

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,

NEW DELHI

Comp. App. (AT) (Ins) No. 1109 of 2024 & I.A. No. 5582 of 2024

IN THE MATTER OF:

State Bank of India

...Appellant

Versus

**Arvind Kumar, Liquidator of Bhagat Ram Motorways
Pvt. Ltd. & Anr.**

...Respondent

Present:

**For Appellant : Mr. Gaurav Mitra, Ishan Ray Choudhury, Mr. Harshit
Khare, Prafull Saini, Adv.**

**For Respondent : Mr. Mohit Chaudhary, Prakhar Mithal, Adv. for R1
None for R2**

O R D E R

Per: Justice Rakesh Kumar Jain: (Oral)

07.11.2024: This appeal is directed against the order dated 25.04.2024, by which the National Company Law Tribunal, Chandigarh Bench (in short 'Tribunal') has dismissed the application bearing I.A. No. 193/2024 filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') by the Appellant.

2. In brief, M/s Bhagat Ram Motorways Pvt. Ltd. (Corporate Applicant) filed an application under Section 10 of the Code which was admitted on 10.12.2018 and Arvind Kumar was appointed as Interim Resolution Professional (IRP) whose appointment was confirmed by the CoC in its meeting held on 01.01.2019.

3. The resolution plan submitted by the Resolution Applicant was rejected and in the 10th meeting the CoC opted for liquidation. Accordingly, the Liquidation application was filed by the liquidator before the Tribunal

which was allowed on 24.09.2019 and Respondent no. 1 was appointed as the Liquidator, pursuant to which he prepared the liquidation estate of the assets of the CD in terms of Section 36 of the Code.

4. The Respondent No. 1 prepared e-auction process information document and gave the details of the assets allegedly owned by the CD. The said details are reproduced as under: -

25.3 Detail of Assets

25.3.1 Land & Building

- n) The entire land of showroom, which the successful bidder will acquire, is registered in the name of the promoter/directors of the corporate debtor. The purchaser is required to fulfil the conditions of Section 118 of the H.P. Tenancy and Land Reforms Act, 1972 for the transfer of its ownership to itself or any other person.

The detail of the land is as below

Sr. No.	Details of the Land
1	Land measuring 0-03-02 Hects being 1/9 share out of land measuring 0-27-16 Hects comprised of khewat No. 23, Khatoni No 26 Khasra No 2153/576 as entered in jamabandi for the year 2013-2014 situated at up mohal Rakkar Colony, Teh and Distt-Una, In the name of Tushar Sharma S/o Rakesh Sharma
2	Land measuring 0-00-63 Hects being 14/240 share out of land measuring 0-10-75 Hects comprised of khewat no 26 khatoni no 37 khasra no 9,16,17,18,19,20,21,22&23, In the name of Tushar Sharma S/o Rakesh Sharma
3	Land measuring 0-00-09 Hects being 14/240 share out of land measuring 0-01-52 Hects comprised of khewat no 27 khatoni no 38 khasra no 12, In the name of Tushar Sharma S/o Rakesh Sharma
4	Land measuring 0-00-33 Hects being 364/6240 share out of land measuring 0-05-65 Hects comprised of khewat no 28 khatoni no 39 khasra no 11, In the name of Tushar Sharma S/o Rakesh Sharma.
5	Land measuring 0-00-32 Hects being 14/240 share out of land measuring 0-05-53 Hects comprised of khewat no 29 khatoni no 40 khasra no 13,14,15, kitta - 3 as entered in jamabandi for the year 2009-2010 situated at Mohal Tabba, Teh and Distt- Una (H.P.), In the name of Tushar Sharma S/o Rakesh Sharma

6	Land measuring 0-01-52 Hects being 1/5 share out of land measuring 0-07-61 comprised of khewat no 77khatoni no 93khasra no 2334/10 as entered in jamabandi for the year 2009-2010 situated at MohalTabba Colony, Una (H.P.) in the name of Sh Tushar Sharma s/o Sh. Rakesh Kumar.
7	Land measuring 0-11-90 hect as detail below. - A) Land measuring 0-04-26 hecets comprised of Khewat no 13 min khatoni no 15 khasra no 577, In the name of Tushar Sharma S/o Rakesh Sharma. B) Land measuring 0-07-64hectbeing 764/2716 share out of land measuring 0-27-16 hecets comprised of khewat no 14khatoni no 2153/576 as entered in jamabandi for the year 2008-2009 situated at Mohal Rakkar Colony, Una (H P.) in the name of Sh. Tushar Sharma s/o Sh. Rakesh Kumar.

Bank has also created the charge on this property for ₹ 1.50 Cr (₹ One Crore Fifty Lakhs only) in respect of loan granted to some other Borrower and buyer will be required to settle this account with lender State Bank of India over and above the sale price of Parcel/Lot – I to take property free from all encumbrances.

25.3.2 Guest House Land & Building at Khewat no. 231 Khatoni no 255 khasra no 2208/634 having share of 940.80 sqm in the name of Sh. Rakesh Kumar s/o Sh. Bhagat Ram, as entered in jamabandi for the year 2008-2009.

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5. The e-auction was held on 26.12.2023, the Respondent No. 2 was adjudged the highest bidder. The Appellant then filed an application bearing I.A. No. 193 of 2024 before the Tribunal with the following prayers:-

“It is therefore respectfully prayed that the present application may kindly be allowed and sale held in view of e-auction dated 26.12.2023 may kindly be cancelled, in the interest of justice.

It is further prayed that during the pendency of the present application, interim order may be passed restraining the respondent no. 1 liquidator from confirming the sale held vide e-auction dated 26.12.2023.

The Hon'ble Adjudicating Authority may grant any other relief as per the facts and circumstances of the matter in hand."

6. This application was contested by Respondent No.1 and the Tribunal recorded its findings in para 11 that "after a careful perusal of the record, we observe that the applicant bank is claiming that the properties were purchased by and in the name of the directors of the company, but no document/agreement in support of the title/ownership of the said properties has been placed on record or produced during hearing by the applicant bank. Similarly, the respondent liquidator too has failed to establish how the 'land' as mentioned in the balance sheet of 2012-13 or 2017 are the same properties which are claimed by the applicant to have been mortgaged to it without any specific details of the said 'land' mentioned therein. Mere reflection of a property as 'land' in the balance sheet does not confer a valid legal title of the same on the CD. This bench is of the view that neither party i.e. the applicant bank nor the respondent liquidator has produced cogent evidence in support of their respective claims" and dismissed the application by recording a finding in para 14 which read as under:-

"In the absence of sufficient documents and evidence in support of the legal title of the properties in question, we have no other option but to dismiss the application. Since, we have not decided the issue on merits, the parties are at liberty to approach the civil court or any other appropriate forum to agitate about their right and title over the said properties. 15. The present I.A No. 193 of 2024 is dismissed and disposed off accordingly."

7. Aggrieved against the aforesaid order, the present appeal has been filed in which, at the time of preliminary hearing, this Court had directed

that “we however observe that any action taken in pursuance of the impugned order shall abide by the result of the appeal.” However, the said order was further amended on an application bearing I.A No. 5582 of 2024 filed by the Appellant in which the following order was passed on 08.08.2024 :-

“I.A. No. 5582 of 2024: By this application applicant has prayed for direction to the liquidator to not proceed to distribute the sale proceeds by the liquidator.

Learned Counsel for the Liquidator submits that the liquidator has already sent an email to the SBI on 02.08.2024 that till next date the liquidator shall not distribute the proceeds.

In view of the aforesaid statement, we see no reason to pass any order.

Let the matter on 14.08.2024.”

8. While attacking the impugned order, Counsel for the Appellant has submitted that the Tribunal has committed a patent error in dismissing the application of the Appellant without advertng to the admitted facts on record i.e. property mentioned in the e-auction process information document. It is contended that there are two parcels of land, namely, the workshop, showroom, Guest house land & building. It is submitted that the workshop, showroom, land and building is owned by Tushar Sharma s/o Rakesh Kumar and the guest house land & building is owned by Rakesh Kumar s/o Bhagat Ram. He has also referred to mortgage documents which have been placed on record with the application bearing I.A. No. 5582 of 2024. The mortgage documents pertaining to the workshop and showroom and in the name of Tushar Sharma s/or Rakesh Kumar and is reproduced as under:-

SME 59

LETTER OF CONFIRMATION FOR EXTENSION OF MORTGAGE BY DEPOSIT OF TITLE DEEDS COVERING ENHANCED LIMITS AND / OR CREATION OF EQUITABLE MORTGAGE ON ADDITIONAL PROPERTIES FOR SECURING THE EXISTING LIMITS AND / OR ENHANCED LIMITS AND ADDITIONAL FACILITIES.

Date: 22.10.11

From: Tushal Sharma S/o Dr Rakesh Sharma Rakkar colony Urf		To: The Chief Manager, State Bank of Patiala, Mehatpur Branch
(Name & Address/s of the Mortgagor/s)		
1. Name of the Borrower/s (Father's / Husband's name also to be mentioned.)		Bhagat Ram motor ways (P) (T)
2. Address of the Borrower/s		Rakkar Colony Urf
3. Facilities & limits originally secured (Full details to be given.)		Rs 175 Lacs. For motorways (referred to as "Mortgage Debt")
4. Enhanced portion of the limits and / or additional facilities secured (referred to as "the enhanced mortgage debt")	Enhanced Portion Rs. _____ Rupees _____	Additional Facilities, if any. Rs. 3.50 crore as Term loan Rupees Rs 3.0 crore as cash credit
SCHEDULE - A (List of the documents of title)		SCHEDULE - B (List of the documents of title)
As per Attached list		
(Description of the Properties)		(Description of the Additional Properties)

Dear Sir,

1. We are writing this to confirm that we had already deposited with you at Mehatpur (Place of deposit) on 10.08.2005 (date of original deposit), the title-deeds relating to our SCHEDULE A property with intent to create equitable mortgage as security for the due repayment of the amounts mentioned in item no. 3 above and also for all other liabilities and indebtedness past, present and future, due and payable to the Bank.

2. This is to confirm that consequent upon the enhancement of the limits and/or grant of additional facilities as mentioned above we had admitted and confirmed on 21.10.11 (Date of extension of mortgage) that the benefit of the aforesaid mortgage shall also apply for, stand extended to and cover the enhanced portion of the limits and/or the additional facilities and also for all other liabilities and indebtedness of the Borrowers to the Bank.

3. We further confirm that on _____ (date of deposit of additional title deeds) we have also delivered to and deposited with you Mehatpur (Place) the additional title deeds relating to additional properties (SCHEDULE-B) with the intention of creating equitable mortgage as security not only for securing the due repayment of the above original mortgage debt but also for the due repayment of the enhanced limits and/or the additional facilities comprised in the enhanced mortgage debt granted or agreed to be granted by the Bank and for all interest, cost, charges, expenses payable by the Borrowers to the Bank. Total Rs 6.50 crore + Rs 175 Lacs = Rs 8.25 crores.

4. Consequent to grant of enhanced mortgage debt, We also confirm that we had admitted and confirmed on 21.10.11 (Date of extension) at Mehatpur (Place) that the benefit of the mortgage/s on the Schedule A and B properties shall also apply for, stand extended to and cover the enhanced portion of the limits and/or the additional facilities and also for all other liabilities and indebtedness of the Borrowers to the Bank.

5. We confirm that no proceedings for recovery of any statutory dues, taxes, etc are being initiated nor were initiated in the past nor any proceeding or levy or tax is pending against the Mortgagor/s under the Income Tax Act, 1961 or the Sales Tax Laws, and that no notice has been issued / or served on us under Rules 2, 16 or 51 or any other Rules of the Second Schedule to the Income Tax Act, 1961, or under any other law for the time being in force.

6. We confirm that we have a good and marketable title and that save the charges created in favour of the Bank, the property is free from all encumbrances. The property is in our physical possession (a portion of the property is under tenancy occupation on monthly rent).

7. We have not entered into any agreement for transfer or alienation in respect of our properties in any form whatsoever nature. We waive the application of Sections 61, 65A and 67A of the Transfer of Property Act 1882.

Yours faithfully,

Signatures of the Mortgagor/s

(Note: In addition to Land & Buildings, if fixed Plant & Machinery is also given, then, full description of the said Plant & Machinery, including identification marks should be written.)

Collateral Security

1. Extension of scope on existing EM of commercial property measuring 0-01-10 Hect. being 1/5 share of 0-05-53 Hect., comprised in Khewat no. 29, Khatauni no.40, Khasra no 13/0-00-90, 14/0-01-40, 15-0-03-23 as entered in Jamabandi for the year 2009-10 situated at Una Nangal Road, Rakkar in the name of Shri Tushar Sharma S/O Dr. Rakesh Sharma.
2. Extension of scope on existing EM of land measuring 0-01-52 Hect. being 1/5 share of 0-07-61 Hect., comprised of Khewat No 77, Khatauni NO 93, Khasra No 2334/10, as entered in Jamabandi for the year 2009-2010, situated at Mohal Tabba, Teh. Una, Nangal Road, Rakkar in the name of Shri Tushar Sharma s/o Dr. Rakesh Sharma.
3. Extension of scope on existing EM of commercial property measuring 0-03-02 Hect. being 1/9 share of 0-27-16 Hect. comprised in Khewat no. 11, khatauni no. 13 min, Khasra no. 576/2 registered vide Vasika no. 1226 dated 07.06.2004 situated at Una-Nangal Road, Rakkar in the name Shri Tushar Sharma s/o Dr. Rakesh Sharma
4. Extension of scope on existing EM of commercial property measuring 0-03-39 Hect. being 1/8 share of 0-27-16 Hect., comprised in Khewat no. 11, khatauni no.13 min, khasra no 576/2 registered vide Vasika 2879 dated 30.12.2004 situated at Una Nangal Road, Rakkar in the name of Shri Tushar Sharma s/o Dr. Rakesh Sharma.
5. Extension of scope on existing EM of commercial property measuring 0-02-99 Hect. constituting land measuring 0-01-52 Hect. being 1/5 share of 0-07-61 Hect, comprised in Khewat no. 29 min, khatauni no. 49, khasra no. 10/2 and land measuring 0-01-47 Hect. being 50/240 share of 0-07-5 Hect., comprised in Khewat 21, khatauni no.37, khasra no.13/0-00-90, 14/0-01-40,15/0-03-23 both registered vide Vasika 2880 dated 31.12.2004 situated at Una Nangal Road, Rakkar in the name of Shri Tushar Sharma s/o Dr. Rakesh Sharma.

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9. Similarly, guest house owned by Rakesh Kumar son of Bhagat Ram was also mortgaged with the Appellant is also reproduced as under:-

SME 59

LETTER OF CONFIRMATION FOR EXTENSION OF MORTGAGE BY DEPOSIT OF TITLE DEEDS COVERING ENHANCED LIMITS AND / OR CREATION OF EQUITABLE MORTGAGE ON ADDITIONAL PROPERTIES FOR SECURING THE EXISTING LIMITS AND / OR ENHANCED LIMITS AND ADDITIONAL FACILITIES.

Date: 22.10.11

From: <u>Tushal Sharma & Co</u> <u>Dr Rakesh Sharma</u> <u>Rakkal colony Urf</u> (Name & Address/s of the Mortgagor/s)		To: The Chief Manager, State Bank of Patiala, <u>Mehatpur</u> Branch	
1. Name of the Borrower/s (Father's / Husband's name also to be mentioned.)		<u>Bhagat Ram motor ways (P) (T)</u>	
2. Address of the Borrower/s		<u>Rakkal Colony Urf</u>	
3. Facilities & limits originally secured (Full details to be given.)		<u>Rs 175 Lacs. For motorways</u> (referred to as "Mortgage Debt")	
4. Enhanced portion of the limits and / or additional facilities secured (referred to as "the enhanced mortgage debt")	Enhanced Portion Rs. _____ Rupees _____	Additional Facilities, if any. Rs. <u>3.50 Crore as Term loan</u> Rupees <u>Rs 3.0 Crore as Cash credit</u>	
SCHEDULE -A (List of the documents of title)		SCHEDULE -B (List of the documents of title)	
<u>As per Attached</u>		<u>dist</u>	
(Description of the Properties)		(Description of the Additional Properties)	

Dear Sir,

31.08.2005

1. We are writing this to confirm that we had already deposited with you at Mehatpur (Place of deposit) on 10.08.2005 (date of original deposit), the title-deeds relating to our SCHEDULE-A property with intent to create equitable mortgage as security for the due repayment of the amounts mentioned in item no. 3 above and also for all other liabilities and indebtedness past, present and future, due and payable to the Bank.

2. This is to confirm that consequent upon the enhancement of the limits and/or grant of additional facilities as mentioned above we had admitted and confirmed on 21.10.11 (Date of extension of mortgage) that the benefit of the aforesaid mortgage shall also apply for, stand extended to and cover the enhanced portion of the limits and/or the additional facilities and also for all other liabilities and indebtedness of the Borrowers to the Bank.

3. We further confirm that on _____ (date of deposit of additional title deeds) we have also delivered to and deposited with you Mehatpur (Place) the additional title deeds relating to additional properties (SCHEDULE-B) with the intention of creating equitable mortgage as security not only for securing the due repayment of the above original mortgage debt but also for the due repayment of the enhanced limits and/or the additional facilities comprised in the enhanced mortgage debt granted or agreed to be granted by the Bank and for all interest, cost, charges, expenses payable by the Borrower/s to the Bank. Total Rs 6.50 crore + Rs 175 Lacs = Rs 8.25 crores.

4. Consequent to grant of enhanced mortgage debt, We also confirm that we had admitted and confirmed on 21.10.11 (Date of extension) at Mehatpur (Place) that the benefit of the mortgage/s on the Schedule A and B properties shall also apply for, stand extended to and cover the enhanced portion of the limits and/or the additional facilities and also for all other liabilities and indebtedness of the Borrowers to the Bank.

5. We confirm that no proceedings for recovery of any statutory dues, taxes, etc are being initiated nor were initiated in the past nor any proceeding or levy or tax is pending against the Mortgagor/s under the Income Tax Act, 1961 or the Sales Tax Laws, and that no notice has been issued / or served on us under Rules 2, 16 or 51 or any other Rules of the Second Schedule to the Income Tax Act, 1961, or under any other law for the time being in force.

6. We confirm that we have a good and marketable title and that save the charge/s created in favour of the Bank, the property is free from all encumbrances. The property is in our physical possession (a portion of the property is under tenancy occupation on monthly rent).

7. We have not entered into any agreement for transfer or alienation in respect of our properties in any form whatsoever nature. We waive the application of Sections 61, 65A and 67A of the Transfer of Property Act 1882.

Yours faithfully,

 Signature/s of the Mortgagor/s

(Note: In addition to Land & Buildings, if fixed Plant & Machinery is also given, then, full description of the said Plant & Machinery, including identification marks should be written.)

10. Counsel for the Appellant has then drawn our attention to the translated sale deeds i.e. Vasika No. 1228 dated 07.06.2004 pertaining to the land owned by Tushar Sharma s/o Rakesh Kumar and the sale deed bearing Vasika No. 3 Dated 20.04.1981 pertaining to land owned by Rakesh Kumar son of Bhagat Ram.

11. There are multiple sale deeds in favour of Tushar Sharma dated 07.06.2004 and similarly in favour of Rakesh Kumar son of Bhagat Ram dated 20.04.1981 of the two parcels of land which are in question in this case. He has further submitted that the Tribunal should not have dismissed the application when it was itself not clear as to whether the land in question belongs to the CD or the individuals, namely, mortgagers who have mortgaged the property with the Bank. He has further submitted that the Tribunal has committed an error in dismissing the application and relegating the Appellant to approach civil court or any other appropriate forum to agitate about their right and title over the said properties and allowed the properties to be sold/transferred to the prospective buyers.

12. In reply, Counsel for Respondent has vehemently argued that there is no error in the impugned which calls for any interference by this Court. It is submitted that the Appellant was the member of the SCC having voting share of 38.23%. They did not participate in the 15th SCC in which the decision was taken for the purpose of e-auction of the property in question. It is further submitted that Respondent No. 1, being a liquidator, has acted in accordance with law much less in terms of Section 36 for selling the property of the CD which he has gathered from balance sheet of the CD in which the word land and building has been mentioned. It is also submitted

that this was within the knowledge of the Appellant from the last two years but no effort was made by them at any point of time.

13. Counsel for the Respondent has also argued that earlier also the same property was put to e-auction but the auction failed and the amount which was deposited by the prospective buyers was forfeited out of which proportionate share of Rs. 60 lakh has gone to the SBI.

14. In rebuttal, Counsel for the Appellant has submitted the mere fact that he did not participate in the SCC meeting when the decision was taken to liquidate the property in question does not change the ownership of the property in question which is owned by two individuals and not by the CD, therefore, it cannot form part of the assets of the CD under Section 36(4) for selling the same to pay off the debts.

15. We have heard Counsel for the parties and perused the record with their able assistance.

16. The Tribunal has framed the question in para 10 to the effect that “The moot issue in the case in hand is whether the properties in question have been purchased by and in the name of the Directors of the CD as contended by the Applicant bank, or the said properties were purchased out of the funds and in the name of the CD and liable to be included in the liquidation estate, as argued by the Respondent/Liquidator”

17. The same question would arise in the present appeal as well. The very fact that the company was incorporated in the year 2011 and the property owned by Rakesh Kumar son of Bhagat Ram was purchased by him in the year 1981 and Tushar Sharma s/o Rakesh Kumar purchased the property in question in 2004 would itself show that these properties do not belong to the CD because had it been the property of the CD then the CD would have

purchased after having been incorporated but since the properties have been purchased by two individuals who happened to be the directors of the CD, would not make this property to be a part of the asset of the CD. In this regard, evidence has been led by the Appellant before this Court by producing the vernacular copies of the sale deeds of the year 1981 and 2004 alongwith translated copies thereof in which the property in question is recorded in the name of both the directors, namely, Tushar Sharma and Rakesh Kumar. Besides this, evidence has also been brought on record in the shape of mortgage documents to show that these properties have been mortgaged by the individuals and not by the CD for the loan for the CD. In addition to that, e-auction process information document, which we have already referred to herein above, also shows that the property which has been put to sale by the liquidator in auction is the same in which khasra number and area are clearly mentioned which relate the title deeds produced by the Appellant. All the documentary evidence available on record indicates to only one fact that the property in question belongs to two individuals, namely, Tushar Sharma and Rakesh Kumar which has been mortgaged with the Appellant for raising loan and is not the property of the CD. Moreover, Counsel for the Appellant has also pointed out during the course of hearing that for the purpose of sale of these properties which have been mortgaged with them, appropriate proceedings have already been initiated by the Appellant Bank under the SARFAESI Act by issuing notices under Section 13(2) and 13(4) and has also obtained recovery certificate from DRT-II, Chandigarh.

18. In such circumstances, we have easily reached to the conclusion that the property in question which has been sold by the liquidator does not

belong to the CD rather the same belongs to the Tushar Sharma s/o Rakesh Kumar and Rakesh Kumar s/o Bhagat Ram which is evident from the documentary evidence available on record.

19. In view of the aforesaid facts and circumstances, the appeal succeeds and the impugned order is hereby set aside. No costs.

20. Before parting, it is pertinent to mention that in view of the aforesaid order, the sale in favour of the Respondent No. 2 is hereby cancelled. The amount which has been collected by Respondent No. 1 from Respondent No. 2 shall be returned to him within 30 days from today.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Indevar Pandey]
Member (Technical)

Sheetal / ravi