate Debtor on the other hand discourages from dealing with the property and assets of the 3rd party as evident from the explanation of Section 18 as provided under I&B Code, 2016.

10. From the Moratorium, it is seen that by virtue of reading Section 14 (1) (b) restricts on the part of the Corporate Debtor in transferring or otherwise dealing with the property including its own during the period of



CIR Process. No evidence has been placed by the IRP that the assets which are sought to be alienated are stock in trade with adequate evidence and not to be treated as an asset. In any case in relation to accounting parlance “Stock-in-Trade” is also part of Current Assets of the Corporate Debtor and cannot be divorced from it.

11. In the circumstance, taking into consideration the provisions of the I&B Code, 2016, in relation to the property which is the subject matter of Arbitration Award as well as in the interest of justice, a *status quo* order is granted and the IRP is directed not to deal with the said property. However, the parties will be at liberty to seek for modifications of this Order by way of suitable application.

-SD-
ANIL KUMAR B]
MEMBER (TECHNICAL)

-SD-
[R. VARADHARAJAN]
MEMBER (JUDICIAL)

P. ATHISTAMANI