



NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.1
IA/112(MP)2024
in
(MP) IA 136 of 2020
in
TP 171 of 2019 [CP(IB) 218 of 2018]

Proceedings under Section Sec. 31(2) r.w. 30(2) & 60(5) a.w. Rule 11

IN THE MATTER OF:

Bhagwan Singh & Ors

.....Applicants

V/s

Jagdish Kumar Parulkar, RP of

M/s Rai Homes Universal Pvt Ltd & Ors

.....Respondents

Order delivered on 29/01/2025

Coram:

Chitra Ram Hankare, Hon'ble Member(J)

Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicants :

For the Respondents :

ORDER

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

Neeraj

Sd/-

**CHITRA RAM HANKARE
MEMBER (JUDICIAL)**



THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

IA/112/MP/2024 in IA/136/MP/2020
In
TP/171/MP/2019 [CP(IB)/218/2018]

In the matter of: IA/112/MP/2024 in IA/136/MP/2020

(Application under section 31(2) r.w. section 30(2)(e) r.w. section 60(5) of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 11 of NCLT Rules, 2016)

1. Mr. Bhagwan Singh

Address: Imaliya Jargan, Kolhar Marg,
Narayanpura, Amrawad Kalan, Bhopal,
Madhya Pradesh- 462042

2. Mrs. Sushila Bai

Address: 7, Bhadbhada Road,
Barkhedi Kalan, Barkheda Nathu,
Suraj Nagar, Bhopal,
Madhya Pradesh- 462044

3. Mr. Parvat Singh

Address: 10-K, Imaliya Jargan, Kolhar Marg,
Narayanpura, Amrawad Kalan, Bhopal,
Madhya Pradesh- 462042

4. Mr. Radheshyam

Address: 10, Imaliya Jargan, Kolhar Marg,
Narayanpura, Amrawad Kalan, Bhopal,
Madhya Pradesh- 462042

5. Mrs. Meena

Address: 7, Near Navodaya School. Ratibad,
Bhopal, Madhya Pradesh- 462044

.....Applicants

Versus

1. Mr. Jagdish Kumar Parulkar

Resolution Professional of
M/s Rai Homes Universal Pvt Ltd



Address: GS-2, CSIDC, Commercial Complex,
Mahadev Ghat Road, Raipur Chowk,
Raipur, Chhattisgarh- 492001

.....Respondent No. 1

2. Mr. Hans Raj Mutreja

Interim Resolution Professional of
M/s Rai Homes Universal Pvt Ltd
Address: 146/8, Premium Center,
Zone-I, M.P. Nagar, Bhopal,
Madhya Pradesh- 462011

.....Respondent No. 2

3. Bank of India

Member of Coc
Address: Bhopal Zonal Office,
Bank of India Bhawan,
Arera Hills, Jail Road,
Bhopal, Madhya Pradesh- 462011

.....Respondent No. 3

4. M/s Arya Infra Solutions

Proprietor Mr. Aditya Deshpandey
Address: 84, Ganesh Nagar,
Nagpur, Maharashtra- 440009

.....Respondent No. 4

In the main matter of: TP/171/MP/2019, CP(IB)/218/2018

(Application under section 7 of the Insolvency & Bankruptcy Code, 2016)

Bank of India

.....Financial Creditor

Versus

Rai Homes Universal Pvt Ltd

.....Corporate Debtor

Order pronounced on: 29.01.2025

Coram: Chitra Ram Hankare, Member (J)

Kaushalendra Kumar Singh, Member (T)

Appearance:

For the Applicants : Ld. Adv. Ms. Soumya Dharwa

For the RP : Ld. Adv. Mr. Aditya J. Pandya a.w.
Mr. Jagdish Kumar Parulkar (RP-in-person)



JUDGMENT

1. This application has been filed on 06.03.2024 by Mr. Bhagwan Singh and others (Applicants) under section 31(2) r.w. section 30(2)(e) r.w. section 60(5) of the Insolvency and Bankruptcy Code, 2016 (the Code) r.w. Rule 11 of NCLT Rules, 2016 against the resolution professional of the corporate debtor i.e. M/s Rai Homes Universal Private Limited and others, seeking following reliefs: -

(i) That, the Hon'ble Adjudicating Authority may be pleased to allow the present application and reject the Resolution Plan dated 01.09.2020 being contravening law for the time being in force by the respondent Nos. 1 & 2 as defined under Section 30 (2) (e) of the IBC.

(ii) That, the Hon'ble Adjudicating Authority may be pleased to hold that the Joint Venture Agreement entered between the applicants and the corporate debtor was only a development agreement and there was no transfer of said land in the name of the corporate debtor.

(iii) That, the Hon'ble Adjudicating Authority may be pleased to direct the respondent No.4 to make provisions for transferring 31% of the sale proceeds received from the sale of the constructed land on the said project of the corporate debtor in favour of the applicants.

(iv) That, the Hon'ble Adjudicating Authority may be pleased to release the portion of undeveloped land (Approx. 3.14 acre) in favour of the applicants being the actual owner and possession holder of the said land.

2. The averments made by the applicants in the present application and as argued by the learned counsel are summarized as under:



- (i) The applicants are farmers by profession and are owners of the land admeasuring 6.34 acres bearing Khasra No. 196/1 and 197 situated at village Borda, Tehsil Husur, District Bhopal, Madhya Pradesh.
- (ii) Corporate debtor had proposed the applicants to develop and construct one housing project in the name and style of “Rai Pink City” on the said land of the applicants. Resultantly, the applicants and the corporate debtor entered into a Joint Venture Agreement dated 21.05.2012 specifying the rights of the applicants over the said land and clarifying the intention of the corporate debtor to carry out development and construction on the said land. It was stated in the agreement that since the applicants lack in having specialized team thus, the agreement was entered into with the corporate debtor for carrying out development and construction of the project.
- (iii) Along with the agreement, the applicants have also entered into a power of attorney in favour of the corporate debtor for a period of one year in order to gather all necessary statutory permissions etc. for functioning of project. Further, no other power of attorney was entered by the applicants in favour of the corporate debtor.
- (iv) As per clause 3 of the agreement, the sole and entire responsibility of developing the land was on the corporate debtor. It was agreed that in lieu of the above understanding the applicants would receive a consideration, 31% of the actual value of the sale of the developed properties/flats and the remaining 69% would be the share of the corporate debtor.
- (v) As per clause 7 of the agreement it was agreed that the corporate debtor shall complete the project within 36 months from the date of entering into the agreement i.e. from 21.05.2012 to



20.05.2015. Consequently, since the corporate debtor has failed to honour its commitment to complete development on the said land within the agreed time, essence of the agreement is tarnished. Thus, the corporate debtor cannot exercise its development right on the said land.

(vi) Apart from the share of 31% from the sale proceeds the applicants have no share in the shareholding or management of the corporate debtor. Therefore, by virtue of the agreement, the applicants will not be treated as 'Promoters' of the corporate debtor.

(vii) Meanwhile, the corporate debtor in order to fulfil financial needs to develop the project, has applied for financial assistance from Bank of India. Consequently, the bank sanctioned loan facility of Rs 5 Crore. In compliance of the sanction letter dated 12.10.2013, the applicants inter alia jointly executed a deed of guarantee dated 08.11.2013 and also created charge by way of equitable mortgage dated 09.12.2013 on the said land.

(viii) Since the corporate debtor could not maintain financial discipline after availing loan, the Bank of India initiated recovery proceedings against the corporate debtor. The bank has also approached the NCLT, Ahmedabad Bench under section 7 of the Code, and NCLT, Ahmedabad Bench has admitted the corporate debtor into the Corporate Insolvency Resolution Process (CIRP) on 19.06.2019 and appointed respondent no. 2 as IRP.

(ix) Respondent no. 2 (Erstwhile IRP) in haphazard manner has unlawfully and without making enquiry into the title deeds of the said land, has taken the said land owned by the applicants as the assets of the corporate debtor. Thereafter, respondent no. 1 came to be appointed as RP by this Adjudicating Authority vide order dated 17.01.2020.



(x) The applicants were not contacted by the IRP and were not aware of the insolvency proceedings of the corporate debtor. It was by the end of January 2020 that the applicants got to know that the corporate debtor is under CIRP and preferred an appeal against the order of CIRP dated 19.06.2019 before the National Company Law Appellate Tribunal at New Delhi on 20.06.2020. However, the appeal was dismissed by the Hon'ble Appellate Tribunal on ground of delay and no jurisdiction to extend time beyond 45 days.

(xi) Subsequently, resolution plan dated 01.09.2020 by Arya Infra Solutions in consortium with M/s SVK infracon Private Limited, respondent no. 4 came to be approved by the CoC in its 8th meeting dated 05.09.2020. At present, application for approval of plan is pending before this Adjudicating Authority.

(xii) Respondent no. 1 has assessed the liquidation value of the corporate debtor including the said land as the asset of the corporate debtor as Rs 2.96 Crores. However, the actual market value of the land is much higher than Rs 15 Crores. It is evident from the RERA records as well in 2017 that the corporate debtor had disclosed the value of the said land as Rs 15 Crores.

(xiii) It is pertinent to mention that respondent no. 3 i.e. Bank of India is the charge holder and possession holder of the said land. However, respondent no. 3 has failed to disclose title of the said land in meeting of the CoC while approving/rejecting the resolution plan.

(xiv) The applicants were executing the registered sale deeds whenever the developed flats were sold by the corporate debtor. Further, large portion of the said land is undeveloped as on date (approx. 3.14 Acres subject to actual measurement of the land) on which as per the agreement the applicants are the owners and possession holders. Hence, in the interest of justice, Adjudicating



Authority may kindly release the portion of undeveloped land in favour of the applicants, reject the resolution plan approved by the CoC and hold that there was no transfer of said land in the name of the corporate debtor.

3. In this context, defense placed by respondent no. 1 in its affidavit in reply and submissions made thereon and as presented/argued by the learned counsel for respondent no. 1/RP are summarized as under:

(i) The applicants in the present application have intentionally tried to portray themselves as land owners, whereas in actuality they are the 'promoters' of the corporate debtor as per the definition of 'promoters' given under section 2(zk) of the Real Estate Regulatory Act, 2016 and section 3(s) of the M.P. Prakoshta Swamitva Adhiniyam, 2000.

(ii) Nowhere in the world farmers or land owners gives personal guarantees and create equitable mortgage on their own lands in order to secure the loan facilities of some company. However, admittedly in the present case applicants have executed deed of guarantee dated 08.11.2013 and deed of equitable mortgage dated 09.12.2013 in order to back the corporate debtor. This conduct of applicants clearly shows that they indeed have acted as promoters of the corporate debtor and both corporate debtor and applicants have acted jointly with their available resources in advertising as well as in developing and constructing the corporate debtor real estate project based on revenue share formula.

(iii) Interpretation given by the respondent is based on logic which has also been adopted by Maharashtra Real Estate Regulatory Authority through its circular no. 12 of 2017 titled as "Land owners/investors having area/revenue share in real estate project to be treated as promoter". Relevant part is reproduced hereunder:



‘Whereas, during the online registration process, especially for on-going projects, it was observed that several developers (who actually obtain building permissions and construct) of the real estate project, have entered into arrangement with individuals/organizations like land owners or investors, by which the said individuals/organizations are entitled to a share of the total revenue generated from sale of apartments or share of the total area developed for sale which are also marketed and/or sold by such individuals/organisations.

Whereas, a careful consideration of the aforesaid definition in the light of the true object and purpose of the said Act leaves no manner of doubt that such individuals/organisations are also covered and clearly fall within the aforesaid definition of the term ‘Promoter’ and as such are Promoters within the meaning of the said terms for the purpose and for the implementation of the said act and all the rules formed thereunder. They are therefore jointly liable for the functions and responsibilities specified in the Act in the same manner as the promoter who actually obtains building permissions and carries out construction.’

(iv) It is clear from the above that applicants herein are also covered and clearly falls within the definition of the term ‘Promoter’. Therefore, the applicants herein are jointly liable for the functions and responsibilities specified in the Act in the same manner as the promoter of the corporate debtor.

(v) The applicants have not come before this Adjudicating Authority with clean hands and they are not entitled to any relief and further to challenge the resolution plan as approved by the CoC. Hon’ble NCLAT in the matter of *Jaideep Ghosh and Anr. Vs Niraj Agrawal and Ors. C.A.(AT) Ins. No. 839 of 2022*, has categorically held that one who does not come to a court with clean



hand may not get any relief, if the conduct of the parties appearing are not transparent.

(vi) The applicants do not have any right to challenge the CoC approved resolution plan as admittedly they have filed their claims on 12.09.2020, whereas, the resolution plan of the SRA was placed before the CoC in its 8th meeting held on 18.08.2020, 20.08.2020, 24.08.2020, 25.08.2020 and 26.08.2020. Further, e-voting was concluded on 05.09.2020.

(vii) Admittedly the applicants herein in the present case have failed to file their claim within the stipulated statutory time period and therefore the same was rejected by the RP through its letter dated 16.09.2020.

(viii) The applicants have filed their claims in form F i.e. proof of claims by creditors other than financial creditors and operational creditors. Hon'ble NCLAT in its judgment namely *Mukesh N. Desai v. Piyush Patel* as well as *Sree Sankeshwara Foundation and Investment v Dugar Housing Limited*, has held land owner who are enjoying reciprocal rights and obligations for developing the land or since there is no claim for any goods or service, they could not be considered as financial or operational creditors of the corporate debtor. However, since the applicants are neither financial nor operational creditors of the corporate debtor even as per their own case they have no locus to challenge the resolution plan.

(ix) IA/137/MP/2020 filed by the same applicants on the similar subject matter/grounds is already pending before this Adjudicating Authority due to which present application is not maintainable. In IA/137/MP/2020 present applicants have raised the same issue regarding dismissal of their claims by the RP and further were seeking permission from this Adjudicating Authority to file EOI for the corporate debtor and have shown their intent to settle the



claims of the creditors of the corporate debtor including the financial creditors. The said conduct of applicants clearly shows that they are indeed promoters of the corporate debtor.

(x) The draft agreement to sale being submitted by the corporate debtor jointly with the applicants before the RERA was a sample draft of agreement to sale of units by the corporate debtor to respective allottees wherein it was categorically written that corporate debtor is the absolute and lawful owner of the said land. Relevant portion of the agreement submitted before RERA is reproduced hereunder:

“A. Rai Homes Universal Pvt Ltd (Joint Venture) is the absolute and lawful owner of Khasra No. 196/1,197, totally admeasuring 2.507543 Hect. (25075.43 Sq. M) situated at village Borda in , Tehsil Huzur & District Bhopal (Said Land) vide sale deed(s) dated 12.04.2007 registered as documents no. A1/156 (j) at the office of the Sub-Registrar. The Owner and the promoter have entered into a development agreement dated 27.12.2014 registered as document no. 1A-1467 at the office of the Sub-Registrar;

B. The said land is earmarked for the purpose of plotted development of a residential project, B. comprising of 570 Flats (including EWS) & 14 shops, and the said project shall be known as ‘Rai Pink City Phase-II (Project): Provided that where land is earmarked for any institutional development the same shall be used for those purpose only and no commercial/residential development shall be permitted unless it is a part of the plan approved by the competent authority;

C. The Promoter is fully competent to enter into this Agreement and all the legal formalities with respect to the right, title and



interest of the promoter regarding the said land on which project is to be constructed have been completed;

D. The Indore Municipal Corporation, Indore has granted the commencement certificate/development permission to develop the project vide approval dated 02.01.2013 bearing Memo no. 162/B-121/2012-2013;”

(xi) From the draft agreement submitted before RERA it is clear that both the corporate debtor and the applicants are the joint owner of the land on which project is situated and further the exact said position was provided as well as advertised to the allottees.

(xii) Hon’ble Supreme Court in the matter of *Victory Iron Works Ltd vs. Jitendra Lohia & Anr* bearing Civil Appeal No. 1743 & 1782 of 2021, has held that the bundle of development rights that the corporate debtor has over the property in question would constitute “asset” within the meaning of section 18(f) and section 25(2)(a) of the Code and RP is duty bound to include those rights in the Information Memorandum being prepared for the resolution of the corporate debtor.

4. We have heard the learned counsel appearing for both the parties, and have perused the relevant documents available on record. It is noted that the applicants and the corporate debtor had entered into a Joint Venture Agreement dated 21.05.2012 to develop and construct housing project i.e. “Rai Pink City” whereby the applicants have provided their land for the construction of housing project to the corporate debtor and the corporate debtor has taken up the development and construction work on the said land. In return, from the sale proceeds of the said project the applicants were entitled to get 31% share of the sale proceeds as consideration. The corporate debtor had taken a loan facility from Bank of India and the applicants have provided guarantee to cover the said loan facility and have also created charge by way of equitable



mortgage dated 09.12.2013. The corporate debtor did not pay the said loan as per the commitments and the bank initiated the proceedings under section 7 of the Code and the Adjudicating Authority vide order dated 19.06.2019 admitted the corporate debtor into CIRP and appointed respondent No. 2 as IRP. The applicants' contention in the present application includes that the IRP had taken and included the said land as the asset of the corporate debtor and the respondent no. 3/Bank of India is charge holder of the said land. Further, the applicants, together with the corporate debtor, being a partner in joint venture have been executing the sale deed of the flats to the allottees/home buyers.

5. The respondent no. 1/RP and the learned counsel appearing for him have taken several pleas in their defense that the applicants are the promoters of the corporate debtor as per the RERA Act, 2016 and M.P. Prakoshta Swamitva Adhiniyam, 2000; that, the applicants have no locus to challenge the resolution plan as they are not the financial or operational creditor of the corporate debtor and have filed their claims, though belatedly after the approval of the resolution plan by the CoC; and that, as per the draft agreement to sale submitted before the RERA, the corporate debtor is the absolute and lawful owner of the said land.

6. After considering the above facts and circumstances, it is clear that the applicants' claim to absolute ownership of the land is untenable. Their involvement in the Joint Venture Agreement with the corporate debtor for development of estate project and deriving the return thereof by sharing the revenue (sale proceeds of flats) and their subsequent actions of providing the personal guarantee and mortgage the entire land for obtaining the loan from Bank of India for the joint venture project, clearly indicate their role as co-promoters in the venture. It is also noted from the record that applicants in IA/137/MP/2020 had sought certain directions to the RP and on the day of hearing on 04.01.2024, Mr. Bhagwan Singh, one of the land owner had appeared and had stated that he is ready as a guarantor to make the entire payment (against the dues



of the corporate debtor) and to carry out the project. For ready reference the relevant part of the daily order dated 04.01.2024 is reproduced here as under:

“(MP) IA 137 of 2020

This is an application filed by the landowners under section 60(5) of the IBC, 2016 seeking certain directions against the Respondents.

Mr. Bhagwan Singh, one of the landowners appears in the matter.

No counsel appears on behalf. It is also noted that the application is not uploaded on the DMS/e-portal. This aspect has been explained to him in Hindi also. He is being asked to ensure that his application is uploaded on the DMS/e-portal. He can seek the assistance of a technical person or advocates for this purpose. He can also make an effort that his matter is presented through some counsel because he does not appear to understand any provisions of the law, particularly the IBC.

When we asked him why he could not engage a counsel, he submits that he does not have enough money to pay for counsel. Then a question arises as to on what ground, he is seeking relief that the CIRP should be withdrawn as he is ready as a guarantor to make the entire payment and to carry out the project.”

7. This clearly demonstrate that the applicants possess shared rights and interests in the project, and thus their assertion of sole ownership over the land without considering the rights and interests of the corporate debtor and other stakeholders is not sustainable.

8. Pursuant to the Joint Venture Agreement, the developer/corporate debtor had acquired development rights onto the subject land and that is considered as their assets, in view of the definition of “property” as contained in Section 3(27) and as held by the Hon’ble Supreme Court in the matter of “Victory Iron Works Ltd” (supra). Further the developer/corporate debtor had raised the funds towards the super



structure as well as the land. The corporate debtor had also obtained loan facility and a charge by way of equitable mortgage to create onto the subject land. As such third party interest (funds of homebuyers and the banks) is also created onto the subject land and super structure (flats) constructed thereon. The project is incomplete. The CoC already approved the Resolution Plan, the part of the land lying vacant is included in the project and will have to be completed by the SRA as per the approved Resolution Plan. It is noted that the Resolution Plan is lying pending for approval before the Adjudicating Authority and if the same gets approved, the corporate debtor under the control of new management/SRA would continue to have the development rights over the entire subject land. Thus, in the facts of the case, the most appropriate course of action for the appellant would have been to file their claims with the RP prior to the approval of the Resolution Plan by the CoC and/or to appeal against the rejection of claim by the RP. In fact, the Applicants *vide* their another application i.e., (MP) IA 137 of 2020 has sought for a direction to the RP to consider their claim which was filed belatedly. In that matter, we have already condoned the delay in filing the claim *vide* order dated 07.01.2025 and have directed the RP to examine the claim and to consider for its inclusion in the Resolution Plan to the extent the claim is admitted and also to place the matter before the CoC/SRA for the suitable modification in the Resolution Plan by way of an addendum, if so required and in that case to call for a CoC meeting for consideration/approval of the addendum.

9. On the issue as raised by the Applicant herein it cannot be said that the Resolution Plan contravene any provisions of the law for the time being in force. In any case the various aspects as per Section 30(2) r.w. Section 30(1) would in any case be examined by the Adjudicating Authority while considering the matter for approval of the Resolution Plan.



10. Pursuant to the Joint Venture Agreement, the corporate debtor is vested with the development rights onto the subject land and after raising the funds from the allottees towards the real-estate project as well as obtaining the loan form the bank by executing the deed of equitable mortgage of the subject land, a third party interest has also been created onto the land as well as the super structure constructed thereon. As such the applicant cannot claim the absolute ownership over the subject land and thereby even the portion of vacant land, which is included in the project cannot be released in the favour of the applicants. The applicant is a co-developer and as such could have made their claim before the RP. Such claim would neither be a financial debt nor operational debt and as such would be other debts and would fall under the order of priority as per the Clause-f of Section 53(1). The applicant has filed his claim before the RP but belatedly and vide order dated 07.01.2025, the delay in filling the claim has been condoned and RP has been directed to examine the claim and consider for its inclusion in the resolution plan to the extent the claim gets admitted.

11. After the approval of the Resolution Plan, the unclaimed unpaid liabilities would in any case be extinguished and as such the applicant/land owners would not have any further right for sharing the revenue on the strength of the said Joint Venture Agreement.

ORDER

The application is rejected. IA/112/MP/2024 in (MP) IA/136/MP/2020 stands disposed of.

-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-
CHITRA RAM HANKARE
MEMBER (JUDICIAL)