

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**IA-651/2022 IN**

**CP/IB/4469/(MB)/2019**

Under Section 7 of the IBC, 2016

*In the matter of*

**UTI Employees Sai Samruddhi Co-  
operative housing Society**

...Applicant

V/s.

**Mr. Jayesh Sangharajka and Ors.**

...Resolution Professional/  
Respondent(s)

*In the matter of*

**Idbi Trusteeship Services Limited**

...Financial Creditor

Versus

**Ornate Spaces Private Limited**

...Corporate Debtor

Order delivered on: **02.05.2023**

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant:

Mr. Partho Sarkar i/b Vidhi legal,  
Adv.

For the Respondent(s):

Mr. Vikram Nankani, Ld. Senior

Counsel a/w Mr. Nausher Kohli, Mr. Devesh Juvekar, Mr. Ashish Parwani, Mr. Dikshat Mehra, Mr. Chintan Gandhi and Ms. Anjali Dhoot i.b Rajani Associates for the RP. Mr. Jayesh Sangharajka RP present in person.

For the SRA:

Mr. Mustafa Doctor Ld. Senior Counsel a/w Mr. Akshay Doctor, Mr. Parag Sawant and Ms. Priyank Kulkarni i.b P.S. Chambers, Ld. Counsel for the Successful Resolution Applicant.

### **ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. This application is filed by the applicant, M/s UTI Employees Sai Samruddhi Cooperating Housing Society, the beneficiary of the land owned by Respondent-3 (MHADA), on which Respondent 5 (Corporate Debtor) was engaged to develop the Tenements for the benefit of members of the Applicant to seek rejection of the Resolution Plan, in consideration before this bench in IA-2374/2021, as being in contravention in terms of Sec. 30(2)(e) read with Sec. 30(3) & (4) of IBC; directions to the Resolution Professional (R1) to hand-over peaceful possession of the land; to issue

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directions against R1 and R2 (suspended board of directors), R5 (Corporate Debtor) and R6 (CoC) u/s 235A of the Code for stated offences; directions to the IBBI to give its finding against the Resolution Professional; directions for impleading in IA-2374/2021 and IA-1927/2021, though no relief is required.

2. It is the case of the present applicant, that the purported resolution plan is an encroachment of the applicant's (its members) rights to the land allotted by MHADA for construction of tenements. The 'Resolution Professional' allegedly in collusion with CoC/suspended directors/resolution applicant (who is alleged of fronting the CD) et al... The alleged perfidy on the part of Respondent/s allegedly assumes significance, since the purported resolution plan extinguishes the rights of the Applicants contrary to the provisions of law i.e. the instant applicant who is/are likely to be prejudiced of their rights. The purported resolution being in contravention of multiple provisions of law stated in the 'Memo of IA' is barred U/s 30 (2) (e) r/w Sec 30 (3) of IBC. The RP is alleged of mala-fide in attempting to seek resolution of properties ex-the assets of CD (Land) and is so alleged that the RP has committed criminal trespass onto the Land beneficial rights of which are vested with the instant applicant.
3. The Ld. Counsel for Applicant submitted that the resolution plan alters the agreement between the applicant and the Corporate Debtor to the detriment of the applicant without even making it a party to the process of

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resolution. He further contended that it also negates section 23 and Section 28(b) of the Indian Contract Act which provides “what consideration and objects are lawful, and what not” and establishment of the rights of the party. He relies on a Hon’ble NCLAT decision in case of Bharat Aluminium wherein it was held the bank guarantees are not part of the Corporate Debtor.

4. The Ld. Counsel for the applicant has filed written submission dated 24.04.2023 applicant stating that the Ld. Technical Member prohibited him from making submissions in response to the contentions raised by the Respondents and the matter was reserved. This bench brings on record that Ld. Counsel had already been allocated more than one hour to argue in IA-651/2022, IA-2232/2022 and IA-2074/2022 and had sufficiently argued the matter. On perusal of the submissions it is noticed that Ld. Counsel has clarified on the aspect of bank guarantee Rs. 27 Crores and corpus amount of Rs.10 Crore by the Applicant society. It has been argued in the submission that it is against the decision in the case of Hon’ble NCLAT in case of *Engineering Projects (India) Limited v. RamRatan Kanoongo (2022) ibclaw.in 344*, since it alters the terms of agreement with the applicant society. This Bench further notices that the Hon’ble Supreme Court in the matter of **Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd. (2022) 2 SCC 401**, held that ‘IBC provides for completion of CIRP

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*‘unswayed by abstract conceptions of equity and contractual freedom of the parties with unfettered discretion’.* Further, It is noticed that the issue in Engineering Projects (India) Limited (supra) was in relation to termination of performance bank guarantee and the Hon’ble NCLAT held that such agreement cannot be terminated without following due process of Law. However, in the present case, alteration of a development agreement between the applicant society and Corporate Debtor is contemplated in accordance with the provisions of the Code; and such alteration is necessitated for the Resolution of Corporate Debtor.

5. Ld. Counsel for the RP relies on para. 3 of order dated 11.02.2020 and para. 2 of order dated 18.02.2021 rendered by Hon’ble Bombay High Court, submitting that despite the Hon’ble High Court restraining the applicant from terminating the development agreement, the applicant proceeded to do so. It was also submitted that CIRP commenced on 18.02.2021 and there was no dispute in relation to fact that the possession of plot of land was with the Corporate Debtor at the commencement of CIRP. It was also submitted that order against RP in relation to success fees charged in another case is *sub-judice* before Hon’ble Supreme Court and regulation 34B of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is clarificatory in nature and should be given purposive interpretation.

6. Ld. Counsel for R7 i.e. Ashdan Properties Private Limited (SRA) relied upon page 111 of the reply and email dated 21.02.2022. Further, he drew attention to clause 19 (page 51) and clause 9 (page 45) of the reply.
7. This Bench heard the Ld. Counsel(s) and perused the material available on record.
8. This bench this Bench is of the view that the applicant has no locus to oppose the plan. Nonetheless, this bench has to consider that the Resolution Plan pending before it for approval is not contravention in any law in terms of section 30(2)(e) of the Code. Further, the applicant cannot be impleaded in this application in view of absence of locus. However, the applicant was served upon a copy of Resolution plan upon his insistence during the course of hearing, without giving any right to make any submission. The prayer for direction to IBBI is already dealt with in IA-2232/2022, hence not being adjudicated here. Further, for the reasons recorded in the order in IA-651 and 2232/2022, this bench is not inclined to issue directions against R1 and R2 (suspended board of directors), R5 (Corporate Debtor) and R6 (CoC) u/s 235A of the Code for stated offences. Further, this Bench is of the view that the applicant is precluded from seeking restoration of possession of the land, as there is no dispute that the land was in possession of the Corporate Debtor at the commencement of CIRP, hence, the possession of the same is not permissible in view of clear mandate in section 14(1)(d) of the Code.

9. In view of foregoing, this application IA-651/2022 is **dismissed**.

Sd/-

**PRABHAT KUMAR**  
**Member (Technical)**

SVR/02.05.2023

Sd/-

**KISHORE VEMULAPALLI**  
**Member (Judicial)**