

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 705 of 2020**

**IN THE MATTER OF:**

**Darode Jog Homes Pvt. Ltd.**

**...Appellant**

**Versus**

**IDBI Trusteeship Services Ltd.**

**...Respondent**

**Present:**

**For Appellant: Mr. Ritesh Mahajan and Mr. Rohit Gupta, Advocates.**

**For Respondent: Mr. Zal Andhyarujina, Sr. Advocate with Mr. Ryan Dsouza, Mr. Samit Shukla, Mr. Nausher Kohli, Advocates.**

**O R D E R**  
**(Through Virtual Mode)**

**25.08.2020:** Appellant – Corporate Debtor has preferred the instant appeal against order dated 9<sup>th</sup> July, 2020 passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Special Bench, Court No. II in I.A. No. 1011 of 2020 in CP (IB) 1346/MB of 2019 by virtue whereof Respondent's application came to be disposed of with direction to the Appellant-Corporate Debtor to deposit Rs.2 Crores or the consideration amount of the TDR, whichever is higher, within a period of 21 days before the Adjudicating Authority with further direction to maintain status quo as on the date of the sale with

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regard to the TDR asset. The impugned order is assailed primarily on the ground that the transaction of sale of TDR was executed after settlement between the parties and such development has not been taken into consideration by the Adjudicating Authority.

2. Learned counsel for the Appellant submits that after the settlement was arrived at between the parties, there was no debt and default thereof. This argument overlooks the fact staring in the face of Appellant that learned counsel for the Appellant-Corporate Debtor had undertaken not to alienate any of the assets of the Corporate Debtor – a fact specifically recorded in the order formulated on 6<sup>th</sup> June, 2019. It is not disputed that the Corporate Debtor has already disposed of TDR without seeking modification of order dated 6<sup>th</sup> June, 2019 and without bringing this subsequent development to the notice of the Adjudicating Authority thereby justifying the conclusion that TDR has been disposed of in utter disregard of the undertaking before the Adjudicating Authority that the assets of Corporate Debtor shall not be alienated. Appellant has not only disregarded its own undertaking but also committed breach of its terms which tantamount to breach of the order of the Adjudicating Authority. If, any subsequent development in the form of settlement has taken place, the Appellant was required to lay information in regard to such development before

the Adjudicating Authority and seek modification of order dated 6<sup>th</sup> June, 2019 for withdrawing its undertaking. Admittedly, the Appellant has not sought such modification. Therefore, being guilty of inequitable conduct and disregarding its own undertaking which tantamount to an order of the Adjudicating Authority, it cannot be heard to raise an issue in appeal that the liability is settled and nothing survives for consideration in the main petition. This is a brazen attempt on the part of the Appellant to commit breach of the undertaking manifesting in order of the Adjudicating Authority, in the nature of restriction on alienation of the assets of the Appellant-Corporate Debtor and the Appellant cannot be permitted to walk with impunity under the garb of settlement without bringing the post-undertaking development to the notice of the Adjudicating Authority and seeking vacation/ withdrawal of order recording such undertaking. Such practice deserves to be deprecated as it has a tendency to promote flouting Court directions based on undertaking of the party.

3. In the given circumstances, we are of the considered opinion that the direction in the nature of impugned order designed to safeguard the interest of the Creditor and prevent the Appellant-Corporate Debtor from marching a score over the Creditor through deceitful means i.e. by making a false undertaking before the Adjudicating Authority, is legally sustainable and in tune

with the power vested in the Adjudicating Authority under I&B Code to slap restrictions on transfer of the assets of the Corporate Debtor to safeguard the interests of the Creditors seeking insolvency resolution.

4. We find no legal infirmity in the impugned order. There being no merit in the appeal, same is dismissed.

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

**[Justice Anant Bijay Singh]  
Member (Judicial)**

**[Dr. Ashok Kumar Mishra]  
Member (Technical)**

*am/gc*