

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH-1**

**IA.No.676 of 2023**

**In**

**CP (IB) NO. 299/7/HBD/2018**

*Under Section 60(5) of the Insolvency & Bankruptcy Code, 2016.*

**Between:**

Sri. Sata Narayana Rao  
S/o Late Sri Sata Pitchaiah, aged about 54 years  
Pvt. Employee, R/o Plot No.890, Pragati Nagar  
Opp: JNTU, KPHB, Hyderabad - 500090

... Implead Petitioner/Respondent/  
Interested through the Corporate Debtor

Versus

Punjab National Bank  
(Erstwhile Oriental Bank of Commerce)  
Regd. Office & Corporate Office  
Plot No.5, institutional area, Sector-32  
Gurgoan – 122001  
Branch Office: Plot No.1271  
Road No.63, Jubilee Hills  
Hyderabad – 500 033

... Respondent/Applicant/Financial Creditor

Versus

NCS Sugars Limited  
405, Minar Apartments  
Deccan Towers, Basheerbagh  
Hyderabad  
Telangana – 500001

... Respondent/Respondent/Corporate Debtor

**Date of order: 01.08.2023**

**CORAM:**

**Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)  
Shri Charan Singh, Hon'ble Member (Technical)**

**Appearance**

For the Applicant: Shri Y. Srinivas Murthy, Senior Advocate and Mr.  
Pandyala Venkaiah Naidu, Advocate

For the Respondent: Shri Y. Suryanarayana, Advocate for R-2

**PER: BENCH**

**O R D E R**

1. This Application is filed seeking to implead the Applicant herein in main CP (IB) No. 299/7/HDB/2018 as Respondent and for directions to Respondents herein to complete the sale transaction in favour of the Applicant by execution and registration of sale deeds in respect of the land admeasuring total Ac 4.12 cents mentioned in the agreement of sale.
- 2.1 It is stated that the 2nd Respondent/NCS Sugars Ltd. (Corporate Debtor) availed loan from Consortium of Banks i.e. Andhra Bank, Indian Overseas Bank and Oriental Bank of Commerce (currently PNB). Out of the 3 banks PNB has got exclusive security of 4.12 acres of land situated in Vizianagaram District.

- 2.2. The 2<sup>nd</sup> Respondent/Corporate Debtor in order to meet part of the OTS amount, requested PNB to give No-objection for sale of the said land, kept as security with Punjab National Bank.
- 2.3. The Applicant herein has agreed to purchase the subject land and in token of acceptance have paid 10% margin money to PNB and in turn, the financial creditor has accepted for release of subject land from mortgage vide letter dated 20.01.2022 upon compliance of the terms of the said letter.
- 2.4 It is further stated that the 2<sup>nd</sup> Respondent /Corporate Debtor entered into an alleged Agreement of Sale with the Applicant vide undated sale agreement in respect of different parcels of land described in the said sale agreements. Subsequently, the 2<sup>nd</sup> Respondent vide email dated 31.05.2022 requested the 1<sup>st</sup> Respondent for extension of time for deposit of balance amount and the 1<sup>st</sup> Respondent/PNB vide letter dated 28.06.2022, extended the time for deposit of balance amount by 08 weeks, subject to the conditions mentioned in the letter.

- 2.5. While it was so, this Tribunal on 24.06.2022 admitted the Petition filed under Section 7 of IBC, imposed moratorium and appointed an IRP. Aggrieved by the said order, the 2<sup>nd</sup> Respondent preferred an Appeal before Hon'ble NCLAT and the same is pending adjudication.
- 2.6. The Applicant herein vide letter dated 04.08.2022 requested the PNB either to register the said land or to refund the Applicant's money, who already paid the margin money of 10% and is ready to pay the balance sale consideration and requested for completing the registration of subject land in his favour. However, the same did not evoke any response.
- 2.7. Therefore, according to the Applicant, as per the oral advice of the CoC, approached this Tribunal, seeking to implead him as Respondent in the main Company Petition. It is stated that the Applicant will be put to huge and irreparable loss besides hardship, if he is not allowed to be impleaded as respondent in the main case.

- 2.8. It is further averred that the Applicant upon enquiry from the SRO, Bobbili office, has come to know that 1.0 acre of land was sold by the District Collector and the unsold extent remained in Sy. Nos.164 & 165.
- 2.9. The Applicant contends that the Financial Creditor/PNB had failed to disclose the true facts before this Tribunal and failed to safeguard the interests of the Applicant. Thus submitting, prayed the Tribunal to direct the RP to execute and register the sale deed in favour of Applicant herein in respect of land to the extent of Ac. 4.12 situated in Sy.Nos. 156, 164 and 165 in Bobbili Mandal belonging to the Corporate Debtor pursuant to the approval given by 1st Respondent vide letter dated 28.06.2022 for which the Financial Creditor has allowed the agreement of sale to be entered into between the Applicant and the Corporate Debtor prior to admission of CIRP process.
3. No counters have been filed by Respondents 1 & 2.
4. In the light of the averments as aforementioned, the point that arises for our consideration is :

Whether an agreement holder for purchase of immovable property of the corporate debtor which has been entered prior to the admission of the Corporate Debtor into corporate insolvency proceedings, is a necessary and proper party to the proceedings under section 7 of IB Code?

5. We have heard Shri Y. Srinivas Murthy, Ld. Senior Advocate along with Shri P. Venkaiah Naidu for the Applicant, perused the record and case law.

Point:

Whether an agreement holder for purchase of immovable property of the corporate debtor which has been entered prior to the admission of the Corporate Debtor into corporate insolvency proceedings, is a necessary and proper party to the proceedings under section 7 of IB Code?

- 6.1 Shri Y. Srinivas Murthy, Ld. Sr. Counsel for the Applicant submits that, the above Applicant has entered into a separate agreement of sale with the corporate debtor for purchase of a part of the property which absolutely belongs to and possessed by the corporate debtor for valuable consideration, part of which has already been paid. Ld. Sr. Counsel further contended that prior approval of the competent authority of the Lender namely, the 1st respondent herein, has been obtained by their Vendor/the 2<sup>nd</sup> Respondent, since the said property

has been under the mortgage of the 1<sup>st</sup> Respondent. Ld. Sr. Counsel in support of this submission placed reliance on the letter of the 1<sup>st</sup> respondent dated 20.01.2022 and also on the correspondence between the 1<sup>st</sup> Respondent/financial creditor and the 2<sup>nd</sup> Respondent/corporate debtor regarding an OTS proposal by the 2<sup>nd</sup> respondent/Corporate Debtor which includes the letter dated 28/06/2022 of the 1<sup>st</sup> Respondent/financial creditor.

- 6.2. Ld. Sr. Counsel further contended that, suppressing the above facts which are very much in the knowledge of the financial creditor, the 1<sup>st</sup> Respondent/financial Creditor initiated proceedings under section 7 of IB Code against the corporate debtor, vide Company Petition No 299/2018 and the same has been admitted by this Tribunal on 24.06.2022, whereby this Tribunal ordered moratorium, and also appointed an interim resolution professional for the corporate debtor. Placing reliance on the communication between the 2<sup>nd</sup> Respondent and the 1<sup>st</sup> Respondent, copies of which are filed along with the Application, learned senior counsel vehemently contended that the financial creditor, being fully aware of Applicant entering into the

agreement of sale with the corporate debtor in pursuance of the letter of the 1<sup>st</sup> Respondent/financial creditor dated 20.01.2022, whereunder the 1<sup>st</sup> Respondent agreed to release the subject land from the mortgage upon complying the terms of the letter dated 20<sup>th</sup> January 2022, is under a legal obligation to ensure that the said transaction of sale of the property of the corporate debtor in favour of the Applicant be completed, especially when it had extended the time beyond 24.06.2022 for payment of the balance OTS amount vide its letter dated 28/06/2022. Ld. Senior Counsel further submitted that since as per the agreement between the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents, the balance sale consideration amount payable by the Applicant herein shall be deposited with the financial creditor towards the discharge of the loan outstanding of the corporate debtor, filing of a petition u/s 7 of IBC, even before the time allowed to deposit the balance amount, is a malafide and an illegal act on the part of the 1<sup>st</sup> Respondent.

- 6.3. Therefore, according to the Ld. Sr. Counsel, the very initiation of corporate insolvency resolution proceedings against the corporate debtor in this case is nothing but gross abuse of the process of law besides collusive as such the order of admission of the corporate debtor into CIRP needs to be recalled. Ld. Senior Counsel also pleaded that in order to unearth the collusion, fraud, and suppression of material information by the financial creditor which was in its knowledge, the Applicant is necessary and proper parties to the present proceedings, therefore, the Tribunal may permit the Applicant to be pleaded as respondent in the company petition.
- 6.4. Ld. Sr. Counsel further submitted that having come to know that their vendor/ corporate debtor has been admitted into CIRP, vide email dated 4<sup>th</sup> August 2022 the Applicant has requested the 1<sup>st</sup> Respondent for execution of registered sale deeds in terms of the agreements of sale. However, as the said letter did not evoke any response the present application has been filed.

- 6.5. Despite service of notice, financial creditor and 2<sup>nd</sup> Respondent have not filed their counters.
- 6.6 Having heard the senior counsel for the Applicant and on perusal of the record, at the outset, it may be stated that the above interlocutory application has been filed in the undeniable backdrop of the above company petition filed under section 7 of IBC, by the 1<sup>st</sup> Respondent alleging that the 2<sup>nd</sup> respondent/corporate debtor having availed credit facilities from the 1<sup>st</sup> respondent/Financial Creditor defaulted in repayment of the same, has already been admitted by the Adjudicating Authority, vide order dated 24.06.2022, imposed moratorium besides appointed an interim resolution professional to carry out insolvency resolution process of the Corporate Debtor. Thus, the CIRP of the corporate debtor is underway.
- 6.7. Needless to say that while admitting a Petition under Section 7 of IBC, as held in the ruling in *Innoventive Industries Ltd vs ICICI Bank & Anr*, wherein it was held that,

The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.

- 6.8. Therefore, in order to decide whether or not a debt and its default exists, the presence or absence of the third parties like the present Applicant who are admittedly the holders of agreement of sale of the immovable property that belongs to the Corporate Debtor is neither unnecessary nor warranted, as they have no role whatsoever to speak on debt or its default. Hence, on this sole ground alone the Interlocutory Application to implead the Applicant/agreement holders as parties to the “main proceedings” which have already culminated in admitting the Company Petition, is thoroughly misconceived, unsustainable and untenable under law.
- 6.9. However, according to the Ld. Sr. Counsel for the Applicant, since, in this case the Applicant has entered into an agreement of sale prior to the admission of the present petition for insolvency resolution of their Vendor/Corporate debtor, pursuant to the permission granted by the financial creditor to their Vendor/corporate debtor and the Financial Creditor also extended, time beyond 24.06.2022, to pay the balance amount of OTS vide letters dated 20.01.2022 and 28.06.2022, the Applicant is entitled under law to get the registered

sale deeds executed in their favour upon payment of the balance sale consideration to their Vendor, therefore the RP is bound under law to execute registered sale deeds in favour of the Applicant. Since, the said request made by the Applicant vide letter dated 20.08.2022 did not evoke any response, the Applicant has filed the present application.

6.10 In order to answer the above contentions of the Ld. Senior counsel, we usefully refer to section 18 of the IB Code, which enjoins upon the Interim Resolution Professional to collect all information relating to the assets, finances and operations of the Corporate Debtor as well as to take control and custody of assets, which is as below.

*Duties of interim resolution professional. - (1) The interim resolution professional shall perform the following duties, namely: -*

*(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to - (i) business operations for the previous two years; (ii) financial and operational payments for the previous two years; (iii) list of assets and liabilities as on the initiation date; and (iv) such other matters as may be specified;*

*(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under Sections 13 and 15; Company Appeal (AT) (Ins.) No.93 of 2022 19*

*(c) constitute a committee of creditors;*

*(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;*

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*(e) file information collected with the information utility, if necessary;*

*and*

*(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including— (i) assets over which the corporate debtor has ownership rights which may be located in a foreign country; (ii) assets that may or may not be in possession of the corporate debtor; (iii) tangible assets, whether movable or immovable; (iv) intangible assets including intellectual property; (v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies; (vi) assets subject to the determination of ownership by a court or authority;*

*(g) to perform such other duties as may be specified by the Board.*

*Explanation. —For the purposes of this section, the term “assets” shall not include the following, namely— (a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment; (b) assets of any Indian or foreign subsidiary of the corporate debtor; and (c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.*

Thus, it is incumbent upon the Interim Resolution Professional under Section 18 of IBC, to take all necessary steps for the control and custody of the assets of the Corporate Debtor, in addition, in terms of section 20 of IB Code to protect and preserve the value of the property of the Corporate Debtor.

6.11 It is trite law, that mere entering into an Agreement to Sell by the Company does not amount to ownership of the property and that ownership of property of a Company is transferred only upon

execution of conveyance deed before the Registrar. Reliance in this regard can be placed on the ruling of Hon'ble Supreme Court in *Narandas Karsondas v. S.A. Kamtam and Anr.* (1977)3 SCC 247, wherein it has been observed that:

“A contract of sale does not of itself create any interest in, or charge on, the property. That is expressly declared in Section 54 of the Transfer of Property Act.”

6.12. Reliance can also be placed on the ruling of the Hon'ble Supreme Court, in *Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana and Ors.* 2012 1 SCC 656 wherein this position has been affirmed and held that:

*“Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of Transfer of Property Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53A of Transfer of Property Act). According to Transfer of Property Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of Transfer of Property Act enacts that sale of immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.”*

*“It is therefore a settled proposition of law that an Agreement to sell does not convey a property from one person to another, either in present or even in future. Agreement to sell is a promise of a future transfer of property ownership which outlines the terms and conditions under which the property will be transferred. An agreement to sell an immovable property is therefore a bilateral contract under which the two parties, i.e. the buyer and the seller, Company Appeal (AT) (Ins.) No.93 of 2022 17 agree to certain terms and conditions, subject to which the property in question would be transferred by the seller to the buyer for a decided sale consideration. It is only after such bilateral obligations are discharged that the execution of the sale deed kicks in and it is*

*this sale deed, which is compulsorily registrable under the Registration Act, 1908, which upon being registered, would transfer the right, title and interest in the property in question on to the purchaser. In the present factual matrix, the agreement to sell was yet to culminate into a registered sale deed and therefore not ripe for transfer of the title of property in question from the Corporate Debtor to the Appellant.”*

- 6.13. Therefore, it is overwhelmingly clear that the property covered under the afore stated alleged agreement of sale in the absence of execution of a Registered Sale Deed continue to remain as the property of the corporate debtor, hence Section 18 of IB Code supra, besides the moratorium granted by this Tribunal, vide order in CP 299/2018 dated 24.06.2022, shall apply to the entire property of the corporate debtor, hence, the submissions of the Ld. Sr. Counsel that, since the Applicant has entered into an “agreement of sale” with the corporate debtor prior to the admission of the corporate debtor into corporate insolvency resolution process, which sale has been permitted by the Financial Creditor, and prior to and post admission of the Corporate Debtor into CIRP the financial creditor has extended the time to deposit the balance amount under the OTS by the Vendor of the Applicant, vide letters dated 20.01.2022 and 28.06.2022, therefore, the RP is bound under law to execute registered sale deeds in favour of the Applicant, by no stretch of imagination be countenanced.

6.14. No doubt, as submitted by the Ld. Sr. Counsel, the letter of the financial creditor dated 28.06.2022 ( post admission of the corporate debtor into CIRP and declaration of moratorium) whereby the financial creditor had extended the time for deposit of the balance sale consideration by the corporate debtor by 8 weeks might have given an impression that the “opportunity of obtaining a registered sale deed” by the Applicant upon complying the terms has been kept alive, however, considering the scheme under IB Code, post admission of the corporate debtor into CIRP, we cannot attach any importance/relevance to the said letter which has been addressed to the “Managing Director of the corporate debtor”, which management stood “suspended by fiction of law”, consequent to admission of the Company into CIRP, as indisputably, the subject asset which absolutely belongs to the corporate debtor has been under the control and custody of the interim resolution professional appointed by this Adjudicating Authority, effective from 24.06.2022, who is duty bound to utilise the said property for the benefit of all the stake holders of the corporate debtor for the purpose of CIRP or Liquidation of

the corporate debtor, as the case may be and not for the exclusive benefit of the financial creditor herein.

- 6.15. We pertinently observe herein, that having been aware of the order dated 24.06.2022 whereby the petition filed under section 7 IBC by the financial creditor has been admitted, addressing the letter dated 28.06.2022 to the corporate debtor represented by its suspended management, informing him of “extension of time for payment of the balance sale OTS amount”, is nothing but an irresponsible act on the part of the author of the said letter.
- 6.16. In the light of our discussion as above, we hold that the plea of the applicant for execution of the registered sale deed by the resolution professional being unsustainable and untenable under law cannot be held to be a remiss in the performance of duties by the resolution professional, as such the same does not call for our interference.
- 6.17. Therefore, having regard to the facts and circumstances of this case and legal position that we have referred above, we have no hesitation in dismissing the present application as the same is devoid of any merit or substance. However, since the record placed before us

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reveals that the Applicant has paid a sum of Rs. 7,23,610/- under the agreement of sale referred supra by way of DD No. 032077 dated 12.01.2022, drawn in favour of financial creditor/ PNB, if the Applicant intends to obtain return of the said amount, he is at liberty to approach the financial creditor (PNB) with an appropriate request for release of the said amount and upon making such request, the Financial Creditor/PNB is directed to return the said amount to the Applicant together with interest at 10% per annum from the date of the said deposit till the date of repayment, within 15 days from the date of making such representation.

6.18. With the above observations, the IA stands disposed of.

**SD/-**  
(CHARAN SINGH)  
Member (Technical)

**SD/-**  
(DR.N.VENKATA RAMAKRISHNA BADARINATH)  
Member (Judicial)

*Binnu*