

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**IA (I.B.C)/796(KB)2024
In
C.P. (IB)/482(KB)2019**

*An application under Section 60 (5) of the Insolvency and Bankruptcy
Code, 2016 read with Rule 11 of the National Company Law Tribunal
Rules, 2016*

In the matter of:

Stressed Assets Stabilization Fund, carrying on its business, inter alia, from 3rd Floor, D-Wing, IDBI Tower, WTC Complex, Cuffe Parade, Mumbai- 400005;

... .. Financial Creditor

Versus

ER Textiles Limited, a company within the meaning of the Companies Act, 2013 and having its registered office at 1/433, Gariahat Road, Block-4A (4th Floor), Jodhpur Park, Kolkata- 700068;

... .. Corporate Debtor

And

In the matter of:

Vajram Estates Private Limited, having its registered office at 3/28/54/1, Brindavan Gardens, Guntur- 522006;

... .. Applicant

Versus

1. Annapoorani Textiles Pvt. Ltd., a company within the meaning of the Companies Act, 2013 and having its registered office at 21A, Nethaji Nagar, Sukkiramaniya Valasu, Manickampalayam Road, Erode- 638004;

2. Anup Kumar Singh, Chairman of the Monitoring Committee of ER Textiles Limited, having his office at Suite 1B, 1st Floor, 22/28A, Manoharpukur Road, Deshpriya Park, Kolkata- 700029;

... .. Respondents.

Date of pronouncement:16th July, 2024

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)

Appearance (via video conferencing/physically)

Mr. Shaunak Mitra, Adv.] For the Liquidator

Ms. Debaleena Ganguly, Adv.]

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Mr. Ratnanko Banerji, Sr. Adv.]	For the Applicant of Vajram
Mr. D. Roy, Adv.]	Estates Private Limited
Mr. A. Agarwal, Adv.]	
Ms. M. Barman, Adv.]	
Mr. Joy Saha, Sr. Adv.]	For the Resolution Professional
Mr. R. Sarkar, Adv.]	
Mr. A. Das, Adv.]	
Mr. T.V.Suresh Kumar Adv		For Annapoorani
		Textiles Private Ltd
Mr. Gokula Krishnan Adv		

O R D E R

Per: D. Arvind, Member (Technical)

1. The Court convened in a hybrid mode.
2. Heard the learned Counsel for the parties.
3. This application has been preferred by Vajram Estates Private Limited (Applicant/Successful Resolution Applicant, SRA) against Annapoorani Textiles Pvt. Ltd. (Respondent No.1) and Anup Kumar Singh, Chairman of the Monitoring Committee of ER Textiles Limited (Corporate Debtor/Respondent No.2) seeking following reliefs:

(a) *An order directing the Respondent No.1 to quit and vacate the said premises being plant and machinery along with constructed area with 180 looms, warping, sizing and other machinery located at 2/1, Nariganapuram Village, Berigai Post, Hosur- 635105, Tamil Nadu and excluding vacant site and handover khas, vacant and peaceful possession of the same to the Applicant;*

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- (b)** *Alternatively, an order directing the Respondent No.1 to quit and vacate the said premises being plant and machinery along with constructed area with 180 looms, warping, sizing and other machinery located at 2/1, Nariganapuram Village, Berigai Post, Hosur- 635105, Tamil Nadu and excluding vacant site and handover khas, vacant and peaceful possession of the same to the Respondent No.2;*
- (c)** *An order directing the Respondent No.1 to pay damages on account of wrongful occupation of the said premises from 20th February, 2023 till the date of handing over of possession to the Applicant at such rate as may be determined by this Hon'ble Tribunal after conducting necessary enquiry thereof;*
- (d)** *An order directing the Superintendent of Police, Krishnagiri District, Tamil Nadu and the Jurisdictional Revenue Authorities to render necessary assistance immediately in order to ensure effective handover of vacant and peaceful possession of the said premises to the Applicant herein;*
- (e)** *A Special Officer be appointed to take over possession of the said premises and to ensure effective handover of vacant and peaceful possession of the said premises to the Applicant herein;*
- (f)** *Ad interim prayers in terms of prayers above;*

4. Factual matrix:

- 4.1.** The Applicant herein is a Successful Resolution Applicant in respect of the Corporate Debtor, ER Textiles Limited whose Resolution Plan was approved by this Adjudicating Authority vide order dated 20th December, 2023.

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4.2. Respondent No.1, Annapoorani Textiles Pvt. Ltd. is in possession of the premises / Assets of the Corporate Debtor being plant and machinery along with constructed area with 180 looms, warping, sizing and other machinery located in the premises based on a Memorandum of Understanding (MoU) made between the Corporate Debtor and Respondent No.1 dated 19th February, 2018.

4.3. As per the MoU the lease period is for six years from the date of taking possession/MoU and consequently the lease period expired on 18th February, 2024. In spite of expiry of the lease period the Respondent No.1 continued to occupy the premises which has been sold to the Applicant/Successful Resolution Applicant. Hence, this application seeking reliefs as mentioned above, in para 3 of this order.

5. Learned Counsel for the Applicant:

5.1. Learned Counsel for the Applicant submits that in paragraph 32 of the order dated 20th December, 2023 passed by this Tribunal in IA (I.B.C)/1539(KB)2022 it was held that the Resolution Applicant shall have access to all the records/premises/factories/documents through the Resolution Professional to finalize the further line of action required for starting of the operation. This order has not been appealed by the Respondent No.1 herein and consequently Respondent 1 is required to hand-over the premises without demur to the Applicant.

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- 5.2.** Learned Counsel further submits that this Tribunal vide order No. IA (I.B.C)/300(KB)2023 pronounced on 31st January, 2024 directed the Applicant to take possession of the premises after the expiry of the lease period in accordance with law.
- 5.3.** In this order the above direction was given on the basis of keenly contested MoU executed between the Corporate Debtor and the Respondent No.1 dated 19th February, 2018. Even this order has not been appealed by the Respondent No.1 and, therefore, at this in point in time if Respondent 1 fails to hand-over the possession of the factory premises he will be in violation of two orders of this Tribunal, which should not be permitted. Even if the Respondent No. 1 had filed an appeal, , no stay of the orders passed by this Adjudicating Authority has been passed or placed till date, before this Tribunal.
- 5.4.** In response to the claim of the Learned counsel for the Respondent 1 that he is continuing to stay and occupy the premises based on lease deed dated 12th June 2019, executed between corporate debtor and Respondent 1, Learned Senior Counsel for the Applicant relies on the case law rendered in ***Lata Construction and others versus Dr. Rameshchandra Ramniklal Shah and another in (2000) 1 SCC 586*** where it has been held that –

“62. parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

10. Essential requirement of novation as contemplated by Section 62 of the Indian Contract Act is that there

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should be complete substitution of a new contract in place of old contract. The substituted contract should rescind or alter or extinguish the previous contract. But if the terms of the contract are inconsistent and they cannot stand together, subsequent contract cannot be said to be in substitution of the earlier contract.

In this context, learned Counsel for the Applicant also refers to judgment passed in ***Super Auto Forge Pvt. Ltd. vs. Protyush Chatterjee*** which confirms the law laid down by the Hon'ble Supreme Court of India in the case law cited (supra).

- 5.5.** He submits that in the case in hand, the purported lease deed dated 12th June, 2019 based on which the Applicant is contesting this application and refusing to vacate, contains no reference to the MoU dated 19th February, 2018 executed between the parties and terms of this lease agreement is substantially different and inconsistent with the terms agreed in the MoU dated 19th Feb 2018 and therefore, subsequent contract cannot be said to be substitution of earlier contract He vehemently submits that in any event, both MoU dated 19th February, 2018 and purported lease deed dated 12th June, 2019 are unstamped/under stamped and not registered and therefore, cannot be relied upon as evidence for enforcing any right by the Respondent No.1.
- 5.6.** Placing the relevant provisions of ***Section 107 of Transfer of Property Act*** “A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument

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5.7. He also relied on the relevant provisions of Stamp Act and the Registration Act to contend that unstamped and unregistered documents, particularly with reference to Immovable properties cannot valid documents for enforcing any right.

5.8. Therefore, learned Counsel for the Applicant submits that it is a fit case where the reliefs that have been sought for be granted.

6. Learned Counsel for the Respondent:

6.1. Learned Counsel for the Respondent submits that though the lease period covered in the MoU dated 19th February, 2018 expired on 19th February, 2024, the leasehold right has been vested on the Respondent No.1 based on the lease agreement dated 12th June, 2019.

6.2. He submits that in fact the validity of MoU expired after 30 days from the date of execution on 19th Feb 2018 as contained in MOU, whereas the Lease Deed provides the lease for a period of 7 years from 12th June, 2019 and, therefore, lease expires only on 11th July, 2026.

6.3. .he Respondent No.1 claims that he has been paying lease rent as per the invoices raised by the Corporate Debtor from time to time and placed reliance on such invoices which are in pages 28 to 58 of his reply to the application.

6.4. He submits further, that a civil suit has been filed before the Principal District Munsif Court seeking injunction against the Corporate Debtor and the Successful Resolution Applicant, not to vacate the leased premises without following due process of law and the same is pending for adjudication before the said Court.

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Under the above said circumstances , he should not be made to vacate before the expiry of lease period mentioned in the lease deed executed on 12th June 2019

7. In Counter, the learned Counsel for the Applicant:

- 7.1.** Learned Counsel for the Applicant submits that there is absolutely no reference to the MoU dated 19th December, 2018 in the lease deed dated 12th June, 2019 and, therefore, novation as contemplated by Section 62 of the Indian Contract Act is not applicable in the case in hand. The substituted contract should rescind or alter or extinguish the previous contract. But if the terms of the contracts are inconsistent, they cannot stand together.
- 7.2.** Though MoU dated 19th February, 2018 is valid only for 30 days, the purported lease agreement was made only on 12th June, 2019, whereby allowing the Respondent to occupy the premises without any agreement, leave alone any valid agreement. In the process, he strongly contested the validity of both MoU dated 19th Feb 2018 and purported lease deed 12th June 2019 under the stamp Act, Registration Act and Transfer of Property Act.
- 7.3.** Learned Sr Counsel for the Applicant further submits that as per the MoU , rent payable was Rs.30 lakhs per month from Feb 2018 for six years , whereas as per the lease deed executed after 15 months , rent payable is only Rs.10 lakhs for the first 36 months.
- 7.4.** Learned Sr Counsel for the Applicant further submits that this Tribunal vide order dated 31st January, 2024 considered the only MoU dated 19th February, 2018 and, accordingly, directed the Respondent No.1 to hand-over the possession to the Applicant

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immediately after the expiry of the MoU which was on 18th February, 2024. The purported lease deed was never considered and was never presented by the learned Advocate representing Respondent that time and therefore, the unstamped and unregistered lease deed claimed to have been executed on 12th June 2019 should not be taken cognizance off and the Respondent No.1 must be directed to hand-over the premises immediately without any further delay, particularly, when there is no stay of both the orders of this Adjudicating Authority by the Higher Forum as on date in which order dated 31st Jan 2024 specifically directed the respondent 1 to hand over the possession of the disputed premises.

8. Analysis and findings:

- 8.1.** We find that the Respondent No.1 is occupying the premises of the Corporate Debtor bought by the Successful Resolution Applicant, the Applicant herein.
- 8.2.** Initially, the Respondent No.1 was occupying on the basis of the MoU made between the Corporate Debtor and the Respondent No.1 on 19th February, 2018. The MoU provided a rent of Rs.30 lakhs per month and it was specifically mentioned that it is valid for only 30 days, post which lease deed would be executed to **deduce** the terms agreed in the MoU.
- 8.3.** However, the purported lease deed was ultimately executed on 12th June, 2019. It is interesting to note that the Financial Creditor filed petition under Section 7 of IBC against the Corporate Debtor, ER Textiles Limited on 8th April, 2019. The matter was under consideration by this Tribunal. Meanwhile,

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within two months from the date of filing Section 7 of IBC Petition, the purported lease deed has been executed on 12th June 2019.

- 8.4.** Though the Memorandum of Understanding was valid only for 30 days and expired on 19th March, 2018, the parties slept over it for nearly 15 Months and Corporate Debtor allowed the Respondent 1 to occupy and run the factory without any agreement/document. The purported lease deed was ultimately executed after 15 months from the expiry of the Memorandum of Understanding that too within 2 months from the filing of Section 7 of IBC petition by the Financial Creditor against the Corporate Debtor. The Rent per month was drastically reduced from Rs. 30 Lac per month in the MoU to Rs. 10 Lac per month in the said lease deed. This is a questionable action, and the validity of the deed can be questioned on this ground alone.
- 8.5.** In the order dated 31st January, 2024 passed by this Tribunal, extensive arguments were made by the Applicant herein questioning the validity of the MoU and was recorded by us. Even default in payment of rent by the Respondent No.1 herein was recorded.
- 8.6.** However, since the Memorandum of Understanding was anyway expiring on 18th February, 2024, which was just 18 days from the date of the pronouncement of the order, in order to put a quietus to the dispute, without recording our decision on the validity of the MoU, we directed the Applicant to take possession of the property in question soon after the expiry of the lease period in accordance with law. When this order was passed only MoU dated 19th February, 2024 was considered and consequently, the

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Respondent should have handed over the possession of the property in question on or by 19th February 2024.

8.7. However, we find that now the Respondent is contesting based on the lease deed executed right after the initiation of pre-CIRP proceedings (the Financial Creditor has filed petition under Section 7 and when the matter was pending for disposal). When that being the case, we are of the considered view that the validity of the lease deed purportedly executed on 12th June, 2019 needs to be examined and a decision be given.

8.8. We find that the lease deed has not been registered and has been unstamped / under-stamped.

8.9. The Statutory Provisions –

a. Section 49 of the Registration Act prescribes as under:

“Effect of non-registration of documents required to be registered as no document required by Section 17 to be registered shall be received as evidence.”

b. Section 33 of the Indian Stamp Act provides that:

“Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impounded the same.”

c. Section 17(1)(b) of the Registration Act, 1908:

“other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in

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present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property.”

d. Section 35 thereof prescribes as under:

“No instruments chargeable with duty shall be admitted in evidence”.

e. Section 107 of Transfer of Property Act envisages as follows:

“A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.”

f. Section 18 (1) (f) of IBC, 2016 prescribes as under:

“Take control and custody of any assets over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including - (i) Assets over which the corporate debtor has ownership rights which may be located in a foreign country;

8.10. We rely on the judgment rendered in the case of **Paul Rubber Industries Private Limited v. Amit Chand Mitra**, reported in **2023 SCC OnLine SC 1216** wherein the Apex Court held that:

“12. The same view was broadly reflected in the cases of Shri Janki Devi Bhagat Trust, Agra v. Ram Swarup Jain (Dead) by Lrs. [(1995) 5 SCC 314] and Satish Chand Makhan v. Govardhan Das Byas [(1984) 1 SCC 369]. Section 107 of the 1882 Act which we have quoted above stipulates that

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a lease of immovable property from year to year or for any term exceeding one year can be made only by a registered instrument.”

(Emphasis Added)

8.11. Further, we would rely upon the judgement rendered by the Hon’ble Apex Court in **Vijay v. Union of India**, reported in **2023 SCC OnLine SC 1585**, wherein it has been held that:

“38. In relation to secondary evidence of unstamped/insufficiently stamped documents, the position has been succinctly explained by this Court in Jupudi Kesava Rao (supra) wherein it dealt with an issue, i.e., whether reception of secondary evidence of a written agreement to grant a lease is barred by the provisions of Sections 35 and 36 of the Stamp Act and answered it in affirmative. It observed:

“12. The Indian Evidence Act, however, does not purport to deal with the admissibility of documents in evidence which require to be stamped under the provisions of the Indian Stamp Act.

.....

13. The first limb of Section 35 clearly shuts out from evidence any instrument chargeable with duty unless it is duly stamped. The second limb of it which relates to acting upon the instrument will obviously shut out any secondary evidence of such instrument, for allowing such evidence to be let in when the original admittedly chargeable with duty was not stamped or insufficiently stamped, would be tantamount to the document being acted upon by the person having by law or authority to receive evidence. Proviso (a) is only applicable when the original instrument is actually before the Court of law and the deficiency in stamp with penalty is paid by the party seeking to rely upon the document. Clearly secondary evidence either by way of oral evidence of the contents of the unstamped document or the copy of it covered by Section 63 of the Indian Evidence Act would not fulfil the requirements of

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the proviso which enjoins upon the authority to receive nothing in evidence except the instrument itself. Section 25 is not concerned with any copy of an instrument and a party can only be allowed to rely on a document which is an instrument for the purpose of Section 35. "Instrument is defined in Section 2(14) as including every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded. There is no scope for the inclusion of a copy of a document as an instrument for the purpose of the Stamp Act.

If Section 35 only deals with original instruments and not copies, Section 36 cannot be so interpreted as to allow secondary evidence of an instrument to have its benefit."

(Emphasis supplied)

39. This Court, in *Hariom Agrawal v. Prakash Chand Malviya*²⁵, reiterated the principle laid down in *Judupi Kesava Rao* (supra) and observed that:

"10. It is clear from the decisions of this Court and a plain reading of Sections 33, 35 and 2(14) of the Act that an instrument which is not duly stamped can be impounded and when the required fee and penalty has been paid for such instrument it can be taken in evidence under Section 35 of the Stamp Act. Sections 33 or 35 are not concerned with any copy of the instrument and party can only be allowed to rely on the document which is an instrument within the meaning of Section 2(14). There is no scope for the inclusion of the copy of the document for the purposes of the Stamp Act. Law is now no doubt well settled that copy of the instrument cannot be validated by impounding and this cannot be admitted as secondary evidence under the Stamp Act, 1899."

40. Thus, if a document that is required to be stamped is not sufficiently stamped, then the position of law is well settled that a copy of such document as secondary evidence cannot be adduced.

(Emphasis Added)

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8.12. Further, in **Saminathan vs. Sukumar** reported in **MANU/TN/7244/2021**, the Hon'ble Madras High Court has observed that

“24. This has been the flow of law with respect to unstamped, unregistered partition deeds produced as documents and sought to be marked as evidence. They are not admissible. They have to be impounded and duty and penalty must be collected. They are still not admissible to prove the factum of partition. They are not admissible to, prove division of properties and allotment of shares. They are not admissible to prove possession.”

(Emphasis Added)

Thus, from the enumerations supra, we are of the view that a lease of immovable property, from year to year, or for any term exceeding one year, can be executed only by a registered instrument. An unregistered, unstamped or not sufficiently stamped lease agreement catering to a leasehold right for more than a year, cannot be admissible as evidence to substantiate the leasehold rights over the property in question.

8.13. In view of the above, we are of the view that the purported lease deed executed on 12th June 2019 is not valid and cannot be used as evidence by Respondent 1 to negate the claim of the Applicant.

8.14. Therefore, we have no hesitation in directing the Respondent to hand-over the possession of the premises along with plant and machinery as sought for by the Applicant within two weeks from the date of pronouncement of this order failing which the Superintendent of Police, Krishnagiri District, Tamil Nadu and the Jurisdictional Revenue Authorities to render necessary assistance

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immediately in order to ensure effective handover of vacant and peaceful possession of the said premises to the Applicant herein

- 9.** Accordingly, the application is **allowed and disposed of**.
- 10.** Certified copy of this order, if applied for with the Registry be supplied to the parties in compliance with all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order signed on this, the 16th day of July, 2024.

Sayon (Steno)/ Bose, R. K. [LRA]