

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

Company Appeal (AT) (Insolvency) No. 79 of 2021
&
I.A. No. 434 of 2023

[Arising out of order dated 18.01.2021 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court III) in I.A. 33/2021, I.A. 2489/2020 in C.P. (IB)/4135(MB)2018]

IN THE MATTER OF:

Darshan Gandhi

Ex-Director, Lok Housing and Constructions Ltd., having his residential address at “Swadhin” 7 Golden Acres Society, Ruia Park, Off. Military Road, Juhu, Mumbai 400049.

..... Appellant.

Versus

1. Hemant Mehta

Resolution Professional
Lok Housing and Construction Pvt. Ltd.
Registration No. IBBI/IPA-001/IP-P00027/
2016-17/10060, B-4, Panchsheel, Nath Pai
Nagar, Ghatkopar (E), Mumbai-400077,
Email: hemant@apmh.in

..... Respondent No. 1.

2. USV Housing Pvt. Ltd.

BSD Marg, Station Road, Govandi,
Mumbai-400088.

..... Respondent No. 2.

Present:

For Appellant: Mr. Rajiv Ranjan, Sr. Advocate with Mr. Kumar Anurag Singh, Mr. Prabhunath Sinha, V. Mehta, Mr. R. Rampal, Advocates.

For Respondent:- Ms. Anjali Sharma, Advocate for R-1.

Mr. PBA Srinivasan, Ms. Srishti Bansal, Mr. V. Aravind, Advocates for SBI.

WITH

Contempt Case (AT) No. 10 of 2021

IN

Company Appeal (AT) (Insolvency) No. 79 of 2021

IN THE MATTER OF:

Darshan Gandhi

Ex-Director, Lok Housing and Constructions Ltd., having his residential address at “Swadhin” 7 Golden Acres Society, Ruia Park, Off. Military Road, Juhu, Mumbai 400049.

..... Applicant.

Versus

1. Hemant Mehta

Resolution Professional
Lok Housing and Construction Pvt. Ltd.
Registration No. IBBI/IPA-001/IP-P00027/
2016-17/10060, B-4, Panchsheel, Nath Pai
Nagar, Ghatkopar (E), Mumbai-400077,
Email: hemant@apmh.in

..... Respondent No. 1.

2. Committee of Creditors

Lok Housing and Construction Pvt. Ltd.
B-4, Panchsheel, Nath Pai Nagar,
Ghatkopar (E), Mumbai-400077.

..... Respondent No. 2.

Present:

For Appellant:-

Mr. Rajiv Ranjan, Sr. Advocate with Mr. Kumar Anurag Singh, Mr. Prabhunath Sinha, V. Mehta, Mr. R. Rampal, Advocates.

For Respondent:-

Ms. Anjali Sharma, Advocate for R-1.

WITH**Company Appeal (AT) (Insolvency) No. 1095 of 2021**

[Arising out of order dated 22.11.2021 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court III) in I.A.(I.B.C) 402(MB)2021 in C.P. (IB)/4135(MB)2018]

IN THE MATTER OF:**Darshan Gandhi**

Ex-Director, Lok Housing and Constructions Ltd., having his residential address at “Swadhin” 7 Golden Acres Society, Ruia Park, Off. Military Road, Juhu, Mumbai 400049.

..... Appellant.

Versus**1. Sankalp Realty Pvt. Ltd.**

Sunbeam Chambers, Ground Floor,
Opp. Liberty Cinema, New Marine Lines,
Mumbai 400020.

..... Respondent No. 1.

2. Hemant Mehta

Resolution Professional
Lok Housing and Construction Pvt. Ltd.
Registration No. IBBI/IPA-001/IP-P00027/
2016-17/10060, B-4, Panchsheel, Nath Pai
Nagar, Ghatkopar (E), Mumbai-400077,
Email: hemant@apmh.in

..... Respondent No. 2.

3. Lok Housing and Construction Pvt. Ltd.

Corporate Debtor
4, Lok Bhavan, Lok Bharti Complex,
Marol Maroshi Road, Marol,
Andheri (East), Mumbai-400059.

..... Respondent No. 3.

Present:

For Appellant:- Mr. Rajiv Ranjan, Sr. Advocate with Mr. Kumar Anurag Singh, Mr. Prabhunath Sinha, V. Mehta, Mr. R. Rampal, Advocates.

For Respondent:- Mr. Dhaval Despande, A. Arsiwala, Advocates for R-1.
Ms. Anjali Sharma, Advocate for R-2/IRP.

ORDER
(19th June, 2023)

Justice Anant Bijay Singh;

Company Appeal (AT) (Insolvency) No. 79 of 2021 and I.A. No. 434 of 2023 preferred by the Appellant under Section 61 of the Insolvency and Bankruptcy Code, 2016 (**for short IBC**) being aggrieved and dissatisfied by the order dated 18.01.2021 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court III) in I.A. 33/2021 and I.A. 2489/2020 in C.P. (IB)/4135(MB)2018 wherein the Adjudicating Authority passed the following order:

“ The matter is taken up through virtual hearing.

Mr. Sandeep H. Parikh a/w Mr. Rahul Karnik, counsel for the applicant and Mr. Jinal Rathi, counsel for the respondent are present. Mr. Mehant J. Mehta, Resolution Professional along with his counsel, Mr. Ashish Jha is also present.

Resolution Professional seeks a week time to file reply in I.A. 33/2021. Time is granted.

List this matter on 02.02.2021 for filing reply.”

2. The instant Appeal was filed on 30.01.2021 and was taken up for admission on 08.02.2021, on that date, the instant Appeal was directed to be

listed on 12.02.201 along with Company Appeal (AT) (Insolvency) No. 644 of 2019. On 12.02.2021, this Tribunal passed the following order:

“12.02.2021 *In terms of the order dated 18.02.2021 records of Company Appeal (AT) (Insolvency) No. 644 of 2019 have been placed.*

2. *From the perusal of the order sheet in Company Appeal (AT) (Insolvency) No. 644 of 2019, the last order is dated 12.03.2020 whereby the Hon’ble Bench of this Appellate Tribunal was directed, the matter not to be treated as Part Heard and further directed to list this matter on 27th March, 2020.*

3. *Due to Covid-19 Pandemic Lockdown, the matter was not listed. Although, the Respondents have appeared in this matter.*

4. *In Company Appeal (AT) (Insolvency) No. 79 of 2021 Learned Counsel appearing on behalf of Appellant referred page 41 of the Appeal Paper Book (Annexure- A- 4) is the order of the Hon’ble Supreme Court of India passed in Civil Appeal No. 8068 of 2019 as follows:*

“The CoC has been constituted. Let it proceed with the matter. However, its decision not to be implemented till the appeal is decided by the NCLAT.

The next date fixed before the NCLAT is 14.11.2019. We request the NCLAT to dispose of the matter, if possible, by the end of November, 2019.

In view of the above, the appeal is disposed of.”

5. *In Company Appeal (AT) (Insolvency) No. 79 of 2021 as well as I.A. No. 174 of 2021, issue notice to Respondents through Speed Post as well as e-mail (Both Mode). Requisites along with process fee be filed within one week. The Appellant provides e-*

mail address of the Respondents, let notice also be issued through e-mail.

6. Further, Learned Counsel for the Appellant pressed the I.A. No. 174 of 2021 at page 109 of the Appeal Paper Book with a following prayers;

“a. That this Hon’ble Tribunal be pleased to stay the effect, operation and implementation of FORM G being Expression of Interest published on 04.01.2021 by the Respondent No. 1 in Free Press Journal as per Minutes of the Seventh meeting of the Committee of Creditors held on 23.12.2020.

b. That the implementation of the EOI published on 04.01.2021 be deferred pending the hearing and final disposal of Company Appeal no. 644 of 2019 pending before this Hon’ble Tribunal.”

7. In view of the prayers **status quo** as on today prevailing in the matter should be maintained.

8. In Company Appeal (AT) (Insolvency) No. 644 of 2019 parties may file Brief Written Submissions not more than four pages along with Case Laws, if any, within two weeks.

9. In Company Appeal (AT) (Insolvency) No. 644 of 2019 one I.A. No. 2106 of 2019 filed on behalf of the Applicant i.e. S.B.I. for impleadment as a necessary party. We direct the registry to list the I.A. No. 2106 of 2019 along with Company Appeal (AT) (Insolvency) No. 644 of 2019 on the next date.

10. List these Appeals ‘For Admission (After Notice)’ on **16th March, 2021** along with I.A. No. 2106 of 2019 in Company Appeal (AT) (Insolvency) No. 644 of 2019.

11. *The Registry is directed to send the copy of this order to the Ld. Adjudicating Authority, National Company Law Tribunal, Mumbai Bench, Court III.”*

3. Further, I.A. No. 640 of 2021 in Company Appeal (AT) (Insolvency) No. 79 of 2021 has been filed on 17.03.2021 under Rule 11 of the NCLAT Rules, 2016 on behalf of the Applicant i.e. State Bank of India for being impleaded as a necessary party.

4. Contempt Case (AT) No. 10 of 2021 in Company Appeal (AT) (Insolvency) No. 79 of 2021 has been filed on 24.03.2021 by the Applicant – Darshan Gandhi (Appellant) against the action of the Contemnors insofar as the directions passed by this Tribunal vide its order dated 12.02.2021 in Company Appeal (AT) (Insolvency) No. 79 of 2021 wherein this Tribunal had directed that “*status quo as on today prevailing in the matter should be maintained.*” However, the Contemnors have convened the 8th meeting of the Committee of Creditors wherein a resolution to approve the publication of the notification/advertisement in FORM-G as approved for inviting Expression of Interest from prospective Resolution Applicants in such newspaper as the Contemnors may decide was put to vote. Further, the Contemnor No. 1 also circulated a document detailing the instruction for e-voting which clearly reflects the intention to violate the status quo – in blatant disregard to the directions of this Tribunal.

5. Company Appeal (AT) (Insolvency) No. 1095 of 2021 filed by the Appellant – Mr. Darshan Gandhi under Section 61 of the Insolvency and Bankruptcy Code, 2016 being aggrieved and dissatisfied by the order dated 22.11.2021 passed by

the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court III) in I.A.(I.B.C) 402(MB)2021 in C.P. (IB)/4135(MB)2018 wherein the Adjudicating Authority passed the following order:

“ I.A. 402/2021

The above Application is filed by the Applicant who is a Joint Venture Holder along with Corporate Debtor for development of the land situated more fully described in the schedule attached to this Application prayed this Bench to direct the Resolution Professional to take joint possession of the said land along with applicant to protect the land from third party encroachments. Since the above application is filed for protecting the interest of the Corporate Debtor in respect of land, the Resolution Professional is hereby directed to take possession along with the Local Police.

The Concerned Local Police on production of this order shall provide necessary police assistance to the Resolution Professional in taking physical possession of the schedule property without insisting any further order from this Bench.

All the parties are directed to complete their pleadings in all pending applications by serving advance copy of each other.

List this matter on 22.12.2021.”

6. The aforesaid Appeal was filed on 13.12.2021 and was taken up for admission on 04.01.2022, on that date, the aforesaid appeal was directed to be listed on 05.01.2022 along with Company Appeal (AT) (Insolvency) No. 644 of 2019 and Company Appeal (AT) (Insolvency) No. 79 of 2019 before the Court No. 3.

7. It is further relevant to note that Company Appeal (AT) (Insolvency) No. 644 of 2019 along with IAs was heard in terms of the direction given by the

Hon'ble Supreme Court and judgment was delivered on 16.11.2022 dismissing the Company Appeal (AT) (Insolvency) No. 644 of 2019.

8. Thereafter, I.A. No. 434 of 2023 in Company Appeal (AT) (Insolvency) No. 79 of 2021 was filed by the Respondent No. 1 under Rule 11 of the NCLAT Rules, 2016 seeking directions to vacate the interim order dated 12.02.2021 passed in the present appeal, to allow the corporate insolvency resolution process of the Corporate Debtor, Lok Housing and Constructions Ltd. to proceed. Thereafter, Counsel for the Appellant filed Reply to the aforesaid IA.

9. Learned Sr. Counsel for the Appellant during the course of argument placed the order dated 04.05.2023 passed by the Hon'ble Bombay High Court wherein the Hon'ble Bombay High Court passed the following order:

“On 13 April 2023, the following order was passed :

“On 27 March 2023, we have passed the following order:

“Before we proceed to examine the matter further, we note that the Petitioner has filed interlocutory application no. 33 of 2021 seeking the identical reliefs which are sought in the Petition. Learned Senior Advocate for the Petitioner states that if this application is granted, most of the reliefs sought for in this petition will stand worked out.

2 Learned counsel for the Respondents seeks time.

3 Hearing of this Petition is deferred to 13 April 2023. By then we expect that Respondent No.5- National Company Law Tribunal (“NCLT”) would take up the interlocutory application for consideration.

4 In the meanwhile, Petitioner will give notice to the Respondents and file affidavit of service.”

2. We are informed that National Company Law Tribunal (NCLT) has placed the application on board on 3 May 2023. The learned counsel for the Respondents, who appears on notice, states that the Petitioner has not made a specific application requesting the Tribunal for early hearing. We were not aware of this fact when we made observation in the order, however, since the application is fixed by the NCLT on 3 May 2023 and the learned counsel who are before us state that they are ready to go on with application, we defer the hearing of this petition till 4 May 2023 awaiting the outcome of the application. Learned counsel for the Petitioner states that a request in writing would be placed on record of the NCLT for early hearing of the application”.

2. The learned Counsel for the Petitioner states that National Company Law Tribunal (NCLT) has now fixed the matter on 15 June 2023 and prays that this petition be adjourned to 15 June 2023. The learned Counsel appearing for the respective Respondents oppose the prayer submitting that when the entire proceedings are pending in NCLT and there is an interim order in Petitioner’s favour, this Court should not monitor the proceeding before NCLT. They have placed on record the order passed by NCLT for circumstances in which the order is passed adjourning the matter to 15 June 2023.

3. We have perused the order. NCLT has recorded that the Advocate for the Petitioner himself had no idea as to why the Petitioner had approached the High Court. Once the entire issue is pending before NCLT and we had made certain observations including liberty to the Petitioner to file an application for an early hearing, we do not deem it appropriate to keep monitoring the proceedings before NCLT which is the Court of competent jurisdiction. Once NCLT has taken up the proceedings for

consideration, we have no doubt that it will proceed to conclude the same giving it priority if it deserves, subject to workload before NCLT.

4. The writ petition is accordingly disposed of.”

10. It is further submitted that if the status quo order dated 12.02.2021 will be vacated, the Respondent No. 1 will immediately go ahead with the issuance of Form G containing all the properties and the newspaper publication of the same would immediately make M/s Godrej Properties lose confidence which would cause grave prejudice to the Corporate Debtor and Appellant and would derail any possibility of settlement of dues.

11. It is further submitted that the main matter is coming before the NCLT on 15.06.2023, therefore, interim protection may be continued and the instant matters may be disposed of with a request to the NCLT to decide the main matter.

12. On the other hand, Counsel for the Respondents/Applicant in IA No. 434 of 2023 submitted that since the Company Appeal (AT) (Insolvency) No. 644 of 2019 filed by the Appellant has been dismissed by this Tribunal, in terms of the order dated 25.10.2019 passed by the Hon'ble Supreme Court in Civil Appeal No. 8068 of 2019, the corporate insolvency resolution process of the Corporate Debtor can now proceed, and any decision of the CoC of the Corporate debtor regarding the same can be implemented. The present Appeal has also been rendered infructuous by the dismissal of company Appeal (AT) (Insolvency) No. 644 of 2019, and hence the interim order dated 12.02.2021 passed in the present appeal must be vacated. Further, submitted that these Appeals are against the

order of interlocutory in nature, the main petition is still pending for consideration on merit before the Adjudicating Authority.

13. Keeping in view of the facts and circumstances of the case, since the main petition is pending before the Adjudicating Authority, we dispose of both the Appeals i.e. Company Appeal (AT) (Insolvency) No. 79 of 2021 and Company Appeal (AT) (Insolvency) No. 1095 of 2021 with a request to the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) to decide the main petition on merit at an early date. The Appellant and Respondents are being given liberty to raise all issues, both about fact and law before the Adjudicating Authority.

With the above observation and direction, these Appeals i.e. Company Appeal (AT) (Insolvency) No. 79 of 2021 and Company Appeal (AT) (Insolvency) No. 1095 of 2021 stand disposed of. The interim order dated 12.02.2021 passed by this Tribunal is hereby vacated. Accordingly, Contempt Case (AT) No. 10 of 2021 is also disposed of. I.As, if any, stands disposed of.

14. Registry to upload this order on the website of this Appellate Tribunal and send the copy of this order to the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench), forthwith.

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

**[Dr. Alok Srivastava]
Member (Technical)**

New Delhi
19th June, 2023
R. Nath.