IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – II, CHENNAI

IA/233(CHE)/2021
in
MA/1370/IB/2019
in
CP(IB)/1325/2019

(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2016)

In the matter of ***Frontier Lifeline Private Limited.***

Mr. S. RAJAGOPAL,
Chairman – Monitoring Committee of
Frontier Lifeline Private Limited,
11/108, 4th Street, Karpagam Avenue,
Raja Annamalaipuram,
Chennai – 600 028. ... *Applicant*

- Vs -

Dr. K.M. CHERIAN
Promoter and Erstwhile Director of
M/s. Frontier Lifeline Private Limited,
R-30-C, Ambattur Industrial Estate Road,
Chennai – 600 101. ... *Respondent*

Order Pronounced on 1st July, 2022

CORAM:

JUSTICE (RETD) S.RAMATHILAGAM, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

For Applicants : Mr.B.Dhanraj, Advocate
For Respondents: Mr.Kaushik N Sharma, Advocate

ORDER

Per: **ANIL KUMAR B, MEMBER (TECHNICAL)**

The above application has been preferred by the Chairman of the Monitoring Committee of the Frontier Lifeline Private Limited.

under 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2016 seeking relief as follows;

a) *Pass an order directing the Respondent Promoter and Erstwhile Director of the Corporate Debtor, to hand over the Original Title Deeds of the Mediville Freehold Lands (50.91 Acres), registered in the name of the Corporate Debtor Frontier Lifeline Private Limited along with the connected records viz, Pattas, Encumbrance Certificates, Land Tax Receipts, Parent Documents, Revenue Survey Maps/Sketches, Lawyers Reports and Communications with TN Government, with immediate effect.*

b) *Pass such further or other orders as may be deemed fit and proper in the facts and circumstances of the case.*

2. It was averred in the application that CIRP in respect of the Corporate Debtor has been initiated by this Tribunal on 02.08.2018 and the Applicant herein was appointed as an Interim Resolution Professional.

3. It was further averred that the Resolution Professional moved an application for Liquidation of the Corporate Debtor, in which this Tribunal has passed an order to appoint the Resolution Professional as Liquidator of the Corporate Debtor with the specific direction to consider the Resolution Plan as a Scheme under Section 230 of the Companies Act, 2013 vide dated 04.09.2019, in view of the observations made by the Hon'ble NCLAT, New Delhi in

its order dated 17.07.2019 passed in the application preferred by the Resolution Applicant.

4. It was further averred that the Applicant had followed due procedures for consideration of the Resolution Plan as a Scheme under Section 230 of the Companies Act, 2013. The Resolution Plan proposed by the Resolution Applicant for a total investment of Rs.75 Crore was duly voted in favour by both Secured Creditors (97.58% vote share) and Unsecured Creditors (96.10% vote share), which is above the voting threshold limit.

5. It was submitted by the Learned Counsel for the Applicant that this Tribunal has approved the Resolution Plan submitted by the Resolution Applicant viz. FirstStep Ventures Ltd. vide order dated 08.01.2020 by rejecting the objection made by dissenting Financial Creditor viz. South Indian Bank with a 2.42% voting share.

6. It was further submitted that the Monitoring Committee has been constituted during the 1st meeting held on 28.01.2020 and the Applicant herein was appointed as the Chairman of the Monitoring Committee and had conducted a meeting of the said Committee to implement the Resolution Plan within in the time frame stipulated in the Plan.

7. It was further submitted that the Resolution Applicant has been postponing the taking over of the management of the Corporate Debtor, by citing previously settled issues and raising fresh requests even after 10 months lapse of the term contemplated in the Plan.

8. Pursuant to that the Applicant moved an application before this Tribunal, prayed directions against the Resolution Applicant to comply with the order of this Tribunal dated 08.01.2020 and take over the management and custody of the Corporate Debtor with all its assets & liabilities and to discharge the Monitoring Committee, which is pending before this Tribunal.

9. It was further submitted that the Plan lists out responsibilities of the Monitoring Committee in Clause 4.3 of Chapter X, which includes the responsibility to obtain all original documents of the Corporate Debtor and to ensure that all the assets remain vested with the Corporate Debtor.

10. It was further submitted that the Applicant has taken all the measures to comply with the above requirement and had sent an e-mail dated 19.02.2020 to the Respondent, asking to hand over the original title deeds of the lands in the Mediville (listed in the table below) (hereinafter referred to as 'Mediville Lands')

S. No.	DATE	PARTICULARS	DOCUMENT NUMBER	EXTENT OF PROPERTY (In Acres)
POOVALAI VILLAGE, SRO – GUMMIDIPOONDI				
1.	10.06.2011	Sale Deed executed by Mr.Nadarajapillai to and in favour of the Corporate Debtor	2480/2011	4.55 ½
2.	10.06.2011	Sale Deed executed by Mr.Nadarajapillai to and in favour of the Corporate Debtor	2481/2011	3.77
3.	29.12.2011	Sale Deed executed by Five Star Associates (POA for 9 Parties) to and in favour of the Corporate Debtor	6436/2011	4.60
4	29.12.2011	Sale Deed executed by Five Star Associates (POA for 3 Parties) to and in favour of the Corporate Debtor	6438/2011	5.97
5.	06.01.2012	Sale Deed executed by S.Manokaran (PoA for 4 Parties) to and in favour of the Corporate Debtor	78/2012	1.62
6.	06.01.2012	Sale Deed executed by Pulendiran @ Periyendiran & Kattayan to and in favour of the Corporate Debtor	82/2012	0.23 ½
7.	06.01.2012	Sale Deed executed by J.Anjala to and in favour of the Corporate Debtor	85/2012	0.38
8.	06.01.2012	Sale Deed executed by S.Manokaran (POA for 9 Parties) to and in favour of the Corporate Debtor	89/2012	0.73 ½
KANNAMPAKKAM VILLAGE, SRO – GUMMIDIPOONDI				
9.	10.06.2011	Sale Deed executed by Mr.Nadarajapillai to and in favour of the Corporate Debtor-	2482/2011	1.59 ½
10.	28.12.2011	Sale Deed executed by Mr.S. Ramesh (POA for 4 Parties) to and in favour of the Corporate Debtor.	6398/2011	1.02
11.	02.01.2012	Sale Deed executed by Mr.Rajendiran & 9 Others to and in favour of the Corporate Debtor.	17/2012	0.48
12.	04.01.2012	Sale Deed executed by Mr.Murali & 4 Others to and in favour of the Corporate Debtor.	35/2012	0.11
13.	04.01.2012	Sale Deed executed by Mrs.Chandra & Mrs.Suguna to and in favour of the Corporate Debtor.	46/2012	0.32

14.	06.01.2012	Sale Deed executed by Mrs.Chandrammal to and in favour of the Corporate Debtor.	77/2012	0.54
15.	06.01.2012	Sale Deed executed by Mr.Damodaran to and in favour of the Corporate Debtor.	79/2012	0.27
ELAAVOOR VILLAGE, SRO - GUMMIDIPOONDI				
16.	29.12.2011	Sale Deed executed by Five Star Associates (PoA for 1 Party) to and in favour of the Corporate Debtor	6435/2011	3.40
17.	29.12.2011	Sale Deed executed by Five Star Associates (POA for 1 Party) to and in favour of the Corporate Debtor	6437/2011	2.47
18.	28.12.2011	Sale Deed executed by V.Geetha to and in favour of the Corporate Debtor	6376/2011	16.66
TOTAL				**50.91**

which were not mortgaged to the banks, to the Resolution Applicant in the reply the Respondent denied the existence of such land.

11. It was further submitted that the Applicant had again sent an e-mail dated 13.03.2020 to the Respondent and requested to hand over the Title Deeds with parent documents of the unencumbered lands located at the Mediville in the name of the Corporate Debtor, in the reply e-mail the Respondent questioned the claim of the Mediville lands by RP and stated that the lands were bought for the purpose of exchange of anaadhenam land.

12. Thereafter, the Applicant on 26.10.2020, again sent an e-mail to the Respondent requesting to hand over the original

documents of the Mediville lands for which the Respondent has not given any reply, consequently the Applicant filed this application and sought to direct the Respondent to hand over the original documents of the Mediville lands in the name of Corporate Debtor to the Resolution Applicant.

13. The Learned Counsel for the Respondent submitted in the counter that the original documents of the alleged Mediville lands are not with the Respondent and further submitted that the original document of the said land is submitted to the Commissioner of Land Administration for exchange of lands.

14. It was further submitted that the total extent of land in which the Frontier Mediville Project was planned was about 358.81 acre out of which only an extent of 141 acre of land belonged to the Corporate Debtor. In addition to the said land, in between the entire project, an extent of 81.77 acre is water courses, 95.68 acre of lands were anadheenam lands and about 1 acre is car track and unutilized land.

15. It was further submitted that the lands termed as 'Anadheenam' mean orphan land which does not belong to anyone. It was further submitted that for the purpose of having contiguity for the entire Frontier Midiville Project, the Corporate Debtor as early as 2011 made a proposal to the Government of Tamil Nadu

to lease/exchange the said orphan land with some other parcel of the property, for this process an extent 53.83 acres of land about 10 KMs away from the existing Frontier Midiville Project was identified.

16. It was further submitted that the extent of 48.93 acre lands at Elavoor, Poovalai and Kannamangalam villages (Midiville Lands) were identified to be purchased in the name of the Corporate Debtor are for the specific purpose of Exchange of Lands with the Anadheenam lands.

17. It was further submitted that the initial proposal from TIDCO was to lease out the Anadheenam lands and later it was decided to give land in exchange and the proceedings of the District Collector with regard to utilization and maintenance of various government lands which fall within the Frontier Mediville Project.

18. It was further submitted that multiple communications have been sent by the Corporate Debtor to the Tamil Nadu Government Authorities regarding the process of exchange of Anadheenam lands. In the meanwhile, the Corporate Debtor was gone into CIRP and all the Original Documents are stagnated in the Office of the Commissioner of Land Administration. In such circumstances, the Respondent sought dismissal of this application.

19. Further, in the Rejoinder the Learned Counsel for the Applicant submitted that it is the responsibility of the Respondent to pursue with the Government Officials, collect and handover the original Title Deeds and other records to the Applicant and further submitted that due to deliberate inaction of the Respondent, the Applicant approached Adjudicating Authority and sought to direct the Respondent to hand over the above-said documents and records.

20. We have heard learned counsel for both sides. The principal question calling for determination in this matter is as to whether the Respondent is bound to hand over the Original Title Deeds and records in the name of Corporate Debtor viz. Frontier Lifeline Private Limited, which is in the custody of the Commissioner of Land Administration, to the monitoring committee constituted under the Plan approved by this Tribunal.

21. It can be seen from clause 4.3 of Chapter X (Implementation and Supervision) of the Resolution plan, which is depicted as follows

> ***"4.3 The monitoring committee, so appointed, shall have inter alia the following responsibilities:***
>
> ...
>
> *b) Obtain all original documents, and also all other agreements, deeds, contracts, correspondences, communications, letters or any other document, pertaining to any division of the Corporate Debtor or pertaining to the company as a whole, transferred by the erstwhile members of the Board of Directors of the Company and/ or by the existing promoters or the Resolution Professional in a peaceful and unconditional manner.*

....

d) Ensure that all the assets of the Company remain vested in the Company, on an as is basis, free from all encumbrances and/or without any encroachments (including but not limited to occupancy or possession by the erstwhile director/s or promoter/s or their men/agents/servants) upon implementation of the Plan. Provided that the Monitoring Committee shall have only the limited role of monitoring compliance with the financial proposal of the Resolution Plan and shall have not control or management over the Corporate Debtor or its assets, including any corporate restructuring."

The above makes clear that the obligation to obtain all original documents in the name of the Corporate Debtor is the responsibility of the Monitoring Committee, where the Applicant is the Chairman of the committee.

22. It is further seen that in the e-mail communication between the parties on 19.02.2020, it was conversed as follows

Date: Wednesday, 19 February, 2020, 10.20 am IST

Dear Mr. S. Rajagopal,

You may kindly reply to my email that I have sent to you yesterday.(18/2/2020) - (Please consider it urgent)

There is no land other than what we have mortgaged to bank is held by Frontier Mediville. For the purpose of exchange of land with the Govt, some land has been bought with a loan from Dr. Archana Thota.USA.

What is important for me is for you to reply to my email sent yesterday, obviously you are looking for ways and means of distracting my contention, request and confuse NCLT and the First Step. I am not trying to conceal anything. I have practised for 45 years in this country as a true professional and a patriotic Indian who surrendered my permanent resident status not in one but in two richest countries of the world. The details of the land are available with the Govt and you could ascertain it from Mrs. Girija Vaidyanathan when she was the CLA. Please also understand that you are questioning my honesty and integrity.

With Kind Regards,
KM Cherian

From: "centaur sr" <centaur_sr@yahoo.com>
To: "drkmc" <drkmc@frontierlifeline.com>
Sent: Wednesday, February 19, 2020 7:30:30 AM
Subject: Frontier Lifeline private Limited Freehold land details

Dear Dr. KM Cherian

As you are aware FLL holds lands to the extent of about 48 acres in Mediville which are not mortgaged to the Banks.

The Original title deeds of these lands need to be handed over to FirstStep Ventures Limited in the course of implementation of their approved Resolution Plan.

Please let me know where these Original Title Deeds are kept.

Regards
S Rajagopal
Chairman, Monitoring Committee

The above communication makes clear that on February 2020 itself the Respondent had intimated to the Applicant that the Midiville Land documents were in the custody of the Commissioner of Land Administration.

23. It may also be noticed that this adjudicating authority approved the plan on 08.01.2020, the above e-mail communication was exchanged on 19.02.2020 and the present application was filed only on 14.01.2021. Further, from the submissions of the Learned Counsels, it appears that the original documents were in the custody of the Commissioner of Land Administration well before the initiation of liquidation of the Corporate Debtor.

24. At this juncture, it would be useful to refer to Sections 34(2)&(3), 35(1)(m) and 37(1)(d) of Insolvency and Bankruptcy Code, 2016

> "**Section *34. Appointment of liquidator and fee to be paid.***
> ...
> *(2) On the appointment of a liquidator under this section, all powers of the board of directors, key managerial personnel and the partners of the corporate debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator.*
>
> *(3) The personnel of the corporate debtor shall extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the corporate debtor and provisions of section 19 shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the interim resolution professional.*

...

35. Powers and duties of liquidator

(1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely:—
(m) to take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator;

37. Powers of liquidator to access information.

(1) Notwithstanding anything contained in any other law for the time being in force, the liquidator shall have the power to access any information systems for the purpose of admission and proof of claims and identification of the liquidation estate assets relating to the corporate debtor from the following sources, namely:—

(c) any agency of the Central, State or Local Government including any registration authorities;

a conjoint reading of the above provisions clarifies that once the liquidation was ordered the liquidator steps into the shoes of the Corporate Debtor and acquires the powers to act under 35(1)(m) and 37(1)(d) for liquidation, distribution of assets and for accessing any information from any agency of the government.

25. We also refer to the observation of the Hon'ble NCLAT in ***"S.C. Sekaran v. Amit Gupta & Ors."*** in Company Appeal (AT) (Insolvency) Nos. 495 & 496 of 2018 wherein it was observed as follows;

"8. In view of the provision of Section 230 and the decision of the Hon'ble Supreme Court in 'Meghal Homes Pvt. Ltd.' and 'Swiss Ribbons Pvt. Ltd.', we direct the 'Liquidator' to proceed in accordance with law. He will verify claims of all the creditors; take into custody and control of all the assets, property, effects and actionable claims of the 'corporate debtor', carry on the business of the 'corporate debtor' for its beneficial liquidation etc. as prescribed under Section 35 of the I&B Code. The Liquidator will access information under Section 33 and will consolidate the claim under Section 38 and after verification of claim in terms of Section 39 will either admit or reject the claim, as required under Section 40. Before taking steps to sell the assets of the 'corporate debtor(s)' (companies herein), the Liquidator will take steps in terms of Section 230 of the Companies Act, 2013. The Adjudicating Authority, if so required, will pass appropriate order. Only on failure of revival, the Adjudicating Authority and the Liquidator will first proceed with the sale of company's assets wholly and thereafter, if not possible to sell the company in part and in accordance with law."

26. From the above observation we perceive that the Scheme proposed under Section 230 of the Companies Act, 2013 during the liquidation of the Corporate Debtor, is also governed under Insolvency and Bankruptcy Code, 2016 then the powers and duty of the liquidator will not cease after approval of the scheme.

27. Further, there is nothing in the application to substantiate that the Liquidator has approached the Commissioner of Land Administration for recovery of the original title deeds of Midiville Land on behalf of the Corporate Debtor.

28. This being the case, we are of the considered opinion that the relief sought in this application is liable to be rejected and we hereby direct the Applicant to take necessary steps to recover the original title deeds of Midiville Land from the Commissioner of Land Administration and report the status of the recovery process to this Adjudicating Authority by way of Affidavit within 30 days from the date of this order.

29. With the above directions, this application stands **disposed off.**

-SD-

ANIL KUMAR B
MEMBER (TECHNICAL)

-SD-

JUSTICE (RETD) S.RAMATHILAGAM
MEMBER (JUDICIAL)

Gopishankar. D