National Company Law Appellate Tribunal, New Delhi

Principal Bench

COMPANY APPEAL (AT) (Insolvency) No. 930 of 2020
(Arising out of Order dated 04.09.2020 passed by National Company Law Tribunal, New Delhi Bench, Company Petition (IB) No. 3196/ ND/2019 in C.A/ 2285/ 2020).

IN THE MATTER OF:

Nitin Garg
Suspended Director of Corporate Debtor
ND-27, Pitam Pura, Near DAV School,
New Delhi- 110034.
E-mail: veekaynitin@gmail.com **...Appellant**

Versus

1. State Bank of India
Member of Committee of Creditor
Having voting share of 80%
Jawahar Vyapar Bhawan, STC Building,
1, Tolstoy Rd, HC Mathur Lane,
New Delhi- 110001.
E-mail: sbi.06199@sbi.co.in **...Respondent No. 1**

2. Resolution Professional of CD
Mr. Ashok Kumar Dewan
Building No. B1/D2, IInd Floor,
Mohan Co-operative Industrial Estate,
New Delhi- 110044
Mail Id-insolvency@arck.in **...Respondent No. 2**

3. M/s Alucom Panels Private Limited
9/24/A/S-2, Vaishali,
Ghaziabad, UP 201010
Mail. Id- habisyasisonali@yahoo.in **...Respondent No. 3**

Appellant: **Mr. Iswar Mohapatra & Mr. Rahul Gupta, Advcoates.**

Respondents: **Ms. Meera Murali, for R-1/SBI.**
Mr. Abhishek Anand, for R-2.
Mr. Dinkar Singh, for R-3/ ARCIL

JUDGEMENT

[Anant Bijay Singh (J)]

1. The Instant Appeal has been preferred by Mr. Nitin Garg, Suspended Director of Corporate Debtor being aggrieved and dissatisfied vide Order dated 04.09.2020 whereby in Company Petition (IB) No. 3196/ND/2019 in C.A/ 2285/ 2020 filed by the Appellant under Section 60 (5) (a) & (c) of the Insolvency and Bankruptcy Code, 2016 (**IBC in short**) for following prayer:-

(a) Pass order for cancellation of the sale effected by respondent i.e. State Bank of India in favour of auction purchaser.

(b) Pass appropriate directions to the respondent i.e. State Bank of India to give effect for reversing this sale transaction

(c) Pass any other order(s) that this Hon'ble Adjudicating Authority may deem fit and proper in the interest of justice.

2. Learned Adjudicating Authority after hearing the parties had dismissed the C.A- 2285/ 2020.

3. The Appellant, Suspended Director of Corporate Debtor M/s Alupan Composite Panels Private Limited was declared as NPA by State Bank of India (Respondent No. 1) on 28.06.2016.

4. Further, a Notice under Section 13(2) of the SARFAESI Act was issued to Corporate Debtor on 12.07.2017.

5. Further, the Corporate Debtor had entered into a one-time settlement of dues with the SBI vide letter dated 23.07.2019.

6. The Corporate Debtor send a letter to the State Bank of India (Respondent No.1) stating that Corporate Debtor is not in a position to accept the offer of the bank for OTS dated 28.06.2019.

7. Accordingly, the State Bank of India (Respondent No.1) inform to Corporate Debtor that in view of this, OTS settlement stood cancelled.

8. That on 17.08.2019 voluntary declaration was made by Corporate Debtor to State Bank of India (Respondent No.1) for taking over physical possession of the Haridwar Factory on account of cancellation of OTS and sought a refund of the initial deposit given towards OTS and accordingly, the bank took the possession of the property on 27.08.2019.

9. On 02.09.2019 the publication possession notice was duly published by the respondent bank in newspapers 'Business Standard' and 'Amar Ujala' under Rule 8(2) SARFAESI Act.

10. On 04.09.2019 letter was issued from SBI/ Respondent No. 1 to Corporate Debtor directing the Corporate Debtor to not deal with the property in any manner as Bank would take action under Section 13(4) SARFAESI Act.

11. On 21.09.2019 Sale notice was published in the newspaper 'Business Standard' (English) and 'Business Standard' (Hindi) under Rule 8(6) SARFAESI Rules.

12. That on 24.10.2019 e-auction sale of the subject property was conducted by State Bank of India and M/s Alucom Panels Pvt. Ltd. (Respondent No.3) declared highest bidder. Sale confirmation issued to Respondent No. 3 under Rule 9(2), SARFAESI.

13. Further on 24.10.2019 the DRT (Debt Recovery Tribunal), Delhi in SA No. 211/2019 directed that the sale shall be subject to Section 52 of the TP Act (Transfer of Property Act) and no stay was granted by the DRT.

14. That on 27.12.2019 the balance payment of 75% was made by the M/s Alucom Panels Pvt. Ltd. (Respondent No. 3) under Rule 9(4), SARFAESI Rules.

15. That on 30.12.2019 Sale Certificate was issued in favour of Respondent No. 3 by State Bank of India (Respondent No. 1) under Rule 9(6), SARFAESI Rules.

16. On 24.01.2020 in IB-3196/ND/2019 'M/s Keshav Enterprises vs. Alupan Composite Panels Pvt. Ltd.' under Section 9 of IBC, 2016 filed by the Applicant. Therein the application under Section 9 was admitted and Mr. Dharmendra Kumar was appointed as IRP.

17. That an Interlocutory Application bearing I.A. No. 2285/ 2020 in Company Petition (IB) No. 3196/ND/2019 was filed by the Appellant 'Nitin Garg, Suspended Director of Corporate Debtor on 10.06.2020.

18. For the relief mentioned in Para-1 of this Appeal ***(Supra***) the Learned Adjudicating Authority, New Delhi Bench under Order dated 04.09.2020 dismissed the application bearing No. C.A. No. 2285/ 2020 after hearing the Parties.

19. **Submissions on behalf of the Appellant**

(i) Learned Counsel for the Appellant while assailing the Impugned Order submitted that the Impugned Order completely ignores the provision of Section 17 of the Indian Registration Act which contemplates about the documents which requires compulsory registration & Section 17(2) (xii) which provides exemption to issuance of sale letter to the purchaser of any property sold by public auction by Civil or Revenue-Officer.

(ii) Learned Counsel for the Appellant while relying on the Judgement of the Hon'ble Supreme Court reported in the case of *'B. Arvind Kumar vs. Govt. of India and Others'* reported in 2007 Volume 5 Supreme Court Cases 745:-

> *"Re: Point (ii)*
>
> *10. The plaintiff has produced the original registered sale certificate dated 29.8.1941 executed by the Official Receiver, Civil Station, Bangalore. The said deed certifies that Bhowrilal (father of plaintiff) was the highest bidder at an auction sale held on 22.08.1941, in respect of the right, title, interest of the insolvent Anraj Sankla, namely the leasehold right in the property described in the schedule to the certificate (suit property), that his bid of Rs. 8,350 was accepted and the sale was confirmed by the District Judge, Civil and Military Station, Bangalore on 25.8.1941. The sale certificate declared Bhowrilal to be the owner of the leasehold right in respect of the suit property. When a property is sold by public auction in pursuance of an order of the court and the bid is accepted and the sale is confirmed by the court in favour of the purchaser, the sale becomes absolute and the title vests in the purchaser. A sale certificate is issued to the purchaser only when the sale becomes absolute. The sale certificate is merely the evidence of such title. It is well settled that when an auction purchaser derives title on confirmation of sale in his favour, and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the court is contemplated or required. In this case, the sale certificate itself was registered, though such a sale certificate issued by a court or an officer authorized by the court, does not require registration. Section 17(2)(xii) of the Registration Act, 1908 specifically provides that a certificate of sale granted to any purchaser of any property sold by a public auction by a civil or revenue officer does not*

> *fall under the category of non testamentary documents which require registration under sub-section (b) and (c) of section 17(1) of the said Act. We therefore hold that the High Court committed a serious error in holding that the sale certificate did not convey any right, title or interest to plaintiff's father for want of a registered deed of transfer.*

(iii) Learned Counsel for the Appellant submitted that the aforesaid position of law of the facts in the instant case, it is admitted that the same was confirmed in favour of auction purchaser on 24.10.2019 and the sale certificate was issued on 30.12.2019. Thus, evidently title stood transferred to Respondent No. 3 prior to the Insolvency Commencement date of 24.10.2019.

(iv) Learned Counsel for the Appellant further referred to Para-47 of the Impugned Judgement which read as under:-

> *"…47. In view of the discussions made above, we are of the considered view that so far the SARFAESI Act is concerned since the sale is by public auction, therefore, in view the decisions, which we have discussed in the aforementioned para, the moment bid is accepted and authorized officer confirmed the sale in favour of purchaser, the sale become absolute and the title vests in the purchaser. A sale certificate is issued only when the sale become absolute. Purpose of registration is to pay only the stamp duty and registration charge and due to non registration of sale certificate, sale shall not be treated void and liable to set aside."*

(v) Learned Counsel for the Appellant further submitted that the contrary to the findings which was recorded by the Adjudicating Authority in Para 47 of the Impugned Order ***(Supra)*** still dismissed the C.A. No. 2285/ 2020.

(vi) Learned Counsel for the Appellant submitted that the SARFAESI Act and Rules are a complete code in itself, detailing and governing every step of the sale process. Under Rule 9(6) of the SARFAESI Rules, which provides for issuance of sale certificate by Authorized Officer of the bank, there is no provision for registration for completion of sale.

(vii) Learned Counsel for the Appellant further contemplate that the Learned Adjudicating Authority was fail to appreciate that point the title of the property stands transferred to the Auction purchaser before the commencement of moratorium under Section 14 of the Insolvency and Bankruptcy code and would have no bearing on the CIRP of the Corporate Debtor.

(viii) Further it was submitted by the Learned Counsel for the Appellant that the Learned Adjudicating Authority was fail to appreciate that the sale under the SARFAESI Act is a statutory sale byway of the Public Auction and unlike a sale between two private parties, which may take effect only upon registration under the Registration Act, if a sale effected under SARFAESI Act, title transfers to the auction purchaser upon confirmation of moratorium. So, based on these submissions it was submitted that the Impugned Order cannot be sustained and fit to be set aside and the Appeal be allowed.

20. **<u>Submissions on behalf of Respondent No. 1/ State Bank of India</u>**

(i) In his Reply Affidavit and during the course of the arguments, the Corporate Debtor after having refused the bank's offer for

OTS and after voluntarily giving possession of the subject property, instituted S.A. No. 211/2019 before the Debts Recovery Tribunal-II (DRT-II) against the e-auction sale notice issued by the Respondent Bank. Vide order dated 24.10.2019, the Hon'ble DRT-II was pleased to direct that the sale was subject to Section 52 of the Transfer of Property Act.

(ii) There was no stay granted by the Hon'ble DRT on the proceedings under SARFAESI Act initiated and conducted by the Respondent Bank and accordingly, the sale of the subject property stood completed and concluded much before initiation of CIRP against the Corporate Debtor.

(iii) It was submitted that the Sale under SARFAESI Act was conducted by the Respondent bank and much before the imposition of moratorium under Section 14 of the IB Code and the sale certificate had been issued in favour of the auction purchaser much prior to the Insolvency commencement date which is mentioned in the tabular form.

Date of issuance of Sale Certificate	*30.12.2019*
CIRP Commencement	*24.01.2020*
Date of registration of the sale Certificate	*15.02.2020*

(iv) It was further submitted that in view of this factual position, the NCLT have no jurisdiction under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 to deal with the matter and pass any order.

(v) It was further submitted that under the SARFAESI Act is a statutory sale under a central statute, by way of public auction and unlike a sale between two private parties and under the Registration Act, and it was a well-established principal that in a sale effected under SARFAESI Act, title transfers for confirmation of sale, which may have taken place before commencement of moratorium and the title of the property in question no longer remains a property of the Corporate Debtor.

(vi) So, based on these submissions, it was submitted that there is no merit in the Appeal and the Appeal be dismissed without costs.

21. **<u>Submissions on behalf of the Respondent No.2/ Resolution Professional of CD</u>**

(i) The Respondent No. 2 Mr. Ashok Kumar Dewan who was appointed as Resolution Professional of Corporate Debtor in Reply Affidavit and Short Notes of Written Submissions and also during course of the arguments that the Appellant herein Mr. Nitin Garg expressed interest in submitting a resolution plan for the revival of the Corporate Debtor but the Respondent No. 2 informed the Committee of Creditors that no Earnest Money Deposit had been received from him and neither any concrete plan was submitted by him.

(ii) Further, the Appellant herein informed that any Plan would be conditional to the factory of the Corporate Debtor at Haridwar and the same had already been sold by the State Bank of India

(Respondent No. 1) much prior to the initiation of the CIRP process.

(iii) The M/s Alucom Panels Private Limited (Respondent No. 3) in the Appeal is the auction purchaser of the said factory at Haridwar.

(iv) Further, it was submitted by Respondent No. 2 that the Committee of Creditors (CoC) in its 6th Meeting held on 18.09.2020, placed the agenda for Liquidation of the Corporate Debtor in terms of Section 33(2) of the Insolvency and Bankruptcy Code, 2016 since no resolution plan had been received from the two interested resolution applicants, including the Appellant herein.

(v) It was further submitted by Learned Counsel for the Respondent No. 2 that the CoC in 6th Meeting resolved as follows: -

> "***RESOLVED THAT*** *pursuant to the provisions of Section 33(2) of the Insolvency and Bankruptcy Code, 2016; the consent of the members of the Committee of Creditors ("CoC") is hereby accorded for liquidation of the Corporate Debtor, M/s Alupan Composite Panels Private Limited ("Corporate Debtor") and continuation of the Resolution Professional, Mr. Ashok Kumar Dewan as the Liquidator at a consolidated professional fee of Rs. 25,00,000/- pluis GST and out of pocket expenses on an actual basis for the entire liquidator process of the Corporate Debtor. The said consolidated fees be shared by the Liquidator and ARCK Resolution Professionals LLP (IPE) equally @ Rs. 12,50,000/- each.*
>
> "***RESOLVED FURTHER THAT*** *pursuant to the provisions of Regulation 39B of the CIRP Regulations, 2016 and other applicable*

> *provisions of the Insolvency and Bankruptcy Code, 2016, the consent of the members of the Committee of Creditors ("CoC") be also accorded towards the creation of a pool of funds for estimated contributions to Liquidation costs aggregating to INR 60,20,000/- approx. which is excess of the estimated liquidation costs over the estimated liquidation assets of the Corporte Debtor, from financial creditors to meet the liquidation costs in the proportionate voting shares of the members of the CoC, which shall be repayable as part of liquidation costs.*
>
> "***RESOLVED FURTHER THAT*** *the application concerning the Liquidation of the CD be filed by the Resolution Professional before the Hon'ble NCLT."*

(vi) Learned Counsel for the Respondent No. 2 further submitted that thereafter the Respondent No. 2 had filed an Application before the Hon'ble Adjudicating Authority under Section 33(2) of the Corporate Debtor bearing I.A 4172 of 2020 which was listed before the Learned Adjudicating Authority on 26.11.2020 and the Learned Adjudicating Authority after hearing the Application, reserved the Application for Orders.

(vii) Learned Counsel for the Respondent No. 2 further submitted that in same 6th CoC Meeting held on 18.09.2020 resolved as follows: -

> ***"RESOLVED THAT*** *pursuant to the provisions of Regulation 2B of IBBI (Liquidation Process) Regulations, 2016, the consent of the members of the Committee of Creditors is hereby accorded for invocation of compromise or arrangement under Section 230 of the Companies Act, 2013 upon approval of liquidation of the Corporate Debtor (Alupan Composite Panels Private Limited) by the Hon'ble NCLT for 90*

> *days and the RP fees to continue at the existing level for this period."*

(viii) It was further submitted on behalf of the Respondent No. 2 reads as hereunder: -

> *"That the Appellant still has an option to submit a scheme under Section 230 of the companies Act, 2013 before the Stakeholders Consultation Committee (SCC), subject to being compliant under Section 29A of the Code. Therefore, an option to submit the Scheme under Section 230 of the Companies Act read with Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016 is still available with the Appellant and the same may be considered by the SCC within 90 days of the Liquidation order passed by the Hon'ble Adjudicating Authority. As stated earlier, the Hon'ble Adjudicating Authority has reserved orders on the application filed by the Answering Respondent under Section 33(2) of the Code seeking Liquidating of the Corporate Debtor."*

(ix) Based on these submissions it was submitted that there is no merit in the instant appeal and is fit to be dismissed.

22. **Submissions on behalf of Respondent No. 3 - M/s Alucom Panels Private Limited.**

(i) Learned Counsel for the Respondent No. 3- M/s Alucom Panels Private Limited in this Reply Affidavit submitted that in the instant case Respondent No. 1/ State Bank of India took possession of the secured assets on 27.08.2019 and conducted e-auction on 24.10.2019, and declared Respondent No. 3 M/s Alucom Panels Private Limited as Successful Bidder and Sale Certificate issued on 30.12.2019 in favour of the

Respondent No. 3 and thereafter transferred the possession of the secured asset on 31.12.2019.

(ii) It was submitted that the entire process of sale of the secured asset, under SARFAESI Act 2002 and was completed on 31.12.2019 and under Section 9 of IBC 2016 was admitted in the instant case much prior to 24.01.2020.

(iii) So, Learned Adjudicating Authority taking note of these facts and have rightly rejected the instant application stating that there is no merit in this Appeal. So the Appeal is fit to be dismissed.

23. **FINDINGS**

After hearing the Learned Counsel for the Parties and going through the pleadings and Written Submissions we are of the considered view that the following facts are admitted.

(i) The Appellant, Suspended Director of Corporate Debtor M/s Alupan Composite Panels Private Limited was declared as NPA by State Bank of India (Respondent No. 1) on 28.06.2016.

(ii) A Notice under Section 13(2) of the SARFAESI Act was issued to Corporate Debtor on 12.07.2017.

(iii) Further, the Corporate Debtor had entered into a one-time settlement of dues with the SBI vide letter dated 23.07.2019.

(iv) The Corporate Debtor send a letter to the State Bank of India (Respondent No.1) stating that Corporate Debtor is not in a position to accept the offer of the bank for OTS dated 28.06.2019.

(v) The State Bank of India (Respondent No.1) accordingly, informed to Corporate Debtor that in view of this, OTS settlement stood cancelled.

(vi) That on 17.08.2019 voluntary declaration was made by Corporate Debtor to State Bank of India (Respondent No.1) for taking over physical possession of the Haridwar Factory on account of cancellation of OTS and sought a refund of the initial deposit given towards OTS and accordingly, the bank took the possession of the property on 27.08.2019.

(vii) On 02.09.2019 the publication possession notice was duly published by the respondent bank in newspapers 'Business Standard' and 'Amar Ujala' under Rule 8(2) SARFAESI Act.

(viii) On 04.09.2019 letter was issued from SBI/ Respondent No. 1 to Corporate Debtor directing the Corporate Debtor to not deal with the property in any manner as Bank would take action under Section 13(4) SARFAESI Act.

(ix) On 21.09.2019 Sale notice was published in the newspaper "Business Standard" (English) and "Business Standard" (Hindi) under Rule 8(6) SARFAESI Rules.

(x) That on 24.10.2019 e-auction sale of the subject property was conducted by State Bank of India and M/s Alucom Panels Pvt. Ltd. (Respondent No.3) declared highest bidder. Sale confirmation issued to Respondent No. 3 under Rule 9(2), SARFAESI.

(xi) Further on 24.10.2019 the DRT (Debt Recovery Tribunal), Delhi in SA No. 211/2019 directed that the sale shall be subject to Section 52 of the TP Act (Transfer of Property Act) and no stay was granted by the DRT.

(xii) That on 27.12.2019 the balance payment of 75% was made by the M/s Alucom Panels Pvt. Ltd. (Respondent No. 3) under Rule 9(4), SARFAESI Rules.

(xiii) That on 30.12.2019 Sale Certificate was issued in favour of Respondent No. 3 by State Bank of India (Respondent No. 1) under Rule 9(6), SARFAESI Rules.

(xiv) On 24.01.2020 in IB-3196/ND/2019 'M/s Keshav Enterprises vs. Alupan Composite Panels Pvt. Ltd.' under Section 9 of IBC, 2016 filed by the Applicant. Therein the application under Section 9 was admitted and Mr. Dharmendra Kumar was appointed as IRP.

(xv) That an Interlocutory Application bearing I.A. No. 2285/ 2020 in Company Petition (IB) No. 3196/ND/2019 was filed by the Appellant 'Nitin Garg, Suspended Director of Corporate Debtor on 10.06.2020.

(xvi) For the relief mentioned in Para-1 of this Appeal ***(Supra)*** the Learned Adjudicating Authority, New Delhi Bench under Order dated 04.09.2020 dismissed the application bearing No. I.A. No. 2285/ 2020 after hearing the Parties.

24. In view of the admitted facts of this case and further in view of the Judgement of the Hon'ble Supreme Court reported in the case of '*B. Arvind Kumar vs. Govt. of India and Others' reported in 2007 Volume 5 Supreme Court Cases 745* ***(Supra)***, wherein, the Hon'ble Supreme Court has held when a property is sold by public auction in pursuance of an order of the court and the bid is accepted and the sale is confirmed by the court in favour of the purchaser, the sale become absolute and the title vests in the purchaser. A sale certificate is issued to the purchaser only when the sale becomes absolute. The sale certificate is merely an evidence of such title.

25. It is well settled that when an auction purchaser derives title on confirmation of sale in his favour, and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the court is contemplated or required. Further, it does not required registration under Section 17(2) (xii) of the Registration Act.

26. Initiation of the proceedings for public auction under SARFAESI Act was completed on 30.12.2019.

27. In the instant case also proceedings for sale of property was initiated under SARFAESI Act and also on 21.09.2019 Sale notice was published in the newspaper 'Business Standard' (English) and 'Business Standard' (Hindi) under Rule 8(6) of SARFAESI Rules.

28. On 24.10.2019 e-auction for sale of the subject property was conducted by STATE bank of India and M/s Alucom Panels Pvt. Ltd. (Respondent No. 3) and was declared highest bidder. Sale confirmation issued to Respondent No. 3 under Rule 9(2), SARFAESI.

29. Further on 27.12.2019 the balance payment of 75% was made by the M/s Alucom Panels Pvt. Ltd. (Respondent No. 3) under Rule 9(4), SARFAESI Rules.

30. Further, proceedings were initiated on 24.01.2020 under Section 14 of the Insolvency & Bankruptcy Code, 2016 and commencement of moratorium under Section 14 of the IB Code came into effect.

31. So, considering all these facts, we are of the view that there is no illegality in the Impugned Order passed by the Learned Adjudicating Authority and Impugned Order is hereby affirmed.

32. There is no substance in the submissions made on behalf of the Appellant.

33. And accordingly the Appeal is dismissed without costs.

34. The Registry is directed to upload this Judgement on the website of this Appellate Tribunal.

35. Registry is directed to send a copy of the Judgement to the National Company Law Tribunal, New Delhi Bench.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

NEW DELHI
12th August, 2021

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