

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 182 of 2018

IN THE MATTER OF:

Bhavik Bhimjyani

...Appellant

Vs

Uday Vinodchandra Shah, RP of

Neelkanth Township & Construction Pvt. Ltd. & Ors.

....Respondents

Present:

For Appellant: Mr. Darpan Wadhwa, Sr. Advocate with Mr. Kush Chaturvedi, Mr. Aman Varma, Ms. Smriti Churiwal and Ms. Chaitrika Patki, Advocates.

For Respondents: Mr. Arun Kathpalia, Sr. Advocate with Mr. Abhishek Anand, Advocate for R-1 (RP).

Mr. Sidharth Samantray and Mr. Anuj Sarma, Advocates for R- 2

ORDER

06.12.2018: The Appellant, a shareholder/ex-director has preferred this appeal against order dated 26th April, 2018 passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench wherein the Adjudicating Authority made following observations and passed following directions:-

“9. On examination of the records of the company, it appears that advances given to these entities aggregating to more than ₹30 crores which is appearing in page No. 66 of this application. By correspondence made by R1, we are prima facie of the view that the promoter/director is hiding information from the Resolution professional as to ensure that the transaction entered into with the related companies; its subsidiaries and third parties are not shown as receivables/debts payable to the Corporate Debtor, in view of the same, R1 is hereby directed to furnish the documents that

this applicant has sought in the e-mail dated 02.04.2018, which is annexed as Exhibit R to this application within 7 days hereof, failing which this Applicant is at liberty to approach this Bench for further directions.”

2. Learned counsel appearing on behalf of the Resolution Professional in reply affidavit dated 18th September, 2018 brought on record the a Chart to suggest the documents required by the Resolution Professional and the documents already provided by the Appellant, also showing why Resolution Professional requires those items. The chart is extracted below:-

S.no.	Documents required by the RP	Documents provided to the RP	Reason as to why the RP requires them
A) Advances made by the Corporate Debtor to Lighthouse Developers Pvt. Ltd. for advancing a sum of Rs.5,27,00,000/-			
1	Memorandum of Understanding dated 6 th January 2015 (“ MOU ”) executed by the Corporate Debtor and Lighthouse Developers.	Minutes of the Board Meeting dated 6 th January 2015 reproducing the contents of the MOU and approving the execution of the said MOU. But, the SIGNED MOU is neither annexed to the said minutes of the meeting nor handed over to the RP.	The Corporate Debtor has advanced a sum of Rs.5,27,00,000/- to Lighthouse Developers from the finances raised from the Financial Creditor but the Corporate Debtor has taking no steps whatsoever to recover the aforesaid amount advanced to Lighthouse Developer.
2	Corporate Debtor’s Bank Statement showing the advance given to Lighthouse Developers Private Limited	Bank Statements of the Corporate Debtor pertaining to the period when the said advances were made to Lighthouse Developers have not been handed over to the RP. The RP is in possession of the Corporate Debtor’s bank statements from 10 th August 2015 onwards.	It is pertinent to note that Mr. Bhavik Bhimjyani and his family hold approximately 60% stake in Lighthouse Developers Private Limited and that Mr. Bhavik Bhimjyani was a director in Lighthouse Developers till October’17. Further, Lighthouse Developers and the Corporate Debtor share the same registered address.

3	Balance Confirmation Statement from Lighthouse Developers and Financial Statement	The RP by its email dated 21 st February 2018 has called upon Lighthouse Developers to confirm the outstanding amount due and payable by it to the Corporate Debtor as well as for certain supporting documents to be provided to the RP for the same. Till date, No Response has been received from Lighthouse Developers Private Limited.	
B) Advances made to Bhagirathi Padte, Levi Bonkar, Mahesh Raukar, Manisha Korde, Prashant Garud and Sunder Padte			
1	Ledger Copies of each advance made to the aforesaid individuals, from the date of advance till date.	The advances made by the Corporate Debtor to the said persons pertains to a period much prior to the period for which documents were handed over by the Mr. Bhavik Bhimjyani to the RP. No. Documents/explanation has been provided by Mr. Bhavik Bhimjyani for making these advances except that the said advances made are old and that the same are not recoverable.	The Corporate Debtor has advanced a sum of Rs.61 lakhs to the said persons from the funds raised from the Financial Creditor. However, till date, the Corporate Debtor has recovered the said sums advanced.
2	Personal Details of the aforesaid persons to whom the said advances have been made.		
3	Latest Status of these Advances.		
4	Reasons as to why the Corporate Debtor never recovered the said advances from the aforesaid persons.		
5	Details of the Land for which these said advance were made		
6	Board resolutions authorizing the Corporate Debtor to make the said advances.		

C) Wholly Owned Subsidiaries – Urban Rupi Infrastructure Private Limited and Neelkanth Palm Realty Private Limited			
1	Incorporation Documents of the aforesaid wholly owned subsidiaries.	The Corporate Debtor has raised Rs.51 crores from the Financial Creditor out of which a sum of Rs.30.95 crores has been advanced to these 2 wholly owned subsidiaries for purchasing of approximately 50 acres of land in the same of project admeasuring approximately of 80 acres, in which the remaining 30 acres stands in the name of the Corporate Debtor. Further, the land purchased in the name of the Corporate Debtor is from the funds raised from the Financial Creditor itself. The subsidiaries are wholly owned and do not have any operations whatsoever except that they have taken a loan from the Corporate Debtor for purchasing the said lands. No Documents pertaining to the WHOLLY OWNED subsidiaries have	The Wholly owned subsidiaries of the Corporate Debtor hold assets acquired directly through the funds received and raised by its Parent Company, i.e. the Corporate Debtor, from the Financial Creditor. In order, to safeguard the assets of the Corporate Debtor, it is imperative that the RP takes over the control of the wholly owned subsidiaries of the Corporate Debtor.
2	Filings made with the ROC during the last 2 financial years.		
3	Minutes of the Board Meetings held in the last two years and minutes of the Annual General Meeting held		
4	Signed Financial Statement for the last 3 years		
5	Trial Balance as on date		
6	Original Land Records		
7	Bank Statements for last two years		
8	Details of Legal Cases, if any		
D)Any other documents as required by the Resolution Professional on orders of this Honourable Tribunal			

3. Reply affidavit has been filed by the Appellant. Learned senior counsel appearing on behalf of the Appellant submits that signed copy of Memorandum of Understanding (MOU) dated 6th January, 2015 executed by Corporate Debtor and 'Lighthouse Developers' is not available with the Appellant. Whatever document were available have already handed over to the Resolution

Professional, rest of the documents may be lying with the other Directors. In so far as Item No. 2 and 3 of Clause (A) regarding advance payment made by the Corporate Debtor to 'Lighthouse Developers' and balance confirmation statement from 'Lighthouse Developers' and financial statement as shown in the Chart are concerned, learned senior counsel appearing on behalf of Resolution Professional submits that those documents have already been received from the Bank.

4. In so far as advances made to Bhagirathi Pate, Levi Bonkar, Mahesh Raukar, Manisha Korde, Prashant Garud and Sunder Padte are concerned learned senior counsel for the Appellant submits that whatever documents were available with him have already been handed over to the Resolution Professional. He further submits that he Appellant will cooperate with the Resolution Professional to trace rest of the documents from the persons who had already received advances.

5. In so far as Clause (C) i.e. documents relates to subsidiaries – 'Urban Rupi Infrastructure Private Limited' and 'Neelkanth Palm Realty Private Limited', learned senior counsel appearing on behalf of the Appellant submitted that the Appellant will provide all the documents. However, he submits that thought the Resolution Professional may take the copies of the records of the flats but cannot take over the subsidiaries in question without any direction of a court of competent jurisdiction or Adjudicating Authority.

6. Learned senior counsel appearing on behalf of the Resolution Professional submits that the Corporate Debtor has been ordered for liquidation and now the Resolution Professional is functioning as Liquidator. He intends to protect all the assets of the Corporate Debtor including the records as detailed in the Chart.

7. In the circumstances, we direct the Appellant to allow the Liquidator to inspect the records of 'Urban Rupi Infrastructure Private Limited' and 'Neelkanth Palm Realty Private Limited' to trace out if any of the records of the Corporate Debtor are available therein or records as mentioned in the Chart extracted above. If any of the record of the Subsidiary Company related with the Corporate Debtor as recorded in the chart aforesaid is traced, the Appellant will hand over the copies of same to the Resolution Professional/ Liquidator.

8. We make it clear that the Resolution Professional/ Liquidator has no jurisdiction to take over any asset of the subsidiary company of the Corporate Debtor including 'Urban Rupi Infrastructure Private Limited' and 'Neelkanth Palm Realty Private Limited', therefore, the Resolution Professional cannot take the original documents available with the subsidiary companies though he may take authenticated photocopies of those documents.

8. Part of the impugned order dated 26th April, 2018 wherein observation has been made against the Appellant is set aside and stands modified to this effect. The appeal is disposed of with aforesaid observations and directions.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/sk