

NATIONAL COMPANY LAW APPELLATE TRIBUNAL AT
CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.
257/2023 (IA Nos. 814 & 815/2023)
(Filed under Section 61 of the Insolvency and Bankruptcy Code,
2016)

Arising out of the Impugned Order dated 23/06/2023
in IA No. 361/2021 in C.P.(IB) No. 243/BB/2018, passed
by the 'Adjudicating Authority', (National Company Law
Tribunal,

Bengaluru Bench, Bengaluru)

In the matter of:

Narappa Manohar Reddy	...Appellant
V	
Pankaj Srivastava	...Respondent

WITH

Company Appeal (AT) (CH) (Ins) No.
261/2023 (IA Nos. 822 & 823/2023)
(Filed under Section 61 of the Insolvency and Bankruptcy Code,
2016)

Arising out of the Impugned Order dated 23/06/2023
in IA No. 568/2022 in C.P.(IB) No. 243/BB/2018, passed
by the 'Adjudicating Authority', (National Company Law
Tribunal,

Bengaluru Bench, Bengaluru)

In the matter of:

Narappa Manohar Reddy	...Appellant
V	
Pankaj Srivastava	...Respondent

Present :

For Appellant	:	Mr. Atul Madhavan, Advocate
		For Mr. K. Dushyanantha Kumar, PCS
For Respondent	:	Mr. Abhishek Anand, Advocate

ORDER
(Date: 24.8.2023)
(Virtual Mode)

1. Two appeals, namely CA (AT) (Ins.) No. 257 of 2023 and CA (AT) (Ins.) No. 261 of 2023 have been filed by Narappa Manohar Reddy, who is a shareholder and erstwhile Director of M/s. Sagar Power (Neerukatte) Private Limited. Mr. Narappa Manohar Reddy, who is the Appellant in both the appeals, has filed the appeals aggrieved by the order dated 23.6.2023 (“Impugned Order”) passed by National Company Law Tribunal, Bengaluru Bench (Adjudicating Authority) in IA No. 568 of 2022 and IA No. 361 of 2021, both filed in CP(IB) No. 243/BB/2018.

2. In CA (AT) (Ins.) No. 257 of 2023, the Appellant is aggrieved by the order of the Adjudicating Authority in which he has been found to trespass on a property, allegedly owned by the corporate debtor, situated at Survey 463/2, Bajattur Village, Putur Paluk, Dakshina Kannada District. The Appellant has alleged that by the Impugned Order, the Adjudicating Authority has, without application of mind and mechanically, allowed IA No. 568 of 2022 and without any evidence given a finding that the Appellant has trespassed on the said property.

3. Insofar as the Impugned Order passed in IA No. 361 of 2021 is concerned, the Appellant is aggrieved by the fact that the Impugned Order holds that he has not cooperated with the Resolution Professional (“RP”), and without any evidence regarding his non-cooperation, passed the

Impugned Order erroneously. The Appellant has further claimed that the land belonging to the Appellant could not be treated as an asset of the corporate debtor in terms of the section 19 of the IBC.

4. Briefly, the facts of the case are that corporate insolvency resolution process (“CIRP”) was initiated against the corporate debtor M/s. Sagar Power (Neerukatte) Private Limited, wherein Mr. Pankaj Srivastava was appointed as Resolution Professional (Respondent in both the appeals). After completion of CIRP period since no successful resolution plan was obtained, the Adjudicating Authority approved the application for liquidation of the corporate debtor on 4.11.2022 and consequently Respondent Mr. Pankaj Srivastava was appointed as liquidator. The Appellant has stated that in a meeting of Committee of Creditors (“CoC”) held on 28.12.2022, the CoC sought information with regard to land parcels of the corporate debtor, its other liabilities, books of accounts etc. to assess the financial condition of the corporate debtor. The Appellant has stated that he had provided all the relevant and necessary information to the liquidator, but despite his having done so, the liquidator filed IA No. 361 of 2021 under section 19(2) seeking direction of the Adjudicating Authority to the Appellant to provide all the original documents in possession of the respondent in support of acquisition of the said land as appearing in the Audited Financial Statement of the corporate debtor, and therefore, Appellant has further stated that the land in question is his personal property and does not belong to the corporate debtor. Therefore, there is no question of his trespassing on the

corporate debtor's property.

5. In the above regard, the relevant portion of the order dated 23.6.2023 in IA No. 361 of 2021 passed by the Adjudicating Authority is reproduced below:-

“8. In respect of Liquidation, it is necessary to reproduce Sec 34(3) of IBC which is as under:

“(3) The personnel of the corporate debtor shall extend assistance and corporation to the liquidator as may be required by him in managing the affairs of the corporate debtor and provisions of Section 19 shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the interim resolution professional.”

9. *It is desirable that, the respondents extent cooperation to ensure that the Liquidator functions and conducts liquidation in terms of the provisions of Insolvency and Bankruptcy Code, 2016. Accordingly, as per Section 19 and section 34 of IBC, this Adjudicating Authority directs the respondent no 1 to provide all the original documents in the possession in support of acquisition of lands as appearing in the Audited Financial Statements.*

10. *Moreover, this Adjudicating Authority is of the view that, the ex-director/management collectively and independently, must furnish information and documents and extend full co-operation to the liquidator for completing the required compliances to various statutes for a successful completion of the liquidation of the Corporate Debtor. The respondents should cooperate with the Liquidator in respect of supply of the documents as mentioned in prayers in the IA; and they cannot escape their obligation. Therefore, this Adjudicating Authority in order to implement the intention of the Code directs the ex-director/management to extent full co-operation and simultaneously furnish all the requisite documents related to Corporate Debtor as desired in the prayers.”*

6. The Learned Counsel for Respondent has submitted that the relevant provision of law which gives the mandate that the ex-directors

have to provide the requisite assistance and cooperation to the RP/ Liquidator during the CIRP and the Liquidation Process. In this context, Sections 19 and 34(3) of the IBC are reproduced hereinunder: -

"19. Personnel to extend co-operation to interim resolution professional.

(1) The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor.

(2) Where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions.

(3) The Adjudicating Authority, on receiving an application under subsection (2), shall by an order, direct such personnel or other person to comply with the instructions of the resolution professional and to cooperate with him in collection of information and management of the corporate debtor.

xx xx xx xx

34. Appointment of liquidator and fee to be paid. –

(3) The personnel of the corporate debtor shall extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the corporate debtor and provisions of section 19 shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the interim resolution professional.

7. A close perusal of the Impugned Order in respect of the furnishing of the original documents in possession in support of acquisition of land as appearing in the Audited Financial Statement shows that the Adjudicating Authority has only directed R-1 (Appellant) to provide all the original documents in his possession in support of acquisition of land as
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appearing in the financial statement of the liquidator. Such an order does not cause any prejudice to the appellant, but merely requires the appellant to produce original documents which may be in his possession in support of acquisition of said land. It stands to reason that in case the Appellant for some reason is not in possession of the original documents, he could always explain to the liquidator the correct position and produce photo copies of the said document. Such an action certainly does not cause any prejudice to the Appellant and he cannot claim to be aggrieved by this part of the order. Moreover, the said order does not return any finding regarding any non-cooperation by the Appellant, but merely directs the Appellant to cooperate with the liquidator for completion of the liquidation process.

8. The Learned Counsel for the Respondent has cited the judgment of this Tribunal in the matter of **Shailesh Chawla and Ors. Vs. Vinod Kumar Mahajan and Ors. Company Appl. (AT) (INS) No. 571 of 2020**, in support of his contention, which is reproduced below:-

"36. It is to be pointed out that section 19 of the 'I & B' code imposes an obligation on the personnel and promoters of the 'Corporate Debtor' to extend all assistance and cooperation with the 'Interim Resolution Professional' may acquire the management of the affairs of the 'Corporate Debtor', 'Personnel refers to directors, managers, key managerial personnel, designated partners and employees, If any of the Corporate Debtor by means of Section 5 (23) of the Code. The burden of establishing a case is on the office holder and is required to satisfy the 'Authority' concerned that the information he seeks is reasonably required.

37. It cannot be lost sight of that where any personnel of the 'Corporate Debtor' does not render assistance or cooperation to the 'Interim Resolution Professional', the 'National Company Law Tribunal' 'Adjudicating Authority' on the application projected by the

'Interim Resolution Professional' is empowered to pass an order and direct the person (s) to comply with the instructions of the 'Interim Resolution Professional' and cooperate with him in the collection of information and management of the 'Corporate Debtor'

9. It is seen from the above judgment that an application is placed on the promoters and personnel of the corporate debtor to cooperate with the Interim Resolution Professional (“IRP”) and help in timely completion of the resolution or liquidation process. We are of the view that the Impugned Order in both the appeals have been given to ensure that proper and adequate cooperation is rendered by the personnel, ex-promoters and directors of the corporate debtor to the Resolution Professional/Liquidator to ensure that the process of insolvency resolution or liquidation is completed in a timely manner, which is at the very heart of IBC.

10. Now turning our attention to CA (AT) (CH) (Ins.) 261/2023, the relevant portion of the order in IA No. 568 of 2022 (which is impugned) is reproduced below:-

“3. *Heard the Learned Counsel for the applicant. We have carefully perused the pleadings of the parties and extant provisions of the Code, and the Regulations made there under.*

4. *On 9.1.2023, when the matter was listed, this Tribunal issued notice. The proof of service filed by the applicant vide diary no. 650 dated 02.02.2023, with tracking report with an endorsement showing ‘item delivery confirmed’, the respondents did not appear, therefore the respondents are proceeded against on an exparte basis.*

5. *We have observed that, trespassing of the property of the corporate debtor by any persons including the*

respondents causes hindrance in the process of liquidation. Therefore, respondents are restrained from trespassing or dealing with the Schedule properties or assets owned by the corporate debtor and corporate debtor/liquidator is directed to maintain the status quo with regard to the Schedule property till the disposal of CP(IB) No. 243/BB/2018.”

11. A perusal of para 4 of the above Impugned Order shows that despite service of notice, the Respondent (Appellant herein) did not appear before the Adjudicating Authority and case was proceeded ex-parte against him. Para 5 of the Impugned Order clearly shows that in view of the property being held by the Corporate Debtor as appearing in corporate debtor's Audited Books of Accounts, the Appellant was restrained from trespassing on the property of the corporate debtor or dealing with the property owned by the corporate debtor, and was directed to maintain status quo with regard to the scheduled property till disposal of the CP(IB) No. 243/BB/2018.

12. We do not find that the Impugned Order gives any finding regarding the ownership of the said property, but merely requires that the Appellant or any other person should not trespass on the property of the corporate debtor and status quo regarding the scheduled property should be maintained till the successful completion of the liquidation process. We are, therefore, of the view that such an order does not cause any prejudice to the Appellant and merely requires him to maintain status quo. The question of his ownership or otherwise of the said land is not the subject of section 19 application filed by the liquidator.

13. In view of the above-mentioned situation, we find that both the company appeals, namely CA (AT) (Ins.) No. 257 of 2023 and CA (AT) (Ins.) No. 261 of 2023, are devoid of any merit. Therefore, these appeals do not deserve to be admitted and are dismissed at the stage of admission. No order as to costs.

(Justice M. Venugopal)
Member (Judicial)

(Dr. Alok Srivastava)
Member (Technical)

Chennai

24th August, 2023

/aks/