

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

COMPANY APPEAL (AT) (CH) (INS.) NO. 437/2022
(Filed under Section 61 of the Insolvency and Bankruptcy Code, 2016)

Arising out of the Impugned Order dated 28/09/2022 in IA No. 511/2021 in
C.P.(IB) No. 497/7/HDB/2018, passed by the ‘Adjudicating Authority’,
(National Company Law Tribunal, Hyderabad Bench)

In the matter of :

Atlanti Spinning and Weaving Mills Limited,
Represented by its Liquidator, Ms. Sujata Chattopadhyay,
Office at No. 710, Mayuresh Cosmos, Plot No. 37,
Sector 11, CBD Belapur, Navi Mumbai – 400614, Maharashtra.
E-MAIL: sujata@scassociates.co.in

....Appellant

Versus

Dolly Investment Company Private Limited,
CIN: U65993TG1985PTC005927,
Regd. Off : 605, Chenoy Trade Centre, Parklane,
Secunderabad, Telangana – 500003.

....Respondent

Present:

For Appellant : Mr. V.V. Sivakumar, Advocate
For Respondent : Mr. P.H. Arvinth Pandian, Sr. Advocate,
For Mr. Ankur Goel, Advocate

J U D G M E N T

(Physical Mode)

[Per: Shreesha Merla, Member (Technical)]

1. Aggrieved by the Impugned Order dated 28/09/2022, passed by the
‘Adjudicating Authority’ / ‘National Company Law Tribunal, Hyderabad Bench’

in IA 511/2021 in CP(IB) No. 497/7/HDB/2018, the Liquidator of ‘M/s Jindal Spinning and Weaving Mills Limited’ (the Corporate Debtor) preferred this Appeal. The Liquidator had filed IA 511/2021 under Section 66 of the Code, seeking to declare the Sale Deed dated 11/08/2008, executed by the Corporate Debtor in favour of the Respondent, with regard to the immovable property bearing Survey No. 18/1 at Goa, as a Fraudulent Transaction. The ‘Adjudicating Authority’ while dismissing the said Application has observed that the Applicant / Liquidator had failed in establishing that the sale Transaction, dated 11/08/2008, in favour of the Respondent, was fraudulent.

2. The Learned Counsel for the Appellant / Liquidator submitted that a Sale Deed was executed between the Corporate Debtor and the Respondent on 11/08/2008 for area admeasuring 123475 sq. m. at South Goa, the Recitals of which Sale Deed state that the Respondent had paid Consideration of Rs. 50,00,000/- to the Corporate Debtor in the year 1989 at the time of purchase of the subject property from Bank of Baroda. It is submitted that the Corporate Debtor and the Respondent fall within the realm of ‘Related Party’ as both the Companies are run by the same Promoter Group. As there is no look back period specified under Section 66 of the Code, the Appellant had challenged the subject Sale Deed for being fraudulent in nature.

3. It is the main case of the Appellant that the Sale Deed dated 11/08/2008 was executed without any valid party through Mr. R.N. Yadav in his capacity as the Director; that the said Mr. R.N. Yadav, was never a Director of the Corporate

Debtor and in fact was the Director of the Respondent Company between 30/04/2009 and 27/07/2019. It is also contended that there are no tangible reasons given for the inordinate delay of almost 20 years in execution of the Sale Deed dated 11/08/2008. The Sale Consideration of Rs. 50,00,000/- is without any appreciation / profit whatsoever and it is improbable that the value of the immovable Property did not appreciate over the years. It is submitted that the Respondent in their Reply dated 20/01/2023 have started a 'Joint Development' over the Scheduled Property for a sum of Rs. 37,00,000/- and therefore, it is the intention that under these Fraudulent Activities to siphon off the assets of the Corporate Debtor for the benefit of the Respondent Company. It is further contended that except for a mere Recital in the alleged sale dated 11/08/2008, there is no actual flow of consideration to the Corporate Debtor and therefore this 'Sale' is not valid in the eyes of Law. It is also submitted that there is no proof of bank transfer, bank draft, or any other mode of payment to substantiate that the Sale Consideration was paid to the Corporate Debtor. The Financial Statements of the Respondent Company until 31/03/2008 do not reflect any such payment made to the Corporate Debtor. The Learned Counsel drew our attention to the letter dated 18/05/1989 and vociferously contended that the said letter is fabricated as the letterhead contained details of Mobile Number when Mobile Phones were not commercially introduced in 1989 and that the letterhead had shown the Corporate Office as 'Chennai' when it is a matter of common

knowledge that the name of the City of ‘Madras’ was changed to ‘Chennai’ only in the year 1996.

4. The Learned Counsel for the Appellant also submitted that the explanation given by the Respondent that the Sale Deed was executed belatedly on account of tenancy of the Scheduled Property by ‘M/s. Goa Syntex Limited’ is incorrect as the said Company is none other than 100 % wholly owned Subsidiary of the Corporate Debtor. The Learned Counsel in support of his arguments placed reliance on the Judgment of the Hon’ble Apex Court in the matter of ‘**Kewal Krishnan v. Rajesh Kumar & Ors.**’ reported in [(2021) SCC Online SC 1097] wherein it is held as follows:

12. Hence, a sale of an immovable property has to be for a price. The price may be payable in future. It may be partly paid and the remaining part can be made payable in future. The payment of price is an essential part of a sale covered by section 54 of the TP Act. If a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eyes of law. It is of no legal effect. Therefore, such a sale will be void. It will not effect the transfer of the immovable property.

5. The Learned Senior Counsel appearing for the Respondent submitted that the Books of Accounts of the Respondent Company reflects the said Transaction; that the Appellant is submitting that they are placing reliance on a Forensic Audit Report, but again state that it is a Transaction Audit; even if the letter dated

18/05/1989 is a fabricated one, the proof of execution of Sale Deed is to be construed as the clinching evidence that indeed an amount of Rs. 50,00,000/- was paid for the cheque and the Sale Deed is a registered one. As regarding the filing of the balance sheet, Learned Counsel for the Respondent submitted that the balance sheet was indeed filed for the year 2008. The delay in the Registration of the Sale Deed was solely on account of the tenancy legislation. It is submitted that the Corporate Debtor had approached the Respondent for sale of the Scheduled Property on a back-to-back basis and the said funds were paid by M/s Shivalika Leasing & Finance Limited on behalf of the Respondent. The same is reflected in the audited financials of the Respondent for the year 2008-2009. Initially a sum of Rs. 37,50,000/- was paid to the Corporate Debtor and thereafter, the balance amount of Rs. 12,50,000/- along with interest was also paid to the Corporate Debtor. The payment is duly recorded in the 'Books of Accounts' of the Corporate Debtor. The Learned Counsel also drew our attention to the list of prospectus, the relevant paragraph is detailed as hereunder:

“Further the Company has also purchased land measuring 1,17,000 Sq. Mtrs, At Nessai, Margao, Goa in an Auction from Bank of Baroda and the Hon’ble Bombay High Court (Panjim Bench) has confirmed the sale. As per the legal advice obtained by the Company no conveyance deed is required for the aforesaid unit. The above land and building thereon have been sold to a company in which the Director are interested.”

(Emphasis Supplied)

6. It is submitted that there were certain encroachments on the Scheduled Property which got cleared only during the year 2003 and a portion thereof was also under attachment of the Excise and Customs Department which got cleared only in June 2008 and immediately thereafter, in less than two months, the Registered Sale Deed was executed in favour of the Respondent.

7. It is submitted by the Learned Counsel for the Respondent that the Scheduled Property had already been sold by the Corporate Debtor to the Respondent and that was never mortgaged by the Corporate Debtor to any bank from 1989, till date and that the Respondent is in continuation of peaceful possession of the said property.

Appraisal:

8. The brief point that falls for consideration in this Appeal is whether the ‘Adjudicating Authority’ was justified in dismissing the Application preferred by the Liquidator under Section 66 of the Code on the ground that there was no evidence to establish that the Sale Deed dated 11/08/2008 was a Fraudulent Transaction.

9. At the outset this ‘Tribunal’ addresses to the contention of the Learned Counsel for the Appellant that there are no tangible reasons for the delay in the Registration of the Sale Deed when the Sale Agreement is dated 15/05/1989. It is seen from the record that there was an attachment by the Central Excise

Department till June 2008 and also that the subject Property was occupied by a tenant till the year 2002 and the same is made part of the Recitals of the Sale Deed.

10. Having regard to the facts and circumstances of the case and the Recitals in the Sale Deed dated 11/08/2008, this Tribunal is of the considered view that merely because the Sale Agreement is dated 15/05/1989 and the Sale Deed is executed on 11/08/2008, it cannot be a ground for establishing that the said transaction is a Fraudulent one. Now, we address to the contention of the Learned Counsel for the Appellant that there is no documentary proof to establish that Rs. 50,00,000/- was indeed transferred to the Corporate Debtor by the Respondent. Apart from the fact that the Financials of the Respondent Company record that the said Consideration was paid on its behalf by 'M/s Shivalika Leasing and Finance Limited', this 'Tribunal' is conscious of the fact that the amount has been paid by Cheque. At this juncture, this 'Tribunal' finds it relevant to reproduce the letter dated 06/09/1989 issued by Bank of Baroda stating that an amount of Rs. 50,00,000/- was received in the account of the Corporate Debtor.

बैंक ऑफ बड़ौदा

(Incorporated in India)

मार्गो ब्रांच
मार्गो बिल्डिंग, मार्गो,
महाराष्ट्र 403 001, मंगळूर-गोवा
फोन : 2400, 2406, 2355 (M)
टेलीग्राम : 190, 245 ग्रांमार्गो

Bank of Baroda

(Incorporated in India)

MARGAO BRANCH
Marchon Building
Behind Graco Church,
Margao-403 001, Salcete-Goa.
Phone : 2400, 2406, 2355 (M)
Telex : 190, 245 Gramar Adorab

A/c No. MB/001/26

Date: 06-09-1989

WITHOUT PREJUDICE

Mrs. Kishorben Spinning

at Keshavnagar Mills in district

Xelodan, Goa

Dear Sir,

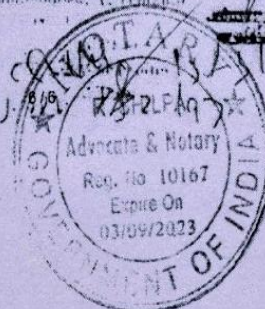
This is to acknowledge receipt
of an amount of Rs. 37,50,000/- (Rupees
Thirty Seven Lacs Fifty Thousand and 00/100)
vide Bankers Cheque No. 455053 of date
15/8/89 by Bank of India, Margao branch
in full payment towards the balance due
of the kind in respect of the public auction for
sale of immovable property of Mrs. G. J. J.
Joshi held on 15/8/89. We further
certify that we have received the above
amount of Rs. 37,50,000/- (Rupees
Thirty Seven Lacs Fifty Thousand and 00/100).

Yours faithfully
Sd/-
Sr. Manager



For Dolly Investment Co. Pvt. Ltd.

Authorised Signatory / Director



"TRUE COPY"

Compared with the Original
and Found Correct

Division XIV (NH), P. W. D.
(KARNATAKA - MARGAO)

(Emphasis Supplied)

11. This Tribunal finds it a fit case to place reliance on the Judgment of the Principal Bench of NCLAT in the matter of **‘Jagdish Kumar Parulkar v. Indore Steel & Alloys (P.) Ltd.’** in **Company Appeal (AT) (Ins) No. 802 of 2022**, dated 21/03/2023 in which this ‘Tribunal’ had addressed in detail, regarding the role of Liquidator and observed as follows:

“....Liquidators under the IBC are assigned by the Court and are undisputedly vested with sufficient authority to take into custody or control all assets, property, effects and actionable claims of the Corporate Debtor and also collect outstanding receivables including paying off bills and outstanding debts. This includes the authority to commence investigations into the Corporate Debtor’s financial affairs for determination of preferential and undervalued transaction as envisaged under section 35(1)(1) of IBC. The Liquidator has therefore a fiduciary and legal responsibility to the Corporate Debtor, the creditors and the Court. Be that as it may, the Liquidator being an officer of the Court also has to display high level of professional maturity and a modicum of balance. Fairness and restraint in the conduct of liquidation process and is not expected to show overzealousness or overreach in detecting traces of preferential/fraudulent/undervalued transactions in respect of interest in the property owned by a person who has acquired such interest from a public authority in good faith and for value. Since the Respondent No. 1 has accrued the lease of the subject land from MPIDCL directly and in a transparent manner hence it cannot be said to be putting any person in a beneficial position or being prejudicial to the interests of the corporate debtor. The negligence on the part of the Corporate Debtor not to have executed the lease deed cannot be overlooked and cannot be allowed to become a ruse for fraudulent transaction. Mere possibility of a potential collusion without material on record is not sufficient to persuade, this Bench to record any finding on preferential or fraudulent

transaction. The present transaction between MPIDCCL and the ISAPL/Respondent No. 1 not being illegal nor suffering from any procedural or material irregularities, we are satisfied with the findings of the Adjudicating Authority that it is not open to the Appellant to unsettle or derail the transaction by raising the bogey of section of 43, 49 and 66 of the IBC or to disturb the possession or interfere with the leasehold right of ISAPL”.

12. From the letter dated 06/09/1989, it is clear that the amount was paid by a cheque and received by the Bank. The Bank statements of the Corporate Debtor for the year 1989-90 during which time the Sale Agreement was entered into, the amount of Rs. 50,00,000/- is reflected. The letter of the Senior Manager, Bank of Baroda dated 06/09/1989 addressed to the Corporate Debtor clearly states that the Bank had received an amount of Rs. 37,50,000/- vide the Banker's cheque No. 455053 issued by Bank of India towards balance due of the bid. To reiterate, the Auditor's Financial Statements in the Financial Year 2008-09 also disclose payment of the balance consideration of Rs. 37,50,000/- with specific reference to the Registered Sale Deed dated 11/08/2008. Additionally, the Recitals of the Sale Deed substantiate the amount paid and the time taken for execution of the Sale Deed. It is settled position of law that there is a presumption that a 'Registered Document' is validly executed. The burden of proof, thus would be on the person who leads the evidence to rebut the presumption. In the instant case, this 'Tribunal' does not find any documentary evidence on record to establish that the said 'Transaction' is a 'Fraudulent' one.

13. For all the foregoing reasons, Company Appeal (AT) (CH) (Ins) No. 437 of 2022 is ‘dismissed’ accordingly. No Costs. Connected pending Interlocutory Applications, if any, are ‘closed’.

[Justice M. Venugopal]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

02/08/2023
SPR/NG