

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA-987/2021

In

IB-2130(ND)/2019

IN THE MATTER OF IB-2130(ND)/2019:

M/s. Dynacon Projects Private Limited **Operational Creditor**

Versus

M/s. Today Homes & Infrastructure Private Limited
..... **Corporate Debtor**

AND IN THE MATTER OF IA-987/2021:

Mr. Nilesh Sharma
Resolution Professional of the Corporate Debtor **Applicant**

Versus

Mr. Atul Kumar & Ors. **Respondents**

Order Pronounced On: 22.12.2023

CORAM:

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**

PRESENT:

For the Applicant/ RP : Mr. Saurabh Kirpal, Sr. Adv., Mr. Kanishk Khetan,
Ms. Swastika Kumari, Mr. Shivam Jaiswal, Ms.
Anushka Sarkar, Advocates for RP
Mr. Akshay Goel, Adv. for the Applicant in IA
4211/2023, Mr. Vivek Kumar, Advocate in IA
3951/2020

For the Respondent : Mr. Rajesh Kr. Gautam, Mr. Anant Gautam,
Mr. Sumit Sharma, Mr. Dinesh Sharma, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present Application has been filed by Mr. Nilesh Sharma, Resolution Professional of the Corporate Debtor, the Applicant on 20.02.2021 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 before this Adjudicating Authority, for seeking the following reliefs:

“a) Allow the present application;

b) Direct the Respondent herein to handover the peaceful, vacant and physical possession of portion of land measuring 9.675 acres bearing Rect. No. 5 Killa No. 23 (8-0), Rect No. 9 Killa No. 8 (7-8), Killa No. 19/1 (5-2), Killa No. 13/1 (5-11), Killa No. 15/1 (0-10), Killa No. 17/3 (1-16), Killa No. 3(8-0), Killa No. 4/1 (5-8), Killa No. 7 (8-0), Killa No. 12 (4-5), Killa No. 13/2 (2-9), Killa No. 14/1 (6-17), Killa No. 18/1 (7-19), Killa No. 20/1/1 (5-7) and Rect No. 9 Killa No. 26 (0-12), Village Behrampur, District Gurugram to the Applicant with immediate effect;

c) Direct the Respondent to not make the said land admeasuring 9.675 acres bearing Rect. No. 5 Killa No. 23 (8-0), Rect No. 9 Killa No. 8 (7-8), Killa No. 19/1 (5-2), Killa No. 13/1 (5-11), Killa No. 15/1 (0-10), Killa No. 17/3 (1-16), Killa No. 3 (8-0), Killa No. 4/1 (5-8), Killa No. 7 (8-0), Killa No. 12 (4-5), Killa No. 13/2 (2-9), Killa No. 14/1 (6-17), Killa No. 18/1 (7-19), Killa No. 20/1/1 (5-7) and Rect No. 9 Killa No. 26 (0-12), Village Behrampur, District Gurugram as an asset of the Corporate Debtor and to exclude the said land admeasuring 9.675 acres from the assets of the Corporate Debtor.

d) Pass any order or orders, direction or directions, relief or reliefs which this Hon'ble Bench deems fit and proper in view of facts and circumstances mentioned hereinabove, in favour of the Applicants, in the interest of Justice.”

2. Brief Background of the Case:

The facts which are relevant and common for the purposes of determination of the issues involved in this application are stated as under:

- i.** An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Operational Creditor i.e. M/s. Dynacon Projects Private Limited, against the Corporate Debtor i.e. M/s. Today Homes & Infrastructure Private Limited and the said application was admitted by this Adjudicating Authority vide order dated 31.10.2019 and a moratorium was declared including the appointment of Mr. Deepak Bansal as an Interim Resolution Professional. Subsequently, the present Respondent namely Mr. Nilesh Sharma was confirmed as Resolution Professional vide order dated 09.01.2020 in terms of Section 22 of IBC.
 - ii.** Thereafter, the Resolution Plan was submitted by the Successful Resolution Applicant namely Consortium of Canary Greens Buyers Welfare Association, Callidora Flat Owners Welfare Association and Royal Elegencia Apartment Buyers Association which was approved by the CoC in its 12th meeting dated 10.08.2021 (voting concluded on 16.08.2021) by 96.93% voting share in respect of the CIRP of the Corporate Debtor after considering its feasibility and viability. Thereafter, Mr. Nilesh Sharma, the Resolution Professional of the Corporate Debtor submitted an IA-4766/2021 for seeking approval of the Resolution Plan under Section 30(6) read with Section 31 of IBC, 2016 on 20.08.2021, which is pending adjudication before this Adjudicating Authority.
- 3.** It is the case of the Applicant that the Respondents who are the owners of the land in question entered into joint collaboration on 06.08.2010 with one M/s. Realtech Realtors Private Limited and M/s. Jai Mata Realtors Private Limited for construction, marketing, selling

and development of the said land as a Residential Group Housing Project. It was agreed that land measuring 94 Kanal 7 Marla (11.794 acres approximately) shall be developed by one M/s. Jaimata Realtors Private Limited who is a nominee of the Corporate Debtor. Further, in view of Clause 24 of the Joint Collaboration Agreement dated 06.08.2010, the Respondents executed a General Power of Attorney on 06.08.2010 in favour of the Corporate Debtor and on the basis of the said General Power of Attorney the Corporate Debtor has got the possession over the said land.

4. The Respondents on the other hand have disputed the fact that the possession and ownership of the land with the Resolution Professional.
5. We have heard the submissions made by Ld. Counsel appearing for the both the parties and perused the records.
6. The Applicant has claimed to have stepped into the shoes of the Corporate Debtor and got development rights for developing the land in question by virtue of the General Power of Attorney dated 06.08.2010. However, the Applicant has not produced any documentary evidence to show that possession of the land was given to the Resolution Professional who has filed the present application seeking a direction to the Respondents to hand over the possession of the land in question.
7. In an identical situation in IA-3356/2020, IA-3629/2020 & IA-5001/2021 in IB-2130(ND)/2019 vide order dated 05.12.2023, this Adjudicating Authority has taken a view with the disputed questions with regard to possession of the land which cannot be decided by this Adjudicating Authority and such issues have to be decided by a Competent Civil Court having jurisdiction.

8. We are therefore of the considered view that the question of possession in the present case also has to be decided by a Competent Civil Court having jurisdiction.
9. IA-987/2021 is **disposed of** accordingly.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)