

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

I.A. NO. 3104/2023

IN

Company Petition No. (IB)- 456(ND)/2018

IN THE MATTER OF:

Pallavi Joshi Bakhru

**... Petitioner/
Financial Creditor**

Versus

Universal Buildwell Private Limited.

... Respondent

AND IN THE MATTER OF I.A. NO. 3104/2023:

Raj Kumar Dad

IRP of M/S Blaze Promoters Pvt. Ltd.
L-302, Sangkeshwar Nagar Society,
Borivali-Dahisar,
Mumbai-400068

... Applicant

Versus

Mr. Atul Kansal

Resolution Professional of

M/s Universal Buildwell Private Limited (In CIRP).
Reg. Add. 102, Antariksh Bhawan,
KG Marg, New Dehli-110001

... Respondent

Under Section: 60(5) of IBC 2016

Order Delivered on: 13.09.2023

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Harshal Kumar, Adv. Himanshu Kapoor for
SRA, Mr. Gaurav Verma, Adv. Satish Rai, and Adv.
Divyansh Rai in IA-3104/2023

For the Respondent : Mr. Swapnil Gupta, Abhinav Mishra and Ahmar
Shad, Advocates

ORDER

PER: SH. ASHOK KUMAR BHARDWAJ, MEMBER (J)

IA-3104/2023

The Applicant herein before us, who is IRP of M/s Blaze Promoters Pvt. Ltd., has filed the present application seeking issuance of direction to the Respondent i.e. the Resolution Professional for M/s Universal Buildwell Pvt. Ltd. (hereinafter referred to as Respondent), to handover the asset of M/s Blaze Promoter Pvt. Ltd. (in CIRP) i.e., an area measuring 43,183 Sq. Ft. in Universal Business Park Project at Badhshahpur, Gurugram, Haryana to the Applicant in terms of the provisions of Section 18 of IBC, 2016.

2. Stating succinctly, the brief factual position adumbrated by the Applicant in the captioned IA sans the facts irrelevant to the present IA is that the Applicant i.e., M/s Blaze Promoters Pvt. Ltd. is the owner of the property situated at Badshahpur, Gurugram, Haryana and had absolute control over the same even prior to execution of a sale deed in its favour. To buttress the plea, regarding his ownership qua the captioned property, the Applicant has relied upon the Sale Deed dated 12.01.2011 (enclosed as Annexure A3 to the IA). According to the Applicant, before being admitted to CIRP, the Respondent i.e., the Corporate Debtor had entered into a Collaboration Agreement dated 28.09.2008 with it (i.e., Blaze Promoters Pvt. Ltd.) as a developer for the

development and collaboration in relation to the project land admeasuring about 2.1625 acres, owned by the Applicant. As per the Collaboration Agreement, particularly, in terms of Clause 14 thereof, the Respondent was under obligation to provide 20% of the total saleable/built-up area to the Applicant along with open and closed parking spaces. In terms of the pleadings, adumbrated in the IA, the project (super built-up area) was to be shared between the Respondent and the Applicant in the ratio of 80:20. A copy of the Collaboration Agreement has been placed on record by the Applicant as enclosure A4 to the IA. The salient plea put forth by the Applicant is that 20% of the total super built-up area of Universal Business Park needs to be handed over to the Applicant.

3. The Applicant has placed reliance on the judgment dated 11.04.2023 given by Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No.661 of 2021 titled as **Kotak Mahindra Pvt. Ltd. & Anr. v. Universal Buildwell Pvt. Ltd. & Anr.** to contend that for the purpose of valuation of the assets of the CD, only an area measuring 89,025.97 Sq. Ft. out of the total area of 2,15,915 Sq. Ft. was taken into account. It is the plea put forth on behalf of the Applicant that since the valuator had not taken into account the total super built-up area measuring 2,15,915 Sq. Ft. for the purpose of valuation, apparently, the 20% area measuring 43,183 Sq. Ft. belongs to the Applicant, was kept out of the assets of the CD. The absence of any response by the CD to the e-mail dated 29.05.2023 sent by Applicant to the RP of the CD asking it to let it know about the status of 20% of the total area qua the project is also made a ground by the Applicant to establish its claim qua 20% of super built-up area of M/s

Blaze Promoters Pvt. Ltd.

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4. Opposing the prayer made in the application, the RP qua the CD filed its reply supported by the affidavit sworn on 11.07.2023. In the reply filed on behalf of the CD it has been contended that: - (i) the Directors of the Applicant Company and CD are the same persons, which fact has been concealed by the Applicant from the captioned IA; (ii) contrary to what is stated in Collaboration Agreement dated 28.09.2008, the truth is that the Applicant had not paid even a single penny as consideration to purchase the Project Land and each and every penny payable as consideration for the Land was paid by the Corporate Debtor. To buttress the plea, the Applicant could refer to the Ledger record placed on record as Annexure R-3 to IA; (iii) the e-mail dated 29.05.2023 was sent by the Applicant belatedly i.e., much after approval of the Resolution Plan and the Applicant was fully justified in not entertaining the same. The Respondent sent a detailed reply dated 06.06.2023 to the Applicant raising the question regarding the status of Blaze Promoters. The Applicant has concealed the said response from this Adjudicating Authority, maliciously; (iv) the claim of the Applicant that the 20% of the land in the project Universal Business Park is the asset of the Applicant goes contrary to the records such as the balance sheet of Blaze Promoters submitted with the Registrar of Companies; (v) the consideration amount of Rs.35.17 Crores, paid by the Corporate Debtor is deemed to be payment of as mentioned in Clause 14 of the Collaboration Agreement dated 28.09.2008; (vi) the Respondent did not receive any claim or information from either of the Blaze Promoters. The Blaze Promoters being Directors qua the CD also were well aware of the CIRP process.

5. We have heard the counsel for the parties and perused the records. One of the main planks of the plea raised by the Applicant in the IA is the order dated 17.04.2023, passed by Hon'ble NCLAT. The plea raised on behalf of the Applicant is noted only to be nixed, for the simple reason that in the said order dated 11.04.2023 passed in Company Appeal (AT) (Insolvency) No.661 of 2021, Hon'ble NCLAT nowhere ruled that the land measuring area 43,183 Sq. Ft. qua the project in question belonged to the Applicant. In para 7 of the judgment, the Hon'ble NCLAT has noted only the contentions of the Appellants, inter alia, the decision of the RP and the CoC that the Appellants had no liquidation value since there was no transferable area available with the Corporate Debtor in the Universal Business Park. The para reads thus: -

“7. The learned Counsel for the Appellants challenging the directions issued in paragraph 49 and 50 of the impugned order, submitted that the total average liquidation value for Corporate Debtor as assessed by the Registered Valuers was INR 299.23 crores and the liquidation value assessed by the Registered Valuers for Universal Business Park is Rs.51,32,34,718/. The Appellant having pari passu charge the liquidation value of the security interest in the Universal Business Park, comes to INR 23.09 Crores and the RP and Resolution Applicant have wrongly treated the liquidation value of the Appellants as NIL, which is not in accordance with law. The valuation given by Registered Valuers as per the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate persons) Regulations, 2016 (hereinafter referred to as the “CIRP Regulations”) is a statutory valuation, which cannot be tinkered with by the RP or the Resolution Applicant. Allocation of Rs.3 Crores to the Appellant in the Resolution Plan is not in accordance with the amount, which the Appellants were entitled as per their liquidation value, which is INR 23.09 crores. The Resolution Plan, thus, is not in accordance with Section 30, sub-section (2) and ought not to have

been approved. It is further submitted that the liquidation value, which has been determined by the two Registered valuers cannot be interfered with by the Resolution Applicant or the CoC. The CoC under the Code, does not have power to re-examine the liquidation value of the assets of the Corporate Debtor. The role has been clearly assigned to the Registered Valuers. The Appellants have raised the issue of liquidation value attributable to them in the 14th meeting of CoC, which objection was disregarded. Respondent No.2 relied upon a misplaced and incorrect premise that the entire area under the Universal Business Park has been sold and no asset remains with the Corporate Debtor. The Appellant Nos.1 and 2 collectively hold 46% charge over the Universal Business Park project. In any event, 89,025 sq. ft. area available with the Corporate Debtor has not been legally transferred as execution of Builder Buyer Agreement does not amount to transfer/sale. The decision of the RP and the CoC that Appellants have no liquidation value, since there was no transferable area available with the Corporate Debtor in the Universal Business Park, is misconceived and untenable. The Appellants having voted against the Plan, they are entitled to minimum liquidation value in the allocation as per sub-section (2) of Section 30 of the Code read with Section 53(1).”

6. The contention of the Applicant raised with reference to the judgment of Hon’ble NCLAT (ibid) is also falsified from the fact that in para 8 of the judgment, Hon’ble NCLAT categorically ruled that an area measuring 1,65,115 Sq. Ft. had been sold by the CD through Builder-Buyer Agreements (BBA) and the remaining area admeasuring 90,606 Sq. Ft. was sold through Conveyance Deed. Para 8 of the judgment reads thus: -

“8. The learned Counsel for the RP refuting the submission of the Appellants submits that Appellants are being provided INR 3 crores and further being provided the project ‘The Pavilion’ having liquidation value of INR 27.24 crores. The claim of security interest over Universal

Business Park is based on mortgage executed in September 2010 over land and unsold super-build up area. The fact of the matter is that in September 2010 at the time of creation of mortgage, the Promoters and Corporate Debtor had already sold area in excess of the total super area available in the project. By September 2010, the area of 1,65,115 sq. ft. had been sold by Builders Buyer's Agreement ("BBA") and an area of 90,606 sq. ft. have been sold by way of Conveyance Deed. No unsold inventory is available as a security claimed by the Appellant, hence, the liquidation value of the Appellants have been treated as NIL. As per the definition of 'liquidation value' contained in Regulation 2(k) of the CIRP Regulations, no estimated realizable value of the assets of the corporate debtor could be determined as on date, since no inventory was available for the same. Thus, liquidation value has rightly been held to be NIL, which has been accepted by the Adjudicating Authority in the impugned order. The entire super area of Universal Business Park was conveyed by Conveyance Deed as well as BBA in September 2010, rather area sold was in excess of total super area and there was no super area available, which could be monetized in favour of the Corporate Debtor. Thus, in the project Universal Business Park, no liquidation value could have been ascribed to the Appellants, which have been done so rightly."

7. As could be noted in the order dated 11.06.2021 passed by this Adjudicating Authority, as also in para 15 of the order dated 11.04.2023 passed by NCLAT, the total area qua the project is only 2,15,956 Sq. Ft. Thus, when it is a matter of record that an area measuring 1,65,115 Sq. Ft. could be transferred through BBA and 90,606 Sq. Ft. could be sold by Conveyance Deed, no area out of the project land remains available, which can be claimed by the Applicant as his 20% share qua the project. It is not the case of the Applicant that he was either BBA or Conveyance Deed holder. Para 15 of the judgment reads thus:

“15. Similarly, when we look into the Report of Sapiient with regard to Universal Business Park, the Valuer has also taken the total built-up area as 2,15,915 sq. ft. and has noticed that Conveyance Deed has been executed for the area equivalent to 83,706.03 sq. ft. The observations of the Valuer is to the following effect:

“Observation:

1. There are total 13 floors in the tower.
2. The tower consist of 3 basement floors for parking.
3. Ground floor is well constructed.
4. Remaining all the floors were in the condition of about to complete.
5. Multiple banks are also present in the ground floor.
6. Suitcase leading to 4th floor is well constructed.
7. There was no electricity facility.
8. During our inspection, it was found that 75% work has been done satisfactorily in respect of construction.
9. The total super built-up area is 2,15,915 sq. ft. out of which conveyance deed was found for the area equivalent to 83,706,03 sq. ft. Therefore, to arrive at the value of building, we have considered the remaining area for the purpose of valuation.
10. For the calculation of land, value is calculated proportionately after considering the conveyance deed.
11. We have given the combined value of Land and building as its work completion stage is more than 50% and some offices are also present there during our physical verification.
12. To arrive at the liquidation value, we have considered a distress factor of 30% on Fair Value.”

8. Though in para 21, where the note of certain details given by the Appellants could be taken, there is a mention that 20% of the area belonged

to Blaze Promoters Pvt. Ltd., but the said note given by the Appellant is contrary to the contents of para 15 of the judgment which refers to the report of valuers. The note given by the Appellant cannot be given credence by ignoring the report of expert valuers. Besides, the Hon'ble NCLAT has not pronounced upon the right or claim of the Applicant qua the project in any manner. The issue determined by Hon'ble NCLAT in the order is only that the secured creditor cannot be kept associated with the plan and the plan should provide either enforcement of the charge of the secured creditor over the security or the money. The reliance placed by the Applicant on the order of Hon'ble NCLAT to claim its share in Business Park Project is misconceived.

9. As far as the Sale Deed dated 12.01.2011 is concerned, as can be seen from the contents of the same, it was executed by Mr. Ved Prakash Choudhary, Mr. Rajinder Prakash & Mr. Trilok Chand etc. in favour of the Applicant. The deed was confirmed by M/s Vatika, a Company registered and incorporated in terms of the provisions of the Companies Act, 1956 as Confirming Party no.1 and by CD herein as Confirming Party no.2. It is not gainsaid that the Confirming Party may also be the party which is funding the transaction. As can be seen from the Sale Deed, the Agreement to Sell was entered into between the Confirming Party No.1 and the Confirming Party No.2. Thus, the CD herein is not completely stranger qua the sale transaction. The Directors of the Applicant Company and those of the Respondent Company being the same, it seems that it was only a kind of formal documentation regarding the transfer of ownership of the property in the name of the Applicant. In any case, the existence of a Sale Deed or MoU are not the issues involved in the matter. The bone of contention is financial

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transaction in the books of accounts/records of the CD/Applicant, indicating the financial transaction such as balance sheet etc., with reference to which the IRP/RP needs to determine the assets and liabilities of the CD.

10. We can see from the Ledger Account of the Blaze Promoters Pvt. Ltd. (Applicant) that it had received an amount of Rs.35,17,00,000.00 being the amount of development rights purchased from it by the Applicant. A copy of the balance sheet is enclosed as Annexure 3 to reply filed on behalf of the Respondent. In reply to the e-mail dated 29.05.2023, the Respondents could send an e-mail dated 06.06.2023, making it clear that the entire sale consideration of Rs.35.17 Crores qua the project land was paid by Universal Buildwell Pvt. Ltd. i.e., the CD and not by the Blaze Promoters Pvt. Ltd. i.e., the Applicant. The e-mail reads thus: -

TUL KANSAL <cirp.universal@gmail.com> Tue, Jun 6, 2023 at 1:33 PM
To: CIRP Blaze <blazepromoters.lbc@gmail.com>
Cc: rajkdad@gmail.com, UNIVERSAL BUSINESS PARK OWNERS ASSOCIATION <contactsubpoa@gmail.com>, "UAWA JNIVERSAL AURA WELFARE ASSOCIATION" <universalaura.welfare@gmail.com>, ugbuyersassociation ugbuyersassociation@gmail.com>

Dear Mr. Dad,

As you must be aware that Universal Buildwell Private Limited ("Corporate Debtor") was admitted into the corporate insolvency resolution process ("CIRP") vide order dated 03.07.2018. Further, a resolution plan was approved in CoC meeting dated 05.12.2019 and was submitted with Hon'ble NCLT for their approval. Hon'ble NCLT vide order dated 11.06.2021 remitted the resolution plan back to CoC on two limited points. CoC, after considering the directions of the Hon'ble NCLT again approved the resolution plan in CoC meeting dated 08.09.2021. The same is pending with Hon'ble NCLT for approval.

Please be informed that undersigned has not received any information / claim from Blaze Promoters Private Limited even though promoters and directors of Blaze Promoters Private Limited were very well aware of admission of Universal Buildwell Private Limited into the Corporate Insolvency Resolution Process. Hence, your claim at this very belated stage cannot be accepted.

However, without prejudice to the above, after receipt of your email we have gone through the ledger account of Blaze with Universal Buildwell Private Limited and the Sale Deeds for the Project Land.

Collaboration Agreement was entered between Universal Buildwell Private Limited and Blaze Promoters Private Limited on 28.09.2008 which allegedly states that Blaze Promoters Private Limited is the owner of the land located at Badshahapur ("Project Land"), Gurgaon whereas the sale deed in favour of Blaze Promoters Private Limited was executed on 12.01.2011.

Further, on the basis of records of Universal Buildwell Private Limited, it is also observed that the entire sale consideration of Rs. 35.17 Crores, including stamp duty, for the project land was paid by Universal Buildwell Private Limited and in fact, Blaze Promoters Private Limited has not paid anything towards the Project Land. Copy of ledger account of Blaze Promotes Private Limited as appearing in the books of Account of Universal Buildwell Private Limited (as available with undersigned) is attached for your ready reference. It is also necessary to note that the sales deed was executed in favour of Blaze Promoters Private Limited in 2011 and payment made by Universal Buildwell Private Limited can be considered as payment against monetary option in Clause 14 of the Collaboration Agreement. This point is also buttressed by the fact that the balance sheet of Blaze Promoters as per examination of documents filed on RoC record is not showing any asset pertaining to Universal Business Park in its books.

Moreover, Mr. Raman Puri, Vikram Puri and Mr. Varun Puri (Promoter-directors of Universal Buildwell Private Limited and Blaze Promoters Private Limited) have sold area much more than the saleable area available. Hence, at

present, there is no area available for sale / to be handed over to Blaze Promoters Private Limited. Further Blaze Promoters Limited is also a confirming party for Conveyance Deed of about 91,000 Sq.ft.area.

The above is without prejudice of other legal rights / remedies available with the undersigned against Blaze Promoters Private Limited and its directors.

Regards
Atul Kumar Kansal
Resolution Professional
Universal Buildwell Private Limited
Regn No. IBB/IIPA-001/IP-P00035/2016-17/10088

11. The contention in consonance with the e-mail could be espoused by the CD in para 8 of the reply. Referring to Clause 14 of the Collaboration Agreement dated 28.09.2008, the Ld. Counsel for the Respondent contended that the CD had the option either to give 20% of developed/constructed area of the project or Rs.40 Crores to the Applicant. And since the CD could pay the amount of Rs.35.17 Crores (ibid) to the Applicant, it has no right to claim 20% build-up area qua the project. A perusal of para 14.1 of the Collaboration Agreement reveals that there is sufficient force in the contention put forth on behalf of the CD. The Clause 14.1 reads thus:-

“14.1 That in consideration of the contributions/obligations of the Owners and the Developers under this Agreement, it has been mutually agreed that the entire saleable/super built areas including open parking spaces and covered car parking of the project to be developed/constructed by the Developers under terms of this Agreement shall be shared between the parties as follows in respect of areas related to the Project Land.

Owners : 20%

Developers : 80%

OR Rs.40/- Crores (Rupees forty crores only) for total consideration of Owner’s share as mutuall agreed upon by both the parties at any time.”

12. We may also be not oblivious of the fact that the Applicant in the present IA never staked any claim before the CD and the present application has been preferred only after the application for approval of the Resolution

plan filed before this Adjudicating Authority could be decided and the decision of Adjudicating Authority could be examined by Hon'ble NCLAT. To file the IA, the Applicant has taken a clue from the note of the Appellant in the order dated 11.04.2023 passed by Hon'ble NCLAT. The note is contrary to the report of valuator and cannot be relied upon. Even the Hon'ble NCLAT also did not rely upon said note and had dismissed the appeal qua which the note was filed. Apparently, the value of the entire project land was paid by the CD, which was never disputed by the Applicant. It would not be gainsaid that this Adjudicating Authority would not determine the title of the parties before it and would go by the determined facts. Once, in terms of Clause 14.1 of the Collaboration Agreement, the consideration of owner shares of land had been paid by the CD, the term of the Agreement was acted upon.

13. The application filed by the Applicant is devoid of merits and is accordingly, rejected. No cost.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)