

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI**

Company Appeal (AT) (Insolvency) No. 872 of 2023
IN THE MATTER OF:

Ramesh Singh Rawat

...Appellant

Versus

SPG Global Distribution Pvt. Ltd.

...Respondents

Present:

For Appellant : Mr. Raghav Sabharwal, Advocate

For Respondent : Mr. P K Mishra, Liquidator

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This appeal is directed against the order dated 02.06.2023, passed by the Adjudicating Authority (National Company Law Tribunal, Chandigarh Bench) in I.A. No. 937 of 2020 filed in C.P. (IB) No. 254/Chd/Hry/2019, by the Resolution Professional (in short 'RP') of SPG Global Distribution Pvt. Ltd. (Corporate Debtor) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') r/w Rule 11 of the NCLT Rules, 2016 (in short 'Rules') for eviction of the Appellant from the property in question has been allowed, the Appellant has been directed to hand over the possession of the property in question to the RP (now Liquidator) within 15 days from the passing of the order and the Statutory Authorities i.e. Local Police, is also directed to provide assistance to the Applicant in the application, in case, the vacant possession of the property in question is not handed over by the Appellant herein within the prescribed time period.

2. The Corporate Insolvency Resolution Process (in short 'CIRP') against the Corporate Debtor was initiated vide order dated 06.12.2019 on an

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application filed by an Operational Creditor. I.A. No. 937 of 2020 was filed by the RP alleging that the entire first floor, having covered area of 945 sq. ft. without roof rights/terrace rights (Property No. 1) and 3rd floor consisting of one room (Property No. 2) at commercial shop plot no. 363, 364, 365, B-type, situated at Nehru Ground, NIT, Faridabad is the property of the corporate debtor in view of sale deed dated 03.09.2014. However, the Applicant/RP came across an agreement to sell dated 31.03.2018 in respect of entire first floor, having its covered area 945 sq. without roof/terrace rights, construction on commercial shop plot no. 363, 364, 365, situated at Nehru Ground, NIT, Faridabad, executed between the Corporate Debtor and Ramesh Singh Rawat (the Appellant) proprietor of R. R. Systems. The total sale consideration of the above said property was fixed at Rs. 75,00,000/-.

3. The RP made the prayer in the application that in the absence of a sale deed, the Appellant herein has not acquired the ownership rights and that some unidentified person is residing in property no. 2 because of which he is unable to take possession of the asset of the Corporate Debtor. In the application, prayer was thus made for eviction of the Appellant from the property of the corporate debtor and also for the police assistance.

4. Counsel for the Appellant has submitted that agreement to sell was executed between him and the Corporate Debtor on 31.03.2018 and a sum of Rs. 30,40,000/- was paid in part performance. It is further submitted that on 31.05.2018, the date for execution of sale deed was extended and the Appellant was put into possession of property no. 1 as it is evident from the receipt dated 29.05.2018. It is further alleged that the date of execution of sale deed was extended on various occasions but finally it was agreed on

09.05.2019 that if the Corporate Debtor would fail to abide by his commitment of executing the sale deed by 03.06.2019 then the Appellant shall have the right to take action against the Corporate Debtor. It is further alleged that in the agreement to sell, it has been provided that in case the Corporate Debtor backs out from the bargain and fails to complete the formalities of the execution of the sale deed then the Corporate Debtor shall be liable to refund to the Appellant double the amount of earnest money and alternatively, shall have the right to seek specific performance of the agreement to sell. It is however submitted that on 06.12.2019 the Corporate Debtor was admitted into insolvency and hence, the agreement to sell could not be executed. It is further submitted that the RP, during the CIRP, did not accept the claim of the Appellant but it is also admitted that since the Corporate Debtor is in liquidation, the Liquidator has admitted the part claim of the Appellant to the tune of Rs. 18 lakh as 'other stakeholder'.

5. Counsel for the Appellant has argued that the Adjudicating Authority has committed a patent error in passing the order of eviction although the possessory title of the Appellant is protected under Section 53A of the Transfer of Property Act, 1882 (the Act, 1882) and that the Adjudicating Authority had no jurisdiction to decide the lis between the parties as it is beyond its jurisdiction. In this regard, he has referred to the decisions of the Hon'ble Supreme Court in the cases of Tata Consultancy Service Limited Vs. Vishal Ghisulal Jain, RP, SK Wheels Pvt. Ltd., 2021 SCC Online SC 1113, Gujarat Urja Vikas Nigam Limited Vs. Amit Gupta & Ors., 2021 SCC Online SC 194, Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka & Ors, 2019 SCC Online SC 1542 and a decision of this Tribunal in the case of

Sicom Ltd. & Anr. Vs. Kitply Industries Ltd. & Ors., CA (AT) (Ins) No. 849 of 2021. It is further submitted that the Liquidator has also erred in not taking into consideration the transaction of Rs. 7,00,000/- made through RTGS and accepted the claim of the Appellant to the tune of Rs. 18 lakh only.

6. In sum and substance, the argument of the Appellant is that because of the agreement to sell, the Appellant was either entitled to refund double of the earned money in view of Clause 7 of the said agreement or he is entitled to seek specific performance of the contract through a suit before the Civil Court whereas the right of the Appellant has been closed by the Adjudicating Authority by way of impugned order.

7. On the other hand, Counsel for the Respondent has submitted that the Appellant has made the payment of Rs. 30,40,000/- as alleged and in the manner as follows:-

- “i. Rs.8 Lakhs in cash (of which there is no record other than mention in the Agreement to Sell); however, since the same has been acknowledged by the Corporate Debtor, the said amount has been admitted as Appellant's claim;
- ii. Rs.7 Lakhs through RTGS UTR No.ORBCH1809004450 dated 31.03.2018 drawn on Oriental Bank of Commerce and made into the account of M/s E2S Infranet Pvt.Ltd. (“E2S Infranet”) (and not the Corporate Debtor). It is pertinent to mention that the said E2S Infranet is another company of one of the directors of the Corporate Debtor (namely, Mr. Chander Shekhar Kukreja);
- iii. Rs. 7.50 Lakhs paid on 29.05.2018 through RTGS UTR No. SBINR5201805290000 dated 29.05.2018 drawn on State Bank of India;
- iv. Rs.2.50 Lakhs paid on 29.05.2018 through RTGS UTR No. FDLR52018052800202891 drawn on Federal Bank;
- v. Rs.4.50 Lakhs paid on 24.07.2018 vide RTGS UTR No. FDLR52018072400606963; the said payment is not reflected in the accounts of the Corporate Debtor
- vi. It has been alleged that Rs.90,000/- (Rupees Ninety Thousand only) paid to discharge the loan liability of the Corporate

Debtor;however,the said payment was made only in the account of M/s E2S Infranet Pvt.Ltd.

vii. Thus, a total of Rs.30,40,000/-has been claimed to have been paid by the Appellant;”

8. However, claim of Rs. 18 Lakh has been admitted by the Respondent as against the claim of Rs. 60,80,000/- made on the basis of clause 7 of the said agreement alleging that in case of failure of agreement on the part of the seller, the purchaser would be entitled to double of the earnest money. It is also submitted that the property in question was already mortgaged by the Corporate Debtor (alongwith E2S Infranet) for the loan of Rs. 98.50 lakhs availed from DCB Bank Limited on 29.08.2016 and hence it could not have entered into agreement with the Appellant. It is further submitted that even if the agreement to sell was executed on 31.03.2018 but since the sell deed was not executed by the Corporate Debtor and the Appellant till 30.11.2018 in terms of the extension agreement dated 14.09.2018, the said agreement to sell stood terminated even before the CIRP was initiated on 06.12.2019. It is further submitted by the Respondent that there is no error in the impugned order by which the Appellant has been asked to vacate the property in question which is in his illegal possession. It is also submitted that the Respondent could not take possession because the order of stay was passed by this Tribunal despite the fact that the appeal is barred by limitation for which the Appellant has filed an application bearing I.A. No. 2965 of 2023 for condonation of delay in filing the appeal and the same was not pressed at the time of issuance of notice in appeal and the grant of stay.

9. We have heard Counsel for the parties and perused the record with their able assistance.

10. The whole case is based upon the agreement to sell dated 31.03.2018. According to the said agreement, the deal was struck for sum of Rs. 75 Lakh out of which the Appellant is stated to have paid Rs. 8 Lakh in cash and Rs. 7 Lakh through RTGS. It was also provided in Clause 7 of the said agreement that 'in case the said seller backs out from the bargain and fails to complete all the formalities than the said seller shall be liable to refund to the said purchaser double of the earnest money received by him and in case the purchaser does not accept such liquidated damages the purchaser shall have the right to get sale of said property effected through court or law under specific performance of the contract'

11. According to the Appellant, the date for execution of sale deed was extended on 31.05.2018 and on 29.05.2018 he was put in possession. He relies upon a receipt dated 29.05.2018. The said receipt is of Rs. 10,00,000/- paid towards the part payment by the Appellant and in the said receipt, it is mentioned that 'and whereas on the request of the seller and purchaser mutually agreed to extend the date of final payment from 31.05.2018 to 31.07.2018 and all the terms and conditions are still valid as per agreement. That the seller handing over the possession of the said property to the said purchaser on or before 31.05.2018.' There was extension of time with the deposit of part payment and ultimately on 14.09.2018 a MOU was entered into between the parties in which it was resolved that 'the both parties mutually agreed to extent the date of full and final payment on or before 15.11.2018 and after 15.11.2018 Rs. 2,00,000/- will be deducted from the sale amount if dated exceed from 15.11.2018 and then final date is 30.11.2018 and after this date the deal will be cancelled as

per agreement dated 31.03.2018'. It is an admitted fact that the Appellant did not make full and final payment either before 15.11.2018 or 30.11.2018 which was fixed as final date and thus in terms of the MOU dated 14.09.2018 the agreement came to an end and the possession of the Appellant was changed from a prospective vendee to a trespasser.

12. The argument raised by the Appellant that he is protected under Section 53A of the Act, 1882 is of no avail because Section 53A would have applied if the Appellant had performed his part of the contract. Meaning thereby, the Appellant had deposited the entire amount of consideration and was in possession. The total sale consideration was Rs. 75 Lakh whereas according to the Appellant, he had paid only 30,40,000/- though taking various opportunities and getting the date of execution of sell deed extended from time to time. It was a categorical contract between the parties on 14.09.2018 that either the Appellant shall be paid the entire amount and in case he does not pay then the seller would deduct Rs. 2 Lakh from the amount received from the purchaser but in any case, the last date was fixed as 30.11.2018, however, the Appellant did not pay or perform his part of the contract by depositing the remaining amount of consideration, therefore, in our considered opinion, he is not protected under Section 53A of the Act, 1882.

13. In so far as the issue regarding the jurisdiction of the Adjudicating Authority is concerned, the judgments relied upon by the Appellant are all decided on its own facts.

14. Section 60(5) of the Code provides the power to the Adjudicating Authority which can be invoked to entertain or dispose of any claim made by

or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and also any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code. Section 238 of the Code creates an overriding effect which provides that the provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

15. In this regard, observations made by the Hon'ble Supreme Court in the case of Gujarat Urja (Supra) is required to be referred to which read as under:-

“71. The institutional framework under the IBC contemplated the establishment of a single forum to deal with matters of insolvency, which were distributed earlier across multiple fora. In the absence of a court exercising exclusive jurisdiction over matters relating to insolvency, the corporate debtor would have to file and/or defend multiple proceedings in different fora. These proceedings may cause undue delay in the insolvency resolution process due to multiple proceedings in trial courts and courts of appeal. A delay in completion of the insolvency proceedings would diminish the value of the debtor's assets and hamper the prospects of a successful reorganization or liquidation. For the success of an insolvency regime, it is necessary that insolvency proceedings are dealt with in a timely, effective and efficient manner. Pursuing this theme in *Innoventive* (supra) this court observed that —one of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process. The principle was reiterated in *Arcelor Mittal* (supra) where this court held that —the

non-obstante Clause in Section 60(5) is designed for a different purpose: to ensure that the NCLT alone has jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings¹. Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the Corporate Debtor. However, in doing so, we issue a note of caution to the NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the Corporate Debtor. The nexus with the insolvency of the Corporate Debtor must exist.”

16. It has been held that the non-obstante clause in Section 60(5) is designed for a different purpose to ensure that the NCLT alone has the jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings. It was held by the Hon’ble Supreme Court that the NCLT has the jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the corporate debtor but it has also been held that while doing so, the Tribunal may not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the corporate debtor and nexus with the insolvency of the corporate debtor must exist. It is pertinent to mention that the facts of the case of Gujarat Urja (Supra) are altogether different from the facts of the present case because in that case PPA was terminated solely on

the ground of insolvency since the event of default contemplated under Article 9.2.1(e) was the commencement of insolvency proceedings against the corporate debtor. In the absence of the insolvency of the corporate debtor, there would be no ground to terminate the PPA. The termination is not on a ground independent of the insolvency, therefore, the dispute in that case solely arising out of and relates to the insolvency of the corporate debtor and it was thus held that the RP can approach the NCLT for adjudication of the dispute that were related to the insolvency resolution.

17. Similarly, in the present case also, the issue is in regard to the title of the property of the Corporate Debtor which is in CIRP and as per Section 60(5)(c) of the Code the question of fact as to whether the asset of the Corporate Debtor is the property of the Appellant on account of the agreement or is the property of the Corporate Debtor in CIRP is a question relating to the insolvency resolution.

18. In so far as the decision rendered in the case of Embassy Property Developments Pvt. Ltd. (Supra) is concerned, it was a case where the corporate debtor was holding a mining lease granted by the Government of Karnataka which was to expire on 25.05.2018. A notice for premature termination of the lease was issued on 09.08.2017, on the allegation of violation of statutory rules and the terms and conditions of the lease deed, no order of termination had been passed till the date of initiation of the CIRP. The IRP therein addressed a letter dated 14.03.2018 to the Chairman of the monitoring committee as well as the director of mines and geology informing them of the commencement of CIRP. He also wrote a letter dated 21.04.2018 to the director for seeking the benefit of deemed extension of the

lease beyond 25.05.2018 upto 31.03.2020 in terms of Section 8-A (6) of the mines and minerals (development and regulation) Act, 1957. Since, no response was found, therefore, RP filed a writ petition seeking a declaration that the mining lease should be deemed to be valid upto 31.03.2020 but during the pendency of the writ petition, Government of Karnataka passed an order dated 26.09.2018, rejecting the proposal for deemed extension. The RP moved an application before the NCLT for setting aside the order of the Government of Karnataka and seeking a declaration that the lease should be deemed to be valid upto 31.03.2020 which was allowed by the NCLT and ultimately the Adjudicating Authority directed the Government of Karnataka to execute the supplement lease deed. In the background of these facts, the Hon'ble Supreme Court has held that "therefore, in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot through the RP, take a bypass and go before NCLT for the enforcement of such a right" However, facts of the present case are altogether different from the aforesaid case. In so far as the decision in the case of Tata Consultancy Service Limited (Supra) is concerned, the Hon'ble Supreme Court has reiterated that the RP can approach the NCLT for adjudication of disputes which relate to the insolvency resolution process, but when the dispute arises dehors the insolvency of the corporate debtor, the RP must approach the relevant competent authority. Similar view has been expressed by this Court in the case of Sicom Ltd. (Supra).

19. Thus, the contention raised by the Appellant that the Adjudicating Authority had no jurisdiction to decide the lis between the parties in so far as the application is concerned, is rejected.

20. It is also pertinent to mention that the argument raised by the Appellant that the Appellant is entitled to double of the earnest money paid towards the part performance, in view of clause 7 of the agreement is concerned, it would not apply to this case because there was no denial on the part of the Corporate Debtor for the execution of the sale deed rather it was agreed by both the parties that the Appellant shall complete his part of the contract by 30.11.2018 which he had failed to perform, therefore, we do not find any substance in this argument as well.

21. Thus, looking from any angle, there is hardly any merit in this appeal which requires interreference by this Court and hence, the same is hereby dismissed though without any order as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Ajai Das Mehrotra]
Member (Technical)

New Delhi

27th February, 2024

Sheetal