



THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

I.A. 4687/ND/2022

IN

Company Petition No. (IB) – 260/(PB)/2017

*Under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016.*

IN THE MATTER OF:

NEELAM SINGH

.... FINANCIAL CREDITOR

VERSUS

M/S. MEGA SOFT INFRASTRUCTURE PRIVATE LIMITED.

..... CORPORATE DEBTOR

AND IN THE MATTER OF-

GROOVY STRUCTURES LLP

.... APPLICANT

VERSUS

NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY

...RESPONDENT NO 1

ABHISHEK ANAND, LIQUIDATOR

...RESPONDENT NO 2



CORAM:

**SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER
(TECHNICAL)**

For the Applicant: Mr. Rahul Gupta and Ms. Deepti Gupta,
Advocate.

ORDER

PER- RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Order Pronounced on: 09.05.2023

1. This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking directions against the Respondents to take appropriate steps to transfer the auctioned property in favour of the applicant being the highest bidder in the e-auction held on 18.11.2019 wherein the sale of property was awarded to the Applicant.
2. The applicant in the present application has prayed for the following reliefs: -



- a) *Allow the present application and direct the Respondent No 1 to transfer the Property situated at Institutional Plot No. 02/2, Sector-154, District Gautam Budh Nagar, Noida, Uttar Pradesh-201310 in favour of the Applicant, and;*
- b) *Pass an order thereby directing the Respondent No. 1 to mutate the said Property in the name of the Applicant herein and*
- c) *Pass an order directing the Respondent No. 2/Liquidator to take appropriate steps for transfer of the Property being Institutional Plot No. 02/2, Sector-154, District Gautam Budh Nagar, Noida, Uttar Pradesh-201 310 in favour of the Applicant herein*
- d) *Pass any such further orders which this Hon'ble Tribunal may deem fit and proper.*

3. Briefly stated the facts of the case as mentioned in the instant application, which are necessary for adjudication, are as follows: -

- i. That the Applicant herein is a limited liability partnership firm incorporated registered on 01.07.2016 and is primarily engaged in the business of real estate and other activities related to property renting.
- ii. That on 28.03.2008, the Respondent No.1 herein vide letter no. Noida/Instt/2008/2280 dated 28.03.2008 allotted plot



No. 02/02 in sector 154, Noida District Gautam Budh Nagar, Uttar Pradesh, admeasuring approximately 4615.13 sq. mtr., to the Corporate Debtor and a registered Lease Deed dated 22.07.2015 having Deed no. 2075 executed between the Respondent No. 1 and the Corporate Debtor whereby the said allotted plot was leased to the Corporate Debtor by Respondent No. 1 for a period of 90 years for a premium of Rs. 2,30,66,419.74/- (Rupees Two Crore Thirty Lakh Sixty-Six Thousand Four Hundred Nineteen and Seventy-Four Paise) and a yearly rental of Rs. 5,76,661 (Rupees Five Lakh Seventy-Six Thousand Six Hundred Sixty-One).

- iii. That the CIRP of the CD was initiated vide order dated 02.08.2017. Subsequently the CD went into Liquidation vide order dated 28.02.2018 and Mr. Abhishek Anand was appointed as liquidator in the matter.
- iv. That the Liquidator issued E-Auction Sale Notice, for sale of the property of the Corporate Debtor of the abovementioned plot for Reserve Price of Rs. 7,30,00,000/ - (Rupees Seven Crore Thirty Lakh) and published a notice



for the same in Hindi (Jansatta) and English (Financial Express) newspapers dated 21.06.2019 and also issued addendum to E-Auction on 08.11.2019 published in Hindi (Jansatta) and English (Financial Express) newspapers dated 08.11.2019 to conduct E-Auction of the Property on 18.11.2019

- v. That, accordingly the auction was conducted on 18.11.2019 through an e-auction portal namely, 'Auction Tiger' and the Applicant herein submitted bid amounting of Rs. 8,66,00,000/- (Rupees Eight Crore Sixty-Six Lakh) in the e-auction, Accordingly, the Applicant herein was declared as the highest bidder in the e-auction, as per the auction report for listing ID -89422, dated 18.11.2019, furnished by E-auction Service Provider.
- vi. That the highest bid of the Applicant was accepted by the Liquidator and the Liquidator communicated the same to the Applicant through email dated 19.11.2019 (hereinafter referred to as "Letter of Intimation").
- vii. That the Liquidator further intimated the Applicant that the sale of the Property was subject to confirmation of sale



by this Tribunal. Accordingly, the Liquidator, filed a Company Application No. 102 (ND)/2019 before this Tribunal on 02.12.2019 for allowing/confirming the sale of the abovementioned Property of the Corporate Debtor and this Tribunal vide order dated 03.02.2020 allowed the sale of the Property.

- viii. That, the Liquidator vide email dated 10.02.2020 informed the applicant that a Company Application No. 1071/2020 has been filed by the Liquidator seeking directions to provide the original lease deed of the Property and this Tribunal vide order dated 10.02.2020 directed the Registrar to provide the original lease deed of the Property. The Liquidator vide abovesaid email further informed the Applicant that all the proceedings *qua* the sale of the Property shall be initiated to the applicant and further on 11.03.2020 requested the applicant to make the payment of Rs. 7,93,00,000/ - (Rupees Seven Crores Ninety-Three Lakh) towards the balance sale consideration of the Property within 30 days. Further, the applicant was also informed that an interest at the rate of 12% will be



applicable in case the payment of the balance sale consideration is delayed and the sale is liable to be cancelled in case the full consideration is not paid within 90 days from the date of the invitation

- ix. That the Liquidator further addressed another E-mail dated 21.04.2020 to make the payment of the balance sale consideration to the Applicant in respect of the aforementioned Property. Further, the Liquidator also informed the Applicant that according to the newly inserted Regulation 47A of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2020 with respect to the exclusion of period of lockdown, the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak shall not be counted for the purposes of computation of the timeline for any task that could not be completed due to such lockdown, in relation to any liquidation process therefore, the period from 25.03.2020 till the lifting of the lock down by Central Government shall not be included for the purpose of calculating timeline for the payment of balance



sale consideration of the Property. That the Liquidator again invited the applicant to provide balance sale consideration i.e. Rs_ 7,93,00,000/- (Rupees Seven Crores Ninety-Three Lakhs only) within 47 days from the date of lifting the lockdown by Central Government along with 12% interest rate for period as mentioned and applicable as per Regulation 12 of Schedule 1 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 mentioned above and that in case the full consideration is not paid within 47 days from the date of lifting of lockdown by Central Government, the sale shall be terminated with forfeiture of 10% amount which had been paid initially.

- x. That owing to huge financial crunch being faced by the Applicant, the Applicant filed an application being I.A. No.4450/2020 seeking extension of time for making payment towards the sale consideration on 12.10.2020 and this Tribunal was pleased to allow the extension in making the payment till 20.01.2021 vide order dated 16.12.2020.



- xi. That, in compliance of the order dated 16.12.2020 passed by this Tribunal, the Applicant paid the entire principal amount of Rs. 8,66,00,000/- (Rupees Eight Crore Sixty-Six Lakh) along with interest at the rate 12% amounting to Rs. 36,24,793/ - (Rupees Thirty-Six Lacks Twenty-Four Thousand Seven Hundred Ninety-Three) on various dates and last instalment was paid on 04.01.2021.
- xii. That vide order dated 11.01.2021, this Tribunal observed that the Applicant has submitted the entire amount. Since the Applicant herein made the entire payment towards the sale of the Property, the Liquidator agreed to sell the Property subject to the provisions contained in the Lease Deed dated 22.07.2015 and the fresh lease deed/sale certificate to be entered with the Respondent No. 1.
- xiii. That the Liquidator informed the applicant that the Liquidator had filed an application being I.A. No. 1612 of 2021 under Section 60(5) of the Code for issuance of direction to the Respondent No, 1 herein to transfer the abovementioned Property in favour of the Applicant.



- xiv. That vide order dated 14.10.2021 in I.A. No. 1612 of 2021, this Tribunal allowed the said application filed by the Liquidator, directing the Respondent No. 1 to transfer the said Property in the name of the Applicant being the auction purchaser in terms of the Code. Accordingly, the Applicant entered into an Agreement to sell dated 22.11.2021 with the Corporate Debtor represented by the Liquidator i.e. Mr. Abhishek Anand.
- xv. That the Respondent No. 1, being aggrieved by the order dated 14.10.2021, preferred an appeal before the Hon'ble National Company Law Appellate Tribunal bearing Company Appeal (AT) (Ins.) No. 998 of 2021 titled as "*New Okhla Industrial Development Authority vs Abhishek Anand, Liquidator of Mega Soft Infrastructure Pvt. Ltd.*".
- xvi. That during the pendency of the abovementioned appeal, the Liquidator as well as the Applicant herein, submitted a Transfer Application Form with the Respondent No. 1 herein on 16.02.2022 seeking to transfer the Property in favour of the Applicant.



- xvii. That based on the contentions put forward by the parties to the abovementioned appeal, the Hon'ble Appellate Tribunal, while disposing off the abovementioned appeal, vide order dated 19.04.2022 directed the Respondent No. 1 herein to consider the application dated 16.02.2022 filed by the Liquidator herein on merits in accordance with law and to dispose the same at an early date preferably within a period of two months.
- xviii. That despite specific directions passed by the Hon'ble Appellate Tribunal against the Respondent No. 1, the Respondent No. 1 has not given any clarifications for non-transfer of the Property during several visits made by the Applicant to the office of the Respondent No. 1 till date.
- xix. That the transfer of the Property in favour of the Applicant is still pending by the Respondent No. 1 which is causing huge financial burden on the applicant.
- xx. In view of the abovementioned facts and circumstances, the Applicant by way of the present application seeks directions against the Respondent No. 1 to transfer the



Property in question in favour of the applicant on immediate basis.

4. The Respondent No 1 had filed his reply to the averments of the applicants which is stated in brief as under:

I. It is submitted that Respondent No. 2 filed IA No. 1612 of 2021 before this Tribunal seeking direction against the Respondent No.1 to transfer the auctioned property in the name of the Applicant

II. That the Respondent No. 1 in its reply submitted that since amount was due as per the terms and conditions of the lease deed and policy of the Respondent No. 1 against the Corporate Debtor and thus the property cannot be transferred to the Applicant without payment of dues of the Respondent No. 1. However, this Tribunal vide order dated 14.10.2021 allowed the Application of the Respondent No. 2 and directed the Respondent No. 1 to transfer the property to the Applicant.



III. Aggrieved by the order dated 14.10.2021, the Respondent No. 1 preferred an appeal bearing Company Appeal (AT) (Ins) No. 998 of 2021 before the Hon'ble NCLAT and the Hon'ble NCLAT vide order dated 19.04.2022 allowed the appeal of the Respondent No. 1 and directed the Respondent No. 2 to approach the Respondent no. 1 with transfer application and the Respondent No. 1 shall consider the application as per the terms and condition of the lease deed and existent policy of the Respondent No.1

IV. The Respondent No. 1 filed claim before the Respondent No. 2 i.e. Liquidator as per direction of this Tribunal. The Respondent No. 2, in utter disobedience of this Tribunal rejected the claim of the Respondent No. 1 on the ground of being time barred.

V. As the order dated 14.10.2021 was challenged before the Hon'ble NCLAT and final order was passed by the Hon'ble NCLAT vide order dated 19.04.2022, the Respondent No. 1 filed Contempt Case no. 26 of 2022 before the Hon'ble NCLAT against Respondent No. 02.



The Hon'ble NCLAT found prima facie substance in the case and issued notice to the Respondent No. 2.

VI. It is pivotal to note that even on the direction of the Hon'ble NCLAT, the Respondent No. 2 has not placed an appropriate application for transfer of the aforesaid property. The Respondent has deliberately and in utter disregard to the direction of the Hon'ble NCLAT, failed to comply the terms and condition of the lease deed and existing policy of the Respondent No. 1.

VII. The Respondent No. 2 has also filed Contempt Case no. 18 of 2022 against the Respondent No. 1 on the ground of non-compliance of order dated 19.04.2022 passed by the Hon'ble NCLAT which is currently pending adjudication. Hence, the Applicant has no locus to file present Application before this Hon'ble Tribunal as issue pertaining to transfer of the property is already pending before the Hon'ble NCLAT. Also, the Applicant should have approached the Respondent No. 2 for transfer of the property in its



favour. Thus, the present application is frivolous and devoid of any merit and should be dismissed.

VIII. Further, it is submitted that as per the existing policy as amended vide office order dated 07.10.2021, no non-functional institutional plot can be transferred. This policy is existing before filing of the transfer application by the Applicant.

5. The Respondent No 2 i.e. Liquidator has not filed its reply. We have gone through the rejoinder and documents on record filed by both the parties and arguments advanced by counsels of both the parties.

6. On perusal of the application, it is observed that similar relief(s) as prayed were granted by this Tribunal vide order dated 14.10.2021. However, the Hon'ble NCLAT vide order dated 19.04.2022 set aside the aforesaid order and directed the Respondent No 2 i.e. New Okhla Industrial Development Authority to consider the application made by the applicant to transfer the said plot on merits and in accordance with law. Accordingly, the applicant again submitted the transfer application on 16.09.2022 and the said transfer application



was rejected by the Respondent No 1. on 22.09.2022. It is submitted by the Respondent No 1 that Respondent No. 2 has also filed Contempt Case no. 18 of 2022 against the Respondent No. 1 on the ground of non-compliance of order dated 19.04.2022 passed by the Hon'ble NCLAT which is currently pending adjudication. Since the matter is currently before the National Company Law Appellate Tribunal and the NCLAT has already set aside the order by which this Tribunal granted relief as prayed by the applicant, this Tribunal cannot now grant similar reliefs in the matter. In light of the facts and circumstances of the present case this Adjudicating Authority dismisses the application filed by the applicant.

The parties are at liberty to approach appropriate forum and may explore other legal remedies available as per law.

Let copy of the order be served to the parties concerned.

Sd/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)