

In the National Company Law Tribunal

Division Bench, (Court-II), Kolkata

IA (IB) No. 592/ (KB) /2024

In CP (IB) No. 218/(KB) /2023

*Application under Section 60(5) of IBC, Code 2016 read with Rule 11 of
the National Company Law Tribunal Rules, 2016;*

In the Matter of:

Miller Traders Private Limited

...Financial Creditor

Vs.

Jai Gokul Towers Private Limited, having its place of business at Room No. 46, Top Floor, 9 Ezra Street Kolkata – 700 001 and also having its office at 5, Russel Street, Kolkata – 700 071.

...Corporate Debtor

And

In the matter of:

Seikh Abdul Salam, Resolution Professional of Jai Gokul Towers Private Limited

Applicant ...

Vs.

1. IDFC First Bank Limited, a banking company registered under the Banking Regulation Act, 1949;
2. Quest Queen Vista LLP, a Limited liability partnership incorporated under the Limited Liability Partnership At, 2008 having its registered office at C/O- Varima Fashions P Ltd, 107/1, Park Street, Kolkata – 700 016.

....Respondents

Date of Pronouncement of order: 24.04.2024

Coram:

Smt. Bidisha Banerjee : Member (Judicial)

Shri D. Arvind : Member (Technical)

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Counsel appeared physically / through video Conferencing

Mr. Joy Saha, Sr. Adv.] For RP
Mr. Ishaan Saha, Adv.
Mr. Sumit Biswas, Adv.
Ms. Rajashree Bhowmick, Adv.

Mr. Ratnanko Banerji, Adv.] For Respondent No. 1
Mr. Pranit Bag, Bar-at-law
Mr. Rahul Poddar, Adv.

Mrs. Manju Bhuteria, Adv.] For Auction Purchaser
Mrs. Arundhati Barman Roy, Adv.
Ms. Anjali Tulsian, Adv.

O R D E R

Per Bidisha Banerjee, Member (Judicial):

1. The Court convened through hybrid mode.
2. Ld. Sr. Counsels / Counsels for the parties were heard at length.
3. This application has been filed by Seikh Abdul Salam, Resolution Professional of Jai Gokul Towers Private Limited seeking the following reliefs:
 - a. An order be made directing the Baguiati Police Station to render necessary assistance in restoring possession of the said premises to the Applicant herein;
 - b. An order be made restraining the Registrar of Assurances from registering any conveyance in respect of any part or portion of the said premises in favour of Quest Queen Vista LLP;
 - c. An order declaring confirmation of sale of the said premises in favour of the Respondent No. 2 as illegal, null and void;
 - d. Ad-interim orders in terms of prayers above;
4. Before advertng to the facts, a few dates would be relevant to be indicated herein below:

Sl. No.	Date	Events
1.	11.10.2023	E-Auction was held in regard to the

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		property being premises No. 1, Kaji Najrul Islam Avenue, wherein a basement ground 6 storied building having total covered area of 144391 Sq. feet is constructed (hereinafter referred to as the said premises) of which 1/6 th share is admittedly owned by the Corporate Debtor
2.	20.11.2023	Sale confirmation was made in favour of the Respondent Quest Queen Vista LLP who emerged as the H-1 bidder in the said e-Auction.
3.	01.01.2024	Corporate Debtor being Jai Gokul Towers Private Limited was admitted into CIRP in CP(IB)No.218(KB)2023 and thus moratorium under Section 14 of IBC kicked in.
4.	06.03.2024	The Recovery Officer of DRT having noted the order passed in CP(IB)No.218(KB)2023 admitting Corporate Debtor in CIRP and effect of Section 14 of IBC on the assets of the Corporate Debtor as well as restraining order passed by Hon'ble High Court at Calcutta in regard to two floors of the

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		<p>building in question, decided to keep in abeyance of the sale certificate under Section ITCP 20 till the next date of hearing.</p> <p>Further, acknowledging the moratorium, the recovery proceedings against the Corporate Debtor were also kept in abeyance.</p>
5.	14.03.2024	<p>The Recovery Officer directed issuance of ITCP 20 in favour of the Auction Purchaser and feeling that there was no restraining order from any higher forum as on that date, issued directions for sale certificate that is ITCP 20 qua the aforesaid mortgage property in favour of the Auction Purchaser.</p>

5. Ld. Sr. Counsel Mr. Joy Saha appearing for the Liquidator would vociferously oppose the move on the part of the Auction Purchaser to get back possession of the entire property from Receiver who was in possession of the same by virtue of the orders passed by the DRT.
6. Ld. Sr. Counsel would submit that the effect of the order passed by this Tribunal declaring a moratorium in regard to the assets of

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the Corporate Debtor on and from 01.01.2024 could not have been negated or rendered otiose by the order passed by the Recovery Officer of the Ld. DRT.

7. Ld. Counsel would also assert that after admission of the Corporate Debtor into CIRP and effect of moratorium having commenced on and from 01.01.2024, no sale certificate would have been issued in favour of the Auction Purchaser.
8. Ld. Sr. Counsel would submit that RP was in possession of Corporate Debtor's property and have established padlock and deputed security personnel whereas in terms of the order passed by the DRT, Resolution Professional was dispossessed from the property in question.
9. Ld. Sr. Counsel would also submit that till date no sale certificate has been issued in favor of the Auction Purchaser and therefore, the title to the said property is not passed on to the Auction Purchaser as yet.
10. Per contra, vehemently opposing the stand of the Liquidator Ld. Sr. Counsel Mr. Ratnanko Banerji appearing for the Bank would submit that the sale itself having been completed before admission of CP(IB)No. 218(KB)2023, the DRT has rightly passed an order permitting the Successful Auction Purchaser to takeover possession of the property in question from the received appointed by the DRT.

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11. Ld. Sr. Counsel would allege that the Liquidator has not come with clean hands in as much as he has suppressed the fact that a Writ Petition has been preferred before the Hon'ble High Court at Bombay by 5/6th owners of the Property vide WP(L) 9356 of 2024, challenging the orders dated 06.03.2024 and 14.03.2024 and the sale notice dated 08.09.2023 issued in Recovery Proceeding No. 65 of 2021. The Writ Petition has been dismissed by the Hon'ble High Court directing the Petitioners to comply with the mandatory provisions of Section 30 of Recovery Debts Act, 1993 and the DRT decided the Appeal preferred under Section 30 of the Recovery of Debts Act, 1993 and therefore, the present Petitioner, the Liquidator is bound to approach the DRT to seek a setting aside of the orders dated 06.03.2024 and 14.03.2024 as also of sale notice dated 08.09.2024 in the Recovery Proceeding No. 65 of 2021. It is argued that this application is not maintainable on that score alone.

12. Ld. Sr. Counsel would further submit that the RP had never taken possession as wrongly claimed by the Liquidator. In fact, Receiver appointed by DRT-1, Mumbai is in possession of the property in question.

13. Ld. Counsel Ms. Manju Bhuteria appearing for Auction Purchaser would support the stand of Sr. Counsel Mr. Ratnanko Banerji to submit that RP got itself duly represented in the Writ

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Petition that was dismissed and hence RP has full knowledge of the fate of the Writ Petition.

14. It is urged that the Resolution Professional was never in possession of the disputed property / Building in question and therefore, the arguments in para “iv” and para “xix” of the IA are not correct. The possession being already handed over, the same cannot be interfered by this Tribunal at this stage in view of the fact that sale was confirmed long before moratorium under Section 14 of IBC kicked in.

15. We have considered rival contentions and perused the records. The issue in the present application is whether after admission of the CIRP proceedings against the Corporate Debtor its assets could have been handed over to a third party namely Quest Queen Vista LLP, the Successful Auction Purchaser and a sale certificate could have been issued after admission.

16. We would note that Hon'ble Apex Court in **Indian Overseas Bank Vs. M/s. RCM Infrastructure Ltd. & Anr. In Civil Appeal No. 4750 of 2021** has held that:

“In view of the provision of Section 14(1)(c) of the IBC, which have overriding effect over any other law, any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the SARFAESI Act is prohibited. We are of the view that the appellant Bank could not have continued the proceedings under the

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SARFAESI Act once the CIRP was initiated and the moratorium was ordered.”

Hon’ble Apex Court noted that a sale certificate had been issued after the moratorium commenced and further noted that “*the present case arises out of a statutory sale. The sale would be governed by Rules 8 & 9 of the said Rules. The sale would be complete only when the auction purchaser makes the entire payment and the authorized officer, exercising the power of sale, shall issue a certificate of sale of the property in favor of the purchaser in the Form given in Appendix V to the said Rules.*”

17. Hon’ble Apex court also observed the following:

“In the case of Shakeena and another V. Bank of India and Others, which was a case arising out of SARFAESI Act, this Court has held that the sale certificate issued in favour of the Respondent No. 3 did not require registration and that the sale process was complete on issuance of the sale certificate.”

18. In view of the order extracted (supra), there is no gain saying that the sale of Corporate Debtor’s assets was complete before CIRP commenced and moratorium kicked in, in as much as without issuance of a sale certificate a sale process cannot be said to be complete.

19. It is trite, axiomatic and settled law that any action taken by any authority in purported exercise of power, it does not possess, is bad in law and if an order is bad in its inception it does not get

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sanctioned at a later stage and has to be ignored (**Hon'ble Apex Court in the matter of State of Orissa Vs. Manta Mohanty**).

20. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be *non est* and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin (vide: **Upen Chandra Gogoi v. State of Assam & Ors., AIR 1998 SC 1289**).

21. In **Anand Rao Korada Versus Versus M/s. Varsha Fabrics (P) Ltd. & Ors. In 2020 volume 14 of SCC 198** having noted the implications of Section 14 and Section 238 of the IBC, Hon'ble Supreme Court held that in view of the provisions of the IBC, the High Court ought not to have proceeded with the auction and property of the Corporate Debtor once proceedings under the IBC had commenced. Having noted that the assets of the Company were alienated during pendency of the proceedings under IBC which will seriously jeopardize the interest of all the stakeholders, Hon'ble Apex Court had set aside

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the interim order passed by the Orissa High Court directing that liquidation of assets will be governed by provisions of the IBC.

22. The **NCLT, Hyderabad, in the matter of ECL Infra Towers Company Private Limited in IA 124 of 2021 in CP(IB)No.673/7/HDB/2019** having noted identical violation of moratorium has set aside the registration of sale certificate and declared the certificate as void and enforceable. Consequently declaring that the 2nd Respondent derives no right / title / interest in the property.
23. The **NCLT, Hyderabad, in the matter of M/s. RCM Infrastructure Limited in IA 823 of 2019 in CP(IB)601/10/HDB/2018** having noted that on the date of commencement of CIRP Sale of assets of Corporate Applicant had not concluded, set aside sale of assets under SARFAESI Act.
24. We find that the declaration of confirmation of sale and issuance of sale certificate in favour of the Quest Queen Vista LLP, the Successful Auction Purchaser is made post initiation of CIRP and commencement of moratorium which is in blatant violation of Section 14 of IBC and therefore bad in law. The confirmation of sale and the sale certificate issued in violation of Moratorium are declared null and void. Hence, we deem it appropriate to ignore the order declaring confirmation of sale and the sale certificate in question and direct the RP in exercise of power and in terms of Section 14 of the IBC to take back possession of the Corporate

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Debtor's share in the titled property that is jointly owned. We therefore, allow the prayers ' IX. (a)', 'IX. (b)' and 'IX.(c)' of this application in full.

25. We further hold that Quest Queen Vista LLP will derive no right / title / interest in the Corporate Debtor's Property. The Liquidator shall be at liberty to retain possession of the questioned property till liquidation process is over.

26. With the above directions, **IA (IB) No. 592/ (KB) /2024 is allowed and disposed of accordingly.**

27. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

28. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee,
Member (Judicial)

Signed on this the 24th day of April, 2024

M. Jana (P.S.)