

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

APPELLATE JURISDICTION

Company Appeal (AT) (CH) (Ins.) No. 394/2024

(IA Nos. 1072 & 1074/2024 & 1073/2024)

IN THE MATTER OF:

**Mr. Bhagawant Narayan Naik,
S/o. Mr. Narayan Naik,
Aged about 47 years,
Residing at Athavan Bungalow,
Near Datta Mandir, Ugar Khurd,
Belgaum, Ugarkhurd,
Karnataka – 591316.
bn.naik1@gmail.com**

... Appellant

Versus

**1. Ritesh R. Mahajan,
RP of Sovereign Industries Ltd.
IBBI/IPA-002/IP-N00048/2017-18/10132,
Having his office at:
B-203, Devgiri, Ganeshmala,
Sinhagad Road,
Pune, Maharashtra – 411030.
Email: irprp@sovereignil.in**

... Respondent No. 1

**2. M/s. Sovereign Industries Limited
Having its registered office at:
2nd Floor, Triveni Complex,
Yadwad Road, Mudhol,
Bagalkot, Karnataka – 587313.
Email: cacahbl1@gmail.com**

... Respondent No. 2

Present:

For Appellant : Mr. E. Om Prakash, Senior Advocate
For Mr. Adith Jahgirdar & Mr. Abhishek Sriram,
Advocates

WITH

Company Appeal (AT) (CH) (Ins.) No. 395/2024

(IA Nos. 1075/2024 & 1076 & 1077/2024)

IN THE MATTER OF:

**Mr. Bhagawant Narayan Naik,
S/o. Mr. Narayan Naik,
Aged about 47 years,
Residing at Athavan Bungalow,
Near Datta Mandir, Ugar Khurd,
Belgaum, Ugarkhurd,
Karnataka – 591316.
bn.naik1@gmail.com**

... Appellant

Versus

**1. Ritesh R. Mahajan,
RP of Sovereign Industries Ltd.
IBBI/IPA-002/IP-N00048/2017-18/10132,
Having his office at:
B-203, Devgiri, Ganeshmala,
Sinhagad Road,
Pune, Maharashtra – 411030.
Email: irprp@sovereignil.in**

... Respondent No. 1

**2. M/s. Sovereign Industries Limited
Having its registered office at:
2nd Floor, Triveni Complex,
Yadwad Road, Mudhol,
Bagalkot, Karnataka – 587313.
Email: cacahbl1@gmail.com**

... Respondent No. 2

Present:

For Appellant : Mr. T.K. Bhaskar, Advocate
For Mr. Adith Jahgirdar & Mr. Abhishek Sriram,
Advocates

JUDGMENT

(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma; Member (Judicial)] :

1. These are the two Appeals, being CA (AT) (CH) (Ins) No. 394/2024 and CA (AT) (CH) (Ins) No. 395/2024, which are engaging consideration of a common question of fact and law, as they are emanating from the common Impugned Order dated 22.10.2024 (common in both the appeals) which has been rendered by the Learned Adjudicating Authority in IA No. 167/2024 and IA No. 417/2024 in CP (IB)197/BB/2022. In CA(AT)(CH)(Ins) No. 394/2024, challenge is put to rejection of IA No. 167/2024 while in CA(AT)(CH)(Ins) No. 395/2024, rejection of IA No. 417/2024 is being challenged. With the consent of the counsels for the parties, though the appeals have been listed as fresh, they are being taken up together for consideration on merits.

2. Brief facts which are involved in consideration in the two appeals are that admittedly the Appellant is a third party to the Corporate Insolvency Resolution Process (CIRP) proceedings which was conducted in relation to the Corporate Debtor M/s. Sovereign Industries Limited. The Appellant contends and claims that he is the owner of the land in dispute and has been in continuous possession of the same. As far as the Respondents are concerned, Respondent No. 1 is the Resolution Professional and Respondent No. 2 is the Corporate Debtor (CD). A proceeding under Section 7 was initiated against the Corporate Debtor and as a consequence thereto, the Corporate Debtor was admitted to the CIRP proceedings

by an order of 28.03.2023 and Respondent No. 1 was appointed as a Resolution Professional. During the CIRP proceedings, the Appellant has filed two Interlocutory Applications being IA No. 167/2024 and IA No. 417/2024. In IA No. 167/2024, the Appellant has sought for the following reliefs:

- a) Direct the Resolution Professional/Respondent No. 1 to explicitly inform all prospective Resolution Applicants and the Committee of Creditors of the Corporate Debtor that the Schedule Property belonging to the Appellant cannot be dealt with by their Resolution Plans;
- b) Direct the Resolution Professional/Respondent No. 1 to submit for the Hon'ble Adjudicating Authority's approval, only those resolution plans that do not in any way deal with the Appellant's Schedule Property; and
- c) Withhold approval to any Resolution Plan or such part thereof that deal with the Schedule Property of the Appellant.

3. By filing the application in IA No. 167/2024, the Appellant had invoked Section 60 (5), to be read with Section 30 (2) (e) of the Code, to be read with Rule 11 of the NCLT Rules, 2016. The relief sought was by way of a declaration, that all the Prospective Resolution Applicants, may be informed that the schedule property belongs to the Appellant, and it is not in possession of the Resolution Professional and that it cannot be made part of any Resolution Plan to be submitted under CIRP proceedings in respect of the Corporate Debtor. And further a relief was sought that the Resolution Professional may take up only such

Resolution Plan for consideration, which does not in any way deal with the schedule property.

4. In IA No. 417/2024, the relief sought for by the Appellant was of the following in nature:

- a) Direct the Resolution Professional/Respondent No. 1 to place the Information Memorandum qua the Corporate Debtor before this Hon'ble Adjudicating Authority and a copy be given to the Appellant;
- b) Direct the Resolution Professional/Respondent No. 1 to place the Successful Resolution Applicant's Resolution Plan qua the Corporate Debtor before this Hon'ble Adjudicating Authority and a copy be given to the Appellant;
- c) Direct the Resolution Professional/Respondent No. 1 to place the minutes of meetings of the CoC before this Hon'ble Adjudicating Authority and a copy be given to the Appellant.

5. In fact, in this application, yet again preferred under Section 60 (5) to be read with Section 30(2)(e) of the Code, to be read with Rule 11 NCLT Rules, 2016, the relief was sought that, the direction may be issued to the Resolution Professional to supply the information memorandum, resolution plan of the SRA and minutes of CoC meeting to the Adjudicating Authority with copy to be given to the Appellant herein. Both these applications stood rejected by the Impugned Order under challenge i.e., the order dated 22.10.2024. Few relevant dates in chronological order which are required to be considered are that: -

- i. CIRP proceedings against the Corporate Debtor, M/s. Sovereign Industries Limited was initiated on October 2022.
 - ii. The subject land was sold by Mr. Basavaraj Ningappa Arekeri, Suspended Director of the Corporate Debtor to Mr. Chidanand Sangappa Patil on 23.01.2023.
 - iii. The order was reserved on Section 7 application on 06.02.2023 and;
 - iv. Mr. Chidanand Sangappa Patil sold the said land to the Appellant herein on 24.02.2023 vide a registered Sale Deed.
 - v. The Corporate Debtor was admitted into CIRP on 28.03.2023.
 - vi. The Appellant filed a Civil Suit being O.S. No. 16/2024, seeking grant of a decree of Permanent Injunction on 16.01.2024.
6. On the initiation of the Civil Suit, the Appellant has portrayed himself as to be a third party to CIRP proceedings, qua the scheduled property, alleged to have purchased the property which was not encumbered in any manner whatsoever, he has claimed to have purchased the same by virtue of the registered Sale Deed of 24.02.2023, with the right protected in his favour, that the property which was thus conveyed by the aforesaid Sale Deed said to have been described in the map which was forming part of the sale deed.
7. When the suit was preferred, there was an application preferred by the applicants under Order 39 Rule 1 and 2 CPC and the trial court had granted a Temporary Injunction on 17.01.2024.

8. The Resolution Professional has appeared and had filed an application on 08.02.2024, contending thereof that the Civil Suit will not be maintainable as it stood instituted on 16.01.2024 for the reason being that:

- 1) It was barred by the provisions contained under Order 7 Rule 11 of CPC.
- 2) The suit would be barred by Section 14 of I & B Code, as the CIRP proceeding was already initiated on 28.03.2023, and owing to aforesaid, any transaction in relation to the property which was falling within the ambit of CIRP proceedings estate would be barred.
- 3) The suit thus preferred by the appellant would be barred by Section 238 of I & B Code.

9. On the contrary, the case of the appellant was that, they contended that, they have purchased the property by sale deed of 24.02.2023 and according to the predecessor's right, that is, the seller to the Appellant, he states that he has exclusive right and possession over the property by the sale deed dated 23.01.2023. But what is more important is that the appellant would not be able to get a better title than that of its seller and it is an admitted case that the property which was thus conveyed, had running conveyors over it which was installed for the factory by Corporate Debtor. But still the Appellant persisted to argue that the property continued to be the part of the property of his predecessor owner and not of the Corporate Debtor and hence the bar of section 18 of I & B Code, 2016 would be attracted. The aspect which is denied by him is that if the provisions

contended under Section 3 Explanation I of Transfer Property Act is taken into consideration, the responsibility of an appropriate purchase of immovable property has been cast upon the purchaser to ensure, prior to the execution of the Sale Deed, that the property proposed to be purchased is free from all encumbrances. The ‘Explanation I to Section 3’ of Transfer Property Act is extracted hereunder:

“Explanation I.- Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of Section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated.”

10. The argument of the Learned Counsel for the Appellant is that owing to the provisions contended under Section 18 of the I & B Code, 2016 since the property was not the part of the property of the Corporate Debtor, it could not have been included as an asset in the assets of the Corporate Debtor in view of the provisions contained under Section 18. The aforesaid Section 18 is being attempted to be substantiated by the reply submitted by the Resolution Professional in the opposition to the application in IA No. 167/2024, wherein the

Resolution Professional has submitted that as far as the property is concerned, since the appellant is third party and there already happens to be a pending Civil Suit, coupled with the fact that the present appellant who contends to have purchased his rights over the party by the sale deed on 24.02.2023, had not raised any claim nor even otherwise they will have no right over the property as such. The Appellant submitted that the plea taken in Para - 21 to the reply, was opposed by filing the reply as contained in the affidavit filed thereto to the effect that the sale made in favour of the Appellant of the property would fall to be a part of the property of the Corporate Debtor because over which the conveyors of the Corporate Debtor's factory exists, it would amount to that it was not an independent sale but it was a sale of litigation, in order to dilute the proceedings of the CIRP as it stood initiated under Section 7 of I & B Code. The Learned Counsel for the Appellant had heavily relied upon the Sale Deed, which was said to have been executed in favour of the Appellant by the predecessor-owner contending that, it was an independent transaction in relation to the precincts of which was bound by the properties of the Corporate Debtor. In response, the Respondent's Counsel has drawn the attention of this tribunal to the sale deed of 24.02.2023, which has a map of the property annexed to it stating that if the map of the property itself is taken into consideration, it can be seen that it is sandwiched as a narrow strip between the sugar plant site and co-generation plant site of the Corporate Debtor and this fact along with the site photographs, which have been annexed with the appeal show that there are conveyor systems running

over if from one side to other and do not establish that the scheduled property is an independent property belonging to the Appellant. Besides this the Appellant's right if at all it is arising from the Sale Deed, is still a subject matter of Civil Suit No. 16/2024, which has been preferred by him and is presently pending consideration before the Civil Court after the grant of Temporary Injunction on 17.01.2024. But if the claim of the Appellant is considered in the light of the contentions raised by the Resolution Professional, the aspects pertaining to question of title and right over the property is a subject matter which has been objected by the Resolution Professional owing to the peculiar facts of the case which is pending consideration before the Civil Court, and even the grant of injunction by the Civil Court on 17.01.2024, has been obtained by the Appellant by misleading the trial court without informing the implications of Section 14 of I & B Code, which has already been enforced by putting the Corporate Debtor into the CIRP, by an order of 28.03.2023.

11. Another important aspect which has to be taken into consideration with regards to the bonafides of the Appellant is that, the land in dispute which is subject matter of the suit has been, at all stages, the part and parcel of the factory premises and it had been under the ownership of one Mr. Basavraj Ningappa Arekeri, who happens to be the suspended director and shareholder of the Corporate debtor, if this be so the property would fall to be part and parcel of the assets of the Corporate Debtor because as against the mortgage of the said

property, the loan facilities were extended. The acquisition of alleged title made by the Appellant from Mr. Chidanand Sangappa Patil on 24.02.2023 in fact is bad in law because the erstwhile owner, the suspended director of the Corporate Debtor, Mr. Basavraj Ningappa Arekeri, had sold the property which was and is in possession of the Corporate Debtor for industrial purposes, to the predecessor-seller of the Appellant by a Sale Deed on 23.01.2023 at a time when Section 7 application against the Corporate Debtor was under active consideration and this fact was very well known to the Suspended Director that alienation of Corporate Debtor's assets should not be done in normal course. A specific case has been made that the property in question is being used for the industrial purposes of the Corporate Debtor, which is a fact not denied by the appellants and it was falling within the premises of the Corporator Debtor which is already in custody of the Resolution Professional. Based on the aforesaid analysis, the Learned Adjudicating Authority while drawing its analogy based on pleadings and evidences had rightly come to the conclusion, that said property belongs to Mr. Basavraj Ningappa Arakeri, who acquired the same on 2013 and has transferred the said property to Mr. Chidanand Sangappa Patil only on 23.01.2023, who in turn has transferred the ownership of the property to the Appellant on 24.02.2023 and that after having the knowledge of the fact that the proceedings under Section 7 has already been instituted in October 2022. The orders under Section 7 were reserved on 06.02.2023 and the Corporate Debtor itself vide its Diary No. 5214 dated 02.12.2022, had stated that it signifies its willingness to admit the

application and the directions for initiation of the CIRP proceedings in view of financial stress. In these circumstances, sale of the said property immediately after reserving of the judgment on 06.02.2023, itself is an avert act, and actions of the Appellant with regard to the aforesaid transaction which is subject matter of the Civil Suit, which has been instituted at his behest together with chronological sequence of transactions in the scheduled land during the pendency of CIRP proceedings shows that the sale was not bonafide and apart from this, since the appellant himself has already questioned the rights of the respondent in a regular Civil Suit, and his rights over the property are yet to be determined by the competent Civil Court, which he himself has invoked at this stage the pendency of the Civil Suit cannot be taken as a reason for interference in the CIRP proceedings. Further, the resolution plan as filed through IA No. 02/2024 in its Clause 5, describes the assets of the Corporate Debtor, which also refers to the ensuing litigation being Suit O.S. No. 16/2024. The apprehension expressed on the basis of the written submissions is without basis, as the Resolution Plan since it does not in any manner transfer or affect the title of the subject property and there is no immediate change of ownership or the Applicant's right. In view of the discussions as above, it does not call for any interference at this stage and that too, while exercising the inherent powers under Rule 11 of the NCLT Rules, 2016.

12. After having heard the Counsels of the parties at length and having scrutinised the reasons which has been assigned by the Learned Adjudicating Authority in relation to the status of the property and the effect of the pendency of the Civil Suit filed by the Appellant, the rejection of the two applications of the Appellant by the Learned Adjudicating Authority by the Impugned order does not call for any interference in the exercise of the Appellate Jurisdiction under Section 61 of I & B Code. Thus, these appeals lack merit and they are accordingly dismissed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

21.11.2024
RO/TM/MS