IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

IA – 951/2021

Company Petition No. (IB)-455(PB)/2017

Order under Section 60(5) of Insolvency & Bankruptcy Code, 2016

IN THE MATTER OF:

M/s. Indiabulls Housing Finance Ltd.	....	Applicant/petitioner
v.		
M/s. Forging Pvt. Ltd.	....	Respondent

IN THE MATTER OF:

DD Real Estate Private Limited	....	Applicant / Petitioner
Vs		
Sanjeev Bhushan Deora	....	Respondent

Dictated on 24.03.2021
Order delivered on 01.04.2021

CORAM:
SH. B.S.V. PRAKASH KUMAR
HON'BLE ACTG. PRESIDENT

SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant	: Mr Rakesh Kumar, Ms Preeti Kashyap, Advs. for the Succesful Resolution Applicant Mr. Rupesh Gupta, Adv. in IA 951/2021
For Respondent	: Mr. Shekhar Raj Sharma for R5 (MCF)
For Liquidator	: Mr. Sanjeve Bhushan Deora, Adv.
For India Bulls	: Mr. Sumesh Dhawan, Adv.

ORDER

IA-951/2021 (Heard and dictated in the Open Court 24.03.2021).

It is an Interlocutory Application filed by M/s D D Real Estate Private Limited (Holding Company of M/s Forgings Pvt. Ltd./the corporate debtor) against the liquidator, Financial Creditor (India bulls Housing Finance

Limited), Successful Bidder (Mars Infra-engineering Pvt. Ltd. and Davinder Kumar), Municipal Corporation, Faridabad (MCF) seeking directions against R1 (Liquidator) to get fresh Valuation conducted over the Land already sold to the bidder in terms of Regulation 35(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation by appointing valuers for ascertaining the value of the Land of the corporate debtor in term of the liquidation Regulations considering the land as industrial in nature and restrain the Respondents from selling the sole asset of the corporate debtor and not to create third party rights in respect of the land.

The Corporate debtor is the owner of the land admeasuring to 42,773.5 sq. yards i.e. 8.84 acres located at 12/6, Village Saral Khwaja, Main Mathura Road, Faridabad, Haryana, it is the sole asset in the possession of the corporate debtor. This land has built-up factory shed with floor area of 16,500 sq. ft. which was once used for manufacturing automotive components, steel forging and conversion of Diesel Bus into CNG before the insolvency proceedings commenced. The said land is located at Delhi-Haryana border which is part of the most industrialized belt of the country and surrounded by other commercial/industrial projects. The land is located within the limits of MCF. Therefore all dues towards conversion, development charges, property tax etc., is levied upon the land by MCF, which is the relevant authority for the purpose of administration of the land upkeep and maintenance of records with regard to the nature of land of the corporate debtor.

The Applicant submits that it has filed this present application based on the facts subsequently come to their light after MCF filed the affidavit before Hon'ble Supreme Court in January 2021, which reflects that the corporate debtor land is industrial in nature. Therefore, the valuation done to this land treating it as agriculture in nature dissipating the value of the land belonging to the corporate debtor shall be declared as null and void and direct the liquidator to conduct liquidation process after taking fresh valuation of the land mentioned above.

As against this contention, the liquidator submits that this issue canvassing that this land shall be converted into industrial land and fresh valuation shall be done has passed through before NCLT in CA1079/2019, then in first appeal before the Honourable NCLAT and then in second appeal before the Honourable Supreme Court, in all forums the promoter director has failed, therefore this applicant has not only vexed the liquidator but also the hierarchy of courts with this issue. This Bench in the order dated 04.12.2019 discussed various aspects of this issue that the promoter director of the Corporate debtor namely Karan Gambir raised similar issues in some other applications, when the issues were decided, he again filed CA 1079/2019, in the said order this Bench adjudicated that the applicant successfully delayed in proceeding with liquidation process, the applicant has failed in all respects to bring in any bidder, failed in all respects to prove that valuation is incorrect, over which, when the applicant in CA 1079/2019 filed an appeal, the Honourable NCLAT dismissed the appeal upholding the order passed by this

Bench, without even exempting the party from paying costs imposed by this Bench, then the party not being satiated with it, went to the Honourable Supreme Court, there also the case went against the promoter director, now these promoters through its Holding Company has come up with this litigation to further delay the process, therefore it shall be dismissed. To prove that how detailed this Bench as well as the Honourable NCLAT dealt with this matter, the liquidator has drawn our attention to various paras of the orders of this Bench and then Honourable NCLAT. As to order of this Bench in CA 1079/2019, we reproduce some parts of the orders of this Bench, which is as follows:

<u>Parts of the order in CA 1079/2019</u>

"CA-501(PB)/2019, CA-741(PB)/2019 & CA-740(PB)/2019":

> *The principal prayer in all these applications is this that with regard to the notice of sale concerning land in question dated 28.02.2019 issued by the liquidator. The Ex-Management in its application i.e. CA-501(PB)/2019 has alleged that the reserve price of the land fixed at Rs. 52.83 Crores may not be a fair price. Some dispute was raised with regard to the nature of the land stating whether it is agricultural or industrial? Mr. Sibbal, Ld. Senior Counsel with Mr. Deora, Liquidator and Mr. Dhawan, Ld. Counsel for sole financial creditor have made a joint statement that meeting of all the stake holders have taken place on 16.04.2019 and 23.04.2019 and a decision has been taken to go for fresh valuation from two also valuers. We have also been shown the additional affidavit dated 23.04.2019 Progress Report (2nd Report, 1st Quarterly) filed through CA-741(PB)/2019 and attention was invited to 5th consultative meeting of the stakeholders held on 14.03.2019. Mr.*

Sibbal, Ld. Counsel for the RP has read out item No. 7 under the caption "The plan for liquidation for assets" and the last para at page 152 reads as under:-

"Mr. Sanjay Gambhir pointed out that there should be vigilance to be observed that there is no cartelisation in bidding, to which all present, agreed.

The Representative of India bulls stated that reserve price is high, which was clarified by the Liquidator as an average of values estimated by the 2 valuers appointed earlier.

On an enquiry from the Liquidator, Mr. Sanjay Gambhir stated that the subject land and building of the CD was an agricultural land at the time of purchase, which was some time in 1969, and was put to industrial use by the CD. Mr. Sanjay Gambhir further mentioned that his Family took over shareholding of Forging Pvt. Ltd. (In Liquidation) sometime in 1994 (When the CD was under purview of Sick industrial Companies (Special Provisions) Act, 1985 and that no records of the CD prior to the time of their acquisition were available with them as the same had been lost in fire. He further mentioned that the subject land building of CD was in use for an industrial activity both prior to and after take-over of the CD by his Family. He further mentioned that there may be a notice regarding charges payable for change of land use received sometime in the past and a demand of about ₹8.5Crore was probably raised and not deposited, and that no documents are available with him in respect thereof. He also further mentioned that the charges for conversion of the subject land to commercial use are over ₹110Crore."

However, at the hearing Mr. K. Datta, Ld. Senior Counsel has pointed out that even the Resolution Professional has stated that the land is industrial land at one stage. However, there is no concrete evidence on record to that effect. In our opinion one Mr.

Sanjay Gambhir who is the largest shareholder in the company under liquidation having 99% shareholding has stated that the company was not able to deposit the charges for change of land use amounting to Rs. 8½ Crores, therefore the change of land use was never processed. The land continues to be the agricultural land. Despite the aforesaid statement we grant liberty to the applicant represented through Mr. Datta to produce any evidence before the liquidator within the next ten days so that the job of the valuer is facilitated. If no evidence with regard to the nature of land is produced then the valuer shall proceed with the valuation as per the evidence already on record. After the valuation is completed the liquidator shall take all necessary steps contemplated by the IBBI Liquidation Process Regulation, 2016. Accordingly, we find that the prayer made in the application would not require consideration at this stage and we dispose of the same with aforesaid observation.

A copy of the valuation report may be furnished to the Ex-Management Mr. Karan Gambhir as per the procedure laid down in the process regulation.

CA-501(PB)/2019, CA-741(PB)/2019 &

CA-740(PB)/2019 are disposed of."

Over which in Para 24 which has mentioned as below:

"24. A perusal of the above mentioned order shows that as per the record the land continues to be the agricultural land as the whooping charges of change of land use amounting to ₹8.5Crore due in 2002 were not deposited which were presently ₹110Crore. Despite that we granted ten days time to the applicant to produce any evidence before the liquidator / valuers within ten days commencing from 24.04.2019. We also clarified that if no evidence concerning the nature of land was produced then the valuers were to proceed with valuation as per the evidence on record and the liquidator was to proceed with the auction in accordance with the

liquidation process regulations. However, no evidence before liquidation / valuers was produced by the applicant. That order was challenged before Hon'ble NCLAT and it was dismissed as withdrawn on 17.05.2019 the order dated 24.04.2019 attained finality and was required to comply with in letter and spirit."

The final conclusion held in this order is as follows:

"40. The base price of ₹52.58Crores is reserve price of the property which is for higher than the circle rate of the agricultural land and the value is much more in demonetisation of development potential of the property. The property was earlier put to e-auction during liquidation in March, 2019 with a reserve price of ₹52.83Crore and no bid was received even at the reserve price and the applicant had failed to identify any bidder/buyer whatsoever in spite of the opportunity given vide order dated 08.04.2019 passed in CA No. 501(PB)/2019. "

41. Mr. Rakesh Kumar, learned counsel for the highest bidder stated that the whole amount of the highest bid stand deposited and the transfer deed is to be executed by the liquidator.

42. as a sequal to the above discussion, we issue following directions:-

(a) the application is dismissed with cost of ₹50,000 payable to the Prime Minister's Relief Fund.

(b) the liquidator is directed to accept the highest bid as the amount stand already deposited and proceed with the liquidation process as per law."

When the appeal was filed before Hon'ble National Company Appellate Law Tribunal, it has held as follows:

*"**41** We are of the view that in the Sale Notice nothing is mentioned which prejudices the prudent bidder for bidding. It is pertinent to*

note that the Ld. Adjudicating Authority while deciding the objections granted an opportunity to the Appellant, to produce any person who is prepared to purchase the land in question at price higher than the Reserve price. He may also file his bid before the Liquidator before the closing date. In terms and conditions of the direction the Appellant was not able to produce any bidder with better price. The land in question was earlier put to e-auction during Liquidation in March, 2019 with Reserve price of ₹52.83Crore and no bid was received even at a Reserve price and the Applicant had failed to identify any bidder/buyer whatsoever, inspite of opportunity given vide order dated 08.04.2019 passed in CA No. 501 (PB)/2019.

***42.** With the aforesaid, we are of the view that there is no substance in the objections raised in these Appeals, in regard to valuation of land and Sale Notice.*

***43.** So far as, the imposing cost of ₹50,000 is concerned Ld. Adjudicating Authority in Para 39 of the impugned order assigned the reasons that efforts made by the Appellant Karan Gambhir is only to delay the Liquidation Process without any basis and indulge in the baseless litigation endlessly. Therefore, imposed a cost of ₹50,000. We find no ground to interfere in this order.*

Over the order of NCLAT, the Hon'ble Supreme Court is not inclined to interfere with the order after not only examining the order but also on examining the affidavit filed by MCF.

Upon perusal of the orders in the earlier round, we are of the view that this issue as to whether or not the land is industrial in nature and whether or not fresh valuation has to be done has been set at rest, now this applicant, which belongs to Gambhirs, cannot come with this application that they discovered new cause of action to file this application.

Now the case invented by the applicant is, it has come across new evidence reflecting the corporate debtor land is industrial in nature upon seeing the affidavit of MCF filed before the Honourable Supreme Court of India, the memo of MCF dated 14.01.2021 demanding payment of EDC by the corporate debtor. It says MCF placed material before Hon'ble Supreme Court reflecting MCF issuing notice upon the corporate debtor way back on 16.12.2002 granting permission for change of land use (CLU) for the land admeasuring aforementioned demanding of payment of External Development Charge. He has also filed another document i.e. as also a email address to the Resolution Professional demanding payment of External Development Charges, to say that new cause of action has arisen to file an application because these document were not in the knowledge of this applicant in the earlier round of litigation, therefore, sought for the direction which was asked in the earlier round of litigation.

By looking at these two documents i.e. one document dated 16.12.2002 is a demand made by Commissioner, Municipal Corporation Faridabad against the corporate debtor company on 16.12.2002, it discloses that the document was addressed to the company, therefore it has to be presumed that this issuance of this document is very much in the knowledge of the debtor company and the people managed by the company in the year 2002 itself, therefore, this document today cannot be said as the material which is not known. When I am dictating this point, the applicant counsel has interfered saying that by the time this document was issued by MCF, this company was in liquidation, the applicant herein came into management of this company only in the year 2004, therefore, the management was not aware of issuance of this letter. When any proceeding is initiated against any company, it is to be deemed that whatever act that happened in the past is to be construed in the notice of the management subsequently come into existence because companies existence will not be changed just because management is changed, therefore historical events happened in the company in the year 2002 are to be construed as events in the know of the management subsequently stepped into. Hence, we have not found any merit in saying that this document was not within the notice of the applicant.

The documents that have come into existence subsequent litigation perhaps could be the cause of action to the point earlier raised, but whereas to the transaction that happened or alleged to have happened prior to earlier round of litigation, the duty is cast upon the party to place it before the court of law.

Mr. Karan Gambhir, who is none other than the family member of Gambhirs filed an appeal before Hon'ble Supreme Court, it is not the case of this applicant and that he was not present before Hon'ble Supreme Court of

India. This company was very much present through its people before National Company Law Tribunal, Hon'ble National Company Law Appellate Tribunal and the Hon'ble Supreme Court. This applicant company holding 99% of shareholding of the corporate debtor from time to time kept on changing its stand, before one forum it says it is agriculture land, when the same financial creditor who filed its company petition initiated proceeding under SARFESI, corporate debtor under this management filed a response with the notice stating that land is agriculture in nature.

Thereafter, in the 5th Consultative meeting of the Stakeholders on 14.03.2019, *"Mr. Sanjay Ghambir stated that the land and building of the CD was an agricultural Land at the time of purchase and was put to industrial use by the CD, he has also further stated that his family took over shareholding of Forging Pvt Ltd. some in 1994 (when the CD was under purview of Sick Industrial Companies (Special Provisions) Act, 1985 and that no records of the CD prior to the time of of their acquisition were available with them as the same had been lost in fire. He further mentioned that the subject land building of CD was in use for an industrial activity both prior to and after take-over of the CD by his family. He further mentioned that there may be a notice regarding charges payable for change of land use received sometime in the past and a demand of about ₹8.5Crore was probably raised and not deposited, and that no documents are available with him in respect thereof. He also further mentioned that the charges for conversion of the subject land to commercial use are over ₹110Crore."*

By reading this para, it is evident that Mr. Sanjay Ghambir, Mr. Karan Ghambir and this company belonging to one family and sometime before this, the applicant has stated that they have come into this company only in the year 2004, but by reading the para above, it is evident that this family took over the shareholding of this company in the year 1994 itself, therefore, this applicant could not say that document dated 16.12.2002 was not within the knowledge of this applicant.

As to the email sent by MCF, we have already decided one application filed by Municipal Corporation Faridabad for payment of External Development Charges & other taxes against the corporate debtor, wherein we have decided that in the earlier round of litigation itself, it was decided that the corporate debtor land is agriculture land, therefore this bench could not revert the finding earlier passed by the National Company Law Tribunal, National Company Law Appellate Tribunal and thereafter Hon'ble Supreme Court stating that land as per record agriculture in nature. Therefore, this email sent by the Municipal Corporation Faridabad to the liquidator cannot be construed as material before this bench to consider this land is industrial in nature.

This Bench in the earlier round gave sufficient opportunity to the promoter group to substantiate their submissions to prove that land is industrial in nature, but nothing happened.

When this issue came up before Hon'ble Supreme Court on 05.11.2020, the applicant counsel has stated that the prospective bidder have indicated that they would require reasonable time to complete due diligence over which the counsel appeared on behalf of the liquidator has categorically mentioned that liquidator has no objection to permit the inspection of documents in his possession, and in fact the liquidator filed an affidavit before Hon'ble Supreme Court of India stating that the details of the property and all information was made available to the promoters to provide it to the interested bidders. The Honourable Supreme Court ordered MCF to place its affidavit, the Hon'ble Supreme Court looking at the affidavit filed by MCF; it has dismissed the appeals on 12.01.2021.

This promoter group had already run one round of litigation and failed to get any relief. In the earlier round of litigation ₹50,000 was imposed, we don't know whether it was paid or not, but now it has come for second round of application on the same issue. In view thereof, we hereby dismiss this company application by imposing ₹1,00,000 costs to be paid to the corporate debtor company within one month hereof.

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(B.S.V PRAKASH KUMAR)
ACTG. PRESIDENT

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(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

24.03.2021
Deepak