

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI ATUL CHATURVEDI,
HON'BLE TECHNICAL MEMBER**

IA No. 18/JPR/2019
In CP No. (IB)-57/7/JPR/2018

IN THE MATTER OF:

VEENA PARAKH AND ANR.

...Financial Creditor/Applicant

VERSUS

M/S SNG REAL ESTATE PRIVATE LIMITED

...Corporate Debtor/Respondent

MEMO OF PARTIES

IA No. 18/JPR/2019:

MS. VEENA PARAKH & ANR.

C-44, Dev Nagar, Tonk Road,
Jaipur - 302018 (Rajasthan)

*Through its Power of Attorney
Holder Ms. Shanti Modi*

...Financial Creditor No. 1

MS. DOLLY JAIN

*Through its Power of Attorney
Holder Ms. Shanti Modi*

...Financial Creditor No. 2

VERSUS

M/S SNG REAL ESTATE PRIVATE LIMITED

R/o: 707, Paris Point Bani Park,
Jaipur - 302016 (Rajasthan)

...Corporate Debtor

FOR THE APPLICANT(S) : Aditya Vijay, Adv.
FOR THE RESPONDENT : Naresh Kumar Sejvani, Adv.

Order Pronounced On: - 12.07.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The brief facts of the present case are that the Petitioners namely Ms. Veena Parakh and Ms. Dolly Singh jointly preferred an Application under Section 7 of Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') through Power of Attorney ('POA') executed in favour of Ms. Shanti Modi for initiating Corporate Insolvency Resolution Process ('CIRP') against M/s SNG Real Estate Private Limited. ('Respondent'/ 'Corporate Debtor').
2. During the process of scrutiny of the file, the Registry pointed out certain defects which are as follows:
 - i. *Power of Attorney in favour of Smt. Veena Parakh executed by Dolly Jain for entering into MoU dated 12.01.2016 not submitted/not available.*
 - ii. *Original Power of Attorney (Pages 91 & 92) not produced for verification.*
 - iii. *Power of Attorney executed by Veena Parakh in favour of Ms. Shanti Modi submitted at page No. 88-90 is not acceptable because it has been executed at Jaipur but on page No. 90 it is declared that it has been executed in USA*
 - iv. *Tripartite Agreement entered with SBI not submitted.*
 - v. *Copy of agreement entered between Corporate Debtor and Financial Creditors by which it was consented to allot another flat to the Financial Creditors in lieu of Return on Investment of the first Two Years not submitted (as mentioned at Page No. 4 of the Application)*
 - vi. *Annexures 1-9 of MoU not submitted/ not available.*

3. The captioned matter was listed for hearing before this Adjudicating Authority and vide Order dated 04.10.2018 this Adjudicating Authority directed the Applicant to cure the defects within a period of one week.
4. The Applicant preferred an Affidavit vide Diary No. 350/2018 dated 16.11.2018 stating that the with respect to the *Defect No. IV*, the Tripartite Agreement has been submitted by the Applicant to its Banker and despite repeated request, the Applicant has not been able to avail the said Agreement. With respect to *Defect No. III* i.e. Power of Attorney, it has been submitted that the place of execution was mentioned as USA inadvertently whereas the same was executed in Jaipur and affidavit of the executant as well as Ms. Shanti Modi has been annexed for the same.
5. Later the Applicant moved an Application bearing *IA No. 18/JPR/2019* vide Diary No. 37/2019 dated 09.01.2019 wherein exemption was sought from filing certain documents i.e. Copy of Agreement executed between the Corporate Debtor and Financial Creditor wherein it was consented to allot another flat to the Financial Creditors in lieu of Return on Investment and Power of Attorney executed in favour of Ms. Veena Parakh (Financial Creditor No. 1) by Ms. Dolly Singh (Financial Creditor No. 2) for entering into the MOU dated 12.01.2016.
6. The Corporate Debtor raised objections against the application through preferring a reply vide Diary No. 487/2019 dated 25.03.2019. It was pointed out that the exemption sought by the Application was only with

regard to the 2 documents whereas against the remaining defects, the Applicant failed to adhere/ rectify the defects.

7. The Corporate Debtor was granted an opportunity to file reply on multiple occasions and vide Order dated 22.02.2019, the opportunity to file reply was closed. Thereafter, the Corporate Debtor in view of the closure of reply, filed an application bearing *IA No. 85/JPR/2019* on 26.03.2019 against which this Adjudicating Authority vide Order dated 28.03.2019 observed as follows:

“In the circumstances, we are not in a position to entertain this application and resultantly take the reply on record. However, it will not detract the Corporate Debtor to argue based on the pleadings as available before this Tribunal. It is also observed that reply cannot be taken on record as the application has not been allowed.”

8. In the circumstances, the Applicant has filed the present application seeking exemption from filing the document listed in Defect No. 1 and Defect No. 5 i.e. Power of Attorney executed in favour of the Financial Creditor No. 1 namely Ms. Veena Parakh for entering in the MOU dated 12.01.2016 on behalf of the Financial Creditor No. 2 namely Ms. Dolly Jain and Copy of Agreement entered between the Corporate Debtor and Financial Creditors consenting to allot another flat to the Financial Creditors in lieu of Return on Investment of the first two years.

9. We have heard the Ld. Counsels for the parties and perused the averments made in the Interlocutory Application and reply along with the documents enclosed with the application.
10. The Steps taken by the Applicant with regard to certain defects have been enumerated in the chart here as below:

	<i>Defects raised by Registry</i>	<i>Rectification done by the Applicant</i>
I.	<i>Power of Attorney in favour of Smt. Veena Parakh executed by Dolly Jain for entering into MoU dated 12.01.2016 not submitted/not available.</i>	<i>IA No. 18/JPR/2019</i> filed vide Diary No. 37/2019 dated 09.01.2019 seeking exemption from filing of POA for the MoU dated 12.01.2016.
II.	<i>Original Power of Attorney (Pages 91 & 92) not produced for verification.</i>	Verified with Original on 16.11.2018, hence, cured.
III.	<i>Power of Attorney executed by Veena Parakh in favour of Ms. Shanti Modi submitted at page No. 88-90 is not acceptable because it has been executed at Jaipur but on page No. 90 it is declared that it has been executed in USA</i>	An affidavit vide Diary No. 350/2018 dated 16.11.2018 is submitted stating that it has been wrongly written USA in the place of Jaipur, hence, cured.
IV.	<i>Tripartite Agreement entered with SBI not submitted.</i>	An affidavit vide Diary No. 350/2018 dated 16.11.2018 is submitted stating Tripartite Agreement has been submitted by the Applicant to its Banker and despite repeated request, the Applicant has not been able to avail the said Agreement.
V.	<i>Copy of agreement entered between Corporate Debtor and Financial Creditors by which it was</i>	<i>IA No. 18/JPR/2019</i> filed vide Diary No. 37/2019 dated 09.01.2019 seeking exemption

	<i>consented to allot another flat to the Financial Creditors in lieu of Return on Investment of the first Two Years not submitted (as mentioned at Page No. 4 of the Application)</i>	from filing of copy of the agreement.
VI.	<i>Annexures 1-9 of MoU not submitted/ not available.</i>	Verified with Original on 16.11.2018, hence, cured.

11. In the Insolvency and Bankruptcy Code, 2016, there is no provision of admission or denial of the documents as provided under the Code of Civil Procedure, 1908. In Insolvency proceedings, the parties are at liberty to challenge the admissibility of a document. The onus of proof lies upon the party alleging the set of facts. Therefore, it is only after being satisfied with the documents and pleadings placed, the Adjudicatory Authority determines the admission or rejection of an application under Section 7, 9, or 10 of the Code.
12. On perusal of the record, with respect to *Defect No. I*, it is seen that one MOU dated 12.01.2016 was executed between the Corporate Debtor namely *M/S SNG Real Estate Private Limited* i.e., the Builder and Ms. Dolly Jain (Financial Creditor No. 2). The said Agreement was entered into by Ms. Dolly Jain through her Power of Attorney holder Ms. Veena Parakh who was a signatory to the MOU on behalf of Mrs. Dolly Jain in capacity of his Power of Attorney holder. The Application has been filed seeking exemption from producing the said PoA.

13. The *Defect No. II* and *VI* have been verified with the Original Documents on 16.11.2018, hence the same stand cured. With respect to *Defect No. III* it is observed that an Affidavit has been submitted stating that the place of execution of the document was Jaipur, hence the same also stands cured. The Applicant has submitted an Affidavit stating that it has not been able to procure the Tripartite Agreement to cure the *Defect No. IV*.
14. On perusal of the record, with respect to *Defect No. V*, it is seen that an Agreement was entered between the Corporate Debtor and Financial Creditors consenting to allot another flat to the Financial Creditors in lieu of Return on Investment of the first two years. The said has not been produced and exemption is being sought to produce the same through this Application.
15. The objections were raised at the Registry level with respect to non-production of documents. Generally, it is the duty of the party to lead the best evidence in his possession and when the party is called upon to produce the said evidence but fails to do so, the Authority may draw adverse inference, if such evidence is withheld. Although invariably taking the pleadings into consideration, the Authority may decide whether the document/evidence withheld has any relevance to the matter pending. Therefore, mere non-production of documents would not result in adverse inference.

16. The Registry has raised *Defect I* with regard to non-production of POA executed in favor of Ms. Veena Parakh by Ms. Dolly Dolly Jain and as mentioned in the MOU dated 12.01.2016. The Registry has also raised *Defect V* and *Defect VI* with regard to non-production of copy of Agreement entered between the Corporate Debtor and Financial Creditors consenting to allot another flat to the Financial Creditors in lieu of Return on Investment of the first two years and non-production of the Tripartite Agreement.
17. The effect of withholding the above said documents has direct bearing with the admissibility of the documents relied upon by the Applicant. Hence exemption to produce the documents cannot be granted and adverse inference, after viewing the relevance of the documents into consideration, may be taken against the Applicant during the course of proceedings.
18. While disposing of any proceedings, the Adjudicating Authority is not bound by the procedure laid down in the Court of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice. The Tribunal/ Adjudicating Authority shall have the same power as are vested in Civil Court under the Civil Procedure Court, 1908 in the matter of discovery or production of documents.
19. The Applicant is directed to produce the documents within 10 days, failing which adverse inference may be drawn against the petitioners, in case the

documents withheld has any relevance while disposing of the Application under Section 7 of IBC, 2016.

20. In view of the foregoing, the Application is disposed off with aforementioned directions.

21. The matter be posted on 17.08.2023 for further consideration.

-Sd-

**DEEP CHANDRA JOSHI
(JUDICIAL MEMBER)**

-Sd-

**ATUL CHATURVEDI
(TECHNICAL MEMBER)**