IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
COURT – IV

IA/2633/ND/2022
IN
COMPANY PETITION NO. (IB)-1058(ND) OF 2018

IN THE MATTER OF:
M/s Gagan Ferrotech Limited

...Operational Creditor

Versus

M/s Manju J Homes India Limited

...Corporate Debtor

AND IN THE MATTER OF:
Mr. Anurag Nirbhaya (RP for M/s Manju J Homes India Limited)

...Applicant

VERSUS

Mr. Ajay Kumar Tyagi

...Respondent

Order delivered on: 28.09.2022

Coram:
MR. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)
DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

ORDER

PER: MR. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

This application has been filed by the Resolution Professional seeking following reliefs :

(i) *Allow the present application.*
(ii) *Issue appropriate directions to the Respondent maintain status quo and not to take any coercive step including cancellation of the registry of land in respect of the Land i.e. Benama Khata No. 846, Khasra No. 1110, Village Morta, Pargna Jalalabad Ghaziabad which is currently registered in the name of the Corporate Debtor and file its claim in accordance with the provisions of the Code;*
(iii) *During the pendency of the application, grant an ex-parte ad-interim order in terms of prayer (b) above against the Respondent to maintain status quo;*
(iv) *Pass such other or further order / order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.*

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2. Briefly stated that this Tribunal vide order dated 02.09.2022 reads to admit the petition No. IB-1058/ND/2018 against the Corporate Debtor for initiation of CIRP proceedings under Section 9 of the Insolvency & Bankruptcy Code, 2016 and the moratorium inter-alia was there and also appointed Mr. Piyush Goyal as Interim Resolution Professional. The said order was challenged before the Hon'ble NCLAT. Thereafter the first meeting of committee of creditors was convened on 13.01.2020, wherein the Interim Resolution Professional was apprised the member of constitution of committee of creditors with 282 Financial Creditors in class presented by Authorised Representative. Further, the CoC, confirmed the appointment of Mr. Harish Goyal as IRP in the present matter by 100% voting. Pursuant to that, vide 8th Meeting of CoC, wherein the applicant has apprised the member to complete the statutory audit of the corporate debtor, accordingly, based on assessment, the name of K. R. A. & Company was proposed for appointment as statutory auditor. Pursuant to that the applicant conducted 14th CoC Meeting of 28th February 2022, wherein the applicant apprised the member of COC that the applicant has received Resolution Plan on 23.02.2022 of Red Apple Homez and Anubhav Mittal as individual.

3. It is further submitted that during the CIRP proceedings, no claim has been received. However, it is also mentioned that the respondent sent a letter, which was received by the applicant on 14.02.2022, wherein the respondent claimed to be full and final amount of plan which has been acquired by the construction by the Corporate debtor.

4. It is also submitted that promoters of the Corporate Debtor purchased the Benama Khata No. 846, Khasra No. 1110, Village Morta, Pargna Jalalabad Ghaziabad from late Shri Omkar Singh, father of the respondent herein in the year 2015 for a consideration of Rs. 15,58,95,000/-. Out of which, a sum of Rs. 3,89,73,750/- were paid by transfer through RTGS and for remaining nine cheques amounting to Rs. 1,29,91,250/- each were issued as full and final payment of sale consideration. One of the project of

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the corporate debtor 'Red Apple Homez' is located on Khasra No. 1108, 1109 and 1110, Village Morta, Ghaziabad and Resolution Plan of the corporate debtor is pending before the CoC for consideration and the respondent raised concerned about Khasra No. 1110 vide its letter dated 14.02.2022. The respondent has failed to file its claim before the Interim Resolution Professional and raised the dispute for the first time in the year 2022 wherein the Resolution Plan is pending before the CoC for consideration. The applicant relied on certain citation and argued that the contract successful CIRP and corporate debtor would be able to maintain itself as a going concern. The applicant relied upon various citations i.e. **"M/s Navbharat Casting LLP. V. M/s Moser Baer India Ltd. & Anr. - Company Appeal (AT) (Ins.) No, 323 of 2018", M/s Srei Infrastructure Finance Ltd. v. Sundresh Bhatt, RP of Sterling Biotech Ltd. - Company Appeal (AT) (Ins.) No, 781 of 2018- dated 31.07.2019, Rajendra K. Bhutta v Maharastra Housing and Area Development Authority & Anr. - Civil Appeal No. 12248 of 2018-dated 19.02.2020", Y. Shivram Prasad v. S. Dhanapal & Ors. Company Appeal (AT) (Ins.) No. 224 of 2018, Gujarat Urja Vikas Nigam Limited v. Amit Gupta & Ors.- Civil Appeal No. 9241 of 2019-dated 08.03.2021","Pepsico India Holdings Pvt. Ltd. v. V. Nagarajan, RP of Oceanic Tropical Fruits Pvt. Ltd. - Company Appeal (AT) (Ins.) No. 686 of 2019- dated 13.11.2019, Aircel Limited through Vijaykumar V. Iyer v. Union of India - MA-337/2018 in C.P. (IB) 298/(MB)/2018-dated 27.11.2019",**

5. Accordingly, it is prayed that the respondent be restrained not to get cancel the sale deed qua Khasra No. 1110 being part of the corporate debtor assets, where the project namely 'Red Apples Homez' is raised, would become frustrated. Accordingly, it is prayed to maintain status quo.

6. On behalf of the respondent, a detailed reply has been filed by Ajay Kumar Tyagi i.e the son of late Shri Omkar Singh that the land in question was purchased for a total consideration of Rs. 15,58,95,000/- out of which the respondent is owner of the piece of land to the extent of one-third part and

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entitled to Rs. 5,19,65,000/-, accordingly three cheques were issued amounting to Rs. 3,89,73,750/-.

7. Further, it is submitted that the additional amount of Rs. 1,29,91,250/- was also paid to the applicant qua the payment of 15 flats in the project, which was allowed to be built on the respondent's land. It is denied that the respondent failed to file its claim during the CIRP process before the IRP - Harish Goyal, whereas the respondent has informed the applicant vide letter dated 23.09.2019 which as duly received by him and thereafter a reminder application were also sent to the concerned authority, which was continuously overlooked and neglected. It is further stated that the respondent herein is the original owner of the piece of land of Benama Khata No. 846, Khasra No. 1110, Village Morta, Pargna Jalalabad Ghaziabad, where the project 'Red Apple Homez', and developed in Khasra No. 1108, 1109 & 1110 Village Morta, Pargna Jalalabad Ghaziabad and the respondent has also filed a Civil Suit No. 490/2017 dated 25.08.2017 before the Court of Civil Judge, Ghaziabad as soon as the cheques issued by the applicant were bounced.

8. Further, it is also submitted that the agreement signed between the applicant and the respondent at the time of purchase of piece of land in question which prominently states that Benama signed on 09.02.2015 stands null and void in case any cheques issued by the applicant finds that the time of clearing at the time. Accordingly, the respondent had already initiated a civil suit for cancellation of registry and disputed the title of the piece of land and the said proceedings are still going on. Even, FIR was registered on 10.04.2017 bearing General Diary No. 033 against the representation and false impersonation committed by applicant which was duly investigated by the forensic team who clearly stated that signatures were false and fingerprints did not match with the respondent. On behalf of the respondent, it is further submitted that he has purchased 15 flats in the project i.e. 'Red Apple Homez' which was allowed to be built on the land in question Benama Khata No. 846, Khasra No. 1110, Village Morta,

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Pargna, Jalalabad, Ghaziabad vide flat buyer agreement dated 29.06.2016 for a total sum of Rs. 2,61,00,000/-. It is also submitted that father of the respondent i.e. Mr. Omkar Singh could not bear this deception and became paralyzed and after suffering for two and half years, he left for heavenly abode and everything was taken away by the applicant from the respondent and his family.

9. Heard. Record has thoroughly been perused. It is settled proposition of law that the corporate debtor has to be keep going concern. This fact also stands supported from the citations referred above by the applicant. In the present matter, the respondent has clearly admitted that the land in question is in possession of the applicant i.e. the corporate debtor and the construction had been raised thereon. Apparently, the project in the name of 'Red Apple Homez' was launched and the construction was raised thereon. Though, the project could not be completed, accordingly, the CIRP proceedings were ordered to be initiated by this Tribunal. Thus, moratorium is still in vogue. In this context, it is also pertinent to mention that after launching the project, number of home buyers got booked their flats after investing their hard-earned money. Even, the respondent's father Sh. Omkar Singh has also booked flats in that project as alleged by the respondent himself. The said project was raised on the property in question i.e consisting of Khasra No. 1108, 1109 and 1110 situated in Morta, Ghaziabad. Further, in the sale deed dated 09.02.2015, it is clearly mentioned that the possession of the land including Khasra No. 1110 was delivered to Manju J Homes India Limited. Thus, Omkar Singh and other legal heirs, knowingly represented to the people at large including the home buyers that the project is being launched by the promoters on the property in question. Hence, now they are estopped to allege that the property in question was not sold to the corporate debtor and the signature of Omkar Singh etc. have been forged and fabricated. Thus, the respondent also stands estopped to allege that the property situated at Khasra No. 1110 was not sold to the corporate debtor. Although, some forensic report and one copy of FIR has been placed on record but the

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same pertains to year 2017 whereas the sale deed was executed on 09.02.2015, thus the said action has been taken after two years of launching of the project. Even, the builder buyer agreement dated 29.06.2016 has been placed on record which shows that the project was already launched on the property by virtue of sale deed executed between Omkar Singh & Manju J Homes Limited. Therefore, without commenting further, this Tribunal is of the view that status quo should be maintained qua sale deed dated 09.02.2015.

Accordingly, **IA No. 2633/ND/2022** stands disposed of in terms of the above said direction.

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(DR. BINOD KUMAR SINHA)
MEMBER (T)

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(DHARMINDER SINGH)
MEMBER (J)