

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 435 of 2023 & I.A. No. 1439, 1440, 3319,
4136 of 2023, 4924, 6603 of 2024

IN THE MATTER OF:

Owners Welfare Association of Universal Trade Tower ...Appellant

Versus

Universal Buildwell Pvt. Ltd. & Anr. ...Respondents

Present:

For Appellant : **Mr. Pradeep Kumar Arya, Mr. Kapil Dhaka & Ms. Namrata Malik, Advocates.**

For Applicant **Mr. Nitesh Jain & Mr. Vatsal Chandan, IA 3319/23**

For Respondents : **Mr. Swapnil Gupta, Mr. Vaibhav Mendiratta, Mr. Harshit Gupta, Mr. Sajal Jain, Mr. Anmol Sehgal & Mr. Tarun Mishra, Advocates.**

ORDER
(Hybrid Mode)

[Per : Justice Rakesh Kumar Jain (Oral)]

04.02.2025 The Appellant, Owners Welfare Association of Universal Trade Tower (**UTT**), is aggrieved against the order dated 09.02.2023 passed by National Company Law Tribunal, New Delhi Bench (Court-III) (**Tribunal**) in IB-456(ND)/2018 and have prayed that the steps being taken by the Resolution Professional in terms of the order passed in CA-500/2019 and IA- 3209/2021 be declared as illegal.

2. Shorn of unnecessary details, M/s Universal Buildwel Pvt. Ltd. (hereinafter referred to as the **Corporate Debtor**) was pushed into the Corporate Insolvency Resolution Process (**CIRP**) on 03.07.2018, on an

application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**Code**) by Ms. Pallavi Joshi Bakhru (Financial Creditor).

3. UTT is one of the projects of the Corporate Debtor qua which the CIRP has been initiated. The Tribunal appointed Mr. Atul Kansal as the Resolution Professional of the Corporate Debtor to complete the CIRP Process.

4. The Resolution Professional filed an application under Section 60(5) of the Code bearing CA-500/2019 in which he made the prayer that *“Appoint Local Commissioner/ Technical person to identify and report the actual position on the above data compiled by the Resolution Professional”*.

5. The Resolution Professional had to file this application on the ground that *“In order to finalise list of assets of corporate debtor and achieve a Resolution Plan it is necessary that there is clarity qua sold, unsold and mortgaged area so that it can be determined that what can be included in the statement of assets belonging to Corporate Debtor for satisfaction of the claims of person who have filed their claims pursuant to commencement of the CIRP Process of the Corporate Debtor. This information is vital and necessary for every stakeholder”*.

6. While CA-500/2019 was pending, the Appellant filed an application bearing IA- 3209/2021 with the following prayers :-

“1. *Initiate the reverse CIRP qua the Universal trade tower;*

2. To exclude the UTT, a completed commercial project from the ongoing CIRP initiated by the Adjudicating Authority by its order dated 03.07.2018;

3. To stay the acts/interference of Resolution Professional in the maintenance of UTT, a completed project and not an asset of Corporate debtor anymore;”

7. There was another application filed by the RP bearing I.A. No. 1473/2022 in which he made the following prayers :-

“(a) Pass appropriate order with respect to maintain status Quo on the commercial complex namely "Universal Trade Tower" located at Gurgaon Sohna Road, Sector-49, Gurgaon, Haryana having approximately 2.05 Lakhs square feet built up area and 2.53 Lakhs Super Area,

(b) Direct Respondent to provide all necessary information required by Resolution Professional.

(c) Direct Local administration to provide all support to RP to ensure control of the building and common area by the Resolution Professional.

(d) Authorize Resolution Professional to appoint an agency by tender to do maintenance of building in the interest of all claimants of building and to identify unauthorized possession.

(e) Pass an order to restrict the respondent from conducting or allowing to conduct any construction activity on the said project till the completion of CIRP.”

8. This application was declined. The RP challenged the order dated 04.04.2022 passed in I.A. No. 1473 of 2022 by way of Company Appeal (AT) (Ins.) No. 720 of 2022. The said appeal was dismissed by this court but the following observations were made.

“3. Learned Counsel for the Appellant who is Resolution Professional submits that Appellant is not denying the submission made before the Court that project is not part of the Resolution Plan however under the conveyance deed certain rights were of the Resolution Professional and there are already Applications (I.A. No. 738 of 2019 and 500 of 2019) under Section 66 and 65 of the I&B Code, 2016 which are pending consideration.

4. Learned Counsel for the Respondent has submitted that Resolution Plan of the Corporate Debtor has already been approved and under the Resolution Plan there is specific clause 8 where Universal Trade Tower has been dealt with in following manner:

Sl. No.	Name of Project	Number of claims	Amount (Rs. In Crores)	Provision under Resolution Plan	Status/ Comments
....
8	Universal Trade Tower	43	20.9	Rights of allottees to be determined on basis of the outcome of Application CA No. 500/2019 for appointment of local Commission which is pending [pg. 335, Vol-II]	Project is complete and occupation certificate has been received. The entire area is fully sold to allottees, there is no asset belonging to Corporate Debtor in the Project. There is overselling due to multiple duplicate sales made by Corporate Debtor which would need to be resolved by the civil court and cannot be addressed in

					<i>insolvency proceedings.</i>
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5. It is submitted that in view of the aforesaid part of the Resolution Plan, liberty was reserved to the RP to resolve the issue in the Civil Court.

6. We are of the view that when the Universal Trade Tower is not the subject matter of the Resolution Plan, the Adjudicating Authority did not commit any error in rejecting prayers made in I.A. No. 1473 of 2022. In so far as the Applications which according to the Appellant have been filed for cancellation of deed they are pending consideration, we do not see any reason to make any observations with regard to such applications. These applications shall be considered in accordance with law. It is however observed that with regard to the pending I.As it shall be open for the parties to make such submission or to take such steps as may be permissible in law.

With these observations, we dismiss the Appeal.”

9. Both the applications i.e., IA 3209/2021 and CA 500/2019 were decided on the same date by the Learned Tribunal vide its order dated 09.02.2023. In the application bearing CA 500/2019 the Impugned Order is recorded as under :-

“CA-500/2019: *The Precipitation espoused by the RP in the captioned IA is that despite all possible endeavours made by him he is unable to identify the occupants of different dwelling units in Universal Trade Tower, Sector 49, Gurugram. According to him, the occupants of the dwelling units are not disclosing the correct factual position to him viz. whether they are actual/original/entitled allottees of the units or are merely occupying the*

same. Though the prayer made in the I.A. is for appointment of local Commissioner to verify the position and file the report, we are sanguine that such duty can be performed by the RP himself.

In the wake, we deem it appropriate to dispose of the IA with direction that the RP would approach the Deputy Commissioner Gurugram to seek the assistance of the administration, to find the actual position and the Deputy Commissioner would ensure to do the needful.

In the event of there being any need to depute police force, the Deputy Commissioner would also do that. Let the RP perform the necessary part of his job in terms of the directions as above. We also hope and trust that the occupants of the units would disclose the correct factual position to RP on his visit to the premises and raising the required interrogatory/ query.

It goes without saying that the RP would file the action taken in terms of our order as above within two weeks.”

10. The operative part of the order passed in IA No. 3209/2021 is reproduced as under :-

“IA-3209/2021: It is in this wake that the RP need to physically verify and ascertain the identity of the persons, who are occupying the dwelling units in UTT, so that he can give suitable reply/ answer to the claimants coming before him. According to the RP, the situation could crop up only because when the dwelling units are less, the allotment had been made in favour of more number of persons.

In view of the aforementioned, we need not to pass the order sought in the IA-3209/2021, as the ramification of the order dated 04.04.2022 is not that the UTT has been

excluded from the CIRP, It could not be taken into account by the SRA in his plan, only for the reason that on record, all the units herein had been sold out.

Nevertheless, in the interest of justice and fairness. we make it clear that while discharging its functions in terms of the order passed in CA-5003/2019 the RP will not cause inconvenience or disturbance to any of the bona fide allottee who are in occupation of the dwelling units and would perform the verification/scrutiny in a civilised manner without creating any unpleasant ambience.

We are sanguine that once the UTT is not part of the Resolution Plan, the RP would ensure that no part of the same is misused at his hand for any purpose in the process of CIRP.”

11. We have perused both the orders passed in IA 3209/2021 and CA 500/2019. The sum and substance of both the orders is that the RP, for the purpose of seeking the information about the units as to whether they are merely occupied as tenants or otherwise and who are the owners of the same, the Tribunal had directed the RP to approach the Deputy Commissioner, Gurugram to seek the assistance of the administration, to find the actual position and a direction has also been given to Deputy Commissioner to provide the same.

12. It has also been ordered that in case that police is also required than the RP shall approach the Deputy Commissioner who shall look into it and do the needful accordingly.

13. However, the request of the RP in CA 500/2019 for appointment of a legal Commissioner was declined and has been directed to conduct the survey and collect the information.

14. In the order passed in IA 3209/2021, it has been made clear by the Tribunal that it does not want to pass any order in IA 3209/2021 rather it has been made clear that while discharging his functions as RP, in terms of the order passed in CA 500/2019, he will not cause any inconvenience or disturbance to any of the bona fide allottees who are in occupation of the dwelling units and shall perform the verification/scrutiny in a civilised manner without creating any unpleasant atmosphere.

15. The association has approached this court, by this appeal with the apprehension that the RP may not create any unsavoury situation at the time of collecting information from them because they are stated to be bona-fide owners/ allottees of the concerned units.

16. Counsel for the RP has submitted that he wants to enquire about the chain of title of the occupant/ members of the association according to him he will only ask the unit holders as to whether they are occupying flat/ unit as the owner/ allottee or as a tenant or otherwise.

17. In case, the person occupying the unit states that he is the owner of the property of the unit then the RP may ask the documents of ownership and in case the person in occupation states that he is in possession as a tenant then the same thing can be asked by the RP about the document of the tenancy in his possession.

18. We do not find any error in the Impugned Order in CA 500/2019 because the allegations are that some units are sold multiple times and no title is vested in the person occupying the unit as the owner. In this regard, during the course of hearing, he has pointed out that one of the person, namely, Rajeev Behl who is shown in Unit No.-8A and 21 in Universal Trade Tower has sent an email on 10.05.2024 at 6:50 PM to the RP that he is not the occupant of the said unit.



ATUL KANSAL <cirp.universal@gmail.com>

Subject: Kindly Attention: Status of Universal Trade Tower under CIR process

message

From: Rohit Aggarwal <rohitaggarwal@hotmail.com>
To: ATUL KANSAL <cirp.universal@gmail.com>
Cc: Rajeev Behl <rajeev@alliancebcorp.in>

Fri, May 10, 2024 at 6:50 PM

Dear Atul Ji,
I am NOT in possession of the Unit No.-8A and 21 in Universal Trade Tower.
Regards
Rohit

On 8 May 2024, at 3:43 PM, ATUL KANSAL <cirp.universal@gmail.com> wrote:

Dear Sir

This is with reference to a claim filed by you for Unit No. 8A and 21 in Universal Trade Tower. Kindly confirm on an urgent basis that you are in possession of said Unit or not? Matter of possession is pending before Honorable NCLAT.

Regards;
Atul Kumar Kansal
Resolution Professional
Universal Buildwell Private Limited
Regn No. IBBI/IPA-001/IP-P00035/2016-17/10088
Atul Kumar Kansal
Resolution Professional
Universal Buildwell Private Limited
Regn No. IBBI/IPA-001/IP-P00035/2016-17/10088

19. Keeping in view the aforesaid facts and circumstances, the present appeal is hereby dismissed. It is made clear that RP shall make enquiry only in regard to the factual position regarding the occupational capacity of

the unit holder and in this process as directed in the order passed in IA 3209/2021 shall perform his duties in a civilized manner.

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

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

Sim/RR