

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**PRINCIPAL BENCH**

**ITEM No. 101**  
**(IB)-967(PB)/2018**

**IN THE MATTER OF:**

SGM Webtech Pvt. Ltd.

..... Petitioners/Applicant

v.

Boulevard Projects Pvt. Ltd.

..... Respondents

**Order Under Section 7 of Insolvency & Bankruptcy Code (CIRP)**

**Order delivered on 22.02.2021**

**CORAM:**

**SH. B.S.V. PRAKASH KUMAR**  
**HON'BLE ACTG. PRESIDENT**

**SH. HEMANT KUMAR SARANGI**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant

Mr. Abhishek Anand, Mohak Sharma, Advs.  
for ICICI Bank

Mr. Ramji Srinivasan, Sr. Advocate, Mr. Shivkrit Rai,  
Adv. and Ms. Rajshree Chaudhary, Adv. for resolution  
applicant

For the Respondent

Mr. Jayant Mehta, Adv with Ms. Anjali and Mr.  
Prashant Kumar for the RP

Mr. Abhimanyu Chopra, Mr. Raghav Chadha, Mr.  
Shaurya Vardhan Singh, Advs. for R-3

Mr. Sourav Roy, Mr. Kaushal Sharma and Mr.  
Prabudh Singh, Advs. for Noida Authority

Ms. Manmeet Arora, Devashish Chauhan, Pallavi  
Mishra Samapika Biswal, Advs. for Yashail Estates  
Pvt. Ltd.

Mr. Shrey Ashat, Ms. Preetika Mishra, Advs. for Asian  
Society of Films and Television

Ms. Shivambika Sinha and Neelambika Singh,  
Advocates, for Acreage Properties Pvt. Ltd.

Mr. Vishal Ganda, Mr. Saransh Kothari, Advs.

For Three C Hospitality Ventures Private Limited

**ORDER**

At request of the parties, the date of hearing for hearing IA1101/2019 earlier fixed i.e., 23.02.2021 is hereby canceled and posted to **09.03.2021**.

Since IA1101/2021 has already been part heard, the RP Counsel shall complete his submissions within 30 minutes, the Resolution Applicant Counsel within 30 minutes and rejoining to be completed within 15 minutes.

Lists IA-1058/2021, IA1785/2019 & IA-2086 along with other avoidance applications for hearing on **09.03.2021**.

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**(B.S.V PRAKASH KUMAR)  
ACTG. PRESIDENT**

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**(HEMANT KUMAR SARANGI)  
MEMBER (TECHNICAL)**

22.02.2021  
Aarti Makker

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**PRINCIPAL BENCH**

**ITEM No. 101**  
**IA-792(PB)/2021**

**IN THE MATTER OF:**

New Okhla Industrial Development Authority  
Main Administrative Building Sector - 6,  
Noida, Gautam Buddha Nagar, Uttar Pradesh

..... Applicant

**Order under Section 60(5) of the IBC read with Rules 11, 23 and 43 of the National Company Law Tribunal Rules, 2016**

In

**(IB)-967(PB)/2018**

**IN THE MATTER OF:**

SGM Webtech Pvt. Ltd.

..... Petitioners/Applicant

v.

Boulevard Projects Pvt. Ltd.

..... Respondents

**Order Under Section 7 of Insolvency & Bankruptcy Code (CIRP)**

**Order delivered on 02.03.2021**

**CORAM:**

**SH. B.S.V. PRAKASH KUMAR**  
**HON'BLE ACTG. PRESIDENT**

**SH. HEMANT KUMAR SARANGI**  
**HON'BLE MEMBER (TECHNICAL)**

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Mr. Sourav Roy, Mr. Kaushal Sharma and Mr.  
Prabudh Singh, Advs. for Noida Authority  
Ms. Manmeet Arora, Devashish Chauhan, Pallavi  
Mishra Samapika Biswal, Advs. for Yashail Estates  
Pvt. Ltd.  
Mr. Shrey Ashat, Ms. Preetika Mishra, Advs. for Asian  
Society of Films and Television



Ms. Shivambika Sinha and Neelambika Singh,  
Advocates, for Acreage Properties Pvt. Ltd.  
Mr. Vishal Ganda, Mr. Saransh Kothari, Advs.  
For Three C Hospitality Ventures Private Limited

**ORDER**

**IA-792/2021:**

**Heard and dictated on 22.02.2021**

It is IA-792/2021 filed by Noida Authority seeking reliefs against the corporate debtor as follows:

*a) Direct the RP to remove the Plot of Land located at Commercial Plot No.C-001/A, Sector 16B, NOIDA, U.P., from the pool of assets of the Corporate Debtor/Lessee;*

*b) Declare that the Corporate Debtor/Lessee does not have any ownership rights over the Plot of Land situated at Commercial Plot No. C-001/A, Sector 16B, NOIDA, U.P.*

2. On perusal of this application, it appears that the Applicant/Noida Authority entered into a Lease Deed dated 29.06.2010 with the Corporate Debtor, leasing a Plot of land admeasuring 40,056.72 Sq. Mtrs. located at Plot No.C001/A, Sector 16B, Noida, Uttar Pradesh for a period of 90 years at a premium of ₹526,74,58,680, out of which, Lessee/Corporate Debtor paid only ₹52,67,45,868 to the lessor; as the corporate debtor failed to pay off the remaining balance of ₹474,07,12,812 as stipulated in the Lease Deed along with interest @ 11% per annum compounded on half yearly basis from the date of allotment, the lessor has filed this application seeking the reliefs as mentioned above.

3. With regard to the facts, either side has no dispute, the corporate debtor is a defaulter, not paid the lease amount as stipulated. If the mode of lease payment is examined, it is clear that payment is bifurcated into two items, one as payment towards premium staggered into instalments and another item is rent as stipulated in the lease agreement. As per the agreement, premium shall be paid in 16 half yearly installments, the rent is a nominal amount that shall be paid by the allottees over a period of time or it could be paid in one-go as



mentioned in the agreement. It is mentioned in the agreement that lessee/corporate debtor can mortgage the leasehold property and can execute the Sub-lease in favor of the allottees. The only condition lying in the present agreement is that any such sub lease shall be by execution of tripartite agreement between the lessor, lessee and sublessee. For there being no dispute regarding factual aspect, we do not believe that we need to delve upon the factual situation, except to the extent of legal proposition canvassed by both sides.

4. In this backdrop, Noida Authority Counsel Mr. Sourab Roy submits that since the property belongs to Noida Authority and ownership lies with Noida Authority, the custody of the property shall not remain with the Corporate Debtor because the Resolution Professional (RP) during CIRP can only deal with assets owned by the corporate debtor but not with the assets not owned by it nor with the assets of third party as envisaged under Section 18 (f) and explanation thereto, whereby the Applicant has sought the reliefs as mentioned above.

5. As against this argument, the RP counsel Mr. Jayant Mehta and Mr. Ramji Srinivasan, Senior Counsel appearing on behalf of the Resolution Applicant submit that though the asset is not owned by the Corporate Debtor, it has leasehold right over the land leased out to the corporate debtor and that right itself has huge value for the simple reason the lessor itself leased out the land for the purpose of development of residential locality, over which the lessee is permitted to do business by selling flats in the name of sublease, therefore lease hold right itself is an interest having value therefore the lease hold right is a transferable right and right creatable of third party rights such as mortgage. By virtue of lease, many incidents of ownership pass on to lessee. In view thereof, the counsel submit that leasehold right accrued to the lessee is a right vested with it and this incident is synonymous to the ownership to the extent of leasehold right upon which the corporate debtor is permitted to do business. Moreover, the lessor shall initiate proceedings for cancellation of lease in favor of the corporate debtor, that has not been done at any point of time till date, and without cancellation of the lease deed, the lessor cannot



withhold the right vested with the corporate debtor. They have further stated that for the lessor has filed application (IA1101/2019) to consider it as financial creditor, the lessor cannot now file this application for removal of this asset from the pool of the assets of the Corporate Debtor, which is diagonally opposite to the relief to consider it as financial creditor. Over and above, whenever a development agreement is entered into, the purpose of entering into an agreement is, to develop a township, in view thereof, the land will be provided by the respective development authorities of either State Government or Central Government to the developers to construct houses so that allottees could reside in the said houses. The purpose is to develop city; therefore, it cannot be said that since it is a leasehold right, it cannot be dealt with by the Corporate Debtor. They further submit that in the CIRP proceedings, this Applicant cannot now turn around and say that this asset does not remain with the Corporate Debtor and it has to be returned to the Applicant by virtue of the ownership right it has over the asset leased out to the Corporate Debtor.

6. On hearing the submissions of both sides, it is evident that this application is filed during CIRP period while Moratorium is operating in rem against all not to initiate any proceeding and to maintain status quo with regard to the incidents falling u/s 14 of the Code. In IBC, insolvency of Corporate Debtor has been divided into two parts; one is CIRP process; and another is Liquidation process. As long as CIRP period is in force, CIRP period is governed by Section 14 of the Code, therefore whatever restraint that emanates from Section 14 is applicable to the items that are falling under Section 14. The clause relevant for consideration is **Section 14 (1) (d), which prohibits the recovery of any property by an owner or lessor or where such property is occupied or in possession of the corporate debtor.** As per this clause, not only the lessor but also the owner of any property during Moratorium cannot take back the property if it is in the possession or occupation of the corporate debtor. Here, it is not in dispute with regard to the leasehold right of the corporate debtor and it is also not in dispute over the possession held by the corporate debtor over the leasehold land. And it is not the case of the corporate debtor that it has ownership rights over the property.



7. The purpose under CIRP is, to preserve the value of the Corporate Debtor existing as on the date of admission of Company Petition, and it shall continue as it is until CIRP is over, for this reason alone, even if an asset belonging to third party is leased out or when it is in the occupation of the Corporate Debtor, it shall not be taken out from the Corporate Debtor either directly or by initiating any proceeding against the Corporate Debtor.

8. This Code has redrafted the exercise of rights by the parties during CIRP, so that the value subsisting in the company as on the date of admission is preserved, and so that it can be sold as a company through resolution process so as to protect not only the interest of the creditors but also other stake holders such as workers and the potential of the company that can resuscitate and generate wealth to the nation; in the perspective of the creditors, the value that lies in the company could be equitably distributed to the creditors like in any other insolvency process existing across the world.

9. During CIRP period, there is only one section that continues in operation throughout CIRP period without any change, that is section 14 of the Code, other sections from 15 to 31 are only facilitating sections to drive this insolvency resolution process at respective stages to a logical end, that is for approval of the resolution process, therefore duties and rights vested with persons such as the Resolution professional or the CoC will not have any bearing over the restraints created u/s 14 of the Code.

10. To our knowledge, we have not come across any ambiguity in any of the sections from 15-31 or creating any negating effect upon the mandate given u/s 14, assuming by default any of the later sections has negating effect upon section 14 mandate, then also such provision shall reconcile to the effect of section 14 and remain subordinate to the mandate of Section 14, but not vice-versa. The reason is section 14 is an umbrella provision to provide protection to all these later sections in progressing towards approval of the resolution plan.

11. We have to figure out that during CIRP, litigations against company will not vanish, compromise or arrangement among the creditors is only to the extent of claims made against the company, if any such issue is present which is not resolvable at the time of approval of the plan by the CoC, the CoC and



the Resolution Applicant will take a call over it. Just as how liabilities of the transferor companies pass on to transferee company, here also unresolvable issues relating to the corporate debtor may be passed on to the Resolution Applicant, that is an issue in between the CoC and the applicant.

12. We shall not be confused with clean slate concept that is applicable to the claims made and debts left unclaimed. Apart from the issues of the creditors, there could be several other issues such as issue relating to title and other like issues; which may pass on to the resolution applicant, because all that turbulence preceding admission has remained calm during CIRP. That's why this period is generally called calm period. And we can call those issues have remained in suspended animation during CIRP. Remaining calm or litigation remaining in suspended animation cannot be construed all that is over.

13. One basic proposition we all shall adhere to is, persons are always free to enter into agreements, they can make themselves bound by their covenants so long as such covenants are not repugnant to the laws governing them, those covenants cannot be diluted by anybody save and except by themselves, yes if State by an enactment brings in any modification to exercise of such rights, such right being accrued to the State from Constitution of India and we being bound by the Constitution, those rights could be dealt with in the way it is modified, but not beyond the modification given by the legislature.

14. In the Code, CIRP process is a time bound attempt to breathe in life into the company by reorganizing its house either by change of hands with the approval of the creditors or by having rearrangement with the creditors. This resolution plan or rearrangement weighs the value of the corporate debtor; accordingly, creditors share the liabilities and the assets in equitable manner as per the availability. In a way, the creditors are asked through statute to reconstruct the affairs of the corporate debtor, they are given free hand to reconstruct the debtor company, to do this exercise, the principles of democracy are applied, because getting 100% concurrence on any issue is practically not feasible. To do this exercise, Moratorium is an arrangement wherein stakeholders shall not exercise their rights during that period, what all





we want to say is, suspension of exercise of rights for a time period cannot be seen as extinguishment of rights of the parties.

15. If resolution plan is not approved, in the event Corporate Debtor or the assets in the possession of the Corporate Debtor goes into liquidation, then it is altogether a different subject matter, Moratorium will get lifted and contours of the liquidation process are dependent upon the definition of the liquidation estate and Section 52 and 53 of the Code. Since that point is not relevant at this juncture, it has not been dealt with.

16. When it comes to Sec. 18 (f), it only deals with the duties of the Interim Resolution Professional. It deals with how the Insolvency Resolution Professional is to perform his duties. It has not been said anywhere that IRP is conferred with rights and he is entitled to take control and custody of any asset of the corporate debtor. It is only a section that deals with what assets he could take control of under section 18; it is not a section creating or taking away rights of somebody. It cannot be a section set against the restraints set up under section 14 of the Code, Section-18 is merely a procedure to be followed for smooth change-over from the suspended directors to the IRP during CIRP period. In the present context, invocation of Sec. 18 (1)(f) will not arise because the asset in issue right from the beginning is in the possession of the corporate debtor and thereafter in the possession and control of the IRP or the RP as the case may be.

17. Section 18 will come into picture only when asset is required to be taken into control of the IRP, in the present case, that stage is over, therefore there is no relevance to section 18 while deciding as to whether or not the asset is to be removed from the pool of the assets of the corporate debtor. What lies with the corporate debtor, what does not lie with the corporate debtor has to be decided in the light of the mandate given under section 14 of the Code and upon the title subsisting over a particular asset. In this case, it is a leasehold right, as per Section 14 of the Code that right cannot be disturbed during CIRP period.

18. As to the definition of asset given in the explanation to Section 18, it delineates the assets owned by third party in possession of the corporate debtor held under Trust or Contractual Arrangements including bailment,



these assets are of such kind that have come to the Corporate Debtor for rendering some services, in case any such asset is stuck with the Corporate Debtor, it shall not be treated as an asset of the corporate debtor under this particular section. If any asset with a definition analogous to the above explanation is in the possession of the corporate debtor, then it could be entailed by applying doctrine of ejusdem generis, not otherwise.

19. In the present case, it is a leasehold right covered by section 14, that apart, the character of lease hold right cannot be called as a right analogous to the category of the assets mentioned in the explanation given to Section 18 of the Code. If it is carefully looked into, the word '**this section**' has been inserted in explanation to limit the applicability of the explanation to section 18 alone.

20. In view thereof, we have not found any merit in the application filed by Noida Authority for removal of the leasehold land from the pool of the assets of the corporate debtor, therefore **IA792/2021 is hereby dismissed as misconceived.**

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**(B.S.V PRAKASH KUMAR)  
ACTG. PRESIDENT**

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**(HEMANT KUMAR SARANGI)**