

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 901 of 2019

IN THE MATTER OF:

International Asset Reconstruction Co. Ltd.

...Appellant

Versus

G. Gunasekaran & Ors.

...Respondents

Present:

For Appellant :

**Mr. Chitranshul A. Sinha, Mr. Anshuman Mohit
Chaturvedi and Ms. Sonali Khanna, Advocates**

O R D E R

03.09.2019 Having heard learned counsel for the appellant and being satisfied with the grounds, the delay of 2 days in preferring the appeal is condoned.

I.A. No. 2736 of 2019 stands disposed of

Pursuant to the proceedings under SARFAESI Act, 2002, the Appellant - 'International Asset Reconstruction Co. Ltd.' (Financial Creditor) took possession over the property admeasuring 34.20 acres bearing Survey Nos. 174/3A, 3B, 174/1, 180/4, 180/5, 174/3A, 174/4, 176/3A, 3B, 3C and 3D at Thirali II, Tirumangalam Taluk, Madurai Distt.. The Adjudicating Authority (National Company Law Tribunal), Special Bench, Chennai on an application filed by the 'Resolution Professional' by impugned order dated 17th July, 2019 directed the Appellant to hand over the possession of the said property on the ground that the ownership of the property is lying with the 'Corporate Debtor'.

Learned counsel appearing on behalf of the Appellant submits that the property in question was leased by 2nd Respondent - 'Thiagarajan Murugesan' in favour of the 'Corporate Debtor' by 'Lease Deed' dated 1st June, 2000. The

‘Corporate Debtor’ has ‘lease hold right’ over the property but is not the owner of the property. However, we are not inclined to decide such issue at this stage, as we find that the Appellant has already handed over the possession of the property in question in favour of the ‘Resolution Professional’.

In terms of Section 18 of the ‘I&B Code’, it is the duty of the ‘Interim Resolution Professional’ to take control and custody of any asset of the ‘Corporate Debtor’ having ownership rights which includes the assets which may or may not be in the possession of the ‘Corporate Debtor’. As per ‘Explanation’ given below of Section 18 for the purpose of that section, the term “assets” does not include the assets owned by a third party in possession of the ‘Corporate Debtor’ or held under trust or under contractual arrangements. If the assets in question belong to ‘Corporate Debtor’ – ‘2nd Respondent’ it will always open to 2nd Respondent to claim the same and the ‘IRP’/ ‘RP’ will decide whether it belongs to the ‘Corporate Debtor’ taking into consideration the provisions of Section 18 including the ‘Explanation’ given below it.

For the said reasons, except for explaining the provisions, no further interference is required. We are not inclined to interfere with the impugned order dated 17th July, 2019. The appeal stands disposed of.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/gc