

SL. No.1

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 27.02.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/1178/2023 in Company Petition IB/36/2022
NAME OF THE COMPANY	Ravi Cranes and Movers Ltd
NAME OF THE PETITIONER(S)	Indian Overseas Bank
NAME OF THE RESPONDENT(S)	Ravi Cranes and Movers Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/1178/2023

Orders pronounced, recorded vide separate sheets. In the result, this application is dismissed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

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

**IA No.1178 of 2023 in
CP(IB) No.36/7/HDB/2022**

*Under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016, read with Rule 11 of the National
Company Law Tribunal Rules, 2016*

In the matter of M/s.Ravi Cranes and Movers Limited

Between:

Mr.K.S.Chowdry,
H.No.7-1-639/9, Plot No.9,
Model Colony, Sanjeev Reddy Nagar,
Near ESI Hospital,
Hyderabad – 500 038.

....Applicant

A n d

1. Ms.Mummaneni Vazra Laxmi,
Resolution Professional for
M/s.Ravi Cranes and Movers Limited,
Plot No.9, Model Colony,
Hyderabad, Telangana.

....Resolution Professional/Respondent

2. Indian Overseas Bank,
Asset Recovery Management Branch,
Third Floor, IOB Platinum Plaza,
Lane Opp to Chandana Brothers,
Chikkadpally,
Hyderabad – 500 020.

....Respondent No.2/Financial Creditor

3. Union Bank of India,
3rd Floor, Andhra Bank Building,
Sultan Bazar, Koti,
Hyderabad – 500 001.

....Respondent No.3/Financial Creditor

Date of Order: 27.02.2024

Coram:

Hon'ble Rajeev Bhardwaj, Member (Judicial)

Hon'ble Sanjay Puri, Member (Technical)

Counsel/Parties present:

For the Petitioner : Mr.Y.Suryanarayana, Advocate

For the Respondent : Mr.Dishit Bhattacharjee, Advocate

Per: [Rajeev Bhardwaj, Member (Judicial)]

ORDER

1. The instant application has been filed by the promoter and member of suspended Board of M/s.Ravi Cranes and Movers Limited (hereinafter referred as Corporate Debtor) 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:

- a) To direct the Resolution Professional to include the land situated at Gopanpally Village, Serilingampally Mandal, Ranga Reddy District in the list of assets fresh Information Memorandum and call fresh resolution plans taking into consideration the inclusion of the said land as land of the Corporate Debtor.
- b) To direct the Resolution Professional to conduct fresh valuation of the Corporate Debtor taking into consideration the land situated at Gopanpally Village, Serilingampally Mandal, Ranga Reddy District as the land of the Corporate Debtor.

c) To stay the conduct of the meetings of the Committee of Creditors to the extent of consideration of the resolution plan submitted by M/s.Amrutha Constructions Private Limited.

2. The facts necessary to dispose of the present application are that:
- i) The Corporate Insolvency Resolution Process (CIRP) was initiated under Section 7 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor vide order dated 26.09.2022.
 - ii) The Corporate Debtor purchased a part of the open land measuring Ac 1-20 guntas, equivalent to 7260 Sq yards Or 6096.36 sq.mts in survey No.170, situated at Gopanapally, Serilingampally Mandal, Ranga Reddy District (hereinafter referred as 'disputed property') for a sale consideration of Rs.2,25,00,000/-.
 - iii) Another company M/s.RCM Infrastructure Limited (hereinafter referred as 'RCM') availed loan from various banks including the Respondent No.2. The Applicant alongwith other Directors of the Corporate Debtor had given personal guarantee and the 'RCM' had given Corporate Guarantee for the loan availed by 'RMC'.
 - iv) However, the 'RCM' was unable to pay the loan amount and therefore, its account was classified as Non-Performing Asset (NPA) on 13.06.2016 and the said company filed application under Section 10 of IBC, 2016, which was admitted vide order dated 03.01.2019.
 - v) The Respondent No.2 through e-auction dated 12.12.2018 sold the secured property of the Corporate Debtor/Corporate Guarantor and of 'RCM' for a consideration of Rs.32.92 crores and the said sale was subsequently confirmed vide letter 08.03.2019.

- vi) As per the balance sheet of the Corporate Debtor, the disputed property is of the Corporate Debtor since the Financial Years 2013-14 till 2021-22.
 - vii) The disputed property is still reflected in the name of the Corporate Debtor, which was mortgaged with the Respondent No.2. The balance sheet of the Corporate Debtor and the Statement of Encumbrance dated 01.07.2023 make it clear that the Corporate Debtor is the owner of this property. When the disputed property is the asset of the Corporate Debtor, it was wrong on the part of the Resolution Professional of the Corporate Debtor not to include it in the Information Memorandum. The Resolution Professional also obtained valuation report which did not correctly reflect the assets of the Corporate Debtor and the valuation should have been carried out after taking into account the disputed property. Thus, the valuation is also undervalued.
 - ix) In view of the above said circumstances, the Applicant has approached this Authority.
3. The Respondent No.2 while filing the reply has contented and contested the averments of the applicant and submitted that:
- i. The consortium of banks led by Andhra Bank (now Union Bank of India) including the Respondent No.2 extended credit facilities to the 'RCM'. When the 'RCM' failed to repay the loan amount, its account was classified as NPA on 30.01.2016.
 - ii. The Respondent No.2 issued Demand Notice dated 12.01.2018 under Section 13(2) of the SARFAESI Act, 2002 to the 'RCM' and its guarantors including the Respondent No.1. When default occurred,

Respondent No.2 took into possession two secured assets mortgaged exclusively with the bank on 18.4.2018.

- iii. Both the properties belonging to 'RCM' and Respondent No.2 were put to e-auction on 12.12.2018 and an offer of Rs.32.92 crores was accepted. The earnest amount of Rs.8.23 crores was deposited on 13.12.2018 and time to pay the remaining amount was extended up to 08.03.2019.
- iv. In the meantime, the 'RCM' approached the NCLT, Hyderabad by filing Application under Section 10 of the IBC, 2016, which was admitted on 03.01.2019.
- v. The bank accepted the remaining 20% of the auction bid amount on 08.03.2019 and Sale Certificate was issued on 11.03.2019.
- vi. The 'RCM' filed IA No.832 of 2010 before the NCLT, Hyderabad to set aside the sale of both the properties. As per order dated 15.07.2020, the realisation of security interest owned by the present Corporate Debtor was upheld, while that of the 'RCM' was set aside in view of the moratorium dated 03.01.2019. Aggrieved by the order dated 15.07.2020, the bank preferred an Appeal under Section 61(1) of the IBC, but the same was dismissed vide order dated 26.03.2021 by the Hon'ble NCLAT and subsequently challenge to the said order was also dismissed by the Hon'ble Supreme Court.
- vii. Thus, it becomes clear that the order against the present Corporate Debtor has not been set aside and accordingly, it is submitted that the Corporate Debtor is not entitled for any right over the said property.
- viii. The Statement of Encumbrance of property is also not a proof of the title and reliance has been placed on the decision of the Hon'ble Supreme Court in *Shakeena and Another versus Bank of India and*

Others (2021)12 SCC 761 and B.Arvind Kumar versus Government of India and others (2007)5 SCC 745.

4. We have heard the Learned Counsels for both the parties and have also gone through the entire records.
6. Indisputably, the 'RCM' took loan from the consortium of banks including the Respondent No.2 and the present Corporate Debtor was one of the guarantors to the said loan. In pursuance of the provisions of the SARFAESI Act, 2002, the Respondent No.2 took possession of the properties tabulated below:

S.No	SECURED ASSET	OWNERSHIP
1	All the part of open land admeasuring Ac.1.20 guntas equivalent to 7260 sq.yards or 6069.36 sq.meters out of AC-4-26 guntas in Sy.No.170 situated in Gopanpally Village, Serilingampally Mandal, Ranga Reddy District.	M/s.RCM Infrastructure (Borrower)
2	All the part of open land admeasuring Ac.1.20 guntas equivalent to 7260 sq.yards or 6069.36 sq.meters out of AC-4-26 guntas in Sy.No.170 situated in Gopanpally Village, Serilingampally Mandal, Ranga Reddy District.	M/s.Ravi Cranes and Movers Limited (Guarantor)

7. Both the properties were put to auction and an amount of Rs.32.92 crores was offered on 12.12.2018. The bidders deposited 25% of the bid amount as earnest amount on 13.12.2018 and remaining amount was to be deposited by 08.03.2019. Meanwhile, an application under Section 10

of IBC was filed by the 'RCM' which was admitted on 03.01.2019 and therefore, moratorium started in respect of the properties of the 'RCM'.

8. The Bidders also deposited remaining 75% of the auction amount on 08.03.2019 and the Sale Certificate was issued on 11.03.2019. However, the NCLT, Hyderabad in IA No.832 of 2020 set aside the Sale Certificate of the property of the 'RCM' because of the moratorium and the Appeal against the said order was also dismissed by the Hon'ble NCLAT and further by the Hon'ble Supreme Court.
9. The Applicant has approached this Authority on the strength of the admission of another Application under Section 7 of the IBC on 26.09.2022 which has been filed by the Respondent No.2 against the Corporate Debtor and the fact that the name of the Corporate Debtor is still recorded as owner in the Encumbrance Certificate. It is relevant to note that before the start of the CIRP, the sale of the disputed property became final on issuance of Sale Certificate on 11.03.2019.
10. Transfer of title is done in one of the modes mentioned in the Transfer of Property Act. Incorporation of such transfer in the revenue record is only for updating the record. Merely because the name of the Corporate Debtor is still being shown in the Encumbrance Certificate of the disputed property does not mean that this property belonged to it as one becomes owner by transfer of title not by any charge on the property created by the previous owner. The moratorium will affect this property owned by the Corporate Debtor and not of the valid transactions which took place prior to CIRP period. The sale in case of the disputed property was complete when Sale Certificate dated 11.03.2019 was issued.

11. In this regard, we also place reliance on the decision of the Hon'ble Supreme Court in *S.Karthik and Others versus N.Subhash Chand Jain and Others 2020 SCC Online SC 787* which says that any case arising out of the SARFAESI Act, 2002, the sale process is complete on issuance of the Sale Certificate. In *Shakeena and Another* and *B.Arvind Kumar* cases supra, the Hon'ble Supreme Court held that even execution and registration of sale deed is no more required after issuance of a sale certificate.
12. As a result, the Resolution Professional was right in not including the disputed property in the Information Memorandum as the asset of the Corporate Debtor.
13. For the reasons given above, there is no merit in the application. Accordingly, this IA No.1178 of 2023 in CP(IB) No.36/7/HDB/2022 is **dismissed.**

Sd/-
SANJAY PURI
MEMBER (TECHNICAL)

Sd/-
RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

Vinod