

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT)(Insolvency) No. 802 of 2022

[Arising out of the order dated 05.05.2022 passed by the Adjudicating Authority, National Company Law Tribunal, Indore Bench in IA /96(MP) 2021 and IA/04(MP)2022 in TP 127/2019 earlier registered as CP(IB) 34/2019]

IN THE MATTER OF:

**Jagdish Kumar Parulkar,
Liquidator for Kapil Steels Ltd.
B-56, Wallfort City, Bhatagaon,
Ring Road No.-1, Raipur,
Chhattisgarh**

...Appellant

Versus

**M/s Indore Steel & Alloys Private Limited
Through Directors
Mr. Rajpati Ojha
R/o 11, Sheshadri Colony
Indore-452006
Mr. Anand Ojha
R/o 11, Sheshadri Colony,
Indore-452006**

...Respondent No.1

**Subhash Kumar Jaiswal
R/o 13/1, Pardeshi Pura,
Indore, Madhya Pradesh-452002**

...Respondent No.2

**Manish Malviya
R/o 13/1, Pardeshi Pura,
Indore, Madhya Pradesh-452002**

...Respondent No.3

**M/s Rupendra Jaiswal Kumar
200, Sundar Nagar, Near Veena Nagar,
Near Shrihari Public School,
Indore, Madhya Pradesh – 452002**

...Respondent No.4

**Deleted as per NCLAT order
dated 27.07.2022**

...Respondent No.5

**Madhya Pradesh Industrial Development
Corporation Limited
Through Executive Director
Rajendra Singh Bhanwar
Regional Office, 1st Floor,
Atulya IT Park, Near Crystal Park,
Khandwa Road, Indore,
Madhya Pradesh**

...Respondent No.6

Present:

**For Appellant: Mr. Aishvary Vikram, Ms. Mrinali Prasad,
Advocates.**

**For Respondents: Mr. Vijayesh Atre and Ms. Bhakti Vyas, Advocates
for R-1.**

**Mr. Karthik Sundar, Mr. Abhishek Singh, Mr.
Abhishek Chaudhary, Mr. Aalak Kumar,
Advocates.**

J U D G M E N T

[Per: Barun Mitra, Member (Technical)]

The present appeal filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (**IBC** in short) by the Appellant arises out of the order dated 05.05.2022 (hereinafter referred as **Impugned Order**) passed by the Adjudicating Authority (National Company Law Tribunal, Indore Bench), in IA /96(MP) 2021 and IA/04(MP)2022 in TP 127/2019 earlier registered as CP(IB) 34/2019. By the impugned order, the Adjudicating Authority disposed of both

the applications and holding the application filed by the Liquidator of the Corporate Debtor (the present Appellant) as void also directed not to disturb the possession or interfere with the leasehold right of M/s Indore Steel & Alloys Pvt. Ltd. (present Respondent No.1) and Tin shed on the leasehold land. Aggrieved by this impugned order, the present appeal has been preferred by the Appellant.

2. The brief factual matrix of the case which is necessary to be noticed for deciding this appeal are as follows: -

- M/s Patni Carbides Private Limited ("**PCPL**" in short) had acquired certain piece of industrial land admeasuring 10,219 sq. mtrs. at Industrial Plot No.36-C/1, Industrial Area, Sector 3, Pithampur, Dist. Dhar on lease (hereinafter referred to as the "**subject land**") from Madhya Pradesh Industrial Development Corporation Ltd./Respondent No.6 ("**MPIDCL**" in short). The Lease Deed was executed on 07.02.1987 for a period of 99 years.
- For obtaining the subject leasehold land, PCPL had secured a loan from Madhya Pradesh Financial Corporation ("**MPFC**" in short) and as a security mortgaged the subject land. PCPL constructed a Tin shed on the subject land.
- PCPL defaulted in repaying the loan to MPFC. On account of default in loan repayment by PCPL, the subject land was auctioned by MPFC which resulted into sale of the subject land to M/s Kapil Steels Ltd.-

Corporate Debtor by way of a sale deed dated 23.02.2010 for a consideration amount of Rs. 60,01,001/- only.

- The consideration amount was not paid by the Corporate Debtor but paid by a third consenting party, M/s ACME Fero Alloys Pvt. Ltd. The Corporate Debtor admittedly also did not get the lease deed executed in its favour from MPIDCL.
- Certain disputes also arose between Corporate Debtor and MPFC regarding payment of dues to MPIDCL in respect of the subject land which led to filing of a Writ petition in 2012 by Corporate Debtor before the Indore Bench of the Hon'ble High Court of Madhya Pradesh. The Writ petition was subsequently dismissed as withdrawn on 10.08.2020. The Writ petition and withdrawal application were both filed by suspended management of the Corporate Debtor.
- A Section 7 petition under IBC was filed against Corporate Debtor on 10.12.2018. The Corporate Debtor was admitted into Corporate Insolvency Resolution Process (**'CIRP'** in short) on 28.07.2020 and subsequently brought under liquidation on 01.10.2021.
- The Corporate Debtor sold the Tin shed on the subject land on 01.02.2020 to M/s Powerage Towers Limited (**"PTL"** in short) by way of a sale deed for a consideration amount of Rs.7,81,000/.
- Subsequently, a registered sale deed in respect of the Tin shed on the subject land was executed by PTL with Indore Steel & Alloys Private

Limited (“**ISAPL**” in short), present Respondent No.1 on 13.11.2020 on payment of consideration of Rs.11,72,220/-.

- Further the MPIDCL after receiving the transfer charges and other outstanding dues from ISAPL also transferred the leasehold rights in the subject land for the remaining leasehold period to ISAPL/Respondent No.1.
- IA No. 96/2021 was filed by Respondent No.1 against the present Appellant/Liquidator of Corporate Debtor that they may not be disturbed of possession and leasehold rights over the subject land along with the Tin shed. Another application was filed vide IA No.04/2022 by the Appellant before the Adjudicating Authority under Sections 43, 45, 49 and 66 of IBC seeking the reversal of the leasehold rights of the said land along with Tin shed from Respondent No.1 to the Corporate Debtor.
- Having heard both the I.A.s stated above, the Adjudicating Authority in the impugned order dated 05.05.2022 issued directions to the Appellant not to disturb the possession or interfere with the title/lease hold rights of Respondent No.1. Aggrieved with the impugned order, the present appeal has been preferred by the Appellant.

3. Making his submissions, the Learned Counsel for the Appellant stated that PCPL had acquired the subject land on lease from MPIDCL on which it had constructed a Tin shed. Having taken a loan from MPFC and having failed to repay the loan, the subject land had been sold in auction by MPFC to the

Corporate Debtor on payment of consideration amount of Rs.60,01,001/- only and a sale deed was executed to this effect on 23.02.2010. It was claimed that the Corporate Debtor had thus become owner of the subject leasehold land including all structures standing on it. While admitting that the said sale deed provided for registration of the subject land with the competent authority within six months and that the Corporate Debtor had not complied to this requirement, it was however pointed out that subject land continued to remain in possession of the Corporate Debtor until February 2020 when the suspended management of the Corporate Debtor sold the Tin shed to PTL for Rs.7,81,000 only. It was submitted that the land and Tin shed which had been bought by the Corporate Debtor for Rs.60,01,001/- in 2010 was sold to one of its group entity - PTL, for only Rs.7,81,000/- thus being an undervalued transaction.

4. It has been vehemently contended by the Learned Counsel for Appellant that the sale transaction with one of its group entities, PTL, was carried out by the suspended management of the Corporate Debtor with malicious intent of giving preference to its related concern since a Section 7 IBC petition had been filed against the Corporate Debtor on 10.12.2018 which was subsequently admitted by the Adjudicating Authority on 28.07.2020.

5. It is further submitted by Learned Counsel for the Appellant that PTL thereafter entered into a further sale transaction of the Tin shed with the

Respondent No.1 for a consideration amount of Rs.40,00,000/-. It has been contended that the very fact that Respondent No.1 had agreed to buy a dilapidated Tin shed at a value of Rs.40,00,000/- which PTL had purchased from the Corporate Debtor for only Rs.7,81,000/- shows that the Respondent No.1 knew well in advance that the sale of the subject land will follow the sale of Tin shed and that the Adjudicating Authority failed to look into this aspect while passing the Impugned Order. Claiming that this was a pointer to the fact that the suspended management abetted and assisted the illegal transfer of the subject land, it was argued that this transaction attracted Sections 43, 45, 49 and 66 of the IBC.

6. Challenging the impugned order, it has been further submitted that the Adjudicating Authority in the Impugned Order had wrongly placed reliance on Clause 6 of the Sale Deed though MPIDCL had never invoked this clause and had never cancelled the lease deed in respect of the subject land on grounds of non-registration of sale deed within six months. It is also the contention of the Appellant that the Adjudicating Authority had erroneously placed reliance on Rule 19 of Madhya Pradesh State Industrial Land and Building Management Rules, 2019 ("**MP Rules 2019**" in short) since this rule does not envisage automatic cancellation of lease.

7. The Learned Counsel for the Respondent No. 1 refuting the submissions of the Appellant contended that ISAPL had lawfully acquired leasehold rights

over the said land in accordance with the MP Rules, 2019 and that it had paid full consideration amount for the same to MPIDCL besides having separately paid the consideration amount for the Tin shed to PTL. It has also been contended that reference made by the Appellant to a chain of documents is unfounded as the transfer of leasehold rights was done directly between MPIDCL and ISAPL, for which purpose, lease deed with MPIDCL was executed by ISAPL under the provisions of the MP Rules, 2019. It was further added that under Rules 19 (B) and 19 (C) (iii) of MP Rules, 2019 since the Corporate Debtor had not taken any action within the stipulated time period to execute the lease deed for transfer of rights and hence the rights acquired by the Corporate Debtor over the said land had automatically lapsed. Thus, the subject land was in the possession of MPIDCL being the owner of the subject land and hence the subsequent acquiring of leasehold rights by Respondent No. 1 from MPIDCL was a bona fide transaction. Hence the transaction does not fall within the rigours of Sections 43, 45, 49 and 66 of IPC.

8. The Learned Counsel for the Respondent No.6 submitted that consequent upon the default in repayment of loan by PCPL to MPFC in respect of the subject land under mortgage, the MPFC had assigned the lease-hold of the subject land in favour of the Corporate Debtor by a sale deed dated 23.02.2010 for the remaining lease period. However, Clause 6 of the said sale deed made the aforesaid assignment of lease-hold right a conditional one and made it obligatory for the Corporate Debtor to seek approval of MPIDCL within

six months of transfer. This not having been done, the right of the Corporate Debtor over the land stood extinguished.

9. It was further pointed out that the Government of Madhya Pradesh had notified the MP Rules, 2019 which provided under Rule 19(B) that transfer of lease-hold rights would be effective only when MPIDCL executes a lease deed in favour of the new allottee after receiving the entire outstanding dues of the previous allottee. However, as the Corporate Debtor had failed to pay the pending dues, the permission to transfer the subject land automatically lapsed. On the other hand, the Respondent No.1 having executed a separate sale deed with PTL for the Tin shed and having paid the entire demand raised by MPIDCL vide their letter dated 11.11.2020 with respect to leasehold rights of subject land, the MPIDCL had transferred the lease hold rights to the Respondent No.1 for the remaining leasehold period by issuing a modified lease deed in favour of Respondent No.1.

10. We have duly considered the detailed arguments and submissions advanced by the Learned Counsel for the parties and perused the records carefully.

11. The short point for consideration is whether the transfer of subject land by MPIDCL to Respondent No.1 has been executed in accordance with law and, if so, whether there is any merit in the claim of the Appellant that the

transaction was not done in good faith but was a fraudulent and a preferential transaction.

12. We find that the Adjudicating Authority has returned the finding that in terms of the sale deed executed by MPFC in favour of the Corporate Debtor, the latter was required to get the lease executed in its favor within a period of six months from the date of execution of the sale deed failing which MPIDCL would have the right to cancel the lease and allot the subject land to other applicants. Cognizance has also been taken by the Adjudicating Authority of MP Rules, 2019 providing for automatic cancellation of the lease if the purchaser after purchase of the land fails to get the lease executed in its favor. Holding further that the transaction carried out by the Corporate Debtor with MPIDCL having become void on account of non-payment of dues and non-registration of lease deed, it has also been observed that Respondent No. 1/ISAPL secured the leasehold ownership and possession over the subject land directly from MPIDCL having executed a registered sale deed after payment of full consideration and clearing all pending dues through banking channels. The Adjudicating Authority has held that ISAPL has thus legally and validly acquired leasehold ownership rights and possession over the subject land directly from the MPIDCL and not from the corporate debtor. Holding that ISAPL is the perpetual lessee of the subject land, the impugned order also notes that this transaction between ISAPL and MPIDCL does not fall within the purview of Sections 43, 49, and 66 of the IBC.

13. For a holistic appreciation of the matter before us, it may be useful to glance through the relevant provisions of the MP Rules, 2019 and the relevant clauses of the sale deed in respect of the subject land as entered between the MPIDCL, Corporate Debtor and the Consenting Party besides provisions contained in the Registration Act, 1908 and Transfer of Property Act, 1882 which deal with registration of immovable property as reproduced hereunder:

Madhya Pradesh State Industrial Land and Building Management Rules, 2019 (MP Rules, 2019)

“19 C (iii) -The allotting authority will issue a 60 days demand letter for payment of due amounts within 15 days from the receipt of the prescribed complete application form for allotment of land. After depositing the dues, the transferee shall obtain the original lease deed from the transferor and submit the same along with the revised lease deed before the allotting authority for execution. The allotting officer will execute the revised lease deed within 7 days and hand it over to the authorized person of the unit for registration of the lease deed. The unit will be able to keep the original lease deed and original copy of the modified lease deed with itself after registration and will submit the certified copy to the concerned regional office, MPIDC. If the transferee does not take action within the said time period, the transfer permission will be automatically cancelled.”

Clause 6 of Sale deed

“6. The vendee hereby undertakes that he/she/they shall get the lease of the land (leasehold) transferred in his/her/their name with the respective DIC/MPAKVN within six months from the date of Agreement/Execution and registration of the sale deed, failing which the competent authority viz. DIC/AKVN reserves the right to cancel the erstwhile lease and allot the said land to those applicant, who has requirement of the same without any information to the vendee.”

The Registration Act, 1908

“17. Documents of which registration is compulsory—(1) *The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—*

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;”

The Transfer of Property Act, 1882

“107. Leases how made. — *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.*

All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immoveable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:

Provided that the State Government may, from time to time, by notification in the Official Gazette, direct that leases of immoveable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.”

14. It is the case of the Appellant that Rule 19(C)(iii) of MP Rules, 2019 only deals with the automatic cancellation of transfer permission and not the lease deed. It has been argued that if the successful purchaser fails to clear the dues, only the permission to transfer gets automatically cancelled but not the

lease deed. It was also added that there was a separate procedure laid down for cancellation and this had not been followed by MPIDCL at any point of time. We are of the considered view that this submission of the Appellant is misconceived and deserves to be rejected. A plain reading of Clause 6 of the Sale Deed supra clearly reveals that the Corporate Debtor was not only required to have leasehold transferred in their name within the prescribed time-period, but also ensure the registration of the sale deed. We notice from the facts of the present case that the corporate debtor in spite of being aware that it was under obligation to get the lease deed of 23.02.2010 executed in its favour, failing which MPIDCL was free to further allot the subject land, never got the lease deed executed by MPIDCL despite lapse of 10 years. Hence, in terms of para 6 of the sale deed, the leasehold right of the corporate debtor over the subject land had clearly lapsed. We do not find any mala-fide or perversity on the part of Respondent No.6 in their understanding or appreciation of MP Rules and application of Clause 6 of the sale deed executed with the Corporate Debtor. In the given circumstances, MPIDCL being a wholly owned subsidiary of the State Government of Madhya Pradesh and bound by the MP Rules, 2019, there is no error in the findings of the Adjudicating Authority that MPIDCL was fully authorized, being the owner of the subject land, to execute the lease deed in favour of Respondent No.1.

15. Furthermore, a bare reading of the above-cited provisions of the Registration Act, 1908 and the Transfer of Property Act, 1882 shows that any

lease of immoveable property for a period exceeding one year can only be made by way of a registered instrument mandatorily. The requirement of execution of lease is not a procedural but a statutory requirement and undisputedly applicable in the present transaction between MPIDCL and the Corporate Debtor. Non-compliance thereto would render the transaction unenforceable and in the light of the above, we find that the Adjudicating Authority has committed no error in holding the transaction carried out by the Corporate Debtor with MPIDCL with respect to the subject land having become void on grounds of both non-payment of dues and non-registration of lease deed.

16. We also note from Annexure-I placed in reply affidavit of Respondent No.6 that the Corporate Debtor had only deposited transfer charges of Rs.10,59,817/-, while the MPIDCL had given them a demand letter on 15.06.2011 for the balance payment of Rs.20,49,216/- for effecting the transfer of lease hold rights. The Corporate Debtor instead of paying the outstanding consideration amount had chosen to file a writ petition before the Hon'ble High Court of Madhya Pradesh disputing the said amount. The payment of outstanding dues not having been done within the given time, the limited rights of the corporate debtor over the subject land stood extinguished by efflux of time. When the terms of the lease deed were violated by the Corporate Debtor, the MPIDCL had full jurisdiction and authority to consider and accept any proposal of executing a sale deed with another applicant as per MP Rules, 2019. We therefore do not find any infirmity in the decision of

the Adjudicating Authority that the transaction carried out by the Corporate Debtor with MPIDCL with respect to the subject land became void on account of non-payment of dues.

17. It is the case of the Appellant that amendment to lease deed records the chain of documents regarding transfer of rights from PCPL to Corporate Debtor to PTL to ISAPL and hence the transfer of tin shed and subject land should be viewed as a composite transaction. While it cannot be denied that the transaction carried out with the Corporate Debtor does find mention in the chain of documents leading to the execution of amended lease deed, but that does not establish that the Corporate Debtor had acquired lease-hold rights as the chain of transactions had broken since the lease deed was not executed by the Corporate Debtor within the given time-limit. In the absence of a duly executed/registered lease deed, the Corporate Debtor was therefore not entitled to claim any ownership/leasehold right over the subject land. The corporate debtor at best had only acquired ownership rights over the Tin shed only which it sold to PTL on 01.02.2020.

18. We also note the submission made by the Learned Counsel for the Respondent No. 1 that ISAPL had purchased the Tin shed from PTL on 13.11.2020 for which it had separately paid a consideration amount of Rs. 11,72,220/- only and for taking the subject land on lease it had separately paid Rs. 38,09,748/- to MPIDCL. Thus, having paid the consideration amount to MPIDCL directly and further having entered into a lease deed with MPIDCL

on 02.12.2020, Respondent No 1 had legally and validly acquired leasehold ownership rights and possession over the subject land directly from MPIDCL and not from the corporate debtor. We therefore find no reason not to accept the submission of Respondent No.1 on this score.

19. It has also been contended by the Learned Counsel for the Appellant it is not MPIDCL which had cancelled the lease or re-auctioned on its own but it was occasioned by a joint application filed by PTL and ISAPL before MPIDCL. The role of suspended management in aiding, abetting and prompting the transfer of subject land and that PTL was used by them as an illegal conduit to commit fraud on the creditors of the Corporate Debtor has also been raised by the Appellant. This has been vehemently contested by the Learned counsel for the Respondent No. 6 on the grounds that action on the part of MPIDCL being manifestly in consonance with the language of the sale deed, MPIDCL was fully empowered under MP Rules, 2019 to execute the sale deed with the Respondent No. 1 on their own and as such there being no requirement of any such letter from PTL, it was asserted that the contention of the Appellant is misplaced. We are inclined to agree with the contention of the Respondents that the transaction between ISAPL and PTL related to purchase of Tin shed while the transaction between ISAPL and MPIDCL was for lease rights over the subject land and that both transactions were separate and not connected.

20. It has also been contended by the Respondents that the fact that the corporate debtor did not acquire ownership rights over the said land is substantiated by the fact that the lease deed entered into between Respondent No.1/ISAPL and MPIDCL was an amendment of the original lease deed of PCPL dated 07.02.1987 for the remaining lease period. This clearly shows that MPIDCL had never executed any lease deed in favour of the corporate debtor or else it would have had to modify or amend the lease deed signed with them and not with PCPL while transferring the leasehold rights for the remaining period to Respondent No.1. We are thus satisfied with the findings of the Adjudicating Authority that ISAPL had legally and validly acquired leasehold ownership rights and possession over the subject land directly from the MPIDCL and not from the corporate debtor.

21. This is validated by the fact that the Registration and Stamp Department, Government of Madhya Pradesh in their communique, as placed at Annexure A-13 in Appeal Paper Book while amending the lease deed mentions change of name from PCPL to ISAPL and reads as under:

“And whereas the firm M/s Indore Steel & Alloys Pvt. Ltd. has now requested to the lessor to change the Name & Products of the lessee firm from M/s Patni Carbides Pvt. Ltd. to M/s s Indore Steel & Alloys Pvt. Ltd. in its records.”

Now therefore, the said lease deed, registered on 07.02.1987, has to be amended and to be read as follows:

1. The Name of the Lessee shall be read as M/s Indore Steel & Alloys Private Limited (CIN No. U27017MP2020PTC052214) in place of M/s Patni Carbides Pvt. Ltd. in its record.

2. The lease period shall remain unchanged.....”

22. This brings us to the contention of the Appellant that the ex-management by not getting the name changed in the lease deed in favour of the Corporate Debtor in 2010 used this fact as a loophole to transfer the leasehold rights in favour of Respondent No.1 and that this amounts to conducting fraudulent transaction. We are not convinced with this line of argument. Liquidators under the IBC are assigned by the Court and are undisputedly vested with sufficient authority to take into custody or control all assets, property, effects and actionable claims of the Corporate Debtor and also collect outstanding receivables including paying off bills and outstanding debts. This includes the authority to commence investigations into the Corporate Debtor's financial affairs for determination of preferential and undervalued transaction as envisaged under Section 35(1)(l) of IBC. The Liquidator has therefore a fiduciary and legal responsibility to the Corporate Debtor, the creditors and the Court. Be that as it may, the Liquidator being an officer of the Court also has to display high level of professional maturity

and a modicum of balance, fairness and restraint in the conduct of liquidation process and is not expected to show overzealousness or overreach in detecting traces of preferential/fraudulent/undervalued transactions in respect of interest in the property owned by a person who has acquired such interest from a public authority in good faith and for value. Since the Respondent No. 1 had secured the lease of the subject land from MPIDCL directly and in a transparent manner hence it cannot be said to be putting any person in a beneficial position or being prejudicial to the interests of the corporate debtor. The negligence on the part of the Corporate Debtor not to have executed the lease deed cannot be overlooked and cannot be allowed to become a ruse for fraudulent transaction. Mere possibility of a potential collusion without material on record is not sufficient to persuade this Bench to record any finding on preferential or fraudulent transaction. The present transaction between MPIDCL and the ISAPL/Respondent No. 1 not being illegal nor suffering from any procedural or material irregularities, we are satisfied with the findings of the Adjudicating Authority that it is not open to the Appellant to unsettle or derail the transaction by raising the bogey of Section 43, 49 and 66 of IBC or to disturb the possession or interfere with the leasehold right of ISAPL.

23. Considering the overall facts and circumstance of the present case, we do not find any illegality in the impugned order of the Adjudicating Authority which may warrant any interference in the exercise of our appellate

jurisdiction. There is no merit in the appeal. The appeal is dismissed. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi

Date: 21.03.2023

PKM