IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2022

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. Nos.6999 & 7003 of 2020
and
WMP.Nos.8347, 8349 & 8352 of 2020

M/s.Evocon Private Limited
No. 6 Vaidyaramam Street,
T. Nagar, Chennai- 600 017,
Represented by its Resolution Professional,
Mr. S. Diraviam ...Petitioner in both the Petitions

Versus

1. Adjudicating Officer
Tamilnadu Real Estate Regulatory Authority,
(TNRERA), 1st Floor, CMDA Building,
Gandhi Irwin Bridge Road,
Egmore, Chennai 600 008.

2. M.S. Muthukrishnen

..Respondents in W.P.No.6999 of 2020

1. Adjudicating Officer
Tamilnadu Real Estate Regulatory Authority,
(TNRERA), 1st Floor, CMDA Building,
Gandhi Irwin Bridge Road,
Egmore, Chennai 600 008.

2. S.Sankar Raman
...Respondents in W.P.No.7003 of 2020

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari Calling for records of 1st Respondents order dated 25.10.2019 vide CCP Nos. 114 & 115 of 2019 and quash the same.

For Petitioner : Mr. S.Sathyanarayanan
(In both the writ petitions)

For Respondents : Mr.P.Gurunathan R1
Additional Government Pleader

Mr.S.Umapathy R2
(In both the writ petitions)

COMMON ORDER

The present writ petitions have been filed seeking to quash the orders dated 25.10.2019 vide CCP Nos. 114 & 115 of 2019 on the file of the first respondent.

2. Since the issue involved in both the matters and the facts are one and the same. Therefore, both the petitions are disposed of by way of common order.

3. The case of the Petitioner is that the second respondent in both the petitions, are buyers, entered into an agreement for purchase of flats from the petitioner's company. Since the petitioner's company defaulted and delayed the construction and handing over the flats, the second respondents approached the first respondent and initiated proceedings. In the meanwhile, the Home Buyers Association had filed an application under the Insolvency & Bankruptcy Code, 2016 before the National Company Law Tribunal (NCLT), Chennai. The NCLT was pleased to appoint a resolution professional to take charge of the affairs of the company. In the meanwhile, in the proceedings initiated by the second respondent before the first respondent, the first respondent passed an order directing the construction company to refund the amount paid towards the agreement with interest and compensation thereon. The second respondent, in W.P.No.6999 of 2020, vide order dated 25.10.2019, was awarded a sum of Rs.34,50,575/- and the second respondent, in W.P.No.7003/2020, was awarded a sum of Rs.34,97,064/-. Challenging the aforesaid orders passed by the 1st respondent, the present writ petitions have been filed.

4. Learned counsel appearing for the petitioner submitted that when NCLT has issued moratorium and also appointed a resolution professional to take charge of the affairs of the company pursuant to the petitioner moved before the NCLT under the Insolvency and Bankruptcy Code, the statutory authorities are estopped from passing any orders relating to the affairs of the company. It is therefore the submission of the learned counsel for the petitioner that moratorium having been issued with regard to the petitioner company and resolution

professional having been appointed to take charge of the affairs of the company, the order passed by the 1st respondent is wholly unsustainable and accordingly, he prays for setting aside the orders impugned in the present petitions.

5. On the above contention, this Court heard the learned counsel appearing for the respondents and perused the materials available on record.

6. It is not in dispute that the second respondent in each of the writ petition had entered into agreement with the petitioner for purchase of flats. However, there occurred a delay, which was not in consonance with the agreement, which resulted in the respective second respondents moving the first respondent.

7. However, pending the said applications before the first respondent, at the instance of some third party creditor, NCLT had issued moratorium against the petitioner company and resolution professional was appointed. It is to be pointed out that once moratorium has been declared against a company, Section 14 of the Insolvency and Bankruptcy Code, 2016, comes into play, which bars any proceeding against institution of suit or any proceedings against the Corporate Debtor. For better appreciation, the relevant provision is extracted hereunder:

> '' 14.(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 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;
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> * * * * *
> * * *
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> 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 approved or liquidation order, as the case may be.''

(Emphasis Supplied)

From the above provision of law, it is abundantly clear that once the corporate insolvency resolution process has started, sub-section (a) to Section 14 of the Insolvency & Bankruptcy Code bars all types of institution of suits 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. It is borne out by record that Corporate Insolvency Resolution Process has been put in action by appointment of resolution professional and that the entire issue is in the hands of the Resolution Professional. That being the admitted position, the passing of award by the first respondent, directing the petitioner to pay a particular amount to the respective second respondent is wholly prohibited. Therefore, giving effect to the said order would be an exercise in futility and the moratorium declared by NCLT would hold the field.

8. In view of the above legal position, the order passed by the first respondent suffers the vice of illegality and against Section 14 of the Insolvency & Bankruptcy Code and the same deserves to be set aside. Accordingly the writ petitions are allowed. However, the respective second respondent is granted liberty to raise all the contentions before NCLT by filing appropriate petitions and if such petitions are filed, NCLT shall take up the same and pass orders on merits and in accordance with law as expeditiously as possible, not later than six months from the date of filing of such applications/petitions. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Adjudicating Officer
Tamilnadu Real Estate Regulatory Authority,
(TNRERA), 1st Floor, CMDA Building,
Gandhi Irwin Bridge Road,
Egmore, Chennai 600 008.

+1 CC to Mr.S.Sathianarayanan, Advocate sr 3317
+1 CC to Mr.S.Umapathy, Advocate sr 3279
+1 CC to The Government Pleader sr 3416.

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SVI(CO)
SP(22/03/2022)