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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA(IBC)/1203/CHE/2021 in CP/433/IB/2018

*(filed under Section 35(1)(f), 60(5) and 238 of the Insolvency and
Bankruptcy Code, 2016)*

*In the matter of **KCT Steels Private Limited***

J. Karthiga
Liquidator of M/s. KCT Steels Private Limited
Sri Nivas, No.1, Old No.1052,
41st Street, Korattur,
Chennai – 600 080

... Applicant

-Vs-

1. The Special Officer (Revenue)
Kerala State Electricity Board Ltd.
Vydyuthui Bhavanam, Pattom,
Thiruvananthapuram – 695 004
2. Assistant Commissioner of State Tax (Special Circle)
State GST Department of Kerala
3rd Floor, State GST Complex (Behind Civil Station)
Palakkad – 678 001
Kerala
3. The Village Officer
Nallaepilly Village Office
SH 25, Nallepilly P.O., Chittur,
Palakkad – 678 553
Kerala
4. The Revenue Recovery Officer
QM65 +84V, Kenathuparambu
Kunathurmedu,
Palakkad – 678 001
5. The Thasildar
Nallepilly (Post)
Chittur Taluk Office,
Chittur – Gopalampuram Road,
Chittur – 678 101
Kerala

6. The District Collector
Office of the Palakkad District Collectorate
Civil Station,
Palakkad – 678 00
Kerala
7. Mr. Sangatina Syed Mohamed Jamaludheen
Proprietor of M/s. Mubasira Steels
71, Anbu Nagar,
South Ukkadam,
Coimbatore – 641 001

... Respondents

*Order Pronounced on **21st March 2022***

Present:

For Applicant : B. Dhanaraj, Advocate

For Respondent : Satish, Advocate for R1

*E.K. Kumerasan, Advocate
Sarath Babu, Advocate for R2 to R6*

A.R. Ramanathan, Advocate for R7

CORAM :

**R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

Under Adjudication is IA(IBC)/1203/CHE/2021 filed by the Applicant under Section 35(1)(f), 60(5) and 238 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 and 14 of National Company Law Tribunal Rules, 2016 seeking relief as follows;

- a) To direct the 3rd to 6th Respondents to mutate the Revenue Records with the name of the 7th Respondent / successful bidder and issue Fresh Thandaper Certificate in favour of the 7th Respondent M/s. Mubasir Steels, represented by its proprietor Mr. Sangatina Syed Mohamed Jamaludeen.
- b) To pass such further or other orders as may be deemed fit and proper in the facts and circumstances of the case and thus render justice.

2. The Learned Counsel for the Applicant submitted that the Liquidation in respect of the Corporate Debtor was ordered by this Tribunal vide order dated 31.01.2019 and the Applicant herein was appointed as the Liquidator. It was submitted that the Applicant / Liquidator has executed her duties in exercise of the powers vested upon her under the provisions of IBC, 2016 as the Liquidator of the Corporate Debtor. It was submitted that the Liquidator has already sold the properties of the Corporate Debtor and has distributed the same to the stakeholders and has also filed MA/76/2020 under Section 54(1) of IBC, 2016 seeking dissolution of the Corporate Debtor.

3. The Learned Counsel for the Applicant submitted that in the present case, one of the property of the Corporate Debtor was sold to the 7th Respondent, who is the successful bidder for a sum of Rs.89,00,000/- and in pursuance of the said consideration, the

Liquidator has also issued a Sale Certificate dated 21.11.2019. Further, it was submitted that the sale proceeds have already been distributed to the stakeholders in respect of the Corporate Debtor.

4. It was submitted that the Applicant was put to notice by the 7th Respondent herein, that the 3rd Respondent has issued a Letter dated 12.02.2020, stating inability to issue the Tandaper / Patta (Revenue Record of a Property) Certificate in the name of the 7th Respondent on account of alleged Attachments for Electricity Bill Dues and State Tax Dues. Hence the present Application has been filed the present Applicant on behalf of the 7th Respondent to direct the 3rd to 6th Respondents to mutate the Revenue Records in the name of the 7th Respondent.

5. The Learned Counsel for the Applicant placed reliance upon Section 32A of IBC, 2016 in support of his contention that the attachment in respect of the properties of the Corporate Debtor is required to be lifted on the sale of the liquidation assets of the Corporate Debtor is made;

32A. (1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in

the management or control of the corporate debtor to a person who was not-

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having fulfilled:

Provided further that every person who was a "designated partner" as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008 or an "officer who is in default", as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner in-charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not –

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the

commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

Explanation.- For the purposes of this sub-section, it is hereby clarified that,-

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person, who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process.]

6. In the present case, it was submitted that the attachment was made for the Electricity Dues and Commercial Taxes Dues on 07.10.2017 and 28.03.2015, which is much prior to the Liquidation proceedings which was commenced on 31.10.2019. Also, it was submitted that the said Authorities have filed their claim before the Liquidator on 16.02.2019 and 22.02.2019. It was also submitted that the Liquidator has obtained an Encumbrance certificate on 19.09.2019 which does not reveal any encumbrances or attachments as claimed by the 1st and 2nd Respondent.

7. The Learned Counsel for the Applicant submitted that the 7th Respondent has duly complied with the terms of the Auction and had obtained a Sale Certificate in their favour as on 21.11.2019, however owing to the action of the 1st to 6th Respondent, no action has been taken to mutate the Revenue Records and the 7th Respondent has been put to severe loss due to the non – use of the Land and Building in respect of which they had paid a sum of Rs.89 lakh. Under the said circumstances the Learned Counsel for the Applicant prayed that the present Application is required to be allowed.

8. The 1st Respondent has filed counter and it was submitted that the Liquidator is in full knowledge of the attachment and has proceeded with the e-auction on 02.08.2019 suppressing the attachment and in now feigning ignorance and trying to find excuses to cover up her lapses. It was submitted that the entire sale proceeds has been distributed to the International Asset Reconstruction Company Limited, who has not been shown even as Respondent in the present Application. Further it was submitted that the Liquidator has shown the auction purchaser as the 7th Respondent to this Application who has not preferred any application even after a period of 2 years.

9. The Learned Counsel for the 1st Respondent submitted that the Liquidator vide email dated 30.08.2019 conveyed to the 1st

Respondent that the assets of the Corporate Debtor was sold and that the proceeds will be applied against the claims of the 1st Respondent in terms of Section 53 of IBC, 2016. Further, it was submitted that vide email dated 15.09.2019, the Liquidator informed that all the proceeds from the sale of the assets of the Corporate Debtor were adjusted against the costs of the liquidator and the dues of the sole Financial Creditor and that no amounts were available to be paid to the 1st Respondent. It was also submitted that the Liquidator has deliberately chose to treat the 1st Respondent as an unsecured creditor, to deny its lawful dues.

10. The Learned Counsel for the 1st Respondent submitted that at this point of time, the Liquidator has filed an IA seeking to set aside or raise the attachment that exist in favour of the 1st Respondent in the property that was sold by the Liquidator to the 7th Respondent. It was further submitted that the Liquidator is very much aware of the pre-existing attachments in the property as evidenced by the letter dated 19.02.2019 issued by the 3rd Respondent Village Officer, wherein the letter dated 29.10.2018 and 08.02.2019 issued by the Applicant is referred to. Thus, it was submitted that the Liquidator is very much aware of the pre-existing attachments even at the stage of CIRP, before the Liquidation was ordered on 31.01.2019.



11. The Learned Counsel for the 1st Respondent submitted that the Liquidator has not communicated her decision of admission or rejection of the claim filed by the 1st Respondent and thereby the Liquidator has foreclosed the right of Appeal under Section 42 of IBC, 2016. However, it was submitted that if the claim of the 1st Respondent dated 22.02.2019 was deemed to have been admitted then the Liquidator was also very much aware of the attachment on the property against the claim of the 1st Respondent vide letter dated 19.02.2019 issued by the 3rd Respondent Village Officer. Hence it was submitted that the sale itself was fraudulently conducted by suppression of vital materials information and therefore the same is liable to be set aside and thus prayed for the dismissal of the present Application.

12. The Learned Counsel for the 7th Respondent submitted that he is a bonafide auction purchaser of the property and after paying the entire sale consideration, the 7th Respondent has approached the 3rd Respondent to mutate the records, however the 3rd Respondent has expressed his inability to issue the Thandaper Certificate in the name of the 7th Respondent on account of some alleged Attachment of Electricity Bill Dues and Tax Dues. It was submitted that for a period of 2 years, the 7th Respondent has not been in a position to convince the Respondents to issue the Tandapar Certificate in the name of the

7th Respondent on account of some alleged Attachment for Electricity Bill Dues and State Tax Dues. The Learned Counsel for the 7th Respondent submitted that had there been an attachment or encumbrance evidenced in the Encumbrance Certificate as on the date of e-auction, the 7th Respondent would not have involved himself to purchase the Assets of the Corporate Debtor in Liquidation. Under the said circumstances, the Learned Counsel for the 7th Respondent prayed that the present Application be allowed.

13. Heard the submissions made by the Learned Counsel for the Applicant and the 1st and 7th Respondent. We have perused the records, and it is seen from the letter dated 08.02.2019 issued by the Applicant to the 3rd Respondent, that the Applicant is very much aware of the fact that the property of the Corporate Debtor which is now sold to the 7th Respondent, is under attachment. The extract of the said letter is as follows;

“.....As informed you earlier, in pursuance of the provisions of IBC, the undersigned has taken over the control and custody of all the assets of the Corporate Debtor as per the provisions of IBC. The property of the Corporate Debtor situated in Old S.No. 296/1, New S.No.497/3, Block-37, Nattukkal, Nallepally Village, Chittur Taluk, Palakkad District, which is under your attachment is the only substantial asset of the Corporate Debtor and forms the liquidation estate of the Corporate Debtor for the purpose of liquidation of the above Corporate Debtor.”

14. Thus, from the above letter, it could be seen that the Applicant is very well aware of the fact as early as on 08.02.2019 that the said property of the Corporate Debtor is under attachment. Knowing fully well of the said fact, in the Asset Memorandum filed before this Tribunal the Liquidator has not disclosed about the same and also has failed to disclose the said fact in the E-Auction sale notice. This act of the Applicant amounts to suppression of fact. Having sold the property in favour of the 7th Respondent herein, it is really shocking to see that the Applicant has moved the present Application seeking to direct the 3rd and 6th Respondent to effect mutation of records of the name of the 7th Respondent. Once the Liquidator has sold the assets and has distributed the amount to the stakeholders and has also filed an application for dissolution of the Corporate Debtor, we are unable to comprehend as to how, at this point of time, the Liquidator can file an application seeking to aid the 7th Respondent, who has not preferred any application before this Tribunal.

15. Once the property has been sold on 'As is where is' condition, then the successful auction purchaser is required to bear the consequences which is arising out of such sale. Besides, if the successful purchaser is facing any difficulty, then the 7th Respondent is required to approach the appropriate forum before the State of Kerala seeking appropriate remedy as against 3rd to 6th Respondent.

After selling of the property through e-auction and after issuing the sale certificate by receiving the entire sale consideration, it is the duty of the successful purchaser to effect mutation of records and we find it shocking to see why the Liquidator is travelling with the 7th Respondent seeking directions to effect mutation of records on behalf of the 7th Respondent. The sale Certificate is registered with the Sub – Registrar on assurance by the Applicant to the 7th Respondent. It is required to be noted that whatsoever the issue that arises with the statutory authorities and the auction purchaser, the 7th Respondent herein, after the e-auction sale, is beyond the scope of IBC, 2016 and this Adjudicating Authority is not empowered to interfere with the same. Further, the 7th Respondent has to exercise his rights under state Revenue Laws and not under the provisions of IBC, 2016.

16. In so far as the merits of the present Application is concerned, we find that the Liquidator has filed the present Application directing relief to be granted to the 7th Respondent and the 7th Respondent has not filed any application before this Tribunal. Further, it is also alleged that the liquidator has suppressed the fact of attachment and has sold the property by way of e-auction to the 7th Respondent. In the said circumstances, we find that the Liquidator has no locus to file the present Application since no direct relief is being sought in the present Application by / against the Liquidator.

17. Further, from the perusal of documents, we find that there are serious lapses being committed on the part of the Applicant / Liquidator in relation to suppression of certain material fact in relation to attachment of property. Hence, we direct the *Registry* to mark a copy of this order to IBBI for its information and records.

18. In view of the above discussion, the present Application stands **dismissed**. Parties to bear their costs.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

R. SUCHARITHA
MEMBER (JUDICIAL)

Raymond