

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**
*(Exercising powers of Adjudicating Authority under
The Insolvency & Bankruptcy Code, 2016)*

I.A No. 361 of 2021
U/s 19(2) r/w U/s 60 (5)
of I& B Code,2016 &
I.A No. 568 of 2022
U/s 60 (5) of I&B Code,2016
r/w Rule 11 of NCLT Rules,2016
in
C.P (IB) No. 243/BB/2018
U/s 7 of the IBC Code
r/w Rule 4 of Insolvency and Bankruptcy
(AAA) Rules, 2016

In the matter of

IA NO 361 OF 2021

Pankaj Srivastava

5,5th Cross Navya Nagar,
Jakkur, Bengaluru-560064

----- Applicant/Resolution Professional

Versus

Narappa Manohar Reddy

No.164,1,
Adarsh Palm Meadows
Ramagondanahalli
Bengaluru-560066

-----Respondent 1

Narappa Reddy Vinela

No.164,1,
Adarsh Palm Meadows,
Ramagandanahalli,
Bengaluru-560066

-----Respondent 2

IA NO 568 OF 2022

Pankaj Srivastava

Liquidator of M/s Sagar Power (Neerukatte)
Private Limited
5,5th Cross Navya Nagar,
Jakkur,Bengaluru-560064

Applicant/Liquidator

Versus

Narappa Manohar Reddy

No.164,1,
Adarsh Palm Meadows
Ramagondanahalli
Bengaluru-560066

-----Respondent 1

Narappa Reddy Vinela

No.164,1,
Adarsh Palm Meadows,
Ramagandanahalli,
Bengaluru-560066

-----Respondent 2

Mohandas Shetty

Perari House,
Perabe Village,
Alankar Post,Kadaba Taluk,
Dakshina Kannada District-574285

-----Respondent 3

Order delivered on: 23rd June 2023

Coram: 1. Hon'ble Justice (Retd) T.Krishnavalli Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Applicant : Ms. Amrita Jain

ORDER

Per: T.Krishnavalli, Member (judicial)

IA NO 361 OF 2021

1. The instant application has been filed by Resolution Professional (herein after 'applicant') under Section 19 (2) r/w 60 (5) of the I & B Code, 2016 *interalia* seeking directions to provide all the original documents in the possession of the respondents in support of acquisition of lands as appearing in the Audited Financial Statements namely, Land parcels for Rs.5.19 Cr, Land parcels forming part of sale agreement dated

11.10.2018 admeasuring about 21.39 acres and amounting to Rs.12.40 Cr, allow the resolution professional to take possession of all the records related to financial statements as well as land documents and issue appropriate directions to Ex-Directors/Management for extending full cooperation and to provide necessary information to the resolution professional for completing the required compliances to various statutes and a successful completion of CIRP. On 4.11.2022, this Tribunal approved the Liquidation of M/s Sagar Power (Neerukatte) Private Limited, the Corporate Debtor and appointed the Applicant/Resolution Professional as the Liquidator.

- 2.** Brief facts of the case, as mentioned in the application which are relevant to the issue in question, are as follows:
 - I.** In the meeting of CoC held on 28.12.2020, the requests were made by the CoC to the respondents to provide numerous information with regard to the land parcels of the Corporate Debtor, its other liabilities, books of accounts, etc. to properly assess the financial position of the Corporate Debtor .the applicant has not been provided the necessary information and assistance since Jan 2021.
 - II.** In spite of the Covid 19 lock down restrictions by the Central Government and respective State Governments, the respondents have continued to not co operate and comply with the directions and requests of the applicant. The Auditors of the Company appointed by the Erstwhile Directors have in their letter dated 15.02.2021 expressed their inability to sign the audited financial statement for the period 1st April 2019 to 31st March 2020 which includes audit of books of accounts up to Insolvency commencement date as on 27.09.2019, due to refusal of Erstwhile Directors to sign the Audited Statements.
 - III.** The respondents have time to time failed to provide information with respect to an amount of Rs.5.19 Crores is capitalized as Land in the books of the Corporate Debtor and appears in the Audited Balance sheet as at 31.03.2019, documents in support of transfer

of land admeasuring 21.39 acres in the name of the Corporate Debtor by way of sale agreement dated 11.10.2018 for which corporate debtor has compensated the seller being the ex directors to the tune of Rs.12.40 Crores. The respondents have failed to register the said property by way of entering into a sale deed with the Corporate Debtor, original documents of the various land parcels as listed in the sale agreement have not been handed over to the resolution professional. The accounts upto 31.03.2020, as respondents as Directors holding office as on the date and fully in control of the business upto 27th Sep 2019 being the date of order of admission of the Corporate Debtor under Corporate Insolvency Resolution Process, have refused to sign the financial statements resulting in failure of completing annual compliances with various regulatory authorities.

IV. The registered office of the Corporate Debtor has not been operational since the commencement of the Corporate Insolvency Resolution Process. The makeshift office of the Corporate Debtor where the erstwhile promoter's conduct their other business and which was visited by the applicant does not contain most of the relevant documents and the officers stationed at the makeshift office are not aware of the whereabouts of the documentations and records of the Corporate Debtor.

V. The applicant had issued a Legal Notice dated 09.09.2021, the respondent neither came forward to provide the information neither sought nor provided any reply to the said Legal notice.

3. The Respondent No 1 has filed the reply for the application vide Diary No. 5184 dated 1.12.2022 *inter alia* contending as follows:

a) The Respondent No 1 has furnished all the necessary information and has been providing the necessary assistance as and when required by the Resolution Professional in managing the affairs of the Corporate Debtor. The Board of Directors of the Corporate Debtor were suspended and the Resolution Professional has not convened any meeting of the Board to discuss the Accounts or Affairs of the

Company nor convened any discussions to consider, draft and finalize the returns for the said period.

- b)** It is submitted that the details of amount of Rs.5.19 Crores capitalised as land enclosed by the applicants as Annexure G along with the application is ledger extract and not the Audited Balance Sheet. The Balance Sheet for the period 2018-19 was neither signed by the auditor nor it was filed by the Resolution Professional.
- c)** It is submitted that the Corporate Debtor was in requirement of the land for the purpose of storing water and the respondent no 1 being the promoter of the company had tried to mobilize land for the same and the agricultural land was mobilized to the extent of 100 Acres and some portion of land was registered and some portion of land is still in agreement stage and not executed as an absolute sale deed in the name of the Company. Out of the acquired land,21.39 Acres(which is in agreement stage) was not entered as absolute sale deed and was in the possession of the respondent no.1 and the consideration for the same has been paid.The banks were aware of the facts pertaining to the process and efforts and chronology with respect to Acquisition/mobilization of land.The Banks has insisted the Respondent No 1 to give the documents pertaining to land acquisition as security accordingly the same was given to the bank (all absolute sale deeds not sale agreements which banks desisted).Further clarification with respect to the land measuring 21,39 acres was provided by the respondent no 1 in his email date 27.07.2020.
- d)** The fixed asset register is not required to claim the insurance. Further the applicant has not taken care of the insurance renewals because of which, the insurance amount could not be claimed.

4. The Respondent No 2 has filed the reply for the application vide Diary No. 857 dated 14.02.2023 *inter alia* contending as follows:

- I. The respondent no 2 has commenced her tenure as the director of the corporate debtor from 11.04.2008 and thereafter, resigned from the post on 1.04.2019, she ceased to be part of the day today affairs of

the company. Hence the documents sought by the resolution professional in the application are neither in the possession of the respondent no 2 nor in her control as an Ex-director.

II. The management of the company is to be handled by the Board of directors but the provisions of sec 19 cannot be read to mean that whatsoever was the director of the company including the director who has resigned should be made responsible for extending co operation to the resolution professional.

5. The applicant has filed the rejoinder for the application vide Diary No. 5293 dated 08.12.2022, is *inter alia* contended as under:

- a) The CoC meeting held on 28.12.2020, wherein the respondents were requested to furnish the information with respect to the land parcels and related assets, books of accounts etc for the proper assessment of the financial position of the Corporate Debtor. But the respondents gave a vague reply and did not furnish the information. The same was reflected in the minutes of the CoC meeting dated 29.12.2020. Further, the applicant sends various e-mails to the Respondents with respect to the land parcel, but no information was furnished to the applicant. The emails dated 20.10.2020 is attached as Annexure E to the application. Moreover, the Respondents have not signed the Audited Financial Statements for the FY 2019-2020 of the Corporate Debtor, which itself made the applicant to assess the true value of assets of the Corporate Debtor.
- b) It is submitted that, after the audit undertaken by the applicant, it was clear that four land parcels were associated with the project of the Corporate Debtor of which specific details were mentioned along with survey nos and amounts. The Land Parcel no.4 was included in Fixed Asset Schedule of the Corporate Debtor Balance Sheet as on 31.03.2019 and as on 31.03.2018 and earlier years.
- c) Therefore, the respondents failed to provide any information with respect to the land parcels and refused to cooperate with the Applicant, for the reasons best known to him.

6. Heard the Learned Counsel for the applicant. We have carefully perused the pleadings of the parties and extant provisions of the Code, and the Regulations made there under.
7. The relevant extract of the Section 19 IBC is as under:
 - (1) *The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor.'*
 - (2) *Where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions.*
 - (3) *The Adjudicating Authority, on receiving an application under sub-section (2), shall by an order, direct such personnel or other person to comply with the instructions of the resolution professional and to co operate with him in collection of information and management of the corporate debtor.*
8. In respect of Liquidation, it is necessary to reproduce Sec 34(3) of IBC which is as under:
 - (3) *The personnel of the corporate debtor shall extend all assistance and corporation to the liquidator as may be required by him in managing the affairs of the corporate debtor and provisions of Section 19 shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the interim resolution professional."*
9. It is desirable that, the respondents extent co operation to ensure that the Liquidator functions and conducts liquidation in terms of the provisions of Insolvency and Bankruptcy Code, 2016. Accordingly, as per Section 19 and section 34 of IBC, this Adjudicating Authority directs the respondent no 1 to provide all the original documents in the possession in support of acquisition of lands as appearing in the Audited Financial Statements.
10. Moreover, this Adjudicating Authority is of the view that the ex director/management collectively and independently, must furnish information and documents and extend full co operation to the liquidator for

completing the required compliances to various statutes for a successful completion of the liquidation of the Corporate Debtor. The respondents should co operate with the Liquidator in respect of supply of the documents as mentioned in prayers in the IA; and they cannot escape their obligation. Therefore this Adjudicating Authority in order to implement the intention of the Code directs the ex director/management to extent full co operation and simultaneously furnish all the requisite documents related to Corporate Debtor as desired in the prayers.

- 11.** In the result the application is allowed with above directions. Accordingly **IA NO 361 OF 2021 is disposed of.**

IA NO 568 OF 2022

1. The instant application has been filed by Liquidator (herein after 'applicant') under Section 60 (5) of the I & B Code, r/w Rule 11 of the NCLT Rules, 2016 *inter alia* seeking to pass an interim order restraining the respondents from trespassing or dealing with the Schedule Property as well as other Properties or assets owned by the Corporate Debtor till the final disposal of CP (IB) No.243/BB/2018,pass an interim order to maintain the status -quo of the Corporate Debtor till the final disposal of CP (IB) No. 243 of 2018.
2. Brief facts of the case, as mentioned in the application which are relevant to the issue in question, are as follows:
 - I. The applicant is seeking issuance of appropriate directions to the respondents to restrain them from illegally entering the property owned by the Corporate Debtor situated at Survey 463/2, Bajattur Village, Near Uppinangadi, Puttur Taluk,Dakshina Kannada District-574241 (hereinafter referred as the "Schedule Property") as well as other Properties or assets owned by the Corporate Debtor in the surrounding areas of the Schedule Property measuring over 100 acres.
 - II. On 17.10.2022, the Liquidator was informed that certain people had trespassed upon the Schedule Property owned by the Corporate Debtor.

III. It is stated that with respect to the trespassing of the property of the corporate debtor by any persons including the respondent's amounts to an illegal activity which is legally untenable as the corporate debtor is under liquidation and the matter is *sub-judice*.

3. Heard the Learned Counsel for the applicant. We have carefully perused the pleadings of the parties and extant provisions of the Code, and the Regulations made there under.
4. On 9.1.2023, when the matter was listed, this Tribunal issued notice. The proof of service filed by the applicant vide diary no 650 dated 02.02.2023, with tracking report with an endorsement showing 'item delivery confirmed', the respondents did not appear, therefore the respondents are proceeded against on an *exparte* basis.
5. We have observed that, trespassing of the Property of the corporate debtor by any persons including the respondents causes hindrance in the process of liquidation. Therefore respondents are restrained from trespassing or dealing with the Schedule Properties or assets owned by the corporate debtor and corporate debtor /liquidator is directed to maintain the status quo with regard to the Schedule Property till the disposal of CP (IB) NO 243/BB/2018.
6. Accordingly, **IA No 568 of 2022 stands disposed of**

-Sd-

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

-Sd-

(T.KRISHNAVALLI)
MEMBER (JUDICIAL)