

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 652 of 2020

[Arising out of Order dated 15.07.2020 passed by the Adjudicating Authority, NCLT, Principal Bench, New Delhi in IA No. 2468 of 2020 in CP (IB) No. 1248(PB)/2018]

IN THE MATTER OF:

Ms. Indrani Brahmachari

W/o. Shri Sumanta Brahmachar

(Authorized Co-Allotee)

Flat No. 1101, Tower – 30

Lotus Panache, Sector 110

Noida, UP-201301

...Appellant.

Versus

1. Mr. Chandra Prakash

Resolution Professional

M/s. Granite Gate Properties Pvt. Ltd.

Through its Resolution Professional

58B, Pocket – 4, Mayur Vihar Phase -1,

New Delhi - 110091

...Respondent No 1

2. Ms. Arti Saraf

W/o Shri Sailesh Saraf

R/o-23-A, Benarasi Dass Estate, Timarpur,

New Delhi – 110054

...Respondent No. 2

3. Mr. Vidur Bharadwaj

Ex-Director (DIN – 00001812)

51-B, Ground Floor, New Friends Colony

New Delhi – 110065

...Respondent No. 3

For Appellant: Mr. Swarnendu Chatterjee and Ms. Saloni Jain,
Ms. Vatsala Bhatta, Advocates.

For Respondent: Mr. Sanyam Saxena, RP.
Mr. Mohit Prasad, Advocate for R-2.
Mr. Rishi K Kapoor and Mr. Abhay Gupta,
Advocates for R-3.

J U D G M E N T
(20th September, 2021)

A.I.S. Cheema, J.: This Appeal has been filed by the Appellant-Ms. Indrani Brahmachari against the Impugned Order passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Principal Bench) in I.A. No. 2468 of 2020 in CP (IB) No. 1248(PB)/2018 dated 15th July, 2020.

2. The matter relates to Corporate Insolvency Resolution Process (CIRP in short) initiated against the Corporate Debtor (M/s. Granite Gate Properties Pvt. Ltd.). According to the Appellant, she along with her husband-Mr. Sumant Brahmachar booked apartment in the project of Corporate Debtor. The name of the Project is Lotus Panache. She had booked Apartment No. 404, Tower No. 16, Lotus Panache for which allotment letter dated 07th August, 2010 was issued and builder buyer agreement dated 14th August, 2010 was executed. Copy of the said agreement is at Annexure 2 Colly. Appellant claims that Appellant took loan from HDFC Bank and the consideration was paid. Still the apartment was not delivered even after four years. According to the Appellant, due to non-delivery of the premises even after four years, Mr. Vidur Bhardwaj-Respondent No. 3 accommodated the Appellant in alternate premises in the same project which is Flat No. 1101, Tower 30 purported to be owned by one Ms. Aarti Saraf-Respondent No. 2. The Agreement was for two years with option to renew after a year with 10% increase in rent. It is the case of the Appellant that the Corporate Debtor was admitted to CIRP when Application under Section 7 of IBC was admitted on 10th January, 2019 and the Respondent No. 1 came to be appointed as Resolution Professional.

3. The Appellant claims that on 08th January, 2020 Respondent No. 2-Ms. Aarti Saraf sent legal notice to the Appellant asking for payment of rent from October, 2019 and to vacate premises and Respondent No. 2 filed suit for eviction i.e. SCC Suit No. 8 of 2020 before the Court of District Judge, Gautam Budh Nagar, Uttar Pradesh. The Appellant filed I.A. 2468 of 2020 before the Adjudicating Authority for protection against eviction. The Adjudicating Authority however rejected the Application. Hence the present Appeal.

4. The Impugned Order is a short order and may be reproduced. The same reads as under:

“On the mentioning made in IA/2479/2020, the Respondents are hereby directed to file their replies within one week hereof.

List this IA/2479/2020 for further hearing ON 06.08.2020.

For IA/2468/2020 being filed stating that the Corporate Debtor executed a rent agreement in favour of the Applicant, therefore to restrain the corporate debtor from evicting the Applicant from the respective premises, the Resolution Professional counsel has categorically stated that rent agreement discloses that it was entered in between the Applicant and one person namely Ms. Aarti Saraf but not in between the Corporate Debtor and the Applicant, therefore this application shall be dismissed in limine.

For this Bench having noticed that Corporate Debtor has nothing to do with this issue, and this Applicant is neither the Creditor nor the Debtor to the Corporate Debtor, this IA/2468/2020 is hereby dismissed as misconceived.”

5. The Appellant claims that on 23rd March, 2020 she has filed her claim as Form C (Annexure A-5, Page 82) in the CIRP against the Corporate Debtor and that she is allottee of the Corporate Debtor.

6. The Appeal claims and it is argued for the Appellant that the Adjudicating Authority wrongly held that the Corporate Debtor has nothing to do with the rent agreement concerned and thus Orders protecting eviction could not be passed. The Appellant claims that Mr. Vidur Bhardwaj has

accommodated the Appellant in the alternate premises purported to be owned by Respondent No. 2-Ms. Aarti Saraf and as per the Rent Agreement the payments of rent were to be made by Mr. Vidur Bhardwaj, the director of the Three C Infra Pvt. Ltd. The project Lotus Panache was first started by Three C Infra Pvt. Ltd. itself and thereafter it was co-shared with M/s. Granite Gate Properties Pvt. Ltd.-Corporate Debtor. The address of both these companies are same and thus the Appellant claims that the Appellant who has paid the complete amount of the consideration for flat which she has booked namely Flat No. 404, Tower No. 16 (Flat Booked in short) she could not be evicted from alternate premises (Flat No. 1101, Tower No. 30) (alternate premises in short). She claims that she could not be evicted from the alternate premises till the flat allotted to her is provided to her. According to her, the liability to pay the rent is also of Mr. Vidur Bhardwaj-Respondent No. 3.

7. The Respondents have filed Replies and we have heard learned Counsel for the parties. Agreement at Annexure-A2 shows that the Corporate Debtor-M/s. Granite Gate Properties Pvt. Ltd. entered into the Apartment Buyer Agreement with Mr. Sumant Brahmchar the husband of the Appellant as well as the Appellant Ms. Indrani Brahmachari. The Appellant is an allottee of Corporate Debtor is a matter which cannot be said to be in doubt.

8. However, the dispute in the present matter is centering around the rent agreement dated 27th November, 2018 (Annexure A-6, Page 88). This agreement dated 27th November, 2018 is between the Respondent No. 2-Ms. Aarti Saraf and the Appellant-Ms. Indrani Brahmachari. Respondent No. 2 is referred as Landlady/First Party and the Appellant is referred as Tenant/Second Party. It relates to Flat No. 1101, Tower No. 30 situated at Lotus Panache Island, Sector – 110 Noida. The Document states that the

landlord has agreed to let out the premises to the tenant on rent for 24 months. The relevant Paragraphs for the present matter from this document may be reproduced which read in Paragraph 1 to 4 as under:

“NOW THIS RENT AGREEMENT WITNESSETH AS UNDER: -

- 1. That the monthly rent of the said premises has been fixed at Rs. 28,000/- (Rupees Twenty-Eight Thousand Only) excluding maintenance per month and the same will be paid by the tenant to the Landlady/First party by cheque/NEFT on or before 7th day of each English calendar month in advance. Tenant/Second party has already paid Rs. 112000/- (Rupees One Lac Twelve Thousand only) as advance rent to the Landlord/first party vide cheque no. 520841 dated 22.11.2018 drawn on Yes Bank, Express Trade Tower 2, Sector-132, Noida Branch. Tenant/Second party has confirmed that the subsequent payment shall also be made by Shri Vidur Bharadwaj.*
- 2. The maintenance charge will be paid by the tenant/ second party.*
- 3. That the security amount of Rs. 50,000/- (Rupees fifty thousand only) has been paid by the Tenant/second party without any interest there on to the Landlady/first party, vide cheque no. 520841 dated 22.11.2018 drawn on Yes Bank, Express Trade Tower, 2, Sector – 132, Noida Branch. The same shall be returned by the landlord/first party to the tenant/second party after adjustment of outstanding dues of any towards the said premises under his/her tenancy and towards damage to any fittings/fixtures at the end of tenure of 24 months.*
- 4. That the said cheque no. 520841 dated 22.11.2018 drawn on Yes Bank, paid as combined amount for 4 months advance Rent of Rs. 112000/- and security amount of Rs. 50000/- totaling to Rs. 162000/- (Rs. One Lakh Sixty Two Thousand only) has been issued by Shri Vidur Bharadwaj. The authenticity and legality of the same has been confirmed by the Tenant/Second party. The future payments may be paid either by Shri Vidur Bharadwaj or Tenant/Second party directly to the landlady/first party.”*

9 Although reference is made to Mr. Vidur Bhardwaj and cheque issued the document has been signed only by Ms. Arti Saraf-Respondent No. 2 and the Appellant and there are two witnesses signing the document. In short Respondent No. 3 is not signatory to this document. Respondent No. 2 in her Reply claims it is her private dispute with Appellant and Corporate Debtor

has nothing to do with it. She claims she has filed suit for eviction of Appellant in Civil Court. The Respondent No. 3 in Reply (Diary No. 24783) paragraph 7 referred to the builder buyer agreement dated 14th August, 2010 and the allotment letter dated 07th August, 2010 between the Corporate Debtor and the Appellant. Respondent No. 3 claimed that after CIRP was initiated the management rest with the RP/IRP and that IRP had stepped into the shoes of the Corporate Debtor and Appellant can seek relief only from the IRP of the Corporate Debtor. In paragraph 10 of the Reply Respondent No. 3 mentioned as under:

“10. In fact, the Appellant has given reference to the Rent Agreement dated 27.11.2018 (hereinafter referred as the “Agreement”) executed between Ms. Aarti Saraf i.e. Respondent No. 2 and the Appellant for a period of 24 months w.e.f. 1st December, 2018 to 30th November, 2020. It is pertinent to mention that the Appellant made wrong statement against the Respondent No. 3 that the Respondent No. 3 has made payment as rent for 4 months amounting to INR. 112000 vide cheques mentioned therein therefore vehemently denied by the Respondent No. 3. However, the content of the said agreement are states in a different form and the extract of the same are reiterated as under:

“1. That the monthly rent of the said premises has been fixed at INR 28000 (Rupees Twenty Eight Thousand Only) excluding maintenance per month and the same will be paid by the tenant to the landlady/first party by cheque/NEFT on or before 7th day of each English month in advance. Tenant/Second Party has already paid INR. 112000 (Rupees one lacs twelve thousand only) as advance rent to the Landlord/First party vide cheque No. 520841 dated 22.11.2018 drawn on Yes Bank, Express Trade Tower 2, Sector 132, Noida Branch. Tenant/Second Party has confirmed that the subsequent payment shall also be made by Shri. Vidur Bhardwaj...”

That the aforementioned Clause specifically states that the Tenant has made the payment of advance rent to the landlord which is the Appellant herself tantamount different false statement submitted by the Appellant in the present Appeal. In fact, the Respondent No. 3 is not even party of the said agreement nor having the any knowledge

of execution of the said agreement between the Appellant and Respondent No. 2, whatsoever. Therefore, no liability could be arise from the said agreement against the Respondent No. 3 which is not even party to the agreement and doctrine of privity of contract needs to apply herein. Hence, no relief of remedy is available to the Appellant against the Respondent No. 3, whatsoever, by virtue of doctrine of privity of contract. Moreover, the said agreement is an un-registered Rent agreement of period more than 11 months tantamount not a valid agreement all together and the present Appeal is liable to be dismissed on this sole ground.”

Thus, Respondent No. 3 denied the cheque and knowledge of the Agreement

10. Respondent No. 3 claimed and argued in the Reply that he was not party to the Agreement and did not have knowledge of the execution of the same and that no relief can be sought against him.

In Rejoinder (Diary No. 25013) the Appellant filed on record Annexure R/1 the photocopy of the cheque which had been issued by the Respondent No. 3-Mr. Vidur Bhardwaj. The document shows that the cheque was dated 22nd November, 2018 signed by Respondent No. 3 –Mr. Vidur Bhardwaj and this cheque was issued in the name of Respondent No. 2- Ms. Aarti Saraf for amount of Rs. 1,62,000/-. The cheque is having No. 520841. This is the same cheque no. 520841 which is referred in the Rent Agreement between the Appellant and the Respondent No. 2-Ms. Aarti Saraf which was executed on 27th November, 2018.

Consequently, we had directed as per our Order dated 15th February, 2021 the Respondent No. 3 to respond to the averments made by the Appellant in Rejoinder Affidavit. After this, the Respondent No. 3 came up with a story of giving aid and loan to the Appellant mentioning in the Affidavit (Diary No. 25994) as under:

“b. That owing to the circumstances existing therein in relation to the Appellant, the Respondent, only in good faith and as a matter of aid, had provided trust based loan to the Appellant of which the Respondent No. 3 reserves its right to recover the same in accordance with law. It would not be out of place to mention that the said in aid payment cannot fasten any liability nor is this Hon’ble Tribunal an appropriate forum to adjudicate the disputes or recovery between the parties other than in relation to the Corporate Debtor or the Corporate Insolvency Resolution Process (CIRP).”

11. Faced with the cheque, story of loan now given has no substance. No reason Mr. Vidur Bhardwaj for “loan” is forthcoming. Apparently, Respondent No. 3 is suppressing the facts. If he was giving loan to the Appellant and (as he claimed earlier that he had no knowledge of the rent agreement) there was no reason why the Respondent No. 3 issued cheque in the name of Ms. Aarti Saraf-Respondent No. 2. The Appellant has relied on Judgment in the matter of “Arcelor Mittal India Pvt. Ltd. Vs. Satish Kumar Gupta & Ors.” (2019) 2 SCC 1 with regard to lifting the corporate veil. Judgment in the matter of Arcelor Mittal India Pvt. Ltd. dealt with provisions under Section 29A of IBC. Hon’ble Supreme Court of India was considering provisions of Section 29-A of IBC which relates to persons not eligible to be Resolution Applicant. In that context, the Hon’ble Supreme Court of India was considering expressions “management” “control” “acting in concert” etc. and observed in Paragraph 37 as under:

“37. It is thus clear that, where a statute itself lifts the corporate veil, or where protection of public interest is of paramount importance, or where a company has been formed to evade obligations imposed by the law, the court will disregard the corporate veil. Further, this principle is applied even to group companies, so that one is able to look at the economic entity of the group as a whole”

Having said so, now it is necessary to consider the facts of the present matter.

12. The Appellant is herself stating that Mr. Vidur Bhardwaj is director of the holding company “Three C Infra Pvt. Ltd.”. The Corporate Debtor is M/s. Granite Gate Properties Pvt. Ltd. Appellant is allottee of Corporate Debtor. The arrangement of accommodating in alternate premises is not part of Builder-Buyer Agreement or any subsequent Agreement to make Corporate Debtor liable to maintain Appellant in a rented/alternate premises. Thus linking the arrangement so as to bind Corporate Debtor under Contract is not there. Even if Respondent No. 3 made some arrangement for the Appellant in the alternate premises and undertook to pay the rent, the question is whether such arrangement with one of the allottee can be allowed to be continued to make the Corporate Debtor liable to go on paying the rent once CIRP is initiated on 10th January, 2019. If we direct the Resolution Professional to continue to pay the rent it would be giving preferential benefit to one of the allottees. Parties have not brought on record anything to show that all the allottees of the Corporate Debtor in CIRP are being given any such preferential treatment. In the facts of the matter, the prayers of the Appellant in I.A. 2468 of 2020 could not be granted. It would not be in consonance with the scheme of IBC. Under the scheme of IBC, the allottee can be dealt with under Resolution Plan or if the Corporate Debtor goes into Liquidation, the allottees would get treatment as per provisions but the same would have to be similar to all. Even if the veil is lifted, what appears is that one of the directors of the holding company gave some preferential benefit to the Appellant. However, when CIRP has been initiated, the Corporate Debtor with whom no prior contractual arrangement is proved, cannot be forced to continue with the same treatment.

13. For the above reasons although we differ from the observations of the Adjudicating Authority in Impugned Order, relief as is being sought by the

Appellant cannot be granted. It appears that Respondent No. 2 has initiated eviction proceedings against the Appellant. This Order of ours will not come in the way of Appellant contesting the action initiated by Respondent No. 2 and taking appropriate defence.

With the observations as above, the present Appeal stands disposed of.
No order as to costs.

[Justice A.I.S. Cheema]
The Officiating Chairperson

[Dr. Alok Srivastava]
Member (Technical)

New Delhi
Basant