THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)

IA No. 1028/2022
in
CP (IB) No.57/Chd/Chd/2019
(Admitted Matter)
Under Section 60(5) of IBC 2016

In the matter of:

M/s Jai Bhawani Steel Industries

….Operational Creditor/ Applicant

Versus

M/s EEE and CEE, Pressings Private Limited.

...Corporate Debtor/Respondent

In the matter of IA No.1028/2022:

M/s Jai Bhawani Steel Industries
through Sh. Nilesh Kumar (Sole Proprietor)
having registered office at:
Shop No.33, Central Market, Gill Road, Ludhiana-141003

… Operational Creditor/Applicant

Versus

M/s EEE and CEE Pressings Private ltd.
having its registered office at:
Plot No.824, Industrial Area Phase-2, Chandigarh-160002

…Corporate Debtor/Respondent

Judgment delivered on: 31.03.2023

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present:-

For the Applicant : Mr. B.B. Bagga Advocate

For the Respondent : Mr. Harsh Garg and Mr. Pulkit Goyal, Advocates

PER: SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

ORDER

The present application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 by M/s Jai Bhawani Steel Industries through Sh. Nilesh Kumar, the sole proprietor (hereinafter referred to as '**Applicant'**), praying for clarification regarding the personal property of the guarantor mortgaged with the Bank in his personal capacity as a collateral security to secure the credit facilities to M/s EEE and CEE, Pressing Private Limited.

2. The brief facts of the case are that the applicants are auction purchasers of the property. The said property was originally owned by one Sh. Subhash Chander Chhabra S/o Late Sh. Dayal Singh Chhabra, vide sale deed No.1270 dated 16.07.2010, who, as per records, mortgaged the same to secure the credit facilities of Union Bank of India, which was allowed by the said Bank in favour of M/s EEE and CEE Pressing Pvt. Ltd. (Copy of the re-allotment letter dated 17.03.2017-Annexure A-1). The Union Bank of India issued notices dated 17.12.2020 under Section 13(2) and 13(4) of the SARFAESI Act, 2002, when RBI declared the account as NPA (Non-performing Assets) and also upon its sister concern M/s Sonata Exports Ltd. (Corporate Guarantor and Borrower).

3. The advertisement dated 18.12.2020 was issued by Union Bank of India for the sale of the property-plot No.169, Phase 1, Panchkula and applicants tendered an amount of Rs.74,04,000/- as earnest money deposit on 16.01.2021 to participate in the bid. The bid of the applicant to the tune of Rs.7,42,00,000/- being the highest bid, was accepted by the Authorized officer of Union Bank of India.

The applicant further deposited the sum of Rs.6,67,96,000/-. The amount was duly accepted by the creditor Bank on the dates of deposit as per the following:-

Sr. No.	Date	Amount Paid	Mode of Payment
1.	16.01.2021	Rs.74,04,000/-	Amount debited to Global EMD Wallet
2.	25.02.2021	Rs. 92,75,000/-	Through RTGS to UBI
3.	25.02.2021	18,55,000/-	Through RTGS to UBI
4.	25.02.2021	Rs. 16,000/-	Through RTGS to UBI
5.	10.03.2021	Rs. 2,75,46,750/-	Through RTGS to UBI
6.	1.03.2021	Rs. 2,75,46,750/-	Through RTGS to UBI

The auction sale was conducted on 18.01.2021. The borrower company challenged the notices u/s 13(2) and 13(4) by filing CWP No.29435 of 2019 in the Hon'ble Punjab and Haryana High Court. The Hon'ble High Court, vide order dated 18.01.2021, allowed to conduct of the auction of the mortgaged properties with the condition that the bids shall not be opened. The properties were put up for e-auction on MSTC Portal, and the bids were received. However, after the order of the High Court, no further bid was taken. Vide order dated 17.02.2021, the Hon'ble High Court dismissed the CWP and relegated the borrower company to seek remedy under the SARFAESI Act, directing interim order dated 18.01.2021 to be continued for one week from the date of order.

The order initiating CIRP in the case of respondent-corporate debtor dated 19.02.2021 passed by NCLT, Chandigarh Bench in the matter of *Jai Bhawani Steel Industries Versus M/s EEE and CEE Pressing Private Limited.* It is submitted that the same was used by the defaulter company to stall the process of physical possession and sale of the property in question. It is further submitted that no clarification was sought by the Union Bank of India with regard to the applicability of the order dated 19.02.2021 on the said property. It is averred by the applicant that the collateral property of the guarantor is not covered under the purview of Section 14 of the Insolvency and Bankruptcy Code. The sale of assets should be finalized in favour of the applicant prior to the order dated 19.02.2021. The borrower company filed SA No.49 of 2021 before Debt Recovery Tribunal -II, Chandigarh, which was declined vide order dated 25.02.2021. The said order was challenged by filing said CWP No.5056 of 2021 before the Hon'ble High Court, and the said writ petition was dismissed by order dated 08.03.2021. The sale certificate was issued on 12.03.2021, and the auction purchaser approached the bank for registration of the sale deed; however, Sub-Registrar, Panchkula, refused to register the same.

4. The reply was filed vide diary No.01708/01 dated 10.11.2022, wherein it is stated that the CIRP process was initiated vide order dated 19.02.2021 and Sh. Rakesh Kumar Singhala was appointed as IRP. The public announcement was made on 23.02.2021 in Form A, and the first meeting of CoC was held on 19.03.2021, wherein the Financial Creditor disclosed that they have recovered all the dues from the Corporate Debtor invoking SARFAESI action against one property of guarantor Plot No.169 which is the same property as bought by applicant vide auction under SARFAESI proceedings. Vide order dated 26.04.2021, IRP was replaced, and he undertook to control and custody of the plot. The said land would fall under the purview of Section 14(1) (d). The property was still in the control of the Corporate Debtor. The Union Bank of India has not been arrayed as the party in the present application.

5. The compliance affidavit was filed by Diary No.01708/2 dated 22.02.2023 wherein it is stated by Resolution Professional that the mentioned property purchased by the auction purchaser is not an asset/property of Corporate Debor; however, the registered office of Corporate Debtor and its plant and machinery is situated at the said property by auction purchaser under SARFAESI proceedings initiated by Union Bank of India. It is further deposed that the present land would fall under the purview of the moratorium as per Section 14(1) (d) of IBC, 2016; as the same is in possession or has been occupied by the Corporate Debtor and cannot be recovered by its owner or lessor. It stated, thus that moratorium is applicable on the said property as per the provision of IBC, 2016 and the same is applicable till the resolution plan is approved in the present matter and on completion of the CIRP process the moratorium u/s 14 would come to an end and the said property will be returned back to the applicant auction purchaser.

6. We have heard the learned counsels for the petitioner as well as the respondent and have also perused the records carefully.

7. We have closely perused the documents, including the minutes of the meeting of the Committee of Creditors, wherein the issue of possession of plot No. 169 Phase 1, Panchkula, has been discussed in detail in its first meeting dated 19.03.2021 and subsequently. The financial creditor involved, Union Bank of India, informed participants in the said meeting that through SARFAESI action, it has recovered dues from seven individual properties, which included plot No. 169, and no due is outstanding towards the corporate debtor. Further, the financial creditor was advised in the meetings to withdraw their claim as there were no due recoverable from the corporate debtor. It is seen that the CoC has in its meeting

dated 19.03.2021, noted the following consequences of the actions of the financial creditor with regard to the property in question. The relevant extract from is produced as under-

> *"It would not be possible to operationalise this unit No. 1 as the land and the building housing this Unit has already been sold by the Financial Creditor as mentioned in the CoC meeting and the Corporate Debtor would be left with only plant and machinery installed there."*

8. Thus, though the corporate debtor was initiated to the CIRP by order dated 19.02.2021, the process of auction of the property at 169, Phase 1, Panchkula, was almost complete. The entire payment has been made by 10.03.2021, and the sale certificate dated 12.03.2021 was issued. The Hon'ble Punjab and Haryana High Court, by its order dated 08.03.2021, has dismissed the petition against the order of the DRT-II Chandigarh finalizing the sale of the said property in favour of the financial creditor. As narrated above, the CoC was aware of the entire proceedings. We also note the fact that the Resolution Professional, in its affidavit dated 22.02.2023, admitted that the property under question is not an asset/property of the corporate debtor.

9. As the property in question is admittedly not the asset of the corporate debtor and the auction purchaser has purchased the same under the provisions of the Securitization Act, there is no justification for depriving the rights of physical possession to the applicant as well as the registration of the sale deed.

10. In view of the above, this application i.e. IA No. 1028/2022, stands allowed and disposed of accordingly.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

Sd/-

(Harnam Singh Thakur)
Member (Judicial)

March 31 , 2023
DS/TB

CA No. 1028/2022
in
CP (IB) No.57/Chd/Chd/2019