

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

**ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL
COMPANY LAW TRIBUNAL, CHENNAI BENCH, HELD ON 12-05-2023 AT
12.15 P.M. THROUGH VIDEO CONFERENCING:**

**PRESENT : SHRI. SANJIV JAIN, HON'BLE MEMBER (JUDICIAL)
SHRI. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**

APPLICATION NUMBER : MA/360/2019
PETITION NUMBER : CP/114/IB/2018
**NAME OF THE PETITIONER : M.Murugesan (RP) M/S Velohar Infra Pvt
Ltd**
NAME OF THE RESPONDENT(S) : Vijayalakshmi & others
UNDER SECTION : Sec 66 of IBC, 2016

ORDER

Ld. Counsel Mr. S. Satyanarayanan for the Applicant and Ld. Counsel Ms. Pratiksha for 6th Respondent are present. None appears for Respondents 1 to 5.

1. This application under Section 66 of IBC, 2016 has been filed by the Resolution Professional of M/s. Velohar Infra Private Limited against Ms. Vijayalakshmi and Others alleging therein that based on the available documents and working papers of the statutory auditor, one property viz., Plot No. 4 in Wood Creek County was sold to Mr. Sanjay Zachariaiah (Respondent No.6) on 09/03/2017 for a sale consideration of

-SD-

Rs.1,85,00,000/- vide Doc No. 964 of 2017/Sale Deed as Annexure-1A. The market value of the property was ascertained as Rs.1,98,00,000/-. It is alleged that from the working papers, it is ascertained that the actual sale consideration was Rs.4,00,00,000/- which is not reflected in the financial statement. It is alleged that the Respondents 1 to 4 with a malafide intention, created the bogus entries by suppression of profits on the sale of assets to defraud the creditors of the Corporate Debtor.

2. It is prayed that the above transfer/transaction be declared as a fraudulent transaction under Section 66 of IBC and the same may be directed to be vested in the Corporate Debtor. It is also prayed that the Respondents 1 to 4 may be directed to make contribution to the assets of the Corporate Debtor.

3. On getting notice, Respondents 1 to 3, Respondent No. 5 and Respondent No. 6 filed their replies/counters. Respondent No. 1 to 3 alleged that the Corporate Debtor had taken a housing loan from IIFL for a sum of Rs.1,70,46,261/-. The loan account was classified as NPA. To clear the outstanding to IIFL, the Corporate Debtor sold the property to 6th Respondent for an actual sale consideration of Rs.1,85,00,000/- due to depreciation of value of the property since the time of last sale. At the insistence of the Sub-Registrar, the market value was mentioned as Rs.1,98,00,000/-. It is stated that the Respondents had clarified from the

5th Respondent about the averment and he has clarified that he would have mentioned Rs.4,00,00,000/- by oversight. It is stated that had the market value of the property been Rs.4,00,00,000/-, the Sub-Registrar would not have allowed the registration to take place. Respondent No.5 in his reply has also stated that the Respondent would have mentioned Rs.4,00,00,000/- by oversight. He reiterated what has been stated by Respondent No. 1 to 3. Respondent No.6 was a person who had purchased the property. He has given the details of the payments made in his reply and stated that the sale consideration was Rs.1,85,00,000/- which was paid. The Sub-Registrar mentioned the market value as Rs.1,98,00,000/- on the basis of the previous documents relating to the property. He stated that he has no relationship with the Corporate Debtor.

4. Rejoinder was filed reiterating the facts as stated in the application alleging that the impugned sale transactions carried out by the Respondents are fraudulent in nature and attract Section 66 of IBC.

5. We have heard Ld. Counsel for the parties.

6. A perusal of the sale deed at Page 66 of the application reveals that the property was sold for a sale consideration of Rs.1,85,00,000/-. The sale deed contains Annexure-1A where market value of the property has been shown as Rs.1,98,00,000/-. There is rough calculation made on receipt voucher/general voucher at Page 16 and 17 of the application

without any authentication from the statutory auditor. There is no certificate to this effect that the market value of property is Rs.4 Crore. Respondent No. 5 who is the Chartered Accountant in his reply at para-5 has clearly stated that the Respondent would have mentioned Rs.4 Crore by oversight. If the market value of the property would have been Rs.4 Crore, Sub-Registrar would not have allowed the registration to take place.

7. In the instant case, the Applicant has not placed any document or the sale deed or the valuation report of the similarly situated property. He based this application mainly on the rough sheet without any authentication.

8. Section 66 of IBC relates to fraudulent trading or wrongful trading. It provides that if during the CIRP/liquidation, it is found that any business of the Corporate Debtor had been carried on with intend to defraud creditors of the Corporate Debtor or for any fraudulent purpose, the Adjudicating Authority may on an application of the Resolution Professional can make the person liable to contribute to the assets of the Corporate Debtor.

9. In the instant case, we do not find any fraudulent transactions to initiate any action under Section 66 of IBC. It has been clearly explained by Respondent No. 1 to 3 and is also evident from the sale deed that the sale consideration was Rs.1,85,00,000/-. There was depreciation of the

-SD-

value of the property since the time of the last sale. At the insistence of the Sub-Registrar, the market value was mentioned as Rs.1,98,00,000/-. We find substance in the contention of the Respondents that had the market value of the property been Rs.4 Crores the Sub-Registrar would not have allowed the registration to take place.

10. For the aforesaid reasons, we dismiss this application with no orders as to costs as the same is devoid of merits.

11. Accordingly, this application stands **disposed off**.

-SD-

SAMEER KAKAR
Member (Technical)

suguna

-SD-

SANJIV JAIN
Member (Judicial)