



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE ADJUDICATING OFFICER

EXECUTION NO. 1124 OF 2023

IN

COMPLAINT NO. 22 OF 2022

Neelam Rani

....DECREE HOLDER

VERSUS

1. M/s CHD Developers Ltd.
2. ICICI Bank Ltd.

.....JUDGMENT DEBTORS

Date of Hearing: 04.11.2024

Hearing: 7th

Present: -

Mr. Viren Jain, Adv., for decree holder through video conferencing.

None for judgment debtor no.1.

None for judgment debtor no.2.

Mr. Viren Sharma, Adv. for Mr. Rajesh Kumar Parakh, IRP through video conferencing.

ORDER

1. Memo of appearance is submitted by Mr. Viren Sharma, Advocate, on behalf of Mr. Rajesh Kumar Parakh, IRP. He also stated at bar that all companies related to CHD Developers Limited including CHD Paradiso and Green Park Residences, which are judgment debtors in the total execution no. 1 to 37 listed for today for

consideration, are now subject to jurisdiction of IRP because of the declaration of moratorium and as per under Section 14(1)(a) of the Insolvency & Bankruptcy Code, it bars further proceeding in this execution petition. He further submitted that as per the information provided by the IRP, out of the total 37 decree holders, 30 have already raised their claim before the IRP, two's case is under process and the remaining are at liberty to forward their claim for settlement as per settled proposition of law, as legally parallel proceedings in the form of execution cannot be carried forward when moratorium proceeding have been initiated in Hon'ble NCLT. In support of his contention that proceedings under Section 14 of Insolvency & Bankruptcy Code have come into play, he has drawn attention of this Court to an affidavit along with order of Hon'ble NCLT sent through post in execution titled as 'Parul vs. M/s. CHD Developers Ltd., RERA-PKL-439-2023', fixed for today.

On the other hand, Id. counsel for decree holder has submitted that information provided by judgment debtor no.1 is incomplete and proceeding in these executions can move further & prayed having referred to orders of Hon'ble NCLT placed on record, for adjournment, to move an application to support his contention that executions are not to be stalled.

Heard.

At the outset, this Court direct ld. counsel appearing for IRP to place on record of each execution file, the affidavit, additional affidavit showing CHD Paradiso is also affected with Hon'ble NCLT order, along with list of decree holders before this Court today who have submitted their claims to IRP, whose claim is in the process and the one ~~now~~^{who} have not filed claim as yet. He is further directed to file an additional affidavit that what all companies under the umbrella of CHD Developers Limited, have been made subject to the jurisdiction of IRP under the orders of Hon'ble NCLT.


When specifically questioned whether or not, claim of learned counsel for IRP regarding initiation of proceedings under section 14 of Insolvency & Bankruptcy Code is right, learned counsel for decree holder did not dispute the same, however has different grounds to state through his application to be filed, to say that the bar of section 14(1)(a) of Insolvency & Bankruptcy Code, is not applicable in respect of all the decree holders present before this Court.

Before adjourning the case to receive application from ld. counsel for decree holder, it is apt to note here that to the mind of this Court prima facie when moratorium has been declared by the Adjudicating Authority in respect of judgment debtor company in the execution pending adjudication, the prohibition provided under section 14(1)(a) of Insolvency & Bankruptcy

Code would come into play. For ready reference, section 14 is reproduced below:

"Section 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:--

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- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
 - (b) transferring, encumbering, alienating or disposing of 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 license, permit, registration, quota, concession, clearances 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;

(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 as may be specified;

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

(a) such transactions, agreements or other arrangements 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."

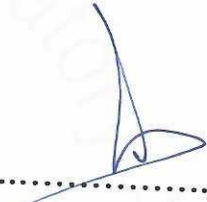
In other words, after declaration of moratorium an execution of order of Hon'ble Authority is prohibited.

However, in the interest of justice, learned counsel for decree holder is given liberty to file an application as requested by him, to show as to how the proceedings in this execution should be continued despite claim of judgment debtor company of declaration of moratorium as per the contents of affidavit of IRP, which prohibits present execution.

2. On request of learned counsel for decree holder, case is adjourned 23.01.2025 to enable decree holder to file application.

3. In the meantime, learned counsel for IRP is directed to provided copy of affidavit as well as additional affidavit along with list of claimants who have raised their claim after declaration of moratorium, so that learned counsel for decree holder is in better position to file his application with facts, figures and law, on the next date of hearing i.e. 23.01.2025.
4. Learned counsel for IRP is also directed to place on record power of attorney on the next date of hearing.

04.11.2024


MAJOR PHALIT SHARMA
ADSJ (Retd.)
ADJUDICATING OFFICER