

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 459/2024

(IA No.1257/2024)

In the matter of:

**Mr. V. Jaisankar,
S/o. Viswanathan,
No. P1, Lloyds Colony,
Royapettah,
Chennai – 600014**

.... Appellant

V

**Mr. Mahalingam Suresh Kumar,
Liquidator - Ganga Foundations Pvt. Ltd.,
SPP Insolvency Professionals LLP,
No. 27/9, Nivedh Vikas, Pankaja Mill Road,
Puliyakulam, Coimbatore – 641045**

... Respondent No.1

**Mr. Senthil Kumar,
Suspended Director of the CD,
No. 2, Ganga Ishana Apartment,
4th Floor, Jayam Gardens,
Jawaharlal Nehru 200 ft.,
Inner Ring Road, Kolathur,
Chennai – 600099**

... Respondent No.2

**Mr. Chittibabu,
Suspended Director of the CD,
No. 10/2, 1st Street, Padma Nagar,
Kolathur, Chennai – 600099**

... Respondent No.3

Present :

For Appellant : Ms. Aditya Sarangarajan &
Mr. Abhineeth Saravanan, Advocates

For Respondents : Mr. TK. Bhaskar, Advocate
For Mr. AG. Sathyanarayana, Advocate for R1

J U D G M E N T
(Hybrid Mode)

Per : Justice Sharad Kumar Sharma, Member (Judicial):

1. The Appellant, in the instant Company Appeal has questioned the validity of the common Order dated 27.09.2024, by virtue of which the Learned NCLT, Chennai had proceeded to decide the three Interlocutory Applications **IA(IBC)/415/2024, IA(IBC)/1701/2023** and **IA(IBC)/1757/2023** in the principal Proceedings, in the name of **IBA/870/2020** in which CIRP proceedings were being carried out against M/s. Ganga Foundations Private Limited, the corporate debtor.
2. The first application **IA(IBC)/415(CHE)/2024** was preferred by the Liquidator, by invoking the provisions contained under Section 32 (e) (f) of I & B Code, 2016, to be read with IBBI (Liquidation Process) Regulations, 2016, to be read with Rule 11 of NCLT Rules, 2016.
3. In the said application, the Liquidator had prayed for passing orders (a) to confirm the sale of the Corporate Debtor as a going concern, (b) to declare that the Successful Bidder, is entitled to avail immunity as prescribed under Section 32A and Section 238 of the Code (that is, waiving of all existing liabilities and penalties, removal of attachments and encumbrances etc., if any, which has been made therein by the Statutory Authorities and (c) to direct the Statutory Authorities, involved in the Management of the affairs of the Corporate Debtor, to modify their records by entering the name of the Successful Bidder, as proposed by them.

4. The orders passed on this application, is not the subject matter of challenge at the behest of the Appellant, in the instant Company Appeal.

5. The Second Application being **IA(IBC)/1701(CHE)/2023** was also preferred by the Liquidator, under the provisions contained under Section 19(2) to be read with Section 35 of I & B Code, 2016, to be read with Rule 11 of the NCLT Rules, 2016 in the said Application, the Liquidator had prayed for a direction to the Respondent No.1 in the said application (i.e. the present Appellant), to handover the original Title Deeds of the property mentioned in the Schedule, as contained with the Application preferred by the Liquidator.

6. The said Application preferred by the Liquidator, has been allowed by Ld. NCLT and it is this order, which is the subject matter of challenge by the Appellant in the instant Company Appeal.

7. The third Application, being **IA(IBC)/1757(CHE)/2023**, was preferred by the present Appellant, by invoking the provisions contained under Section 60(5) of the I & B Code, 2016, to be read with Rule 11 of the NCLT Rules, 2016, wherein the Appellant prayed for the following reliefs:

“1. Allow the present application.

2. Direct the second Respondent, Liquidator, to execute the Sale Deed in respect of the property at Plot No. 4, Beulah Nagar, comprised in Survey No. 718/4, Old Survey No. 718, Patta No. 17917, situate in Pallikaranai Village, Sholinganallur Taluk, Chennai, measuring an extent of 11,400 sq.ft. in favour of the Applicant herein in furtherance of the agreement of sale dated 30/11/2020, registered as Doc. No. 9107 of 2020 on the file of the Sub Registrar Office, Saidapet, Chennai.

3. Restrain the second Respondent, Liquidator from interfering with the peaceful possession, enjoyment, occupation and use of the property described in the Schedule hereunder at Plot No. 4, Beulah Nagar, comprised in Survey No. 718 / 4, Old Survey No. 718, Patta No. 71917, situate in Pallikaranai Village, Sholinganallur Taluk, Chennai or bring the property for sale as threatened in the communication dated 23/08/2023 detrimental to the interest of the Applicant.

4. Direct the second Respondent, Liquidator, to accept the claim of the Applicant for Rs.38,40,000/- (Rupees Thirty-Eight Lakhs and Forty Thousand only) which is due from the Corporate Debtor to the Applicant in furtherance of the transaction of loan dated 30th December 2020.

5. Direct payment of costs to the Applicant in respect of these application; and

6. Pass such further or other reliefs as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the case and thus render justice."

8. The extraction of the reliefs as prayed for by the Appellant in IA(IBC)/1757(CHE)/2023, becomes relevant, for the reason being that, it has got a direct nexus to the issue, which has been made as a subject matter of challenge in the instant Company Appeal preferred by the Appellant arising from the Impugned Order on IA(IBC)/1701(CHE)/2023.

9. It is made clear at this juncture itself, that the Orders passed on IA(IBC)/1757(CHE)/2023 preferred by the Appellant is not a subject matter, which has been put to challenge by the Appellant in the instant Appeal or in any other independent proceedings before this Appellate Tribunal, by any of the parties, who had contested the proceedings before Ld. NCLT.

10. Hence, it will have to be deemed by way of a legal construct that, the Order rendered by the learned Adjudicating Authority on IA(IBC)/1757(CHE)/ 2023

has attained finality qua the Appellant (since being the Applicant to the said Application) and that, he would be bound by the consequences of the said Order, rendered on 27.09.2024, in IA(IBC)/1757(CHE)/2023.

11. The precise facts which engage consideration in the instant Company Appeal, are that a proceedings under Section 7 of the I & B Code, 2016, stood initiated by the State Bank of India (the Financial Creditor), as against the Corporate Debtor, namely `M/s. Ganga Foundations Pvt. Ltd. and subsequently, the aforesaid Corporate Debtor was admitted to the CIRP proceedings, by an Order passed by the Ld. Adjudicating Authority on 10.01.2022, which has attained finality and it is not the subject matter of challenge. As of now, besides no such fact has been brought on record, to show that the admission of the Corporate Debtor to the CIRP proceedings has been subjected to challenge by any person or a Body.

12. As a consequence of the commencement of the CIRP proceedings on 10.01.2022, the Resolution Professional was appointed. The resolution professional invited and collated the claims and formed the committee of creditors (CoC). Subsequently, he invited the Resolution Plans from prospective resolution applicants in respect of the CD, no such plan was received by him.

13. Owing to the non-receipt of any Resolution Plan within the timeline prescribed under the code, CIRP process was terminated and the Corporate Debtor, M/s. Ganga Foundations Pvt. Ltd. was directed to be placed under

Liquidation by an Order passed by the learned Adjudicating Authority on 15.03.2023 and Mr. Mahalingam Suresh Kumar was appointed as a Liquidator to carry out the liquidation proceedings of the Corporate Debtor.

14. It has come on record that, the Liquidator issued a publication on 19.03.2023 announcing the commencement of the Liquidation process of the Corporate Debtor and invited the claims from various Stakeholders as against the Corporate Debtor and fixed 14.04.2023 as the last date for the purposes of submission of the claims with regards to any debt due to be paid by the Corporate Debtor.

15. After receipt of such claims from the creditor, the Liquidator, constituted the “Stakeholders Consultation Committee” (hereinafter to be called as “SCC”). In accordance with the recommendations made by the SCC that the Corporate Debtor be sold as a going concern, the Liquidator proceeded further and appointed a Valuer to get the exact valuation of the assets of the Corporate Debtor, as it stood existed on the date when the invitation of claim was made by the Liquidator, i.e., on 14.04.2023. Upon receipt of the Valuer's Report, he prepared the “Asset Memorandum” of the Corporate Debtor, giving the details of the assets of the Corporate Debtor and took the further steps for the sale of the Corporate Debtor as a going concern through e-auction in the manner provided in Schedule 1 of the Liquidation Process Regulations.

16. It has come on record that the e-auction conducted by the Liquidator on 29.06.2023, 23.08.2023, 11.10.2023 and 27.10.2023 met with no response and that only in the 5th e-auction held on 11.01.2024, after the Reserve Price was reduced as per the Liquidation process regulations to Rs.43.74 crore, there was a response by a prospective bidder Shri. A.M. Ganesh, who submitted his bid along with EMD being 10% of the reserve price.

17. As he fulfilled all the eligibility requirements, he was declared as the Successful Bidder and letter of intent was issued in his favour and he also paid the balance 15% of the bid amount as per the terms and conditions of the letter of Intent.

18. The Liquidator, during verification of the documents relating to the assets of the CD, found that the original title Deeds of the property of the Corporate Debtor bearing the description of Plot no. 4, Maranathan Street, Beulah Nagar located in survey no. 718/4 (old survey no. 718), Pallikaranai village, Sholinganallur Taluk, Chennai district and bearing Patta no. 17917 was lying with the Appellant and accordingly, he issued Notices to the Appellant Shri. V. Jaisankar on 23.08.2023, directing him to handover the Title Deeds. The Appellant responded to the said notice on 28.08.2023 contending thereof that he is the bona fide purchaser of the property, based upon a registered Agreement for Sale for an amount of Rs.45,60,000/- which has been executed in his favour by the CD, by getting it registered at the Office of the Sub- Registrar, Saidapet, Chennai, on 30.11.2020, that he has paid Rs.3400000/- and that he has also given

a loan of Rs.50,00,000/- to the CD against deposit of original title deeds pertaining to the above property, paid in 26 instalments between 30.12.2020 and 18.02.2021, for which the CD has executed a memorandum of title deeds (MoDT) dated 30.12.2020, thereby depositing the original title deeds pertaining to the said property with the appellant and that, the CD has also executed a promissory note dated 18.02.2021 in his favour for the same amount.

19. Failing to get back the original title deeds from the appellant, the liquidator filed the interlocutory application being IA/1701/2023, praying for a direction to the appellant herein to return the title deeds to the liquidator. Ld. NCLT, after hearing both sides, allowed the application and passed the impugned order dated 27.09.2024, which is under challenge in this appeal.

20. It is being argued by the Appellant contending thereof that after the execution of the registered Agreement for Sale on 30.11.2020, as a matter of fact, a right has been created over the said immovable property, in his favour on the basis of the said registered Agreement for Sale, that even the encumbrance certificate for the said property shows the registered agreement of Sale, that he has got the possession of the property and consequently the absolute owner of the property and therefore, the liquidator cannot ask for return of the title deed and that instead he should execute the sale deed in favour of the appellant as full payment for the said property as per the Agreement of Sale has already been made.

21. It will not be out of context to point out at this juncture, which does not need any reference or an elaborate discussion, that it is the settled law that merely an Agreement for Sale in respect of a property, will not in itself confer a Title over the property which is otherwise claimed by the Liquidator, as to be part of the Liquidation Estate as it stands recorded in the name of the Corporate Debtor.

22. The Appellant has further attempted to carve out a case for retaining the title deeds of the property, contending thereof that on 30.12.2020, he had extended a financial assistance of Rs.50,00,000/- to the Corporate Debtor, as against the deposit of the Title Deeds of the said property and therefore, he is a Secured creditor of the CD, that he has elected to retain his security interest and has not relinquished the same, and therefore the liquidator cannot force him to relinquish his security interest and hand over the title deeds as demanded by the liquidator.

23. The questions, which emerge for consideration is, as to (i) whether at all, any right would be conferred on the Appellant based on a registered Agreement for Sale dated 30.11.2020, particularly when admittedly no Sale Deed got executed within the time stipulated under the Agreement for Sale in itself, and (ii) Whether, in the absence of having resorted to any Civil proceedings by way of institution of a Suit for a specific performance, the Appellant can claim ownership of the mortgaged property in the event of non-repayment of financial assistance extended to the CD and that too, based upon an unregistered Mortgage Deed dated 30.12.2020, based on which the Title Deed was said to have been surrendered by the Corporate Debtor to the Appellant.

24. At this stage, a reference would be required to be made to the Agreement for Sale, which was got registered on 30.11.2020. The Agreement for Sale shown to have been registered before the Sub-Registrar, for the Property described as Plot No. 4, Beulah Nagar, in Old Survey No. 718 (New Survey No. 718/4), Pallikaranai Village, Sholinganallur Taluk, Chennai district and bearing Patta No.17917 and, having an area of 11,400 Sq. ft.

25. If we go through the terms of the Registered Agreement for Sale it provides, that the Sale Deed was agreed to be executed within the time period, as it was settled between the parties, as per the terms of the Deed itself. It is an admitted case that, till date, no effort has ever been made by the Appellant, to get the Sale Deed executed under the terms of Agreement for Sale of 30.11.2020. The terms of Agreement for Sale provides for, that the Title Deeds of the Property, have been delivered to the Appellant and that the sale transaction will be completed within two years if the purchaser/Appellant herein finds the title of the vendor/CD herein to be satisfactory and marketable. The relevant Clause 4 of the Agreement for Sale dated 30.11.2020 is extracted below:

“4. That the Vendor has this day delivered all the original title deeds and its parent documents and Patta in respect of schedule mentioned property, and its Encumbrance Certificates to the Purchaser / Party of the Second Part, upon perusal of the documents, if the title of the Vendor is satisfactory and marketable in the opinion of the purchaser’s Legal advisor, then the Parties hereto mutually agree to complete the sale transaction within two years from this day by execution of registered sale deed in favour of the Purchaser or his nominee’s name.”

26. If the said Clause is taken into consideration in its entirety, it has provided for that, since Rs.34 lakh has already been paid out of the total agreed sale consideration of an amount of Rs.45,60,000/-, leaving a balance amount of Rs.11,60,000/- to be paid, the documents of the said property was handed over by the Corporate Debtor to the Appellant in accordance with the terms contained under Clause 4 of the said Agreement and the sale transaction will be completed within 2 years subject to the satisfaction that, the title of the Vendor is satisfactory and marketable as per the opinion of the legal advisor of the Appellant. However, no action is shown to have been taken by the Appellant to get the sale transaction completed within the stipulated time frame though he was supposed to initiate the process of completion of sale transaction.

27. Further, the Appellant has contended that Subsequent to execution of the agreement to sale, the CD approached him for a loan of Rs.5000000/- for business purposes and agreed to deposit the original title deeds of the said property, based on which, he extended the said amount as loan to the CD, for which the CD executed an unregistered memorandum of deposit of title deeds (MoDT) on 30.12.2020 and that, it has created an "Equitable Mortgage" in his favour, in lieu of the loan of Rs.50,00,000/- allegedly extended by him to the Corporate Debtor. He has admitted that the property on which "Equitable Mortgage" has been created in consonance with the memorandum of deposit of title deeds (MoDT), is the same Property which was the subject matter of Agreement for Sale dated 30.11.2020. He

has contended that since all the title documents has been surrendered, the Order issued by the Ld. Tribunal while deciding the IA (IBC) / 1701 (CHE) / 2023 at the behest of the Liquidator, by invoking the provisions contained under Section 19(2) to be read with section 35 of the I & B Code, 2016 would not be tenable, as he was the owner of the Property on 30.12.2020 by having the title deeds handed over to him before the start of CIRP proceedings which got commenced on 10.01.2022 and the liquidator does not have any right as such to seek for its surrender, by invoking the provisions contained under Section 19(2) of the I & B Code, 2016.

28. When the controversy was being agitated and was being judicially considered by the Ld. Adjudicating Authority qua the theory of having extended the financial assistance to the Corporate Debtor to the tune of Rs.50,00,000/-, under the Agreement for Sale or MoDT, a specific finding has been recorded by the Tribunal, after going through the Books of Accounts of the Corporate Debtor that, as on the date when the Liquidation process was being carried, the books of accounts of the CD reflected receipt of Rs. 34 lakh from the Appellant by the CD through two bank transfers, namely, (a) RTGS - Indian Overseas Bank (Ref No.: IDIBH 20328376092) for Rs.14.60 lakh and (b) RTGS – Indian Overseas Bank (Ref No.: IDIBH 20328378194) for Rs. 19.40 lakh and that none of the documents including the Valuer's Report and the Books of Accounts of the Corporate Debtor including the Agreement for Sale showed- at any point of time, the Appellant had extended the financial assistance of Rs.50,00,000/- as claimed.

29. It was observed by Ld. NCLT that there was no record for the said Loan of Rs. 50 lakh which is alleged to have been extended by the Appellant and hence, the entire contention of the loan having been extended by virtue of the MoDT was not found acceptable. Rather, from a composite reading of the Agreement for Sale dated 30.11.2020 and the alleged Mortgage Deed of 30.12.2020, Ld. NCLT gathered a few relevant facts which are;

- (i) that there is surrender of Title Deed by the Corporate Debtor to the Appellant, as per Clause 4 of the registered Agreement for Sale;
- (ii) that there is nothing on record to show that, at any point of time, the Sale Deed, was ever attempted to be executed by the Corporate Debtor, prior to the Corporate Debtor being put to CIRP and therefore, the title still continues to be vested with the Corporate Debtor;
- (iii) that the Agreement for Sale in itself, under the provisions of Registration Act does not confer any valid title over the Property and therefore, the property will have to be a part of the Liquidation Estate;
- (iv) that the MoDT of 30.12.2020, which has been sought to be made as the basis for acquiring the title deeds of the said property cannot be used to establish ownership over the said property because
 - 1) it is an unregistered document;
 - 2) it specifically contemplated creation of an " Equitable Mortgage", which required to be registered as per Section 17 of the Registration Act and it has not been done;

3) there is no evidence on record, which could be extracted from the Books of Accounts of the Corporate Debtor to show extension of a loan of Rs. 50 lakh by the Appellant to the Corporate Debtor.

30. On the basis of the above, Ld. Tribunal did not accept the stand taken by the Appellant that he should be treated as a secured creditor on basis of surrender of the Title Deed as per clause-4 of the Agreement for Sale document.

31. The Ld. Counsel for the Respondent has submitted that creation of a charge over an asset of a company by the unregistered MoDT of 30.12.2020, would not be a valid charge as contemplated under Section 77 because, in accordance with the provisions contained under sub-section (3) of Section 77, no charge over the Liquidation Estate, can be created until and unless it has been duly registered under sub-section (1) of Section 77 and a Certificate of Registration of such charge is given by the Registrar under sub-section (2) of Section 77.

32. Section 77 of the Companies Act 2013 is extracted hereunder: -

“(1) It shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within thirty days of its creation:

1[Provided that the Registrar may, on an application by the company, allow such registration to be made--

(a) in case of charges created before the commencement of the Companies (Amendment) Act, 2019, within a period of three hundred days of such creation; or

(b) in case of charges created on or after the commencement of the Companies (Amendment) Act, 2019, within a period of sixty days of such creation, on payment of such additional fees as may be prescribed:

Provided further that if the registration is not made within the period specified--

(a) in clause (a) to the first proviso, the registration of the charges shall be made within six months from the date of commencement of the Companies (Amendment) Act, 2019, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;

(b) in clause (b) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such ad valorem fees as may be prescribed.]

Provided also that any subsequent registration of a charge shall not prejudice any right acquired in respect of any property before the charge is actually registered:

2[Provided also that this section shall not apply to such charges as may be prescribed in consultation with the Reserve Bank of India.]

(2) Where a charge is registered with the Registrar under sub-section (1), he shall issue a certificate of registration of such charge in such form and in such manner as may be prescribed to the company and, as the case may be, to the person in whose favour the charge is created.

(3) Notwithstanding anything contained in any other law for the time being in force, no charge created by a company shall be taken into account by the liquidator 3[appointed under this Act or the Insolvency and Bankruptcy Code, 2016 (31 of 2016), as the case may be,] or any other creditor unless it is duly registered under sub-section (1) and a certificate of registration of such charge is given by the Registrar under sub-section (2).

(4) Nothing in sub-section (3) shall prejudice any contract or obligation for the repayment of the money secured by a charge.”

33. There is nothing on record as such, brought by the Appellant to contradict the contention of the Respondent that the charge sought to be created over the property covered by the Sale Deed, by virtue of the MoDT while property in question continued to be vested with the Corporate Debtor, cannot be taken into consideration until and unless the charge has been created by way of an ‘‘Equitable Mortgage’’ and has been registered in accordance with the law as it has been contemplated under sub-section (1) of Section 77 which was lacking in the instant case.

34. The word ‘‘Charge’’ has been defined under Section 2(16) of the Companies Act, 2013, which reads as under: -

“(16) ‘‘charge’’ means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage;”

If sub-section (3) of Section 77, is read together with the definition of charge contained under sub-section (16) of Section 2, the charge created by virtue of a of a ‘‘Mortgage Deed’’ or even an ‘‘Equitable Mortgage’’, would be covered within the ambit of charge, as defined under sub-section (16) of Section 2 and in that eventuality, it will, mandatorily, have to be registered before the same is being taken into consideration, in accordance with Section 77(3) which is lacking in the instant case. Hence no right whatsoever could be said to have been legally created in favour of the Appellant on the basis of the MoDT dated 30.12.2020.

35. This aspect has been further elaborated upon by the Ld. Counsel for the Respondent in the context of the provisions contained under the Registration Act. He has submitted that the MoDT, since it was intending to create an ‘‘Equitable Mortgage’’ in relation to an immovable property, would fall to be a document falling within the documents as contemplated under Section 17 of the Registration Act, 1908, and it ought to have been mandatorily registered in accordance with law in order to enable the said deed or a document to be read in evidence for the purposes of deciding the claim of a party.

36. Section 17 of the Registration Act is extracted hereunder: -

“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:--

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in 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;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

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

1[(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates

to create, declare, assign, limit or extinguish, whether in 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:]

Provided that the 2[State Government] may, by order published in the 3[Official Gazette], exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

4[(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 (48 of 2001) and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.]

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to--

(i) any composition deed; or

(ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) 5[any document other than the documents specified in sub-section (1A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the

value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court 6[except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding]; or

(vii) any grant of immovable property by 7[Government]; or

(viii) any instrument of partition made by a Revenue-Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or

(x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or

8[(xa) any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or]

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer.

9[Explanation.--A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.

37. The Ld. Counsel for the Respondent has further submitted that, under Section 17 of the Registration Act, there had been a State Amendment which was notified on 24.10.2012 and the amendment thus made under the Registration Act qua the provisions contained under Section 17, is applicable to the State of Tamil Nadu.

The said amendment reads as under: -

“[Tamil Nadu]:- In its application to the State of Tamil Nadu, in S. 17,-

(1) Sub-S. (1), for Cl. (f), substitute the following clause, namely: -

“(f) instruments of agreement relating to construction of building as referred to in clause (i) under Article 5 of Schedule I to the Indian Stamp Act, 1899 (Central Act II of 1899);

(g) instruments of agreement relating to sale of immovable property of the value of one hundred rupees and upwards;

(h) instruments of Power of Attorney relating to immovable property other than those executed outside India;

(i) instruments evidencing an agreement relating to the deposit of title deeds.”

(2) in sub-S. (2), the Explanation shall be omitted. – Tamil Nadu Act 29 of 2012, S.2.”

38. He submits that, if Clause (g) as given therein is read, it provides for mandatory registration of an instrument or an Agreement relating to the sale of an immovable property of the value of over One Hundred Rupees and upwards and particularly when as per Clause (i) of the said provision, the instruments as contained under Section 17, are evidencing an agreement relating to the deposit of Title Deeds.

39. We are of the view that according to the State Amendment too, the Mortgage Deed was not satisfying the conditions contained under Section 17 and therefore, the deposition of the Title Deed by the CD and its retention by the Appellant, is not justified and as a consequence, passing of the Impugned Order directing the Appellant to handover the documents of Title Deed as it was mentioned in the Agreement for Sale dated 30.11.2020, does not appear to suffer from any apparent vices. Since the MoDT dated 30.12.2020, which in accordance with sub-section (3) of Section 77, to be read in accordance with the State Amendment of Tamil Nadu of 2012, under Section 17 of the Registration Act of 1908 was necessarily required to be registered and it has not been done, the Appellant does not have a right to retain the documents of the Title Deed, which are said to have been handed over to the Appellant on the basis of a document, which cannot otherwise be read in evidence in accordance with the restrictions and stipulations imposed by Section 49 of the Registration Act, 1908, which creates an embargo that an un-registered document cannot be read in evidence.

40. Another remarkable feature requiring to be considered by us is that, though the entire process of the Corporate Debtor, being first admitted into CIRP and then into liquidation was in the knowledge of the Appellant, because he filed his response to the notice issued by the Liquidator, he did not file any claim with the Liquidator, despite of knowledge of notice of invitation of claim.

41. In the Insolvency Proceedings the Creditors are categorized as secured and un-secured Creditors, based on a registered charge against the Assets of the Corporate Debtor, done as per the provisions of Section 77 of the Companies Act.

42. Admittedly, Mr. V. Jaisankar, did not register his charge over the property as per the provisions of Section 77 and therefore, he cannot claim to hold the status of being a ``Secured Creditor`` or having a ``charge`` and he will have to be categorized as an ``Unsecured Creditor`` in ordinary course. But, since, admittedly the Appellant has not filed any claim within the stipulated timeframe provided under the Liquidation proceedings, the entire proceedings and the grounds raised by the Appellant during the Liquidation process would not be maintainable to be considered, as per the principle enunciated by the Principal Bench of NCLAT in the matters of ***Volkswagen Finance Limited v. Shree Balaji Printopact Pvt. Ltd. & Anr. as rendered in Company Appeal (AT) (Insolvency) No.02 of 2020.***

43. The relevant extract of paragraph dealing with the issue in the Impugned Order is extracted hereunder:

“ Ld. Counsel further submitted that Mr. V. Jaisankar has not filed a claim within the stipulated period during the liquidation proceedings and has filed an application straight away seeking admission of claim which is not maintainable.”

44. The Ld. Counsel for the Respondent has further elaborated that, the scrutiny of the documents does not reveal that, the Appellant has ever extended a financial assistance, based upon the MoDT dated 30.12.2020 and therefore, it has to be

construed that he does not have any valid claim as the same has not been raised by him and accordingly, the case of the Appellant does not deserve consideration.

45. Besides that, since the property was never registered in his favour, in that eventuality, in the light of the Judgment rendered by this Appellate Tribunal in ***Company Appeal (AT) (CH) (INS) No. 254 / 2023 in the matters of K. Jayant Prabhu & Anr. v. Pankaj Srivastava, Liquidator***, there would be no Security Interest which could be said to have been created in the absence of there being any Registered Sale Deed executed in favour of the Appellant or a legally valid registration of charge alleged to have been created by virtue of execution of an ‘‘Equitable Mortgage’’, as per the MoDT dated 30.12.2020.

46. Even otherwise also, this Appellate Tribunal is of the view that, in the absence of any reference to the alleged loan of Rs. 50 lakh in the Books of Accounts of the CD and in absence of compliance to the provisions of section 17 of Registration Act read with provisions of the State Amendment as contained therein, by not registering the MoDT and in the absence of any proof of having entered into any financial transaction as claimed, no defence as such on part of the Appellant justifying the retention of the title deeds of the subject property would be acceptable to be sustained in the eyes of law.

47. Yet another aspect which requires consideration is that, the Appellant himself has not put a challenge to the Order passed on IA (IBC) / 1757 (CHE) / 2023, as preferred in IBA / 870 / 2020 for the relief claimed.

48. Under the above circumstances, the claim of the Appellant could be summarized to be flowing from the registered Agreement for Sale dated 30.11.2020 and from the un-registered MoDT dated 30.12.2020. Both these documents had disclosed surrender of Title Deed in favour of the Appellant.

49. But, the Agreement for Sale in itself, will not confer a Title until and unless, it is followed by execution of the Sale Deed, which admittedly, has not been done and thus, no right or title will vest with the Appellant, in order to enable him to hold the Title Deed, based upon the Agreement for Sale dated 30.11.2020.

50. As far as the description of documents contained in the MoDT dated 30.12.2020 is concerned, it is an admitted case that this is an un-registered document which is not in accordance with Section 17 of Registration Act, to be read with the State Amendment, as applicable to the State of Tamil Nadu. Since the MoDT in itself was containing a Clause of creation of an ``Equitable Mortgage'', in accordance with the provisions contained under Section 17 of Registration Act, the same is required to be mandatorily registered, in the absence of which, the MoDT cannot be read as a document for creating any right in favour of the Appellant.

51. In fact, no sustainable right of the Appellant exists as on today, qua the relief, which has been granted while adjudicating upon IA (IBC) / 1701 (CHE) / 2023, as it was preferred by the Liquidator, owing to the fact that in accordance with the relief clause, the Appellant has renounced his rights by not raising the claim as made

therein and hence, the conclusion arrived at by the Ld. Tribunal while issuing directions on IA (IBC) / 1701 (CHE) / 2023, directing the Appellant to handover the Title Deeds, which admittedly according to him was handed over at the stage of execution of the Registered Agreement for Sale for which, there was no proceedings drawn by him for grant of a decree of a specific performance, and based on which, when he has no valuable sustainable rights, the directions as contained in the Impugned Order, does not call for any interference whatsoever and hence, the Company Appeal (AT) (CH) (INS) No. 459 / 2024 lacks merit and the same is accordingly dismissed.

All pending Interlocutory Applications, would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

10 / 10 / 2025

SR/YS/AR/MS/AK