

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

COMPANY APPEAL (AT)(Ins) No.1590/2024

(Arising out of judgement and order dated 24th July, 2024 passed by National Company Law Tribunal, Bench V, New Delhi in IA No.3085/2022 in CP No.(IB)2083/ND/2019)

In the matter of:

Mr Gaurav Mahendru
S/o Mr RC Mahendru
73/40-52, Barina Downs Rd.,
Baulkham Hills 2153, NSW, Australia

Appellant

Vs

Mr. Sunil Kumar Aggarwal
RP
KPG International Pvt Ltd,
E-29, South Extension, Part II
New Delhi-110049.

Respondent

For Appellant: Mr. Abhinav Vasisht, Sr. Advocate, Mr. Kanwal Chaudhary, Advocate.

For Respondent: Mr. Sunil Fernandes, Sr Advocate, Mr Manoj Kumar Garg, Mr Kundan, Ms Diksha Dadu, Advocates.
Mr. Sunil Kumar Agarwal, Respondent in person.

JUDGEMENT

JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)

This appeal is filed against an impugned order dated 23rd July, 2024 passed by the National Company Law Tribunal, Bench V, New Delhi dismissing appellant's IA 3085/2022 in Company Petition bearing No.(IB)2083/ND/2019. It is argued the Learned Adjudicating Authority without appreciating the mandate of *Explanation* to Section 18 of the Code, and also its previous order dated 27.09.2021, which came to be affirmed by

this Appellate Tribunal *vide* order dated 02.12.2021, had wrongly passed the impugned order.

2. The brief facts of the case as submitted by the appellant are as under:-

a) On 07.08.2015 the appellant had acquired ownership rights of an immovable property bearing No.354, Block B, Mangolpuri Industrial Area Phase I, New Delhi by way of a Regd. Sale Deed;

b) on 16.12.2016 by way of a Take Over Agreement, Appellant's business in the name of proprietorship concern, namely *KPG Industries was taken over by Corporate debtor*. In Clause 3, it was mentioned the *said property shall devolve upon Corporate Debtor and Appellant shall offer to pledge/ mortgage the said property, for and on behalf of Corporate Debtor*;

c) however, on 17.04.2017 the appellant being a sole owner had mortgaged the property to Oriental Bank of Commerce (now taken over by PNB) so as to secure credit facilities for Corporate Debtor;

d) on 27.01.2020 an application under Section 7 of the IB Code was admitted against the Corporate Debtor and CIRP commenced;

e) on 26.08.2020 the appellant was in Australia, on account of Covid 19 restrictions. RP preferred an application under Section 19 of the Code being IA No.2715/2020 and the Ld. Counsel for the appellant on instructions, informed the Ld. Adjudicating Authority that a person shall be deputed at the said property, so that IRP may be able to enter inside the premises for the purposes of making inventory of movable assets of Corporate Debtor and/or take in control of the tangible assets, including plant and machinery. However, the RP included the

appellant's property in the Information Memo and published Form G and even valuations of said property were obtained without ascertaining if Corporate Debtor had any title thereto;

f) on 3.12.2020 Resolution Applicant submitted Resolution Plan and it would appear the Resolution Applicant considered the representation made by Ld. RP that said property, though in the name of Appellant, however, shall be registered in favour of Corporate Debtor, on payment of stamp duty,

3. It is argued by the learned counsel for the appellant at no time the subject property was ever transferred to Corporate Debtor by way of any registered sale deed. Admittedly an application was filed by the RP before the Ld. NCLT in the present case for getting it registered but following order was passed on 27.09.2021 by the Ld. NCLT:

IA-565/2021:-

A bare perusal of the provisions shows that a contract for sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not of itself create any interest in or charge on such property and this has also been decided by the Hon'ble Supreme Court in (2010) 8 SCC 383 that an agreement does not create any right or title in favor of intending buyer, therefore, in view of the aforesaid decisions and provision of law, we are of the considered view that merely there was an agreement to transfer the property, it does not create any right or any interest in favor of the Corporate Debtors. Therefore, merely this property is shown as an asset of the Corporate Debtor and it is included under the Resolution Plan submitted by the Resolution Applicant, in our considered view, on this ground alone, we cannot direct the District sub-Registrar, Respondent no. 1 to execute and register a sale deed in favor of the Corporate Debtor. The remedy available to the Resolution Professional is to file an application before Competent Court for the specific performance of contract. For the reasons discussed above, we are not inclined to

allow the prayer of the applicant. Accordingly, the prayer of the applicant is hereby rejected. However, it is made clear that by passing this order, we have not decide the merit of agreement arrived in between the parties. The Resolution Professional is at liberty to file an appropriate case before the Competent Court under the relevant provision of law. Accordingly, the present application is dismissed.

4. This order dated 27.09.2024 was appealed against in Company Appeal (AT)(Ins) No.978 of 2021 before this Tribunal and on 02.12.2021 the following order was passed:-

We have heard learned Counsel for the Appellant and perused the record. It is not denied that property was in the name of proprietorship firm and could not be transferred in favour of the Corporate Debtor to be the reason which has been given by the Adjudicating Authority. Learned Counsel for the Appellant has submitted that even if the Adjudicating Authority was of the view that direction could not have been issued to the Sub-Registrar, they should have left it open to the Applicant to take such recourse in law as permissible. The view taken by the NCLT with regard to the Application cannot be faulted with. We, however, observe that it is always open to a party to seek recourse of law as permissible with regard to protecting its right as per the provisions of law. The NCLT while rejecting the Application, has made the following observation:-

"the remedy available to the Resolution Professional is to file an application before the Competent Court for the specific performance of contract"

Having gone through the observation made by the NCLT, we see no reason to entertain the Appeal. The Appellant may take recourse to the law as observed by the NCLT or take any other remedy permissible in law. We find no merits in the Appeal. The Appeal is dismissed.

5. The Resolution Professional then filed yet another IA No.912/2022 with identical prayers as was made in earlier application i.e. IA No.565/2021; but it was withdrawn.
6. Thereafter, IA No.3085/2022 was filed by the appellant to seek physical possession of the subject property.

7. Reply to such application was filed by RP. It is argued the discussions *qua* the title of the subject property were made by the financial creditors in the 4th and 5th Meeting of the CoC held on 8.12.2020 and on 30.12.2020. Though there were divergent opinions as to who shall be the title holder and who shall pay stamp duty in case the property was to be transferred in the name of Corporate Debtor by the RP, yet the Ld. NCLT in its impugned order held as under:-

11. xxxxxx 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.

8. It is argued by the Ld. Senior counsel for appellant once an earlier order dated 27.09.2024 was passed by the Ld. NCLT holding the title cannot pass upon Corporate Debtor without a registered sale deed, the Ld. NCLT could not have given this contrary observation in its impugned order. The learned counsel for the appellant relied upon Indian Overseas Bank Vs MAS Subramanian & Ors; *Civil Appeal No.-of 2025*, diary No.38616 of 2018 decided on 07.01.2025 wherein Hon'ble Supreme Court held as under:-

6. It is well settled that an agreement for sale in respect of an immovable property does not transfer title in favour of the purchaser under the agreement. In view of Section 54 of the Transfer of Property Act, 1882, an agreement for sale does not create any interest in the property. The only mode by which an immovable property worth more than Rs.100/- (Rupees one hundred) can be sold is by a sale deed duly registered in accordance with the Indian Registration Act, 1908.

7. In this case, the NCLAT has recorded a finding that late Shri M.A.Shanmugam who was the owner of the property subject matter of these appeals had agreed to sell the property to the company against the transfer of shares of the company in his favour. The NCLAT has recorded a finding that the company was in possession by way of part performance of the contract. Based on the said finding, the sale deed dated 31st October, 2011 purportedly executed by the legal representatives of late Shri M.A.Shanmugam has been held as not binding on the company. So long as the original owner had not sold the property by execution of a registered sale deed, he continued to be the legal owner of the property. Admittedly, he had not executed a sale deed in favour of the company. Therefore, the NCLAT in its limited jurisdiction could not have held that the sale deed dated 31st October, 2011 was not binding on the company as the company was in possession by way of part performance of the contract.

8. There is nothing placed on record to show that the company filed a suit for specific performance for enforcing the agreement made by late Shri M.A.Shanmugam. In the circumstances, we set aside the declaration granted by the NCLAT under the impugned judgment in the following terms:

"We declare that the sale deed dated 31.10.2011 executed by original Respondents 2 to 6 in favour of original Respondent No.7 as not binding on the Respondent No.1 Company."

9. While doing so, we make it clear that we have made no adjudication on the ownership rights claimed by the different parties pursuant to the sale deed dated 31st October, 2011 and the rights claimed by respondent No.10- company as well as by the appellant. Their remedies to seek declaration and/or to enforce their rights are kept open.

9. The Ld. Senior counsel for appellant also relied upon State Bank of India Vs Arvind Kumar (Liquidator) and Anr (2024) ibclaw.in 723 NCLAT wherein this Tribunal held as under:-

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.

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."

10. And reliance was also placed on Mrs Durdana Abid All and ors Vs Vijay

Kumar V Iyer (RP) (2024) ibclaw.in 265 NCLAT wherein this Tribunal held

30. It will not be off the mark to state that the RP had hastily served the notice on the Appellant for inspection of the subject property without doing requisite ground work on the Deed of Lease Assignment and without finding out who was in actual occupation of the subject property.

Assets owned by a third party in possession of the Corporate Debtor is excluded from the scope of CIRP and moratorium in view of Explanation (a) to [Section 18](#) of the IBC. As the Appellant is a third party and undisputedly the subject property is owned by the Appellant and there is nothing Company Appeal (AT) (Insolvency) No. 27 of 2024 foolproof to show that the Corporate Debtor was in occupation of the same, the subject property clearly fell outside the scope of CIRP and consequently the moratorium. We find that no compelling reasons have been made out before the Adjudicating Authority by the RP to allow access into the subject property and inspection of stock/assets lying therein failing which the CIRP would have been jeopardised.

11. Thus it is the submission of the learned senior counsel for the appellant the finding given by the Ld. NCLT that the Corporate Debtor *had a title to the property* is bad in view of the earlier order dated 27.09.2021 passed by the Ld. NCLT and upheld vide order dated 02.12.2021 by this Tribunal also *per Explanation to Section 18 of the Code.*

12. Explanation to Section 18 of the Code reads

Explanation-For the purpose of this section the term “assets shall not include the following namely-

- (a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment.*
- (b) Assets of any India or foreign subsidiary of the corporate debtor; and*
- (c) Such other assets as may be notified by the Central Government in consultation with any financial sector regulatory.*

13. In view of the above it is submitted the finding *qua* the title may be set aside as the subject property is not owned by the Corporate Debtor and the possession be restored to the appellant as is withheld by the Resolution Professional.

14. The Ld senior counsel for Respondent argued in support of the impugned order.

15. Heard.

16. Admittedly the subject property is the Corporate Office of the Corporate Debtor and is shown as property of CD in its financial statements. In view of this it cannot be said the Resolution Professional had no power to take possession of the subject property.

17. Further, *admittedly* a Take Over Agreement dated 16.12.2016 was executed between KPG International Pvt Ltd, *viz* the Corporate Debtor as well as KPG International, a sole proprietorship firm of the appellant herein. Property bearing No.B354, Block 3 Mangolpuri, Industrial Area, Phase I, New Delhi *admittedly* was in the name of M/s KPG Industries, a sole proprietorship firm, *per* its Sale Deed. However, *admittedly* Take Over Agreement dated 16.12.2016 was executed between the two and a bare perusal of its provisions would reveal the intention of appellant was to pass on the ownership of property unto the Corporate Debtor. The relevant provisions of Take Over Agreement are as under:-

1. That from the date of 16th December 2016 the Parties hereto agree to mutually and constructively adjusted their rights and accounts in the manner that all the Assets and Liabilities of the KPG, as at the closing hours of 15 December 2016, as per the accounts duly signed/endorsed by the Auditors of KPG & by its proprietor namely Mr. Gaurav Mahendru now stand fully & comprehensively taken over by the COMPANY and the Final Accounts of the COMPANY henceforth, shall be drawn up, finalized, consolidated, shown, signed & filed with various authorities in such manner as may be determined by the Board of Directors of COMPANY, In pursuance of the requirements of the Companies Act, 2013

or such other acts/laws/rules/regulations, as may be applicable;

2. That in consideration of the valuation of the assets &/or liabilities of the KPG, being taken over at the book value, the COMPANY has agreed to transfer the net amount shown in the accounts of KPG as the Capital Account of the Proprietor to the credit of Mr. Gaurav Mahendru, which is being settled by the COMPANY vide allotment of Equity Shares in the "COMPANY", or the balance, if any, will remain as unsecured loan in the books of the COMPANY. The proprietor shall be allotted equity shares taking the said amount as the full & final settlement of their dues & all their claims associated with the sale/transfer/taking over the said KPG with the understanding that they shall henceforth loose all his proprietary control/title over the respective KPG, which shall henceforth be run, managed and controlled by the COMPANY, in pursuance of its Memorandum and Articles of Association read with the Companies Act, 2013;

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, Mangel puri Industrial Area, Phase 1, New Delhi in the name of KPG Industries through its proprietor Mr. Gaurav 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.

4. That the business/assets/liabilities of the said firm KPG as on 15-12- 2016 shall vest in the COMPANY on signing of this agreement of takeover, free from all claims except specifically expressed in this agreement. The balance sheet (as per Annexure A) shall form integral part of this agreement.

6. That Mr. Gaurav Mahendru has represented that there is no lien/ mortgage/hypothecation or any other charge over the Assets of the KPG save and except such as has been disclosed in the accounts thereof as at 15th December 2016 duly signed by its auditors;

12. That in consideration to take over the business of the firm - KPG owned by Mr. Gaurav Mahendru, the company agrees to issue and allot 297,400 equity shares of Rs. 10 each at par aggregating to Rs. 29, 74,000.00 against the capital of Mr. Gaurav Mahendru and remaining small

amount, if any standing to the credit of capital account of Mr. Gaurav Mahendru shall remain as unsecured loan.

14. That no other properties/assets of the Proprietor Mr. Gaurav Mahendru or any of his family members, wherever situated shall devolve to the COMPANY.

(Emphasis supplied)

18. The relevant clauses of the Takeover Agreement more specifically . Clause 2 says the Corporate Debtor Company will transfer a net amount to the Appellant herein and in lieu of the same, the Appellant would lose all proprietary control/title over his sole proprietary firm; clause 3 says the business of the Appellant as well as the 'subject Property shall be transferred to the Corporate Debtor Company; Clause 7 says the entire operation of the Appellant's business would *vest* with the Corporate Debtor Company and be carried by the Corporate Debtor Company under its name, ownership, goodwill etc; clause 10 says all immovable and movable properties belonging to the Appellant's firm would *vest* with the Corporate Debtor Company; clause 12 says a consideration in mode of equity shares aggregating to Rs. 29.74 Lakhs is transferred to the appellant against such transfer.

19. The clauses above would reveal it was a clear understanding between the parties that the entire subject property belonging to M/s KPG Industries, a sole proprietorship firm *is transferred* or to be transferred and shall *stood vested* with the Corporate Debtor. (Admittedly order dated 27.09.2021 passed by the Learned NCLT in IA No. 1153/2021 in IB-2083/ND/2010 never held the subject property vests with the sole proprietorship firm. Rather in order dated 27.09.2021, the Resolution Professional was rather directed to seek resort to civil remedy).

20. Admittedly *vide* the Take Over Agreement dated 16.12.2016 the subject Property came into the possession of Corporate Debtor. Now by virtue of the Takeover Agreement, if the corporate veil is pierced, then it can be seen the Appellant's sole proprietorship firm is transferring its sole asset *viz.* the subject Property to the Corporate Debtor Company.

21. Admittedly in lieu of the said agreement, the Appellant herein had received consideration of 297,400 equity shares of Rs.10 each at par aggregating to Rs. 29.74 Lakhs. On receipt of such consideration the subject Property was understood and shown to be a part of the assets of the Corporate Debtor.

22. Admittedly since 2016-till date, the Takeover Agreement *has not been challenged by the Appellant herein at any point in time.*

23. It is to be noted in February 2007, the Oriental Bank of Commerce (now Punjab National Bank) had sanctioned certain facilities in the name of Corporate Debtor. The said Mangolpuri Property was mortgaged by Mr. Gaurav Mahendru/Appellant herein as a Collateral Security, *who was a Director of the Corporate Debtor at that point in time* and an erstwhile Proprietor of M/s. KPG Industries. One of the conditions of the Sanction letter mandated the Appellant herein *will get the title deed of the said Mangolpuri Property executed in the name of Corporate Debtor by 31.03.2018*, though the Appellant herein deliberately failed to get the title deeds of the said Mangolpuri Property executed on the pretext of financial constraints.

24. Now if one peruse an order dated 11.09.2020 passed by the Ld. Adjudicating Authority in the CP (IB) No. 2083/(ND)/2019, it notes of a direction to the appellant not to create any hindrance and to cooperate with

Resolution Professional for entering into the said Mangolpuri Property which allegedly belong to the Corporate Debtor. The relevant portion of the Order dated 11.09.2020 is excerpted hereinbelow:

"The Suspended Board of Director is directed to ensure that IRP on that day is able to enter inside the Corporate Office and no hindrance or obstruction will be created by any person while discharging the duty of IRP".

"The Respondent is also directed to mention the facts regarding the compliance of the order passed by us today especially handing over the factory to the IRP in its reply."

25. Vide a subsequent Order dated 23.09.2020 passed by the Ld. Adjudicating Authority in the CP (IB) No. 2083/(ND)/2019, the Ld. Counsel on behalf of the Appellant herein submitted that the subject Property stood handed over to the Resolution Professional by him. The relevant portion of the said Order is herein below:

"Mr. Kanwal Chaudhary has appeared on behalf of Suspended Board of Directors submitted that he has already 'handed over the possession of the premises to the RP."

26. Further, during the 4th CoC Meeting dated 08.12.2020, the Appellant herein had admitted *due to lack of funds to purchase the stamp duty*, the title deeds for Mangolpuri Property could not be executed in the favor of Corporate Debtor. One of the excuses taken by him in the said CoC Meeting was he will be required to pay the Stamp Duty of more than Rs. 20 Lakhs and hence, the same couldn't be executed.

27. Further during the 6th CoC Meeting dated 13.01.2021, the Resolution Plan submitted by Mr. Rama Gupta was approved by 80.43% voting share and the said Mangolpuri Property was included in the assets of the Corporate

Debtor. The Appellant herein *admittedly* was *present* in the said CoC meeting when the plan was approved by the CoC in its commercial wisdom.

28. Moreso, *admittedly*, the said Property was shown in the Financial Statements of Corporate Debtor for Financial Year 2017-18. These Financial Statements were duly audited by the Statutory Auditor of the Corporate Debtor. The abovementioned fact of the takeover of M/s. KPG Industries by Corporate Debtor was also certified by a Chartered Accountant namely Mr. Varun Goel, Partner of NVA & Co.

29. Now the facts reveal the parties were *ad-idem* from 2016 *qua* the transfer of the subject Property to the Corporate Debtor Company. In fact, the appellant herein was very clear in his stand that the asset stood transferred to the Corporate Debtor Company. The appellant herein had consistently abided by his stand since 2016 till the 6th CoC Meeting. Probably his intentions changed when he got a clue from order dated 27.09.2021 of Ld. NCLT wherein application of Resolution Professional was dismissed.

30. Admittedly the title of the property is still with appellant but in view of facts stated above and the stand of appellant throughout; *the absence of a registered sale deed can be treated as a defect in the title of the property which defect may be perfected by the Resolution Professional/ Corporate Debtor in civil litigation and this imperfect title in peculiar facts of this case would not entitle the appellant the restoration of its possession.*

31. On approval of the Plan the Successful Resolution Applicant would step into the shoes of Resolution Professional and may prosecute the matter for a successful title. We cannot loose sight of the fact a suit for specific performance or mandatory injunction etc., may be filed by the Successful

Resolution Professional as and when the Plan Approval Application is allowed by the Ld. Adjudicating Authority. Thus *at this stage* to revert the possession of subject property to appellant, in our opinion, would be putting premium upon the vice and would certainly amount to an *unjust enrichment*, as the Appellant had already received a consideration of 297,400 equity shares of Rs.10 each at par, aggregating to Rs. 29.74 Lakhs in lieu of the said Takeover Agreement. The Resolution Professional *admittedly* is in possession of the subject property and just because a formal sale deed has not been executed/registered, does not mean the appellant be handed over the possession of such property which he himself willingly had agreed to transfer, upon receipt of consideration, to company owned and managed by him, viz. the Corporate Debtor.

32. Further we note earlier Order dated 02.12.2021 passed by this Tribunal in CA(AT)(INS) 978/2021 does not help the Appellant because then the Resolution Professional had requested for certain directions to the Sub-Registrar *qua* the transfer of title but the learned Tribunal was of the view the remedy can only be granted by invoking an independent civil remedy. The said order cannot be construed in favour of the appellant herein.

33. Moreso, this Tribunal in the earlier appeal did not observe the Corporate Debtor does not have a title over the Said Property or the subject Property should vest back with the Appellant herein but on the contrary, this Tribunal had observed in case of a dispute over the title, civil remedies be invoked to perfect the title and not a remedy be sought under Section 60(5) of the Code.

34 Admittedly as of now an application for plan approval is still pending and in case the plan is approved it shall be the prerogative of the Successful Resolution Applicant to pursue civil remedies to perfect the title of the said Property. The Successful Resolution Applicant admittedly is made aware of the situation of the subject Property before submitting its Resolution~ Plan. Admittedly the Resolution Plan is approved with 80.43% voting share in 6th COC Meeting dated 13.01.2021 *in the presence of the appellant herein and without his objecting to its approval.*

35. Thus *at this stage* we are of the considered view the Resolution Professional cannot be allowed to hand over the possession of subject property to the appellant herein despite the sale deed being in favour of the appellant. The acts and admissions of the appellant, as enumerated above, cannot be ignored. The proceedings before the Ld. NCLT are still pending.

36. Now if we pursue the judgement in Indian Overseas Bank (*Supra*) even there the Hon'ble Supreme Court had *left the adjudication on the ownership rights claimed by different parties open and also their remedies to seek declaration and/or to enforce their rights.* Even such liberty was given in State Bank of India case (*Supra*). Lastly the facts in Mrs Dradana Abid Ali (*Supra*) are different. There the Corporate Debtor was never in possession of the subject property.

37. Thus we find no merit in the appeal and are of the considered view that reversing the possession to the appellant at this stage, would *unjustly enrich* him, especially when he had maintained a contrary stand from 2016 till filing of IA No.3085/2022, probably changing stance after order dated 27.09.2021 of the Ld. NCLT and probably for this motive had shown his helplessness to

transfer it to Corporate Debtor on the pretext of financial difficulty as recorded in the 4th CoC Meeting.

38. The appeal is, thus, dismissed while giving liberty to parties to resort to civil remedies to *perfect* title and/or to seek possession.

39. Pending applications, if any are all closed.

(Justice Yogesh Khanna)
Member (Judicial)

(Mr. Ajai Das Mehrotra)
Member (Technical)

Dated:16-04-2025.

Bm/