

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT III, MUMBAI BENCH**

**I.A 2859 of 2021
In
CP (IB) 4682 of 2018**

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

Filed By

**Dadar Neelkanth Apartments Co-operative
Housing Society Limited**

A Co-Operative Housing Society, registered under the Maharashtra Co-operative Societies Act, 1960, bearing Registration No. BOM/WFS/HSG/TC/418/1987-88, having its registered office at Neelkanth Apartment, Gokuldas Pasta road, Dadar (East), Mumbai: 400 014.

..... Applicant

In the matter of

Jitendra Kantilal Shah

..... Petitioner

Versus

Sutlej Housing Private Limited

..... Corporate Debtor

Order Reserved On: 12.06.2023

Order Pronounced On: 21.07.2023

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Smt. Madhu Sinha, Member (Technical)

For the Applicant: Mr. Mutahhar Khan a/w Mr. Vishal Mehta i/b MV Law
Partners, Advocates.

Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

The above Interlocutory Application No. **2859 of 2021** has been filed by the **Dadar Neelkanth Apartments Co-operative housing Society Limited** (hereinafter referred to as "**Applicant/Society**") under Section 60(5) of the Insolvency and bankruptcy Code, 2016 for opposing/objecting to the Application bearing no. 533 of 2021 filed by Resolution Professional for approval of Resolution Plan and seeking following reliefs:

- a. *This Hon'ble Tribunal be pleased to exclude the subject Property from the Corporate Insolvency Resolution Process of the Corporate Debtor;*
- b. *This Hon'ble Court be pleased to restrain the Resolution Professional from acting in furtherance of the resolution plan submitted by the M's VK-21 Realty LLP and which is purported to have been approved by the committee of creditors of the Corporate Debtor.*

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT III, MUMBAI BENCH

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- c. *This Hon'ble Tribunal be pleased to restrain the Resolution Professional from creating any encumbrances in respect of the subject Property;*
 - d. *This Hon'ble Tribunal pleased to direct the Resolution Professional to issue a revised Expression of Interest setting out in detail the rights asserted by the Applicant in respect of the subject property and in particular the details with respect to the pending proceedings instituted by the Applicant before the Hon'ble Bombay City Civil Court;*
 - e. *Pending the hearing and disposal of the present application. This Hon'ble Tribunal be pleased to restrain the execution professional from taking any steps in furtherance of the resolution plan submitted by M/s. VK-21 Realty LLP or any third party that seeks to proceed in derogation of the Applicant's rights in respect of the subject Property;*
 - f. *Costs of the present Application;*
 - g. *Such further and other reliefs as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.*
- 1.** Heard the Counsel appearing for the Applicant/Society and Counsel appearing for the Resolution Professional and perused the materials available on record. The Applicant is primarily aggrieved by non-

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disclosure of the pending Litigation of the concerned Land and provision related to the concerned land under 100% approved Resolution Plan by the Committee of Creditors (hereinafter referred to as “CoC”) of the Corporate Debtor.

2. During the course of hearing, the Resolution Professional has drawn the attention of the Bench as well as to the Counsel appearing for the Applicant to the Affidavit dated 01.03.2022 wherein the Resolution Professional has stated as per the terms of Clause 25 of Settlement Agreement, the Conveyance proposed to be executed in favor of Corporate Debtor is subject to claims of the Society in the said Long Cause Suit. The Resolution Professional in **para h** of the said Affidavit stated that the Society’s Claim over the Society Property, which is subject matter of the said Long Cause Suit pending before the Hon’ble City Civil Court at Bombay is not been dealt with in the Resolution Plan and hence the Society is sufficiently protected in respect of their claim made by them, which are pending for adjudication. Advancing the arguments, the Resolution Professional also stated that the Resolution Applicant will acquire the entire shareholding in the Corporate Debtor and aforesaid transfer does not affect the Society Property in any manner whatsoever and also does not take away any vested rights of the Society.
3. Further, the Resolution Applicant has also filed an Affidavit dated 02.03.2022 confirming the pending litigations where the Resolution Applicant has categorically mentioned that the Resolution Applicant

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COURT III, MUMBAI BENCH

I.A 2859 of 2021
In
CP (IB) 4682 of 2018

shall continue to defend all suits and other proceedings filed by or against the Corporate Debtor in accordance with law which all includes the Suit filed by the Society before the City Civil Court, Mumbai. Hence, the Society is sufficiently protected.

4. After seeing the above Affidavits dated 01.03.2022 and 02.03.2022 and the explanations of the Resolution Professional and Successful Resolution Applicant, the Applicant/Society was satisfied and thus the grievance of the society stands resolved.
5. It is hereby once again clarified that the issue of the ownership of the concerned land claimed by the Applicant/Society is subject to the outcome of the long cause title suit.
6. As a consequence, the above Interlocutory Application is hereby disposed off with the above observations.

SD/-

MADHU SINHA
MEMBER (TECHNICAL)

//RENUKA//LRA//

SD/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)