

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 702 of 2020

(Arising out of the Order dated 07.08.2020 passed by the National Company Law Tribunal, New Delhi Bench-II in IA 2102/2020 and IA 2276/2020 in CP (IB) No. 2582 (ND) /2019.)

IN THE MATTER OF:

Rupinder Singh Gill,

S/o Shri Karan Singh Gill r/o Gill Farms, Bullepur
Road, Khanna, Dist. Ludhiana

Email: rupindersinghgill10@yahoo.com

...Appellant

Versus

Three C Universal Developers Private Limited

Through Resolution Professional

Rakesh Kumar Gupta

Having office at: 701, Vikrant Tower 4, Rajendra

Place New Delhi 110008

Email: cirp.3cuniversal@gmail.com

...Respondent

Present

For Appellant: Ms. Prachi Johri & Mr. Sharad Agnihotri,
Advocates.

For Respondent: Mr. Abhishek Anand, Ms. Meghna Rao, Mr. Aadhar
Nautiyal & Mr. Harshit Goel, for RP.

J U D G E M E N T

(04.09.2025)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed by the Appellant i.e. Rupinder Singh Gill under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('Code') against

the Impugned Order dated 07.08.2020 passed by the National Company Law Tribunal, Delhi Bench- II (‘**Adjudicating Authority**’) in I.A. No. 2102/2020 and I.A. 2276/2020 in C.P.(IB) No. 2582 (ND)/2019).

2. Three C Universal Developers Pvt. Ltd., which is the Corporate Debtor, is being represented through Resolution Professional and is the Respondent herein.

3. The Appellant submitted that he is the director of Challengerz Web Solutions Pvt. Ltd. ("**Challengerz**") and Hacienda Infosoftech Pvt. Ltd. ("**Hacienda**"), companies in which the Corporate Debtor holds shares. The Appellant submitted that the Corporate Debtor entered into two Agreements to Sell dated 08.10.2018 with the Respondent for the transfer of 100% equity shareholding of Challengerz and Hacienda. It is the case of the Appellant that these agreements were entered into following verbal assurances by the Promoters of the Three C Group, who represented that the transfer of shares would facilitate the development of valuable properties owned by these companies, namely Plot FH-17, Sector 133, Noida (owned by Challengerz) and Plot 8A, Sector 127, Noida (owned by Hacienda).

4. The Appellant submitted that they were induced to enter into these agreements based on assurances that the properties were free of encumbrances and that the Appellant would gain full management control and physical possession of the properties to develop and market them. The Appellant further submitted that the Promoters personally assured attractive and financially viable

terms, promising significant profits for the Appellant and the unlocking of the Three C Group's stalled investments.

5. The Appellant contended that, pursuant to the Agreements to Sell dated 08.10.2018, they fulfilled their initial obligations by depositing 2% of the total agreed consideration for each company. Specifically:

- For Challengerz, the Appellant deposited Rs. 20,00,000/- (2% of the total agreed consideration of Rs. 10,00,00,000/-) into a newly opened bank account with the Bank of India, Phase-9 Branch, Mohali, Punjab, in September 2018.
- For Hacienda, the Appellant deposited Rs. 61,81,500/- (2% of the total agreed consideration of Rs. 30,93,75,000/-) into a newly opened bank account with the same bank in September 2018.

6. The Appellant submitted that these payments were made in good faith, and the Agreements to Sell (ATS) were duly executed on 08.10.2018. The Appellant stated that the Appellant was handed physical possession of the properties on the same day, and on 09.10.2018, the Appellant deployed their own security agency to safeguard the plots. The Appellant further submitted that the appointments of three Additional Directors, as per their preference, were confirmed by the Annual General Meetings of Challengerz and Hacienda, reinforcing the Appellant's management control.

7. The Appellant submitted that, despite fulfilling their initial obligations, the Corporate Debtor failed to honour their obligations to the Appellant, citing various excuses and delaying the execution of necessary documentation. The

Appellant contended that this non-performance constitutes a deliberate breach of the Agreements to Sell dated 08.10.2018.

8. The Appellant further submits that Clause 2 of the Agreements to Sell explicitly obligated the Corporate Debtor to obtain requisite approvals from NOIDA & other authorities within 11 months from 08.10.2018 for the transfer of shares. The Appellant contended that the Corporate Debtor failed to secure these approvals within the stipulated 11-month period, thereby breaching its obligations. Consequently, the Appellant's obligation to pay the remaining consideration has not arisen, as the Corporate Debtor's non-performance is solely attributable to its own actions.

9. The Appellant submitted that the Corporate Debtor, in collusion with the Promoters of the Three C Group, engaged in fraudulent and illegal actions to undermine the Appellant's rights. The Appellant contended that the Corporate Debtor and the Promoters caused the bank accounts of Challengerz and Hacienda to be frozen through fraudulent letters dated 17.10.2018 sent to the Manager, Bank of India, Mohali, accompanied by backdated and forged documents. The Appellant further submitted that the Corporate Debtor, through Three C Builders Pvt. Ltd. (a non-shareholder in Hacienda or Votive Propbuild Pvt. Ltd.), misrepresented facts in a letter dated 25.10.2018 to the authorities. This letter falsely claimed that a sale of properties owned by Hacienda and Votive Propbuild Pvt. Ltd. was to occur, leading to the wrongful attachment of Hacienda's property (Plot 8A, Sector 127, Noida) to satisfy a recovery decree of Rs. 34.75 Crores

issued by the National Consumer Disputes Redressal Commission (NCDRC) on 05.09.2018 against six Judgment Debtors, including the Corporate Debtor and the Promoters.

10. The Appellant contended that the attachment, ordered by the Sub-Divisional Magistrate, Dadri, on 27.10.2018, was blatantly illegal, as Three C Builders Pvt. Ltd. had no legal authority to act on behalf of Hacienda or Votive Propbuild Pvt. Ltd. The Appellant submitted that the transaction involved only the transfer of shares, not the sale of properties, rendering the attachment invalid. The Appellant further submitted that they, along with Hacienda and Votive Propbuild Pvt. Ltd., were constrained to approach the Hon'ble High Court of Allahabad, which, vide orders dated 30.01.2019 and 31.01.2019, directed the Collector and District Magistrate, Gautam Budh Nagar, to pass a detailed and lawful order after hearing all concerned parties.

11. The Appellant submitted that the Corporate Debtor issued an alleged Notice of Frustration dated 28.01.2019, claiming that the Agreements to Sell dated 08.10.2018 were frustrated under Section 56 of the Indian Contract Act, 1872. The Appellant contended that this notice is illegal, invalid, and malicious, as Section 56 applies only to events that the promisor could not prevent. The Appellant submitted that the Corporate Debtor's deliberate breaches, including its failure to transfer shares, obtain requisite approvals, and fraudulent actions in freezing bank accounts and attaching properties, preclude it from invoking the doctrine of frustration. The Appellant further submitted that the Corporate

Debtor's actions were intentional and dishonest, aimed at deceiving the Appellant and undermining the agreements.

12. The Appellant submitted that the Corporate Debtor's actions constitute a gross breach of trust and contractual obligations. The Appellant contended that, as per the Agreements to Sell, the Corporate Debtor holds the shares of Challengerz and Hacienda in trust for the Appellant, with its only right being to receive the balance consideration upon fulfilling its obligations, which it has failed to do. The Appellant further submitted that the wrongful attachment of Hacienda's property and the freezing of bank accounts are illegal and prejudicial to the Appellant's rights, particularly given their financial contributions of Rs. 20,00,000/- and Rs. 61,81,500/- for Challengerz and Hacienda, respectively, and their assumption of management control and physical possession of the properties.

13. The Appellant submitted that the Adjudicating Authority lacked jurisdiction to adjudicate issues already pending in the company petitions, which involve similar prayers and directly concern the validity of the Agreements to Sell dated 08.10.2018. The Appellant contended that the Adjudicating Authority cannot assume jurisdiction over matters pending before another tribunal or court.

14. The Appellant submitted that the applications and the impugned order are infructuous due to the loss of original share certificates of Challengerz and Hacienda. The Appellant contended that in August 2019, they misplaced a bag containing these documents at City Centre, Khanna. Despite efforts, including

filing a police complaint (No. 105-5D, dated 26.10.2019) and a reminder application dated 09.06.2020 with the Deputy Superintendent of Police, Khanna, the documents remain unrecovered. The Appellant submitted that this fact could not be presented during the hearing on 29.07.2020 due to technical disruptions disconnecting their counsel, and the briefing counsel was not permitted to make further submissions.

15. The Appellant contended that the Adjudicating Authority erred in failing to recognize that the original title deeds and documents of the properties held by Challengerz (Plot FH-17, Sector 133, Noida) and Hacienda (Plot 8A, Sector 127, Noida) belong to these companies as separate legal entities, not the Corporate Debtor. The Appellant submits that the Corporate Debtor, as a shareholder, has no ownership rights over these assets, and the Adjudicating Authority lacked jurisdiction to decide ownership issues concerning properties not held by the Corporate Debtor.

16. The Appellant submitted that the impugned order overlooks the Corporate Debtor's default in fulfilling its obligations under the Agreements to Sell dated 08.10.2018 and its fraudulent actions in collusion with the Promoters of the Three C Group. The Appellant contended that the Corporate Debtor cannot benefit from its own default or use the initiation of the CIRP to defeat the Appellant's rights under the agreements. The Appellant further submitted that the Adjudicating Authority failed to address the broader scheme of fraud, including the Corporate Debtor's alleged collusion with the operational creditor to maliciously initiate the

CIRP. The Appellant contended that the Resolution Professional, instead of acting impartially, has acted as a mouthpiece for the suspended management, thereby prejudicing the Appellant's rights.

17. Concluding his arguments, the Appellant requested this Appellate Tribunal to set aside the Impugned Order and to allow his appeal.

18. Per contra, the Respondent denied all averments made by the Appellant as misleading and baseless.

19. The Respondent submitted that the approach by the Appellant reflected a mala fide intent to undermine the lawful proceedings and to obstruct the orderly conduct of the CIRP.

20. The Respondent submitted that the instant reply is filed on behalf of Mr. Rakesh Kumar Gupta, who has been duly appointed as the RP of the Corporate Debtor, namely M/s Three C Universal Developers Private Limited vide the order dated 17.12.2019, as pronounced by the Adjudicating Authority in the proceedings of CP-IB No. 2582/ND/2019 titled ***M/s Jakson Limited v. M/s Three C Universal Developers Private Limited***. The Respondent asserted that this appointment vests him with the full statutory authority and responsibility to oversee and manage the CIRP in accordance with the provisions of the Code.

21. The Respondent submitted that, in accordance with the provisions of Section 25(2)(a) of the Code, the Resolution Professional is statutorily obliged and duty-bound to take immediate custody and control of all the assets of the

Corporate Debtor, including, but not limited to the business records and other critical documents of the Corporate Debtor.

22. The Respondent further submitted that, under the provisions of Section 18(1)(a), (d), and (f) of the Code, the Interim Resolution Professional is entrusted with a range of duties, which are equally applicable to the Resolution Professional post-appointment. The Respondent contended that these statutory obligations unequivocally mandate the Resolution Professional to secure and take possession of all assets of the Corporate Debtor, including the original share certificates and related documents that form part of the Corporate Debtor's estate

23. The Respondent submitted that, upon assuming control and charge over the management and affairs of the Corporate Debtor, it came to his knowledge that the Corporate Debtor had entered into Agreements to Sell dated 08.10.2018 with the Appellant herein. The Respondent contended that these Agreements were executed for the sale of shares held by the Corporate Debtor in the subsidiary companies, namely Challengerz for a total consideration amounting to Rs. 10 crores and Hacienda for a total sale consideration of Rs. 30,93,75,000. The Respondent asserted that these financial terms were explicitly stipulated in Clause 1 of the respective Agreements, forming the cornerstone of the contractual obligations between the parties.

24. The Respondent submitted that the shares held by the Corporate Debtor in its subsidiary companies, namely Challengerz and Hacienda, constitute valuable assets of the Corporate Debtor as per the provisions of the Companies Act, 2013,

and the rules framed thereunder. The Respondent contended that the original share certificates, which were handed over to the Appellant at the time of their execution, along with the documents of title deed pertaining to the properties, are integral components of the Corporate Debtor's asset base. The Respondent further submitted that the term of the said Agreements was expressly limited to a period of 11 months from the date of execution, which expired on 07.09.2019. In light of this efflux of time, the Respondent asserted that the Agreements stand automatically determined and have become infructuous, thereby extinguishing any rights or obligations arising therefrom.

25. The Respondent submitted that the Appellant has deliberately and malafidly failed to perform his obligations under the terms of the aforementioned Agreements, particularly with regard to the payment of the entire consideration & within the stipulated 11-month period. The Respondent contended that, in response to this non-performance, Notices of Termination dated 16.01.2020 notices were duly served upon the Appellant. These Notices granted the Appellant a grace period of three days to comply with his payment obligations as per the Agreements. The Respondent asserted that the Notices explicitly stipulated that failure to make the requisite payments within the stipulated timeframe would result in the deemed termination of the Agreements, which were in any event already determined by efflux of time. The Respondent contended that, to date, the Appellant continues to retain illegal custody and possession of the original share certificates and other original documents, the Agreements for

temporary possession. The Respondent further submitted that the Appellant has falsely alleged that he made a payment equivalent to 2% of the total consideration amount into the bank account of the Corporate Debtor and asserted that no such payment has been received or recorded, and the Appellant's claim lacks any evidentiary support.

26. The Respondent submitted that, as the duly appointed Resolution Professional, he was legally and morally duty-bound to discharge the responsibilities entrusted to him under Sections 18 and 25 of the Code. Accordingly, upon taking over the charge and management of the Corporate Debtor, the Respondent had undertaken all necessary and appropriate steps in strict compliance with the law and the provisions of the Code to ensure the protection and custody of any asset over which the Corporate Debtor retains ownership rights, as recorded in the balance sheet of the Corporate Debtor. The Respondent contended that this includes the original share certificates of Hacienda and Challengerz along with all other original documents that were temporarily possessed by the Appellant.

27. The Respondent submitted that the Appellant, with the sole intention of deviating the attention of this Appellate Tribunal, has raised frivolous and extraneous contentions regarding an alleged dispute between the Appellant and the promoters of the Three C Group, namely Mr. Nirmal Singh, Mr. Supreet Singh Suri, and Mr. Vidur Bhardwaj. The Respondent contended that these contentions have no bearing whatsoever on the subject matter of the present

proceedings, as the Respondent is discharging his duties and functions solely in terms of the provisions of the Code and is not involved or interest in the said alleged disputes. The Respondent further submitted that, upon the admission of the Section 9 Petition and the commencement of the CIRP on 17.12.2019, the Respondent stepped into the shoes of the management of the Corporate Debtor. Consequently, the Respondent is required to take control over all assets of the Corporate Debtor, including the original share certificates and other title documents as adumbrated hereinabove. The Respondent asserted that, in light of the moratorium imposed under Section 14 of the Code, which bars the transferring, encumbering, alienating, or disposing of any assets of the Corporate Debtor from the date of CIRP commencement, the Agreements in question can no longer be acted upon and have become infructuous due to the operation of law, with time being of the essence for the performance of any contract.

28. The Respondent submitted that, being aggrieved by the illegal, mala fide, and unjustifiable conduct of the Appellant in refusing to comply with the terms of the Agreements and in retaining the original share certificates and documents, the Respondent was left with no alternative but to approach the Adjudicating Authority by filing Applications bearing IA No. 2102/2020 and IA No. 2276/2020. The Respondent contended that these Applications sought the indulgence of the Adjudicating Authority to issue appropriate directions against the Appellant to hand over the original share certificates of the companies,

namely Hacienda and Challengerz along with other title documents that were in the Appellant's possession.

29. The Respondent submitted that, after a thorough consideration of the facts and circumstances presented before it, the Adjudicating Authority pronounced the impugned order dated 07.08.2020. The Respondent contended that the Adjudicating Authority rightly allowed the Applications bearing IA No. 2102/2020 and IA No. 2276/2020, directing the Appellant to hand over the original share certificates, along with other original documents pertaining to Hacienda and Challengerz to the Respondent within a period of seven days from the date of the pronouncement of the Impugned Order. The Respondent contended that the Impugned Order is a well-reasoned and legally sound decision that upholds the rights of the Corporate Debtor and the Resolution Professional to reclaim its assets.

30. The Respondent submitted that the status quo order dated 05.04.2019, as pleaded by the Appellant only serves to support the Respondent's claim, as it mandates the maintenance of the status quo regarding the shareholding of Hacienda and Challengerz, which are 100% subsidiaries of the Corporate Debtor. The Respondent asserted that, as of the present date, the shareholding of the said companies continues to vest exclusively with the Corporate Debtor. The Respondent further submitted that the Appellant has no legal or equitable right whatsoever to hold custody of the original share certificates of Hacienda and Challengerz.

31. The Respondent referred to the judgment of the Hon'ble Delhi High Court in ***Liberty House Group Pvt. Ltd. v. State Bank of India and Ors.***, reported in MANU/DE/0727/2019, which reaffirmed that no civil court shall have jurisdiction over matters within the purview of the NCLT under the Code.

32. The Respondent submitted that the Appellant has, for the very first time and under the garb of the instant Appeal, raised a frivolous contention regarding the filing of police complaints dated 26.10.2019 and 28.10.2019 with the Police Station at PS Khanna City-2, alleging the loss of original documents and photocopies pertaining to Hacienda and Challengerz. The Respondent contended that this alleged fact was never brought to the notice of the Respondent at any prior stage, nor was it argued or pleaded before the Adjudicating Authority during the adjudication of the Applications. The Respondent further submitted that the fact that, after the orders were reserved in the aforementioned Applications, the Appellant arbitrarily claims to have filed an additional affidavit, which was neither placed before the Adjudicating Authority bench nor served upon the Respondent. The Respondent asserted that no proof of filing such an affidavit has been placed on record by the Appellant, rendering this claim dubious and unreliable. The Respondent further submitted that a perusal of the alleged police complaints reveals no mention of the loss of the original share certificates of Hacienda and Challengerz, which are currently in the Appellant's possession, which clearly demonstrates that the Appellant is attempting to perpetrate a fraud upon this Appellate Tribunal as well as upon the Respondent. The Respondent

asserted that the Appellant never made any submission regarding the loss of documents in his replies to the Notices issued by the Resolution Professional, in his responses to the Applications, or during the course of arguments before the Adjudicating Authority. The Respondent contended that the Appellant's reference to this excuse, raised for the first time in June 2020, is a complete fabrication and a baseless approach that is not maintainable under the law.

33. Concluding his arguments, the Respondent requested this Appellate Tribunal to dismiss this appeal with exemplary cost.

Findings

34. We note that vide Impugned Order dated 07.08.2020, the Adjudicating Authority has allowed I.A. No. 2102/2020 and I.A. 2276/2020 filed by the Resolution Professional whereby the Appellant herein was directed to return share certificates along with original documents possessed by the Appellant of two companies, namely, Hacienda and Challengerz. It was held in the Impugned Order the Resolution Professional can claim possession on these share certificates along with original document.

35. It has been pleaded before us that ATS dated 08.10.2018 between the Corporate Debtor and according to the Appellant, the Corporate Debtor was required to transfer 100% shareholding of both the companies i.e., Hacienda and Challengerz. Further, the Corporate Debtor was required to get requisite permission and approvals from various authorities within 11 months of the ATS

and thereafter, the Appellant was required to pay the balance consideration. It has also been pleaded that 2% of the consideration was paid and acknowledged by the Corporate Debtor as stipulated in Clause 1 of the ATS dated 08.10.2018.

36. The Appellant has also brought out that in terms of Clause 6 of ATS, possession of title deed of property owned by Hacienda and Challengerz along with share certificates and some statutory documents were handed over to the Appellant. The Appellant further brought out that Corporate Debtor initiated proceedings against the Appellant under Section 241 and 242 of the Companies Act, 2013 in respect of Hacienda and Challengerz and status quo order of shareholding was passed by the National Company Law Tribunal on 05.04.2019.

37. During arguments, the Appellant conceded that he was willing to return back share certificates as ordered by the Adjudicating Authority, however, the Appellant claimed that the bag of the Appellant containing original share certificates and some other documents were lost by him in City Centre, Khanna somewhere in August, 2019 for which, he had filed a police complaint No. 105-5D, dated 26.10.2019 and a reminder application dated 09.06.2020 with the Deputy Superintendent of Police, Khanna, followed by communication with police authorities. The Appellant also pleaded before us that he was not in a position to return back the original shares certificates as well as the other documents of Hacienda and Challengerz.

38. It is also the case of the Appellant that since these are not the properties of Corporate Debtor and rather belongs to the subsidiaries of Corporate Debtor, the

Respondent/ Resolution Professional could not have requested to repossess these documents.

39. The Appellant has emphasised that it is the failure of the Corporate Debtor in obtaining the approvals from authorities within 11 months of the ATS, the Appellant was not required to pay remaining dues and also was not required to submit back the original documents of Hacienda and Challengerz to the Respondent /Corporate Debtor.

40. On the other hand, it is the case of the Respondent that the Adjudicating Authority was within the right to adjudicate the two IA's filed by the Resolution Professional, as, the Resolution Professional, was duty bound to protect the properties of the Corporate Debtor in order to maximise the value of the Corporate Debtor. The Resolution Professional also pointed out that the ATS dated 08.10.2018, has been determined by efflux of time and due to operation of law. The Resolution Professional pointed out that the Appellant took illegal custody of the share certificates as well as other documents without any consideration.

41. At the outset, we consciously note that in terms of Section 25(2)(a) of the Code, the Resolution Professional is obligated and required to take over all the assets of the Corporate Debtor and run the management keeping in view to maximise the asset of the Corporate Debtor. Therefore, the Resolution Professional / Respondent was well within his right to move I.A. No. 2102/2020

and I.A. 2276/2020 before the Adjudicating Authority seeking repossession of the documents sought. The relevant section is reproduced as under: -

“25. Duties of resolution professional:

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely:

—
(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;”

(Emphasis Supplied)

This makes position quite clear in favour of the Respondent.

42. We further observe that in terms of Section 18(1)(a), (d) and (f) of the Code, the Respondent/Resolution Professional is also required to take over the assets of the Corporate Debtor. The relevant portion reads as under: -

“18. Duties of interim resolution professional. —The interim resolution professional shall perform the following duties, namely: —

(a) collect all information relating to the assets, finances and operations of the corporate debtor

for determining the financial position of the corporate debtor, including information relating to—

(i) business operations for the previous two years;

(ii) financial and operational payments for the previous two years;

(iii) list of assets and liabilities as on the initiation date; and

(iv) such other matters as may be specified;

(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board.”

(Emphasis Supplied)

From above, it is clear that the Resolution Professional is required to take control and custody of any assets for which the Corporate Debtor has ownership

right including the assets that may or may not be in possession of the Corporate Debtor, security is including shares held in any subsidiary of the Corporate Debtor, financial, insurance policy and finally assets subject to the determination of ownership by a court or authority. Thus, Section 18(1)(f)(v) of the Code makes it abundantly clear that it is within the ambit of the Resolution Professional/ Respondent to repossess the shares held in any subsidiaries of the Corporate Debtor. It is not a disputed fact that Hacienda and Challengerz are the subsidiary of the Corporate Debtor and therefore, the Resolution Professional is within the right to take back the share certificate of Hacienda and Challengerz of the Appellant.

43. It is also surprising to note that the Corporate Debtor, being a corporate entity could have handed over the shares of Hacienda and Challengerz in this manner to the Appellant, without following the due process as stipulated in Companies Act, 2013 and without receiving the consideration. It is reiterated that Corporate Debtor is a corporate entity and not a personal property of any individual, hence, the whole process of the Appellant taking possession of the share certificate, without following due process and without paying the consideration, is fallacious and not legal.

44. The Appellant conceded that he was willing to handover the shares of Hacienda and Challengerz, however, it was not possible due to fact that the same was lost by the Appellant at City Centre, Khanna, Punjab. The Appellant also tried to impress upon us that he has taken the reasonable steps of following it up

with the police. In this connection, it was perplexing to understand as to why the Appellant had chosen to take such important documents to City Centre, Khanna. On a pointed query by the Appellate Tribunal to the Appellant, the Appellant could not give any satisfactory answer and could not satisfy to why no proper FIR was filed. The Appellant merely filed police complaint bearing No. 105-5D, dated 26.10.2019 which does not reflect the seriousness of the Appellant.

We also note that the Appellant, for the first time, has raised this contention concerning a purported police complaint filed on 26.10.2019 and 28.10.2019 at P.S. Khanna City-2, alleging loss of original and documents of Hacienda and Challengerz after requiring the order by the Adjudicating Authority. Notably, the Appellant failed to disclose the existence of such complaints to the Respondent or raise them before this Appellate Tribunal during hearing. Subsequent to the reservation of orders by the Adjudicating Authority, the Appellant claims to have filed an additional affidavit, which was neither permitted by the Adjudicating Authority nor served upon the Respondent, rendering such to open questioning about it.

45. Thus, on the issue of handing over all the share certificate of Hacienda and Challengerz held by the Appellant as ordered by the Adjudicating Authority, we do not find any error in the Impugned Order.

46. On the other issue regarding the handing over the property and other documents as requested by the Respondent/ Resolution Professional, it is the case of the Appellant that these are not properties of the Corporate Debtor since these

belong to the subsidiaries of the Corporate Debtor which are having independent legal entities. The Appellant pointed out that this is contrary to the provisions as Section 18 and 25 of the Code only empowers the Resolution Professional to take possession of the assets of the Corporate Debtor and not the assets of any other company including subsidiary.

47. In this regard, we have already noted that the Respondent/ Resolution Professional pointed out that the basis on which the Appellant had taken over the document of Hacienda and Challengerz means subsidiary of the Corporate Debtor was w.r.t. ATS dated 08.10.2018, which has been determined by efflux of time and due to operation of law. It is the case of the Respondent that as per Clause 2 of the ATS, dated 08.10.2018, the whole transaction was to be completed within the period of 11 months from the date of agreement and therefore, it should have been completed by 08.09.2019, however, the same could not be fructified till date as due to non-co-operation of the Appellant as well as due to non-payment by the Appellant and therefore, the ATS has become infructuous by efflux of time. We find merit in the contentions of the Appellant.

48. We note that in terms of ATS dated 08.10.2018, the Appellant was required to make payment of total consideration of Rs. 10 Crores in respect of Challengerz and Rs. 30,93,75,000/- in respect of Hacienda as stipulated in Clause 1 of the agreement. We also note that the Resolution Professional has brought out clearly that the Appellant has failed to perform its obligation of payments under said ATS and therefore, the Resolution Professional had served notice of termination dated

16.01.2020 asking the Appellant to make the payment, failing which the said ATS shall be deemed to be terminated.

49. The Appellant has claimed that he has already paid 2% of consideration amount in the bank account of the Corporate Debtor. However, on asking specific details by this Appellate Tribunal, the Appellant could not identify and clarify exact date of the transaction through which such payment was made or specific details of payments made. The Appellant repeated that he made payments to the Corporate Debtor in newly opened bank account with Bank of India, sometime in September, 2010. At this stage, we reiterate that we could not find any such details of payments to the Corporate Debtor in the appeal paper book or other submitted documents by the Appellant. It is also interesting to note that the Appellant has claimed to make payment sometime in September, 2010, whereas the ATS itself was signed on 08.10.2018. In other words, the Appellant claims that he made payments to Corporate Debtor without any documentations. Such facts are hard to believe and does not support cause of the Appellant. On this issue, the Resolution Professional has further confirmed that he could not corroborate the said receipt of 2% consideration from books of the Corporate Debtor or other records of the Corporate Debtor. We do not have any reason to disbelieve the RP on this account.

50. Keeping in view these facts, we are unable to accept the contentions of the Appellant that he has paid 2% of the consideration to the Corporate Debtor and

since, the Corporate Debtor could not fulfil its promise of obtaining all approvals within 11 months of the ATS, the Appellant was discharged from his obligations.

51. As regard, the property document and other important documents as required by the Respondent/ Resolution Professional, it is a fact that these belong to the subsidiaries of the Corporate Debtor and therefore, there may not be direct ownership of the Corporate Debtor. However, the fact remains that the Appellant has not paid any consideration and has not proved even alleged initial payment of 2% of total consideration, therefore, the Appellant is not entitled to retain custody of such documents. It cannot be denied that as Resolution Professional, the Respondent is entitled to seek custody of the documents of the ownership of the property of Hacienda and Challengerz which are 100% subsidiary of the Corporate Debtor. In fact, the Corporate Debtor is direct beneficiary although, separate legal entities are required to follow due process of law about ownership.

52. The Appellant has raised an issue regarding lack of jurisdiction by the Adjudicating Authority to adjudicate on such matters. We observe that the Adjudicating Authority is vested with clear jurisdiction to adjudicate upon the such matters as contained in I.A. No. 2102/2020 and I.A. 2276/2020 filed by the Respondent before the Adjudicating Authority, as provided under Section 60(5) of the Code.

53. The relevant provision is reproduced hereunder: -

"Section 60(5): Notwithstanding anything to the contrary contained in any other law for the time being in force, the

National Company Law Tribunal shall have jurisdiction to entertain or dispose of— (a) any application or proceeding by or against the corporate debtor or corporate person; (b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and (c) any question of priorities or any question of law or facts arising out of or in relation to the insolvency resolution or any liquidation proceedings of the corporate debtor or corporate person under this Code."

(Emphasis Supplied)

54. We will also refer to Sections 63, 231, and 238 of the Code, which bars any civil court or other authority, except NCLT or Appellate Tribunal, from taking cognizance of matters pertaining to the CIRP process. The relevant provisions are reproduced hereunder:

"Section 63: Civil court not to have jurisdiction— No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code. Civil court not to have jurisdiction...

Section 231: Bar of jurisdiction— "No civil court shall have jurisdiction in respect of any matter in which the Adjudicating Authority or the Board is empowered by, or under, this Code to pass any order and no injunction shall be

granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such Adjudicating Authority under this Code...

Section 238: Provisions of this Code to override other laws— *"The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law..."*

(Emphasis Supplied)

55. Thus, we hold that the Adjudicating Authority possesses the powers and jurisdiction to decide the said Applications in terms of Sections 60(5), 63, 231, and 238 of the Code.

56. We also find that there are several judicial precedents. In C.A. No. 719 of 2018 titled ***Encore Asset Reconstruction Company Pvt. Ltd. v. Ms. Charu Sandeep Desai & Ors.***, this Appellate Tribunal held in Para 13 which reads as follows:

"...It is not the case of the Appellant that the title of the assets has already been transferred or they have sold the assets in terms of Section 13(4) of the SARFAESI Act, 2002. It was also not the case of the Appellant that the assets owned by a third party is in possession of the 'Corporate Applicant' in terms of Section 18, as it is the duty of the 'Interim Resolution Professional' to take control and custody of any asset over which the 'Corporate Applicant' has 'ownership rights' as

*recorded in the balance sheet of the 'Corporate Applicant'.
Even if it is not in possession of the 'Corporate Applicant', a
person who is in possession of the same, including the 'Dena
Bank' or 'Encore Asset Reconstruction Company Pvt. Ltd.' is
bound to hand over the same to the 'Resolution Professional',
when title still vests with 'Corporate Applicant...'.*

(Emphasis Supplied)

57. Based on above detailed observations, we do not find any error in the Impugned Order. The Appeal is devoid of any merit and stand rejected. No cost. I.A., if any, are closed.

**[Justice Rakesh Kumar Jain]
Member (Judicial)**

**[Mr. Naresh Salecha]
Member (Technical)**

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