

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT -II**

IA No. 727/2023

In

C.P. (IB)No.4271/MB/2018

Under Section 60(5) (c) of Insolvency and
Bankruptcy Code, 2016

Mr. Pandurang BhikobaShelar

At- D/801, Kakade City,

Near Warje Water Plant,

Karve Nagar, Pune- 411052

.... Applicant

In the matter of

EsselInfraprojects Limited

Registered Office at- 513/A, 5th Floor,
Kohinoor City, Kirol Marg, Kula (West),
Mumbai- 400070

...Financial Creditor

V/s

Mr. Jitendra Palande,

Liquidator of Kakade Developers

Private Limited

Registered Office at- 38, 5-3/D,

New Ajanta Anevue,

Paud Road, Kothrud, Pune- 411038

...Corporate Debtor

Order Pronounced on :- 06.12.2023

Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Applicant (VC) : Adv. Mr. SukandR. Kulkarni
For the Liquidator (VC) : Adv. Mr. Rohan Agrawal a/w Harshad Vyas
For the Director of the
Corporate Debtor (VC) : Adv. Ajinkya Udane

ORDER

Per: Coram

1. The present Interlocutory Application has been filed by the Applicant for a declaration that the unit on the ground floor in the building known as “Kakade Bizz Icon’ admeasuring 304 square meters carpet area with four car parking spaces and six two-wheeler parking spaces (in short, the ‘Said Unit’) does not form part of the assets of the Corporate Debtor and to restrain the liquidator to proceed with the E-auction in any manner and to quash and set aside the E-auction notice dated 20.10.2022 issued by the Liquidator.

Brief facts leading to the filing of the present Application are as under:-

2. Corporate Insolvency Resolution Process (‘CIRP’) under Insolvency and Bankruptcy Code, 1996 (‘the Code’) was initiated against Kakade Developers Private Limited (‘the Corporate Debtor’) vide an order of this Tribunal dated

19.03.2020 under the Insolvency and Bankruptcy Code, 2016 ('the Code'). Subsequently, this Tribunal passed an order on 07.09.2021, under Section 33 (1) (b) of the Code initiating liquidation of the Corporate Debtor and appointed the Respondent as Liquidator of the Corporate Debtor. Pursuant to the said order, the Liquidator issued E-auction notice dated 20.10.2022 for sale of the 'the Said Unit'.

3. The Applicant challenged the said E-auction notice stating that the Said Unit forms part of the project named 'Kakade Bizz Icon' developed by the Corporate Debtor and was acquired by the Applicant under an Agreement for Sale dated 30.01.2020 executed with the Corporate Debtor for a consideration of Rs. 2 crores. As per the Applicant, sale consideration to the extent of Rs. 1.45 crore was paid by the Applicant prior to the execution of Agreement for Sale, the balance amount of Rs. 55 lakhs was also paid subsequent to the execution of the Agreement for Sale from time to time in cash.
4. Though the Applicant stated to have orally informed the Liquidator about the purchase of the Said Unit and payment of full consideration, the Liquidator has issued E-auction notice in respect of the Said Unit and hence, the present Application.

Submissions of the Applicant:-

5. The Applicant submitted that the Agreement for Sale for purchase of the Said Unit was executed between the Corporate Debtor and the Applicant on 30.01.2020, i.e. before commencement of the CIRP. The entire sale consideration of Rs. 2 crores (1.45 crore prior to execution of the Agreement) was paid. The Corporate Debtor had also handed over possession of the Said Unit on 09.09.2019, way before execution of the Agreement for Sale. In the circumstances, the Said Unit does not form part of the assets of the Corporate Debtor and thus, cannot come under the purview of the Liquidator.
6. The Agreement for Sale dated 30.01.2020 is yet to be registered and the Applicant is taking necessary steps in this regard including, but not limited to, filing of civil proceedings against the Developer/Corporate Debtor.
7. The Respondent/Liquidator is threatening the Applicant with criminal action for which there is no basis.

Submissions of the Respondent/Liquidator:-

8. The Liquidator submitted that the Said Unit has already been auctioned on 16.11.2022 and full consideration has also been paid by the auction purchaser. Erstwhile management of the Corporate Debtor/suspended

directors, through aware of the public auction/sale, the RP/Liquidator never informed about any such sale and the present case of the Applicant is a concocted story to somehow grab the Said Unit.

9. On or about 02.02.2023, two months after the successful public auction, the Applicant broke the locks of the Said Unit and inscribed a Possession Notice on the Said Unit and the liquidator registered a criminal complaint dated 17.02.2023 with the Chaturshringi Police Station.
10. The Liquidator claimed that the documents produced by the Applicant are prima facie fraudulent documents. The Liquidator further submitted that the Agreement for Sale is unregistered and no evidence had been produced to show that sale consideration had actually been paid by the Applicant to the Corporate Debtor. As per the records of the Corporate Debtor, no consideration had been received by the Corporate Debtor from the Applicant towards sale of the Said Unit.
11. The Liquidator stated that the Said Unit forms part of the liquidation estate of the Corporate Debtor and was sold by way of a public auction and full sale consideration has been received.
12. The Liquidator stated that no NoC for the sale of the Said Unit had been obtained by the Corporate Debtor from the secured creditor.

13. The Liquidator submitted that the Applicant had neither during the entire CIRP process or in the liquidation process submitted his claim against the Corporate Debtor nor taken any steps to register the unregistered Agreement for Sale. An unregistered document cannot be relied upon to establish the ownership on the Said Unit which is an immovable property.

Submissions of the Applicant in the Rejoinder:-

14. The Applicant claimed that he was in possession of the Said Unit since 09.09.2019 and denied auction of the Said Unit. The Applicant has also submitted certain documents such as No Dues Certificate (Property Tax) dated 07.07.2023, invoice or acknowledgement of BPCL dated 02.03.2023, registration certificate of FSSAI dated 08.06.2023, and Receipt issued by 'Bizz Icon Business Premises Co-operative Society dated 29.09.2022 and 21.07.2023. The Applicant stated that the world wide pandemic caused the delay in registering the document.

Analysis and Decision:-

15. We have heard the learned counsels for the parties and have also perused the records.
16. The main contention of the Applicant is that an Agreement for Sale was executed between the Applicant and the Corporate Debtor before the

commencement of CIRP i.e. 19.03.2020. In this connection, it is observed that the Financial Creditor, Essel Infraprojects Limited, filed an Application against the Corporate Debtor in 2018 and CIRP was initiated on 19.03.2020. Thus it is a matter of record that the execution of the Agreement for Sale and handing over of possession of the Said Unit allegedly took place on 09.09.2019, both during the interregnum period of filing of application under Section 7 of the Code and order of admission passed by the Tribunal.

17. It is pertinent to note that the Agreement for Sale dated 30.01.2020 has been executed on plain paper instead of on stamp paper. Further, the signature of the parties appears only on the last page and one Mr. Chandrakant Kankayya Boda executed the Agreement for Sale on behalf of the Corporate Debtor in his capacity as Director. Neither the Resolution authorising the said Director to execute the document nor an authority under a power of attorney is specified in the document.

18. In para 14 of the Agreement for Sale, it is stated as under:

‘It is expressly recorded that the possession is not handed over to the purchaser at the time of executing these presents. ‘

In spite of the above specific provision, the Applicant claims that the possession was handed over to him on 09.09.2019 ie way before the date of execution of the Agreement for Sale. It is not out of place to mention that the

letter handing over of possession dated 09.09.2019 does not mention the name of the person handing over possession on behalf of the Corporate Debtor or his position in the Corporate Debtor.

19. With respect to passing of sale consideration, the Agreement for Sale states that an amount of Rs. 1.45 crore had been given to the Corporate Debtor under two cheques No. 494261 and 494262 dated 02.01.2020 and 28.01.2020 respectively and both drawn on State Bank of India, Pune. The Liquidator specifically denied receipt of any money from the Applicant towards sale consideration as per the records of the Corporate Debtor. It is pertinent to note that the Applicant has also not brought on record any documentary evidence like bank statement to prove actual payment of sale consideration to the Corporate Debtor. As regards the alleged payment of balance sale consideration in cash, no date or other details are mentioned. Considering the above, we are of the view that payment of sale consideration by the Applicant to the Corporate Debtor is not established. It is also an established legal position that unregistered and unstamped document will not confer a valid legal title for immovable property.
20. It is also very peculiar to observe the conduct of the Applicant to establish his title. Though the Corporate Debtor had been admitted to CIRP on 19.03.2020, the Applicant appears to have shared, for the first time, a copy of the Agreement for Sale only on 30.01.2023. No steps appear to have been

taken by the Applicant, either to establish his ownership with IRP/RP or to register the document with the concerned Sub-Registrar of Assurances. The explanation for the delay for taking such action as world wide pandemic is not very convincing. The suspended director of the Corporate Debtor, who appears to have executed the Agreement for sale, on behalf of the Corporate Debtor has also never, brought to the notice of the sale of the Said Unit to the IRP/RP.

21. The Said Unit alleged to be sold to the Applicant in the year 2020 for a consideration of Rs.2 cr has now been sold in public auction in 2022 for a sale consideration of Rs.5.05 cr and the purchaser has deposited full consideration for the same.
22. Based on the above discussion, we are of the considered view that the Applicant has failed to produce any admissible or reliable evidence to even prima facie establish his title to the Said Unit or make out a case in his favour. Thus, the **IA No. 727 of 2023** stands **dismissed** being devoid of any merit.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)