

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency)No. 377 of 2020

IN THE MATTER OF:

Energy Properties Pvt. Ltd.

.....Appellant

Vs.

**Jitendra Lohia,
Resolution Professional of M/s. Avani Towers Pvt. Ltd.
& Ors.**

.....Respondents

Present :

For Appellant: Mr. Ramji Srinivasan, Sr. Advocate, Mr. Jayant Mehta, Mr. Ajay Choudhury, Mr. Rishub Kapoor, Mr. S.C. Das, Mr. Ashish Choudhury, Advocates

**For Respondents: Mr. Abhijeet Sinha, Mr. Arjun Asthana, Mr. Saikat Sarkar, Ms. Sreenita Ghosh, Advocates for RP
Ms. Varsha Banerjee, Advocate for R-3**

O R D E R

04.03.2020 - Heard.

Let notice be issued on Respondent No. 2 by speed post. Requisites along with process fee, if not filed, be filed by 5th March, 2020. If the Appellant provides the e-mail Address of the Respondent, let notice be also issued through e-mail.

2. Advocate Shri Arjun Asthana appears on behalf of Respondent No. 1 (RP). Advocate Ms. Varsha Banerjee appears on behalf of R-3. They waive formal service of Notice.

....contd.

3. Learned Counsel for Appellant is submitting that the Appellant is the owner of the land on which the 'Corporate Debtor' was to develop the property and it is stated that the property is in joint possession of the Appellant and licensee R-3. It is stated that the land is owned by Appellant and by way of development contract 'Corporate Debtor' was to develop the same as per Development Agreement. Reference is made to Memorandum dated 02.03.2010 page 178 to say that 'Corporate Debtor' agreed that it will not claim exclusive possession and confirmed that it holds the same for itself as well as for 'Jhunjhunwala Group'. The Learned Counsel states that the 'Resolution Professional' applied vide application No. 1807/KB/2019 copy of which is at (page-94) and in the prayers (p-111) requested the Adjudicating Authority to give assistance of police in taking possession of the said property.

The operative part of Impugned Order reads as under:-

"ORDER

The respondents (or any other person acting through them in CA(IB) No. 1807/KB/2019) shall not obstruct RP's possession and his activities relating to CIRP of the corporate debtor, until further orders, failing which the local police are directed to give every assistance to the RP for completion of CIRP of the corporate debtor effectively.

....contd.

ii) *Our order dated 09.01.2020 shall not affect the activities of Victory Iron Works Ltd. in piece of land in their possession on the basis of leave and licence agreement dated 11.08.2011 until the original owner of the property decides further course of action as far as leave and licence agreement is concerned. Hence, this application, i.e. CA((IB) 146/KB/2020 stands disposed of.”*

4. The Learned Counsel for ‘Interim Resolution Professional’ states that only 10,000 sq. ft. of land is with R-3 and on rest of the land in order to keep the Company going concern, the ‘Interim Resolution Professional’ has a right to develop the property in view of the subsisting contract between the Appellant and the ‘Corporate Debtor’. The Learned Counsel for ‘IRP’ adds pursuant to the impugned order the ‘IRP’ is in possession of the land for ‘Corporate Debtor’ in terms of the Development Contract, other than 10,000 sq. ft. stated to be with R-3.

5. The Learned Counsel for Appellant relied on the judgement in the matter of ***Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka and Others in Civil Appeal No. 9170 of 2019, 2019 SCC Online SC 1542.***

6. Till we hear this appeal on next date, ‘IRP’ may not make any physical changes in the land concerned and may not create any encumbrance with regard to the land concerned. Respondent to file the reply by 18th March, 2020.

....contd.

Parties should be ready next date to argue the Appeal itself.

List the appeal in 'admission' (after notice) category on **20th March, 2020**.

[Justice A.I.S. Cheema]
Member (Judicial)

[Justice Anant Bijay Singh]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

ss/m

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