

(2023) 10 NCLT CK 0012

In the National Company Law Tribunal

Case No : IA-2028/2023 IN CP.IB.68(MB)2021

**?Mr. Bhrugesh Amin Vs Thane Municipal Corporation through its
commissioner ?**

Date of Decision : 06-10-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 14, 18, 20, 25, 60(5)
Maharashtra Regional and Town Planning Act, 1966 — Section 37

Citation : (2023) 10 NCLT CK 0012

Hon'ble Judges : Kishore Vemulapalli, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Ravi Kadam, Ayush J. Rajani, Khushboo Shah, A. Y. Sakhare, Joel Carles, Shavez Mukri, Girish Paryani

Final Decision : Dismissed

Judgement

Kishore Vemulapalli, Member (Judicial)

1. This is an Application IA-2028/2023 filed on 19.07.2023 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'the Code') read with section 14, 18, 20 and 25 by the Resolution Professional of Modella Textile Industries Limited ("Corporate Debtor") seeking directions against thane Municipal Corporate ("Respondent No.1") not to make any DP modifications as a sought to be done by it; not to deal with regard to assets of the Corporate Debtor in view of moratorium u/s 14 of the Code; no to cause any hindrance to the prospective Resolution Applicant complete their due diligence; and to set aside the letter dated 03.10.2022 issued by it. The Deputy Engineer, development plan (Executive Department) is arrayed as Respondent No.2.

2. The applicant has submitted that the Corporate Debtor was admitted into Corporate Insolvency Resolution Process (CIRP} vide order dated 04 May 2022 passed by this bench and Mr. Bhrugesh Amin, the Applicant was appointed as the Interim Resolution Professional and later on confirmed as Resolution Professional by the CoC after its constitution.

3. The Applicant submits that

3.1. The Corporate Debtor is the owner of a land admeasuring (approximately) 57,962 sq. meters (14.3 acres) bearing Survey Nos. 464, 465A, 465, 466 and having CTS Nos. 1592 to 1597, 1599 to 1638, Tika No. 33, 34 and 37 situated at Village Panchpakhadi, Taluka and District Thane, within the limits of Thane Municipal Corporation (the "Land").

3.2. The Corporate Debtor's architect, by letter dated 24 February 2011, sought from the Respondent No. 1, inter alia, the Development Plan remarks in order to enable the Corporate Debtor for development of the said Land.

3.3. The present application is filed for the purpose of impugning letter dated 03 October 2022 (the "Impugned Letter") and modifications to the development plan issued by the Respondent No. 1 and 2. The Respondent No. 1 has, under the Impugned Letter, arbitrarily, unjustly and illegally issued modifications to the development plan wherein additional area belonging to the residential part has been reserved without consulting the Corporate Debtor. The impugned Letter was issued based on a notification dated 30 March 2022 and resolution dated 03 March 2022 purportedly passed by the Respondent No. 1 which have not been provided to the Corporate Debtor. The Respondent No. 1 has sought to modify the development plan without following the provisions of the Code.

4. On perusal of the letter dated 03 October 2022 was addressed to Saakar Architect advising that some areas of the plot have been notified by the government vide notification no. TPS-1220/575/CR-13/22/UD-12, as per the amendment approved on dated 30/03/2022 is affected by the provisions of (Internal Metro). Thane Municipal Corporation Resolution no. 730 on dated 03/03/ change from vacant plot has been approved as per table below:

Sr.

No.

As per approved development

plan

Area (Sq.Mtr)

Format modification

Area (Sq.Mtr.)

1.

Resident Dept

36125.00

1.Municipal Purpose

Reservation 2. 20 Mtr. Road

1) 35360.00

2) 2600.00

2.

Parking R.No.5

17200.00

1) Parking

R.S.No.5

2) 20 Mtr.

Road.

14690.00

2510.00

3.

18 Mtr. Wide development plan road.

1838.00

3) Abolition of 18 mtr. Wide road and inclusion of said portion in municipal purpose reservation.

5. The Respondent No.1 has filed an affidavit in reply dated 24.07.2023 stating that the captioned Interim Application under the provisions of Section 60(5) read with Sections 14, 18, 20 and 25 of the Insolvency and Bankruptcy Code, 2016 thereby, inter-alia seeking to quash and set-aside letter dated 3rd October, 2022 issued by the Respondent No.1 and quashing and restraining Respondent No.1 from making DP modifications as sought to be done by the Respondent No.1 Corporation is not maintainable and is untenable in the eyes of law as the Hon'ble NCLT is Coram Non-Judice. The reliefs as sought by the Resolution Profession against the Respondent No.1 qua State Government are beyond the scope and jurisdiction of the Hon'ble NCLT as provided under Insolvency and Bankruptcy Code, 2016 and Rules and Regulations made thereunder.

5.1. Section 60(5) mentions about the jurisdiction of the Hon'ble Tribunal in which it specifies that any question of law or fact, arising out of or in relation to insolvency resolution of the Corporate Debtor only but a decision taken by the Government or a statutory authority in relation to a matter which is in the realm of public law, cannot by any stretch of imagination, be sought within the fold of phrase. "arising out of or in relation to the insolvency resolution" appearing in clause (c) of Subsection (5). It is settled law that wherever the Corporate Debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution

professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5) under the guise of Sections 18, 20 and 25 of IBC as duties of a resolution professional are entirely different from the jurisdiction and power of NCLT.

6. We heard the counsel and perused the material on record.

6.1. We find from the impugned letter dated 03.10.2022 that this letter was in nature of feed back given in accordance with the orders issued by the government from time to time as well as the Unified Development Control and Promotion Regulations (UDCPR) 2020 approved by the Government, Regulation No.3.11. It is further noted from the reply of the Respondent No.1 that the issue arose from the resolution No. 730 dated 03.03.2022 modification u/s 37 of MRTP Act, for change in residential zone to Municipal purpose reservation and 20 Mtr. Wide road and parting resolution No.5 to parking and 20 mtr. Wide road and for deletion of 80 mtr. Wide road. It is also found that the draft modification of metro was sanctioned by Government of Maharashtra vide G.R. No. TPS-1220/527/CR-13/22/UD-12 dated 30.03.2022. Accordingly, the TMC has submitted the following reservations:

Reservations

Area reserved for reservations in

Sq. Mtrs. From 03/03/2022

Total Plot area 57962.29

45 M wide Road

3590.26

18 M wide Road

Deleted

Parking reservation

14,690.00

Residential area

Reservation for municipal
purpose

35,360.00

Reservation for 20.00 m road with
alignment of metro

5110.00

6.2. The Respondent has also submitted that the reservation are matter of public and it is the State Government and the Union of India who has the power and jurisdiction to change/delete reservation. Further, the change/delete/reservation also depend upon the facts, circumstances, and requirements on that particular area.

6.3. This bench finds substance in the argument of Respondent No.1 that this bench cannot interfere in the matters pertaining to public policy as such matters do not arise out of or in relation to insolvency of a corporate debtor. In the case of Municipal Corporation Of Greater ... vs Abhilash Lal [2019] ibclaw.in 28 SC, the Hon'ble Supreme Court held that "Section 238 cannot be read as overriding the MCGM's right – indeed its public duty to control and regulate how its properties are to be dealt with. That exists in Sections 92 and 92A of the MMC Act. This court is of opinion that Section 238 could be of importance when the properties and assets are of a debtor and not when a third party like the MCGM is involved. Therefore, in the absence of approval in terms of Section 92 and 92A of the MMC Act, the adjudicating authority could not have overridden MCGM's objections and enabled the creation of a fresh interest in respect of its properties and lands". In the present case though the issue pertains to the property of the Corporate Debtor but in terms of the statutory powers vested in the government a person can be deprived of its property in accordance with the law for the purpose and objects stated in such law. In other words, law dealing with public properties are public policy are not overriding by the Section 238 of the IBC. Accordingly, this bench cannot consider the prayer in this relation.

6.4. Nonetheless, we find the impugned letter dated 03 October 2022 entails communication of merely a future proposition, and a subject to the procedure contemplating under the MRTTP act which is still not began. It seems to be a pre-mature prayer also. As regards other directions, this bench is of the considered view that though the planning authority are bound by the present plans, and but such authorities are not barred from taking into consideration any future proposal while considering the sanction of any drawing on a land which may be subject matter of such future proposal. Further, the Respondents have not yet restrained any person authorized by the applicant from accessing the site. Accordingly, this bench does not be any necessity to issue any directions since, the process of due diligence is already over and the resolution plan approved by the CoC is pending for approval before this Tribunal.

7. In view of the aforesaid discussions, this bench is of the considered view, this application [IA-2028/2023] deserves to be dismissed.