

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III

IA-4648/2020
In
(IB)-1083(PB)/2018

IN THE MATTER OF (IB)-1083(PB)/2018:

M/s. Edelweiss Asset Reconstruction Company Ltd. Financial Creditor
Vs.
M/s. Adel Landmarks Ltd. Corporate Debtor

AND IN THE MATTER OF IA-4648/2020:

Mr. K.H. Khan and Ors. Applicants
Vs.
Sri Udayraj Patwardhan Respondent

Order Pronounced On: 30.04.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicants : Mr. Arvind Nayar, Sr. Adv., Mr. Darpan Kumar, Ms. Amrita Sharma, Mr. Rajat Shaw, Mr. Durga Prakash, Advs.
For the RP : Mr. Sanjay Bhatt, Adv.
For Parinda Buildcon : Mr. Apoorv Agarwal, Ms. Vaishnavi Prakash, Advs.
For the SRA : Mr. Sudhir Makkar, Sr. Adv., Ms. Riya, Mr. Manir Jain, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present Application has been filed by Mr. K. H. Khan and Ors., the Applicants under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016. The Applicants seek the deletion of the Scheduled Properties from the Corporate Insolvency Resolution Process (CIRP) and Information Memorandum (IM) circulated by the Resolution Professional. The prayer of the Applicants in this Application are as follows:

“WHEREFORE it is prayed that this Hon'ble Tribunal may be pleased to direct removal of the Schedule Properties from the CIRP Process and deletion of the Schedule Properties, from the information memorandum

circulated by the Resolution Professional of the respondent in CP No. IB-1083 (PB)/2018 and pass such other and further order as deemed fit in the facts and circumstances of the case in the interest of justice and equity.”

A. Brief Background of the Case

2. The facts relevant for the determination of the issues involved in these applications are stated as under:

- i. An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Financial Creditor i.e. M/s. Edelweiss Asset Reconstruction Company Ltd., against the Corporate Debtor i.e. M/s. Adel Landmarks Ltd. The said application was admitted by this Adjudicating Authority vide order dated 05.12.2018. Consequently, a moratorium was declared and Mr. Udayaraj Patwardhan was appointed as an Interim Resolution Professional. Subsequently, Mr. Udayaraj Patwardhan, the Respondent herein was confirmed as Resolution Professional.
- ii. The Resolution Plan was submitted by the Successful Resolution Applicant, namely M/s. Art Constructions Private Limited was approved by the CoC in its 27th meeting dated 15.09.2022 by 82.66% voting share in respect of the CIRP of the Corporate Debtor. Thereafter, the Resolution Professional of M/s. Adel Landmarks Ltd. filed IA-1817-2023 seeking approval of the Resolution Plan under Section 30(6) read with Section 31 of IBC, 2016 on 20.01.2023, which is pending adjudication before this Adjudicating Authority.

B. Submissions by the Applicants:

3. The Applicants i.e. Mr. K. H. Khan and Mrs. Shaheda Begum wife of Mr. K. H. Khan are the owners of the immovable property admeasuring 36 acres 04 Guntas lands situated at Kengeri Village, Kengari Hobli, Bangalore, South Taluk (more fully described in the schedule attached along with the present application and hereinafter referred to "Schedule Property"). The Applicants initially executed a Collaboration Agreement dated 05.07.2008 in favour of the Respondents i.e. M/s. Adel Landmark Limited (earlier known as M/s.

Era Landmark). Thereafter an addendum was executed between the Applicants and the Respondent on 28.10.2009.

4. The Respondent executed the Assignment Agreement dated 25.01.2010 in favour of M/s. Parinda Buildcon Private Limited [in short Parinda (PBPL)] assigning all its rights and obligations under the Collaboration Agreement dated 05.07.2008 and Addendum dated 28.10.2009 in favour of the said Parinda (PBPL) with the consent of the Applicants and thereby, the Respondent lost all its rights under the said Collaboration Agreement and Addendum. However, the Respondent and Parinda (PBPL) miserably failed to perform their obligations under the Agreements and as such the Applicants herein issued Legal Notices dated 17.02.2012 and 22.02.2012 terminating the Collaboration Agreement dated 05.07.2008, Addendum dated 28.10.2009, GPA dated 05.07.2008 and Assignment Agreement dated 25.01.2010.
5. Thereafter, the Respondent along with Parinda (PBPL) filed Civil Miscellaneous Petition (CMP) No. 167/2011 before the Hon'ble High Court of Karnataka praying for the appointment of an independent person as a sole Arbitrator for adjudicating the disputes and claim between the parties in terms of the Collaboration Agreement dated 05.07.2008. The Hon'ble High Court of Karnataka vide order dated 20.04.2012 appointed Hon'ble Mr. Justice N. Santosh Hegde (Retd. Judge, Supreme Court of India) as the sole Arbitrator to arbitrate and adjudicate the dispute between the parties arising out of the said Agreement.

5.1 Pursuant to the appointment of the Arbitrator, the Respondent and Parinda (PBPL) filed a claim statement before the sole Arbitrator seeking the following reliefs:

"A. Pass an Award in favour of the Claimants and against the Respondents declaring that the Collaboration Agreement dated 05.07.2008, General Power of Attorney dated 05.07.2008, Addendum dated 28.10.2009 to the Collaboration Agreement dated 05.07.2008 and the Assignment Agreement dated 25.01.2010 are legal, valid and subsisting;

B. Pass an Award declaring that the legal notice dated 17.02.2012 and 22.02.2012 issued by the Respondents are null and void and of no consequences;

C. Pass an Award in favour of the Claimants and against the Respondents directing the Respondents to specifically perform their part of obligations under Collaboration Agreement dated 05.07.2008, the Addendum dated 28.10.2009, the General Power of Attorney dated 05.07.2008 and the Assignment Agreement dated 25.01.2010 in a manner so that the Claimants may execute and complete the project in accordance with Collaboration Agreement, the Addendum to the Collaboration Agreement, the General Power of Attorney and the Assignment Agreement;

D. Direct the Respondents to deposit all the original title deeds/sale deeds in respect of the Schedule Property in a Joint Locker No. E 410 at Bank of Maharashtra, RR Nagar Branch, Bangalore;

E. Pass an Award in favour of the Claimants and against the Respondents thereby restraining the Respondents, their agents, attorneys, representatives or any persons acting for and on behalf or through Respondents from alienating, transferring, selling, creating third party interest or encumbering with respect to the Schedule Property;

F. Direct the Respondents to withdraw/ recall the public notice dated 28.02.2012 given in the English daily "The Hindu" and to retract the Legal Notices dated 17.02.2012 and 22.02.2012;

G. Direct the Respondents to pay their respective contributions towards
• Marketing expenses incurred by the Claimants;

H. Direct the Respondents to pay an amount of Rs.2,32,23,768/- towards Machinery and Equipment idleness charges/damage of machinery, manpower etc of Contractor i.e. Era Infra on the project site and further direct the Respondents to pay the idling charges till the commencement of actual work;

1. Direct the Respondents to pay an amount of Rs.1,26,47,397/- along with interest @ 18% p.a from the date of payment till the date of realizations;;

J. Direct the Respondents to pay compensation amounting to Rs.100 Crore towards loss suffered by the Claimants;

OR IN THE ALTERNATIVE

If this Hon'ble Tribunal is of the view that the termination of the Agreements is valid and Agreements cannot be enforced:

K. Direct the Respondents to pay a sum of Rs.64,04,81,076/- to the Claimants on account of the various heads as tabled in Paragraph No. 108 above;

L. Direct the Respondents to pay Damages amounting to Rs, 300 Crores (Three Hundred Crores) towards business loss, loss of profit, loss of reputation and goodwill on account of the Respondents,

M. Direct the Respondents to pay Interest @ 18% p.a. for pre-arbitration period, pendent lite and post-arbitration period in favour of the Claimant;

N. Direct the Respondents to pay the cost of Arbitration proceedings to the Claimant including the legal cost incurred by the Claimants;

Pass such other order/direction or further orders as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the present case and in the interest of justice and equity.”

5.2 The Applicants herein also filed their statement of objections and a counter-claim before the Arbitral Tribunal.

- 6.** The Arbitral Tribunal vide order dated 27.05.2014, ordered that the Assignment Agreement dated 25.01.2010 is liable to be impounded as contemplated under Section 33 of the Karnataka Stamp Act as the same is not duly stamped. Thereafter the Respondent and Parinda (PBPL) filed an application seeking for amendment of the claim petition by deleting Parinda (PBPL) from the proceedings and to withdraw the Assignment Agreement from the records of the Arbitral Tribunal. The Arbitral Tribunal vide order dated 08.05.2015 permitted the deletion of Parinda (PBPL) from the Arbitration proceedings as prayed for by the Respondent and Parinda (PBPL).
- 7.** The Applicants herein contended before the Ld. Arbitrator that as per the Assignment Agreement dated 25.01.2010, the Respondent had assigned all its rights and obligations under the Collaboration Agreement and Addendum in favour of Parinda (PBPL) and since the claimants therein themselves are seeking deletion of Parinda (PBPL) from the Arbitration proceedings, the Respondent has no right to continue with the Arbitration proceedings. The

Arbitral Tribunal held that the Collaboration Agreement had been novated when the parties entered into the Assignment Agreement.

8. The Arbitral Tribunal after hearing both the parties, passed an order on 15.07.2015, which is extracted below:

"On the basis of the above findings, I am of the opinion that the 1st claimant cannot pursue this claim petition, because it has lost all its rights, duties and obligations, on the schedule properties and this claim petition cannot be pursued by the 1st claimant on its own in the absence of the 2nd claimant whom it has deleted from the array of parties with the permission of the Tribunal." (underlining supplied).

9. The Respondent and Parinda (PBPL) challenged the order of the Arbitral Tribunal dated 15.07.2015, in M.A. No. 37/2015, before the XXXV Addl. City Civil & Sessions Judge, Bengaluru. The said appeal was dismissed as not maintainable vide order dated 12.10.2018. Thereafter, the Respondent and Parinda (PBPL) filed MFA No.10068/2018, before the Hon'ble High Court of Karnataka, at Bengaluru and the said appeal was also dismissed vide order dated 25.06.2019. Therefore, the Applicants contended that the order dated 15.07.2015 has attained finality and the Respondent in Arbitration proceedings has no right whatsoever over the Schedule Property which was the subject matter of the Collaboration Agreement and Addendum.
10. The Applicants received objections dated 19.08.2020 from the Insolvency Resolution Professional of the Respondent/Corporate Debtor objecting to the public notice issued by and on behalf of the Applicants herein on 07.08.2020, published in the Times of India, Bangalore Edition in respect of the scheduled properties requesting the Applicants to publish a corrigendum withdrawing the said public notice. The Applicants gave a reply dated 01.09.2020 to the Resolution Professional pointing out the Arbitration proceedings and the orders passed by the Arbitral Tribunal and called upon the Resolution Professional to withdraw the objection dated 19.08.2020. The Applicants in their reply submitted that they are the absolute owners of the Schedule property and are entitled to deal with the property. The respondent has no right whatsoever over the Schedule property. The inclusion of the Schedule property in the information memorandum is contrary to Section 29

of the IBC read with Rule 36 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations in as much as the said properties are not the assets of the Respondent and the Respondent has no right or interest whatsoever over the said properties. Consequently, the moratorium order of this Adjudicating Authority is not applicable to the Schedule property.

C. Submissions by the Resolution Professional/Respondent:

- 11.** The Respondent/ Resolution Professional in the reply affidavit stated that the Applicants being the owners of Scheduled Property entered into a duly registered Collaboration Agreement dated 05.07.2008 and Addendum dated 28.10.2009 inter alia with the Corporate Debtor for construction and development of a project namely 'the Arena' on the Scheduled Property consisting of multi-storied residential apartment building/apartments and commercial complexes along with clubhouses, swimming pools, etc. for operational convenience. Further, the Corporate Debtor vide Assignment Agreement dated 25.01.2010 assigned its development rights to its wholly owned subsidiary, namely, M/s. Parinda Buildcon Private Limited (PBPL) while retaining its obligation of being responsible to perform the terms of the Collaboration Agreement in case of default or failure by Parinda (PBPL) as per the Assignment Agreement including resolving any difference or disputes as provided in the Collaboration Agreement.
- 12.** It is submitted that Clause 2 of the Assignment Agreement clearly stated that the Corporate Debtor shall undertake the responsibilities of Parinda (PBPL) in case of any default by Parinda (PBPL) in its performance of the obligations mentioned in the Collaboration Agreement and the Corporate Debtor agreed to perform its obligations detailed in the Collaboration Agreement as if the Assignment Agreement had not been effected. Further, Clause 3 of the Assignment Agreement records that the same shall form an integral part of the Collaboration Agreement and Addendum. Clause 8 of the Assignment Agreement further detailed that in case of Arbitration to resolve any difference or disputes as provided in the Collaboration Agreement, the Applicants may choose to include the Corporate Debtor without waiting for defaults to occur or differences to precipitate and that the Applicants may directly deal with the Corporate Debtor, if the Applicants find that Parinda

(PBPL) has limitations in carrying on the Project as envisaged in the Collaboration Agreement.

- 13.** The Respondent submitted that the appeal filed before the Hon'ble Karnataka High Court came to be rejected vide order dated 25.06.2019 on technical grounds without deciding the issues involved on merits. A perusal of the order passed by Ld. Arbitrator and order dated 12.10.2018 passed by the City Civil Court and order dated 25.06.2019 passed by the Hon'ble High Court of Karnataka shows that the same does not in any manner determine or adjudicate upon the rights of Corporate Debtor and Parinda (PBPL) on merits relating to the Collaboration Agreement.
- 14.** It is contended that as on the date of initiation of CIRP, the dispute with respect to the project being developed by the Corporate Debtor over the Scheduled Property was sub-judice and thus has been rightly included as part of the CIRP and also in the IM. Even otherwise, the provisions of Section 14 of the Code will apply to the project being developed by the Corporate Debtor over the Scheduled Property as the moratorium was in operation when the order dated 25.06.2019 was passed by the Hon'ble Karnataka High Court and the moratorium is still subsisting. Therefore, the Applicants cannot seek any relief as is being sought from this Adjudicating Authority till completion of the CIRP. The reliefs sought by the Applicants are beyond the jurisdiction of this Adjudicatory Authority as the disputed question of facts cannot be decided in a summary proceeding under Section 60 of the Code and on imposition of a moratorium under Section 14. Further, it is the duty of RP to preserve the assets of the Corporate Debtor.
- 15.** It is submitted by the Respondent that the financial records of the Corporate Debtor show that the Corporate Debtor has made total investment of INR 64 Crores (approx.) towards the development of the said Project over the Scheduled Property including payment of loans taken by the Applicants from HUDCO. As per Clause 6 of the Collaboration Agreement, upon termination, the Applicants had undertaken and are obliged to refund the amounts invested by the Corporate Debtor in the said project. However, till date the Applicants have not refunded the amount to the Corporate Debtor. Thus, the amount invested by the Corporate Debtor in the said Project which is yet to be refunded by the Applicants is a valuable property of the Corporate Debtor

in terms of the Code and therefore RP is duty bound to protect and preserve the same.

16. It is further contended by the Respondent that the Applicants had earlier entered into a Development Agreement with M/s. Upkar Developers Private Limited (a company promoted by Applicants) for the development of the township on the subject land. Upkar along with the owners has also availed a loan of Rs. 15 crores from HUDCO against the securities of the Land as well as a proportionate share in the total super built-up area for the said project. However, being unable to develop the project, both Upkar and the Applicants jointly approached the Corporate Debtor and entered into MoU with the Corporate Debtor as a developer. As per the MoU, the Corporate Debtor was required to pay an amount of Rs. 5 crores jointly to the owners and Upkar and an amount of Rs. 7.2 crores to the Applicants. Thereafter, MOU was converted into a registered Collaboration Agreement on 05.07.2008.

17. The Respondent also submitted that as per the Statement of Defence (SoD) filed by the Applicants before the Ld. Arbitrator in Para 18, the Applicants have admitted this position that “on the termination of the Agreement, claimants are only entitled to a refund of money and nothing more”. It is further submitted that the Statement of Defence (SoD) filed by Applicants has been dismissed by the Ld. Arbitrator vide order dated 08.09.2016, the Relevant para 18 of the order is extracted below.

“18. For the reasons stated herein above, the above application filed by ERA (Now ALL) is liable to be allowed and consequent to the same, it has to be held that pursuant to the orders of this Tribunal Holding the assignment agreement is inadmissible, this Tribunal ceases to any jurisdiction to decide on counterclaim of KH Khan.”

18. It is further stated that as the Applicants have chosen not to challenge the above order, thus, the same has attained finality and the Applicant is liable to pay Rs. 64 crores invested by M/s. Adel Landmarks Limited in the project over the Schedule Property.

D. Key Analysis and Findings:

19. We have heard the submissions made by the Ld. Counsel appearing for the parties and perused the records.

20. Before Analysing the case, it is pertinent to refer to the following aspects:

20.1 This application was listed on 07.02.2024 seeking clarification from the parties and the following order was passed:

“IA-4648/2020:-

This matter was listed for seeking clarification on the following aspects:-

1. Copies of the legal notices dated 17.02.2012 and 22.02.2012 terminating the Collaboration Agreement dated 05.08.2008 are not available on record.

2. Did the Corporate Debtor give any reply to the legal notices dated 17.02.2012 and 22.02.2012 issued by the Applicants/Landowners.

3. The RP in its reply has contended that an amount of Rs. 64 crores have been paid to the Applicant but no evidence is on record to show that the said payment was made.

The Applicant/Resolution Professional shall file a copy of the legal notices dated 17.02.2012 and 22.02.2012 and reply of the Corporate Debtor to the said legal notices, if any, within one week. Further, the Resolution Professional is directed to place on record evidence with regard to payment of Rs. 64 crores to the Applicant along with an affidavit within one week. The SRA is also at liberty to file an affidavit.

*List the matter on **20.02.2024** for compliance.”*

20.2 In compliance with the order dated 07.02.2024, the Resolution Professional as well as M/s. Parinda Buildcon Private Limited ("PBPL") filed an affidavit clarifying issues raised by this Adjudicating Authority.

20.3 The copies of the said Legal Notices dated 17.02.2012 and 22.02.2012, replies to the said Legal Notices have been placed on record. RP has filed an affidavit along with copies of the bank statement and relevant financial documents in support of total investment of INR 64 Crores (approx.) towards the development of the said Project.

21. The entire controversy between the parties revolves around the Collaboration Agreement, Assignment Agreement, Legal Notices dated 17.02.2012 and 22.02.2012 cancelling the Collaboration Agreement, the orders passed by the Ld. Arbitrator, the Civil Court, the Hon'ble High Court of Karnataka.

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- 22.** In order to appreciate the case in a proper perspective, it would be necessary to refer to the Collaboration Agreement and some of the clauses therein.
- 23.** The Collaboration Agreement in question was executed between Mr. K. H. Khan son of the Late N. A. Khan, Mrs. Shaheda Begum wife of Mr. K. H. Khan and Mr. Karar Ahmad son of the Late N. A. Khan and M/s. Upkar Developer (India) Private Limited and M/s. Era Landmark (India) Private Limited by way of registered document registered at Headquarter, Sub-Registrar, Kengan, Bangalore. The initial recitals of the said Collaboration Agreement are reproduced below:

*“**WHEREAS** the First Party herein are the absolute Owners in actual and physical possession and enjoyment of various immovable residentially converted lands situated at Kengeri Village, Kengeri Hobli, Bangalore South Taluk totally measuring 36 acres 04 Guntas which lands are described in Schedule hereto and hereinafter referred to as the "SCHEDULE PROPERTY".*

***AND WHEREAS** the First Party hereto further represents, warrants and assures that they are fully authorized and entitled to deal with, transfer and dispose of the Schedule Property in any manner as they may deem fit.*

***AND WHEREAS** the Owners No. 1 & 2 are the Promoter Directors of the Second Party which is one of the group companies of the Upkar Group. Whereas the Owners have entered into a Registered Joint Development Agreement dated 08.02.2007 with the Second Party for the Development of a township in the Schedule Property consisting of multi-storied residential Apartment building/apartments and commercial complexes along with club houses, swimming pools, etc.”*

Thus, it is seen from the third recital of the Collaboration Agreement that the Owners Nos. 1 and 2 (the Applicants herein) are the Promoter, Director of the second party i.e. M/s. Upkar Developers (India) Private Limited which is one of the group companies of Upkar Group.

- 24.** Clause 3 of the Collaboration Agreement states that Owner Nos. 1 and 2 are the promoter director of the second party i.e. M/s. Upkar Developers, one of the group companies of the Upkar Group. The said Agreement further states that the second party along with the first party have availed a loan of Rs. 15 Crores from HUDCO against the security of the first parties and the second

party's undivided shares in the scheduled property along with proportionate share in the total super built-up area as per the registered joint Development Agreement dated 08.02.2007. It also states that the second party desires to relinquish its share, right, interest and claims in the scheduled properties in favour of the developers who have the necessary expertise to develop the same.

- 25.** Clause 6 of the Collaboration Agreement speaks about the “TERM and TERMINATION”. The said Clause is extracted below:

“6. TERM & TERMINATION

This Agreement may be terminated on the happening of any of the following events:

- a) By Mutual consent of the First Party and the Developers by execution of written document duly signed by authorised representatives of both parties;*
- b) Either Party becomes suspended or ineligible for participating in the Project anticipated under this Agreement, in accordance with applicable government regulations;*
- c) Failure of any party to perform its obligation under this agreement shall be deemed to be a breach of this agreement. The party claiming such failure shall notify in writing, the parties alleged to have failed to perform such obligations and shall demand performance. No breach of this agreement may be found to have occurred, if performance has commenced to the reasonable satisfaction of complaining party within thirty days of the receipt of such notice. If after the notice, the breaching party fails to cure the breach, the other party may seek any remedy available under law.”*

- 26.** Clause 8 of the Collaboration Agreement deals with the dispute resolution. Sub Clause 8.1 of Clause 8 of the Collaboration Agreement stipulates that if any dispute under this Agreement arises between the parties, every effort shall be made by the appropriate management of the respective parties to resolve such dispute in good faith. Sub Clause 8.2, 8.3 and 8.4 of the Collaboration Agreement provide for referring the dispute to Arbitration.

- 27.** Mr. Arvind Nayar, Ld. Senior Counsel appearing on behalf of the Applicants took us through the various clauses of the Collaboration Agreement, the Assignment Agreement and the orders passed by the Ld. Arbitrator in the Arbitration Proceedings as well as the orders passed by the City Civil & **IA-4648/2020 In (IB)-1083(PB)/2018**
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Session Court and the Hon'ble High Court of Karnataka, at Bengaluru in the appeals arising out of various orders in the Arbitration Proceedings. The main thrust of the argument advanced by Mr. Nayar, Ld. Senior Counsel is that although the Collaboration Agreement was executed by the Applicants in favour of the Corporate Debtor and the Corporate Debtor in turn assigned its rights to Parinda (PBPL) for the development of the land, the Corporate Debtor failed to adhere to the terms and conditions of the Collaboration Agreement for which the Applicants issued two Legal Notices on 17.02.2012 and 22.02.2012 terminating the Collaboration Agreement dated 05.07.2008.

- 28.** These termination orders were challenged by the Corporate Debtor before the Hon'ble High Court of Karnataka in CMP No. 167/2012 and the Hon'ble High Court of Karnataka vide order dated 20.04.2012 appointed Hon'ble Mr. Justice N. Santosh Hegde (Retd. Judge, Supreme Court of India) as the Arbitrator and referred the matter to Arbitration proceedings.
- 29.** The parties before the Ld. Arbitrator were M/s. Era Landmarks Ltd. and Anr., the Claimants and Mr. K. H. Khan and Anr., the Respondents. The Ld. Arbitrator formulated the following question for determination vide order dated 27.05.2014:
1. Whether the document dated 25.01.2010 executed by the first claimant as "Assignment Agreement" in favour of the second claimant is required to be stamped with the specified stamp duty under the provisions of Karnataka Stamp Act, 1957.
 2. Whether the said Assignment Agreement dated 25.01.2010 is liable to be impounded.
- 30.** The Arbitral Tribunal vide order dated 27.05.2014 ordered that the Assignment Agreement dated 25.01.2010 is liable to be impounded as contemplated under Section 33 of the Karnataka Stamp Act, 1957 as the same is not duly stamped. Thereafter, the Respondent and Parinda (PBPL) filed applications seeking amendment of the claim petition and for deleting Parinda (PBPL) from the proceedings and withdrawing the Assignment Agreement from the records of the Arbitral Tribunal. The Arbitral Tribunal vide order dated 02.01.2015 rejected the prayer of the Respondent and Parinda (PBPL) to withdraw the Assignment Agreement from the record of the Arbitral Tribunal and vide order dated 08.05.2015 permitted deletion of

the Parinda (PBPL) from the Arbitration proceedings as prayed for by Respondent and Parinda (PBPL). Pursuant to the deletion of Parinda (PBPL) from the Arbitration Proceedings, the Applicants contended that the Respondent have no right to continue with the Arbitration Proceedings as the Arbitral Tribunal has held that the Collaboration Agreement was novated when the parties entered into the Assignment Agreement. The Arbitral Tribunal vide order dated 15.07.2015 passed the following order:

"On the basis of the above findings, I am of the opinion that the 1st claimant cannot pursue this claim petition, because it has lost all its rights, duties and obligations, on the schedule properties and this claim petition cannot be pursued by the 1st claimant on its own in the absence of the 2nd claimant whom it has deleted from the array of parties with the permission of the Tribunal." (underlining supplied).

31. Having held so, the Arbitral Tribunal by order dated 15.07.2015 terminated the Arbitral proceedings. While passing the order dated 15.07.2015, the Ld. Arbitrator took note of the contentions raised by the parties and formulated the following questions for consideration:-

1. Whether the principles of novation as contemplated under Section 62 of the Contract Act applies, if so, does the Collaboration Deed stand superseded by the Assignment Deed or not?
2. Whether the Collaboration Deed gets revived by virtue of the cancellation deed executed by the claimant No.1 and claimant No.2 (since deleted) or not?
3. What orders?

32. The Ld. Arbitrator noted that M/s. Era Landmarks Limited, Claimant No. 1 acquired development rights from M/s. Upkar Developers (India) Pvt. Ltd. (a company promoted by Applicants) in regards to the land mentioned in the schedule to the Collaboration Agreement dated 05.07.2008. M/s. Era Landmarks Limited, Claimant No. 1 transferred the said rights, duties and obligations in favour of M/s. Prinda Buildcon Pvt. Ltd., the second Claimant by a deed of Agreement dated 25.01.2010. Thus the first Claimant with the consent of the other parties to the Collaboration Agreement conveyed its rights, duties or obligations in favour of the second Claimant (since deleted).

- 33.** The first claimant undertook to perform the rights, duties or obligations which would not be performed by the second claimant in case of any default by the second Claimant, in its performance of the said obligations, the first Claimant has agreed to perform those obligations as per the agreement.
- 34.** The Ld. Arbitrator, based on these facts, recorded an opinion that, the first Claimant has not retained any of its rights which accrued to it from the Collaboration Agreement. The Ld. Arbitral Tribunal also dealt with a question as to whether the Assignment Agreement is a valid document or not for the purposes of invoking the Legal principle of invocation.
- 35.** The Ld. Arbitrator has noted that the novation of the Collaboration Agreement has occurred by the execution of the Assignment Agreement and the first Claimant has lost all his right, duties and obligations accrued under the Collaboration Agreement in favour of the second Claimant.
- 36.** On the basis of the above discussion/opinion/findings, the Ld. Arbitrator took the view that the first Claimant cannot pursue the claim petition because it has lost all its rights, duties and obligations over the Scheduled property and this claim petition cannot be pursued by the first Claimant on its own in the absence of the second Claimant, who has been deleted from the array of parties with the permission of parties. Therefore, the Ld. Arbitrator held that the Arbitration proceedings are liable to be terminated. This order of the Ld. Arbitrator has not been reversed by any higher forum yet.
- 37.** The Respondent and Parinda (PBPL) challenged the order dated 15.07.2015 passed by the Ld. Arbitrator before the XXXV Addl. City Civil and Session Judge, Bengaluru in MA-37/2015. This appeal was dismissed as not maintainable vide order dated 12.10.2018, the operative part of the order dated 12.10.2018 is extracted below:

*“31. Therefore, this court is of the opinion that the present Appeal filed by the Appellants is not maintainable. Accordingly, the point under reference is answered in the **negative**. Accordingly, I proceed to pass the following.*

ORDER

I.A.No.3 is allowed.

The Appeal filed under Section 34 of the Arbitration and Conciliation Act is not maintainable.

Consequently, the entire Appeal is dismissed with cost”

- 38.** The Respondent and Parinda (PBPL) filed Miscellaneous First Appeal (MFA) No. 10068/2018 before the Hon’ble High Court of Karnataka at Bengaluru against the order dated 12.10.2018 passed by XXXV Addl. City Civil and Session Judge, Bengaluru which was dismissed vide order dated 25.06.2019, the operative part of which is extracted below:.

“5 In view of the proposition laid down in the above two decisions, it is to be stated that even the proceedings under Section 34 of the Arbitration and Conciliation Act in the District Court was not maintainable. Whatever may be the classification of the proceedings in the District Court, the appellant could not have invoked Section 34 of the Arbitration and Conciliation Act. In view of the above, I do not find any ground to hold that the appeal is maintainable.

*Therefore, appeal is **dismissed.**”*

- 39.** Mr. Arvind Nayar, Ld. Senior Counsel appearing for the Applicants has therefore contended that the order dated 15.07.2015 passed by the Arbitrator has become final and therefore the Respondent has no right whatsoever over the scheduled property which was the subject matter of the Collaboration Agreement and the addendum thereto.
- 40.** Mr. Sanjay Bhatt, Ld. Counsel appearing for the Resolution Professional refuted the arguments advanced by Mr. Arvind Nayar, Ld. Senior Counsel and he vehemently submitted that the Ld. District Court and the Hon’ble High Court of Karnataka have rejected the appeals filed against the termination order of the Ld. Arbitrator on technical grounds without deciding the issues involved on merits and without adjudicating the rights and obligations of the parties relating to the alleged termination of the Collaboration Agreement. Therefore, the termination order passed by the Ld. Arbitrator is not an award. Mr. Bhatt, Ld. Counsel relied upon a judgment passed by the Hon’ble Delhi High Court in the case of **“PCL Suncon vs National Highway Authority of India”** reported in 2021 SCC OnLine Del 313 wherein it has been held that *“30. Viewed in the aforesaid context, it is clear that an order, which terminates the arbitral proceedings as the Arbitral Tribunal finds it impossible or unnecessary to continue the arbitral proceedings, would not be an award. This is so because it does not answer*

any issue in dispute in arbitration between the parties, but is an expression of the decision of Arbitral Tribunal not to proceed with the proceedings.”

Mr. Bhatt has also submitted that the CIRP against the Corporate Debtor was initiated on 05.12.2018 and the moratorium under Section 14 was in placed. Thus, the order dated 25.07.2019 passed by the Hon’ble High Court of Karnataka which resulted in achieving finality in termination of Arbitration proceedings was during the moratorium period and therefore, the Applicants cannot seek any relief. He further submitted that the resolution plan in respect of the Corporate Debtor has already been approved by the CoC by 82.66% votes and is pending for approval before this Adjudicating Authority and therefore, the commercial wisdom of the CoC cannot be called in question.

41. Mr. Sanjay Bhatt, Ld. Counsel for the RP contended that the CIRP of M/s. Adel Landmarks Ltd. has been complex as it was developing 17 projects across India and after lots of efforts by the RP and the CoC, the Resolution Plan has been approved which is entitled to benefit 4,406 Real Estate Allottees and granting any relief to the Applicants at such belated stage would derail the entire Resolution Process of the Corporate Debtor. Further, it was never the contention of the RP that the scheduled property is an asset owned by Adel, but only to the extent of development rights.
42. Mr. Sudhir Makkar, Ld. Senior Counsel appearing for M/s. Art Construction Pvt. Ltd., the SRA/Intervener has submitted that the Resolution Professional has rightly included the development rights of the land in dispute in the Information Memorandum of the Corporate Debtor. He, contended that the order dated 15.07.2015 passed by the Ld. Arbitrator terminating the Arbitration proceedings cannot be considered to be an Award passed by the Ld. Arbitrator and is not binding on the parties to the proceedings. He submitted that the Applicants/Land Owners could not have unilaterally terminated the Collaboration Agreement dated 05.07.2008 by issuing Legal Notices dated 17.02.2012 and 22.02.2012 since it is contrary to the terms agreed to between the parties in the Collaboration Agreement. Mr. Makkar, Ld. Senior Counsel referred to Clause 6 of the Collaboration Agreement which stipulates that the termination of the Collaboration Agreement can be done only in case of the following circumstances:

i. In the mutual consent of the parties.

ii. Either party becomes ineligible for participating in the project.

iii. Failure of any party to perform its obligation.

- 43.** He therefore, submitted that the termination of the Collaboration Agreement is invalid and therefore, the development rights still exist with the Corporate Debtor and the inclusion of the property in question in the Resolution Plan submitted by the SRA based on the development rights vested with the Corporate Debtor is correct in the eyes of law. In this regard, he placed reliance on a judgement passed by the Hon'ble Supreme Court India in *Civil Appeal No. 1743 and 1782 of 2021*, in the case of **“Victory Iron Works Vs. Jitendra Lohia and Another”** wherein it has been held that if the Corporate Debtor has been vested with the development rights in a project, then it falls within the rights of the Interim Resolution Professional/ Resolution Professional, as the case may be, to include such properties in its IM.
- 44.** Mr. Makkar, Ld. Senior Counsel contended that the Collaboration Agreement was a registered deed and the registered deed could not have been revoked or cancelled unilaterally by the Applicants without following due process of law i.e. either by way of filing a civil suit or by way of executing a registered deed of cancellation and not otherwise. He therefore contended that the Collaboration Agreement exists in the eyes of the law and the rights are shown to the Corporate Debtor by virtue of the said Collaboration Agreement.
- 45.** Mr. Apporva Aggrawal, Ld. Counsel appearing for Parinda (PBPL) supported the contentions raised by Mr. Bhatt, Ld. Counsel, appearing for the Resolution Professional. He submitted that the Corporate Debtor transferred all the rights, duties and obligations conferred to it under the Collaboration Agreement to the intervener (M/s. Parinda Buildcon Pvt. Ltd.) vide Assignment Agreement dated 25.01.2010. The said Assignment Agreement was duly signed and consented to by the Applicants. He submitted that the Collaboration Agreement which is a registered document could not have been terminated by the Applicants unilaterally, which could be terminated only if it gets cancelled by the Registrar's Office or by a Competent Civil Court. The intervener i.e. M/s. Parinda Buildcon Pvt. Ltd. in the written submissions dated 10.01.2024 has contended that questions w.r.t. title of land cannot be examined in proceedings under the Insolvency and Bankruptcy Code, 2016. He has placed reliance on the judgement of the **IA-4648/2020 In (IB)-1083(PB)/2018**
Date of Order: 30.04.2024

Hon'ble Supreme Court in the case of "**Embassy Property Developments Pvt. Ltd. vs. State of Karnataka & Ors.**" reported in (2020) 13 SCC 308 and the judgement of Hon'ble NCLAT in "**SICOM Ltd. & Anr. vs. Kitply Industries Ltd. & Ors.**" C.A. (AT) (IB) No. 849 of 2021.

46. From the arguments advanced by the Sr. Counsel/ Ld. Counsel appearing for Resolution Professional, the Intervener and Parinda (PBPL), it is seen that an objection has been raised with regard to the validity of the Legal Notices dated 17.02.2012 and 22.02.2012 by which the Applicants have terminated/cancelled the Collaboration Agreement. It is vehemently contended that the Collaboration Agreement is a registered deed which can only be cancelled or terminated by way of executing another registered deed by the parties before the Registrar or Sub-Registrar, as the case may be or by an order passed by a Competent Civil Court having jurisdiction. Ld. Counsel submitted that under no circumstances, the registered Collaboration Agreement can be unilaterally cancelled as has been done in the present case by the Applicants. The terms and conditions under Clause 6 of the Collaboration Agreement clearly stipulate the conditions on which the Collaboration Agreement can be terminated. The Applicants have contended that the Collaboration Agreement has been terminated because of the failure of the Corporate Debtor to perform its obligation. Sub-Clause 'c' of Clause 6 of the Collaboration Agreement says that in case of failure to perform the obligations under the Agreement by a party, the other party may seek remedy available under law after giving due notice to the breaching party. The Applicant has not placed on record any evidence on record to show that he has availed of any remedy available under Law in terms of Sub-Clause c of Clause 6 of the Collaboration Agreement. Further, there is nothing on record to suggest that the Applicants have refunded the total investment of Rs. 64 crores approximately as per the terms of the Collaboration Agreement which is a requirement in case of termination of the said agreement.
47. Further, it will not be out of place to mention that the disputes that have arisen in this case are complex in nature and go to the root of the validity of the Collaboration Agreement, the Assignment Agreement and the Legal Notices given by the Applicants and also as to whether the right, title, interest and possession over the Scheduled Properties have been transferred
- IA-4648/2020 In (IB)-1083(PB)/2018**
Date of Order: 30.04.2024

to the Corporate Debtor and to the Parinda (PBPL) by virtue of the said Agreement and the fact that the Ld. Arbitrator had framed several issues concerning the rights of the parties. We are therefore, of the view that such issues involving disputed questions of facts cannot be determined in a summary proceeding under the IBC and have to be determined by a Competent Civil Court having jurisdiction after recording evidence.

E. **Order:**

- 48.** In view of the analysis and findings recorded above, we are of the view that this Adjudicating Authority has no jurisdiction to decide the issues involving disputed questions of facts. Hence, the present Application is **disposed of** with the above observations.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III

Ivn.P.-58/2023
In
(IB)-1083(PB)/2018

IN THE MATTER OF (IB)-1083(PB)/2018:

M/s. Edelweiss Asset Reconstruction Company Ltd. Financial Creditor
Vs.
M/s. Adel Landmarks Ltd. Corporate Debtor

AND IN THE MATTER OF Ivn.P.-58/2023:

M/s. Art Constructions Private Limited Intervenor

Order Pronounced On: 30.04.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the SRA : Mr. Sudhir Makkar, Sr. Adv., Ms. Riya, Mr. Manir
Jain, Advs.
For the RP : Mr. Sanjay Bhatt, Adv.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present Intervention Petition has been filed by M/s. Art Constructions Private Limited, the Successful Resolution Applicant (SRA) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking intervention in IA No. 4648 of 2020 in CP(IB) No. 1083 (PB) of 2018. The Applicant seeks the following reliefs:

- a. Allow the instant Application,*
- b. Allow the Intervenor to be arrayed as a party to IA No. 4648 of 2020,*
- c. Direct the Applicant in IA No. 4648 of 2020 to implead the Intervenor as a necessary party to the captioned Application and to file an amended memo of party, and/ or,*
- d. Pass any other order in the favor of the Intervenor in the interest of justice, equity and good conscience."*

2. Heard the submissions made by Mr. Sudhir Makkar, Ld. Sr. Counsel appearing for the Intervener.
3. Having regard to the fact that the present intervention has been filed by the M/s. Art Construction Pvt. Ltd., who is the major stakeholder in the resolution of the Corporate Debtor and since the Resolution Plan has been approved by the CoC in its 27th meeting dated 15.09.2022 by 82.66% voting share in respect of the CIRP of the Corporate Debtor, we deem it appropriate to allow the intervention application and permit the applicant to intervene in the main application and make submissions.
4. Accordingly, the Ivn. P. 58/2023 stands **allowed**.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI COURT III**

Item No. 325

New IA-2040/2024 IA-1544/2024 IA-2670/2023

In

(IB)-1083(PB)/2018

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Ltd

.....APPLICANT/PETITIONER

Vs

Adel Landmarks Ltd

.....RESPONDENT

SECTION

U/s 7 of IBC, 2016

Order delivered on 30.04.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the RP : Adv Sanjay Bhatt and Adv Apoorva

**HYBRID HEARING (PHYSICAL & VC)
ORDER**

Renotified to **03.05.2024**.

Sd/-

(Court Officer)

