

**NATIONAL COMPANY LAW TRIBUNAL
CHENNAI BENCH – II**

IA/IB/426/2020 in CP/550/IB/2018

*(filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016
Read With Rule 11 of The National Company Law Tribunal Rules, 2016)*

In the matter of M/s. Surana Corporation Limited

Chandramouli Ramasubramaniam

Liquidator of M/s. Surana Corporation Limited
'RAJI' 3B1,
3rd Floor,
Gaiety palace, No.1L,
Blackers Road,
Mount Road,
Chennai – 600 002

..... Applicant

-Vs-

1. **Vinod Kumar Jain**
75/7B, Jermia Road,
Vepey,
Chennai – 600 007
2. **Tax Recovery Officer**
Deputy Commissioner of Income Tax,
Central Circle – 2 (3)
Income Tax Department
Room No.106, 1st Floor, Investigation Buildings,
No.46, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034
3. **The Sub registrar**
Office of the Sub- Registrar
11, Davidson Street, Sowcarpet,
Chennai – 600 079

..... Respondents

CORAM

**Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Applicant

:

Vipin Warriar, Advocate



For Respondent : *Rahul K Jain, Advocate
For R1*

*Raj Jhabakh, Advocate
For R2*

Order pronounced on 10th June 2022

ORDER

Per: ANIL KUMAR B, MEMBER (TECHNICAL)

The application under consideration is filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as the Code, 2016) read with National Company Law Tribunal Rules, 2016 (hereinafter called as Rules) by the Liquidator of the Corporate Debtor viz. Surana Corporation Limited, seeking relief as follows;

(a) declare that the attachment effected by the 2nd Respondent dated 01/09/2017 on land and building located at Old No.79, 119/120, New Door No 161, NSC Bose Road, Sowcarpet, Chennai, Tamil Nadu - 600 001, R.S.No. 8738 (extent 700 sq ft), Built Up Area 3500 sq.ft, as non est in law;

(b) direct 3rd Respondent, Sub Registrar Sowcarpet to take on file and register Sale Deed governing the land and building located at Old No.79, 119/120, New Door No 161, NSC Bose Road, Sowcarpet, Chennai, Tamil Nadu 600 001, R.S.No. 8738 (extent 700 sq ft), Built Up Area 3500 sq.ft;

(c) Pass any other order or orders that this Hon'ble Tribunal may deem fit and proper.

2. The Learned Counsel for the Applicant submitted that this Tribunal vide its Order dated 5th October 2018 admitted the

Company Application No. CP/550(IB) 2018 filed by State Bank of India under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("Code") against the Corporate Debtor and Corporate Insolvency Resolution Process of the Corporate Debtor was commenced on 5th October 2018. It was submitted that this Tribunal appointed the Applicant as the Interim Resolution Professional of the Corporate Debtor and subsequently the Applicant herein was appointed as Resolution Professional in the meeting of the Committee of Creditors. Further, it was submitted that this Tribunal vide its Order dated 25th October 2019 ordered liquidation of the Corporate Debtor and appointed this Applicant as the Liquidator.

3. It was submitted that in due discharge of duties as prescribed under the Code r/w the Insolvency and Bankruptcy Board of India (Liquidation Process (Regulation 2016 (the Regulations), the Applicant published a notice of sale of assets of the Corporate Debtor by way of e-auction on 18/04/2020. It was submitted that the entire assets of the Corporate Debtor were auctioned in one batch (Lot 1) and assets were individually auctioned in second batch (Lot 2 and Lot 3) and it was provided that the highest offer received will be declared successful. The reserved price for Lot 1 was fixed at Rs.4,01,00,000/- and Earnest Money Deposit (EMD) was fixed at 40,10,000/-. The said entire assets of the Corporate Debtor consists of two assets.

4. The Learned Counsel for the Applicant submits that one of the said assets comprises of the land and building located at Old No.79, 119/120, New Door No 161, NSC Bose Road, Sowcarpet, Chennai, Tamil Nadu - 600 001, R.S.No. 8738 (extent 700 sq ft). Built Up Area 3500 sq.ft (Asset No.1) and land and building at Old No.121, New Door No 80/163, NSC Bose Road, Sowcarpet, Chennai, Tamil Nadu 600 001, R.S.No. 8737 (extent UDS of 87.5 sq ft out of 1437 sq.ft with the super built up area of 309 sq.ft) (Asset No.2).

5. It was submitted that the 1st Respondent submitted the highest offer for an amount of Rs.7,41,00,000/- during the e-auction held on 20.05.2020 and was declared the successful bidder. Further, it was submitted that the 1st Respondent deposited the EMD on 12/05/2020 itself. It was submitted that the 1st Respondent obtained a certificate of encumbrance on the assets of the Corporate Debtor on 03/06/2020. The said encumbrance certificate shows an encumbrance on Asset No.1 in the form of an attachment by the 2nd Respondent effected vide TRC No.68/73/C2/2016/17 dated 01/09/2017. It was submitted that the 1st Respondent is ready for completing the sale but only after removing the said encumbrance. It is also understood that the 3rd Respondent may not take on file and register the Deed of Conveyance (Sale Deed) proposed to be entered in between this Applicant and the prospective purchaser

(Respondent No.1) so as to effect transfer of title of Asset No.1 in favour of Respondent No.1.

6. Thus, it was submitted that by virtue of various provisions of the Code, including but not limited to sec.36(3)(b) of the Code, the assets of the Corporate Debtor even if encumbered shall form part of Liquidation estate. Further by virtue of various provisions of the Code and Sec.238 of the Code, the Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being force or any instrument having effect of any such law. Under the said circumstances, the Learned Counsel for the Applicant submitted that the said attachment cannot act as a bar for completion of the prospective sale of the Asset No.1 in between the Applicant and the 1st Respondent.

7. The Respondents have filed their counter and we have perused the pleadings raised by the Respondents in their counter. As to the facts of the present case, it is seen that the CIRP in respect of the Corporate Debtor was initiated by this Tribunal on 05.10.2018, however the attachment in respect of the properties of the Corporate Debtor was made by the Income Tax Department as early as on 01.09.2017 which is much prior to the commencement of CIRP. Thus, by virtue of the Judgment rendered by the Hon'ble NCLAT in the matter of **Regional Provident Fund Commissioner -Vs- T.V.**

Balasubramanian in *Company Appeal (AT)(Ins) No. 1521 of 2019*
the attachment in respect of the properties of the Corporate Debtor
prior to the commencement of CIRP **cannot** be lifted.

8. However, in the present case, as per Section 36(3)(b) of IBC, 2016, the subject property forms part of the liquidation estate. It is not stated anywhere in the pleadings as to whether the Income Tax Department has submitted its claim before the Liquidator. If the 2nd Respondent has submitted its claim to the Liquidator, they cannot raise any objection to the sale of the subject property by the Liquidator and the dues of the 2nd Respondent would be paid as per the waterfall mechanism laid down under Section 53 of IBC, 2016.

9. Under such circumstances, since the subject property forms part of the liquidation estate of the Corporate Debtor, we hereby direct the 3rd Respondent to register the property in the favour of the 1st Respondent and the Liquidator is directed to receive the balance sale consideration from the 1st Respondent. With the above said directions, this Application stands **disposed of**.

- Sd -

ANIL KUMAR B
MEMBER (TECHNICAL)

Raymond

- Sd -

Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)