

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P. No.(IB)1339(MB)/2017
MA 1007/2018, MA 751/2019

CORAM: SHRI V. P. SINGH
MEMBER (J)
SHRI RAVIKUMAR DURAISAMY
MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 8.5.2019

NAME OF THE PARTIES: Alchemist Asset Reconstruction Company Ltd

Vs

Precision Fasteners Ltd

Section 7 of the Insolvency and Bankruptcy Code, 2016.

ORDER

50. **MA 751/2019, MA 1007/2018 IN CP.(IB)-1319(MB)/2017**

MA 1007/2018 has been filed by the Liquidator under Section 60(5)(c) of IBC, 2016, seeking direction in respect of Respondents who are occupying various flats in Gurudev Co-op Housing Service Society Limited (Gurudev Society), Plot B, Sr. No.24/2(T), Sayli Road, Silvassa 396230.

The applicant states that he has been appointed as Liquidator of the Corporate Debtor by an order dated 12.3.2018. The Corporate Debtor is the owner of 17 flats in Gurudev Society which were occupied by various people. Given the Liquidator order, the Liquidator has issued notice dated 6.4.2019, requesting the various occupants of flats in the Gurudev Society Limited to vacate and hand over the possession of the respective flats to the Liquidator on or before 05.05.2018. Copies of the notices are annexed with the application as Exhibit B.

It is further submitted that 11 occupants handed over the peaceful and vacant possession of their respective flats. After the said occupants handed over the possession of the flats, the Respondents, 1,2 and 4 continued to occupy the flats in the Gurudev Society. It is further submitted by the applicant that from years 2003, the Corporate Debtor was registered as a sick company with the Board for Industrial & Financial Reconstruction (**"BIFR"**). The applicant has further stated that various documents relating to the Corporate Debtor are not made available to the Liquidator. The applicant has further stated that Flat No.E7 is occupied by the Respondent no 1 and Flat No. B-9 in the Gurudev Society is being occupied by the Respondent No.2 MrJayendra G Chauhan, and Flat D-11 in the Gurudev Society is being occupied by Respondent No. 4. The applicant has further stated that R-4 in and around June 2018, informed the liquidator that he would not vacate the Flat No. D 11.

In these circumstances, the applicant has filed this application, seeking possession of the flats mentioning above.

It is further stated that Regulations 44 of the Insolvency and Bankruptcy and Board of India (Liquidation Process) Regulations, 2016, provides the Liquidator to liquidate the Corporate Debtor within two years. Therefore, it is necessary to take possession of the liquidation estate. It is further stated by Applicant that under Liquidation process, Liquidator is required to sell or liquidate the moveable and immovable property and actionable claims of the Corporate Debtor in liquidation by public auction or private contract, subject to section 52 and then distribute the proceeds so received to the Creditors. Such retention of the possession and refusal of handing over of the flats owned by the Corporate Debtor is likely to affect all the creditors of the Corporate Debtor who is by the distribution of asset

under section 53 of the Code entitled to the proceeds out of the liquidation. Moreover, it is known the fact that if the applicant sold the property/flats while the Respondents are occupying the flats, the same would not fetch the fair value and in fact, would fetch far less price which it would otherwise be able to fetch in a sale. It is further stated by the applicant that unauthorised occupied flats are part of the Liquidation estate, and the proceeds received from the same would be for the benefit of all the creditors of the Corporate Debtor. The applicant is duty bound to act as per the powers under the Code and to hold and form the liquidation estate in a fiduciary capacity for the benefit of all the creditors.

The applicant has filed an affidavit of service which shows that the notice on the respondent nos 1,2 and 4 has been served by way of publication of notice in the newspaper and by notice sent through the post. Despite service of notice, R1 and R2 have not filed their objections. However, R4 has filed a written statement wherein it is stated that flat D-11, Gurudev Society is occupied by him. It is further stated that he was providing labourers for the Corporate Debtor and on account of the supply of labourers, the Corporate Debtor owes a principal sum of Rs. 15,94,514/- plus interest, amounting to total claim of Rs 29,13,382/. It is further stated in the written statement that he has filed proof of claim through a letter dated 20.04.2018 to the liquidator. In respect of the said claim, based on proof provided to the Liquidator, the Liquidator has admitted the claim to the extent of Rs. 29,13,382/-. Copy of the said proof of claim is attached with the MA as **Exhibit- "I"**. Respondent No. 4 has further stated that the Corporate Debtor has executed an agreement dated 12.12.2013 and as per the terms of the agreement, he was given possession of the Flat No D11 in Gurudev Society until the payment of the total claim by the Corporate

Debtor is made to him. It is further stated by Respondent No. 4 that he is in lawful possession of the said Flat No. D11 and has the authority of such possession which was handed over by the then Manager K. N. Disley. The written statement has been filed on behalf of the Respondent No.4, but no affidavit has been filed in support of its claim. Heard the Counsel representing the Liquidator and Counsel representing the Respondent No-4. Since R1 and R2, despite service of notice have failed to submit their reply and their representation before this Bench. It is pertinent to mention that Flat Nos. E7, B-9 and D11 mentioned above in Gurudev Society is set to be a part of the liquidation estate which is occupied by R1, R2 and R4 respectively.

Respondent No. 4 is claiming to have the flat based on the possession letter issued by the Manager of the Corporate Debtor. The said letter is on the stamp paper of Rs.20 attach with the application on page nos. 46 and 47 which shows that Mr K. N. Disley, Manager on behalf of the Corporate Debtor has handed over to the possession of the flat to the Respondent No. 4, Labour Contractor, Mr. Dhirubai Chhotubhai Patel, for the interim period till the dues of R4, is pending with Corporate Debtor. The said letter could not be treated as the Deed of Conveyance whereby R4 has got the valid possession of the flat. No sale or transfer has been made. Prima facie the said letter cannot be treated as valid document whereby the alleged property has been transferred to R4. Further, the alleged claim as per the contention of R4 has been admitted as the Operational Debt for which Respondent may get their share as per the provision of section 53 of the IBC Code, 2016 when the sale proceeds of the liquidation estate will be distributed.

: 5 :

In the circumstances, we at this moment allow MA 1007/2019 and direct R1, R2 and R4 to vacate the possession of the alleged flat Nos.E7, B9 and D11 and hand over the same to the liquidator, failing which Liquidator will be entitled to get the possession in accordance with law with the help of police.

Certified copy of the order may be issued to the Liquidator.

Sd/-
RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-
V. P. SINGH
Member (Judicial)