

IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH BENGALURU
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(Through web-based video conferencing platform

IA No.457 & 458 of 2022 in
CP (IB) No.189/BB/2018

IN THE MATTER OF:

1. I.A. No. 457 of 2022

Jason Nath

A-1206, Abrol Vastu Park
B-Gokul, Evershine Nagar, Malad (West)
Mumbai -400064...Applicant

Versus

Pankaj Srivastava,

Liquidator,
M/s Samruddhi Reality Ltd (in liquidation)
Second floor, No:1, Tate Lane, Richmond Road Cross,
Bangalore -560025

...Respondent

2. I.A. 458 of 2022

Manjinder Singh, USA

2181, Sanburg,
Dunn Loring, VA 22027
USA

Represented by Power of Attorney Holder,
Shri. Vijay Kumar Jagannath,
Bangalore

...Applicant

Versus

Pankaj Srivastava,

Liquidator,
M/s Samruddhi Reality Ltd (in liquidation)
Second floor, No:1, Tate Lane, Richmond Road Cross,
Bangalore -560025

...Respondent

Order delivered on: 14th December, 2023

Coram: 1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Present/Counsels Present:

For the Applicant in I.A. no. 457 & 458 of 2022 :Shri Narendra Kumar
For the Respondent in I.A. no 457 & 458 of 2022 :Shri Abhishek Anand

ORDER

Per: BENCH

I.A No. 457 of 2022

1. The present application is filed on 10.08.2022 by the applicant seeking to direct the respondent liquidator of M/s Samruddhi Reality Ltd (in liquidation) to register the Flat No. 14B, 14th Floor in “Samruddhi Sunshine” in favour of the Applicant after receipt of balance amount of Rs. 1,00,000/- from the Applicant and to exclude the said Flat from the Liquidation Estate of the Corporate debtor.
2. The facts of the application as narrated by the applicant is as follows:
 - a) The Applicant entered into an “Agreement to Sale and Construction” on 04.05.2013 with respect to an apartment in “Samruddhi Sunshine” the Applicant had paid to Respondent 97% of the consideration amounting to Rs. 34,00,000/- out of Rs. 35,00,000/- towards sale and construction of apartment and the same was registered in the name of the Applicant on 04.05.2013. The ‘Agreement of Sale and Construction’ was registered with the Sub-Registrar, Bommanahalli, Bangalore, on 4.05.2013. As per Clause 7 of the agreement the construction of flat/apartment was to be completed within 36 months of signing of the said agreement subject to “force majeure”.
 - b) It is submitted that without the knowledge of Applicant, the Corporate Debtor- company in liquidation had entered into Mortgage Deed with with M/s INDIABULLS HOUSING FINANCE LTD on 26.07.2016 and one of the flat bearing no. 14B was given as security to the Mortgagee.
 - c) The Applicant has obtained encumbrance certificate from the sub-registrar on 17.06.2020 and on 19.07.2022, which shows that the flat still stands in the name of the Applicant.
 - d) The applicant submits that this Tribunal vide order dt.13.03.2020 in CP (IB) No. 189/2018 passed a liquidation order by which the Respondent Mr. Pankaj Srivastava has been appointed as Liquidator of M/s Samruddhi Reality Ltd. and that on 17.03.2020 the respondent liquidator made a public announcement inviting

claims from the public. In response to the advertisement the applicant has made a claim of Rs. 99, 00, 735 out of which the Respondent liquidator had admitted Rs. 50, 69, 721.

- e) Further, the applicant has written letter dt.23.07.2022 requesting the liquidator to register the flat in Applicant's name and to exclude the flat/apartment allotted to the applicant from the liquidation estate of the corporate debtor. The applicant had also proposed to bear the expenses relating to registration of sale deed as well the construction of remaining work co-jointly with other flat allottees.
 - f) It is submitted that the Respondent/liquidator vide reply dt.11.07.2022 rejected the request of the applicant by stating that mere agreement to sell or possession over property does not amount to the ownership of that property and reliance placed on section 54 of the Transfer of Property Act, 1882. The respondent/liquidator has relied on the Apex Court's decision in the case of *NarandasKasondas v. S.A. Kamtam and Anr. (1977) 3 SCC 247* and *Suraj Lamp and Industries P. Ltd. v. State of Haryana and Ors. AIR (2012)206* to state that the ownership is said to complete only after executing and registering the valid deed of conveyance.
 - g) The present application has been filed by the applicant being aggrieved by the fact that the Flat no.14B in the Schedule Property B is included in the Liquidation estate of the Corporate Debtor and that no action is being taken to register the flat vide sale deed in favour of the applicant.
3. The Learned Counsel for the respondent filed in its objection/written submission inter alia contenting the following:
- a) The respondent is the liquidator of the Corporate Debtor, M/s Samruddhi Reality Limited and the CD has entered into a mortgage deed dt.26.07.2016 with Indiabulls Asset Reconstruction Company (INDIABULLS) vide loan agreements dt.30.06.2016 for amounts of Rs 3,30,00,000 and Rs. 10,20,00,000 vide which the CD has created mortgage over the property/flat 14B which is alleged to be in possession of the applicant. The charge created over the said flat is subsequently registered with Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI).
 - b) The Respondent avers that the exclusion of the said flat cannot be granted as the flat is exclusively charged to INDIABULLS(Debt along with security interest assigned to Assets Care and Reconstruction Enterprise Ltd. Vide Assignment Deed Dt. 26.04.2021) and the security interest thereof has not been relinquished towards the liquidation estate of the CD. This issue of relinquishment of security interest is pending adjudication before this Tribunal.

- c)** Further, INDIABULLS have assigned the entire debt/facility along with underlying security and all loan and financing documents together with all the Existing lender's rights, benefits to Asset Care & Reconstruction Enterprise (ACRE) acting in its capacity as a trustee of ACRE-102-Trust and has requested the liquidator to substitute ACRE'S name in place of INDIABULLS for participating in Stakeholders Committee Meeting.
- d)** The Respondent has also denied the contention taken by the applicant while relying on the Hon'ble NCLAT decision in *Alok Sharma v. M/s I P Construction Pvt. Ltd Through Resolution Professional Anju Agarwal; CA(AT)(IB) No. 350/2020* wherein the NCLAT directed the RP to execute the sale of deed in favour of the allottees. However, the respondent states that the facts of the instant applicant are distinguishable from the instant application, as in Alok Sharma case (supra) the application was for approval of resolution plan and the issue before the NCLAT was whether registration of sale deed will violate 'moratorium' under Section 14 of the Code which prohibits transferring, encumbering, alienating, or disposing of by the CD any of its assets or any legal right or beneficial interest. Contrary to the above position, the issue in this case is whether the Liquidator has the power to register sale deed during liquidation proceeding and exclude Flat No. 14B from the liquidation estate which is exclusively charged to INDIABULLS. Further, the respondent contends that since the moratorium has ceased to take effect as per Section 14 (4) of the Code and the subsequent liquidation order has been passed by this Tribunal, the fact of the instant application and the Alok Sharma (supra) case are distinct from each other.
- e)** Moreover, the Respondent states that a mere Agreement to Sell or possession over a property cannot amount to ownership of that property as per the terms of Section 54 of the Transfer of Property Act read with Sections 47, 48 and 49 of the Registration Act which clarifies the position regarding transfer of property by making the registration of transfer title a mandatory requirement to establish ownership.
- f)** The Respondent, further, relies on the decision of the Apex Court in the case of *NarandasKarsondas v. S.A. Kamtam and Anr., (1977) 3 SCC 247* which states that an Agreement to sell/Allotment letter does not create any interest in, or charge on the property and consequently does not grant ownership right. Moreover, the title in immovable property is transferred only upon execution of conveyance (Sale) deed before the Registrar.
- g)** Lastly, the Respondent has relied on the Apex Court decision in the case of *Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana and Ors., AIR 2012 2016* which states that it is mandatory for an

Agreement to sell to be registered as a deed of conveyance as per Sections 54 and 55 of Transfer of Property Act without which the title or any interest in the immovable property (except to the limited right granted under Section 53A of Transfer of Property Act) cannot be conferred. Additionally, the word 'transfer' is defined with reference to the word 'convey' and as per Section 5 the word is used in the wider sense of conveying ownership which is only completed on execution and registration of a valid deed of conveyance.

4. The Learned Counsel for the Applicant filed its Rejoinder vide diary No. 405 dated 20.01.2023.
5. Heard both the Counsels and perused the records available.
6. The present application is filed by the Applicant who has entered into an 'Agreement of Sale and Construction' with the Corporate Debtor with respect to an apartment in the corporate debtor's project "Samruddhi Sunshine". It is seen that the applicant has paid a consideration amounting to Rs. 34,00,000/- out of Rs. 35,00,000/- towards sale and construction of apartment and same was registered in the name of the Applicant on 04.05.2013.
7. The main contention raised by the Liquidator is that the said flat is exclusively charged to Indiabulls Asset Reconstruction Company Limited and the said secured financial creditor has not relinquished its security interest towards the liquidation estate.
8. It is observed that the Applicant has prayed to direct the Liquidator to register the said flat in favour of the Applicant, however the same is not tenable, as mere Agreement to sell or possession over a property does not amount to ownership of that property. It is pertinent to point out that ownership of a property is attained only through a registered instrument. It is further seen that said flat is exclusively charged to India bulls Asset Reconstruction Company Limited and the secured creditor has not relinquished its security interest over the said flat. Hence it is to be concluded that the Applicant is not the absolute owner of the property.
9. Similar position has been taken by this Tribunal in the same company petition i.e. *CP (IB) 189 of 2018* vide order dated 25.05.2023 in *I.A. No. 343 of 2021*. In this application the homebuyers requested for the possession of the villas and exclusion of their villas from the Liquidation estate of the CD on account of: (a) 'Agreement to Sell' and (b) handing over the key to the villa by the CD for making some improvements inside the villa. However, this Tribunal noted that since there was no security interest created in favour of the applicants, by way of Section 3(31) of the Code, the property will be included in the liquidation estate of the CD. This position was upheld by the Hon'ble NCLAT, Chennai in *CA (AT) (CH) (INS) No. 252/2023* vide order dated 28.08.2023.

- 10.** In this connection, it is appropriate to cite the judgment regarding Agreement to Sell without registering a conveyance deed or sale deed in the case of Suraj Lamp and Industries (supra) wherein the Hon'ble Supreme Court has held that,
- “12. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of Transfer of Property Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53A of Transfer of Property Act). According to Transfer of Property Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of Transfer of Property Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.”*
- 11.** Additionally, the Hon'ble Supreme Court, recently in the case of *Shakeel Ahmed v. Syed Akhlaq Hussain C.A. No. 1598 of 2023* vide order dated 01.11.2023 has categorically observed that,
- “...no title could be transferred with respect to immovable properties on the basis of an unregistered Agreement to Sell or on the basis of an unregistered General Power of Attorney. The Registration Act clearly provides that a document which requires compulsory registration under the Act, would not confer any right, much less a legally enforceable right to approach a Court of Law on its basis. Even if these documents i.e., the Agreement to Sell and Power of Attorney were registered, still it could not be said that the respondent would not have acquired title over the property in question. At best, on the basis of the registered agreement to sell, he could have claimed relief of specific performance in appropriate proceedings. In this regard reference may be made to sections 17 and 49 of the Registration Act and section 54 of the Transfer of Property Act, 1882.”*
- 12.** Lastly, it is rightly pointed out by the Liquidator/Respondent that as per Section 36(3) of the Code he is required to include all assets over which CD has ownership rights in the Liquidation Estate whether tangible or intangible, whether encumbered or unencumbered. Further, as per Section 35(1) (d) of the Code he is within his power “to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary.”
- 13.** Hence, this Tribunal is of the considered opinion that since no Sale Deed is registered and no security interest is created in favour of Applicants, said property falls within the purview of Liquidation Estate of the Corporate Debtor.
- 14.** Accordingly, I.A 457 of 2022 is **dismissed**

I.A. 458 of 2022

- 1.** The present application is filed on 08.08.2022 by the applicant seeking to direct the respondent liquidator of M/s Samruddhi Reality Ltd (in liquidation) to register the Flat No. 13A, 13th Floor in “Samruddhi Sunshine” in favour of the Applicant and to exclude the said Flat from the Liquidation Estate of the Corporate debtor.
- 2.** The applicant submits that he entered into an ‘Agreement of Sale’ on 14.02.2013 with respect to an apartment in “Samruddhi Sunshine” and that the applicant had paid 100% of the consideration amount of Rs27,01,000/- to the respondent towards the sale and construction of the apartment which was registered in the name of the Applicant on 14.02.2013.
- 3.** The Applicant submits that as per the terms of clause 7 of the said Agreement the construction of the flat was to be completed within 36 months. However, the respondent/CD without the knowledge of the applicant, entered into Mortgage Deed with INDIABULLS on 26.07.2016 and one of the flat bearing number 13A was given as security to the Mortgagee.
- 4.** The Applicant had made a claim of Rs. 1,08,01,888/- out of which the Respondent liquidator has admitted the claim amounting to Rs 42,31,912/-. The Applicant avers that he has written letters to the respondent with complete background of the facts of the case and requested the Liquidator to register the flat in applicant’s name but the same has been rejected by the respondent.
- 5.** The Learned Counsel for the respondent/Liquidator filed its objection/written submission to the application, vide diary no. 22 dated 02.01.2023, whereby the contention of the respondent is similar to the objection filed in the above discussed application I.A. 457 of 2022 in which the order has been passed today.
- 6.** Heard the Ld. Counsel for the Applicant and the Counsel for the Respondent.
- 7.** The Tribunal observes that the facts and circumstances of the instant application are similar to the facts in I.A. No. 457 of 2022 which has been disposed of by this Tribunal today. Reliance is placed on the observations made above and on the decisions of the Hon’ble Apex Court in *Suraj Lamp and Industries P. Ltd. v. State of Haryana and Ors.* AIR (2012)206 and *Shakeel Ahmed v. Syed Akhlaq Hussain C.A. No. 1598 of 2023* along

with the decision of the Hon'ble NCLAT, Chennai in CA(AT) (CH) (Ins) No. 252/2023 vide order dt.28.08.2023, wherein the NCLAT has affirmed the decision of this Tribunal in CP(IB) No. 189 of 2018, I.A. No. 343 of 2021, order dt.25.05.2023. Accordingly, we are of the considered opinion that since no Sale Deed is registered and no security interest is created in favour of Applicants, the said property falls within the purview of Liquidation Estate of the Corporate Debtor.

8. Accordingly, I.A 458 of 2022 is dismissed.

-Sd/-

**MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)**

-Sd/-

**T. KRISHNAVALLI
MEMBER (JUDICIAL)**