

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA No.820/2022
In**

**CP (IB) No. 199/Chd/Pb/2020
(Admitted Matter)**

**Under Section 60(5) of the Insolvency
and Bankruptcy Code, 2016**

In the matter of:

Adit Goel, Prop. Adit Collaboration

...Petitioner/Operational Creditor

Vs.

M/s Best Zone Builders and
Developers Pvt. Ltd.

...Corporate Debtor

And in the matter of :

Mohit Chawla,

Resolution Professional

M/s Best Zone Builders and Developers Pvt. Ltd.

H. No. 270, MS Enclave, Dhakoli,

District SAS Nagar

Mohali- 140603

...Applicant/Resolution Professional

Vs.

1. The Tehsildar, Kharar

having its registered office at

Tehsil Office Kharar,

District SAS Nagar

Punjab- 140301

... Respondent

2. Bhupinder Paul Singh s/o Late Sh. Agya Pal Singh

H.No. 1559, Sector 18-D

Chandigarh

3. Mohd. Ahtesham

H.No. 54, Room No. 5
2nd Floor, Sohi Complex
Near Googa Mahri, Kajaheri
Chandigarh - 160036

... Proforma Respondents

Order delivered on: 07.12.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:

For the Applicant : Mr. Pulkit Goyal, Advocate
For the Respondent No.1 : None

Per: Harnam Singh Thakur, Member (Judicial)

Subrata Kumar Dash, Member (Technical)

ORDER

The present application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 by **Mohit Chawla, Resolution Professional**, M/s Best Zone Builders and Developers Pvt. Ltd. (hereinafter referred to as '**Applicant/Resolution Professional (RP)**') against the respondent to vacate the attachment over the immovable property of the corporate debtor i.e., M/s Best Zone Builders and Developers Pvt. Ltd., which has been attached by the respondent during the moratorium.

2. The aforesaid Insolvency Petition was filed by the operational creditor, i.e. Adit Goel, Prop. Adit Collaboration, against the corporate debtor, i.e. M/s Best Zone Builders and Developers Pvt. Ltd., under Section 9 of the Insolvency and

Bankruptcy Code, 2016 and the same was admitted by this adjudicating authority vide order dated February 19, 2021, and moratorium under Section 14(1) of the Code was declared. During the CIRP process of the corporate debtor, CoC resolved to change the resolution professional and approved the name of the applicant as the resolution professional in the CIRP matter of M/s Best Zone Builders and Developers Pvt. Ltd., and the applicant was appointed as the Resolution Professional vide order dated March 24, 2022.

3. The brief facts stated in the application are:

3.1. *The respondent No. 2 (**Bhupinder Paul Singh**) a home buyer, bought an apartment/flat in "Orchid Green", a project of the corporate debtor. On failure of the corporate debtor to hand over the possession of the said flat to respondent No. 2 within the stipulated time period, respondent No. 2 approached the Hon'ble State Consumer Disputes Redressal Commission, Punjab at Chandigarh and filed a consumer complaint bearing No. 462 of 2019, which was allowed by the Hon'ble State Commission vide order dated October 31, 2019 and directed the corporate debtor to hand over the possession of the flat to respondent No. 2 within 45 days.*

3.2 *The corporate debtor failed to comply with the said order, subsequent to which, an Execution application No. 357 of 2020 for the order dated October 31, 2019 was filed by respondent No. 2 where the Hon'ble Commission, via order dated October 11, 2021, ordered to attach the following land of the corporate debtor situated in Village Khuni Majra, HB No. 187, Tehsil Kharar, District SAS Nagar as per Jamabandi for the year 2016-17:*

*"Mutation No. 4161 dated 07.08.2020 to the extent of 23/155 share of Best Zone Builders and Developers Pvt. Ltd., Khasra No. 32 //12/2(7-15), 23/155 share.
Mutation No. 4161 dated 07.08.2020 to the extent of 61/160 share of Best Zone Builders and Developers Pvt. Ltd.. Khasra No. 32//11 (8-0), 61/160 share.
situated in Village Khuni Majra, HB No. 187, Tehsil Kharar, District SAS Nagar as per jamabandi for the year 2016-17."*

3.3 *The respondent No. 1, in compliance with the said order, attached the aforesaid land of the corporate debtor vide Rapat No. 1408 dated March 10, 2021.*

3.4 Subsequently, another complaint was filed by respondent No. 3 (**Mohd. Ahtesham**), home buyer, before the Real Estate Regulatory Authority, Punjab, at Chandigarh, which was allowed, and an order dated April 5, 2021 was passed directing the corporate debtor to refund the principal amount of Rs. 5,80,000/- along with interest and Rs. 75,000/- as compensation. The corporate debtor failed to comply with the order, pursuant to which RERA ordered the recovery of the aforesaid land as land revenue. Respondent No. 1, in compliance with RERA's orders, declared the land as land revenue and entered a mutation vide Rapat No. 595 dated March 17, 2022.

3.5 In the 10th meeting of the CoC held on May 21, 2022, an agenda was discussed for the execution of the conveyance/sale deed in favour of home buyers and to allow immediate possession. However, due to the attachment of the property of the corporate debtor by respondent No. 1, the applicant is unable to execute the conveyance/sale deeds.

3.6. It is submitted by the applicant that respondent No. 1 had attached the above mentioned property of the corporate debtor vide Rapat No. 1408 dated March 10, 2021, and Rapat No. 595 dated March 17, 2022, i.e., during the applicability of moratorium, which is in contravention of Section 14 of the IBC, 2016.

3.7 The Resolution Professional of the corporate debtor wrote to respondent No. 1 vide letters dated June 8, 2022, to lift the attachment of property of corporate debtor vide rapat no. 1408 dated March 10, 2021, and rapat no. 595 dated March 17, 2022, on the basis of the orders passed by the State Commission and RERA, respectively. The applicant has placed reliance on the judgment passed by NCLAT Principal Bench New Delhi in Civil Appeal No. 575 of 2019 titled as **Directorate of Enforcement v. Manoj Aggarwal** decided on 09.04.2021, which held that there is no conflict between PMLA and IBC and even if the property is attached under PMLA, which is belonging to corporate debtor, if CIRP is initiated, the property should become available to fulfill the objects of IBC till resolution takes place or the sale of liquidation assets occurs in terms of Section 32A.

4. In response to the above contentions in the application filed, despite being given two opportunities vide orders dated April 19, 2023, and September 30, 2022 of this adjudicating authority, no response has been received from respondent no. 1, i.e., the Tehsildar, Kharar. Respondents 2 and 3 were impleaded as pro forma respondents. Despite the last opportunity given, no reply

was filed on behalf of the respondents. Therefore, their right to file a reply was closed by this adjudicating authority vide order dated July 6, 2023, and they were proceeded ex-parte.

5. We have heard the learned counsel for the petitioner and have perused the records carefully.

6. We hold that the impugned land was first attached under the directions of the Hon'ble State Commission vide order dated October 31, 2019 and executed by the Tehsildar, respondent no. 1, vide Rapat No. 1408 dated March 10, 2021. Subsequently attached by an order dated April 5, 2021 of Hon'ble RERA and executed vide Rapat No. 595 dated March 17, 2022. In the present case, the CIRP was initiated on 19.02.2021.

7. In the case in hand, the Tehsildar has attached the impugned property on March 10, 2021, and again on March 17, 2022, i.e., after the initiation of CIRP on February 19, 2021. Thus, the attachment was given effect to by the Tehsildar, respondent no.1, after the moratorium under Section 14 of the Code was in place. Section 238 of the IBC, 2016 provides that-

"238. Provisions of this Code to override other laws. - The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

Thus, it is settled law that the provisions of Section 238 of the Insolvency and Bankruptcy Code, 2016 have an overriding effect on the Consumer Protection Act as well as the Real Estate Regulatory Authority Act. We also note the fact that the interests of the aforementioned two petitioners before the two authorities who are Proforma respondents are protected under the IBC, 2016, if their claims are

lodged before the resolution professional of the corporate debtor. Hence, the attachment of the property by Respondent No. 1 is illegal and must be lifted.

8. In view of the circumstances mentioned above, I.A. No. 820/2022 is allowed and stands disposed of accordingly.

Sd/-

(Subrata Kumar Dash)
Member (Technical)
December 07, 2023
ASG/PKA

Sd/-

(Harnam Singh Thakur)
Member (Judicial)