

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No.303

IA/752(AHM)2023 in CP(IB) 77 of 2018

Order under Section 60(5) IBC r.w Rule 11 of NCLT Rules, 2016

IN THE MATTER OF:

P G Sales Corporation

.....Applicant

Vs.

Laxmanbhai Mohanbhai Vegad & Ors.

.....Respondent

Order delivered on 17 /01/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

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DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-sd-

CHITRA HANKARE
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD (COURT-II)

IA No. 752 (AHM) 2023

IN

C.P. (IB) No. 77 of 2018

(Filed under Section 60(5) of the Insolvency & Bankruptcy Code,
2016 And Rule 11 of the NCLT Rules, 2016)

IN THE MATTER OF:

P.G. Sales Corporation

Opp. Government Technical High School,
Bhavnagar - 364001

.....Applicant

VERSUS

1. Laxmanbhai Mohanbhai Vegad

Security Guard at the premises of
API Industries Private Limited
Plot No. 36, CS No. 6095
Kumbharwada, Madhia Road,
Bhavnagar – 364001

2. Police Inspector, Bortalav Police Station

D Division,
Near RTO Circle, Shastrinagar,
Bhavnagar - 364001

3. Shri Kiran Shah

Liquidator of API Industries Private Limited
608, Sakar – 1, Near Gandhigram,
Railway Station, Ashram Road,
Ahmedabad – 380009

.....Respondents

Order pronounced on: 17.01.2024

Coram:

MRS. CHITRA HANKARE
HON'BLE MEMBER(J)

DR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER(T)

Appearance:

For the Applicant : Mr. Monaal J Davawala, Advocate

For the Respondent : Mr. Kiran Shah, CA for R – 3 (Liquidator in person)

JUDGEMENT

1. An application has been filed under Section 60(5)(c) and other applicable provisions of the IBC 2016, by the successful auction purchaser (P G Sales Corporation) of certain assets from the liquidator of the Corporate Debtor which is presently under liquidation vide orders of this Tribunal dated 23.09.2019. The Respondent No.1 is Mr Laxmanbhai Mohanbhai Vegad, the security guard who is stated to be staying at the premises of the corporate debtor. The Respondent No. 2 & 3 are the Police Inspector of Bortalav Police Station, Bhavnagar and Shri Kiran Shah, the liquidator of the corporate debtor respectively.

2. It is submitted by applicant that the Respondent No.3 had sold the assets of the corporate debtor from time to time and pursuant to an e-auction dated 12.03.2023, showed willingness to buy the assets of the property of certain land and building on Lease Rights of Land (2526.88 sq metres with Industrial Shed admeasuring 839.38 sq meters) situated at Plot No.36, C.S No.6095, Kumbharwada, Madhia Road, Bhavnagar. The Reserve Price was Rs.166.93/- lakhs with EMD of Rs.16.69/- lakhs. Applicant was the successful bidder under e-auction held on 13.04.2023 for sale of the assets on “as is where is basis” and “no recourse basis” as per the terms and conditions of the e-auction process document. The assets were purchased at a cost of Rs.1,73,93,000/- plus GST and a sale confirmation letter dated 17.05.2023 was given by the respondent to the applicant. Vide letter dated 21.06.2023 the Respondent No.3 also handed over the vacant and peaceful possession of land and industrial sheds (property) to the successful purchaser (applicant) who has received it on same date and also stated to have received to “complete satisfaction and without any qualification/observation”.

3. It is submitted that a security guard (respondent No.1) appointed originally by the suspended management and continued by the security agency appointed by the respondent No.3 (on humanitarian grounds) has refused to leave the premises claiming an unfettered right to live on the premises since he has been staying there for many years. The Respondent No.1 is stated to have approached the local court with a view to enforce tenancy rights on industrial premises. The applicant enclosed a copy of the Civil Suit No.782/2020 wherein the Respondent No. 1 (versus Pankajbhai Haribhai Varia and another 2 defendants) had sought a permanent injunction against eviction from rented premises. Later on he has withdrawn the petition with right to file fresh suit. The applicant also filed a letter with the Police Inspector (Respondent No.2) stating that the property bought by them on handing over of possession on 21.06.2023 from liquidator and when it was taken up for demolition of dilapidated shed, Respondent No.1, who was watchman, and his sons harassed them to stop the work.

4. Respondent No.1 has refuted all allegations made against him and stated that he has been staying in the premises in a small room where he has been staying with his family (and has been working as security guard) for last 39 years and the corporate debtor/suspended management used to deduct the rent amount of the room situated at disputed premises. As he has been in peaceful, continuous, uninterrupted and unobstructed possession of room, he is entitled to own the premises on the basis of “The Doctrine of Adverse Possession” and the principles laid down by Hon'ble Supreme Court in various matters. He has also stated that the property that has been sold by the liquidator has been a disputed premises of title and ownership since long and a civil suit before the Civil Judge Bhavnagar in Civil Suit No.73 of 2009 wherein status quo was granted against the transfer of disputed land/property of the said application was allowed by learned Civil Judge, Bhavnagar vide order dated 11.01.2011. Accordingly, there was a concealment of material facts and the Tribunal has been misguided on the sale of property done by liquidator as per the respondent. Further, he has clarified that it was in another civil suit

No.782 of 2020 preferred against the SBI and Mr Kiran Shah (liquidator and R-3) who were threatening to take over his premises, was withdrawn with the condition if in the future any sort of threat would be given or the premises of Respondent No.1 would be vacated without following due process of the law, then the Respondent no.1 would have liberty to approach the Civil Judge Bhagvnagar.

5. The liquidator has stated that the SBI as financial creditor of the corporate debtor had while taking action under SARFESI Act 2002, had appointed a security agency for protecting the assets in question and the agency has continued the engagement/employment of Respondent No.1 as security guard for the purpose. He had on sensing something wrong with the arrangement changed the security agency, but the Respondent No.1 was not inclined to leave the factory premises of the corporate debtor on the contrary claimed tenancy rights on the assets. Further in the year 2020 when the civil suit was filed before the Hon'ble Civil Court at Bhavnagar claiming tenancy rights, he had contested the application and filed objection under Order VII Rule 11 in the matter and further had preferred

Special Civil Application before the Hon'ble Civil Court directing the court commission which was stayed by the Hon'ble High Court of Gujarat with a direction to the Addl. Civil Judge, Bhavnagar, to hear the application filed by the liquidator as expeditiously as possible in the interest of justice. Accordingly orders were reserved and on filing withdrawal pursis by the R-1, the same was dismissed as withdrawn. The liquidator has further on 21.06.2023 addressed a letter to the Police Inspector, Bortadev Police Station, Bhavnagar in the matter for assistance for vacation of Respondent No.1 from the premises.

6. Heard both the learned Counsels.

Conclusion:

7. There is no dispute regarding sale of assets of Corporate Debtor and purchased of it by the applicant. This application is not filed by the liquidator but it is filed by the purchaser, who has purchased the property. In paragraph no. F of the application, the applicant has clearly mentioned that the vacant and peaceful possession of the assets of Corporate Debtor was handed over to him by Respondent No.3 – Liquidator. This statement is also supported by the

letter dated 21.06.2023 at Annexure D wherein also it is clearly mentioned that liquidator is handing over vacant and peaceful possession of the land and industrial shares of Corporate Debtor situated at Plot No. 36 CS No. 6095 Kubarwala, Madya Road, Bhavnagar, Gujarat. The applicant further verified the property and confirmed that he has obtained the vacant and peaceful possession of the land. Thus, it is crystal clear that at that time of confirming sale, the vacant possession of the premises were handed over to the applicant. As the vacant possession is handed over, it means that it was not occupied by any person at that time. After taking vacant possession from the liquidator it was duty of the purchaser to protect his properties. Therefore, now this cause will not fall within the ambit of liquidation process. Moreover, Respondent No. 1 also tried to initiate Civil Proceedings with respect to same property. When the vacant possession was given to the applicant, the liquidator is no more responsible in the matter. So also, this Tribunal is not having jurisdiction to entertain the applications which fall outside the ambit of liquidation process. In view of these

observations, the application itself is not maintainable.

8. Hence, we are passing the following order:

ORDER

The application IA No. 752 of 2023 in C.P.(IB) No. 77 of 2018 is rejected.

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DR.V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

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CHITRA HANKARE
MEMBER (JUDICIAL)