

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

SL. No.137

**Special Bench (Video Conference)**

**CORAM: DR.VENKATA RAMAKRISHNA BADARINATH NANDULA – HON'BLE MEMBER (J)  
CORAM: SHRI VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 15.09.2022 AT 02:30 PM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/152/2022 in CP (IB) No.184/7/HDB/2019
NAME OF THE COMPANY	Meenakshi Energy Ltd
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Meenakshi Energy Ltd
UNDER SECTION	7 of IBC

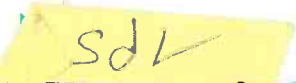
**ORDER**

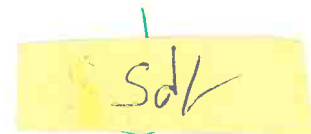
Orders pronounced vide separate sheets. In the result the petition is allowed.

The Resolution Professional is directed to forthwith handover the possession of the land admeasuring to an extent of 40.23 acres covered by Sy. No. 691/2, 428, 55, 636A, 617, 618, 619, 478 and 474 situated in the Momidi Village belonging to the Applicant Nos. 1 and 2 and Sy. No. 41, 58, 32, 33A, 60, 65 A, 66B2, 123,153, 72, 478, 63B, 617, 618, 619 and 31C situated in the Momidi Village belonging to the Applicant No. 3 and file compliance report within two weeks.

The Resolution Professional is at liberty to approach the APIICL Authorities for either allotment of similar land of equivalent value to the Corporate Debtor or to pay the entire amount spent by Corporate Debtor and it is for the authorities of APIICL to take appropriate decision on the same.

The petition is accordingly allowed. No costs.

  
MEMBER (T)

  
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

**IA No. 152 of 2022**  
In CP (IB) No.184/7/HDB/2019  
Under section 60(5) of the IB Code, 2016.

In the matter of:-  
**M/s. MEENAKSHI ENERGY LIMITED**

Gandavarapu Radhakrishna Reddy  
R/o Anikepally Village, Venkatachalam Mandal  
SPR Nellore District.

...Applicant No.1

Kasireddy Rajeshwaramma  
R/o Ramalingapuram, Nellore,  
SPR Nellore District.

...Applicant No.2

Garikipati Naraiiah  
R/o Chinnacherukuru, Gudur Mandal,  
SPSR Nellore District.

...Applicant No.3

Versus

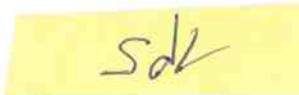
M/s Meenakshi Energy Ltd.  
Through Mr. Ravi Kumar Deverkonda,  
Resolution Professional  
Having its registered office at:  
405, Saptagiri Towers,  
1-10-75/1/1 to 6, Begumpet,  
Secunderabad, Telangana – 500016.

...Respondent

**Date of Order: 15.09.2022**

**Coram:**

**Dr.Venkata Ramakrishna Badarinath Nandula, Member Judicial**  
**Shri Veera Brahma Rao Arekapudi, Member Technical**





**Parties/Counsel Present:**

For the Applicant: Shri. Valdmanis Sheshagiri Rao, Counsel

For the Respondent/RP: Shri. Sumant Batra, Counsel

**[Per : Bench]**

**ORDER**

1. Under consideration is the Interlocutory Application bearing IA No.152 of 2022 filed by the above Applicants, u/s. 60(5) of Insolvency and Bankruptcy Code, 2016, for the following relief(s):
  - a. To allow the present Application;
  - b. To issue the appropriate directions to the Corporate Debtor M/s. Meenakshi Energy Ltd, to release the land admeasuring 40.23 acres to the Applicants.
2. The brief facts as stated by the Applicants in Application are as under:-
  - a. That on or about 2009 the Respondent, herein after referred to as the Corporate Debtor approached the Andhra Pradesh Industrial infrastructure corporation Limited ("APIICL") for allotment of land for installing a power plant in the District of Nellore, Andhra Pradesh. The APIICL upon considering the request Corporate Debtor allotted 938.90 acres of land situated at Thamminapatnam and Momidi respectively to the Corporate between 2009 to 2011. That APIICL and the Corporate Debtor had executed agreement for sale of land in respect of 140.19 acres situated Village Thamminapatnam on 22.07.2010 and on 16.07.2011 in respect of land admeasuring 207.58 acres situated at Thamminapatnam and Momidi. That apart from the two parcel of land APIICL did not register any parcel of land that had been allotted to the Corporate Debtor.
  - b. That the Applicants herein who are the owners and in continuance possession of the land admeasuring 40.23 acres, by carryout agriculture activities of on the said land. As soon as the Applicants came to know about

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the fact that the APIICL mistakenly had allotted their above to the Corporate Debtor, for setting up of power project, the Applicant filed a Writ Petition WP(C) Nos. 32019, 32245 of 2010 before the Hon'ble High Court of Andhra Pradesh, seeking the relief of writ of mandamus and/or directions to the Government of Andhra Pradesh and its agencies not to allot or interfere with possession and enjoyment of the Applicants above stated Patta Lands which is in their possession.

- c. That the Government of Andhra Pradesh and APIICL in the counter affidavit filed before the Hon'ble High Court of Andhra Pradesh admitted their mistake in taking over the lands belonging to the Applicants and in handing over the same to the Corporate Debtor.
- d. The Hon'ble High Court upon hearing the parties was pleased to allow the Writ Petition filed by the Applicants and passed the following order dated 18.11.2013:

*"The state has accepted the mistake of fact in acquiring the title and nature of holding of writ petitioners. This admission goes to the root of acquisition/resumption of petition lands by the State. The other respondents in my view cannot plead contrary to the stand taken by State to claim right or title to the petition lands. The writ petitions are allowed."*

- e. The Applicants upon receipt of the order submitted the same to the competent authority for compliance and release of the aforementioned lands from the record of the Corporate Debtor. The District collector vide its letter dated 05.05.2017 requested the Tehsildar, Chillakuru to implement the order of the Hon'ble High Court of Andhra Pradesh by handing over the land that had been mistakenly taken over by APIICL to the Applicants and to submit the compliance report.
- f. The office of the Tehsildar vide letter dated 26.05.2017 requested to Zonal Manager APIICL Nellore to handover the lands that had been mistakenly taken over by APIICL to the Applicants and comply with the order passed by the Hon'ble High court of Andhra Pradesh.

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- g. That the APIICL did not take steps to comply the order passed by the Hon'ble High Court of Andhra Pradesh and the subsequent directions issued by the District Collector and Tehsildar Chillakuru for handing over the lands to the Applicants. However, the Zonal Manager, APIICL had on 06.02.2019 written a letter to Vice Chairman and Managing Director of APIICL detailing the facts and the order passed by the Hon'ble High Court of Andhra Pradesh, admitting the fact that 40.23 acres of land has been mistakenly included in the land that has been allotted to the Corporate Debtor, and that the Corporate Debtor has been requested to return the aforementioned land to which the Corporate Debtor was ready and willing to give back the land that have been taken over, however has requested the APIICL to allot/substitute land in return of the land belonging to the Applicants or to repay the amounts that have been paid by the Corporate Debtor. That APIICL without following the directions issued from time to time by its officers as well as the competent authority had failed to release the aforementioned land in favour of the Applicants in timely manner.
- h. While it was so, the Corporate Debtor had undergone CIRP proceedings by the order of this Tribunal in CP No. 184/7/HDB/2019 dated 07.11.2019 and moratorium has been implemented. The Resolution Professional despite being made aware of the fact that the aforementioned lands have been mistakenly given to the Corporate Debtor. That the legal department of APIICL has also issued a letter dated 08.06.2020, directing the Resolution Professional to release the land belonging to the Applicants as the same are third party land and do not form part of the moratorium. However, the Corporate Debtor did not take any step to release the aforementioned lands and instead has invited expression of interest for selling the Corporate Debtor as a going concern. The said action of the Resolution Professional is prejudicial to the interest of the Applicants which necessitated the Applicants to approach this Tribunal for seeking relief.

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Thus, contending the Ld. Counsel for the Applicant prayed to allow the Application as prayed for.

3. The Respondent filed counter denying the allegations and averments made by the Applicants, *inter-alia*, contending that:

a. That Andhra Pradesh Industrial Infrastructure Corporation Limited (“APIICL”) had vide letter dated July 27, 2018 informed the erstwhile management of the Corporate Debtor that the Corporate Debtor had vide email dated December 29, 2017 informed APIICL that it was willing to surrender the lands to the extent of 8.71 acres in Survey Nos. 478 and 19.00 acres in Survey No. 691 of Momidi village (“1<sup>st</sup> Handover Letter”). Therefore, in furtherance of the said email APIICL had requested the Corporate Debtor to surrender the said lands to APIICL.

b. APIICL also issued a show cause notice dated July 27, 2018 vide which it had sought clarifications from the Corporate Debtor as to why APIICL should not cancel the allotment of the land made to the Corporate Debtor and to evict the Corporate Debtor from the said lands (“Show Cause Notice”). This was because the Corporate Debtor was not utilizing parts of the lands that were assigned to the Corporate Debtor.

c. The erstwhile vice president of the Corporate Debtor vide letter dated August 31, 2018 responded to the Show Cause Notice regarding the allotment of land to an extent of 938.90 Acres in the industrial park Thamminapatnam and Momidi villages, Chillakur Mandal, SPSR Nellore District (“Reply to Show Cause”). The Corporate Debtor stated that the land to the extent of 8.71 acres in Survey Nos. 478 of Momidi village was involved in the Writ Petition No. 32245/2010 before the Hon’ble Andhra Pradesh High Court and 19.00 acres in Survey No. 691/2, 691/4 to 8, 9.61 acres in Survey No. 636 and 2.90 acres in Survey No. 478 of Momidi village were involved in the Writ Petition No. 32019/2010 before the Hon’ble Andhra Pradesh High Court (collectively “Disputed Lands”).

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- d. The Corporate Debtor in the Reply to Show Cause stated that the Hon'ble Andhra Pradesh High Court decided the said Writ Petitions against APIICL and had directed to resume the lands and redeliver the same to the Applicants. Therefore, because of this and other reasons which were beyond the reasonable control of the Corporate Debtor there was delay in the progress of the project. The erstwhile vice president of the Corporate Debtor also stated that the Corporate Debtor would honour the directions of the Hon'ble Andhra Pradesh High Court but requested APIICL to explore possibility of allotting same extent of land in the neighbouring area to the Corporate Debtor given its obligations to fulfil the project requirements.
- e. That APIICL is a proper and necessary party as APIICL is the one that had allotted the Disputed Lands to the Corporate Debtor. This amounts to non-joinder of parties and the Application is liable to be dismissed on this ground. APIICL which has failed to release the Disputed Lands to the Applicants and has not abided by the directions of the Hon'ble Andhra Pradesh High Court. Therefore, it would be necessary for APIICL to be impleaded in the present Application in order to provided reasoning for the same.
- i. It is APIICL which has been communicating with the Corporate Debtor and the Resolution Professional for surrender of the Disputed Lands. The Resolution Professional has informed APIICL that he is ready and willing to surrender the Disputed Lands but has requested for equivalent compensation.
- ii. It is evident that APIICL is a proper and necessary party as the lands cannot be handed over to the Applicants directly and the same would not be valid. However, if the Hon'ble Tribunal directs hand over of the Disputed Lands to APIICL, the same should be done balancing the interests of the Corporate Debtor. The Adjudicating Authority may allow the same by directing APIICL to allot equivalent land or compensation

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along with interest at 24% per annum being awarded to the Corporate Debtor.

- f. Applicants have never communicated with the Resolution Professional:
- i. The Applicants have alleged that they have made the Resolution Professional aware of the fact that the Disputed Lands belonged to the Applicants and the same was settled by the Order of the Hon'ble High Court of Andhra Pradesh.
  - ii. The Resolution Professional was not made aware of the same by the Applicants at any time during the CIRP of the Corporate Debtor.
- g. The assets of the Corporate Debtor are protected under Section 14(1)(d) of the Code:
- i. That moratorium under Section 14 of the Code subsists till the completion of the Corporate Insolvency Resolution Process (“CIRP”) of the Corporate Debtor. Till the completion of CIRP period the Code prohibits the Corporate Debtor from, *inter alia*, (i) transferring, encumbering, alienating or disposing off by the Corporate Debtor any of its assets or any legal right or beneficial interest therein, and (ii) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor. Hence, as the Disputed Lands are covered by moratorium under Section 14 of the Code, the Resolution Professional is not permitted under the Code to surrender the same during CIRP period.
  - ii. That Section 14 of the I&B Code, categorically prohibits the Resolution Professional from transferring or disposing off any of the assets of the Corporate Debtor during the CIRP period.
  - iii. As on date the land allotted to the Corporate Debtor which includes the Disputed Lands is reflected as an asset of the Corporate Debtor and therefore the Resolution Professional is not empowered under the Code to surrender the Disputed Lands to the Applicants despite the Order. Section 14 of the Code categorically prohibits the Resolution Professional from

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transferring or disposing off any of the assets of the Corporate Debtor during the CIRP period.

- iv. It is stated that Hon'ble Supreme Court in the matter of M/s Embassy Property Developments Pvt. Ltd. vs. State of Karnataka & Ors [(2020) 13 SCC 308] has held that

‘The right under Section 14(1)(d) of the Code is the right not to be dispossessed of a property which is in the possession of the Corporate Debtor during the moratorium period.’ and the same was also informed to APIICL by the Resolution Professional vide Moratorium Letter dated 10.07.2020. Therefore, the claim of the Applicants/APIICL that as the Transferred Lands are lands belonging to third parties the same would not fall under moratorium is misconceived and against settled principles of law.

- h. The RP is duty bound to protect the value of the Corporate Debtor:
- i. The RP has duty under the Code to protect and preserve the value of the Corporate Debtor. Any order passed for handing over possession of land to the Applicant without simultaneous order of allotment of alternate land of similar size or value or compensation in lieu thereof shall amount to depriving the stakeholders of the value and be contrary to the objectives of the Code of maximising the value of Corporate Debtor.
  - i. The Corporate Debtor is a *bona fide*, purchaser:
    - i. The erstwhile vice president of the Corporate Debtor stated that they had spent a total sum of Rs.2,86,16,735/- (Rupees Two Crores Eighty Six Lakhs Sixteen Thousand Seven Hundred and Thirty Five only) for purchasing lands from APIICL, which also includes the consideration paid to APIICL for the Disputed Lands.
    - ii. The Corporate Debtor would be put in a position of loss for the mistake of APIICL. Further, the Corporate Debtor is a third party and a *bona fide* purchaser of the Disputed Lands.

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- iii. If the Corporate Debtor is to lose the Transferred Lands that would cause a reduction in the valuation of the Corporate Debtor as a going concern which would also cause hindrance in the CIRP of the Corporate Debtor. This would be against the very ethos and objectives of the Code.
  - j. That the Resolution Professional issued letters and communications to APIICL stating the facts and seeking an alternative to the present situation. However, it was APIICL which never did respond or provided any alternatives to the Resolution Professional.
  - k. That the Resolution Professional has invited expression of interest for sale of Corporate Debtor and has included the Disputed Lands in the same is incorrect. The Resolution Professional has informed the potential bidders about the status of the Disputed Lands as the Resolution Professional intends to abide by the order of the Hon'ble Andhra Pradesh High Court in the Writ Petitions.
  - l. That the Resolution Professional is willing to hand over the possession of the Transferred Lands to the Applicants, however it is prayed that the Adjudicating Authority in the interest of justice be pleased to direct APIICL (which is a proper and necessary party) to either allot the Corporate Debtor a similar land of equivalent value so that the Corporate Debtor may retain its value or direct APIICL to repay the Corporate Debtor the entire amount it had paid to APIICL as consideration and spent on the Disputed Lands along with interest at 24% per annum from the date of the agreements of sale for the lands including the Disputed Lands.
4. Counsel for the Applicants has also filed written submissions, reiterating the oral submissions made inter-alia stating as under:
- a) That the Corporate Debtor vide his letter dated 25.05.2020 replied to the letter of APIICL dated 08.06.2020 stating that the management affairs and to take custody and control of the assets of the Corporate Debtor vest with the Resolution Professional ("RP").

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- b) That further, the Corporate Debtor requested APIICL to grant some time to seek approval of the CoC and NCLT, Hyderabad for surrendering the subject lands.
- c) That the plea taken by the Corporate Debtor is twofold:
- a. The APIICL should be made a party to the present application, without which the issue raised in the application cannot be properly addressed to;
    - i. That the Corporate Debtor did not challenge the order passed by the Hon'ble High Court of Andhra Pradesh in the aforementioned writ petitions and rather accepted the order and undertook to comply the same by releasing the subject lands.
    - ii. The Corporate Debtor stated that due to negligence of APIICL, the Corporate Debtor was made to pay for the subject lands as well. Therefore, the Corporate Debtor to be allowed to possess the lands of the Applicants till APIICL refund the amount or allot lands in an adjacent area. The Corporate Debtor cannot put conditions as per the directions of the Hon'ble High Court for the release of lands belonging to the Applicants which the Corporate Debtor is in possession wrongfully. Therefore, there is no necessity for APIICL to be made a party in the present application.
  - b. The Corporate Debtor cannot release the lands belonging to the Applicants as Section 14(i)(d) of the Insolvency and Bankruptcy Code 2016 is in operation.
    - i. Any unlawful or wrongful occupation of any property in the possession of a Corporate Debtor will not give the Corporate Debtor the benefit of Section 14(1)(d) of the Code.
    - ii. That the Corporate Debtor was in wrongful possession of the properties belonging to the Applicants and therefore do not

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have a right to seek the protection of Section 14(1)(d) of the Code.

- d) That as per Section 14 of the Bankruptcy Code stipulates that any possession of a property of an owner or lessor could be in possession of the Corporate Debtor provided such possession of the property is lawful. However, in the present case the Corporate Debtor had been holding the properties belonging to the Applicants who are third parties and had never given the said properties to the Corporate Debtor either by way of lease or otherwise. The moratorium of Section 14 therefore is not applicable to the subject lands.
  - e) As Corporate Debtor could not get the requested land of 1250 acres. Only 938 acres was allotted and out of which 90 acres of land which the Corporate Debtor is referring include the 40.23 acres of land belonging to the Applicants. Therefore, the Corporate Debtor on this very ground is not entitled to retain the possession of the lands belonging to the Applicants under Section 14 of the Bankruptcy Code.
  - f) That as per Section 18(f)(vi) the Corporate Debtor is not entitled to the possession of the property of the Applicants as the Corporate Debtor does not have any ownership rights over the subject lands as the Hon'ble High Court vide its order dated 18.11.2013 adjudicated that the applicants are the owners of the subject lands shown in the balance sheet of the Corporate Debtor and therefore the subject lands of the Applicants are liable to be released without any delay.
5. The Ld. Counsel for Resolution Professional also filed its Written Submissions, reiterating the contentions put forth in the counter.
  6. In the light of the contest as above the Points that emerges for consideration by this Adjudicating Authority is:
    1. Whether the Corporate Debtor herein is entitled to stall the recovery of the subject land in occupation by the corporate debtor, by the Applicants/Landowners in terms of Section 14(1)(d) of the I&B Code?

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2. Whether APIICL is a necessary party to the present application? If so, whether present Application is bad in law for non-joinder of APIICL?
7. We have heard Shri. Vadlamani Sheshagiri Rao, Ld. Counsel for the Applicants and Shri. Suman Batra, Ld. Counsel for the Respondent, perused the record, written submissions and the case law.
8. Before proceed to decide on the Point above, we refer herein the following facts which are not in controversy: -
  - a. That APIIC, the Writ Petitions (C) No's. 32019, 32245 of 2010, filed by the Applicants herein before Hon'ble High Court of Andhra Pradesh, in its counter has categorically admitted that land of an extent of 40.23 Acres, belonging to the Applicants herein, has been included by mistake in the land that were handed over to the corporate debtor for setting up a power plant.
  - b. The Hon'ble High Court has allowed the said Writ Petitions which were filed seeking a relief of writ of mandamus and/or directions to the Government of Andhra Pradesh and its agencies not to allot or interfere with possession and enjoyment of the Applicants of Patta Lands possessed by the Applicants as per the order dated 18.11.2013.
  - c. The said order of the Hon'ble High Court was not challenged further before any other forum, thus, same has attained finality. As such there can be no dispute as to the title or ownership of the Applicants herein over the subject land.
  - d. The Resolution Professional *though* has challenged this Application on various grounds, has fairly conceded that he is willing to hand over the possession of the said Lands to the Applicants, however praying this Adjudicating Authority to direct APIICL to either allot the Corporate Debtor a similar land of equivalent value so that the Corporate Debtor may retain its value or direct APIICL to repay the Corporate Debtor the entire amount it had paid to APIICL as consideration and spent on the Disputed Lands along with interest at 24% per annum from the date of the agreements of sale for the lands including the Disputed Lands.

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e. We shall now refer to the provision relating in Moratorium contained in I&B Code, which is as below.

*14. Moratorium. -*

*(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of*

*the following, namely: -*

*(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*

*(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

*(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

*(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

*[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]*

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*(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

*[(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances*

*[(3) The provisions of sub-section (1) shall not apply to —*

*[(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;]*

*(b) a surety in a contract of guarantee to a corporate debtor.]*

*(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:*

*Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.*

- f. Admittedly, the following order, *“The state has accepted the mistake of fact in acquiring the title and nature of holding of writ petitioners. This admission goes to the root of acquisition/resumption of petition lands by the State. The other respondents in my view cannot plead contrary to the stand taken by State to claim right or title to the petition lands. The writ petitions*

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are allowed.” (Emphasis supplied) passed by Hon’ble High Court that has attained finality. Pursuant thereto the District Collector vide letter dated 05.05.2017 requested the Tehsildar, Chillakuru to implement the order of the Hon'ble High Court of Andhra Pradesh, by handing over the land that had been mistakenly taken over by APIICL to the Applicants and to submit the compliance report. Pending compliance of the said order, Corporate Insolvent Resolution Process, for short, 'CIRP', against the respondent/corporate has been triggered by State Bank of India and an order of initiation of 'CIRP' and declaring Moratorium against the respondent/Corporate Debtor has been passed by this Adjudicating Authority, vide order in CP No 184/7/HDB/2019 dated 07.11.2019. The Resolution professional appointed by this Adjudicating Authority took control of the properties of the Corporate Debtor, including the subject property in the backdrop of the order of Hon’ble High Court, *supra*, and the letter of the District Collector dated 05.05.2017 requesting the Tehsildar, Chillakuru, to implement the order of the Hon'ble High Court of Andhra Pradesh, by handing over the land that had been mistakenly taken over by APIIC to the Applicants.

- g. According to the Ld. Counsel for the Applicants, the stipulation under *Sub Section 1 (d)* of 14 of the Bankruptcy Code, not to be dispossessed of a property which is in the possession of the Corporate Debtor during the moratorium period applies provided such possession of the property is lawful. However, in the present case the Corporate Debtor had been holding the properties belonging to the Applicants who are third parties and had never given the said properties to the Corporate Debtor either by way of lease or otherwise. As such the moratorium under Section 14 is not applicable to the subject lands.
- h. Ld. Counsel for the Applicants placing reliance on Section 18(f)(vi), which is as below,

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**18. Duties of interim resolution professional. -**

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*(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including -*

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*(iv) Intangible assets including intellectual property;*

- i. Contended that even though the subject properties were shown in the balance sheet of the Corporate Debtor, in the light of the categorical finding of Hon'ble High Court vide its order dated 18.11.2013 that the applicants are the owners of the subject lands, the Corporate Debtor is not entitled to the possession of the property and therefore the subject lands of the Applicants are liable to be released without any delay.
- j. Ld. Counsel further contended that the Corporate Debtor cannot put conditions for release of the property of the Applicants as, Hon'ble High Court has categorically held that the subject lands belonging to the Applicants which the Corporate Debtor is in possession has been wrongfully handed over by APIIC to the respondent/corporate debtor.
- k. Ld. Counsel for the Resolution Professional, refuting the above submissions of the Ld. Counsel for the Applicants would contend that, the Resolution Professional is not empowered under the Code to surrender the subject land to the Applicants even in spite of the order of Hon'ble High Court, *supra*, as Section 14 (1) (d) of I&B Code categorically prohibits the Resolution Professional from transferring or disposing off any of the assets of the Corporate Debtor during the CIRP period. In support of his plea that the corporate debtor cannot be disposed of the assets by the owner during CIR Process, Ld. Counsel has relied on the ruling of Hon'ble Supreme

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Court in M/s Embassy Property Developments Pvt. Ltd. vs. State of Karnataka & Ors [(2020) 13 SCC 308] has held that,

*'The right under Section 14(1)(d) of the Code is the right not to be dispossessed of a property which is in the possession of the Corporate Debtor during the moratorium period.'*

- l. Ld. Counsel further submitted that as the subject land has been shown in the balance sheet of the Corporate Debtor the Resolution Professional was well within his jurisdiction to hold the properties for the benefit of the Lenders and other creditors of the corporate debtor. Ld. Counsel submits that the Resolution Professional while denying the plea of the applicants that the subject land has been included in the Expression of Interest (EoI), has pleaded that he had informed the potential bidders about the *status of the subject land* and that the Resolution Professional intends to abide by the order of the Hon'ble Andhra Pradesh High Court, passed in the Writ Petitions, *supra*.
- m. Ld. Counsel further submitted that, the Resolution Professional is willing to hand over the possession of the Transferred Lands to the Applicants, provided the Adjudicating Authority in the interest of justice directs APIICL to either allot the Corporate Debtor a similar land of equivalent value so that the Corporate Debtor may retain its value or direct APIICL to repay the Corporate Debtor the entire amount it had paid to APIICL as consideration and spent on the subject land along with interest at 24% per annum from the date of the agreements of sale for the lands including the Disputed Lands.
- n. Having heard the Ld. Counsel for both sides at length, at the outset it may be stated that, in "Words and Phrases" Permanent Edition, Vol. 33 (1971), published by St. Paul, Minn. West Publishing Co., at pages 91-92, the word possession has been defined as below;  
"**Possession**' as used in statute is not synonymous with physical bodily presence of adverse claimant; continuous bodily presence is not required

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but rather question is one of fact which must be determined from circumstances of each case. (Emphasis supplied)

- o. Indisputably, Hon'ble High Court of Andhra Pradesh, in the Writ Petition, *supra*, categorically held that *'the state has accepted the mistake of fact in acquiring the title and nature of holding of writ petitioners. This admission goes to the root of acquisition/resumption of petition lands by the State. The other respondents in my view cannot plead contrary to the stand taken by State to claim right or title to the petition lands. The writ petitions are allowed.'*
- p. Therefore, it is clear that the corporate debtor is in possession of the subject property which it is not entitled to, as such the said possession is wrongful. In our considered view the right under Section 14(1)(d) of the Code, *namely*, not to be dispossessed of a property which is in the possession of the Corporate Debtor during the moratorium period, cannot be extended to situations where the possession is without right, as possession without right wrongful or adverse.
- q. The submission of the Ld. Counsel for the Resolution professional that the subject land though has been included in the Expression of Interest (EoI), he had informed all the potential bidders about the *status of the subject land* and that the Resolution Professional intends to abide by the order of the Hon'ble Andhra Pradesh High Court, passed in the Writ Petitions, *supra*, also is an important factor, that weigh in favour of the applicants in cindering the prayer for release of the subject land to the applicants.
- r. Therefore, allowing the respondent/Corporate Debtor to hold the subject property of the Applicants for the purpose of corporate insolvency resolution of the respondent, not only frustrates the order of the Hon'ble High Court, *supra*, but also enables the respondent/corporate debtor to enrich *unjustly*, as admittedly the subject lands were delivered to the respondent/corporate debtor mistakenly/wrongly by APIIC, besides

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results in deprivation of the constitutional right of the Applicants to hold their property.

- s. In P Mohanraj vs Shah Brothers Ispat Pvt. Ltd. Civil Appeal NO.10355 OF 2018, Justice Rohinton Fali Nariman, speaking for the Court, expounded upon the object of Section 14 in the following terms;

*“The object of a moratorium provision such as Section 14 is to see that there is no depletion of a corporate debtor's assets during the insolvency resolution process so that it can be kept running as a going concern during this time, thus maximising value for all stakeholders. The idea is that it facilitates the continued operation of the business of the corporate debtor to allow it breathing space to organise its affairs so that a new management may ultimately take over and bring the corporate debtor out of financial sickness, thus benefitting all stakeholders, which would include workmen of the corporate debtor.” (Emphasis supplied)*

- T. We have already held that the possession of subject property which is now with the corporate debtor, in the light of the order Hon'ble High Court of Andhra Pradesh, *supra*, the same cannot be termed as “lawful”. Therefore, even though the object behind imposing moratorium under section 14 of IB Code, is to prevent depletion of a corporate debtor's assets, in our considered view the same cannot be extended to the properties which are not in rightful possession of the corporate debtor as any such extension to the properties which are not in the rightful possession of the corporate debtor results in unjust enrichment by the corporate debtor, under the guise of ‘maximisation’ at the cost of the lawful owner of the property. Therefore, in our considered view Section 14(1)(d) of the Code has no application when the corporate debtor is not in rightful possession of the property.

- U. In view of our discussion as above, we are unable to accept the argument of the Ld. Counsel for the Resolution professional that Corporate Debtor is

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entitled to invoke Section 14(1)(d) of the Code. The Point is answered accordingly.

**Point 2.**

Whether APIICL is a necessary party to the present application? If so, whether present Application is bad in law for *non-joinder* of APIICL?

- a. According to the Ld. Counsel for Applicants the Corporate Debtor did not challenge the order passed by the Hon'ble High Court of Andhra Pradesh, in the aforementioned writ petitions and rather accepted the order and undertook to comply the same by releasing the subject lands, hence the applicants need not implead APIICL. It is further contended that the Corporate Debtor cannot put conditions, in view of the directions of the Hon'ble High Court for unconditional release of lands belonging to the Applicants which the Corporate Debtor is in possession wrongfully. Therefore, there is no necessity for APIICL to be made a party to the present application.
- b. *Per contra*, the Ld. Counsel for the resolution professional while contending that APIICL is a necessary and a proper party to the present proceedings submitted that, the Corporate debtor is willing to hand over the possession of the subject land to the Applicants, provided the Adjudicating Authority in the interest of justice directs APIICL to either allot the Corporate Debtor a similar land of equivalent value so that the Corporate Debtor may retain its value or direct APIICL to repay the Corporate Debtor the entire amount it had paid to APIICL as consideration and spent on the subject land along with interest at 24% per annum from the date of the agreements of sale for the lands including the Disputed Lands and in that view of the matter APIICL is a necessary or proper party.

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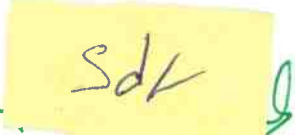
- c. In the matter of Amit Kumar Shaw And Another vs. Farida Khatoon And Another (2005) 11 SCC 403, Hon'ble Supreme Court Of India, has held as under:

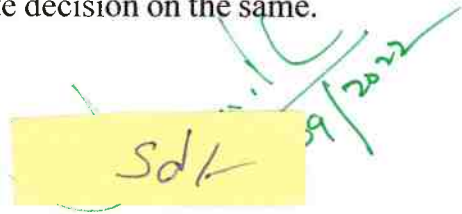
*“The power of a Court to add a party to a proceeding cannot depend solely on the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a party. Such right, however, will include necessarily an enforceable legal right. “*

- d. In the case on APIICL has admittedly taken a stand that the subject lands shall be delivered to the Applicant in compliance of the order of Hon'ble High Court in, supra, as such the question of affecting the right in any, of APIICL does not even arise in this case. Hence, in our considered view APIICL need not be added as a party to the present proceedings.

- e. The Point is answered accordingly.

9. The Resolution Professional is directed to forthwith handover the possession of the land admeasuring to an extent of 40.23 acres covered in Sy. No. 691/2, 428, 55, 636A, 617, 618, 619, 478 and 474 situated in the Momidi Village belonging to Applicant Nos. 1 and 2 and Sy. No. 41, 58, 32, 33A, 60, 65 A, 66B2, 123,153, 72, 478, 63B, 617, 618, 619 and 31C situated in Momidi Village belonging to the Applicant No. 3 and file compliance report within two weeks.
10. The Resolution Professional is at liberty to approach the APIICL Authorities for either allotments of similarly land of equivalent value to the Corporate Debtor or to pay the Corporate Debtor the entire amount spent by APPIICL and it is for the authorities of APIICL to take appropriate decision on the same.
11. The petition is accordingly allowed. No costs.

  
Veera Brahma Rao Arekapudi  
Member Technical

  
Dr.Venkata Ramakrishna Badarinath Nandula  
Member Judicial