

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III

I.A. 5337/2023 & I.A. 5339/2023

In

C.P. No. (IB) 909/MB/C-III/2019

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

I. I.A. 5337/2023

Akbar Bashir Pathan)
G/1, Sai Anand Plaza, Near Himalaya)
Complex, Opp. Golden Nest, Bhayander)
(East), Thane – 401105) **... Applicant**

Vs

Debhasis Nanda)
Resolution Professional of RNA Corp)
Private Limited)
Flat No. C S – 14, C-Floor, Ansal Plaza,)
Vaishali, Ghaziabad, Uttar Pradesh –)
201010) **... Respondent**

II. I.A. 5339/2023

Sai Raj Developers)
G/1, Sai Anand Plaza, Near Himalaya)
Complex, Opp. Golden Nest, Bhayander)
(E), Thane – 401105) **... Applicant**

Vs

Debhasis Nanda)
Resolution Professional of RNA Corp)
Private Limited)
Flat No. C S – 14, C-Floor, Ansal Plaza,)
Vaishali, Ghaziabad, Uttar Pradesh –)
201010) **... Respondent**

IN THE MATTER OF

Bank of India *... Petitioner/Financial Creditor*

Vs

RNA Corp Private Limited *... Respondent/Corporate Debtor*

Order pronounced on: 19.04.2024

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

Appearances:

For the Applicants : Adv. Prakhar Tandon i/b. Agam H Maloo

For the RP : Adv. Harsh Kesharia

For the Promoter : Adv. G Aniruth Purusothaman

Per: Shri. Charanjeet Singh Gulati, Member (Technical)

ORDER

1. The I.A. No. 5337/2023 and I.A. No. 5339/2023 are filed respectively by Akbar Bashir Pathan and Sai Raj Developers (hereinafter referred to as **Applicants**) against the Resolution Professional under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**I&B Code**) seeking reliefs as stated below:

I. I.A. No. 5337/2023

- a. *Issue necessary directions to the Resolution Professional of the Corporate Debtor to co-operate with the Applicant to demarcate the subject land viz, share of lands bearing Survey No. 17 and Hissa No. 4-A admeasuring 4080 sq. mtrs., Survey No. 17 and Hissa No. 4-B admeasuring 3150 sq. mtrs. and Survey No. 17 and Hissa No. 4-C admeasuring 3030 sq. mtrs., situated at Village Kashi, Taluka and District Thane in the Registration District and Sub-District Thane, within the limits of Mira Bhayander Municipal Corporation;*
- b. *Issue necessary directions to the Resolution Professional to value its share in the subject land and sell its share in the subject land after necessary consultation with the Committee of Creditors of the Corporate Debtor.*

II. I.A. No. 5339/2023

- a. Issue necessary directions to the Resolution Professional of the Corporate Debtor to co-operate with the Applicant to demarcate the subject land viz, share of lands bearing Survey No. 98 admeasuring 2830 sq. mtrs., Survey No. 17 and Hissa No. 6 admeasuring 300.07 sq. mtrs., Survey No. 23 and Hissa No. 5 admeasuring 2000 sq. mtrs., and Survey No. 16 and Hissa No. 5-A admeasuring 1310 sq.mtrs., situated at Village Kashi, Taluka and District Thane in the Registration District and Sub-District Thane, within the limits of Mira Bhayander Municipal Corporation;
- b. Issue necessary directions to the Resolution Professional to value its share in the subject land and sell its share in the subject land after necessary consultation with the Committee of Creditors of the Corporate Debtor.

2. Submissions of the Applicants:

The Applicants, in both the I.A.s, have submissions in common which are stated below:

- 2.1 The Corporate Insolvency Resolution Process (**CIRP**) was initiated against RNA Corp Private Limited (**Corporate Debtor**) vide this Tribunal's Order dated 26.11.2019 and moratorium was declared in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 (**I&B Code**).
- 2.2 The Applicant in IA 5337/2023 and the Corporate Debtor are joint owners of undivided parcels of land (**subject land 1**), the distribution of which is provided in the table below:

Sr. No.	Survey No.	Area (Sq. Mtrs.)	Applicant's share (5/6 th)	Corporate Debtor's share (1/6 th)
1	17/4A	4080.00	3400.00	680.00
2	17/4B	3151.00	2626.00	525.00
3	17/4C	3030.00	2525.00	505.00

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2.3 The Applicant in IA 5339/2023 and the Corporate Debtor are joint owners of undivided parcels of land (**subject land 2**), the distribution of which is provided in the table below:

Sr. No.	Survey No.	Area (Sq. Mtrs.)	Applicant's share (5/6 th)	Corporate Debtor's share (1/6 th)
1	98	2830.00	2358.34	471.66
2	17/6	300.07	250.00	50.07
3	23/5	2000.00	1666.67	333.33
4	16/5A	1310.00	1091.67	218.33

2.4 It is submitted that the Applicants, being into the business of real estate development, were desirous to develop the said parcel of the land and even had discussions with the Corporate Debtor for acquiring the 1/6th share also to develop complete parcel/s of land on its own. However, after the commencement of CIRP on 26.11.2019, the management control was taken over by the Resolution Professional. Considering the same, the Applicants decided to develop their own share out of the said parcel of the lands (i.e. 5/6th Share) and approached the Resolution Professional of the Corporate Debtor for identification and demarcation of the subject land. However, till date no proper reply has been filed by the Resolution Professional.

2.5 It is submitted that because of the above situation, the Applicants are unable to utilize the opportunity and any minor changes in demand/supply may drag the Applicants into substantial losses merely because of non-action by the Corporate Debtor.

2.6 It is further submitted that the possession of the entire subject land is with the Applicants, and the Resolution Professional have approached them to handover the possession of the Corporate Debtor's share in the subject land in accordance with section 18(f) of the I&B Code.

- 2.7 It is submitted that the 5/6th share of the subject lands are owned by the Applicants in their own name and are 'third party assets' and thus, there is no question of handing over the 5/6th portion of the subject lands, however, the 1/6th share that belongs to the Corporate Debtor could not be taken over in absence of any demarcation on the subject lands.
- 2.8 The Applicant submits that no records of the Corporate Debtor filed by the Resolution Professional mention the fact that the Applicant is the undisputed owner of 5/6th portion of the subject land and that the said land cannot be handed over to the Resolution Professional for CIRP purpose without demarcation.
- 2.9 It is submitted that identification and demarcation of the subject land will not only enable the Applicants to develop their own share of land but will also enable the Resolution professional to take possession of the share of the Corporate Debtor.
- 2.10 It is submitted that the Applicant herein shall not be deprived of its right to utilize its share of subject land merely for non-action of the Corporate Debtor. The Explanation Clause to Section 18 of the I&B Code has been inserted clearly with the intent to not cause any difficulty or loss to any third party dealing with Corporate Debtor.
- 2.11 The Applicant vide the present application is only seeking necessary co-operation from the Respondent to demarcate the subject land so that there can be necessary bifurcation with respect to the land owned by the Applicant and the Corporate Debtor.
- 2.12 If there is no possibility of demarcation of the land, then, in the alternative, the Respondent shall be directed to sell the share of the Corporate Debtor in the subject lands to the Applicants at the market value. It is submitted that despite declaration of moratorium under

Section 14 of the Code, the Respondent is empowered to sell an unencumbered asset, if he is of the opinion that it may realize a better value for the Corporate Debtor.

2.13 The Applicants pray and submit that considering the pendency of the proceedings before the Hon'ble Supreme Court with respect to the CIRP of the Corporate Debtor, it is in the fitness of things and interest of justice that necessary directions may be issued to the RP for necessary cooperation for demarcation of the subject land.

3. **Submissions of the Resolution Professional**

3.1 The Resolution Professional submitted that the suspended Board of Directors of the Corporate Debtor had preferred an appeal no. 1504/2019 against the CIRP order dated 26.11.2019 which was dismissed by the Hon'ble NCLAT vide order dated 07.02.2020. Consequently, a Civil Appeal no. 827-828/2021 challenging the Hon'ble NCLAT's dismissal was preferred before the Hon'ble Supreme Court which is pending adjudication. The matter was heard, and the Hon'ble Supreme Court has ordered status quo in the matter vide order dated 12.04.2021.

3.2 It is submitted that the Resolution Professional requested the suspended Board of Directors for co-operation in managing the affairs of the Corporate Debtor and to handover the custody and control of assets and records of the Corporate Debtor. However, the directors failed to provide the necessary support consequent to which an application under section 19(2) of I&B Code, 2016 was made. Upon directions by this Tribunal, the suspended management provided some information but not the complete details of the Assets of the Corporate Debtor.

3.3 In such circumstances, the Resolution Professional attempted to identify and take custody and control of the assets of the Corporate Debtor.

During the process, the Resolution Professional came to know about the 1/6th share of the Corporate Debtor in the subject lands, but which were in the possession of the Applicants.

- 3.4 The Applicants approached the Resolution Professional and expressed their willingness to purchase the share of the Corporate Debtor in the said land. It was clarified to the Applicants that no sale of assets of the Corporate Debtor is permissible during the CIRP process other than in the manner laid in the I&B Code, 2016.
- 3.5 The Resolution Professional, being the custodian of the assets of the Corporate Debtor, is conferred upon with the duty to protect and preserve the assets of the Corporate Debtor and accordingly, the RP requested the Applicants to handover possession of the respective share owned by the Corporate Debtor.
- 3.6 It is submitted that this Tribunal may, if it deems fit, allow clause (a) of the prayer along with directions to the Applicant to immediately handover the possession of the respective share of the Corporate Debtor in the subject lands as the same is in the interest of the Corporate Debtor. However, all other prayers are liable to be dismissed.

FINDINGS/OBSERVATIONS

4. Heard the Counsels and perused the records.
5. Since the issues involved in both the applications are common, we consider it appropriate to decide the matter together and pass a common order.
6. Through the present I.A.s, the Applicants have sought two prayers:

- (a) cooperation from the Resolution Professional in the demarcation process of the subject lands;
- (b) transfer by sale of the shares of the Corporate Debtor in the subject lands to the Applicants.

7. To decide on the issues raised and prayers made in these applications, it is important to note certain facts of the case. The Company Petition no. 909/2019 was admitted into CIRP vide order dated 26.11.2019 of this Tribunal. The matter was subsequently appealed and is currently pending before the Hon'ble Supreme Court. While issuing notice on 12.04.2021, the Hon'ble Supreme Court directed to maintain status quo existing as on that date which order is still in operation. The said order dated 12.04.2021 reads as follows:

"Issue notice.

Counter affidavit, if any, be filed in the meanwhile.

*In the meanwhile, **status quo, as it exists today**, shall be maintained by the parties."*

(Bold for Emphasis)

8. The Hon'ble Supreme Court in **Bharat Coking Coal Limited vs. State of Bihar & Ors. [1987 Supp. Supreme Court Cases 394]** observed that *according to the legal connotation, the term "status quo" implies the existing state of things at any given point of time.* The Black's Law Dictionary defines 'status quo' as *"a Latin phrase that means without change and in the same situation as it was."*

Thus, it is clear from the above that a status quo order would mean that the existing state of affairs in a particular case should not change by acts of any party/parties.

9. Further, it is important to see the provisions of section 25 of the code which enumerates the 'Duties of resolution professional, which for the ready reference is reproduced here in under:

"25. Duties of resolution professional. –

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: -

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;

I raise interim finances subject to the approval of the committee of creditors under section 28;

(d) appoint accountants, legal or other professionals in the manner as specified by Board;

I maintain an updated list of claims;

(f) convene and attend all meetings of the committee of creditors;

(g) prepare the information memorandum in accordance with section 29;

[(h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.]

(i) present all resolution plans at the meetings of the committee of creditors;

(j) file application for avoidance of transactions in accordance with Chapter III, if any; and

(k) such other actions as may be specified by the Board."

(Bold for Emphasis)

10. A plain reading of the above provisions clearly indicate that a legal duty is casted on the Resolution Professional ***to preserve and protect the assets of the corporate debtor and take immediate custody and control of all the assets of the corporate debtor.*** Therefore, for these actions to be taken, the Resolution Professional need not seek any directions from this Tribunal.
11. We also note that in this case the insolvency proceedings in respect of the Corporate Debtor had initiated on 26.11.2019 whereas the status quo order was passed by the Hon'ble Supreme Court on 12.04.2021. It is clearly understood from the submissions of the Applicants as well as the Resolution Professional that neither of the parties have any dispute as to the demarcation of the subject lands, thus, both the parties had ample time to settle the issue. Even post the status quo order, if the parties were of the view that the demarcation process will have no effect on the status quo order, they could have proceeded with the demarcation of the subject lands without any need for this Tribunal's intervention.
12. It is the submission of the Applicants that demarcation of the subject lands is required particularly keeping in view the status quo order of the Hon'ble Supreme Court as it would otherwise deprive the Applicants to utilize their share of the subject land. Therefore, the Applicants have come to seek directions to the Resolution professional seeking his cooperation for demarcation etc. only for the reason that there is status quo direction given by Hon'ble Supreme Court with respect to the CIRP process.
13. However, as has been mentioned and understood above at para 7 & 8 of this order, this Tribunal cannot direct the Resolution Professional to do an act which is related to the CIRP process and which would have effect of disturbing the sanctity of the direction of status quo given by the

Hon'ble Supreme Court in the present case. Accordingly, this Tribunal is of considered opinion that such a direction cannot be given to the Resolution Professional. In view of the same, prayer (a) cannot be granted and is therefore **rejected**.

14. As regards prayer (b), we are conscious that Regulation 29 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Process) Regulations, 2016 [**IBBI CIRP Regulations**] provides for sale of unencumbered assets of the Corporate Debtor by the Resolution Professional for better realization of value, however, it is for the Committee of Creditors (**CoC**) to approve the same with 66% voting as stated in clause (2) of Regulation 29 of the IBBI CIRP Regulations. It is only after the approval of CoC that the Resolution Professional shall proceed with the sale and seek approval from this Tribunal. Considering the same, as also of the 'status quo' directed by the Hon'ble Supreme Court, no directions can be given in this case at this stage, relating to the sale of assets of the Corporate Debtor which would have effect of violating the status quo order given by the Hon'ble Supreme Court. Thus, prayer (b) is also **rejected**.
15. In the result, the said I.A. No. 5337/2023 and I.A. No. 5339/2023 are **dismissed**.

Per: Ms. Lakshmi Gurung, Member (Judicial)

16. I had the privilege of going through the judgement of my Ld. Brother. I concur with the conclusion of my Ld. Brother, however, would like to add some further observations.
17. The two interlocutory applications are filed seeking the following reliefs:
 - a. Issue necessary directions to the Resolution Professional of the Corporate Debtor to co-operate with the Applicants to demarcate the subject lands;

- b. Issue necessary directions to the Resolution Professional to value its share in the subject land and sell its share in the subject land after necessary consultation with the Committee of Creditors of the Corporate Debtor.
18. We are conscious of the fact that Mr. Anubhav Anilkumar Agarwal, the suspended director of the Corporate Debtor, had preferred an appeal against the admission order dated 26.11.2019 before the Hon'ble NCLAT vide Company Appeal (AT) (Ins) No. 1504/2019 on two grounds viz. limitation and insolvency proceedings initiated against a guarantor for the same set of claims. The Hon'ble NCLAT dismissed the said appeal vide order dated 07.02.2020. Thereafter, a review application seeking review of order dated 07.02.2020 was filed by the suspended director which was again dismissed by Hon'ble NCLAT on 07.12.2020.
19. Thereafter, the suspended director filed Civil Appeal No. 827-828 of 2021 challenging the NCLAT orders dated 07.02.2020 and 07.12.2020. The Hon'ble Supreme Court vide order dated 12.04.2021 directed that *status quo, as it exists today, shall be maintained by the parties*. The meaning of status quo that this Bench construes is that the status quo order is with respect to taking the process of CIRP forward. In other words, the order dated 26.11.2019 whereby the Corporate Debtor was admitted to CIRP has not been wiped out.
20. Under the Insolvency and Bankruptcy Code, 2016, the Resolution Professional is duty bound to take control of the assets of the Corporate Debtor. We note that, in the present case, though the Corporate Debtor had purchased 1/6th portion of the subject lands, however, the possession of the land is not with the Corporate Debtor. Therefore, the Resolution Professional has submitted that prayer (a) may be allowed

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with a direction to the Applicant to immediately handover the possession of the respective share of the Corporate Debtor.

21. In view of above facts, it is in the interest of the Corporate Debtor that the 1/6th share of the Corporate Debtor in the subject lands to be handed over to the Resolution Professional as mandated under the provisions of the IBC but due to the 'status quo' order dated 12.04.2021 by the Hon'ble Supreme Court, no directions in this regard can be granted by this Tribunal which will have the effect of disturbing the 'status quo'.
22. It is further noted that no progress has been made in the said Civil Appeal No. 827-828 of 2021. One of the objectives of the IBC is time-bound completion of CIRP. The parties are at liberty to approach the Hon'ble Supreme Court for expediting the said civil appeal pending before it, especially in view of the fact that CIRP process is not moving forward thereby hampering the objective of the Insolvency and Bankruptcy Code, 2016.
23. With the above observations, the Interlocutory Applications No. 5337/2023 and 5339/2023 are **dismissed**.

Sd/-

Charanjeet Singh Gulati
Member (Technical)

Sd/-

Lakshmi Gurung
Member (Judicial)

Uma, LRA