

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH - I, CHENNAI**

**MA/151/2019** in CP/603/IB/2017 filed  
under Section 60(5)(c) of the Insolvency  
and Bankruptcy Code, 2016

In the matter of ***M/s. Anandram Developers Private Limited***

**M/s. Garron Trading Company Pvt. Ltd.,**  
B-202, New Usha Nagar, Village Road,  
Bhandup (West)  
Mumbai – 400 078

... Applicant

-Vs-

1. **Gopal Krishna Raju**  
*Resolution Professional of*  
*M/s. Anandram Developers Private Limited*  
New No.2, South Dhandapani Street,  
Meena Arcade, Ground Floor, Burkit Road,  
Chennai – 600 017
2. **M/s. Asset Reconstruction Company (India) Ltd.**  
The Ruby, 10<sup>th</sup> Floor, 29 Senpathi Bapat Marg,  
Dadar (West)  
Mumbai – 400 028
3. **M/s. Anandram Developers Private Limited**  
New No.45 & 47 (Old No.17 and 18)  
Arcot Road, Saligramam,  
Chennai – 600 093

... Respondents

*Order Pronounced on 20<sup>th</sup> January 2020*

CORAM :

**R.VARADHARAJAN, MEMBER (JUDICIAL)**  
**ANIL KUMAR B, MEMBER (TECHNICAL)**



*For Applicant* : *V. Suthakar, Counsel*  
*K.S. Viswanathan, Counsel*  
*T. Hemalatha, Counsel*  
*M. Devi, Counsel*

*For 1<sup>st</sup> Respondent* : *Anant Merathia, Counsel*  
*Rishi Srinivas, Counsel*  
*Ranghasayee, Counsel*  
*Gopal Krishna Raju, RP in person*

*For 2<sup>nd</sup> Respondent* : *P. Elayarajkumar, Counsel*  
*K. Ramesh, Counsel*  
*For M/s. Ramalingam & Associates*

**ORDER**

**Per: R.VARADHARAJAN, MEMBER (JUDICIAL)**

1. This Application has been filed by the Applicant viz. M/s. Garron Trading Company Pvt. Ltd., under Section 60(5) of the IBC, 2016 seeking reliefs as follows;

- a) Direct the Interim Resolution Professional to take steps to sell the larger extent of property belong to M/s. Anandram Developers Private Limited at Bharani Colony, No.110, Saligramam Village, Saidapet Taluk, Chengalpet District after protecting the interest of the Applicant Company as regards 1040 Sq. ft. of undivided share of land held by them and corresponding 2600 sq. ft. of constructed area.
- b) Stay of all further proceeding pending decision confirming the protection of interest of the applicant company about 1040 sq.ft. their undivided share of land held by them at Bharani Colony, No.110, Saligramam Village, Saidapet Taluk, Chengalpet District and corresponding 2600 sq.ft. of constructed area and thus render justice.

2. The Learned Counsel for the Applicant submitted that the applicant company viz. M/s. Garron Trading Company Pvt. Ltd., an associate of Mafatlal Finance Co. Ltd. gave certain credit facilities to one M/s. Ravishankar Industries Private Limited against plant and machinery and equipments of the said company. Since the said Company expressed their inability to repay the dues as there is no flow of receivables, they entered into a Memorandum of Understanding on 11.10.2001 with the applicant company, in and by which the said Company agreed to convey the property proposed to be constructed viz. Residential Flat to be developed on the land situated in Bharani Colony, No.110, Saligramam Village, Saidapet Taluk, Chengalpet District, measuring an extent on 7900 Sq. ft. of built up area valued at Rs.1,77,75,000/- which is the amount due and payable by Ravishankar Industries Private Limited as on 11.10.2001.

3. In consequence of the same, a Sale Deed was executed on 12.12.2001 by Mrs. Sangeetha and 27 others represented by their Power agent Mr. A. Manohar Prasad to an in favour of the applicant Company, by conveying 1040 sq. ft. of undivided share of land out of 1,76,400 sq.ft. in Bharani Colony, No.110, Saligramam Village, Saidapet Taluk, Chengalpet District and the same is registered as



Document No.1021/2001 at the office of the Sub - Registrar, Virugambakkam. The Learned Counsel for the Applicant submitted that in the meantime Joint Venture Agreement was entered into between Anandram Developers Private Limited (Corporate Debtor) with Konark Civil Constructions Private Limited to develop residential cum commercial complex and the applicant was allotted built up area of 2600 sq.ft. "Anandram Enclave" in the eight floor which is formed part of the built up share allotted to Anandram Developers Private Limited corresponding to undivided share of land as evident from the letter dated 24.02.2003 written by M/s. Konark Civil Constructions Private Limited.

4. The Learned Counsel for the Applicant further submitted that due to non obtaining of approval of the building plan by M/s. Anandram Developers Private Limited, the Corporate Debtor could not commence their construction and on 30.10.2010, the Corporate Debtor re-allotted the space in the proposed commercial complex measuring an extent of 2600 sq. ft. in the third floor instead of eighth floor (now named as Matrix Complex instead of Ananda Enclave) as already allotted to the applicant Company. It was submitted by the Learned Counsel for the applicant that till date the project has not been completed and the applicant company is yet to



get the vacant possession of the built up area and in the meantime, the 2<sup>nd</sup> Respondent has initiated Corporate Insolvency Resolution Process against the Corporate Debtor.

5. The Learned Counsel for the Applicant submitted that consequent thereto, this Tribunal appointed S. Dhanapal as Interim Resolution Professional by an order dated 06.06.2018 and the applicant has also submitted their claim before the IRP and on 25.06.2018 the IRP has asked for certain additional documents which was also furnished by the Applicant Company on 05.07.2018.

6. It was contended by the Learned Counsel for the Applicant that the Applicant Company was not invited to participate in the CoC meeting on the ground that they are not a creditor and on the other hand the applicant company made it clear to the IRP that any resolution of dispute by sale of property, the undivided share of land and the constructed area stands in a distinct and separate footing, and the same needs to be informed to the prospective bidder.

7. The Learned Counsel for the Applicant submitted that the Applicant Company did not receive any communication from the IRP



and consequent upon change of the IRP one Gopalkrishna Raju, the 1<sup>st</sup> Respondent herein was appointed as the Resolution Professional, and the applicant company on 05.11.2018 had written a letter to the Resolution Professional wherein they have stated that the undivided share of land and corresponding constructed area is to be protected and till date the applicant company has not received any communication from the Resolution Professional and in the said circumstances, the Applicant has filed the present Application.

8. The Learned Counsel for the 1<sup>st</sup> Respondent prima facie contended that the Applicant Company has failed to produce any Board Resolution or any other authority given to the person filing the Application claiming to be a Director of the Applicant herein. The Learned Counsel for the 1<sup>st</sup> Respondent submitted that in the books of the Corporate Debtor there exists no bank entry or cash entry with respect to the claim submitted by the Applicant herein and not even a single journal entry recognizing the liability of the Corporate Debtor towards the Applicant herein has been made and there is no other document evidencing the business relationship between the Applicant and the Corporate Debtor.



9. The Learned Counsel for the 1<sup>st</sup> Respondent submitted that the Applicant herein does not come under the category of either Financial Creditor or Home Buyers in view of the Claim form submitted by the Applicant herein has not been accepted. It was also submitted that the Resolution Professional had orally communicated to the Applicant herein that the claim submitted by the Applicant is not accepted as there exists no direct transaction nexus between the Corporate Debtor and the Applicant and the Resolution Professional had asked more documents from the Applicant to substantiate its claim.

10. The Learned Counsel for the 1<sup>st</sup> Respondent submitted that the Resolution Professional during the CIRP period is duty bound not to alienate the assets of the Corporate Debtor and since the Liquidation Application in relation to the Corporate Debtor has been filed, the sale and assets and distribution of the proceeds from such sale will be done in accordance with the relevant provisions of the Insolvency and Bankruptcy Code, 2016.

11. The Learned Counsel appearing on behalf of 2<sup>nd</sup> Respondent has submitted that they have not filed any reply to the Application filed by the applicant as no relief is sought against them.



12. Heard both sides and perused the records, including the documents placed on record. It may be noted here that the Liquidation Application in relation to the Corporate Debtor was filed by the Resolution Professional in MA/463/2019 and this Authority vide order dated 31.12.2019 has ordered for liquidation of the Corporate Debtor, however, for the reasons stated therein, have referred the matter to the IBBI to propose the name of the liquidator and the said Liquidation Application is coming up for further orders on 11.02.2020.

13. As to the facts of the case, it may be seen that the claim as made by the Applicant is with respect to the property and not in relation to money. A perusal of records would go to show that the Applicant has extended credit facilities to a third party Company in and by which the said third party has agreed to convey certain property in the name of the Applicant. In pursuance of the same, a Sale Deed was also executed by the said third party in respect of the undivided share of 1040 sq. ft. in favour of the Applicant. Further, by virtue of a Joint Venture Agreement of the Corporate Debtor with one M/s. Konark Civil Constructions, the Applicant by a letter dated 24.02.2003 was informed by M/s. Konark Civil Constructions that they have been allotted the built up area of 2600



sq. ft. in the 8<sup>th</sup> floor. Thereafter, by a letter dated 30.10.2010 the Corporate Debtor has informed the Applicant that they have re-allotted the 2600 sq. ft. in the third floor instead of eighth floor.

14. Subsequently, the CIRP has been initiated against the Corporate Debtor by this Authority on 06.06.2018 and thereafter, the Applicant have submitted their claim before the IRP. However the RP has not accepted the claim made by the Applicant and required them to submit more documents in order to substantiate their claim. Further, the Resolution Professional has stated that as per the documents submitted by the Applicant there exists no business relationship between the Applicant and the Corporate Debtor.

15. As things stand thus, the relief as sought for by the Applicant in the present application is to protect the interest of the Applicant Company as regards 1040 sq. ft. of undivided share of land held by the Corporate Debtor and corresponding built up area of 2600 sq. ft.

16. It is relevant to point out here that, as already mentioned supra, this Authority has passed the order of liquidation against the



Corporate Debtor and has referred to IBBI for the limited purpose of only naming the Liquidator and in this context the relief has been sought by the Applicant as against the IRP / RP is not sustainable under the changed circumstances.

17. In view of the order of liquidation passed by this Tribunal, a decision in relation to the claim as made by the Applicant is required to be taken by the Liquidator taking into <sup>consideration</sup> the provisions of the IBC, 2016, more particularly Section 36 of IBC, 2016, as to what constitutes a Liquidation Estate. For ready reference the said section is reproduced hereunder:-

**36. Liquidation estate. –**

- (1) For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the corporate debtor.
- (2) The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.
- (3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following: -
  - (a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;



- (b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;
- (c) tangible assets, whether movable or immovable;
- (d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;
- (e) assets subject to the determination of ownership by the court or authority;
- (f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;
- (g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;
- (h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and
- (i) all proceeds of liquidation as and when they are realised.

(4) The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation: -

- (a) assets owned by a third party which are in possession of the corporate debtor, including –
  - (i) assets held in trust for any third party;
  - (ii) bailment contracts;
  - (iii) all sums due to any workmen or employee from the provident fund, the pension fund and the gratuity fund;
  - (iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and



- (v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;
- (b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;
- (c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;
- (d) assets of any Indian or foreign subsidiary of the corporate debtor; or
- (e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

18. Section 36(3) of IBC, 2016 stipulates the assets which form part of the liquidation estate and Section 36(4) of IBC, 2016 stipulates the assets which does not form part of the liquidation estate. Based on the claim which is to be preferred in the prescribed form, as may be applicable, upon calling for the claims by the Liquidator, the applicant is required to stake the claim appropriately before the Liquidator in terms of Section 38 of IBC, 2016 and the Liquidator is thereafter to decide on the claim as to whether it is to be admitted or rejected in part or in whole and also decide on the nature of interest in the property over which the Applicant seeks to impose its claim in view of the Judgment rendered by the Hon'ble NCLAT in the matter of **Principal**



**Commissioner of Income Tax Central-2 -Vs-  
C. Ramasubramaniam, Resolution Professional for Surana  
Corporation** in *Company Appeal (AT) (Insolvency) No.1290 of  
2019 dated 13.12.2019.*

19. Thus, this Authority is of the considered view that Applicant is to be directed to submit its claim in respect of the property before the Liquidator and the liquidator after verification of the claims, may determine as to whether to admit or reject the claim, and if the claim made by the Applicant is admitted, shall distribute the assets as contemplated under Section 53 of the IBC, 2016

20. With the aforementioned directions, the MA/151/2019 filed by the Applicant, stands **disposed of**.

**-SD-**  
**(ANIL KUMAR B)**  
MEMBER (TECHNICAL)

**-SD-**  
**(R.VARADHARAJAN)**  
MEMBER (JUDICIAL)

*Raymond*