

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 400 of 2021

IN THE MATTER OF:

Naresh Kumar

R/o Isarda House,
Civil Lines, Jaipur, Rajasthan – 302006.
Through his Power of Attorney
Sukhbir Singh
R/o 426, Nemi Sagar, Vaishali Nagar,
Jaipur, Rajasthan

Appellant

Versus

Durgesh Kumar Sharma

Proprietor M/s Salasar Buildings
23, Tirth Nagar, Shyam Nagar,
New Sanaganer Road,
Jaipur – 302019.

1st Respondent

M/s North Rajasthan Buildwell Pvt. Ltd.

Reg. Office at:-
Shop No. G-7, Ground Floor,
Pankaj Tower, Community Centre,
Vikas Puri, New Delhi – 110018
Through
Shailesh Dayal, Resolution Professional
2/6A, LGF, Jungpura – A,
New Delhi - 110014

2nd Respondent

For Appellant: Mr. Mohit D. Ram, Advocate.

**For Respondents: Mr. Chandra Shekhar Yadav and Ms. Gitnshi Arora,
Advocates for R-1.**

**Mr. Samar Bansal and Ms. Harsheen Madan, Advocates
for RP.**

ORDER
(Virtual Mode)

11.06.2021: Heard Learned Counsel for the Appellant and Respondents on stage of admission. This appeal has been filed by a third party claiming to have ownership of the properties which are shown/stated to be of the Corporate Debtor.

2. Respondent No. 1 - Operational Creditor – Mr. Durgesh Kumar Sharma filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short 'I&B Code') before the Adjudicating Authority (National Company Law Tribunal) New Delhi Bench VI (IB-512/(ND)/2020) claiming that Respondent No. 2 - the Corporate Debtor 'M/s North Rajasthan Buildwell Pvt. Ltd.' had defaulted with regard to operational debt of Rs.1,81,021/- with regard to the material supplied and services rendered. The Adjudicating Authority after hearing the parties admitted the application on 18.12.2020.

3. The present appeal has been filed by one Mr. Naresh Kumar. The Appellant states that this is a case of fraudulent and malicious initiation of insolvency proceedings, which was done by Respondent No. 1 in collusion with Respondent No. 2, a non-operative defunct company with no business, to usurp the right of the Appellant in property at Jaipur.

4. According to the Appellant, he is member of 'Sanyukt Grah Nirman Sahakari Samiti Ltd., Jaipur' and was allotted a plot of land bearing No. 243-244 admeasuring 516.66 square yards on 5th May, 1995 under Housing Scheme in name and style of Dr. Rajendra Prasad Nagar A. The Appellant has filed copy of Allotment Letter at Annexure A-2. According to the Appellant, he recently came

to know on 29th June, 2009 that through forgery and vide a sham sale deed the plot was got registered in the name of Respondent No. 2 – Corporate Debtor. The Appellant claims that Respondent No. 2 was a defunct company and non-operative and last AGM was held only on 26th September, 2016. It is claimed that the name of the Corporate Debtor was struck off from the records of ROC by public notice on 29th October, 2019 (Annexure A-4). According to the Appellant, thereafter, Respondent No. 1 sent notice under Section 8 of I&B Code to the Corporate Debtor on 31st December, 2019 to the Registered Office and also sent email notice. Appellant claims that the Respondent No. 2 responded to the email. According to the Appellant, Section 9 application was filed on 15th January, 2020. It is claimed that the Corporate Debtor admitted the claim made by Respondent No. 1 and sought time to make payment. Thus, Appellant claims that there is collusion to deal with the plot which Appellant claims belongs to him. It is argued that value of the Plot is much more than the operational debt claimed.

5. Learned Counsel for the Resolution Professional, Advocate Mr. Samar Bansal submits that the property was originally allotted to one Mrs. Saroj Jain on 20th May, 1991 by ‘Sanyukt Grah Nirman Cooperative Samiti’. It is stated that on 3rd July, 2008 the ownership of Mrs. Saroj Jain was affirmed by Registrar in a Panch Nirnay under Rajasthan Cooperative Society Act. Thereafter on 1st June, 2009 a decree under Section 100 of Rajasthan Cooperative Society Act was passed in favour of Mrs. Saroj Jain confirming her ownership. Finally, on 29th June, 2009, Mrs. Saroj Jain sold the property to the Corporate Debtor vide a Registered Sale Deed. The Learned Counsel further states that as the Resolution Professional he

has verified the documents and found the title is of the Corporate Debtor. It is stated that the present appeal has been filed only to delay the resolution process which has started and resolution process is at the stage of submission of Resolution Plans.

6. We have gone through the matter. Learned Counsel for the Appellant is unable to show any documents showing entry in any Government Records prima facie to show ownership of Appellant as claimed. The Appellant had stated that the Appellant had executed Power of Attorney in favour of 'Sukhbir Singh' (at Annexure A-3). Relevance of making such submission is not shown as the document Annexed as A-3 shows that the Power of Attorney was executed on 7th April, 2021 which is subsequent to admission of application under Section 9 of I&B Code on 18th December, 2020. The Appellant further claims that he has filed a Civil Suit for declaration of ownership of the property. Even this appears to be done in April, 2021 which is again after admission of the Application under Section 9 in December, 2020 and thus not in consonance with Section 14 of the I&B Code. Learned Counsel for the Appellant submit that the Appellant got information about this Corporate Insolvency Resolution Process only on 10th April, 2021 when local police informed him about the claim filed by the IRP. If Appellant had dispute of title, it does not appear to have been raised anytime earlier. Copy of Company Master Data (page 57 of Appeal) shows the Corporate Debtor was incorporated on 20.05.2009 and as per Counsel for Resolution Professional Registered Sale Deed in favour of Corporate Debtor was executed on 29.06.2009.

7. At the instance of Appellant who has merely shown an Allotment Letter and receipt issued by a Co-operative Society more than 25 years back, in appeal we do not wish to get into decision of title. At the instance of such third party we decline to enter into the allegations of collusion between Respondent No. 1 and Respondent No. 2 with regard to initiation of Corporate Insolvency Resolution Process.

8. We decline to entertain the Appeal and it is dismissed. Appellant may pursue appropriate remedy in appropriate forum.

**[Justice A.I.S. Cheema]
The Officiating Chairperson**

**[Mr. V.P. Singh]
Member (Technical)**

Archana/gc.