IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH, COURT NO. II

KOLKATA

I.A. (IB) NO. 203/KB OF 2026

IN

CP (IB) NO. 46/KB OF 2025

An Application under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016, read with Section 20 and 25 of the Insolvency and Bankruptcy Code, 2016.

IN THE MATTER OF:

1. **MR. RAJAN KUMAR,** Flat No. 501, Gardens, Tower – 8, Uniworld City, AA- III, New Town, Kolkata – 700160.
2. **MR. BHIMANI ALIRAZA RAFIKHUSEN,** E 503, Classic Homes, Nr Amber Tower, Sarkhej Road, Ahmedabad – 380055.

… Applicants

VERSUS

1. **MR. SUBODH KUMAR AGGARWAL,** Resolution Professional of BIL Vyapar Limited, 1 Ganesh Chandra Avenue, 3rd Floor, Room No. 301, Kolkata – 700013.

2. **COMMITTEE OF CREDITORS,** represented by Punjab National Bank, having its Corporate Office at No. 4, Sector 10, Dwarka, New Delhi – 110075, Branch Office at Zonal Shastra, Zonal Office at United Towers, 3rd Floor, 11 Hemanta Basu Saranai, Dalhousie, Kolkata – 700001.

…Respondents

Date of Pronouncement:09.07.2026

CORAM: Mr. Labh Singh, Hon'ble Member (Judicial)

Ms. Rekha Kantilal Shah, Hon'ble Member (Technical)

Present:

Mr. Joy Saha, Sr. Adv.	**] For the Applicants**
Mrs. Swapna Choubey, Adv.	**]**
Mr. Udit Agarwal, Adv.	**]**
Ms. Rachna Jhunjhunwala, RP.	**] RP**
Mr. Jayesh Kumar Choradia, Adv.	**] For Respondent No. 2**

ORDER

Labh Singh, Member (Judicial)

1. The present application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (for short 'the Code') seeking directions from this Tribunal for prohibiting the declaration of a particular asset of the Corporate Debtor as a part of the estate for the purposes of the Corporate Insolvency Resolution Process(CIRP), prohibiting any manner of dealings with the property and to direct the Respondent No.1 to take steps to resolve the pending proceedings before the Deputy Collector, Ahmedabad and complete the remaining steps for a successful conveyance of the property.
2. The Applicants, Mr. Rajan Kumar and Mr. Bhimani Aliraza Rafikhusen, were the joint purchasers in an Agreement to Sale, dated 24.05.2025, which was executed between the Applicants and the Corporate Debtor for the sale of the Office No. 705 and 706, situated at Sakar-II, FP No. 522/3, TP Scheme No. 3/5 (Varied), Moje Chhadavad, Taluka City, District Ahmedabad, Sub-District Ahmedabad – 3 (Memnagar) (hereinafter being referred to as the 'scheduled property') for a total consideration of Rs. 63,00,000/-(Rupees Sixty-Three Lakhs only).
3. The Respondent No. 1 is the erstwhile Interim Resolution Professional appointed by this Tribunal vide an order dated

13.11.2025. The Respondent No. 2 is the Committee of Creditors (hereinafter being referred to as the 'COC') constituted in accordance with the provisions of the Code for the CIRP process of the Corporate Debtor, which is being represented by the Punjab National Bank.

4. The Respondent No. 1 was replaced by Mrs. Rachna Jhunjhunwala, Registration No. IBBI/IPA-001/IP-P00389/2017-18/10707, as the Resolution Professional. The issue was resolved by Respondent No.2 and further affirmed by this Tribunal vide an order dated 13.01.2026. It is noted that the order dated 13.01.2026 was uploaded on the official website and communicated to the Applicant on 04.02.2026. Thus, any and all documents and applications filed under Respondent No.1 are being filled by the current Resolution Professional, Mrs. Rachna Jhunjhunwala.
5. The Corporate Debtor, Binani Industries Limited, is currently undergoing the CIRP pursuant to an order dated 13.11.2025 passed by this Tribunal in C.P. (I.B.) No. 238/KB/2023 and accordingly, the moratorium period as per Section 14 of the Code was declared. A copy of the order dated 13.11.2025 is annexed as **Annexure – A.**
6. It is submitted that on 24.05.2025, the Applicants, jointly, entered into an Agreement to Sell of the scheduled property for a total consideration of Rs. 63,00,000/- (Rupees Sixty-Three Lakhs). A copy of the agreement is annexed as **Annexure – B.**

Pursuant to this agreement, the Applicants paid the sum of Rs. 60,00,000/- (Rupees Sixty Lakhs only) on 21.05.2024, prior to the execution of the said agreement. The copies of the bank statement are attached as **Annexure – C**.

7. After the execution of the Agreement and the partial payment, the possession of the scheduled property was handed over to the Applicants on 25.05.2025, which is affirmed by a handover letter dated 24.05.2025. It is submitted that the Applicants have been in peaceful, continuous and lawful possession of the scheduled property since. A copy of the handover letter dated 24.05.2025 is annexed as **Annexure – D**.

8. It is submitted that the scheduled property falls under the jurisdiction of The Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1991. As per Section 5(1) of the Act, no property, falling under this Act’s ambit, shall be transferred without a prior permission from the Collector. Thus, an application for permission to transfer was filed under Section 5(3)(a) on 24.05.2025. It is further submitted that the said application is pending before Learned Deputy Collector, Ahmedabad and hence, execution of the sale deed and registration of the same could not be completed. The copies of the Application under

Section 5(3)(a) dated 24.05.2025 are annexed as **Annexure – E (Colly)**.

9. The Applicants send a representation via email dated 24.12.2025 to the erstwhile Interim Resolution Professional, informing him about the agreement to sell and further developments in that regard. After getting no response, the former sent a notice dated 08.01.2026 which was delivered on 10.01.2026, to which the applicants again received no response. The copy of the email dated 24.12.2025 and the legal notice dated 08.01.2026, along with the postal receipt, is annexed as **Annexure – F (Colly)**.

10. It is submitted that the applicants have lawful possession of the scheduled property and thus, it cannot be considered as a part of the estate of the Corporate Debtor for the purposes of CIRP. It is further submitted that the execution and registration of the sale deed could not be completed due to pendency of the matter before Learned Deputy Collector, Ahmedabad and that the pre-existing contractual obligations cannot be barred due to the moratorium.

11. The respondents appeared in pursuance of notice issued by this Tribunal and filed its reply raising preliminary objection that the present application is not at all maintainable in law and in facts. The present application has been filed in gross abuse of

the process of law and the same is liable to be dismissed in limine.

12. It has further been submitted by respondent no. 1 that subsequent to the filing of the petition, the name of 'Binani Industries Limited' has been formally changed to 'Bil Vyapar Limited' after completion of the necessary procedural formalities before the Registrar of Companies, West Bengal. A fresh incorporation certificate upon change of name has been issued by the authority dated 04.06.2025.

13. It has further been replied that the properties were allegedly sold only a few months prior to the commencement of CIRP in order to evade the property by the Corporate Debtor. It is alleged that the sale deed cannot be executed after the commencement of the CIRP because the moratorium has been declared. Any sale of assets of the Corporate Debtor will be considered a violation of Section 14(1)(b) of the Code.

14. It has further been replied that the alleged sale of the scheduled property has been done less than the book value, as recorded in the balance sheet of the Corporate Debtor. Hence, this sale has been done with mala fide intentions and is an attempt to keep the property in question away from the benefit of the stakeholders. A copy of the balance sheet for the quarter ended June, 2025 is annexed as **Annexure – R/1.**

15. According to Respondent No. 1, an unregistered agreement to sell does not create any right with respect to ownership of the property. Any agreement to sell which is not a registered deed of conveyance does not meet the requirements of Section 54 and 55 of the Transfer of Property Act, 1882 and thus, cannot confer title or transfer any interest. Hence, the only recourse left for the applicants is to file a claim for the money paid for consideration of the agreement.

16. Respondent No. 2 has submitted vide its reply that the agreement to sell does not truthfully describe the entire scheduled property as it does not mention the additional 'eight parking spaces'.

17. It is further replied that at the 4th meeting of the COC held on 13.02.2026, the instant matter was discussed. As replied by respondent No. 1, the RP mentioned that the applicants can claim the amount initially paid in accordance with the agreement to sell.

18. Further, similar arguments and contention regarding vesting of rights of the scheduled property and moratorium were submitted by Respondent No.2. For the sake of brevity, it is not being mentioned in detail.

19. Subsequent to the replies, the applicants filed their rejoinders reiterating their stand taken in the instant application. The

entire facts stated in rejoinder are not reproduced here in entirety for sake of brevity.

20. It is submitted by the applicants that vide a report by the Office of the Ld. City Mamlatdar, Sabarmati and Executive Magistrate Taluka Seva Sadan Beside Vadaj Police Station, Bhimjipura, New Vadaj, Ahmedabad, vide communication dated 30.07.2025 bearing No. City Sabramati/MBG/Disturbed Permission/Vashi-355/2025, addressed the City Deputy Collector (West) stating that the transaction is being carried out without any threat, coercion or undue influence. The value stated is fair and the said transaction will not result in any disturbance or imbalance. Another report submitted by the applicants with the rejoinder is of the Circle Officer, Paldi dated 19.07.2025. The report states that the transaction is 'bona fide, voluntary, supported by adequate consideration and does not give rise to any adverse social or demographic consequences. The copies of the reports dated 30.07.2025 and 19.07.2025 are annexed at Pages 15 and 17 of the Rejoinder to Respondent No. 1, respectively.

21. It is further submitted that that the Corporate Debtor had the responsibility to obtain permission under the Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1991 and that consequently this responsibility now falls on the

Resolution Professional as per Section 25 of the Code. Therefore, a prayer has been made for dismissal of the present application.

22. Heard Learned Counsels appearing on behalf of the Applicants and the Respondents. We have gone through the pleadings of the parties and documents placed on record. We have duly appreciated the law applicable on the facts and circumstances of the present case.

23. The main issue involved in the instant application is whether the applicants are entitled to seek enforcement of an agreement to sell executed prior to CIRP process and can an agreement to sell vest rights of an immovable property in favour of the applicants.

24. An agreement to sell is a contract entered between the seller and buyer with conditions stipulated therein for execution of sale deed in future. The sale has been defined in section 54 of the Transfer of Property Act, 1882 which read as under:

> ***"54. "Sale" defined. –***
>
> *"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*
>
> ***Sale how made.*** *– Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can*

be made only by a registered instrument. In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale. *– A contract for the sale of immoveable 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."*

25. It is clear from the above stated provision of Section 54 that a contract for sale does not create any charge or interest on the property. The sale, in case of immovable property having value Rs. 100 or more, can be completed by execution and registration of sale deed.

26. A similar question came up for consideration before Hon'ble NCLAT in the case of ***M/s Indo World Infrastructure Pvt. Ltd. v. Shri Mukesh Gupta RP of M/s Rohtas Projects Ltd., (2022) ibclaw.in 984 NCLAT***, wherein Hon'ble NCLAT held that:

*"**21.** It is therefore a settled proposition of law that an Agreement to sell does not convey a property from one person to another, either in present or even in future. Agreement to sell is a promise of a future transfer of property ownership which outlines the terms and conditions under which the property will be transferred. An agreement to sell an immovable property is therefore a bilateral contract under which the two parties, i.e. the buyer and the seller, agree to certain terms and conditions, subject to which the property in question would be transferred by the seller to the buyer for a decided sale consideration. It is only after such bilateral obligations are discharged that the execution of the sale deed kicks in and it is this sale deed, which is compulsorily registrable under the Registration Act, 1908, which upon being registered, would transfer the right, title and interest in the property in question on to the purchaser. In the present factual matrix, the agreement to sell was yet to culminate into a registered sale deed and therefore not ripe for*

transfer of the title of property in question from the Corporate Debtor to the Appellant.”

27. Further reliance is also placed on the judgment passed by Hon’ble Supreme Court judgement of ***Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana, (2012) 1 SCC 656***, wherein it was held by Hon’ble Supreme Court that an agreement to sell does not confer any title. The relevant observation of Hon’ble Supreme Court in para no. 19 is as follow:

> *“**19.** Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter.”*

28. Moreover, it settled the proposition of law that a sale deed cannot be executed when a moratorium is imposed. The Code provides that no transfer of any of the Corporate Debtor's assets is allowed during moratorium. In this case, when there is no pre-CIRP transfer of right or ownership of the scheduled property, a sale deed for transfer of property cannot be executed post-CIRP when moratorium is imposed.

29. The Hon'ble NCLAT observed in the case of ***Indian Overseas Bank v. M/S RCM Infrastructure Ltd., (2021) ibclaw.in 163 NCLAT*** that when moratorium has been imposed no rights can be transferred through an auction and no sale balance can be paid. Thus, in brief no action that alienates or transfers a right over the assets of the Corporate Debtor can be undertaken and if done will be considered illegal.

30. Therefore, in view of our aforesaid observation and law applicable thereon, we come to the conclusion that the agreement to sell dated 24.05.2025 does not create or vest ownership right over the scheduled property in favour of the applicants even though the applicants are in present possession of the property in question. The applicants can not force for execution of sale deed consequent upon initiation of CIRP process. If the sale deed is allowed to be executed and registered for the scheduled

property at this stage, it will violate the object and scheme of the Code.

31. The Resolution Professional, in terms of Section 25(2)(a) of the Code, is duty bound to take immediate custody and control of all the assets of the Corporate Debtor, including the business record of the Corporate Debtor. The property in question is an asset of the Corporate Debtor for the purposes of the Insolvency Resolution Process as no sale deed has been executed till date.

32. The applicants have their right to prefer their claim before the Resolution Professional. Upon submission of the claim, Resolution Professional, in terms of provision of Section 18(1)(b), is duty bound to receive and collate all the claims submitted by the creditors to him, pursuant to the public announcement made under sections 13 and 15.

33. The **I.A. (I.B.) No. 203/KB/2026** is hereby **dismissed,** accordingly.

34. Certified copy of the order may be issued, if applied for, upon compliance of all requisite formalities.

Rekha Kantilal Shah	**Labh Singh**
Member(Technical)	**Member(Judicial)**

T.Roy (LRA)