

THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-I

Rule 11 of the NCLT Rules, 2016

**I.A. 368 OF 2024
IN
C.P. (IB) 501/MB/2023**

Orion Industries

...Applicant

Vs.

Mr. Fanendra Harakchand Munot & Ors.

...Respondent

In the matter of

C.P. (IB) 501/MB/2023

Poona Petroleum Company Private Limited

... Operational Creditor

Vs.

Specific Alloys Private Limited

... Corporate Debtor

Order delivered on: 23.07.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)
Hon'ble Member (Judicial)

Appearances:

For the Applicant : Adv. Roshan Gaud

For the Respondent : Adv. Kunal Chheda

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ORDER

Per: Prabhat Kumar, Member (Technical)

1. The present Interlocutory Application IA 368 of 2024 is filed in Petition CP No. 501 of 2023 by the Orion Industries in terms of Section 60(5) of the Insolvency and Bankruptcy Code, 2016 in the matter of Specific Alloys Private Limited seeking following relief;
 - a) *To direct the Respondent No. 1 to complete the execution of the said property, GAT No. 137, Hissa No. 1 total admeasuring about 13.3 acre land situated at Village Pirangut, Tal: Mulshi, Dist: Pune in favour of the Applicant in terms of the Agreement of Sale dated 21.08.2023.*
 - b) *To pass such Order or Orders as this Hon'ble Tribunal may deem expedient.*
2. The Applicant is a registered Partnership Firm under the Provision of Partnership Act and claims to a bona-fide purchaser of one of the property of the Corporate Debtor i.e. GAT No. 137, Hissa No. 1 total admeasuring about 25.3 acre land situated at Village Pirangut, Tel: Mulshi, Dist. Pune.
3. The Respondent No. 1, is an Insolvency Profession having IBBI Registration NO. IBBI/IPA-001/IP-P00515/2017-2018/10916 is the Resolution Professional of Corporate Debtor.
4. The Respondent No. 2, is a Financial Company who has sanctioned the financial facilities to the Applicant and with whom the said property of the Corporate Debtor is mortgaged with.
5. The Corporate Debtor informed the Applicant that there are dues outstanding and payable to one, Respondent No. 2. Accordingly, the Applicant and the Corporate Debtor approached Respondent No. 2

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wherein the Applicant confirmed its intention to purchase the said property from the Corporate Debtor.

6. It was mutually agreed that the Applicant will purchase the said property for a consideration of Rs. 1,05,00,000/- (One Crore five Lakhs Only) from the Corporate Debtor. The Applicant made payments to the Corporate Debtor amounting to Rs. 45,00,000/- (Forty Five Lakhs Only) through RTGS from 06.01.2023 to 27.01.2023.
7. The Corporate Debtor and Applicant had executed an Agreement dated 15.05.2023 wherein the details of the transactions were recorded and receipt of payment of Rs. 45,00,000/- (Forty Five Lakhs Only) was confirmed by the Corporate Debtor.
8. It was decided between the Applicant and the Respondent No. 1 that for the balance payment of Rs. 60,00,000/- (Sixty Lakhs Only), the Applicant shall raise finance from the same finance company i.e. Respondent No. 2 and thereafter, the Applicant shall make payment to the Corporate Debtor. The Respondent No. 2 has issued the Sanction Letter dated 21.08.2023 for an amount of Rs. 95,00,000/- (Ninety Five Lakhs Only) to the Applicant. It is pertinent to mention that the sanction granted by the Respondent No. 2 is by keeping the said property as security.
9. Thereafter, the Corporate Debtor and the Applicant had executed an Agreement of Sale dated 21.08.2023 wherein the said property has been sold to the Applicant. The Applicant has also made payment of Rs. 6,76,800/- towards stamp duty and registration charges.
10. The Applicant through Public Announcement in Financial Express came to know that the Corporate Debtor has been admitted to CIRP pursuant to the order dated 27.07.2023 (received on 21.08.2023).
11. Accordingly, the Applicant addressed an undated Letter to the erstwhile Resolution Professional (ERP) thereby informing about the transaction

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in respect to the said property and thereby requesting to complete execution of the said property in favour of the Applicant. However, the Applicant did not receive any reply from the RP.

12. The Applicant is a bona fide purchaser of the said property and has availed Sanction facilities from Respondent No. 2 for purchasing the said property. The Applicant, being aggrieved by the conduct of the Respondent No. 1 has preferred the present Application.
13. The Respondent No. 1 through its RP has filed the reply dated 28.2.2024 stating that Protium Finance Limited, the Respondent No. 2 Protium Finance Limited has filed its claim their outstanding dues as secured creditor and the alleged transaction dated 21.08.2023 relied by the Applicant is a transaction purportedly entered during the CIRP period which the against the sprit of IBC and is against the law.
14. Heard the Learned Counsel and perused the material available on record.
15. We note that the Corporate Insolvency Resolution Process in the case of Corporate Debtor was initiated vide Order dated 27.07.2023 and the moratorium was declared effective from the said date. The said Order was uploaded on the DMS portal of this Tribunal on 19.8.2023. In this perspective, we shall examine the facts of the case placed before us.
16. The Applicant has submitted that it had paid advance of Rs. 45,00,000/- in month of January, 2023 and thereafter entered into an Agreement dated 15.05.2023 wherein the details of the transactions were recorded and receipt of payment of Rs. 45,00,000/- (Forty Five Lakhs Only) was confirmed by the Corporate Debtor. It has also placed a Board Resolution purported to be passed by the Board of Corporate Debtor on 15.4.2023. It is undisputed fact that the advance is stated to have been paid without deduction of any tax at source and that too prior to passing of the Board Resolution by the Board of Corporate Debtor. It is worth noting here that the property in question was mortgaged to Respondent

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No. 2 and encumbered. Further, the Applicant has stated that the Corporate Debtor executed an Agreement to Sale in relation to said property on 21.8.2023 and the same was duly registered with the Sub-Registrar pleading that the Order of CIRP came to be communicated on that day only. The Applicant is stated to have applied for sanction of Loan on 25.7.2023 and received sanction of loan from Respondent No. 2 on 21.8.2023 stipulating that first tranche of loan of Rs. 65,00,000/- shall be disbursed towards closure of loans availed by the Corporate Debtor from Respondent No. 1 in account No. LAN NO. GS006LAP014879 and the remaining amount of loan of Rs. 30,00,000 will be disbursed in favor of seller. On the other hand, the Applicant has pleaded that *“It was decided between the Applicant and the Respondent No. 1 that for the balance payment of Rs. 60,00,000/- (Sixty Lakhs Only), the Applicant shall raise finance from the same finance company i.e. Respondent No. 2 and thereafter, the Applicant shall make payment to the Corporate Debtor.”*

17. The above facts do not lead to a credible conclusion in favor of the applicant due to inconsistencies/gaps in the pleadings of the Applicant. The advance was paid in January, 2023, the Board Resolution for sale of property was passed in April, 2023, and first agreement was recorded in May, 2023, however, the Applicant approached the Respondent No. 2 only on 25.7.2023, by which time the CIRP order had already been pronounced in the Open Court declaring the moratorium in place. The sanction letter placed with this Application stipulated payment of 65,00,000/- towards closure of loan, while the applicant states that only 60,00,000/- was remaining to be paid. Further, the Respondent No. 2 is stated to have filed its claim as secured creditor in CIRP of Corporate Debtor. The sanction letter is dated 21.08.2023 stipulating disbursement thus demonstrating that the amount was not disbursed on that date

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squaring off the loan account in the name of Corporate Debtor on 21.8.2023, however, the Corporate Debtor is stated to have admitted received of full consideration. At last, even if it is admitted that the Order dated 27.7.2023 came to be served upon the Corporate Debtor on 21.8.2023, the same was available on DMS portal on 19.7.2023 itself and the erstwhile management of the Corporate Debtor must have been well aware of existence of Order on 19.7.2023. All these facts leads to inevitable conclusion that the Applicant has cooked up the case to take out the property of the Corporate Debtor from the rigors of the CIRP and also indirectly benefitting the Respondent No. 2, whose debt is sought to realised in full, while Respondent No. 2 may get lesser amount in the Resolution process.

18. Nonetheless, the moratorium having been announced on 27.7.2023, the Respondent No. 2 could not appropriate the disbursement proceeds against the loan account of the Corporate Debtor and the erstwhile Board could not have executed the Agreement to Sale on behalf of Corporate Debtor on account of their powers having been suspended in terms of order dated 27.7.2023 even on 21.8.2023, the date when the applicant claims to have knowledge of this Order. Hence, we do not find any merit in the present application and the same deserve to be dismissed.
19. In case the applicant has not filed any claim in relation to Rs. 45,00,000/- in the CIRP of Corporate Debtor, the IRP is directed to admit the same after verification provided a claim is filed within 10 days from the date of communication of this order. The IRP/RP is directed to consider the property in question as assets of the Corporate Debtor for the purpose of its resolution.

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20. In view of the above, **IA 368 of 2024** is **dismissed** and **disposed of** accordingly.

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

Sd/-

**JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)**