

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 208
(IB)-917(ND)2019
IA-355/2021, IA-276/2024,
CA-26/2023, IA- 1344/2024

IN THE MATTER OF:

M/s. Ved Contracts Pvt. Ltd.

... **Applicant/Petitioner**

Versus

M/s. RG Infra Build Pvt. Ltd.

... **Respondent**

AND IN THE MATTER OF IA. NO. 355/ND/2021:

Mr. Rakesh Kumar Jain

... **Applicant**

(RP M/s Infrabuild Private Limited
1670/120, Shanti Nagar,
Tri Nagar, New Delhi-110035

Versus

1. M/s Atul Paper Private Limited

... **Respondent No. 1**

2604, Ground Floor & First Floor
Balaji Market Main Road,
Nai Sarak, Delhi-110006

2. Atul Kumar Garg

... **Respondent No. 2**

(Director, Atul Paper Private Limited)
2604, Ground Floor & First Floor
Balaji Market Main Road,
Nai Sarak, Delhi-110006

3. Sachin Garg Kumar

... **Respondent No. 3**

(Director, Atul Paper Private Limited)
2604, Ground Floor & First Floor
Balaji Market Main Road,
Nai Sarak, Delhi-110006

Under Section: 9 of IBC, 2016 (Liq.)

Order delivered on 06.05.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Respondent : Adv. Saurabh Jain, Adv. Prayag Jain, Adv. Dhruv Sehgal in IA-276/2024

For the Liquidator : Adv. Mohit Nandwani, Adv. Abhishek Goswami

Hearing Through: VC and Physical (Hybrid) Mode

Reportable

ORDER

IA-355/2021: The prayer made in the captioned application reads thus:-

- a. *“Allow the present application and pass necessary orders against the Respondents to vacate the property bearing Unit No. B-101 on First Floor at RG City Centre situated at Plot No. SU, LSC at B- block, Lawrence Road, Delhi, and handover the peaceful and vacant possession to the Applicant at the earliest; and.”*

Mr. Mohit Nandwani, the Ld. Counsel for the Applicant (liquidator) submitted that when the agreement to sell the property in question i.e. the commercial unit No. B-101 on First Floor at RG City Centre situated at Plot No. SU, admeasuring 2746.22 Sq. Mtr. Situated at LSC at B-Block Lawrence Road, Delhi, was entered into on 24.04.2018, the CIRP commenced only on 25.09.2019 and for a long period of one year and five months, the Respondent resorted to no steps to get the sale deed in terms of the provisions of the agreement get executed. He further submitted that the property (ibid) was bought in the year 2015, by the CD for Rs.6.5 crore and in terms of the agreement, the same was sought to be sold for Rs.2.7 crores only, thus the agreement entered into by the ex-management of the CD was not bona fide. Finally, with reference to Section 18(1)(f) of IBC, 2016 it is submitted that the RP is liable take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate

debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets. He also placed reliance upon the Section 25 (2)(a) and 35(1) (b) of the Code. Per contra Mr. Zain, the Ld. Counsel for the Respondent submitted that when in terms of the provisions of Section 53A of the Transfer of Properties Act, the Respondent (transferee) has taken possession of the property and has been always willing to perform his part of the contract, notwithstanding whether there is instrument of transfer that the transfer has not been completed in the manner prescribed therefore by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken possession other than a right expressly provided in terms of the contract.

We heard the counsels for the parties and perused the record. It is not in dispute that the ownership qua the aforementioned property stands in the name of the corporate debtor. It is also not in dispute that the property is in possession of the Respondent. Nevertheless, the controversial fact is that a corporate debtor had entered into an agreement to sell on 24.04.2018 with the Respondent, in terms of which the property (ibid) was agreed to be sold for a consideration of Rs. 2.70 lakhs. The relevant excerpt of the agreement to sell reads thus:-

- 1.1 In accordance with the terms and conditions set out in this Agreement to Sell, mutually agreed upon by and between the parties, the VENDOR hereby agree to sell and the VENDEE hereby agrees to purchase the said Commercial Unit No B-101 on First Floor at RG City Centre, admeasuring an approximate Built up Area of 301.75 Mtr (3248 Sq. Ft.) And Super Area of 431.07 Sq. Mtr. (4640 Sqfts.) situated at Plot No. SU, admeasuring 2746.22 Sq. Mtr. situated at LSC at B-Block Lawrence Road, Delhi (the definition of Super Area is given in Annexure-II) along with undivided proportionate share in the land underneath the said Building in which the said Commercial Unit is located calculated in the ratio, which the saleable Super Area of the said Commercial Unit bears to the total saleable Super Area of all the Commercial Unit in the said floor in the said Building for a total sale consideration of Rs 2,70,00,000/- (Rupees Two Crore and Seventy lakh Only). The schedule of payment is attached herewith as Annexure-IV.
- 1.2 The VENDEE hereby agrees and confirm that the total sale price payable for the said Commercial unit as stated above is exclusive of stamp duty payable for registration of said Unit or any other tax leviable on the sale of the said unit, at present or in future, except Income tax, which shall be borne respectively by the Vendor and the Vendee, in relation to the sale of the said Commercial unit or building or any related or incidental activities.
- 1.3 It is made clear by the VENDOR and the VENDEE agrees that the sale price of the said Commercial unit shall be calculated on the basis of its Super Area (as per the definition of Super area given in Annexure -II). The area of balconies/terraces/open area/refuge area, if allotted to the VENDEE are free of cost, for restricted use as advised by DDA and other Govt. agencies. The VENDEE will have no right to claim the ownership of the same under this Agreement to Sell. The same will be provided to the VENDEE subject to convenience of the VENDOR.
- 1.4 The definition of Super area / Covered Area, on the date of execution of this Agreement to Sell is clearly described by the VENDOR in Annexure-II which forms part of this

Agreement to Sell and is hereby accepted by the VENDEE. The VENDEE confirms that he/she has read, understood and agrees to this definition and that it has no objection to the same and the VENDEE has assured the VENDOR that after having agreed to the definition of Super area/Covered Area given in the Annexure-II as the basis for purchase and payment of price of the said Commercial Unit, VENDEE shall not raise any dispute or make any claims etc. at a later date in this regard.

The argument put forth by Mr. P. Nagesh, Ld. Sr. Counsel appearing for the Respondent that in the wake of Section 53A of Transfer of Property Act, at the strength of the possession of the property being with the Respondent, the transferor or any person claiming under him stands debarred from enforcing against the transferee any right respect of the property of which the transferee has taken the possession. However, in terms of the provisions of Section 238 of

IBC, the provisions of the Code the provisions of this Code shall have effect notwithstanding anything inconsistent therewith containing in any other law for the time being in force or any instrument having effect by virtue of any such law. The Section 238 reads thus:-

238. “Provisions of this Code to override other laws.- *The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”*

Thus once the ownership of the property stands in the name of the corporate debtor, in the wake of the provisions of Section 18(1)(f) of the Code, the IRP and in terms of the provisions of Section 25(2)(a), the RP and as per provisions of Section 35(1)(b), the Liquidator are entitled to take into his custody or control the asset or property, owned by the CD.

In terms of the provisions of Section 238 of the Code, the aforementioned provisions of the IBC would have effect over Section 53A of the Transfer of Property Act.

We may also not be oblivious of the fact that when agreement to sell was executed on 24.04.2018, for a period of one year and five months, the Respondent did not take any steps to enforce his right to see execution of sale deed in his favour qua the property in question. Besides the stand taken by the Ld. Counsel for the liquidator that the property agreed to be sold by ex-management for Rs. 2.74 crore, as on 24.04.2018 was bought by the CD for Rs.6.5 crore as on 04.12.2015. In view of the aforementioned factual and legal

position, we are left with no option but to allow the prayer made in the application for taking control and custody of the property referred to hereinabove. Ordered accordingly. Nevertheless, before parting with, we cannot ignore the fact that the Respondent had paid Rs. 2.01 Cr. to the corporate debtor on 24.04.2018 and the corporate debtor cannot be absolved of the liability to repay the said amount. Normally, the amount could be claimed by the Respondent as a financial debt, as such is the spirit of the clause (f) of sub-section 8 of Section 5 of IBC, 2016, as it could be considered as a creditor in other category. Nevertheless, since the agreement to sell was an open-ended agreement and there was no clause therein providing the time limit for execution of the sale deed and further it is not in dispute that the Respondent had actually paid Rs.2.01 crores to the corporate debtor, we find it just and proper to direct that in the event of sale of the aforementioned property by the liquidator, after taking the possession of the same, an amount of Rs. 2.01 Cr. would be paid to the Respondent. Subject to aforementioned directions, **the IA stands disposed of. No Cost.**

CA-26/2023: In view of the order passed in IA-355/2021, the CA has become infructuous and **is disposed of accordingly.**

IA-1344/2024: The IA was allowed in terms of the order dated 22.03.2024. In the wake, the IA is directed to be deleted from the cause list and the same should not be listed in any future cause list.

IA-276/2024: The reply on behalf of the Respondent is not on record. Ld. Counsel for the Respondents is directed to ensure that the same is placed on record. At his request, the hearing is deferred to 30.05.2024.

Ashima

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)