

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT - IV

Item No. 103

IA/5536/ND/2022 in IB/552/ND/2021

IN THE MATTER OF:

Omkara Assets Reconstruction Pvt. Ltd.	...	Applicant
Versus		
K.S.N Buildwell Pvt. Ltd.	...	Respondent

Order under Section 7 of IBC, 2016.

Order pronounced on 17.10.2023

CORAM:

**MR. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)
DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)**

ORDER

Order pronounced in open Court vide separate sheets.

IA/5536/ND/2022 in IB/552/ND/2021 stands allowed.

Sd/-

**DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)**

Sd/-

**MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV**

**Interlocutory Application No.5536/ND/2022
IN
Company Petition No. (IB)-552/ND/2021**

IN THE MATTER OF:

OMKARA ASSET RECONSTRUCTION PRIVATE LIMITED

... FINANCIAL CREDITOR

VERSUS

K.S.N BUILDWELL PRIVATE LIMITED

... CORPORATE DEBTOR

AND IN THE MATTER OF:

MR. MOHIT GOYAL
RESOLUTION PROFESSIONAL
K.S.N. BUILDWELL PRIVATE LIMITED

... APPLICANT

VERSUS

UTTAR PRADESH HOUSING AND DEVELOPMENT BOARD
(U.P. AVAAS VIKAAS PARISHAD) & OTHERS.

... RESPONDENTS

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on:17.10.2023

ORDER

PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

The instant application has been filed on behalf of Mr. Mohit Goyal ('Applicant'), Resolution Professional of M/s. K.S.N Buildwell Private Limited ('Corporate Debtor') against (i) Uttar Pradesh Housing and Development Board (U.P. Avaas Vikaas Parishad) ('Respondent No.1'), (ii) District Magistrate, Ghaziabad ('Respondent No.2), (iii) Sub-Divisional Magistrate Ghaziabad ('Respondent No.3') and (IV) Tehsildar, Sadar ('Respondent No.4') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016, inter alia, seeking the following relief(s):-

- a) Pass a direction to the District Magistrate/Sub-Divisional Magistrate/Tehsildar, Ghaziabad to immediately desear the premises at Sarvottam Pride, Plot No.-C1, Atal Chowk, Pocket A, Sector 16, Vasundhara, Ghaziabad, Uttar Pradesh – 201012.
- b) Pass a direction to Housing Board to file its claim, if any, in terms of the Code, 2016
- c) Pass any other order/orders as may be deemed necessary in the facts and circumstances of the case.

2. Briefly stated facts of the present case as averred by the applicant and relevant for adjudication of the present issue are that the Corporate Insolvency Resolution Process was initiated against M/s. KSN Buildwell Private Limited ('Corporate Debtor') vide this Adjudicating Authority's order dated 13.05.2022 on an application i.e., C.P.(IB)/552/2021 filed under Section 7 of the Code, 2016 by M/s. Omkara Asset Reconstruction Private Limited ('Financial Creditor'). The applicant was appointed as the Resolution Professional of the

Corporate Debtor vide this Adjudicating Authority's order dated 11.10.2022 by replacing Mr. Anil Matta, erstwhile Resolution Professional of the Corporate Debtor.

3. The Applicant after taking charge as the Resolution Professional of the Corporate Debtor came to know that a demand of Rs. 81,62,95,193/- was raised by the Respondent No.1 towards the outstanding amount of monthly land charges and penal interest cumulatively. Consequently, the District Magistrate, Ghaziabd had sealed the premises at Sarvottam Pride, Plot No-C1, Atal Chowk, Pocket A, Sector 16, Vasundhara, Ghaziabad, UP-201012 ('Premises') during the Corporate Insolvency Resolution Process period of the Corporate Debtor.
4. Also, the erstwhile Resolution Professional as well as the Applicant herein had vide letter(s) dated 27.06.2022, 23.07.2022, 02.08.2022, 13.10.2022 had requested the Respondent No.1 to file their claim in terms of the provisions of the Code, 2016, however, the Respondent No.1 had not filed their claim with the Applicant in the CIRP of the Corporate Debtor.
5. It was also submitted that besides requesting the Respondent No.1 to submit claim, the Applicant had also approached the office of Tehsildar, Ghaziabad for immediate de-sealing of the premises since the sealed premises contains relevant documents and other records of the Corporate Debtor which are relevant for conducting the CIRP of the Corporate Debtor and also for conducting the valuation of the sealed property.

6. The Respondent No.1, Uttar Pradesh Housing and Development Board (U.P. Aavaas Vikaas Parishad had filed its reply and submitted that the Corporate Debtor had entered into a Hire Purchase Agreement dated 30.03.2010 with the Respondent No.1 with respect to the said sealed property. The Clause 3(N) of the said Hire Purchase Agreement dated 30.03.2010 provides that if the Corporate Debtor failed to pay three continuous installments, the lease shall stand cancelled and since the Corporate Debtor had failed to pay the installments, therefore on a default to make payment of Rs.81,62,95,193/- till the year 2020, the said property was got sealed by the Respondent No.1. It is further submitted that as the Corporate Debtor had defaulted in payment of more than three continuous installments as per the Hire Purchase Agreement dated 30.03.2010, the said Hire Purchase Agreement dated 30.03.2010 stood cancelled and the Corporate Debtor only remains as a Tenant with the ownership rights of the property being vested in with Respondent No.1 only.
7. The Respondent No.1 further submitted that the mandate of IBC is very clear that any property of a third party which is in the possession of the Corporate Debtor cannot be taken control or custody by the IRP/RP of the Corporate Debtor. Furthermore, it was submitted that no documents have been placed on record by the applicant to prove that the ownership rights over the sealed property is with the Corporate Debtor.
8. It was also submitted that in view of the provisions of Section 15 & 56 of UP Awas Vikas Parishad Act, 1965 read with the aforesaid Hire Purchase Agreement, the assets could not be dealt by the Applicant as the same belongs to a third Party i.e., the Respondent No.1. To support its contention, the Respondent No.1 placed reliance on

Hon'ble Supreme Court's judgement in **Municipal Corpn. of Greater Mumbai v. Abhilash Lal [(2020)13 SCC 234]**.

9. Also, the Respondent No.1 submitted that in a similarly situated case wherein the assets whose ownership were with the Respondent No.1 were included in the Resolution Plan of a Corporate Debtor who defaulted in the payment of instalment as per Hire Purchase Agreement, is pending before the Hon'ble Supreme Court in Civil Appeal No. 5767/2022 and a status quo order dated 19.08.2022 is passed by the Hon'ble Supreme Court of India.
10. In Rejoinder filed on behalf of the applicant, it is submitted that in fact the Respondent No.1 has filed its claim for a sum of Rs.1,39,47,89,026/- in Form-B, for the value of the plot after adjusting the payments already made, on 13.01.2023 and the Applicant after verification of its claim and documents submitted with the claim form, had made the Respondent No.1 a member of the Committee of Creditors of the Corporate Debtor. It is contended by the Applicant that as the Respondent No.1 has already filed its claim for the outstanding amount towards the land charges of the property, the Respondent No.1 cannot be permitted to cancel the Hire Purchase Agreement.
11. The Applicant further submitted that the Applicant had no knowledge in respect of the documents executed between the Respondents and the Suspended Directors of the Corporate Debtors since no documents are handed over by the suspended directors, for which an I.A No. 112 of 2023 under Section 19(2) of the Code, 2016 is filed by the Applicant and is pending adjudication by this Adjudicating Authority.

12. Further, the Applicant submitted that the act of sealing the property during the Corporate Insolvency Resolution Process of the Corporate Debtor in light of the moratorium imposed under Section 14 of the Code, 2016 is bad in law. To support the above contention, the applicant also placed reliance on Hon'ble NCLAT's judgment in **Anish Niranjan vs. Chief Officer, Nagar Parishad Himayatnagar [(2021) SCC OnLine NCLT 7940, Para 12]**.
13. We have heard Ld. Counsels for the parties and perused the averments made in the application and the written submissions filed by the parties. Pertinently, neither the Applicant nor the Respondent No.1 have placed on record of this Adjudicating Authority, the Hire Purchase Agreement dated 30.03.2010 in respect of "Sarvottam Pride, Plot No.-C1, Atal Chowk, Pocket A, Sector 16, Vasundhara, Ghaziabad, Uttar Pradesh – 201012" ('sealed property').
14. Be that as it may, coming to the factual matrix of the present case, it is an admitted fact that the property 'Sarvottam Pride, Plot No.-C1, Atal Chowk, Pocket A, Sector 16, Vasundhara, Ghaziabad, Uttar Pradesh – 201012' was in possession of the Corporate Debtor at the time of commencement of Corporate Insolvency Resolution Process against the Corporate Debtor. It has not been specifically denied by the Respondent No.1 that the said property was sealed by the Respondents after the commencement of Corporate Insolvency Resolution Process against the Corporate Debtor vide this Adjudicating Authority's order dated 13.05.2022.
15. In order to adjudicate the instant application in the given facts of the present case, it would be relevant to refer to Section 14 of the Code, which is as under:

"Section 14: Moratorium

*14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—

(a)*****

(b)*****

(c)*****

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

[Explanation.—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

16. It is clear from a perusal of the above extract that Section 14 of the Code deals with the declaration of moratorium and Section 14(1)(d) of the Code specifically prohibits the recovery or repossession of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor during CIRP. The Respondent No.1 have themselves argued that on account of default in payment of Hire Purchase instalments, the said Hire Purchase Agreement stood cancelled and the Corporate debtor only remained in possession of the property as a Tenant. Therefore, even without delving deeper into the question of ownership of the Impugned property, we are of the considered view that provisions of Section 14(1)(d) of the Code, 2016 shall be squarely applicable in the instant case.

17. As regard to the Respondent's contention that the property was sealed because the instalments as per the Hire Purchase Agreements were not paid by the Corporate Debtor, we are of the view that any violation of the terms of the Hire Purchase Agreement, would not give any substantial ground to the Respondent to seal the property of the Corporate Debtor in violation of the moratorium order imposed vide this Adjudicating Authority's order dated

13.05.2022. Further, it is also evident from record that the Respondent had already filed their 'Claim' as an 'Operational Creditor' with the RP under Form B on 13.01.2023. We are of the considered view that once the Respondent No.1 has filed its claim for the value of land charges, thereafter, they could not keep possession of the property during the CIRP Period as it would tantamount to illegal exercise of authority during the Moratorium period which is clearly barred by Section 14(1)(d) of the Code, 2016. Further, such sealing of property will also restrain the Resolution Professional from carrying out his duties under Section 18 and 25 of the Code, 2016 and will thus, frustrate the objectives of the I&B Code, 2016 itself.

18. Further, as regards the Respondent's reliance on the Hon'ble Supreme Court's status quo order dated 19.08.2022 in Civil Appeal No. 5767/2022, we are of the view that the issue pending before the Hon'ble Supreme Court is, "whether the property not belonging to the 'Corporate Debtor' can be treated as part of the property for preparation of Resolution Plan?". Whereas the issue in the present application is as to the sealing of property in violation of Section 14(1)(d) of the Code, 2016 which is different from the issue pending before the Hon'ble Supreme Court. Therefore, relied judgement is not helpful to the Respondent.

19. In view of the aforesaid discussion, this Adjudicating Authority is of the considered view that the Respondent's action of sealing the property which was in possession of the Corporate Debtor during the Corporate Insolvency Resolution Process of the Corporate Debtor is illegal in view of the Moratorium period imposed under Section 14 of the Code, 2016. We also hold that such sealing of property by UP Awas Vikas Parishad, which is an operational creditor who has already filed its claim in Form-B and has already been given a seat in the CoC, also puts the Resolution Professional in such a position that he cannot carry out his mandatory duties under the Code, 2016 to keep the Corporate Debtor as a going concern, thereby frustrating the very objectives of the I&B Code, 2016, which cannot be allowed by this Adjudicating Authority.

20. The Respondents are, therefore directed to immediately desal the premises at Sarvottam Pride, Plot No.-C1, Atal Chowk, Pocket A, Sector 16, Vasundhara, Ghaziabad, Uttar Pradesh – 201012 but not later than 1 week from the pronouncement of this order. Besides, the Respondent No.1 copy of this order be also served on the DM/SDM/ Tehsildar, District Ghaziabad for compliance.
21. The Respondents are further directed to submit a compliance report of the present order within 2 weeks of the pronouncement of this order by way of an affidavit.
22. Any current charges in respect of the impugned property payable by the Corporate Debtor to the Respondent No.1 shall be paid as CIRP Cost of the Corporate Debtor by the Resolution Professional.
23. In view of the above order, the present Interlocutory Application i.e., **I.A/5536/2022 stands allowed**. No orders as to cost.

Sd/-

**(DR.BINOD KUMAR SINHA)
MEMBER (T)**

Sd/-

**(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)**