

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH NEW DELHI

Company Appeal (AT) (Insolvency) No. 931 of 2020

[Arising out of order dated 22-09-2020 in IA No. 234/2020 IN C.P.(I.B.) No. 197/Chd/Chd/2019 passed by National Company Law Tribunal, Chandigarh Bench, Chandigarh]

IN THE MATTER OF:

Mr. Sumat Gupta,

Registration Number IBBI/IPA-001/IP-P00167/2017-2018/10336

Resident of C/O 2581/3,B-1,Near Zoom Hotel Building,

Industrial Area-A Transport Nagar, Ludhiana-141003,

Resolution Professional, M/s Agro Dutch Industries Limited.

... Appellant / Resolution Professional

Versus

1. **Sh. RD Sharma,**

Incharge, M/s Mars Envirotech Limited, Vill Tohfapur,

Lalru, Distt Mohali, Punjab, Whats App No. 9779925500.

2. **M/s Mars Envirotech Limited,**

Regd Office: 28A, Vidhan Sabha Marg,

Near Burlington Crossing, Lucknow UP 226001,

Marsgroup001@gmail.com

...Respondents

For Appellant: Dr. Rajansh Thukral, Advocate.

For Respondents: Mr. Pankaj Khullar, for R-1 and R-2.

J U D G M E N T

Justice Anant Bijay Singh,

The instant Appeal has been filed against the order dated 22.09.2020 passed by the Adjudicating Authority, National Company Law Tribunal, Chandigarh Bench, Chandigarh in I. A. No. 234/2020 IN C.P.(I.B.) No. 197/Chd/Chd/2019 whereby and whereunder the Ld. Adjudicating Authority passed the following order:

“ 9. Therefore, the respondent and their men or anybody claiming through them shall not create any hindrance or obstacle to the applicant or any personnel working under his control in any manner. The respondents cannot claim any right on the common road. If the respondent or its employees or anybody claiming through them create any disturbance or hindrance to the Resolution Professional or to any of his staff or security personnel in any manner, he may approach this Authority by filing an appropriate application for appropriate directions.

10. This order shall not be construed as conferring/recognizing existence of any common road or any right on/of the respondent company to use the common road or to claim any right over it.

11. Accordingly, IA No. 234/2020 is disposed of.

Copy of this order be supplied to the parties by the Registry.”

2. The brief facts giving rise to the instant Appeal is as follows:

i. That the Corporate Debtor - M/s Agro Dutch Industries Limited was put into 'Corporate Insolvency Resolution Proceeding' (**for short CIRP**) upon an Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**for short IBC**) filed by State Bank of India - Financial Creditor against the Corporate Debtor in C.P.(I.B.) No. 197/Chd/Chd/2019 vide order dated 27.11.2019.

ii) That Sh. Desh Deepak, Insolvency Resolution Professional having Registration No. IBBI/IPA-001/IP-P00648/2017-18/11105 was appointed as Interim Resolution Professional on 25.02.2020 by the Adjudicating Authority.

iii) That after taking charge of the property of the Corporate Debtor. One of the property of the Corporate Debtor is situated at Vill Tohfapur, Lalru, Distt Mohali, Punjab which is in close proximity to the Respondent No. 1 - Sh. RD Sharma, Incharge, M/s Mars Envirotech Limited. The total area of land of housing Tohfapur plant is more than 100 Ares.

iv) That this plant was closed long back and the entire property comprising of Plant, machinery, land and building requires protection and for this purpose security has been deployed from M/s VR India Security Services Private Limited, Royal Business Park, Motia Group, 5th Floor, 33-B, Zirakpur, Distt Mohali to take care of the property of the company.

v) Further case is that during the period the premises were closed it appears that the Respondent No. 1 broke the wall and opened a gate inside the

premises of the Corporate Debtor for the purpose of using the property of the Corporate Debtor to access their land.

vi) The entire property of the company is housed by a boundary wall around the property of the company and has several gates to access the property. The copy of this site map of the property is as Annexure A/6 at page 81 to 86 of the Appeal Paper Book.

vii) Further case is that the one of the gates is installed at point Mark "A" in the site plan. This gate was locked by the appellant after taking over the possession of the property. The front part of the boundary wall is adjoining the land belonging to another company in liquidation known as Golden Forest Limited. The land belonging to M/s Mars Envirotech Limited - Respondent No. 1.

viii) The aforesaid land was purchased by the Respondent No. 2 on 09.10.2015 knowing fully well that the Corporate Debtor was defaulting and this land belonged to the Corporate Debtor company, the possession notice had already been issued by Union Bank of India on 11.02.2015. Certified copy of the Title Deed dated 9th October, 2015 is at Annexure - A/8 (Page 85 to 90 of the Appeal Paper Book).

ix) That in the Title Deed it is mentioned that on the south side of the plot there is a common road having width 26ft. 10 inches. Whereas on site there is no such common road in existence, nor any such common road is shown in the "Aks Shajra".

x) It is further case is that no map of the land showing any such common road is attached to the Title Deed in the record of the Sub Registrar from where the certified copy has been procured. It is nowhere mentioned in the purported Title Deed that this common road means any road common with the Respondents or that the common road is inside the boundary wall of the Corporate Debtor or that the access to the demised property is from the common road. The Title Deed is also silent as to who is the owner of the common road or it is a Government land.

xi) That keeping in view the continuous trespass by the Respondents, the Appellant filed Application bearing I.A. No. 234 of 2020 in CP (IB) No. 197/Chd/Chd/2019 copy of the IA marked as Annexure- A/10 (page 100 to 119 of the Appeal Paper Book).

xii) The Respondents was appeared and file their Reply Affidavit taking the averment made by the Appellant in the I.A and after hearing both the parties impugned order dated 30th September, 2020 was passed. Hence the Appeal.

Submissions on behalf of the Appellant

3. The Learned Counsel for the Appellant during the course of argument and Memo of Appeal and also in IA bearing I.A. No. 234 of 2020 in C.P.(I.B.) No. 197/Chd/Chd/2019, *inter alia*, taken the following grounds while mentioning the provision of the Section 14 of the IBC is as under:

“ 14. Moratorium –

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall

by order declare moratorium for prohibiting all of the following, namely:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Explanation.-For the process of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition

that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to-

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves

the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

4. Learned Counsel for the Appellant further referred to provision of Section 238 of the IBC which reads as under:

“ 238. Provisions of this Code to override other laws.-

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.”

5. Learned Counsel for the Appellant also referred to provision of Section 231 of the IBC which reads as under:

“ 231. Bar of jurisdiction.-

No civil court shall have jurisdiction in respect of any matter in which the Adjudicating Authority or the Board is empowered by, or under, this Code to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such Adjudicating Authority or the Board under this Code.”

6. Learned Counsel for the Appellant further submitted that the Ld. Adjudication Authority has failed to considered that as per revenue record

there is no such common road as per 'Aks Shajra' is as Annexure - A/7 (at page 83 to 84 of the Appeal Paper Book).

7. It is further submitted that pursuant to schedule 11 of the IBC Section 280 of the Companies Act 2013 has been amended and it is provided that notwithstanding anything contained in any other law, NCLT has jurisdiction to decide all suits/proceedings/claims/questions of priorities etc. in respect of a company in relation to its winding up.

8. It is further submitted that after filing the present Appeal the Committee of Creditors have already resolved to liquidate the Corporate Debtor and further I.A. No. 876 of 2020 is pending before the Adjudicating Authority.

9. It is further submitted that in view of the aforesaid amendment in Section 2(94A) of the Companies Act, 2013 w.e.f. 15.11.2016 and Section 280 of the Companies Act, 2013 w.e.f. 15.12.2016 the NCLT or NCLAT has appropriate jurisdiction to decide the present Appeal, which the Ld. Adjudicating Authority has failed to adjudicate, so it was submitted that impugned order cannot be sustained in the eye of law, it is fit to be set aside and Appeal be allowed.

10. It is further submitted that the Ld. Adjudicating Authority while passing the impugned order failed to consider the facts that the Corporate Debtor is under liquidation and assets are to be sold and recognising any such right of the Respondent while adversely affecting the Title of the property making entitle the sale and further on the basis of the submission interim order be set aside and the Appeal be allowed.

Submissions on behalf of the Respondents

11. Learned Counsel for the Respondents in his Reply Affidavit submitted that the immovable property is situated at Vill Tohfapur, Lalru, Distt Mohali, the appropriate jurisdiction for dispute is Civil Court situated at Derabassi is competent to decide the matter.

12. It is further submitted that the Respondents have purchased the land in June, 2015 and from June, 2015 the Respondents are continuously using the common passage without any interruption or interference.

13. It is further submitted that the Appellant failed to show that the said part of common land is mortgaged with the Bank. Without proper dimension, the Appellant under the power of Resolution Professional cannot take control over the property of others.

14. It is further submitted that the Title Deed it is mentioned that on the south side of the plot there is a common road having width of 26 ft. 10 inches.

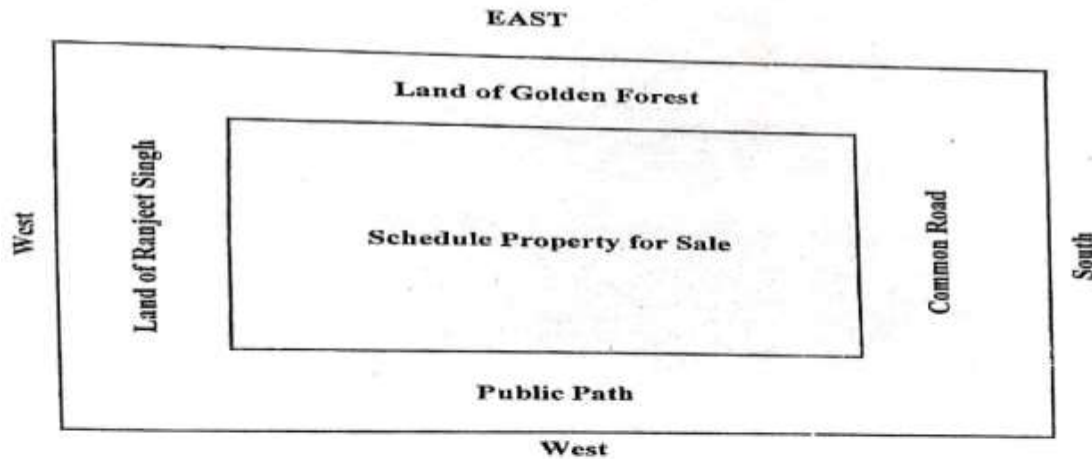
15. It is further submitted that the Appellant have admitted, in his plant, there is a common passage having a width of 26 ft. and 10 inch. In between the Appellant and Respondent company's and both are using said common passage for their transportation. The said plot is sold by showing the passage as common in the Memorandum of Understanding and Registered Sale Deed. Copy of the Memorandum of Understanding is annexed as marked as Annexure – R/5 (at page 40 to 42 of the Reply Affidavit).

16. Learned Counsel for the Respondents referred to schedule -1 at page 42 which described 'property details and position' is here under:

SCHEDULE - 1 PROPERTY DETAILS AND POSITION

1. Khata No. : 27/60
2. Khasra No.; 33//10/1(2-3),11/(4-0),20(4-0),34//16/1(1-17),6/2(0,1)14/2(0-2), 15/2(2-11),16/2(2-3),17/1(3-3),25(4-0).
3. Area : 24 Bighas 0 Biswas
4. Situated At : Village Tofapur Tehsil Dera Bassi, Dist. SAS Nagar, Mohali, Punjab
5. Bounded as :

East	:	Land of Golden Forest
West	:	Public Path
North	:	Land of Ranjeet Singh
South	:	Common Road.



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17. Learned Counsel for the Respondent further submitted that in view of the aforesaid facts and situation Ld. Adjudication Authority has rightly passed

the impugned order, so there is no merit in the Appeal. The appeal is to be dismissed.

FINDING

18. We have perused the records of the case, considered the arguments advanced on behalf of the parties and gone through the written submissions filed on behalf of parties.

19. Schedule -1 'property details and position' (supra) which is filed in the Reply Affidavit at page 42 that site map has been filed with shows that on the south side of the plot there is a common road, this fact has not been denied by the Appellant. This fact has also been mentioned in the Title Deed, so taking this fact and all the submissions advanced by the parties, we are of the view that the Ld. Adjudicating Authority has rightly pass the impugned order and rightly said in para 8 of the impugned order which is read as under;

“ 8. It is not in dispute that the registered sale deed dated 09.10.2015 Annexure A-4 under which the respondent purchased the property from the corporate debtor shows that there is a common road on the South side of the respondent's property with 26 ft. 10 inch. Width. Though no plan is enclosed to the said registered sale deed even according to the respondent, but unless the said sale deed is declared as invalid in an application failed by the Resolution Professional, the usage of the said common road by the respondent company cannot be objected. At the same time, the respondent company or its men cannot create any disturbance to the applicant or to the corporate

debtor or any of the staff working under the control of the applicant in any manner.”

20. We are of the consist view that the proceeding before the Adjudicating Authority and this Tribunal is summary in nature as to follow strict time line.

21. We are of the further view that the Learned Counsel for the Appellant have failed to make out any ground and the finding recorded by Ld. Adjudicating Authority, so we are affirmed the finding recorded in the impugned order dated 22.09.2020 in I. A. No. 234/2020 IN C.P.(I.B.) No. 197/Chd/Chd/2019 passed by the Adjudicating Authority, National Company Law Tribunal, Chandigarh Bench, Chandigarh.

ORDER

22. Having regard to the foregoing discussion, we find no merit in this Appeal. The Appellant has failed to demonstrate that the impugned order suffers from any legal infirmity. The Appeal being devoid of merit is dismissed. No order as to costs.

**[Justice Anant Bijay Singh]
Member (Judicial)**

**[Ms. Shreesha Merla]
Member (Technical)**

13th April, 2021.

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