# NATIONAL COMPANY LAW APPELLATE TRIBUNAL
# PRINCIPAL BENCH, NEW DELHI

## COMPANY APPEAL (AT) (INSOLVENCY) NO. 600 of 2021

(Arising out of the Order dated 24th March, 2021 passed by National Company Law Tribunal, Principal Bench, New Delhi, in I.A. – 951/2021 in CP No. (IB)-455(PB)/2017)

**IN THE MATTER OF:**

**DD Real Estate Private Limited**
(Holding Company of Forgings Private Limited)
F-1/9, Okhla Industrial Area, Phase-1,
New Delhi – 110020. **…Appellant**

**Versus**

**1. Mr. Sajeve Bhushan Deora**
(Liquidator for Forgings Pvt. Ltd.)
606, New Delhi House,
17, Barakhamba House,
New Delhi – 110001. **…Respondent No. 1**

**2. Indiabulls Housing Finance Ltd.**
M-62 & 63, Rajeev Chowk, Connaught Place,
New Delhi – 110001. **…Respondent No. 2**

**3. Mars Infraengineering Pvt. Ltd.**
**(Sole Bidder 25% Share)**
Plot No. 660, Sector – 16A, Faridabad,
Haryana – 121002. **…Respondent No. 3**

**4. Late Davinder Kumar (Sole Bidder 75% Share)**
Through his legal representative
Smt. Vidya Wati
Ms. Savita Girdhar
Mr. Abhishek Girdhar
R/o. House No. 52, Sector 16A,
Near Post Office Kheri Khalan,
Faridabad, Haryana – 121002. **…Respondent No. 4**

**5. Municipal Corporation of Faridabad**
B.K. Chowk, Narela Rajeev Nagar,
Nehru Industrial Town,

Faridabad, Haryana – 121001. **…Respondent No. 5**

**6. Mr. Karan Gambhir**
Ex-Director of Forgings Private Limited
N-56 Panchsheel Park Enclave,
New Delhi – 110017. **…Respondent No. 6**

**<u>Present</u>**

| | |
|---|---|
| **For Appellant:** | **Mr. Sudhir K. Makkar, Sr. Advocate with Ms. Megha Mukherjee & Mr. Saumya Gupta, Advocates.** |
| **For Respondent No. 2:** | **Mr. Sumesh Dhawan, Ms. Vatsala Kak, Mr. Raghav Demlia & Mr. Shahrya Shyam, Advocates for R-2.** |
| **For Respondent No. 3 & 4:** | **Mr. Rakesh Kumar & Mr. Ankit Sharma, Advocates for R-3 & R-4.** |
| **For Respondent No. 5:** | **Mr. Hemant Gupta & Mr. Shivang Jain, Advocates for R-5.** |
| **For Respondent No. 6:** | **Mr. Karan Gandhi, Advocate for R-6.** |

## <u>( J U D G E M E N T )</u>

**<u>[Per; Shreesha Merla, Member (T)]</u>**

**1.** Challenge in this Appeal to the Impugned Order dated 24.03.2021, passed by the Learned Adjudicating Authority (National Company Law Tribunal, Principal Bench, New Delhi) in I.A. 951/2021 in CP No. (IB) 455(PB)/2017, whereby the Adjudicating Authority has dismissed the Application imposing costs of Rs.1,00,000/- to be paid to the 'Corporate Debtor Company'.

**2.** Succinctly put, I.A. 951/2021 was filed by M/s. DD Real Estate Private Limited/the Appellant herein which is the Holding Company of M/s. Forgings

Private Limited/the 'Corporate Debtor' against the Liquidator, the 'Financial Creditor' (Indiabulls Housing Finance Ltd.), the SRA (Mars Infraengineering Private Limited), the Municipal Corporation Faridabad/MCF seeking a direction to the Liquidator to get fresh valuation conducted for the land sold to the bidder under Regulation 35(2) of the Insolvency and Bankruptcy Board of India, (Regulation Process) Regulations, 2016, whereby valuers were appointed for ascertaining the value of the land of the 'Corporate Debtor'. The 'Corporate Debtor' is the owner of the land admeasuring 42,773.5 sq. yds. located at 12/6 Village Sarai Khawaja, main Mathura Road, Faridabad, Haryana and comes within the limits of MCF.

**3.** The Learned Adjudicating Authority referred to its previous Order in CA 1079/2019, whereunder, cost of Rs.50,000/- was imposed on the Appellant. The relevant portion is reproduced as hereunder:

> *The final conclusion held in this order is as follows:*
>
> *"40. The base price of ₹52.58Crores is reserve price of the property which is for higher than the circle rate of the agricultural land and the value is much more in demonetisation of development potential of the property. The property was earlier put to e-auction during liquidation in March, 2019 with a reserve price of ₹52.83Crore and no bid was received even at the reserve price and the applicant had failed to identify any bidder/buyer whatsoever in spite of the opportunity given vide order dated 08.04.2019 passed in CA No. 501(PB)/2019."*
> *41. Mr. Rakesh Kumar, learned counsel for the highest bidder stated that the whole amount of the highest bid stand deposited and the transfer deed is to be executed by the liquidator.*

*42. as a sequal to the above discussion, we issue following directions:-*

> *"(a) the application is dismissed with cost of 250,000 payable to the Prime Minister's Relief Fund.*
>
> *b) the liquidator is directed to accept the highest bid as the amount stand already deposited and proceed with the liquidation process as per law."*

*When the appeal was filed before Hon'ble National Company Appellate Law Tribunal, it has held as follows:*

*41 We are of the view that in the Sale Notice nothing is mentioned which prejudices the prudent bidder for bidding. It is pertinent to note that the Ld. Adjudicating Authority while deciding the objections granted an opportunity to the Appellant, to produce any person who is prepared to purchase the land in question at price higher than the Reserve price. He may also file his bid before the Liquidator before the closing date. In terms and conditions of the direction the Appellant was not able to produce any bidder with better price. The land in question was earlier put to e auction during Liquidation in March, 2019 with Reserve price of ₹52.83Crore and no bid was received even at a Reserve price and the Applicant had failed to Identify any bidder/buyer whatsoever, in spite of opportunity given vide order dated 08.04.2019 passed in CA No 501 (PB)/2019.*

*<u>42. With the aforesaid, we are of the view that there is no substance in the objections raised in these Appeals, in regard to valuation of land and Sale Notice.</u>*

*<u>43. So far as, the imposing cost of ₹50,000 is concerned Ld. Adjudicating Authority in Para 39 of the impugned order assigned the reasons that efforts made by the Appellant Karan Gambhir is only to delay the Liquidation Process without any basis and indulge in the baseless litigation endlessly. Therefore, imposed a</u>*

> *<u>cost of 850,000. We find no ground to interfere in this order."</u>*
>
> *(Emphasis Supplied)*

**4.** Subsequently, in the Impugned Order, the Adjudicating Authority while imposing cost of Rs.1,00,000/- noted as hereunder:

> *"Mr. Karan Gambhir, who is none other than the family member of Gambhirs filed an appeal before Hon'ble Supreme Court, it is not the case of this applicant and that he was not present before Hon'ble Supreme Court of India. This company was very much present through its people before National Company Law Tribunal, Hon'ble National Company Law Appellate Tribunal and the Hon'ble Supreme Court. This applicant company holding 99% of shareholding of the corporate debtor from time to time kept on changing its stand, before one forum it says it is agriculture land, when the same financial creditor who filed its company petition initiated proceeding under SARFESI, corporate debtor under this management filed a response with the notice stating that land is agriculture in nature.*
>
> *Thereafter, in the 5th Consultative meeting of the Stakeholders on 14.03.2019, "Mr. Sanjay Ghambir stated that the land and building of the CD was an agricultural Land at the time of purchase and was put to industrial use by the CD, he has also further stated that his family took over shareholding of Forging Pvt Ltd. some in 1994 (when the CD was under purview of Sick Industrial Companies (Special Provisions) Act, 1985 and that no records of the CD prior to the time of of their acquisition were available with them as the same had been lost in fire. He further mentioned that the subject land building of CD was in use for an industrial activity both prior to and after take-over of the CD by his family. He further mentioned that there may be a notice regarding charges payable for change of land use received sometime in the past and a demand of about ₹8.5Crore was probably raised and not deposited, and that no documents are available with him in respect thereof. He also further mentioned that the charges for*

*conversion of the subject land to commercial use are over ₹110Crore."*

*By reading this para, it is evident that Mr. Sanjay Ghambir, Mr. Karan Ghambir and this company belonging to one family and sometime before this, the applicant has stated that they have come into this company only in the year 2004, but by reading the para above, it is evident that this family took over the shareholding of this company in the year 1994 itself, therefore, this applicant could not say that document dated 16.12.2002 was not within the knowledge of this applicant.*

*As to the email sent by MCF, we have already decided one application filed by Municipal Corporation Faridabad for payment of External Development Charges & other taxes against the corporate debtor, wherein we have decided that in the earlier round of litigation itself, it was decided that the corporate debtor land is agriculture land, therefore this bench could not revert the finding earlier passed by the National Company Law Tribunal, National Company Law Appellate Tribunal and thereafter Hon'ble Supreme Court stating that land as per record agriculture in nature. Therefore, this email sent by the Municipal Corporation Faridabad to the liquidator cannot be construed as material before this bench to consider this land is industrial in nature.*

*This Bench in the earlier round gave sufficient opportunity to the promoter group to substantiate their submissions to prove that land is industrial in nature, but nothing happened.*

*<u>When this issue came up before Hon'ble Supreme Court on 05.11.2020, the applicant counsel has stated that the prospective bidder have indicated that they would require reasonable time to complete due diligence over which the counsel appeared on behalf of the liquidator has categorically mentioned that liquidator has no objection to permit the inspection of documents in his possession, and in fact the liquidator filed an affidavit before Hon'ble Supreme Court of India stating that the</u>*

> *details of the property and all information was made available to the promoters to provide it to the interested bidders. The Honourable Supreme Court ordered MCF to place its affidavit, the Hon'ble Supreme Court looking at the affidavit filed by MCF; it has dismissed the appeals on 12.01.2021.*
>
> *This promoter group had already run one round of litigation and failed to get any relief. In the earlier round of litigation ₹50,000 was imposed, we don't know whether it was paid or not, but now it has come for second round of application on the same issue. In view thereof, we hereby dismiss this company application by imposing ₹1,00,000 costs to be paid to the corporate debtor company within one month thereof."*
>
> *(Emphasis Supplied)*

**5.** Learned Sr. Counsel Mr. Sudhir K. Makkar appearing on behalf of the Appellant strenuously argued that the ex-Director of the 'Corporate Debtor', Mr Karan Gambhir had earlier changed the Valuation Reports filed by R1 and also the Sale Notice published by R1 in CA 1079/2019, which was dismissed by the Adjudicating Authority vide Order dated 12.04.2019 on the ground that there was no sufficient evidence to prove that the land has been converted to 'Industrial Use'. Separate Appeals were preferred by Mr. Karan Gambhir and the Appellant herein before this Tribunal which vide Order dated 17.08.2020, upheld the Order of the Adjudicating Authority only on account of lack of evidence stating that the land is agricultural in nature, even though it is used for industrial purposes, however, the use of land was not changed. A Civil Appeal was then preferred by Mr. Karan Gambhir and the Appellant herein before the Hon'ble Supreme Court which while hearing the Appeal, vide Order dated 05.11.2020, directed Haryana, Shahari Vikas Pradhikaran ('HSVP') and Department of Town and Country Planning, Chandigarh to file affidavits, indicating whether permission is been given for conversion of land use.

**6.** It is submitted by the Learned Sr. Counsel that HSVP and Department of Town and Country Planning, Chandigarh, in their Affidavits, submitted that they had not dealt with the conversion of land and the authority which was dealt with the conversion is MCF only and accordingly the Hon'ble Apex Court vide Order dated 03.12.2020 directed MCF to file an Affidavit clarifying the status of conversion of land use along with any outstanding dues. The Affidavit filed by MCF on 09.01.2020 expressly states that vide Memo dated 18.12.1978, change of land use of the land from agricultural to industrial had been allowed. The 'Corporate Debtor' was directed to pay the Extra Developmental Charges ('EDC') amounting to Rs.1,21,80,505/- and that the total EDC outstanding as on date is Rs.23,96,30,131/–. It is strenuously contended that the Affidavit filed by MCF proves that the land was converted from agricultural to industrial. The valuer chosen by R-1, in his revaluation, has stated the fair value of the land to be approximately Rs.150Crs./- and the Liquidation Value of the land to be 105.45Crs./- subsequently vide Order dated 12.01.2021, the Hon'ble Supreme Court refused to interfere with the Order of this Tribunal. MCF was not party before this Tribunal and therefore occasion for this Tribunal to look into the stand taken by MCF before the Hon'ble Supreme Court. The Affidavits and subsequent communication from MCF is fresh evidence. The Hon'ble Supreme Court had dismissed the Civil Appeal *in limini*, but did not reject the Affidavit of MCF which was filed before it as false and irrelevant and therefore it has to be construed that the land is 'Industrial' in nature and hence the value of the same is more than what has been ascertained by R-1.

**7.** It is contended that R1/Liquidator is selling the land at a very low valuation price which is unfair.

**8.** Learned Counsel for the Liquidator submitted that the Adjudicating Authority has rightly given a finding that the issue has attained finality with the Order of the Hon'ble Supreme Court.

**9.** At this juncture, we find it relevant to reproduce the Order of this Tribunal in ***'DD Real Estate Pvt. Ltd.' Vs. 'Sajeve Bhushan Deora, Liquidator for Forgings Pvt. Ltd. & Ors.'***[1]**,** whereunder 1079/2019 was challenged. This Tribunal while dismissing the Appeal observed as follows:

> *"40. We have considered the submissions. As we have held that there is no defect in the valuation reports and reports are as per the Rules. In the Sale Notice dated 15.05.2019 all material facts are disclosed. In the Sale Notice terms and conditions are mentioned condition No. 12 & 13 are as under:-*
>
> > *"12. After payment of the entire sale consideration, the sale Certificate containing due disclosure of the fact that the sale is "AS IS WHERE IS" AS IS WHAT IS" AND WHATEVER THERE IS BASIS "will be issued in the name of the successful bidder only and will not be issued in any other name.*
> >
> > *13. Bidder to confirm the permitted use of subject land and building and costs and charges payable*

[1] Comp. App. (AT) (Ins.) No. 1430/2019

> *in respect thereof, including those for industrial use in the past. The demands of providers of utilities and service at the subject land and building may too be confirmed from appropriate authorities/ agencies. All demands, whether outstanding or payable in relation to subject land and building, will be the liability of successful bidder."*

*In the notice, it is nowhere mentioned that the conversion fees for the land in question to industrial use is Rs. 110 crores.*

*41. We are of the view that in the Sale Notice nothing is mentioned which prejudices the prudent bidder for bidding. It is pertinent to note that the ld.*
*Adjudicating Authority while deciding the objections granted an opportunity to the Appellant, to produce any person who is prepared to purchase the land in question at price higher than the Reserve price. He may also file his bid before the Liquidator before the closing date. In terms and conditions of the direction the Appellant was not able to produce any bidder with better price. The land in question was earlier put to e-auction during Liquidation in March, 2019 with Reserve price of Rs. 52.83 Crores and no bid was received even at a Reserve price and the Applicant had failed to identify any bidder/buyer whatsoever, in spite of opportunity given vide order dated 08.04.2019 passed in CA No. 501 (PB/2019.*

*42. With the aforesaid, we are of the view that there is no substance in the objections raised in these Appeals, in regard to valuation of land and Sale Notice.*

*43. So far as, the imposing cost of Rs. 50,000/- is concerned Ld. Adjudicating Authority in Para 39 of the impugned order assigned the reasons that efforts made by the Appellant Karan Gambhir is only to delay the Liquidation Process without any basis and indulge in the baseless litigation endlessly. Therefore, imposed a cost of Rs. 50,000/-, We find no ground to interfere in this order."*

**10.** Challenging this Order, Mr. Karan Gambhir and the Appellant herein has preferred Civil Appeal Nos. 3103-3104/2020 which have been dismissed by the Hon'ble Supreme Court vide Order dated 12.01.2021 observing as follows:

> *"1. We are not inclined to interfere with the order of the National Company Law Appellate Tribunal dated 17 August 2020 in Company Appeal (AT) (Insolvency) Nos. 1420 and 1430 of 2019.*
>
> *2. The appeals are accordingly dismissed.*
>
> *3. Pending application, if any, stands disposed of."*

**11.** The issue raised by the Learned Sr. Counsel 'regarding the issue of land use', has already attained finality right upto the Hon'ble Supreme Court. The Learned Adjudicating Authority in the first round of litigation has not determined the nature of the land in question but has only decided the objections in regard to the valuation of land in question and that of the Sale of Notice, and observed that the Sale Notice was in accordance with the provisions of Regulations 35(3) & (4) of the IBBI (Liquidation Process) Regulations, 2016. This Tribunal has categorically held that there is no defect in the Valuation Report and that as per the Rules in the Sale Notice, it is mentioned that sale is on an 'as is where is basis' and it is nowhere mentioned that the conversion fees for the land in question to 'Industrial Use' is Rs.110Crs./- The Liquidator has brought to the Notice of this Bench that the land in question was earlier put to e-Auction during Liquidation in March 2019 with the Reserve Price of Rs.52.83Crs./- and no bid was received even at that price and that the Applicant had failed to identify any bidder despite several opportunities being given. The same was also recorded by this Tribunal in the initial round of Litigation.

**12.** Be that as it may, it is also pertinent to mention that in the Affidavit filed by the Commissioner, MCF before the Hon'ble Supreme Court in Civil Appeal No. 3103-3104/2020 in paras 8 to 10, it is stated as follows:

> *"8. That after perusal of the record so provided by the Administrator, HSVP it is apparent that the then Chief Administrator, Faridabad Complex Administration (Now known as Commissioner, Municipal Corporation, Faridabad) vide memo no. FCA(T)-Supdt.-78/7935-58 dated 18.12.1978 had allowed the change of land use from Agricultural Industrial. Which reads as under:*
>
> > *"In accordance with the Agreement on Form CLU-II necessary permission for change of land use in respect of the land measuring 427735 sq. yds. Bearing Khasra no. 25, 21/1, 1, 2, 3, 4/1, 7/2, 8, 9, 10, 5 and 6 falling in the revenue estate of village Sarai Khawaja, Faridabad. The Ballabgarh District Gurgaon situated at 13/6, Delhi Mathura Road, Faridabad has been allowed subject to the provisions of the Punjab Scheduled Road & controlled Area Restrictions of unregulated Development Act, 1963 and Faridabad Complex (Regulations & Development) Act, 1972 and rules framed thereunder Permission is subject to deposit the amount of Industrial Area Development Cess with the Haryana Urban Development Authority, Faridabad."*
>
> *It is relevant to mention here that aforesaid letter issued vide memo no. FCA(T)-Supdt.-78/7935-38 dated 18.12.1978, has been verified from the original dispatch register to corroborate the document provided by the HSVP. The perusal of the relevant entry of the dispatch register would shoe that the said letter was issued to M/s. Forgings Pvt. Ltd., 12/6, Sec. 27-C, Mile Stone, Faridabad and other concerned offices.*

> *9. It is pertinent to mention here that the CLU permission was issued by the then Chief Administrator Faridabad Complex Administration Faridabad was subject to deposit of the amount of Industrial Area Development Cess with the Haryana Development Authority Faridabad but the record does not indicate that whether this condition was fulfilled or not. Infact, the authority who can ascertain this fact is the Haryana Urban Development Authority, Faridabad now known as Haryana Shehari Vikas Pradhikaran (HSVP).*
>
> *10. That deponent submits that since the original record of the Forging Pvt. Ltd. is not available in this Corporation, therefore, the record so provided by the Administrator, HSVP reveals that Municipal Corporation Faridabad vide memo no. 1928 dated 16.12.2002 asked M/s. Forging Pvt. Ltd. to pay EDC amounting to Rs. 1,21,80,505/- @ Rs. 13,78,275/- per gross acre applicable at that time within a period of 30days. The outstanding external development charges is being calculated on the basis of memo no. 1928 dated 16.02.2022 with prevailing rate of interest. As per calculation the total outstanding EDC is Rs. 239630131/- (Twenty Three Crore Ninety Six Lakh Thirty Thousand One Hundred Thirty One rupees) interest calculated upto 31.12.2020."*

**13.** The contention of the Learned Sr. Counsel that the Affidavit filed by MCF before the Hon'ble Supreme Court showing that the land was of 'Industrial Use', is not relevant at this point of time and therefore the subject land has to be revalued, is untenable as the Hon'ble Supreme Court has dismissed the Civil Appeal and upheld the Order of this Tribunal, whereunder this Tribunal has held that the Appellant was not able to produce any evidence before the Liquidator that the land was of 'Industrial Use'. It is also an admitted fact that the Appellant did not pay the External Development Charges and there is an outstanding amount due with respect to the same.

**14.** This issue having attained finality in two rounds of litigation we are constrained to observe that the Appellant has filed this Appeal only to delay the proceedings, which practice is deprecated. We confirm the costs of Rs.1,00,000/- imposed by the Adjudicating Authority.

**15.** For all the aforenoted reasons, this Appeal is dismissed accordingly. No further order as to costs.

**[Justice Anant Bijay Singh]**
**Member (Judicial)**

**[Ms. Shreesha Merla]**
**Member (Technical)**

**Principal Bench,**
**New Delhi**
**23rd November, 2022**

*himanshu*