

(2024) 04 NCLT CK 0029

In the National Company Law Tribunal

Case No : M.A. 1662 O5 2019 In CP (IB) 3558/MB/C-I/2018

Bank Of Baroda

APPELLANT

Vs

Pratibha Industries Ltd

RESPONDENT

Date of Decision : 08-04-2024

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 14, 60(5)
Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2)

Citation : (2024) 04 NCLT CK 0029

Hon'ble Judges : V.G. Bisht, Member (J); Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Shyam Kapadia, Dhruvad Vaghani, Nandita Bajpai, Gaurav Jain, Cyrus Ardeshir, Sukanya Bhaumik, Abdul Kader

Final Decision : Dismissed

Judgement

Prabhat Kumar, Member (Technical)

1. This Misc. Application IA 1662 /2022 was filed by Mr. Anil Mehta, the Resolution Professional ("Applicant") in the matter of Pratibha Industries Limited (Corporate Debtor) under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 ("Code"), seeking direction against the Respondents to reverse the sale transactions of the properties situated at B-85 Defence Colony, New Delhi-110024 (entire first floor) and at E-10 Defence Colony, New Delhi-110024 (front portion of 3rd floor along with servant quarter with attached toilet and two car parking spaces in the driveway);

2. The Adjudicating Authority, appointed Mr. Sunil Kumar Choudhary as the Interim Resolution Professional ('IRP') of the Corporate Debtor and further imposed a moratorium under Section 14 of the Code.

2.1. Since the IRP was unable to continue as the Resolution Professional ("RP"), vide Order dated 14 March 2019, this Adjudicating Authority appointed Mr. Anil

Mehta as the RP of the Corporate Debtor.

2.2. The Corporate Debtor had availed credit facilities from Respondent No. 1 i.e. Yes Bank Limited, amounting to term loan facility of INR 500,000,000 ("Facilities").

2.3. To secure the aforesaid Facilities, the Corporate Debtor created an exclusive mortgage in favor of the Respondent No. 1 in respect of the certain properties.

2.4. On 10 May 2018, the Respondent No. 1 issued a notice on the Corporate Debtor under Section 13(2) of SARFAESI Act, 2002, for recovery of an amount of INR 87,53,58,171.

2.5. After serving the notice for possession, Respondent No.1 on 21 September 2018 took over physical possession of the Properties and on 27 September 2018, published the notice of possession in local newspaper, being "The Statesman".

2.6. On 30 November 2018, the Respondent No.1 issued a notice for sale by way of e-auction of the Properties. However, on 03 January 2019, the e- auction was declared unsuccessful as no bids were received for purchase of the Properties.

2.7. On 11 January 2019, the Respondent issued second sale notice for the Properties by way of e-auction.

2.8. On 28 January 2019, an e-auction was conducted and E-10 Property was bid by Respondent No.1 for a total sale consideration of INR 5,11,00,000/- and a letter of confirmation dated 28 January 2019 was issued by Respondent No. 1 in favor of Respondent No.2 i.e. Mrs. Raj Shivhare. A Sale Certificate dated 12 February 2019 was issued by Respondent No. 1 in favour of Respondent No. 2 and the sale was registered in the office of Sub Registrar Delhi on 18 February 2019. On 28 January 2019, an e-auction was also conducted for B- 85 Property and the Sale Certificate (showing a date of 30 January 2019) was issued by Respondent No. 1 to itself for B-85 Property.

2.9. Once the provisions of moratorium as prescribed under Section 14 of the Code becomes operative (i.e. from the date of the order passed by the Hon'ble Adjudicating Authority, which in the present case is 01 February 2019), any action by the creditor to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property, including any action under SARFAESI Act for sale of the property is prohibited.

2.10. The breach of the moratorium provisions in Section 14 of the Code, the Respondent No. 1 continued its enforcement actions in respect of the Properties, even after 01 February 2019 (being the date of the order of this Adjudicating Authority declaring moratorium on the Corporate Debtor under the provisions of the Code).

2.11. The Respondent No. 1 had no authority or right to take any action in respect of the Properties and hence, could not have issued or registered the Sale Certificates after 01 February 2019.

2.12. The Properties have always been an asset of the Corporate Debtor and Respondent No.1 only held the Properties as a security for the loans taken by the Corporate Debtor. Pertinently, the actual ownership of the Properties always vested in the Corporate Debtor.

3. Heard learned counsel for both sides and perused the materials available on record.

4. In this case, one property bearing No. E-10 was sold in auction and confirmation of sale was issued on 28.01.2019. In case of second property bearing No. B-85, the said property is stated to have been purchased by the Respondent No. 1 itself by way of accounting book entry in books of accounts on 31.01.2019, crediting the account of the borrower.

5. The moratorium in this case commenced on 01.02.2019. The Ld. Counsel for the Applicant has relied upon the decision in the case of Indian overseas Bank... Versus RCM Infrastructure Limited and Another (2022) 8 Supreme Court Cases 516, wherein the Hon'ble Supreme Court has held that The sale would be complete only when the auction-purchaser makes the entire payment and the authorised officer, exercising the power of sale, shall issue a certificate of sale of the property in favour of the purchaser in the form given in Appendix V to the said Rules".

6. Per contra, the Respondent has relied upon the decision of the Hon'ble Supreme Court in the case of CELIR LLP.. Versus... Bafna Motors (Mumbai) Pvt. Ltd. & 8 Ors., passed in Civil Appeal Nos. 5542-5543 of 2023, wherein the Hon'ble Supreme Court has held at para 105(ii) as under:

"The confirmation of sale by the Bank under Rule 9(2) of the Rules of 2002 invests the successful auction purchaser with a vested right to obtain a certificate of sale of the immovable property in form given in appendix (V) to the Rules i.e., in accordance with Rule 9(6) of the SARFAESI".

7. In so far as property bearing No. E-10 is concerned, we note that the sale confirmation was issued on 28.01.2019, prescribing the payment to be made till 12.02.2019, we find that this Case is squarely covered by the ratio of the Hon'ble Supreme Court decision in the case of CELIR LLP (supra), where, the confirmation of the sale by the Bank has been held to be creating a vested right in favour of SRA. It is implied therefrom that subject to the compliance of the conditions stated in letter of confirmation of sale, the owner of the auctioned property is precluded from claiming any right from the date of confirmation of sale certificate itself. In this case it is undisputed fact that confirmation of sale letter was issued on 28.01.2019, and CIRP commenced on 01.02.2019, accordingly, we have no hesitation to hold that this property ceased to be the property of the Corporate Debtor on 28.01.2019. Accordingly, the RP could not have claimed any right to take control and possession by invoking Section 14 of the Code.

8. As regards, property bearing No. B-85, where also the sale confirmation was issued on 28.01.2019 and the sale certification was also issued on 30.01.2019 by the Respondent No. 1 to itself. We note that there is no bar in transferring the property to itself in case of failure of auction which the Respondent No. 1 had done. It is not in dispute that the full consideration has been received by way of book transfer i.e by crediting the account of the Corporate Debtor in the Books of the Respondent No.1. Applying the same ratio as explained in paragraph 7 above, we similarly hold that this property also ceased to be the property of the Corporate Debtor on 28.01.2019.

9. With the aforesaid observation, the Miscellaneous Application bearing MA No. 1662 of 2019, is dismissed.