



**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH**

**COURT- III**

**IA-2427/2022 IA-2345/2022**

**In**

**IB-11(ND)/2022**

**IN THE MATTER OF**

**Rudra Buildwell Constructions Pvt Ltd.**

**...Operational Creditor**

**Vs.**

**M/s. PSA Impex Pvt. Ltd.**

**...Corporate Debtor**

**AND IN THE MATTER OF IA-2427/2022:-**

**Prabhat Ranjan Singh**

**Interim Resolution Professional**

**For PSA Impex Pvt Ltd**

**... Applicant**

**Versus**

**SLB Welfare Association**

**...Respondent**

**AND IN THE MATTER OF IA-2345/2022:-**

**Prabhat Ranjan Singh**

**...Applicant/IRP**

**Coram:**

**SHRI SATYA RANJAN PRASAD**

**Hon'ble Member (Technical)**

**Shri BachuVenkatBalaramDas**

**Hon'ble Member (Judicial)**

**Delivered on: 25.07.2022**

**Appearances:**

**Operational Creditor : Adv. Abhishek Anand, Adv. Karann Kohli in IA 2427 of 2022, Adv. Mohit Uppal for IRP, Adv. Prabhat Ranjan Singh IRP**

**For the Corporate Debtor : Adv. Shantanu Singh, Adv. Ravi Sehgal**

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## ORDER

**Per:BachuVenkatBalaram Das, Member (Judicial)**

**IA-2427/2022:-**

The present application has been filed by the Interim Resolution Professional under Section 60(5) of IBC read with Section 18(f) read with Rule 11 of the NCLT Rules, 2016 seeking a direction against the Respondent i.e., SLB Welfare Association to handover the peaceful custody and control of the project side being real estate project "Sampada Livia" situated at GH-06B, CHI-05, Express Way, Greater Noida, Gautam Budh Nagar, Uttar Pradesh-201310 being an assets of the Corporate Debtor to the Applicant in terms of provisions of the Code. The Applicant has also sought directions to the Local District Administration under Regulation 30 of CIRP Regulation to provide necessary assistance to the Applicant for taking position of the project site.

It is stated by Ld. Counsel appearing for the Applicant that, CIRP of the Corporate Debtor was commenced on 18.04.2022 and Mr. Prabhat Ranjan Singh was appointed as Interim Resolution Professional by this Adjudicating Authority. Thereafter, the Interim Resolution Professional took over the management of the Corporate Debtor in accordance with the provisions of the IBC, 2016. It is stated that while perusing the records of the Corporate Debtor, the Applicant came to know that Real Estate Project, "Sampada Livia" situated at GH-06B, CHI-05, Express Way, Greater Noida, Gautam Budh Nagar, Uttar Pradesh-201310 is under the ownership of the Corporate Debtor. The Applicant visited this project site to take over the custody of the said asset, however, the Respondent obstructed the Applicant and refused to hand over the possession of the same. It is also submitted that the Respondent i.e., SLB Welfare Association informed the IRP that the Corporate Debtor had defaulted in completing the project within the stipulated time and in a proceeding arising out of RERA the U.P. RERA, by order dated 30.09.2019 directed revocation of the registration of the promoter under Section 7 of the RERA Act, 2016 which

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was subsequently upheld by Hon'ble Allahabad High Court vide order dated 09.03.2021 and decided to handover the project to the Respondent as per Section 8 of RERA Act, 2016 to ensure completion of the project.

Mr. Shantnu Singh, Ld. Counsel appearing for the SLB Welfare Association contended that the project stands transferred to the welfare association by virtue of the orders passed by the RERA Authorities and the property does not belong to the Corporate Debtor and therefore cannot be handed over to the IRP. The Ld. Counsel also contended that the order initiating CIRP has been obtained by fraud and misrepresentation and IRP also has been appointed by the Operational Creditor in a fraudulent manner and therefore, prayed that the present application is liable to be dismissed.

Mr. Abhishek Anand, Ld. Counsel submitted that under Section 238 IBC, the IBC will have over-riding effect over all other laws and therefore the order passed under the RERA Act will not come in the way of the CIRP Process. He has relied upon the judgment of the Hon'ble Supreme Court of India in the matter of Poiner Urban Land and Infrastructure Limited and Anr. Vs. Union of India and others, Writ Petition (Civil) No. 43 of 2019 dated 09.04.2019 wherein the Hon'ble Supreme Court has held that RERA and the Code must be held to co-exist and, in event of clash, RERA must give way to the Code.

He further contended that the provisions under Section 8 of the RERA Act do not grant ownership or possession rights to the allottees. The RERA Court only permitted the SLB Welfare Association to complete the project and therefore, the project site in question still belongs to the Corporate Debtor and therefore ought to be handed over to the IRP to enable him to complete his duties as envisaged under Section 18 of the IBC, 2016.

We have heard the submissions made by both the Ld. Counsel with regard to the objection raised by the Ld. Counsel for the Respondent that the order initiating CIRP was obtained in a fraudulent manner, we do not think that the said question can be gone into by this Tribunal in the present IA in as

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much as an appeal against the order dated 18.04.2022 initiating CIRP of the Corporate Debtor is under challenge before the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 642 of 2022 titles as SLB Welfare Association Vs. PSA Impex Private Limited & Anr., and is pending for adjudication. Further, there is no order of stay granted by Ld. Appellate Tribunal in the operation of CIRP of the Corporate Debtor or restraining the IRP to proceed with the CIRP.

Moreover, it is the settled law that the provision under Section 238 IBC has overriding effect over the provisions of other legislations including provisions of the RERA Act 2016. Further, the Resolution Professional is duty bound under the provisions of Section 18 of IBC, 2016 to perform certain duties and obligations as envisaged under the said provision including taking over the control and custody of the assets of the Corporate Debtor under Section 18 (f).

In view of the aforesaid discussions and taking into consideration the facts and circumstances of the case, we direct the Respondent, SLB Welfare Association to handover peaceful possession and custody of the project in question to the Applicant within two weeks and file compliance report before this Tribunal and we also direct the Local District Administration to provide necessary assistance to the Applicant for taking possession of the project site, if required.

**IA allowed.**

**IA-2345/2022:-**

The present application has been filed under Section 21(6A)(b) seeking appointment of Mr. Akarsh Kashyap as the Authorized Representative of Financial Creditor of the Corporate Debtor in the class of allottees under Real Estate Project. Mr. Prabhat Ranjan Singh Applicant/IRP submitted that majority of the home buyers have voted in favour of Mr. Akarsh Kashyap to be appointed as Authorized Representative for the Financial Creditors in class.

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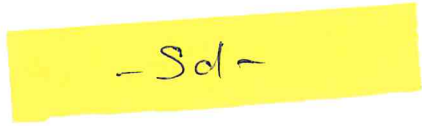


Considering the facts of the case we direct the appointment of Mr. Akarsh Kashyap as the Authorized Representative of the Financial Creditor in class.

The IA is **allowed**.

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**(SATYA RANJAN PRASAD)**  
**MEMBER (TECHNICAL)**



**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**

IA-2427/2022 IA-2345/2022  
In  
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