

SL.No.1

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

PHYSICAL HEARING and VIRTUAL HEARING

**CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)
CORAM: SHRI CHARAN SINGH - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 27.04.2023 AT 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/1115/2022 & Intervention Petition /3/2022 in Company Petition IB/250/2021
NAME OF THE COMPANY	Minerva Enterprises Pvt Ltd
NAME OF THE PETITIONER(S)	Edelweiss Asset Reconstruction Company Ltd
NAME OF THE RESPONDENT(S)	Minerva Enterprises Pvt Ltd
UNDER SECTION	7 of IBC

ORDER

This applications are dismissed, vide separate orders.

**Sd/-
MEMBER (T)**

**Sd/-
MEMBER (J)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

IA Nos.3 & 1115/2022
in CP(IB) No. 250/7/HDB/2021
Under Section 60(5) of IBC, 2016

In the matter of:

M/s. AGR Constructions Pvt. Ltd.,
Flat No.401, Apurupa Classics,
6-3-345/1/2, Road No.1,
Banjara Hills,
Hyderabad – 500 034.

.... Applicant

Vs

1. M/s. Edelweiss Asset Reconstruction Co. Ltd.,
Edelweiss House, C.S.T. Road,
Kalina, Mumbai,
Maharashtra – 400 098.

....Financial Creditor/
Respondent No.1

2. M/s. Minerva Enterprises Pvt. Ltd.,
3-6-199, Himayat Nagar,
Hyderabad,
Telangana – 500 029.

....Corporate Debtor /
Respondent No.2

Date of order: 27.04.2023

CORAM:

Hon'ble Justice Smt. Telaprolu Rajani, Member (Judicial)

Hon'ble Sri Charan Singh, Member (Technical)

Counsels present:

For the Applicant : Mr. Duvva Pavan Kumar, Advocate

For the Respondents : Mr. Vedula Srinivas, Senior Advocate
Mr. V.V.S.N. Raju, Advocate

Heard on : 19.04.2023

**[PER: BENCH]
ORDER**

1. Both the IAs are taken-up for passing a common order, since the grounds on which the two IAs are filed are, one and the same:

2. This application is filed by M/s. AGR Constructions Pvt. Ltd. represented by its Director Mr. K. Sreedhar Reddy against the Respondents who are the Financial Creditor (FC) and the Corporate Debtor (CD), seeking for an order to exclude the land to the extent of Acres 2-2.39 guntas situated in Survey No.104 (p) & 134 (p), Gachibowli Village, Serilingampally Mandal, Ranga Reddy District, and to direct the Resolution Professional to recall and issue a clarification in respect of the Expression of Interest (EoI) and Form G dated 20.09.2022 which records the subject land as an asset of the Corporate Debtor, and to pass an order injuncting the Resolution Professional from claiming any rights over the subject land.

3. Briefly, the facts as mentioned in the application are as follows:
 - a. CP No. 250 of 2021 was filed by the Financial Creditor M/s. Edelweiss Asset Reconstruction Company, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against the

Corporate Debtor M/s. Minerva Enterprises Pvt. Ltd. This Tribunal admitted the application by order dated 14.07.2022. The admission order has been obtained by the FC by playing fraud on the Tribunal. The Resolution Professional & the Committee of Creditors (CoC) are trying to usurp and encash the land admeasuring Acres 2-2.39 guntas situated in Survey No.104 (p) & 134 (p), Gachibowli Village, Serilingampally Mandal, Ranga Reddy District which is the subject land. Hence this application, seeking to stay the admission order dated 14.7.2022.

- b. The Telangana Housing Board (THB) formerly known as Andhra Pradesh Housing Board (APHB) entered into a Development Agreement-cum-Power of Attorney on 30.04.2005 and a Deed of Rectification dated 02.03.2007 with M/s. Universal Realtors Pvt Ltd. (URPL) for construction of Township consisting of residential and commercial buildings on land admeasuring 19.95 Acres in Survey No.132(p) and other Survey Numbers at Gachibowli. In accordance with the said Development Agreement, the URPL divided the land into 5 Bits, wherein Bit-III comprises of the subject land admeasuring Acres 2-2.39 guntas.
- c. M/s. Universal Realtors Pvt Ltd. entered into an Agreement for Sale dated 17.03.2006, with the Applicant for sale of future cold

shell of building admeasuring 1,50,000 sft. of built-up space in addition to proportionate cellar and parking space of 90,000 sft. proposed to be built-up on the subject property. By way of a Supplementary Agreement Sale Deed dated 18.03.2008, the built up space for cold shell area, being sold to the Applicant under the Agreement for Sale was increased from 1,50,000 sft. to 4,14,000 sft. and parking space was increased from 90,000 sft. to 2,07,000 sft.

- d. Thereafter, the Applicant entered into an Agreement of Sale dated 28.07.2008 in favour of the CD for sale of 2,00,000 sft. of the proposed built-up area for a total sale consideration of Rs.100.0 Crores. No rights were created in favour of the CD in respect of the subject land, but only on the proposed built up area to be constructed on the subject land.
- e. The CD, by way of Lease Deed dated 18.02.2010, obtained long term leasehold rights on balance extent of land admeasuring 2,44,000 sft. along with parking space and utility area and proportionate undivided share of land admeasuring 5,970 Sq. Yds.
- f. The CD approached the Consortium of Banks for a loan, for the purpose of constructing a 5 Star Hotel on the subject land. As a security, the CD mortgaged 2.0 lakhs sft. of the proposed built-up

area and leasehold rights in respect of 2,44,000 sft. in favour of the Consortium by way of a Deed of simple Mortgage dated 30.03.2010.

- g. In 2015, Edelweiss Asset Reconstruction Company Limited, the Financial Creditor, purchased the debt of the Corporate Debtor from 3 bankers. One of the lenders in the Consortium did not sell their debt. Minerva Executive and the CD paid an amount of Rs.48.0 Crores to the Applicant as part payment of the consideration during the afore said period, pursuant to the Agreement of Sale dated 28.07.2008 and Lease Deed dated 18.02.2010.
- h. For the reasons best known to the CD, they were unable to commence the construction of the Hotel on the subject land. As a result, the CD informed the Applicant about their inability to pay the balance sale consideration and continue with the proposed sale/lease transaction, by way of a letter dated 29.11.2017 (cancellation letter) and agreed to enter into a cancellation agreement for cancellation of the Agreement of Sale dated 28.07.2008 and Lease Deed dated 18.02.2010 executed between the CD and the Applicant. By virtue of the said cancellation letter and thereafter execution of the cancellation deeds, the subject

land vested back with the Applicant herein and the possession as well as the rights in respect of the subject land and/or the proposed built-up area lie with the Applicant alone and the Applicant has entered into forwarding contracts for commencement of development on the said subject land. The same was communicated to the FC by way of an email dated 04.04.2018 and the same is in the knowledge of FC. No objection was raised by the FC in connection with the said cancellation letter. On learning about the said cancellation, in fact, the FC acted on it by giving an One Time Settlement (OTS) opportunity to the CD for settlement of all outstanding dues. The FC by way of reply dated 05.04.2018, not only acknowledged the cancellation letter but also confirmed that the letter was Okay. He further stated that "Tell Minerva to make a covering letter addressed to Edelweiss Arcand BOI and send the copy of this letter, so that it can be taken on record by the lenders".

- i. In the light of the above cancellation, the Applicant, along with M/s. Universal Realtors Pvt. Ltd., entered into OTS discussions with FC and Bank of India, to ensure release of charge over the future built-up area over the subject land. Accordingly, the OTS was approved for Rs.23.0 Crores, out of which Rs.6.3 Crores are paid by the Applicant. Further, the FC approved an OTS for

Rs.77.0 Crores in December 2018, out of which Rs.7.7 Crores were already paid by the Applicant.

- j. In the year 2019, the Applicant and the CD entered into the cancellation deeds for cancellation of Agreement of Sale dated 28.07.2008 and Lease Deed dated 18.02.2010.
- k. FC filed the above application in 2021. The FC obtained the Admission Order by playing fraud.
- l. Owing to the challenge to the Recovery Certificate, there remains no basis for CP 250 of 2021, as the same is barred by limitation. The loan facility availed by the CD was in the year 2009 which was assigned to the FC on 30.12.2015. The present application is filed on 04.09.2021 i.e. after more than five years of the assignment. The FC, with the sole intention of overcoming the bar under the Limitation Act has obtained the Recovery Certificate without following due procedure of law. The CD has no right, title or interest over the subject land. Hence, this application seeking the above mentioned reliefs.
4. On the same facts in IA No.3 of 2022, the Applicant seeks for setting aside the Admission Order dated 14.07.2022 and to

declare all the actions taken by the Resolution Professional as null and void and to impose penalty on the Financial Creditor and the Corporate Debtor.

5. Respondent No.1 & 2 filed counters separately.
 - a. In the counter of Respondent No.1, it is stated that the Applicant being a party to the Registered Simple Mortgage Deed dated 30.03.2010 which is annexed as Annexure 7 by the Applicant with the instant IA, is estopped by his act and the application deserves to be dismissed. Since, the Applicant along with all interested parties i.e Telangana Housing Board/Andhra Pradesh Housing Board, M/s. Univeral Realtors Private Limited, M/s. Minerva Enterprises Private Limited and the Consortium of Banks executed the Simple Mortgage Deed, the Applicant cannot impugn the same in any manner and the Applicant cannot blow hot and cold at the same breath and take a U turn by filing the present IA.
 - b. All the agreements are in the knowledge of Respondent No.1. The Applicant has setup alleged fraud and misrepresentation as one of the grounds for filing and maintaining the IA under reply but has not furnished in the application the particulars which are mandatory. *As held by the Hon'ble Supreme Court in the case of Gayatri Devi Vs. Shantadevi, AIR 2005 SC 809 and in the case of*

M/s. Lynette Fernandes Vs. Gertie Mathias, 2018 (1) SCC 271 held that;

“the law is well settled that in the matter of fraud, general allegations are not sufficient. The particulars of fraud must be specifically pleaded and proved. The party alleging the fraud must set forth full particulars of fraud and the case can be decided only on the particulars laid out”.

- c. The IA filed by the Applicant seems to be collusive with the CD in order to get themselves wriggled out from their lawful liabilities having been created by them voluntarily in executing the Registered Simple Mortgage Deed.
- d. The application is not maintainable in the absence of the Andhra Pradesh Housing Board/Telangana Housing Board as a party who happens to be the owner/title holder of the property. The OTS was not entered in furtherance of cancellation. The cancellation of the Agreement of Sale and the Lease Deed were not even in picture without the Applicant having made the payment of the entire OTS consideration.
- e. The Cancellation deed to the Agreement of Sale dated 29.06.2019 and Cancellation Deed to the Lease Deed dated 29.06.2019 allegedly having been entered in the year 2019 annexed as Annexure 12 & 13 are false.

- f. The Hon'ble Debt Recovery Tribunal (DRT), Hyderabad in OA No.562 of 2015 issued a Recovery Certificate dated 29.10.2018. Even if, the said order was passed *ex-parte*, unless it is set aside, it is as good as a contested order/Recovery Certificate. As the Recovery Certificate dated 29.10.2018 exists, the present IA is otherwise not legally maintainable. Respondent No.1 has filed the same in the DRT. The Applicant does not have any legs to stand to impugn either the orders of this Tribunal or the orders of the Hon'ble Debt Recovery Tribunal. The DRT has issued a Recovery Certificate in accordance with law and the application is liable to be dismissed.
6. Respondent No.2 who is the Resolution Professional of the CD in his counter denied the facts and put forth the facts as stated by the Applicant with regard to the Agreements and supported the contents made by Respondent No.1. Hence not reiterated.
7. A rejoinder is filed for the Counters of Respondent No.1 & 2, reiterating almost all the contents of the Counters and further contending that the cancellation was not contingent on any OTS or other settlement and the cancellation sought for by the CD, was due to its inability to complete the construction. The Applicant once again seeks to allow the application as prayed for.

8. Heard both the Counsel and perused the written submissions filed on behalf of the Applicant and Respondent No.1, in which, the Counsel reiterated the contents of their pleadings.
9. The admitted facts in this case are; that the owner of the subject land is Telangana Housing Board (THB) and it was given for development to M/s. Universal Realtors Pvt. Ltd. (URPL). The Applicant has entered into an Agreement of Sale for purchase of future cold shell of building from M/s. URPL by way of an Agreement of Sale dated 17.03.2006. The Applicant entered into an Agreement of Sale dated 18.07.2008 in favour of the Corporate Debtor for sale of 2.0 lakhs sft. of the proposed built-up area as well as a Lease Deed dated 18.02.2010 granting the Corporate Debtor long-term leasehold rights on 2,44,000 sft. of the proposed built-up area and the said Agreement of Sale and the Lease Deed were subsequently cancelled.
10. In the meantime, the CD was admitted into Corporate Insolvency Resolution Process (CIRP). There was a litigation pending before the Debt Recovery Tribunal in O.A. No.765 of 2015 and the Petitioner therein who is the Financial Creditor has obtained an *ex-parte* order and Recovery Certificate.

11. The contention of the Applicant's Counsel now before us is that; he has filed an application to set aside the order dated 29.10.2018 in R.C. No.837 of 2018 by virtue of which, a Recovery Certificate was issued to the Financial Creditor by the Hon'ble Debt Recovery Tribunal and hence the Recovery Certificate and the rights declared by DRT in favour of the FC are not final.

12. The Counsel for the Respondents submits that irrespective of the Recovery Certificate not becoming final, the FC has a right over the undivided share of the CD, by virtue of the Agreements entered into between the parties. He, further contends that the Petition to set aside the order granting Recovery Certificate is filed with enormous delay and that they do not have notice about the same. It is contended that even if it is assumed that they have notice of the same, the said fact is not material for an application under Section 7 of IBC, 2016, as until the time, the Hon'ble Debt Recovery Tribunal sets aside the order, the same holds good. Non mentioning of an immaterial fact does not amount to suppression of a fact, is the argument.

13. The Counsel draws our attention to the Deed of Simple Mortgage to which the Applicant herein is also a party. The Deed of Mortgage is executed on 30.03.2010. Clause 4 of the said Mortgage Deed

stipulates that the Mortgagee will be entitled to cause the said premises to be sold, if the borrower fails to pay any two instalments of the principal amount. There is no denial of the fact that the CD has failed to pay the debt due to the Financial Creditor.

14. The Counsel for the Respondents submits that the cancellation of the Sale Agreement does not have any binding effect on the Respondent, since he is not a party to the same. The rights that accrued to the Respondents under the Mortgage Deed to which all the parties concerned with the land and development are parties cannot be assailed. We find immense strength in the said argument. When the Applicant agrees for the premises to be sold on the failure of the borrower to pay any two instalments, he cannot now deny and dispute the right of the Creditor to invoke the said Clause in the Mortgage Deed.

15. The very basis for the Consortium of Banks to sanction loan in favour of the CD is Agreement of Sale and Lease with the Applicant. When the Applicant has bound himself by the Simple Mortgage Deed, he cannot escape from the operation of any of the Clauses incorporated in the said Mortgage Deed.

16. In view of the above, we do not find any merit in the applications and hence, we dismiss the same. Accordingly, **IA No. 3 of 2022 & 1115 of 2022 in CP(IB) No. 250/7/HDB/2021** are disposed of.

Sd/-
(CHARAN SINGH)
MEMBER (TECHNICAL)

Sd/-
(JUSTICE TELAPROLU RAJANI)
MEMBER (JUDICIAL)

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