

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH**
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

IA/CA Nos. 69/2019 & 40/2020
In
CP (IB) No.155/Chd/Hry/2018
(Admitted Matter)

**Under Sections 19(2) & 60(5) of
the Insolvency & Bankruptcy
Code, 2016**

In the matter of:

M/s. Hind Tradex Limited ...Operational Creditor

Vs.

M/s. Lakshmi Precision Screws LimitedCorporate Debtor

And in the matter of:

CA No.69/2019

Mr. Deepak Thukral

Resolution Professional

H.No.237/1, Sector-44-A,

Chandigarh-160047

....Applicant

Versus

Sanjeev Kumar Arora

Partner of M/s Arorar & Choudhary Associates,
Chartered Accountants, New Delhi

B-III/1853, 1st Floor, Upstairs Shanti Plywood,

Shant Mai Chowk, Civil Road, Rohtak

Statutory Auditor (For the Financial Year 2017-18

....Respondent/Statutory Auditor

And in the matter of:-

IA No. 40/2020

HSI IDC Ltd.

having its registered office at

Plot No.13-14 Sector 16 Panchkula, Haryana

Through its Authorised Representative

....Applicant

Versus

Deepak Thakural
Resolution Professional,
M/s Lakshmi Precision Screws Ltd.
At SCO 18, First Floor, above
Yes Bank, Mani Majra, Chandigarh.

....Respondent

Order delivered on: 21.10.2022

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present through video-conferencing:

For the Applicant
in CA No.69/2019 and for
respondent in IA No. 40/2020 : 1). Mr. Savar Mahajan, Advocate
2). Ms. Swati Saluja, Advocate

For the respondent in
CA No.69/2019 : Mr. Nahush Jain, Advocate

For the Applicant
in IA No. 40/2020 : Mr. Piyush Bansal, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

CA No. 69/2019

The instant IA has been filed by the Resolution Professional of M/s Lakshmi Precision Screws Limited under Section 19(2) of the Insolvency and Bankruptcy Code, 2016, seeking directions to the Respondent/Statutory Auditor to assist and cooperate with the applicant and comply with the instruction of the applicant, provide all the pending information as required by him. Also, to direct the respondent to conduct the statutory audit for the financial year 2017-18 at the

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quoted fee and direct the respondent to file his resignation along with his no objection certificate in case he is not willing to act as statutory auditor.

2) Notice was served on the respondent, and the affidavit of service in response to the order dated 04.02.2019 has been filed by Diary No. 613 dated 06.02.2019.

3) The applicant-resolution professional has prayed inter alia to assist and cooperate with the applicant and provide instructions and information required by him. The applicant-Resolution Professional, asked for a detailed inventory list relating to the third quarter ended on 31.12.2017, for which the respondent has done the Limited Review. The respondent-Statutory Auditor expressed his inability to share the details required on the grounds that all the records/documents are with the corporate debtor only. Further, the applicant has prayed to direct the respondent to conduct a statutory audit for the financial year 2017-18. It is stated that when the applicant approached the respondent to conduct the proposed audit at a consolidated fee of Rs. 5,00,000/- in view of the limited availability of funds, the respondent expressed his dissatisfaction regarding the proposed professional fee. Furthermore, the Committee of Creditors recommended changing the Statutory Auditor if the respondent is not willing to complete the assignment at the consolidated quoted fee, but in the absence of NOC from the applicant, the new Statutory Auditor cannot be appointed. Non-cooperation of the respondent resulted in delay of the audit, resulting in delay in filing of the Income Tax Return under Section 139 of the Income Tax Act, 1961, delay in the Registrar of Companies filing under Section 137 read with Section 129 of Companies Act, 2013 and delay in submission of financial results and annual report under

Regulation 33 and 34 of Securities and Exchange Board of India Regulation, 2015 which comprise of huge penalty and burden of payment of additional fee on the corporate debtor. Under Section 28(1)(m), the Resolution Professional is required to obtain approval of the CoC to rectify the replacement of the Statutory Auditor, which was approved in the CoC meeting held on 16.11.2018. However, despite approval of the CoC, the RP is unable to appoint a new Statutory Auditor till the time the present auditor resigns and provides a No Objection Certificate.

4) We have heard the learned counsel for the applicant and perused the material available on record.

5) From the perusal of the facts narrated above, it is evident that the respondents have failed to discharge the responsibility under the Code with regard to sharing of information with the Resolution Professional. As per Section 19(1) of the Code, the Respondent is under obligation to extend all assistance and cooperation to the RP as required in managing the affairs of the company. By not responding to the notices issued during the present proceedings, the respondents have only lent strength to the contention of the Resolution Professional that such non compliant behaviour is intentional and premeditated.

6) In view of the above discussion, we direct Mr. Sanjeev Kumar Arora-Respondent, Statutory Auditor, to cooperate and give access to all documents/details as sought by the applicant . They are further directed to assist the applicant-RP in completing the statutory compliances as required to complete the audit. The respondent is further directed to provide pending information required by IRP. All the aforementioned compliances be made within two weeks from the date of this order, failing which the applicant-Resolution Professional is at

liberty to approach local police on the basis of this order and local police to render all necessary assistance to Resolution Professional. In view of the above discussion, the respondent Statutory Auditor is hereby directed to share all the information, documents etc, with the Resolution Professional within 10 days of this order and take forward the pending audit work and complete the same within a period of 45 days. In case of a lack of willingness to act as Statutory Auditor on the part of the respondent, he is directed to file his resignation along with his No Objection Certificate only immediately after handing over all the required information and pending documents to the Resolution Professional.

7) Accordingly, IA No. 69/2019 is allowed and disposed of.

IA No. 40/2020

The present application is filed under Section 60(5) of the IBC, 2016 and read with Rule 11 of the NCLT Rules, 2016 filed by Haryana State Limited (hereinafter referred to as HSIIDC), seeking acceptance of the claims of the applicant regarding the enhanced dues towards land acquisition cost, as awarded by various Hon'ble Courts and maintenance charges due and payable on Plot No. 4, Sector 30-B, IMT, Rohtak (hereinafter referred as **Plot-I**) and Plot No. 153, IMT, Manesar (hereinafter referred as **Plot-II**) as per clauses of conveyance deed and Estate Management Policy, 2015 of the applicant corporation by virtue of having the first charge over the plots.

2) It is prayed that Resolution Professional be directed to accept the objection regarding the resolution plan of the Applicant and place a fresh resolution proposal before the Committee of Creditors (**COC**), taking due notice of the

Applicant's claim of enhanced dues towards land acquisition and maintenance charges.

3) The brief facts of the case are as follows:-

3.1 The Applicant is an Industrial and Infrastructure Development Corporation engaged in the business of developing industrial estate, allotment of industrial plots and providing financial assistance to industrial units. The Applicant provided financial assistance in the form of a loan to the corporate debtor. Plot-I vide Regular Allotment of Letter (hereinafter referred to as RLA) dated 18.10.2010 and Plot-II was offered to the corporate debtor on 09.12.2013 by Applicant for setting up of an industrial project. The possession of the plots was offered to the corporate debtor on 18.10.2010. As per the conveyance deed dated 25.09.2007 and 20.12.2012, the corporate debtor was liable to pay any additional price of the plots as a consequence of enhancement of land acquisition cost awarded by the Courts in a matter arising out of acquisition proceedings shall be payable by the transferee, in lump-sum within 60 days from the date of issuance of demand notice without any interest or in six half yearly instalments along with interest @ 11% per annum on balance outstanding. Default in payment of instalments would entail interest @ 14% per annum for the defaulted period on defaulted amount, compounded annually. Thereafter, on non-payment, the Plot shall be liable to be resumed.

3.2. As per the Estate Management Policy, 2015 acceptance of the allotment letter and agreement regarding Plots, the corporate debtor was required to complete the project within three years. However, the

corporate debtor failed to comply with the same. The applicant issued show cause notices dated 05.11.2015, 30.06.2016 and 18.07.2016 to the corporate debtor as to why the plot should not be resumed on account of violation of Clause in the allotment letter regarding non-payment of additional cost due to enhancement in land acquisition, compensation awarded by Hon'ble Courts and maintenance charges (Annexure-A4).

3.3 The claims were placed by the Resolution Applicant before CoC in the meeting dated 01.11.2019. A reminder email was also sent dated 18.11.2019 (Annexure-A6). In the CoC meeting held on 21.11.2019 (minutes of the meeting are attached as Annexure-A7) the representatives of HSIIDC contended that it is pursuing its claim. Dues with calculation were filed before RP, and directions from NCLT were passed to consider the claim with respect to the additional price of the plot stating that the same shall be payable by the purchaser of the land. The acquisition cost was enhanced by the Court, and an enhanced price of the land was demanded from the corporate debtor, but the same is still due. Reliance is placed on the judgment of Hon'ble Punjab & Haryana High Court titled ***Omni Plast Vs. HSIIDC Ltd. and another : 2015 (1) PLR 662*** and Hon'ble Supreme Court Judgment Civil Appeal No.6350 of 2019 titled ***Municipal Corporate of Greater Mumbai Vs. Abhilas Lal & Ors.***

4) Short written submissions were filed vide Diary No.02258/2 dated 02.09.2022 by the applicant and vide Diary No.02258/01 dated 18.08.2022 by the respondent. It is submitted by the respondent that claims in Form-C was duly verified and admitted by the respondent, and the applicant was made part of the

CoC. Also, the applicant was aware of the progress of CIRP. Further applicant filed two more claims as an operational creditor despite being in CoC before the respondent on 27.03.2019 and 29.03.2019, claiming amounts of Rs.4.14 Cr. and Rs.1.63 Cr just before the resolution plan was put for voting. However, the claim was not within the timeline under Section 12(2), and the same was not collated. Further, the respondent submitted the resolution plan approved by 78.43% voting share of the CoC bearing CA No.274/2019 before this Bench for approval of the resolution plan, which is pending. Vide order dated 27.09.2019 of this Bench, the respondent was directed to consider the claims of the applicant filed two applications bearing CA No.355/2019 and CA No.356/2019 as the claims of the applicant were not considered on merit by the Resolution Professional. Therefore, the applicant was included in the list of operational creditors. Further, regarding the enhancement of cost, it is stated that the same is reflected in the claim forms dated 27.03.2019 and 29.03.2019. It is further stated by the respondent that on this Bench's approval of the resolution plan, the payments will be made to all creditors. However, the respondent pointed out that the claim of getting paid operational dues in priority over other creditors is untenable in law.

5) We have heard the Learned Counsels of the parties involved and have carefully gone through the records.

6) In the present case, the applicant has prayed for consideration of his claim of enhanced payment as stipulated in the conveyance deed with the Respondent. Per contra, the respondent has stated that this claim would be considered as per the provisions of Section 30(2) (b) of the Code, and the applicant will be paid his enhanced payment as a part of operational dues. In this context, it is noted that

the appellant's claim for enhanced cost and maintenance cost flows from the Estate Management Policy (EMP), 2015, which is applicable to all the existing as well as future allottees of industrial plots/sheds as well as residential, group housing etc., developed by HSIIDC as well as Industries Department, Haryana, transferred to HSIIDC and shall be uniformly applicable w.e.f 16.10.2015 unless otherwise specified in these procedures.

7) "Enhanced compensation" is mentioned in clause 5 of the Regular Letter of Allotment (RLA) with an offer of possession dated 14.08.2003 as any additional price of the plot as a consequence of enhancement in compensation awarded by the Courts. It is further laid down that the same shall be payable by the allottee in lump sum within 30 days from the date of demand notice, failing which a penal interest @ 18% per annum shall be charged from the date of the notice. The plot shall be liable to resume in case of non-payment of enhanced compensation within 3 months of notice. The non-payment of instalments towards 75% of the price or non-fulfilment of terms and conditions of RLA shall entail withdrawal of RLA of the plot, and the principal amount deposited will be refunded without any interest after deduction of 10% price of the plot (along with interest, if any). It is further clarified that the plot is allotted on an "as is where is" basis, and the allottee has to pay for existing construction material, trees structure and compound walls at the time of allotment, for which compensation has been assessed and paid by HSIIDC when the allottee wants to make use of the same.

8) Furthermore, it is seen from a plain reading of the Conveyance Deed dated 20.12.2012 between Haryana State Industrial and Infrastructure Development Corporation that as per Para 5, the applicant was mandated to complete the

implementation of the project within a period of 3 years and as per Para 7 the applicant was granted a further extension subject to payment of prescribed extension fee along with applicable interest and subject to certain conditions. It is a matter of record that the respondent has not completed the project within the stipulated period. The respondent, as per the same Conveyance Deed, does not have the full right or interest over the ownership of the industrial plot unless the applicant extends the period for implementation of the said project after receiving the payment of the extension fee as per Clause 5.4 of the Estate Management Procedure (EMP) 2015 as amended up to 08.03.2017.

9) It is also noted that owing to the delay in the completion of the projects, the applicant was constrained to issue show-cause notices listing the basis on which the claims for payment to the applicant are made. For the sake of clarity, relevant part of the show cause notice dated 13.04.2018 is extracted below:

“As per terms & conditions of the allotment/agreement, you were required to implement the project within a period of three years from the date of the offer of possession. i.e. up to 17.10.2013. On your failure to implement the project, you were granted an extension up to 17.10.2015. Again you failed to implement the project even within the time limit extended. As per the site report, you have constructed three side boundary walls with one administrative building of 4800 sq. mtrs. and a workshop of 4800 sq. mtrs, so far. As per the C.A. Certificate dated 10.07.2014, You have invested a sum of Rs.34.80 crores against the projected level of Investment of Rs.56.00 crores. No further investment has been made by you so far”.

Prior to this, similar show cause notices dated 05.12.2015, 30.6.2016 and 18.07.2016 to the corporate debtor were issued asking as to why the plot should

not be resumed on account of non-payment of maintenance charges and enhanced cost.

10) It is further noted that the dues claimed by the applicant pertains to a period prior to the initiation and admissions of the Insolvency Resolution Process and before the moratorium was declared by this Adjudicating Authority i.e. on 18.07.2018.

11) The RP's observation made in the COC meeting dated 21.11.2019 underlines the following facts regarding the claims:

- 1) The enhanced compensation and maintenance charges were duly filed by the applicant before the RP, and the latter was directed by this Bench to consider the claims as per the law.
- 2) The dues on account of enhanced compensation claimed by the applicant are governed by clause no. 1 of the conveyance deed, which stipulates that in case there is any additional price of the plot due to enhancement in acquisition cost by order of the court shall be payable by the purchaser of the land.
- 3) Clause no. 24 of the conveyance deed further stipulates that the applicant-corporation has a right to recover the amount as the first charge.
- 4) These conditions, which are part of the Estate Management Policy applicable on the IMT Rohtak, were duly agreed to by the insolvent Corporate debtor.
- 5) Because of the non-fulfilment of the aforementioned conditions in the conveyance deed etc, the said plot is not capable of being transferred in the name of the corporate debtor.

12) In the present case, the issue is

1. whether the applicant has the right to deal with its properties as per the provisions of the applicable laws or subject itself only to the provisions of the IBC especially when the claims pertain to a period prior to the initiation of CIRP and
2. whether the respondent can take recourse to the provision of Section 238 of the Code to assert that the same can override the applicant's rights under the Conveyance Deed.

13) In this context, it is appropriate to refer to the decision of the Hon'ble Punjab and Haryana High Court in the case of *Omnoplast Pvt. Ltd. vs. H.S.I.I.D.C. Ltd. and Ors.* (14.10.2014 - PHHC) : MANU/PH/3305/2014 in a case where the clause 12 incorporated in the conveyance deed executed by the respondent HSIIDC in favour of the petitioner contemplating that the petitioner seeks specific written approval from Haryana State Infrastructure and Industrial Development Corporation ('HSIIDC' for Short) before creating any charge or mortgaging the freehold land or building was challenged as illegal, arbitrary, unjust, discriminatory and unconstitutional. After going through the provisions in minute details, the Hon'ble High Court held that "Clause No. 12 of the regular letter of allotment and Clause No. 13 of the conveyance deed are not invalid or illegal, since the said clauses are inserted to protect the interest of HSIIDC to enable it to recover any outstanding against the said plot.

14) Furthermore, we place reliance on the decision of the Hon'ble Supreme Court in the case of *Municipal Corporation of Greater Mumbai (MCGM) vs. Abhilash Lal and Ors.* (15.11.2019 - SC) : Civil Appeal No.6350 of 2019 dealing

with the provisions of the IBC vis a vis the provisions of the *Mumbai Municipal Corporation Act, 1888*, in a case where the facts are similar to the case at hand.

After considering the issues involved, the Hon'ble Supreme Court held:

“In the opinion of this Court, Section 238 cannot be read as overriding the MCGM's right - indeed its public duty-to control and regulate how its properties are to be dealt with. That exists in Sections 92 and 92A of the MMC Act. This Court is of opinion that Section 238 could be of importance when the properties and assets are of a debtor and not when a third party like the MCGM is involved. Therefore, in the absence of approval in terms of Section 92 and 92A of the MMC Act, the adjudicating authority could not have overridden MCGM's objections and enabled the creation of a fresh interest in respect of its properties and lands. No doubt, the resolution plans talk of seeking MCGM's approval; they also acknowledge the liabilities of the corporate debtor; equally, however, there are proposals which envision the creation of charge or securities in respect of MCGM's properties. Nevertheless, the authorities under the Code could not have precluded the control that MCGM undoubtedly has, under law, to deal with its properties and the land in question-which undeniably are public properties. The resolution plan therefore, would be a serious impediment to MCGM's independent plans to ensure that public health amenities are developed in the manner it chooses, and for which fresh approval under the MMC Act may be forthcoming for a separate scheme formulated by that corporation (MCGM)”

(Emphasis Supplied)

15) After perusing the relevant documents cited in the foregoing paragraphs, we are of the view that the doctrine of caveat emptor i.e. let the buyer beware, is applicable in the present case and if the incoming promoter has not cared to verify title documents, it cannot take shelter behind technicalities. With regard to the first issue framed in para 12 above, we hold that Section 31 of the IBC does not come

to the rescue of the petitioner because the Section does not talk about the defect in title and only refers to the statutory dues under Municipal Laws and local laws. In contrast, the present case of non-payment of enhanced land compensation towards the price of the plot and maintenance charges directly affecting the property's title and Section 31 does not cover any such eventuality. The fact that the applicant has also filed a claim on as advised by the RP; to file a claim before the latter does not come in the way of granting the applicant the right to protect its interest and recover the entire outstanding amounts against the plots allotted to the applicant-corporate debtor. With regard to the second issue framed in Para 12 above, we follow the decision of the Hon'ble Supreme Court in the case of *Municipal Corporation of Greater Mumbai (MCGM) vs. Abhilash Lal and Ors (supra)* and hold that the provisions of Section 238 of the IBC cannot be invoked by the respondent in the present case to deny HSIIDC the right to protect its interest.

16) As a sequel to the above discussion, we hold that the enhanced dues towards the land acquisition cost and maintenance charges stand outside of the CIR Process and must be considered by the RP in terms of the Estate Management Policy, 2015, Allotment Agreement and Conveyance Deed executed between the parties and not in terms of the provisions of the IBC, 2016.

17) In the result, the appeal is allowed the disposed of accordingly.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

October 21, 2022

PB/TB

Sd/-

(Harnam Singh Thakur)
Member (Judicial)