

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**I.A. 318 OF 2021**

Under Section 60(5) of Insolvency &  
Bankruptcy Code, 2016

Suraksha Realty Limited

**...Applicant**

V/s

Mr. Ankur Kumar

Resolution Professional

**...Respondent**

In the matter of

C.P.(IB) No. 2300/MB/2018

Bank of India

**.... Financial Creditor**

Vs.

Mahavir Roads and Infrastructure Private  
Limited

**...Corporate Debtor**

***Order delivered on: 01/11/2023***

***Coram:***

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

**Justice Shri V.G. Bisht**  
Hon'ble Member (Judicial)

***Appearances:***

For the Applicant

: Ms. Suyesha Kakarla

For the RP

: Ms. Prajakta Menezes, Advocate

**ORDER**

*Per: Prabhat Kumar, Member (Technical)*

1. This is an Application IA 318/2021 is filed on 11.02.2021 by M/s Suraksha Reality Limited (“Applicant”) seeking direction against the Ankur Kumar, the Resolution Professional (“Respondent”) in the Corporate Resolution Insolvency Process (“CIRP”) in the case of Mahavir Roads & Infrastructure Pvt. Ltd. (“Corporate Debtor”). The Application has sought following reliefs-
  - A. Direction to the Respondent to admit the entire claim amount of Rs 109,63,47,940/-(Rupees One Hundred and Nine Crore Sixty Three Lakh Forty Seven Thousand Nine Hundred and Forty Only) as set out more particularly in the Applicant's proof of claim;
  - B. Direction to the Respondent to reconstitute the Committee of Creditors of the Corporate Debtor in accordance with law by admitting the entire claims of Applicant and granting the Applicant voting share proportionate to the said Claim together with all consequential;
  - C. Direction to the Respondent to admit the Applicant as a secured creditor; and
  - D. pending hearing and final disposal of the present Application, to restrain the Respondent from conducting any further meetings of the Committee of Creditors of the Corporate Debtor, for any purpose whatsoever.
2. The Applicant herein is a Financial Creditor of the Corporate Debtor and had submitted its claim with proof to the Respondent,

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the Resolution Professional appointed by the Committee of Creditor of the Corporate Debtor at the first Committee of Creditors meeting in accordance with Regulation 12(2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016('said Regulation). The case of the Applicant is as follows -

2.1.The Applicant had initially granted a loan of Rs. 60,00,00,000/- (Rupees Sixty Crore Only) (the "Loan") to the Corporate Debtor by a Loan Agreement dated 03/12/2014 executed between Applicant and the Corporate Debtor.

2.2.One of the terms of the Loan Agreement was that the Loan together with interest, cost, charges and monies payable thereon shall be secured by way of mortgage over land owned by the Corporate Debtor admeasuring 32 Acres and 17 Gunthas lying. being and situated at revenue village Balvali, Tal- Pen, Dist.- Raigad (clause 6(1) of the Loan Agreement). Additionally, as per clause 9 in the said Loan Agreement, the Corporate Debtor had agreed to keep the title of the Mortgaged land free from all encumbrances and reasonable doubts and further agreed not to create any third-party interest whatsoever nature and had deposited the original title documents of the mortgage land in favour of the Applicant thereby creating an oral mortgage.

2.3.On 18/02/2015, the Corporate Debtor and the Applicant entered into a supplementary loan agreement, as per to the terms and conditions, the Corporate Debtor has given post

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dated cheques as security to the Applicant towards securing the interest amount as mentioned in the Agreement. The Corporate Debtor defaulted in repayment of the Loan and the cheques, issued by the Corporate Debtor for repayment of the instalments/ the Loan and other amounts payable under the Loan Agreement (as modified/ amended) were dishonoured.

2.4. On 15/12/2015, the Applicant and the Corporate Debtor entered into a Modified Loan Agreement ("Modified Loan Agreement") the terms whereof were to be read with those of the Loan Agreement. In the terms of the Modified Loan Agreement, the Corporate Debtor undertook to pay outstanding dues of the Loan as on date of the agreement i.e. Rs. 60,80,00,000/- (Rupees Sixty Crore and Eighty Lakh Only) to Applicant along with the rate of interest mentioned in the Modified Loan Agreement.

2.5. The Applicant had also granted financial assistance to one GN Infrastructure Private Limited ("GNIPL") and a loan of Rs. 12,52,00,000/- (Rupees Twelve Crore and Fifty Two Lakh only) was outstanding payable by GNIPL to Applicant ("Additional Loan"). The Corporate Debtor agreed and undertook to repay the Additional Loan.

2.6. An Addendum to Modified Loan Agreement dated 09/02/2016 was executed between the Applicant and the Corporate Debtor, where the Loan Agreement read with the Modified Loan Agreement were further modified on the terms and conditions contained in the said Addendum. The

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repayment terms and the outstanding dues stood modified to the extent that the Corporate Debtor agreed to pay the outstanding dues mentioned in the said Addendum viz. Rs. 67,97,00,000- (Rupees sixty Nine Crore and Ninety Seven Thousand Only) in 75 equal monthly instalments starting from 1<sup>st</sup> February 2016 along with interest of 18% p.a. payable monthly.

2.7. The Applicant had filed a complaint against the Corporate Debtor and all its Directors before the Magistrate Court at Andheri, Mumbai vide Private Complaint No. CC/5583/SS/2015 AND CC/6153/SS/2015. Consent Terms were filed between the Corporate Debtor and Applicant for withdrawal of the complaint in February 2016 and as per the consent Terms, the Corporate Debtor was under an obligation to repay the amount as mentioned in the Modified Loan Agreement dated 15/02/2015 and Addendum to Modified Loan Agreement dated 09/02/2016. The Corporate Debtor failed to repay the entire Loan to the Applicant in accordance with the terms of the Loan Agreement, Modified Loan Agreement and its modifications as well as in terms of the Consent terms.

2.8. Thus, the Corporate Debtor was admitted into corporate insolvency resolution process by an order dated 21<sup>st</sup> February 2019 by National Company Law Tribunal, Mumbai Bench upon an application made under section 7 of the Code by Bank of India (Financial Creditor) and Mr Ankur Kumar, the Respondent, was appointed as interim resolution professional

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of the Corporate Debtor and a public announcement was issued by him in Form G dated 12 March 2019 for invitation of claims from creditors of the Corporate Debtor.

2.9. The Applicant submitted its claim of Rs 109,63,47,940/- (Rupees One Hundred and Nine Crore Sixty Three Lakh Forty Seven Thousand Nine Hundred and Forty Only) in the prescribed Form C pursuant to the public announcement in newspaper to the Respondent on 26th November 2019.

2.10. On 16th December 2019, the Applicant received an email from the Respondent, wherein the Respondent had admitted only a part of claim amount of Rs 40,84,24,363/- (Rupees Forty Crore Eighty Four Lakh Twenty Four Thousand Three Hundred and Sixty Three Only) out of the entire claim amount and have not given any clarification whether the balance amount was admitted or rejected. The Applicant came to know that the Respondent has categorized the Applicant as an unsecured creditor on the ground of no charge created on securities as per MCA records.

2.11. The Applicant sent an email dated 28 December 2019 to the Respondent objecting the view points of the Respondent to treat the Applicant as an unsecured creditor and also provided a point wise reply to the queries of the Respondents. The Applicant had also sent a copy of legal opinion dated 19 December 2019 taken by the Applicant from his advocates to the Respondent.

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2.12. Despite the Applicant submitting all the requisite documents to the Respondent, the Respondent have ought to reject the said claims of the Applicant and no just reasons have been provided thereto. Additionally, despite the Respondent being appointed as the Resolution Professional of the Corporate Debtor and being duty bound to respond the Applicant's email, the Respondent has not only failed to respond to the Applicant but has also failed to take the said Claim on record and admit the Applicant as a secured creditor.

2.13. The Applicant submits the Respondent has proceeded on a wholly erroneous understanding of the nature of the transaction and relationship between the Corporate Debtor and the Applicant and inter-alia erroneously rejected the claims partly. The Respondent has failed to correctly examine the documents submitted by the Applicant and also failed to examine the records of the Corporate Debtor in order to satisfy itself of the existence of debt owed by the Corporate Debtor to the Applicant. It is also submitted that that despite Respondent being fully aware of the submissions of the said Claim and the documents submitted by the Applicant in support of its claim and despite being duty bound under the provisions of the Code and the regulations frame there under, the Respondent has deliberately failed to admit the said Claim and consequently failed to categorize the Applicant as a secured creditor of the Corporate Debtor.

2.14. It is further submitted that the Respondent cannot treat the Applicant as an unsecured creditor only on the ground of non

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compliance of formalities for registration of charge with Registrar of Companies. It is submitted that as per section 77 of the Companies Act 2013, it is the duty of the Corporate Debtor to register the charge with the Registrar of the Companies. However, if the charge is not registered within 300 days of such creation, the Corporate Debtor shall seek extension of time in accordance with Section 87 of the Companies Act, 2013.

- 2.15. The Applicant has also pleaded that the said loan facility is declared to be secured by the Corporate Debtor in its Audited Financial Statements for the year ended on 31.03.2017 till 31.3.2020, and the fact of security interest having been created in favor the applicant is undisputed and within the knowledge of other lenders as well on the basis of audited financial statements.
3. The Respondent filed reply on 3.6.2021 and an additional affidavit on 30.08.2023 stating that, assuming but not admitting that the claim of the applicant is admitted in full, the voting share of the applicant will only increase to 17.48% and not change substantially and shall not have any major bearing on the CIRP or liquidation process of the Corporate Debtor. It was further submitted that the application seeking liquidation of the Corporate Debtor is pending before this Tribunal and was not proceeded with in view of interim order dated 4.6.2021 passed by this Tribunal restraining the CoC to consider the liquidation of the Corporate Debtor even though the attempts to resolve the Corporate Debtor has failed. It was further argued that the claim of the Applicant that it ought to be classified

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as Secured creditor is not maintainable, as none of the agreements creating mortgages, entered between the applicant and Corporate Debtor were duly stamped as per the Maharashtra Stamp Act, 1958 nor were the agreements registered as required under the Registration Act, 1908.

4. We have heard the Counsel and perused the material available on record.

4.1. We find that the Applicant filed an additional affidavit dated 17.06.2022 stating that it had followed up with the Respondent to reconsider its claim to the extent of Rs. 72,38,82,649/-, however, the Respondent has admitted claim of Rs. 62,82,51,263/- and has fairly agreed to examine the remaining part on the basis of documents placed and submission made by the Applicant. Accordingly, the application may be disposed of giving direction to the Respondent in so far as the quantum of claim is concerned. Accordingly, only prayer for direction to file the necessary document before the Registrar of Companies for rectification of records pertaining to charge in favor of the applicant may be adjudicated in view of the acknowledgement in the Balance Sheet.

4.2. We find that it is undisputed fact that the property in question i.e. Freehold Land owned by the Corporate Debtor is mortgaged to the Applicant by deposit of title deeds; the agreement is not duly stamped and the charge on such land is not registered with the Registrar of Companies in terms of the provisions of Companies Act, 2013. It is on account of non-registration of charge with the Registrar of Companies that the applicant is before us seeking our indulgence to direct the Respondent Resolution Professional to facilitate filing of

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prescribed form for registration of charge in terms of provisions contained under Companies Act, 2013, since no form for registration of charge can be filed beyond 300 days without leave of this Tribunal and period of more than 300 days has passed thereafter.

4.3. The loan agreement creating mortgage by deposit of title deeds came to be entered into on 3.12.2014 and the Corporate Debtor was admitted into CIRP on 21.02.2019. The audited financial statements of the Corporate Debtor disclosed that the freehold land is mortgaged against the Term Loan from Banks, however, the Applicant contents that it was their loan and this fact was disputed by the Respondents. Further, from the perusal of financial statements of the Corporate Debtor for the Financial Year from 2016-17 to 2019-20 placed on record by the Applicant, we find that a freehold land is reflecting in the schedule of Fixed Assets appended to such financial statements and in terms of security interest held by other lenders, this land is not mortgaged or encumbered in any manner in favor of any other lender/person. The fact of encumbrance in the freehold land, being in knowledge of all lenders and creditors as demonstrated from the financial statements becomes absolute and is clearly discernible from the accounting records of the Corporate Debtor.

4.4. The Code vests the power of verification of claims in the Resolution Professional in accordance with the evidences placed before him after corroboration thereof with the Accounting books/records of the Corporate Debtor. It is trite law that the Resolution Professional does not have any adjudicatory power in so far as admission of claim is

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concerned. Whether the agreement in question is unstamped or insufficiently stamped is to be decided by the Stamp Authorities and the Resolution Professional can not assume adjudicatory role in this relation.

- 4.5. We find that the Applicant has placed a legal opinion from a High Court Advocate. From the perusal of said opinion, we find that Hon'ble Supreme Court in the case of **Rachpal Maharaj vs. Bhagwandas Daruka & Ors (05.05.1990)** stated that "*The question whether a memorandum of deposit of title deeds is compulsorily registrable under section 17 of the Indian Registration Act, 1908, as an instrument creating an interest in immovable property, depends on whether the parties intended to reduce their bargain regarding the deposit to the form of a document. If so the document requires registration. If, on the other hands, its proper construction and the surrounding circumstances lead to the conclusion that the parties did not intend to do so, there being no express bargain, the contract to create the mortgage arises by implication of the law from the deposit itself with the requisite intention, and the document, being merely evidential does not require registration. The time factor is not decisive*". Further, the Hon'ble Supreme Court in the case of **State of Haryana & Ors. Vs. Navir Singh & Ors** explained that "In our opinion, it may be effected in specified town by the debtor delivering to his creditor documents of title to immovable property with the intent to create a security thereon. No instrument is required to be drawn for this purpose. However, the parties may choose to have a memorandum prepared only showing deposit of the title-deeds. In such a case also registration is not required. But in a case in which the memorandum recorded in writing creates right,

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liability or extinguishes those, same requires registration. In our opinion, the letter of the Finance Commissioner would apply in cases where the instrument of deposit of title-deeds incorporates terms and conditions in addition to what flow from the mortgage by deposit of title-deeds. But in that case there has to be an instrument which is an integral part of the transaction regarding the mortgage by deposit of title-deeds. A document merely recording a transaction which is already concluded and which does not create any rights and liabilities does not require registration". In view of these judicial proposition, we find that the Resolution Professional ought to not have travelled in the field of adjudication while deciding whether the applicant is secured creditor or not.

4.6. From bare reading of section 77 of the Companies Act 2013, we find that it is incumbent on a Company to have the charge registered in favor of the security interest holder. In the present case, though, the Corporate Debtor has invariably acknowledged the charge in its financial statements, but has omitted to have it registered. Since, no form can be filed for registration of charge beyond a period of 300 days except with the leave of the Central Government in terms of Section 87 of the Companies Act, 2013. Section 87 of the Companies Act, 2013 reads as under –

87. The Central Government on being satisfied that—

- (a) the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required under this Chapter; or
- (b) the omission or misstatement of any particulars, in any filing previously made to the

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Registrar with respect to any charge or modification thereof or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83, was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as it deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or misstatement shall be rectified.

- 4.7. We find that the provisions of Section 87 of the Companies Act, 2013 are beneficial in nature, and these provisions contemplate protection of security interest in favor of lender, in case the intimation of charges is not given to the Registrar of Companies, which is primary responsibility of a borrower. No prejudice is shown to have been caused to any other lenders, if the fact of charge is registered by the RoC, which could not be registered in view of negligent conduct on the part of the Company. It is pertinent to note that while section 77 of Companies Act, 2013 does not authorise lender to file an intimation of registration of charge, the section 87 of the Companies Act, 2013 also includes the 'any person interested', who may approach Central Government for rectification of Charge particulars in terms of Section 87 of the Companies Act, 2013, in case the fact of registration omits. Considering these facts, we consider it appropriate to direct the Applicant to file

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appropriate application before the Regional Director, who is authorised person in terms of powers vested in Central Government, to allow such modification within seven days. The Regional Director shall process the application within 15 days from the date of filing of application by the Applicant, and pass necessary Orders in terms of Section 87 of the Companies Act, 2013.

4.8. The Resolution Professional shall determine the status of applicant accordingly, in case the applicant furnish the Order of Regional Director within specified period or such further period as is allowed by this Tribunal.

4.9. It is clarified that this Order shall not be construed as deciding on the aspect of registration of the Mortgage instrument or payment of Stamp Duty, if any, and no finding in this Order shall have bearing on the determination of applicability of Registration Act or Stamps Act on this transaction by any appropriate authority under such Acts.

5. With the aforesaid directions, this IA 318/2021 is partly allowed.

Sd/-

**Prabhat Kumar**  
Member (Technical)

Sd/-

**Justice V.G. Bisht**  
Member (Judicial)