

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 35 of 2021

In the matter of:

Damont Developers Pvt. Ltd. & Anr.

....Appellants

Vs.

Brys Hotels Pvt. Ltd. & Ors.

....Respondents

Present:

Appellants: Mr. Virender Ganda and Mr. Anil Kher, Senior Advocates with Mr. Vishal Ganda, Mr. Anand Singh Sengar, Mr. Ayandeb Mitra, Mr. Harendra Khokhar, Advocates.

Respondents: Mr. Arun Kathpalia, Senior Advocate with Mr. Abhishek Anand, Mr. Kunal Godhwani, Mr. Sandeep Goel, Advocates for R1 (RP).

ORDER

(Through Virtual Mode)

22.01.2021: The issue raised in this appeal is that the IRP could not be permitted to take possession of the subject matter as provisions of Section 18(1) (f) of the Insolvency and Bankruptcy Code, 2016 were not satisfied. It is contended by Mr. Virender Ganda, Senior Advocate representing the Appellant that the Hotel is not in the ownership of the Corporate Debtor who is only having lease hold right in regard to the same as reflected in the balance sheet and, therefore, in terms of law laid down by the Hon'ble Apex Court in "***Embassy Property Developments Private Limited v. State of Karnataka (2019) SCC OnLine SC 1542***", the IRP is not empowered to take possession and control of the same.

2. Mr. Arun Kathpalia, Senior Advocate representing the Respondent No.1 submits that the lease hold rights are property of the Corporate Debtor and property being on perpetual lease is an asset which is the property of the Corporate Debtor and, therefore, the Appellant has no right to be in possession and control of such assets.

Contd/-.....

3. Issue notice upon Respondents. Notice on behalf of Respondent No.1 is waived and accepted by Mr. Abhishek Anand, Advocate. No further notice need be issued to him. Reply affidavit may be filed by the Respondent No.1 within five days. Rejoinder, if any, be filed within five days thereof. In view of the Corporate Debtor represented through IRP being arrayed as Respondent No.1, presence of Respondent Nos. 2 and 3 (suspended Directors) and Respondent No.4 (an employee of the Corporate Debtor) is unnecessary. They are directed to be deleted from the array of Respondents as Respondent Nos. 2, 3 and 4. We are of the opinion that since the lessor of the property admittedly is the Government of Rajasthan which has granted lease hold rights, we deem it appropriate to add Government of Rajasthan as a necessary party in this appeal. Let the Government of Rajasthan through its Chief Secretary be arrayed as party Respondent No.2. Appellant to provide full particulars of newly added Respondent No.2 within two days. Notice be served on Respondent No.2 through any available mode.

4. Respondent No.1 is permitted to place on record such documents which were part of the record of the Adjudicating Authority but have not been placed on the appeal paper book. Written submissions not exceeding three pages may also be filed by the parties along with the pleadings supported by the relevant case law.

5. I.A. No.89 of 2021 seeking exemption from filing certified copies, true-typed copies of dim documents is disposed of with direction to the Appellant to file certified copy of the impugned order within two weeks.

List the appeal 'for admission (after notice)' on 5th February, 2021.

Meanwhile, status quo as obtaining today shall be maintained till the next date of hearing.

**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[Kanthi Narahari]
Member (Technical)**

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

AR/g