



IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

I.A/160/2023

Company Petition No. (IB) – 607/(PB)/2020

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

IN THE MATTER OF:

BANK OF BARODA

...FINANCIAL CREDITOR

VERSUS

MB MALLS PRIVATE LIMITED

...CORPORATE DEBTOR

AND IN THE MATTER OF –

Mr. Abhimanyu Mittal

Resolution Professional of M/s M.B. Malls Private Limited

At: 29FF, The White House, Sector-57, Gurgaon,

Haryana- 122003

...Applicant

Versus

**1. Director General, Town & Country Planning, Haryana,
Chandigarh**

Plot No. 3, Sec-18A, Madhya Marg, Chandigarh – 160018



...Respondent No. 1

2. District Town Planner, Faridabad (Planning)

Department of Town and Country Planning

FISVP Office Complex,

Sector - 12, Faridabad - 121007 (Haryana)

...Respondent No. 2

3. Senior Town Planner, Faridabad

FIUDA Complex,

Sec-12, Faridabad - 121007 (Haryana)

...Respondent No. 3

CORAM:

SHRI. BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, MEMBER (TECHNICAL)

For the Applicant: Mr. Anjaneya Mishra

ORDER

PER- RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Order Pronounced on: 31.10.2023

1. The present application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the



National Company Law Tribunal Rules, 2016 praying for the following reliefs:

- i. Allow the present Application and direct Respondents to produce order dated 03.11.2022 and set aside the impugned order dated 03.11.2022 ("First Order") passed by Respondent No. 1 cancelling the License No. 1207 of 2006 dated 19.10.2006 granted to the Corporate Debtor for setting up Commercial Colony on an area measuring 3.6875 acres, Sector-32, Faridabad ("Project Site") passed by Respondent No. 1.
- ii. Pass an order setting aside the impugned order dated 19.12.2022 ("Second Order") passed by Respondent No. 2 whereby the Respondent No.2 has passed order to take over the Commercial Colony (i.e. an area measuring 3.6875 acres, Sector-32, Faridabad - "Project Site") for which License No. 1207 of 2006 dated 19.10.2006 was granted to the Corporate Debtor.
- iii. Set aside all consequential acts / actions taken by the Respondents pursuant to the cancellation of License No. 1207 of 2006 dated 19.10.2006 granted to the Corporate



- Debtor vide order dated 03.11.2022 passed by Respondent No. 1 including installation of notice board at Project Site of Corporate Debtor on 21.12.2022 (“Impugned Public Notice”);
- iv. Pass an order directing the respondents to remove the notice board installed at Project Site on 21.12.2022 immediately and forthwith, without any delay;
 - v. Grant ad-interim ex-parte stay of the impugned order dated 03.11.2022 passed by Respondent No. 1 and impugned order dated 19.12.2022 passed by Respondent No. 2 till the pendency of the instant Application;
 - vi. Grant ad-interim ex-parte any act/actions taken by the Respondents pursuant to the cancellation of License No. 1207 of 2006 dated 19.10.2006 granted to the Corporate Debtor vide order dated 03.11.2022 passed by Respondent No. 1 including directing the respondents to remove or alternatively, permitting the applicant to remove the notice board installed at Project Site of Corporate Debtor on 21.12.2022;



- vii. Pass an order excluding the time period commencing from 03.11.2022 and until the disposal of present application from the computation of CIRP period;
- viii. Pass any other further order as this Tribunal may deem fit and proper.

2. Briefly stated the facts of the case as mentioned in the instant application, which are necessary for adjudication, are as follows:

- i. That the present Application under Section 60 (5) being preferred by the Applicant Resolution Professional of the Corporate Debtor against the impugned order dated 03.11.2022 ("First Order") passed by Respondent No. 1 cancelling the License No. 1207 of 2006 dated 19.10.2006 granted to the Corporate Debtor for setting Commercial Colony over an area measuring 3.6875 acres, Sector-32, Faridabad (hereinafter referred as "Project Site") and further the impugned order dated 19.12.2022 i.e. Memo No.7753 ("Second Order") passed by Respondent No. 2 whereby the Respondent No.2 has passed order to take over the Project Site. The said order dated 03.11.2022 was passed without hearing the Applicant/Corporate Debtor and without even



- issuing any show cause to the RP or without even serving a copy of the said order dated upon the Corporate Debtor.
- ii. That the Applicant vide letter dated 04.10.2022 had already informed the Respondent No. 1 and 2 about the initiation of CIRP process of Corporate Debtor vide order dated 03.08.2022 passed by this Tribunal and imposition of moratorium in terms of Section 14 of IB Code. Further, Applicant requested the Respondent No. 1 and 2 for filing of claim for outstanding dues, if any. Therefore, the Respondents were well aware of the imposition moratorium upon the Corporate Debtor and action of the Respondents is in utter defiance of the order dated 03.08.2022 and provisions of IB Code.
 - iii. That the license granted to the Corporate Debtor for development of Commercial Colony at the Project Site is the very essence to keep the Corporate Debtor as a going concern during the imposition of moratorium upon the Corporate Debtor. The Respondents arbitrarily and manifestly have proceeded to cancel the License of the Corporate Debtor



without giving any proper reasoning, whatsoever, to the Corporate Debtor.

- iv. That at present the Applicant is in process of receiving the resolution plans for the resolution of the corporate debtor. However, the such cancellation of license arbitrarily by Respondent No. 1, taking over of the Project site coupled with the installation of notice board at the Project Site is causing great difficulty to conduct the corporate insolvency resolution process of the corporate debtor since the resolution applicant are being hesitant to participate in the present resolution process and have showed unwillingness to submit resolution plan. The impugned action on the part of respondents has a cascading effect on the Corporate Debtor and has drastically narrowed any resolution chances of Corporate Debtor.
- v. That there are no current dues of respondent authority that have come into place post imposition of moratorium, and the apparent reason for termination of license is arrears of alleged dues of respondents or for other reasons best known to respondents alone.



vi. That in view of grave action of Respondents including installation of notice board, no PRA is willing to submit any resolution plan at this juncture, practically resulting into derailing the entire resolution process.

3. The Respondents have filed their reply to the averments of the Applicant stating as follows:

- i. That the Corporate Debtor was issued License No. 1207 of 2006 Dated 19.10.2006 by the Answering Respondent under the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 for development of a commercial colony for the land measuring 3.6875 acres situated at Sector - 32, Faridabad, Haryana. The License of the Corporate Debtor was cancelled on 03.03.2017 i.e. before the commencement of CIRP.
- ii. That the Corporate Debtor failed to complete the development works within the valid license period, therefore, the license given to the Corporate Debtor was renewed up to 18.10.2015 as per Rule 13 & 14 of the Haryana Development and Regulation of Urban Areas Rules, 1976.
- iii. That the Corporate Debtor namely, M/s M.B. Malls Pvt. Ltd. was further required to get the license renewed beyond 18.10.2015.



Despite number of directions issued to the licensee, the necessary parameters for renewal of license were not undertaken by the Corporate Debtor. Accordingly, request of the licensee for further renewal of license beyond 18.10.2015 was rejected and license was cancelled by the Answering Respondent vide Order Dated 03.03.2017.

- iv. That in compliance with the aforementioned Order Dated 03.03.2017, proceedings under Rule 18 (1) of the Rules of 1976 were served to the licensee on 11.06.2018. However, even after issue of notice under Rule 18 (2) and number of opportunities of personal hearing granted, the Corporate Debtor failed to remove the deficiencies as pointed out in the show cause notice.
- v. That License No. 1207 of 2006 granted to the Corporate Debtor was cancelled by the Answering Respondent vide order dated 12.09.2022. Thereafter, a final detailed order for cancellation of the license was passed on 03.11.2022 by the Answering Respondent.
- vi. That the Respondent has filed its claim in Form B before the Applicant.



4. We have gone through the documents on record filed by all the parties and arguments advanced by the counsels of all the parties.
5. The present Application has been filed by the Applicant/RP of the Corporate Debtor praying for setting aside the order dated 03.11.2022 passed by Respondent No. 1 and order dated 19.12.2022 passed by Respondent No. 2 cancelling the License No. 1207 of 2006 dated 19.10.2006 granted to the Corporate Debtor for setting Commercial Colony an area measuring 3.6875 acres and taking over of the said land. It is the case of the Applicant that the said orders were passed after initiation of CIRP against the Corporate Debtor and hence are liable to be set aside. The Respondents on the other hand have contended that the license was cancelled prior to the CIRP order vide order dated 03.03.2017.
6. After carefully going through the chain of events, it appears that the Respondent No. 1 had taken legal opinion on the order dated 03.03.2017 cancelling the license No. 1207 of 2006 dated 19.10.2006 and in view of the same, notice dated 11.06.2018 under Rule 18(1) of the Haryana Development and Regulation of



Urban Areas Rules, 1976 was issued by the Respondent No. 1 to the Corporate Debtor stating the violations committed by the Corporate Debtor. After ample hearings, the license was finally cancelled vide order dated 03.11.2022. Therefore, the order dated 03.03.2017 cannot be taken as the final order cancelling the license. The order dated 03.11.2022 shall be construed as the final order vide which the license no. 1207 of 2006 dated 19.10.2006 issued to the Corporate Debtor was cancelled.

- 7.** The CIRP of the Corporate Debtor was initiated vide order dated 03.08.2022 i.e. much prior to cancellation of license by the Respondent No. 1. The Applicant had duly informed the Respondents about the initiation of the CIRP of the Corporate Debtor.
- 8.** The immediate effect of initiation of CIRP is imposition of moratorium under Section 14 of the IBC, 2016. Section 14(1)(d) prohibits the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor. The explanation attached to Section 14(1) states as follows:



[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

9. From the explanation to Section 14(1) it is clear that the Respondents exceeded their powers in issuing the orders dated 03.11.2022 and 19.12.2022 in utter ignorance of Section 14, IBC, 2016. The Respondent No.1 could have cancelled the license only if there were outstanding current dues. However, in the present case, the dues were for the period before the initiation of CIRP for which claim has been duly filed before the Applicant. Since there are no current outstanding dues, the explanation to Section 14, IBC, 2016 does not apply in this case. The act of the Respondent No. 1 cancelling the license of the Corporate Debtor during the CIRP of the Corporate Debtor can derail the process of resolution



of the Corporate Debtor. Similar view was taken by Hon'ble NCLAT in the case of *Maharashtra Industrial Development Corporation Limited v. Santanu T. Ray Comp. App. (AT) (Ins.) No. 1004 of 2021* wherein the Hon'ble NCLAT held as follows:

27. The purpose and object of Moratorium is to temporarily freeze all actions as contemplated under Section 14 to enable the Corporate Debtor to resolve its Insolvency and to revive it. Prohibition on action against the Corporate Debtor is only to preserve the status quo as it exists on the date of initiation of CIRP so that all claims against the Corporate Debtor on the date of initiation of CIRP be collated and dealt with to take steps to revive by approving appropriate Resolution Plan, if any, to bring it back. All the institution of suits or continuation of pending suits and proceedings against the Corporate Debtor are prohibited under Section 14(1)(a) of the Code with the object that status quo regarding Corporate Debtor be maintained and further proceedings against the Corporate Debtor be not permitted during the continuance of the CIRP to preserve the Corporate Debtor from any financial assault or other proceeding to stop off its current situation for purpose of 21 Comp. App. (AT) (Ins.) No. 1004 of 2021 Resolution. Similarly, under Section 14(1)(d), recovery of any property by any owner or lessor which is occupied by the Corporate Debtor is prohibited.



10. In view of the above, the orders dated 03.11.2022 and 19.12.2022 passed by Respondent No. 1 and Respondent No. 2 respectively stand quashed. The Respondents are directed to remove the notice board installed at the Project Site on 21.12.2022 informing the public about the cancellation of the license within 7 days from the passing of this order. Further, as the act of the Respondents has direct impact on the resolution of the Corporate Debtor, the period starting from 03.11.2023 i.e., the passing of first order by the Respondent No. 1 till the date of passing of this order shall be excluded from the computation of the CIRP period.

11. IA/160/2023 stands allowed on above terms.

Let copy of the order be served to the parties concerned.

SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)