

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI ATUL CHATURVEDI,
HON'BLE TECHNICAL MEMBER

IA No. 17/JPR/2019
In CP No. (IB)-56/7/JPR/2018

IN THE MATTER OF:

DEEPAK ASHOK TIWARI

...Financial Creditor

VERSUS

M/S SNG REAL ESTATE PRIVATE LIMITED

...Corporate Debtor/Respondent

MEMO OF PARTIES

IA No. 17/JPR/2019:

MR. DEEPAK ASHOK TIWARI
4204 SW Hollyhock St. Bentoville,
AR, USA, 72712

...Financial Creditor/Applicant

VERSUS

M/S SNG REAL ESTATE PRIVATE LIMITED

R/o: 707, Paris Point Bani Park,
Jaipur, Rajasthan- 302016

...Corporate Debtor/Respondent

FOR THE APPLICANT
FOR THE RESPONDENT

: Aditya Vijay, Adv.
: Naresh Kumar Sejvani, Adv.

Order Pronounced On: - 12.07.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The brief facts of the present case are that the Petitioner namely *Mr. Deepak Ashok Tiwari* preferred an Application through Power of Attorney ('POA') executed in favour of *Mr. Raj Kumar Tiwari* under Section 7 of Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') against *M/s SNG Real Estate Private Limited* ('Respondent'/ 'Corporate Debtor').
2. During the process of scrutiny of the file, the Registry pointed out certain defects which are as follows:
 - I. *Annexure-2 needs Replacement*
 - II. *Original Document required for Verification of Power of Attorney (Annexure-10 Page No. 61 & 62) which is not available at present.*
 - III. *Annexures 1-10 of MoU (Annexure-1 & Annexure-2) not submitted/not available.*
 - IV. *Power of Attorney in favor of Shri Raj Kumar Tiwari for entering MoU is not submitted/not available.*
 - V. *Copy of Tripartite Agreement with SBI not submitted.*
 - VI. *Copy of agreement entered between Corporate Debtor and Financial Creditors by which it was consented to allot another flat to the Financial Creditors in lieu of return on investment of the first two years not submitted. (as mentioned at Page 4 of the Application)*
3. The captioned matter was listed for hearing before this Adjudicating Authority and vide Order dated 04.10.2018 this Adjudicating Authority directed the Applicant to cure the defects within a period of one week.
4. The Applicant preferred an Affidavit vide Diary No. 699/2018 dated 29.11.2018 stating that the with respect to the *Defect No. V*, the Tripartite Agreement has been submitted by the Applicant to its Banker and despite

repeated request, the Applicant has not been able to avail the said Agreement.

5. Later the Applicant moved an Application bearing *IA No. 17/JPR/2019* vide Diary No. 38/2019 dated 09.01.2019 wherein exemption was sought from filing certain documents pointed out in *Defect IV* and *VI* i.e. Copy of Agreement executed between the Corporate Debtor and Financial Creditor wherein it was consented to allot another flat to the Financial Creditor in lieu of Return on Investment and the Power of Attorney executed in favour of Shri Raj Kumar Tiwari for entering into the MOU on behalf of Mr. Deepak Ashok Tiwari.
6. The Corporate Debtor was granted an opportunity to file reply on multiple occasions and vide Order dated 22.02.2019, the opportunity to file reply was closed. Thereafter, the Corporate Debtor in view of the closure of reply, filed an application bearing *IA No. 87/JPR/2019* on 26.03.2019 against which this Adjudicating Authority vide Order dated 28.03.2019 observed as follows:

“In the circumstances, we are not in a position to entertain this application and resultantly take the reply on record. However, it will not detract the Corporate Debtor to argue based on the pleadings as available before this Tribunal. It is also observed that reply cannot be taken on record as the application has not been allowed.”

7. In the circumstances, the Applicant has filed the present application seeking exemption from filing the document listed in *Defect No. IV* and *Defect No. VI* i.e. Power of Attorney executed in favor of the *Shri Rajkumar Tiwari* for

entering in the MOU on behalf of the Financial Creditor namely Mr. Deepak Ashok Tiwari and Copy of Agreement entered between the Corporate Debtor and Financial Creditor consenting to allot another flat to the Financial Creditor in lieu of Return on Investment of the first two years.

8. We have heard the Ld. Counsels for the parties and perused the averments made in the Interlocutory Application and reply along with the documents enclosed with the application.
9. The Steps taken by the Applicant with regard to certain defects have been enumerated in the chart here as below:

	<i>Defects raised by Registry</i>	<i>Rectification done by the Applicant</i>
I.	<i>Annexure-2 needs Replacement</i>	Replaced and rectified
II.	<i>Original Document required for Verification of Power of Attorney (Annexure-10 Page No. 61& 62) which is not available at present.</i>	Verified with the Original on 29.11.2018, hence cured.
III.	<i>Annexures 1-10 of MoU (Annexure-1 & Annexure-2) not submitted/not available</i>	Verified with the Original on 29.11.2018, hence cured.
IV.	<i>Power of Attorney in favor of Shri Raj Kumar Tiwari for entering MoU is not submitted/not available</i>	<i>IA No. 17/JPR/2019</i> filed vide Diary No. 38/2019 dated 09.01.2019 seeking exemption from filing of POA
V.	<i>Copy of Tripartite Agreement with SBI not submitted</i>	An affidavit vide Diary No. 699/2018 dated 29.11.2018 is submitted stating Tripartite Agreement has been submitted by the Applicant to its Banker and despite repeated request, the

		Applicant has not been able to avail the said Agreement.
VI.	<i>Copy of agreement entered between Corporate Debtor and Financial Creditors by which it was consented to allot another flat to the Financial Creditors in lieu of return on investment of the first two years not submitted. (as mentioned at Page 4 of the Application)</i>	IA No. 17/JPR/2019 filed vide Diary No. 38/2019 dated 09.01.2019 seeking exemption from filing of copy of the agreement.

10. In the Insolvency and Bankruptcy Code, 2016, there is no provision of admission or denial of the documents as provided under the Code of Civil Procedure, 1908. In Insolvency proceedings, the parties are at liberty to challenge the admissibility of a document. The onus of proof lies upon the party alleging the set of facts. Therefore, it is only after being satisfied with the documents and pleadings placed, the Adjudicatory Authority determines the admission or rejection of an application under Section 7, 9, or 10 of the Code.

11. The *Defect No. I* was duly replaced by the Applicant and thereby rectified. The *Defect No. II* and *III* were verified with the Original Copies on 29.11.2018, hence the same stand cured. With respect to *Defect No. V*, it is observed that an Affidavit stating that the Applicant has not been able to procure the Tripartite Agreement to cure the *Defect No. V*.

12. On perusal of the record, with respect to *Defect No. IV*, it is seen that one MOU was executed between the Corporate Debtor namely *M/S SNG Real*

Estate Private Limited i.e., the Builder and Mr. Deepak Ashok Tiwari (Financial Creditor). The said Agreement was entered into by *Mr. Deepak Ashok Tiwari* through his Power of Attorney holder *Mr. Rajkumar Tiwari* as a signatory to the MOU on behalf of *Mr. Deepak Ashok Tiwari* in capacity of his Power of Attorney holder. The Application has been filed seeking exemption from producing the said PoA.

13. On perusal of the record, with respect to *Defect No. VI*, it is seen that an Agreement was entered between the Corporate Debtor and Financial Creditor consenting to allot another flat to the Financial Creditor in lieu of Return on Investment of the first two years. The said has not been produced and exemption is being sought to produce the same through this Application.
14. The objections were raised at the Registry level with respect to non-production of documents. Generally, it is the duty of the party to lead the best evidence in his possession and when the party is called upon to produce the said evidence but fails to do so, the Authority may draw adverse inference, if such evidence is withheld. Although invariably taking the pleadings into consideration, the Authority may decide whether the document/evidence withheld has any relevance to the matter pending. Therefore, mere non-production of documents would not result in adverse inference.

15. The Registry has raised *Defect IV* with regard to non-production of POA executed in favor of *Mr Rajkumar Tiwari* by *Mr. Deepak Ashok Tiwari* and as mentioned in the MOU dated 17.12.2015. The Registry has also raised *Defect VI* with regard to non-production of copy of Agreement entered between the Corporate Debtor and Financial Creditor consenting to allot another flat to the Financial Creditors in lieu of Return on Investment of the first two years and non-production of the Tripartite Agreement.
16. The effect of withholding the above said documents has direct bearing with the admissibility of the documents relied upon by the Applicant. Hence exemption to produce the documents cannot be granted and adverse inference, after viewing the relevance of the documents into consideration, may be taken against the Applicant during the course of proceedings.
17. While disposing of any proceedings, the Adjudicating Authority is not bound by the procedure laid down in the Court of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice. The Tribunal/ Adjudicating Authority shall have the same power as are vested in Civil Court under the Civil Procedure Court, 1908 in the matter of discovery or production of documents.
18. The Applicant is directed to produce the documents within 10 days, failing which adverse inference may be drawn against the petitioners, in case the

documents withheld has any relevance while disposing of the Application under Section 7 of IBC, 2016.

19. In view of the foregoing, the Application is disposed off with aforementioned directions.
20. The matter be posted on 17.08.2023 for further consideration.

-Sd-

**DEEP CHANDRA JOSHI
(JUDICIAL MEMBER)**

-Sd-

**ATUL CHATURVEDI
(TECHNICAL MEMBER)**