

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 20 of 2020

IN THE MATTER OF:

Mr. Mukesh Mehta & Ors.

...Appellant

Vs.

Silver Land Developers Private Limited & Ors.

...Respondents

Present: For Appellant: - Mr. Ritin Rai, Senior Advocate with Mr. Dinesh Tiwari, Ms. Jaikriti S Jadeja and Mr. Ansh Karnavak, Advocates.

For Respondents: - Mr. Abhijit Singh, Mr. Bantim, Mr. Debopriya Mulik, Mr. Nikhil Pratap, Advocates for R2 to R4.

Mr. Somesh Dhawan, Mr. Gaurav Nair and Ms. Kritiya Sinha, Advocates for R5.

J U D G M E N T

(31st January, 2020)

JUSTICE JARAT KUMAR JAIN, MEMBER (JUDICIAL)

The Appellants/ Petitioners filed this appeal against the impugned order dated 28th November, 2019 passed by the National Company Law Tribunal (hereinafter referred to as the "NCLT"), Mumbai Bench, Mumbai in Miscellaneous Application No. 3779 of 2019 and Miscellaneous Application No. 3293 of 2019 in Company Petition No. 488 of 2019.

2. The Appellants herein filed Company Petition against the Respondents under Sections 241, 242 & 245 of the Companies Act, 2013. In Company Petition, the Appellants/ Petitioners have filed a Miscellaneous Application No. 3779 of 2019. NCLT has decided the application vide impugned order.

3. The Respondent No.1 Company incorporated on 16th August, 1989 under the provisions of the Companies Act, 1956. The Respondent No.1 Company engaged in the business of Real Estate Development and other allied fields of land, Real Estate, construction and development of immovable properties. The Appellant Nos. 2 and 3 are respectively the wife and daughter of the Appellant No.1. The Appellants in aggregate hold 50.2% shares of the Respondent No.1 Company, in short they are called as **“Mehta Group”** whereas the Respondent Nos. 2 to 7 are close relatives and they are called as **“Shah Group”**. ‘Shah Group’ in aggregate holds 49.80% of the shares of Respondent No. 1 Company. Respondent No. 1 Company has taken loan from ‘J.M. Financial Services’ and the properties were mortgaged in their name.

4. It is alleged that the Respondent Nos.2 to 4 have ousted the Appellants from the management of the Respondent No.1 Company forcibly and they are conducting the affairs of the Respondent No.1 Company in a completely arbitrary and capricious manner, against the interests of the Respondent No.1 Company.

5. The Appellants came to know that the Respondent Nos. 2 to 4 were unilaterally and unauthorisedly disposing off assets of Respondent No.1 at a gross undervalue, being units in the building known as “Silver Point”. Therefore, the Appellants have filed the Company Petition against the Respondent Nos. 2 to 4 and filed an application (M.A. No. 3779/2019) against Respondent Nos. 2 to 7 herein for the following interim reliefs:

“(a) Allow the present Miscellaneous Application;

(b) Restrain Respondent Nos. 2 to 7 by themselves, or through their servants, agents and assigns or any person claiming through or under them from in any manner dealing with, or disposing of, or dispossessing, or parting with the possession of, or alienating, or encumbering, or altering the status or condition of any of the assets of Respondent No.1;

(c) In the alternative to prayer clause (b) above, Respondent Nos.5 to 7 be directed to give the Applicants with a 14 (fourteen) days’ notice prior to, in any manner, dealing with, or disposing of, or dispossessing, or parting with the possession of, or alienating, or encumbering, or altering the status or condition of any of the units of Respondent No.1, along with all relevant particulars of the manner in which Respondent Nos. 5 to 7 propose to deal with any particular unit of Respondent No.1;

(d) appoint an Administrator and/ or Special Officer and/or an Independent Committee of Management to carry on the business of and to manage the affairs of Respondent No.1 including the operation of all bank accounts of Respondent No.1, and to ensure the protection of the assets of Respondent No.1;

(e) Direct the Administrator and/or Special Officer and/or an Independent Committee of Management to represent Respondent No.1 in any and all of the litigations and proceedings to which Respondent No.1 is a party;

(f) urgent interim and ad-interim reliefs in terms of prayer clauses (a) – (e) above;

(g) costs;

(h) such other and further reliefs as this Hon'ble Tribunal may deem fit and proper.”

6. NCLT after considering the submissions passed impugned interim order which is as under:

“ORDER

The learned counsel for the petitioner filed this miscellaneous application seeking restrain order against J.M. Financial Services and other from

alienating/ transferring the assets of the respondent's company.

The Learned Senior Counsel appearing for the J.M. Financial Services who is a party as respondents in this Application had fairly submits in his capacity i.e. Secured Creditor for the loan advanced to the respondent company and thereafter in view of the default committed by the Corporate Debtor, they are exercising their rights as secured creditor.

It is also on record that the respondent No.5 i.e. J.M. Financial Services is a Secured Creditor and the properties are mortgaged in their name. however, the contention raised by the petitioner is that the value of which the properties are being sold is far lower than the market value and if they get a chance to sell this property at better value they can sell it on a higher price hence an opportunity may be offered to them.

The Learned Senior Counsel appearing for the Respondent No.5 in this Application has fairly agreed for the same and he is ready to wait for 2 weeks and in the event the Petitioner fails to bring a buyer with a better price, as available with a particular date the

respondent would be free and in a position to sell the property.

In view of the urgency that the Respondent Company become an NPA, the argument advanced by the learned Senior Counsel is gone into very carefully and in view of the submissions made by the Petitioner we hereby direct both the parties to maintain status-quo for a period of 14 days, in the meanwhile, the Respondent is at liberty to proceed in exercising his rights as secured creditor after the next date of hearing. We also make it very clear that any sale that would taken up by the JM Financial Services, if it found to be in collusion with the Directors of the Respondent Company against whom the allegation of oppression and mismanagement are levelled, the sale will become subject matter of final decision on that particular day that means any sale is bound to be set aside in case it is found that the same is done in collusion with the Respondent Company. The above order will be without prejudice to their rights and contention.

List this matter on 17.12.2019”

7. Being aggrieved with the impugned order, the Appellants filed this appeal.

8. Learned counsel for the Appellants submits that in the Miscellaneous Application they have raised a specific ground that 'J.M. Financial Services' being a Creditor has no authority to sell the properties which are mortgaged with them.

9. From bare reading of the 'Mortgaged Deed', it is apparent that the mortgaged properties were in the possession of the Company. As per Section 59 of the 'Transfer of Property Act, 1882', without the consent of the Company i.e. Respondent No.1, Creditor i.e., 'J.M. Financial Services' has no authority to sell the Company's properties.

10. It is also submitted that some properties have been sold by the 'J.M. Financial Services' even after filing of the Company Petition. NCLT has not given finding on this issue which is material and goes to the root of the case.

11. It is also submitted that there is collusion between the Respondent Nos.2 to 4 and 'J.M. Financial Services' and their actions are against the interest of the Respondent No.1 Company.

12. Learned counsel for the Appellants placed on record the orders which are passed on 17th December, 2019 and 20th January, 2020, after passing of the impugned order by the NCLT.

13. Learned counsel for the Appellants submits that if some time is given then they can sold the mortgaged properties at a much higher price than the prices being offered by the buyers.

14. On the other hand, learned counsel for the Respondent Nos. 2 to 4 submits that as per the 'Mortgaged Agreement', 'J.M. Financial Services' is competent to sell the mortgaged properties.

15. The Respondent No.1 Company has taken loan from 'J.M. Financial Services' and Respondent No. 1 committed default in repayment. Therefore, it is incumbent on Respondent Nos.2 to 4 to give the consent to Respondent No.5- 'J.M. Financial Services' for selling the mortgaged properties. Otherwise, 'J.M. Financial Services' may proceed against the Respondent Company under the 'Insolvency and Bankruptcy Code, 2016' and the 'Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002'.

16. It is also submitted that the alternate reliefs claimed in the application has already been granted by the NCLT. The NCLT has protected the rights of the Appellants.

17. The NCLT while passing the impugned order has given a liberty to the Appellants to bring a buyer with a better price, but the Appellants are not in a position to bring any buyer who is ready to purchase the mortgaged properties at a higher rate.

18. Learned counsel for the Respondent No.5 'J.M. Financial Services' submits that they have fairly agreed before the NCLT that if the Appellant brings a buyer with a better price then it would be beneficial for them also. They are interested only in their loan amount and not interested in selling the mortgaged properties.

19. It is also submitted that they are not the party in the Company Petition and the Appellants should have filed the application before the Debt Recovery Tribunal.

20. It is further submitted that this is a consent order hence, in view of sub-section (2) of Section 421 of the Companies Act, 2013, the appeal is not maintainable.

21. Having considered the submissions of learned counsel for the parties, we have gone through the record.

22. It is apparent that NCLT while passing the impugned order has granted the alternative reliefs claimed by the Appellants in his Miscellaneous Application No. 3779 of 2019.

23. We are of the view that while passing the impugned order, it is not necessary for the NCLT to give a finding whether as per agreement of mortgaged, the Respondent No.5- 'J.M. Financial Services' can sell the mortgaged property or not. Such finding can be given only after examining the allegations and counter allegations of the oppression and mismanagement levelled against the Respondent Nos. 2 to 4. The impugned order is not in any manner detrimental to the Respondent No.1 Company as well as the Appellants' interest.

24. Sub-section (4) of Section 242 of the Companies Act, 2013 provides that the Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.

25. Thus, the NCLT has a vast power to pass interim order for regulating the conduct of the company's affairs and it should be just and equitable. We find that the impugned order is just and equitable. Therefore, we find no ground to interfere with the impugned order dated 28th November, 2019.

Hence, the appeal is dismissed. However, no order as to costs.

[Justice Jarat Kumar Jain]
Member (Judicial)

[Mr. Balvinder Singh]
Member (Technical)

[Dr. Ashok Kumar Mishra]
Member (Technical)

NEW DELHI

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