

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

ITEM No.168

IA/96(MP)2021

in

TP 127 of 2019 [CP(IB) 34 of 2019]

Order under Section IA For Directions

IN THE MATTER OF:

Indore Steels & Alloys Pvt Ltd

V/s

Jagdish Kumar Parulkar RP of Kapil Steels Ltd

.....Applicant

.....Respondent

Order delivered on 05/05/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)

Kaushalendra Kumar Singh Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

Braj Mohan / A. Bhadauria

-sd-

MADAN B. GOSAVI
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

ITEM No.169

IA/4(MP)2022 in TP 127 of 2019 [CP(IB) 34 of 2019]

Order under Section 43,45,49 & 66 IBC,2016

IN THE MATTER OF:

Jagdish Kumar Parulkar Liquidator Kapil Steels Ltd
V/s
Subhash Kumar Jaiswal & Ors

.....Applicant

.....Respondent

Order delivered on 05/05/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

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The order is pronounced in open Court vide separate sheet.


KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

Braj Mohan / A. Bhadauria

-sd-
MADAN B. GOSAVI
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH**

IA/96(MP) 2021
IA/04(MP) 2022
IN

TP 127 of 2019 [CP(IB) 34 of 2019]

In the matter of:

IA 96/2021

Indore Steels & Alloys Pvt. Limited
Through Rajpati Ojha, Director
Age: 56 years, Occupation-
Business, Plot No-36-C/1,
industrial Area, Sector 3,
Pithampur, Dist. Dhar (M.P.)
Email: indoresteel21@gmail.com

Applicant

VERSUS

Jagdish Kumar Parulkar
Resolution Professional of
Kapil Steels Limited
8-56, Wallfort City, Bhatagaon,
Ring Road No.1, Raipur-492 001
Email: jkparulkar.ip@gmail.com

Respondent

IA 4/2022

Jagdish Kumar Parulkar Liquidator
Resolution Professional of
Kapil Steels Limited
B-56, Wallfort City,
Raipur, Chhattisgarh
Applicant

VERSUS



Subhash Kumar Jaiswal & Ors
13/1 Pardeshi Pura
Indore, Madhya Pradesh-452002

Respondent

Order Reserved on: 11.03.2022

Order Pronounced on 05.05.2022

CORAM: Hon'ble Mr. Madan B Gosavi, Member
Hon'ble Mr. Kaushalendra Kumar Singh,
Member (Technical)

Appearance:

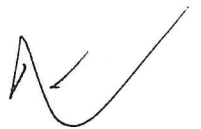
For the Applicant: Learned Advocate Mr. Vijayesh Atre

For the Respondent: Learned Advocate Ms. Mrinali Prasad

ORDER

1. The present IA 96 of 2020 has been filed by M/s Indore Steels Alloys Limited for directing Resolution Professional Jagdish Kumar Parulkar not to disturb the possession or interfere with the title leasehold rights of the applicant company i.e Indore Steels Alloys Limited.
2. Another IA No.4 of 2022 has been filed by the liquidator Jagdish Kumar Parulkar of M/s Kapil Steels Limited under sections 43, 45, and 49 of the Insolvency and Bankruptcy Code, 2016 seeking avoidance of the Industrial land and the Industrial shed so acquired by Indore Steels & Alloys Private Limited and restoring the





leasehold rights of the land in favor of the corporate debtor.

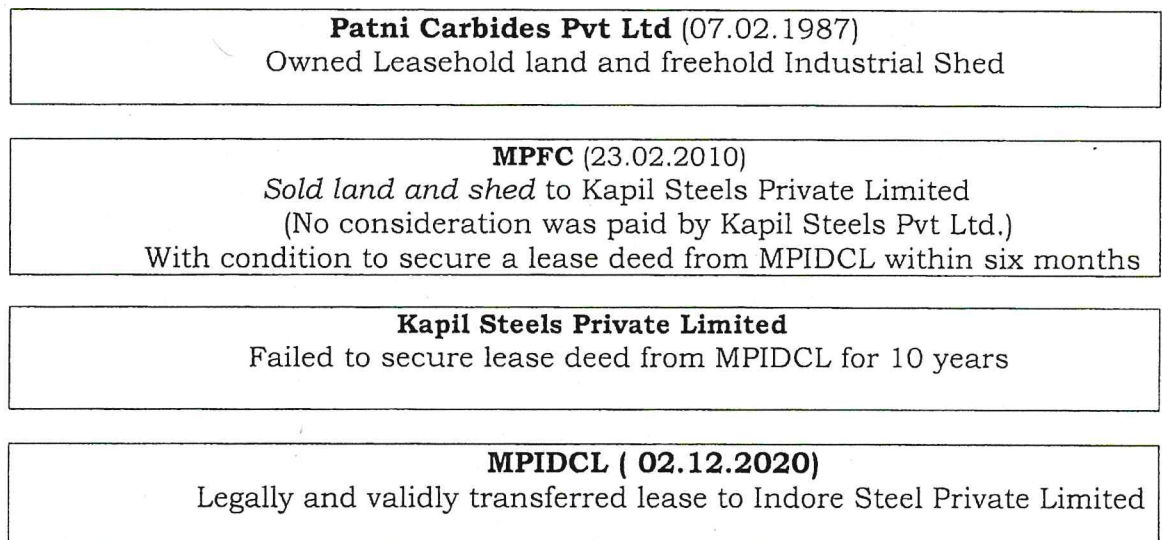
3. The applicant Indore Steels Alloys Limited in IA 96 also submits that it owns and possesses Industrial Plot No. 36-C/1, Industrial Area, Sector-3, Pithampur District Dhar has a lessee of the Madhya Pradesh Industrial Development Corporation Limited, Regional Officer at Indore for a period of 99 years, vide lease deed No. MP119002020A1801862 dated 27 Nov. 2020, which was duly registered on 2 December 2020.
4. The applicant Indore Steels Alloys Limited in IA 96 also submits that it also owns and possesses an industrial shed constructed on the aforesaid piece of land by purchasing it from M/s Powerage Towers Limited 101-103 Indore Trade Centre, 2/3 South Tukoganj, Indore through registered Sale Deed NO. MP119002020A1757267 dated 13 November 2020.
5. The dispute is for a leasehold property along with the tin-shed standing on the land admeasuring 10,2019 sq meter sq meter bearing No.36-C/1, Industrial Area, Sector-3, Pithampur Dist. Dhar on lessee from the Madhya Pradesh Industrial Development Corporation Limited (MPIDCL).

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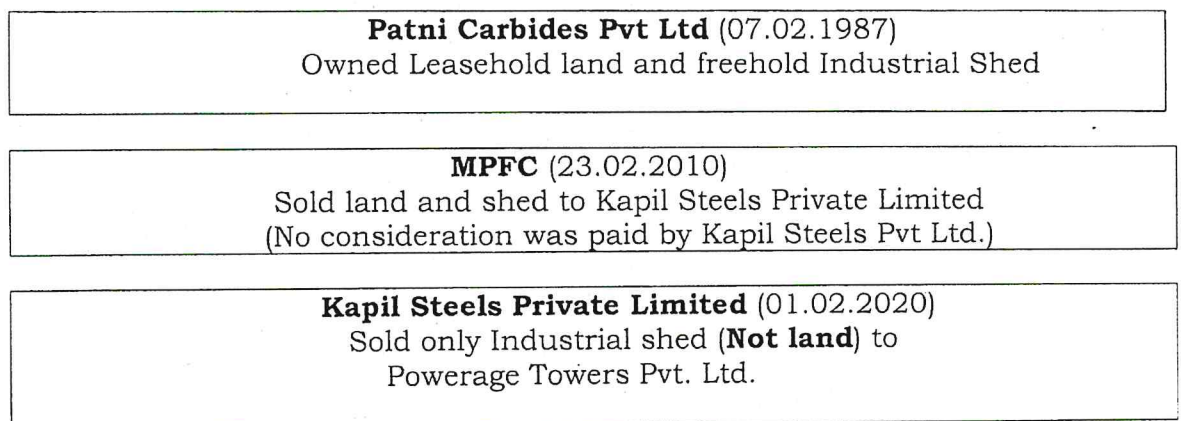
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6. It is submitted by applicant Indore Steels Alloys Limited, that MPIDC originally allotted a lease deed dated 7th February 1987 to M/s Patni Carbide Pvt. Ltd. The flow chart shows the transfer of land and shed individually.

7. FLOW CHART SHOWING TRANSFER OF INDUSTRIAL LAND



8. FLOW CHART SHOWING TRANSFER OF INDUSTRIAL SHED



Powerage Towers Pvt. Ltd. (13.11.2020)
Sold Industrial Shed (**Not Land**) to
Indore Steel Private Limited

9. It is submitted by Indore Steels & Alloys that originally the land was taken on lease for a period of 99 years on 7th February 1987 by M/s. Patni Carbides Private Limited from MPIDCL and constructed industrial shed thereon against which it had obtained secured financial facilities from MPFC, default in repayment of which resulted into sale of the land and the industrial shed by MPFC to the corporate debtor company M/s. Kapil Steel Limited on 23rd February, 2010, under the State Financial Corporation Act. However, despite a lapse of ten years, the corporate debtor M/s. Kapil Steel Limited company never got the lease deed executed in its favor from MPIDCL as per the Sale Deed dated 23rd February 2010.

Para 6 of the sale deed says, *'The vendee hereby undertakes that he/she/they shall get the lease of the said 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 applicants, who have a requirement of the same without any intimation to the Vendee.'*

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And Rule 19 of the Madhya Pradesh State Industrial Land and Building Management Rules, 2019, the right of the Corporate Debtor Company to get the lease transferred in its favor has automatically lapsed.

10. The applicant in IA 96 further submits that on 1st February, 2020, the corporate debtor M/s. Kapil Steel company sold only the industrial shed to M/s. Powerage Towers Limited vide sale deed No.MP119002020A1084455.
11. It is further submitted by the applicant Indore Steels Pvt. Ltd that the said sale of the shed has taken place between M/s Powerage and M/s Indore Steel on 13.11.2020, at the time when the insolvency resolution process of the corporate debtor M/s Kapil Steels was going on bearing case CP(IB) No.34/7/NCLT/AHM/2019 wherein the Resolution Professional was appointed vide order dated 28.7.2020.
12. It is further submitted that for purchasing the industrial shed, the applicant company has paid a sum of Rs.11,72,220/- to M/s. Powerage Towers Limited and got the sale registered through the Sale Deed No.MP119002020 A1757267 dated 13th November 2020 and the corporate debtor company acquired ownership rights over the industrial shed only and not over the industrial land.

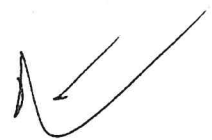
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13. According to IA 4/2022 the Resolution Professional submitted that the applicant is not a *bonafide* purchaser since it purchased the Industrial shed first and thereafter got the lease of the land in their favor from MPIDCL. The corporate debtor company purchased the land from MPIDCL for consideration of Rs.60,01,001/- and immediately on execution of the sale deed in its favor on 23rd February 2010, the corporate debtor company has become the owner of the land.
14. It is further submitted by Jagdish Kumar Parulkar that amendment of the lease deed in favor of the applicant company is just a procedural formality and the fact that the applicant company acquires the leasehold rights over the subject land only on 2nd December 2020, during the intervening period, the land belongs to the corporate debtor and the transaction between the Powerage Towers Limited and the applicant company is a preferential transaction which is grossly undervalued.
15. It is further submitted by the Jagdish Kumar Parulkar that the sale between the applicant and the Powerage Towers limited has taken place after the initiation of the CIRP against the corporate debtor. The said asset was sold 4 months before the initiation of the CIRP to a related concern at a very undervalued price.



16. It is submitted by the applicant company that the industrial shed is presently in dilapidated condition and cannot be utilized by the applicant company since it wishes to start its plant. The applicant company Indore Steels and Alloys Private Limited after taking the industrial shed on long lease directly from MPIDCL has constructed its industrial shed for starting its steel furnace after spending an amount of Rs. 1,52,84,816/-.
17. On perusal of the documents placed before the adjudicating authority undisputedly reveals that the applicant company has secured the lease deed from MPIDCL on 2nd December 2020 after payment of full consideration and all pending dues through banking channels and MPIDCL, in terms of the provisions of Rule 19 of the Madhya Pradesh State Industrial Land and Building Management Rules, 2019, which provides for automatic cancellation of the lease if the purchaser has purchased the land fails to get the lease executed in its favor, has duly executed a registered lease deed in favor of the applicant company Indore Steels & Alloys Pvt. Ltd.
18. On perusal of the sale deed dated 23rd February 2010 executed by MPFC in favor of the Corporate Debtor Kapil Steels, wherein it is provided that the corporate debtor company had 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 DIC/AKVN (Now MPIDCL) reserves the right to cancel the lease and allot the said land to those applicants.

19. The adjudicating authority on the perusal of documents states that the application filed by liquidator Jagdish Kumar Parulkar is void and declares the transaction carried out by the Kapil Steels /Corporate Debtor as void. The property may be vested in favor of Indore Steels and Alloys Private Limited. Further, the authority observed that the transactions do not fall within the purview of Sections 43, 49, and 66 of the Insolvency and Bankruptcy Code 2016.
20. The authority regarding the old industrial shed of 3000 sq feet constructed on land which was sold by the corporate debtor company to M/s. Powerage Towers Limited (a related party) on 1st February 2020, at a consideration of Rs.7,81,000/- and subsequent sale by Powerage Towers Limited to the applicant company on 13th November 2020, through a registered sale deed, on payment of consideration of Rs.11,72,220/-.
21. On perusal of documents, the adjudicating authority is in view that the Applicant M/s Indore Steels & Alloys Private Limited has legally and validly acquired leasehold ownership rights and possession over the industrial land

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directly from the MPIDCL and not from the corporate debtor company M/S Kapil Steel Limited and is a perpetual lessee of the Industrial land.

22. Therefore, the adjudicating authority is in a view that the applicant company is the rightful owner of the industrial land admeasuring 10,219 sq meters at the plot bearing No.36-C/1, Industrial Area, Sector-3, Pithampur Dist. Dhar and direct the respondent resolution professional not to interfere with the rights, title, and possession of the applicant company.
23. That the said property under the notice dated 15.3.2021 is leased and that the lessor is M.P Industrial Development Corporation (MPIDC) which is a subsidiary of the State Government of M.P. The said property is situated within the Industrial Sector of MPIDC Indore and the ownership over the property is that of MPIDC by following due process of law MPIDC has leased out the said property by executing a valid and subsisting lease deed in favor of Indore Steel and Alloys Pvt Ltd.
24. It is observed that since the corporate debtor company has sold the industrial shed to M/s. Powerage Towers Limited on 1st February 2020, and the Powerage Towers Limited subsequently sold the industrial shed to the applicant company on 13th November 2020. However, since the industrial land has been declared to be in the



legal ownership of the applicant company, the resolution professional is directed to remove the old industrial shed from the aforesaid land without damaging the new industrial shed of the applicant company. Hence we pass the following order.

Order

This Hon'ble Tribunal directs the Resolution Professional to vacate and not disturb the possession or interfere with the title or leasehold right of the applicant company. The Respondent /Resolution Professional Jagdish Kumar Parulkar or any other person entity through him or at his place is directed to vacate the tin shed in dispute and not to disturb the possession of the applicant company as the tin shed is not the asset of the corporate debtor.


KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)


MADAN B GOSAVI
MEMBER (JUDICIAL)