

**THE NATIONAL COMPANY LAW TRIBUNAL
COURT V, NEW DELHI**

**I.A No. 3085/2022
IN
Company Petition No. (IB) – 2083/ND/2019**

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:

Modern Credit Pvt. Ltd.

....FINANCIAL CREDITOR

VERSUS

KPG International Pvt. Ltd.

....CORPORATE DEBTOR

AND IN THE MATTER OF-

Gaurav Mahendru,
R/o 214, Ground Floor,
Ambika Vihar, Paschim Vihar,
New Delhi - 110063

....APPLICANT

VERSUS

Mr. Sunil Kumar Aggarwal
Resolution Professional of Corporate Debtor
Having its regtd. office at
E-205, LGF
Greater kailash-II
New Delhi-11 0048

....RESPONDENT

Order Pronounced on: 23.07.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

- For the Applicant** : Adv. Aman Garg, Adv. Dhruv Gupta, Adv. Kanwal Chaudhary
For the RP : Adv. Manoj Kumar Garg, Adv. Sachin Kaushik, along with Mr. Sunil Kumar Agarwal

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 by the Applicant, Mr. Gaurav Mahendru, Ex-director of the Corporate Debtor seeking directions to resolution professional to handover physical possession of property bearing No. 354, Block B, Mangolpuri Industrial Area, Phase-1, New Delhi to the Applicant.
2. The Applicant in the present application has prayed for the following reliefs:
 - a) *Direct the Ld. R.P. to remove the assets whatsoever of the Corporate Debtor from the Property bearing No. 354, Block B, Mangolpuri Industrial Area, Phase-1, New Delhi and handover the peaceful and vacant possession of the same to the Applicant;*
 - b) *Pass such other and/or further order as this Hon'ble Court may deem fit and proper in the facts and circumstance of the case.*
3. **Brief facts of the case as mentioned in the instant application, which are just and necessary for adjudication, are as follows: -**
 - (a) This Tribunal vide order dated 27.01.2020 admitted the Section 7 petition against the Corporate Debtor, KPG International Pvt. Ltd. filed by Modern Credit Pvt. Ltd., Consequently, the Respondent was appointed as the Interim Resolution Professional (IRP) and subsequently as the Resolution Professional (RP), and Corporate Insolvency Resolution Process was initiated.
 - (b) Applicant stated that he is the owner of Immovable Property bearing No. 354, Block-B, Mangolpuri, Industrial Area, Phase-1, New Delhi. To substantiate his claim a Sale Deed dated 07.08.2015 registered in favor of applicant is annexed with the application.

- (c) KPG Industries, a proprietorship firm of the Applicant was acquired by the Corporate Debtor through Take Over Agreement dated 16.12.2016. Clause 3 of the said agreement stipulates that Said Property shall also devolve upon the Company and Applicant shall offer to pledge/mortgage the Said Property on behalf of the Company, for its business in favor of any Financial Institution or Bank or NBFC to raise any debt, if required. However, this clause in itself does not transfer the "title" of aforesaid property in favor of the Company. Accordingly, the Applicant in 2017 mortgaged the said property to Oriental Bank of Commerce (now taken over by PNB) to secure credit facilities for KPG International Pvt. Ltd.
- (d) The Corporate Debtor was permitted to operate from said property by the applicant. However, nowhere from the aforesaid Take Over Agreement, it can be established that Applicant ever delivered the Possession of the Said Property to the Corporate Debtor.
- (e) To enter into said property, Respondent has deputed his person on 14.09.2020 & 15.09.2020 and on 15.09.2020, Respondent illegally and unauthorizedly took over the possession of said property. Furthermore, The Respondent disregarded the terms of Take Over Agreement and recorded the incorrect minutes, insisting that the property had become an asset of the Corporate Debtor under the agreement.
- (f) Take Over Agreement dated 16.12.2016 is is both unregistered and insufficiently stamped instrument. As such, it cannot create any interest in or charge on the said property. Furthermore, the Corporate Debtor did not take any steps within the period of limitation to obtain a title, conveyance, or sale deed registered in its favor.
- (g) Despite being aware that the Corporate Debtor lacked ownership rights to the specified property, the Respondent proceeded with the publication of FORM G. Consequently, the resolution applicant submitted their resolution plan on 03.12.2020, which was opened in 4th CoC meeting of the creditor. Considering the issue raised by one of the Financial Creditor, Punjab National Bank that no sale deed was executed in favor of Corporate Debtor. Authorized Representative of Punjab National Bank proposed to get two legal opinions from Advocates or Legal Advisors to

determine whether the property in question could be considered an asset of the Corporate Debtor.

- (h) The Respondent obtained two legal opinions and he presented these opinions before the CoC members to establish that the said property was indeed an asset of the Corporate Debtor. Consequently, the Ld. R.P. misrepresented and misled the Committee of Creditors (CoC) by convening the 6th CoC meeting on January 13, 2021, during which the Resolution Plan was put to a vote. As a result, the Resolution Plan proposed by the Resolution Applicant was approved by 80.43% of the voting shares of Punjab National Bank on 16.01.2021.
- (i) Respondent moved an application being I.A. 565 of 2021 on 19.01.2021 praying that title of Said Property be directed to be registered in favor of Corporate Debtor, which was dismissed by this Adjudicating Authority on 27.09.2021. Respondent then filed an appeal before Hon'ble NCLAT being Company Appeal (AT) (Ins) No. 978 of 2021 which was also dismissed vide order dated 02.12.2021. Respondent again moved an application bearing I.A. No. 912 of 2022 before this tribunal on which direction was issued to Resolution Professional to withdraw the said application.
- (j) Applicant stated that the contract for the sale of the immovable property is a contract that a sale of such property shall take place on terms settled between the parties. Further, it does not by itself create any interest in or charge on such property. Further, the Take Over Agreement does not comply with Section 54 of Transfer of Property Act, 1882, as the said agreement is silent about how, by when and in what manner Applicant was to transfer the property, by way of sale deed or conveyance deed or assignment deed and who shall be paying registration charges and stamp duty on any such above instrument.
- (k) Neither Corporate Debtor nor the Respondent ever sought specific performance of the Take Over Agreement dated 16.12.2016 and now cannot seek any such relief as being barred by limitation. Further, the Respondent cannot seek protection regarding possession of the said property under Section 53A of the Transfer of Property Act, 1882.

Therefore, it is clear that the Corporate Debtor does not have ownership rights to the property based on the Take Over Agreement.

4. Contentions asserted by the Learned Counsel appearing on behalf of the Respondent, Resolution Professional in reply to the present Application.

- (a) Respondent submitted that the suspended board of directors has no locus to file the present application. Further, vide order dated 11.09.2020 passed by this Adjudicating Authority, Applicant undertook that he will not create any hinderance and cooperate with the Respondent for entering into said property which solely belongs to the Corporate Debtor. Order dated 11.09.2020 further elucidates that the said property solely belongs to the Corporate Debtor which was also admitted buy the Applicant in same order.
- (b) Vide order dated 23.09.2020, applicant submits that the possession of the said property already handed over to the Respondent. Thus, it is the admitted fact that the said property solely belongs to the Corporate Debtor.
- (c) The Corporate Debtor has taken over the assets and liabilities of M/s KPG Industries, a proprietorship firm of Mr. Gaurav Mahendru, Suspended Director/Applicant on 16.12.2016 and subsequent to the Take Over Agreement, all the assets (including the said property) and liabilities of the firm KPG Industries had been taken over by the Corporate Debtor. The takeover of KPG Industries by the Corporate Debtor was also certified by the Chartered Accountant Mr. Varun Goel. Further, said property also shown in the audited financial statements of the Corporate Debtor as on 31.03.2018 property as fixed asset of the Corporate Debtor.
- (d) The Financial Creditor, Punjab National Bank sanctioned certain credit facilities to the Corporate Debtor in February, 2017 and against which the said property was mortgaged by Mr. Gaurav Mahendru, Suspended Director of the Corporate Debtor and also a proprietor of M/s KPG Industries as collateral security. Financial creditor imposed a condition in Sanction Letter that Mr. Gaurav Mahendru, Applicant will get the title

deed of said property executed in the name of Corporate Debtor by 31.03.2018.

- (e) Further, The Title Opinion Report submitted by the Bank Counsel states that though the property is in the name of M/s KPG Industries/Applicant. However, it is shown in the Balance sheet of the Corporate Debtor and is under the possession of the Corporate Debtor on the basis of takeover agreement. Thus, the said property rationally belongs to the Corporate Debtor.
- (f) The applicant further in the 4th CoC meeting has admitted that due to lack of funds to purchase the stamp duty, the title deed for the said property could not be executed in the favor of Corporate Debtor.
- (g) Further submitted that the fact that the property belongs to the Corporate Debtor and the registered address of the Corporate Debtor is situated in the said property is also registered with Ministry of Corporate Affairs. Thus, the property belongs to the Corporate Debtor and the possession of the Respondent is fully justified in the eyes of law.
- (h) The Resolution Plan for the Corporate Debtor has already been approved by the CoC in its 6th meeting held on 13.01.2021 with 80.43% majority. It is pertinent that the applicant was also present in said CoC meeting.
- (i) Thus, the present application is liable to be dismissed as the Resolution Plan has already been approved by the CoC. As per the fact and circumstances, the said property solely and rightly belongs to the Corporate Debtor.

Analysis and Findings

5. We have heard the Learned Counsels for the Applicant and the Respondent, and further perused the averments made in the Application, Reply and Written Submissions presented by the Parties. The Applicants has filed the present Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking directions against the Respondent Resolution Professional for regarding handing over physical possession of Property Bearing No.354, Block B, Mangolpuri Industrial Area, Phase-1, New Delhi.
6. The Applicant stated that both the Corporate Debtor and M/s KPG Industries, a proprietorship firm of the Applicant has entered into Take Over

Agreement on 16.12.2016 wherein KPG Industries were taken over by the Corporate Debtor. The Applicant alleged that the property in question i.e. No.354, Block B, Mangolpuri Industrial Area, Phase-1, New Delhi. is neither transferred not registered in the name of Corporate Debtor by virtue of that Take Over Agreement and is still registered in the name of Applicant vide sale deed dated 07.08.2015.

7. The applicant contends that the Corporate Debtor lacks any legal title to the aforesaid immovable property and the Respondent wrongly mentioned the said property in the assets of Corporate Debtor. However, from bare perusal of the Take-Over Agreement dated 16.12.2016 it reveals that all the assets and liabilities of the proprietorship firm, M/s KPG Industries as per the accounts, stands fully and comprehensively transferred/taken over by the Corporate Debtor whether tangible or intangible, movable or immovable, current or fixed. Further, the aforesaid take over agreement explicitly mentions that the said property shall devolve to the Corporate Debtor. Thus, it can be safely construed that the rights over the said property evidently devolved to the Corporate Debtor by the Applicant. Further, it clearly indicates the intent of parties entering into Take Over Agreement that the aforesaid property is to be transferred to Corporate Debtor. The relevant extract of the aforementioned Take-Over Agreement is reproduced below:

“3. The whole of the business alongwith its assets & liabilities of the said firm "KPG" as on 15-12-2016 hereinafter vests with the COMPANY at their Book Value. The immovable property i.e. No. 354, Block B, Mangol puri Industrial Area, Phase 1, New Delhl in the name of KG Industries through its proprietor, Mr. Gaura Mahendru shall also devolve to the COMPANY. Mr. Gaurav Mahendru shall offer to pledge/mortgage this property for and on behalf of the company for Its business in favor of any Financial Institution or bank or NBFC to raise any debt, if required.”

8. Further, in the 4th CoC meeting held on 08.12.2020, the Applicant reiterated that the M/s KPG International Pvt. Ltd., Corporate Debtor has taken over all the assets and liabilities of three firm M/s AR Enterprises, M/s KPG Industries and M/s P.S. Overseas and the Financial Creditor has provided credit facilities against the mortgage of said property to the Corporate Debtor knowing the fact that the same property is not yet registered with the

Corporate Debtor. Further, the applicant also clarified in the CoC meeting that the applicant was unable to execute the sale deed as the Company was facing financial difficulties. It is evident from the minutes of CoC meeting that applicant believe that the property belongs to the Corporate Debtor. Furthermore, the financial statements of the Corporate Debtor indicates that the said property was considered as fixed asset under "Land & Building" of the Corporate Debtor which is also stands substantiated with the Chartered Accountant Certificated. Certificate issued by Mr. Varun Goel, Chartered Accountant is also placed on record. The relevant extracts of the minutes of 4th CoC meeting is reproduced below:

“Mr. Gaurav Mahendru- Suspended Director of M/s KPG International Pvt. Ltd, has informed to COC that the takeover agreements were executed of the three firm M/s AR Enterprises, M/s KPG Industries, M/s P.S. Overseas with M/s KPG international Pvt. Ltd. in December. 2016. As per agreements all the Assets & Liabilities of the firms taken over by the M/s KPG International Private Limited. All These documents submitted before the OBC Bank before the sanction of the loan and the bank has agreed with this and on the basis of this the property which was situated at B-354, Block-B Mangolpuri Industrial Area, New Delhi was mortgaged with the bank and the bank provided the credit facilities/ Term Loan. The bank has notified in Sanction letter that Sale Deed/ Conveyance Deed will be executed in the name of the Company i.e. M/s KPG International Private Limited.

Mahendru has also clarified that the stamp duty of Rs. 25.00 Lac (approx) was to be paid to the revenue account of Government on the execution of the sale deed and the company was facing difficulty to deposit the such amount due to the shortage of fund. The Sale deed was not executed and not registered in the Sub-Registrar office, New Delhi.

Mr. Mahendru has further clarified that the property belongs to the company M/s KPG International Private Limited. because the KPG Industries already takeover by company M/s KPG International Private Limited in December, 2016. The property is mentioned in Financial Statements Year 2016-17 of the Company in the Fixed Assets - Land & Building.”

9. Further, the Applicant submitted before this Adjudicating Authority, as recorded in orders dated 11.09.2020 and 23.09.2020 that the possession of

the aforesaid property was handed over to the Respondent, Resolution Professional of the Corporate Debtor. Thus, it is clear that the possession of the said property belongs to Corporate Debtor and the Applicant itself handed over the possession of property to the Respondent. It is worth mentioning here that in I.A. No. 565 of 2021, vide order dated 27.09.2021 we never adjudicate on merit of the said Take Over Agreement, the Applicant only prayed for execution of sale deed in favor of Corporate Debtor.

10. Furthermore, the Respondent stated that the aforementioned property is the only asset owned by the Corporate Debtor which is central to the Resolution Plan duly approved by the CoC in its 6th meeting and any dispossession of said property will have adverse impact on entire Corporate Insolvency Resolution Process of the Corporate Debtor. On the basis of Take Over Agreement dated 16.12.2016, Financial Statement of the Corporate Debtor, Certificate issued by Chartered Accountant and Acknowledgements made by the Applicant, it is established that the aforementioned property solely belongs to the Corporate Debtor. In case, if the said property is dispossessed from the Corporate Debtor, it will lead to the corporate death of the Corporate Debtor and the entire CIR process will be failed. As in the present case, a conjoint reading of Take-Over Agreement dated 16.12.2016, Financial statements and other acknowledgements made by the Applicant in CoC meetings and before this Tribunal clearly establishes that the said property belongs to the Corporate Debtor. Any interference in the resolution of Corporate Debtor by dispossessing the Respondent from the said property which is imperative to the successful Resolution of the Corporate Debtor would push toward the corporate death of the Corporate Debtor.

11. In terms of Take Over Agreement dated 16.12.2016, the aforesaid property was devolved with Corporate Debtor and therefrom it is treated as an asset of Corporate Debtor which can be corroborated with the financial statements. Section 49 of the Registration Act, 1908 further stipulates that an unregistered document can also be received as evidence of contract in suit for specific performance and also as evidence of any collateral transaction. Further, the Hon'ble Supreme Court in ***Ameer Minhaj v. Dierdre Elizabeth (Wright) Issar, (2018) 7 SCC 639*** held as follows:

“10. On a plain reading of this provision, it is amply clear that the document containing contract to transfer the right, title or interest in an immovable property for consideration is required to be registered, if the party wants to rely on the same for the purposes of Section 53-A of the 1882 Act to protect its possession over the stated property. If it is not a registered document, the only consequence provided in this provision is to declare that such document shall have no effect for the purposes of the said Section 53-A of the 1882 Act. The issue, in our opinion, is no more res integra. In S. Kaladevi v. V.R. Somasundaram [S. Kaladevi v. V.R. Somasundaram, (2010) 5 SCC 401 : (2010) 2 SCC (Civ) 424] this Court has restated the legal position that when an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received as evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the 1908 Act.”

Thus, the said Take Over Agreement made crystal clear that the intent of the transaction was to transfer the assets and liabilities of said proprietorship firm of Application including the aforementioned property to the Corporate Debtor and consequently such transaction took place vide that Take Over Agreement. In light to the above, it would be improper to draw an analogy contrary to the intent of the said Take Over Agreement. The Applicant cannot take advantage of Section 54 of the Transfer of Property Act, 1882 which mandates the registration for Sale Deed.

12. In light of the above facts and circumstances, we do not find any merit in the prayers made by the Applicants seeking possession of the aforesaid property do not warrant any further directions to the Respondent Resolution Professional. Consequently, the relief sought by the Applicants lacks merit and is therefore dismissed. Accordingly, **IA No. 3085 of 2022 in CP(IB) No. 2083/ND/2019** is hereby **dismissed** and **disposed of**.

Let a copy of this order be served to parties.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)