

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-III**

IA-4876/2020  
In  
IB-2130(ND)/2019

**IN THE MATTER OF IB-2130(ND)/2019:**

M/s. Dynacon Projects Private Limited ..... **Operational Creditor**

**Versus**

M/s. Today Homes & Infrastructure Private Limited  
..... **Corporate Debtor**

**AND IN THE MATTER OF IA-4876/2020:**

Mr. Nilesh Sharma  
Resolution Professional of the Corporate Debtor ..... **Applicant**

**Versus**

Mr. Atul Kumar & Ors. .... **Respondents**

**Order Pronounced On: 22.12.2023**

**CORAM:**

**SHRI ATUL CHATURVEDI  
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS  
MEMBER (JUDICIAL)**

**PRESENT:**

For the Applicant/ RP : Mr. Saurabh Kirpal, Sr. Adv., Mr. Kanishk Khetan,  
Ms. Swastika Kumari, Mr. Shivam Jaiswal, Ms.  
Anushka Sarkar, Advocates for RP  
Mr. Akshay Goel, Adv. for the Applicant in IA  
4211/2023, Mr. Vivek Kumar, Advocate in IA  
3951/2020  
For the Respondent : Mr. Rajesh Kr. Gautam, Mr. Anant Gautam,  
Mr. Sumit Sharma, Mr. Dinesh Sharma, Advs.

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

1. The present Application has been filed by Mr. Nilesh Sharma, Resolution Professional of the Corporate Debtor, the Applicant on

02.11.2020 under Section 14 and Section 25 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 30 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 read with Rule 11 of the NCLT Rules, 2016 before this Adjudicating Authority, for seeking the following reliefs:

*“a) Allow present application*

*b) Direct the Respondent Nos. 1 to 3 herein to handover the peaceful, vacant and peaceful physical possession area admeasuring 2.14 Acres (approx.) of Killa No. 18(7-3), 19(8-0) and part of Killa No. 20(2-0) totaling to 17 Kanal and 3 Marla situated at Sector-73, Sohna Road, Gurugram to the Applicant immediately;*

*c) Pass an order directing Respondent No. 5 and 6 to assist the Applicant in restoring the peaceful, vacant and peaceful physical possession of 2.14 Acres (approx.) of Killa No. 18(7-3), 19(8-0) and part of Killa No. 20(2-0) totaling to 17 Kanal and 3 Marla situated at Sector-73, Sohna Road, Gurugram to the Applicant immediately;*

*d) Take appropriate action against the Respondent Nos. 1 to 3 in terms of Section 74 of IBC for violation of Section 14 of Insolvency and Bankruptcy Code, 2016;*

*e) Pass ad-interim ex-parte order in terms of prayer (c) hereinabove;*

*f) Pass such other or further orders and other relief(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.”*

## **2. Brief Background of the Case:**

The facts which are relevant and common for the purposes of determination of the issues involved in this application are stated as under:

- i.** An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Operational Creditor i.e. M/s.

Dynacon Projects Private Limited, against the Corporate Debtor i.e. M/s. Today Homes & Infrastructure Private Limited and the said application was admitted by this Adjudicating Authority vide order dated 31.10.2019 and a moratorium was declared including the appointment of Mr. Deepak Bansal as an Interim Resolution Professional. Subsequently, the present Respondent namely Mr. Nilesh Sharma was confirmed as Resolution Professional vide order dated 09.01.2020 in terms of Section 22 of IBC.

- ii.** Thereafter, the Resolution Plan was submitted by the Successful Resolution Applicant namely Consortium of Canary Greens Buyers Welfare Association, Callidora Flat Owners Welfare Association and Royal Elegencia Apartment Buyers Association which was approved by the CoC in its 12<sup>th</sup> meeting dated 10.08.2021 (voting concluded on 16.08.2021) by 96.93% voting share in respect of the CIRP of the Corporate Debtor after considering its feasibility and viability. Thereafter, Mr. Nilesh Sharma, the Resolution Professional of the Corporate Debtor submitted an IA-4766/2021 for seeking approval of the Resolution Plan under Section 30(6) read with Section 31 of IBC, 2016 on 20.08.2021, which is pending adjudication before this Adjudicating Authority.
- 3.** It is the case of the Applicant that the Respondent Nos. 1 to 3 who are the owners of the land in question entered into joint collaboration on 06.08.2010 with one M/s. Realtech Realtors Private Limited and M/s. Jai Mata Realtors Private Limited for construction, marketing, selling and development of the said land as a Residential Group Housing Project. It was agreed that land measuring 94 Kanal 7 Marla (11.794 acres approximately) shall be developed by one M/s. Jaimata Realtors Private Limited who is a nominee of the Corporate Debtor. Further, in view of Clause 24 of the Joint Collaboration Agreement dated 06.08.2010, the Respondent Nos. 1 to 3 executed a General Power of

Attorney on 06.08.2010 in favour of the Corporate Debtor and on the basis of the said General Power of Attorney, the Corporate Debtor has got the possession over the said land.

4. The Respondents on the other hand have disputed the fact that the possession and ownership of the land with the Resolution Professional.
5. We have heard the submissions made by Ld. Counsel appearing for the both the parties and perused the records.
6. The Applicant has claimed to have stepped into the shoes of the Corporate Debtor and got development rights for developing the land in question by virtue of the General Power of Attorney dated 06.08.2010. However, the Applicant has not produced any documentary evidence to show that possession of the land was given to the Resolution Professional who has filed the present application seeking a direction to the Respondents to hand over the possession of the land in question.
7. In an identical situation in IA-3356/2020, IA-3629/2020 & IA-5001/2021 in IB-2130(ND)/2019 vide order dated 05.12.2023, this Adjudicating Authority has taken a view with the disputed questions with regard to possession of the land which cannot be decided by this Adjudicating Authority and such issues have to be decided by a Competent Civil Court having jurisdiction.
8. We are therefore of the considered view that the question of possession in the present case also has to be decided by a Competent Civil Court having jurisdiction.
9. IA-4876/2020 is **disposed of** accordingly.

Sd/-

**(ATUL CHATURVEDI)  
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**