

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

**CORAM: SHRI. RAJEEV BHARDWAJ – HON'BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 20.03.2025 at 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/508/2021, IA (IBC)/641/2021 in CP(IB) No.326/7/HDB/2018
NAME OF THE COMPANY	Khaitan Electricals Ltd
NAME OF THE PETITIONER(S)	Bank of India
NAME OF THE RESPONDENT(S)	Khaitan Electricals Ltd
UNDER SECTION	7 OF IBC

ORDER

IA (IBC)/508/2021

Order pronounced, recorded vide separate sheets. In the result, this IA (IBC)/508/2021 is allowed with directions.

IA (IBC)/641/2021

Order pronounced, recorded vide separate sheets. In the result, this IA (IBC)/641/2021, is dismissed.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, COURT-II**

IA(IBC)/508 of 2021,
IA (IBC)/641 of 2021 in
C.P (IB) No.326/7/HDB/2018

Under Section 66, 60(5)(c), 35(1)(n) of the Insolvency and Bankruptcy
Code, 2016 read with Rule 11 of NCLT Rules, 2016

**I. IA(IBC)/508 of 2021 in
CP (IB)/326/7/HDB/2018**

Mr.Kamalesh Kumar Singhania,
Liquidator of Khaitan Electricals Limited,
Room No.213 & 214,
Bajrang Kunj, 2B Grant Lane,
Kolkata – 700 012.

...Liquidator/Applicant

- 1) **Mr.Sunil Krishna Khaitan,**
Erstwhile Director of Khaitan
Electricals Limited,
No.7, Keyatala Lane, Golpark,
Kolkata – 700 029.
- 2) **Ms.Gairik Banerjee,**
Erstwhile Director of Khaitan
Electricals Limited,
No.46 C, J.L.Nehru Road,
Kolkata – 700 071,
West Bengal.
- 3) **Ms.Sujatha Banerjee,**
Erstwhile Director of Khaitan
Electricals Limited,
No.46 C, J.L.Nehru Road,
Kolkata – 700 071,
West Bengal.
- 4) **Mr.Akhil Ahmed,**
Resident of Jamanpur,

Selaqui, Dehradun – 281 011,
Uttarakhand.

- 5) **Religare Finvest Ltd,**
Unsecured Creditor of CD,
Address : 4th Floor,
LMJ House, 15-C,
Hemanta Basu Sarani,
Kolkata – 700 001.

...Respondents

Counsels Present

For the Applicant	:	Mr.Pranay Agarwal, Counsel
For the Respondent Nos.1& 3	:	Ms.Mathur Andrea, Counsel
For the Respondent No.4	:	Mr.Santosh Jadhav, Counsel
For the Respondent No.5	:	Mr.G.Kalyan Chakravarthy, Counsel

**II. IA(IBC)/641 of 2021 in
CP (IB) No.326/7/HDB/2018**

1. **Mr.Akil Ahmed, S/o.Mohd. Yasin**
Resident of No.87, Jamanpur,
Selaqui, Dehradun – 281 011,
Uttarakhand - 248197.
2. **Ms.Tarannum,**
W/o.Mr.Akil Ahmed,
Resident of No.87, Jamanpur,
Selaqui, Dehradun – 281 011,
Uttarakhand - 248197.

...Applicants/Petitioners

A n d

1. **Mr.Kamalesh Kumar Singhania,**
Liquidator of Khaitan Electricals Limited,
Room No.213 & 214,
Bajrang Kunj, 2B Grant Lane,

Kolkata – 700 012.

...Liquidator/Respondent No.1

2. **Mr.Sunil Krishna Khaitan,**
Erstwhile Director of Khaitan
Electricals Limited,
No.7 , Keyatala Lane, Golpark,
Kolkata – 700 029.

...Respondent No.2

Counsels Present

- For the Applicant : Mr.Santosh Jadhav, Counsel
For the Respondent No.1 : Mr.Pranay Agarwal, Counsel for the
Liquidator/R1
For the Respondent No.2 : Ms.Mathur Andrea, Counsel

Date of Order: 20.03.2025

Coram:

Shri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Shri Sanjay Puri, Hon'ble Member (Technical)

[P e r : Rajeev Bhardwaj]

O R D E R

1. Both IA Nos. IA(IBC)/508 of 2021 and IA(IBC)/641 of 2021 are taken up together for decision as they are interlinked and interconnected.
2. **Background:**
- a) Khaitan Electricals Ltd., the Corporate Debtor (**CD**), entered the Corporate Insolvency Resolution Process (CIRP) pursuant to an order dated 28th November 2018, in CP No.326/7/HDB/2018 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC**). As no Resolution Plan was

received, the Liquidation process was initiated against the CD vide order dated 23rd August 2019.

- b) Prior to the CIRP, Mr. Akhil Ahmed (Respondent No.4 in IA No.508 of 2021) and his wife, Ms. Tarannum (Applicant No.2 in IA No.641 of 2021), executed an agreement dated 23.12.2013 for the purchase of land comprised in Khasra Nos. 800KA, 890KH, 889, 891KH, 891KA, and 892KH, measuring 1.36 hectares, situated at Mauza Chharba Pacchwa, Doon-Langa Road, Dehradun (hereinafter referred to as the "**disputed property**"). The agreement was executed with Mr. R. Lohariwala (now deceased), erstwhile Chief Executive Officer of the CD, for a consideration of ₹1.81 crores. The entire amount was to be paid on or before July 2014, failing which the agreement would be deemed cancelled, null, and void.
- c) Mr. Akhil Ahmed, through a letter dated 16.07.2014, informed the CD that the final payment, along with interest, would be made by October 2014. He further stated that if the entire payment was not made by 31.12.2014, the agreement should be treated as cancelled.
- d) A loan of ₹10,00,00,000/- was sanctioned by Religare Finvest Limited (Respondent No.5 in IA No.508 of 2021) vide sanction letter dated 26.12.2013, and a facility agreement was executed on 11.01.2014. The CD handed over the original title deeds of the disputed property to Religare Finvest Limited vide letter dated 23.01.2014.
- e) In the light of the above background, IA(IBC)/508 of 2021 and IA(IBC)/641 of 2021 have been filed concerning the disputed property.

I. IA No.508 of 2021:

3. Application

- a) The Liquidator has asserted that Mr. Akhil Ahmed failed to pay the entire amount within the stipulated period, resulting in the agreement being deemed cancelled, null, and void.
- b) It is claimed that when the property of the CD situated at Faridabad was auctioned on 15.02.2021, the Liquidator found a letter dated 28.10.2018 along with a post-dated cheque dated 28.02.2019 for an amount of Rs. 28,91,700/- in the desk of Mr. R. Lohariwala, the erstwhile Chief Executive Officer of the CD. However, the said cheque was never encashed.
- c) The sale agreement was executed on 23.12.2013, just three days before the sanction of the loan by Religare Fintech Ltd. (**RFL**), which has raised doubts about the legality of the agreement. Additionally, a portion of the balance payment was made while the CD was under CIRP/liquidation, without the knowledge of the Liquidator. On the other hand, the erstwhile Directors and management of the CD received a payment of Rs. 1.77 crores out of Rs.1.81 crores in respect of the agreement dated 23.12.2013.
- d) In these circumstances, the Liquidator of the Applicant in IA No.508 of 2021 has prayed for the following reliefs :
 - i. Issue necessary orders/directions on the Respondents Nos.1, 2 and 3 herein, being the erstwhile Directors of the CD to pay Rs.1.81 crores along with an interest of 18% per annum for the period starting from 01.12.2013 till date in the liquidation account of the CD, as compensation for the loss caused to the value of the assets of the CD and to the stakeholders of the CD.

- ii. Issue necessary orders/directions on the Respondent No.4 herein to handover the premises of the CD in Dehradun being land admeasuring 1.36 hectares situated at Mauzsa Chharba Pacchwa Doon Langa Road (Dehradun) contained in Khasara Nos.800KA, 890KH, 889, 891KH, 891KA and 892KH to the Applicant herein as the same forms a part of the liquidation estate of the CD and has to be dealt with as per the provisions of the Code.
- iii. Issue necessary orders/directions on the Respondent No.4 herein to file its claim, if any, with the Liquidator, i.e., the Applicant herein.
- iv. Issue necessary orders/directions on the Respondent No.5 herein to handover the original title deeds of the premises of the CD in Dehradun being land admeasuring 1.36 hectares situated at Mauzsa Chharba, Pacchwa Doon Langa Road (Dehradun) contained in Khasara Nos.800KVA, 890KA, 890KH, 889, 891KH, 891KA and 892KH.
- v. Costs and
- vi. Pass such other Order/directions as this Hon'ble Bench may deem fit and necessary in the facts and circumstances of the case.

4. Counter of Respondent No.1 (Mr.Sunil Krishna Khaitan and Respondent No.3 (Ms.Sujatha Chatterjee):

- a) Both Respondents No. 1 and 3 were Directors of the Corporate Debtor and they have filed joint counters, and Respondent No. 3 has also submitted an additional counter.
- b) They have contended that Mr. Akhil Ahmed failed to make the balance payment, and as a result, the agreement stands cancelled, null, and void.

- c) They have claimed ignorance regarding the letter dated 28.10.2018, along with the cheque for Rs. 28,91,700/- discovered by the Liquidator on 28.02.2019. They have also stated that they were unaware that Respondent No.4 sought time until December 2014 to make the full payment, as mentioned in the letter dated 16.07.2014. Regarding the receipt of Rs.1.77 crore, they have submitted that this amount was deposited into the bank account of the CD, and Respondent No. 1 did not take any portion of the said advance amount.
- d) On the issue of the loan taken from RFL., they have submitted that Mr. R.Lohariwala (now deceased), the erstwhile Chief Executive Officer of the CD, handed over the original title deeds of the disputed property to maintain sufficient security cover. However, this was done without the consent or knowledge of Respondent No. 1. As a result, no charge was created on the said property.
- e) Respondent No.3, Ms. Sujatha Chatterjee, has taken an additional plea, stating that she was not part of the CD when the said agreement was executed and only joined the CD in the year 2018.

5. Counter of Respondent No.4 (Mr.Akhil Ahmed):

- a) It is submitted that he has paid the entire consideration of Rs.2,05,00,000/- through the bank account of the CD.
- b) It is claimed that he was not aware of the CIRP and liquidation proceedings. Upon learning about these proceedings, he filed IA No. 641 of 2021 for the execution of the sale deed.

6. Counter of Respondent No.5 (Religare Finvest Ltd):

a) It is submitted that Respondent No. 5 agreed to grant a loan facility of Rs.10,00,00,000/- to the Corporate Debtor as per the sanction letter dated 26th December 2013, and the loan agreement was executed on 11th January 2014. The title deeds of the disputed property were handed over to Respondent No. 5 to provide additional security for the loan advanced, in accordance with the terms and conditions of the agreement. In the letter dated 23.01.2014, the CD explicitly stated that it had handed over five (5) original title deeds to the replying Respondent. Therefore, there was no violation of the terms and conditions of the agreement.

II. IA No.641 of 2021:

7. Application

a) This Application has been filed by Mr.Akhil Ahmed and his wife Ms.Tarannum for the execution of the sale deed of the disputed property in their favour in accordance with the sale agreement dated 23.12.2013 as the entire sale consideration has already been paid. It is submitted that the payments along with interest have been deposited into the company's account on the instructions of Mr.Sunil Krishna Khaitan, Respondent No.2, who was also one of the Directors of the Company. This is clear from the statement of account (**Annexure A-3** of the Application).

8. Counter of Respondent No.2 (Mr.Sunil Krishna Khaitan)

a) It is submitted that payment of Rs.40 lakhs only was made before 31.12.2014. Some more amount totalling Rs.1.37 crores was paid till 15th September, 2015. Thus, making total payment of Rs.1.77 crores (including

advance of Rs.40 lakhs) was paid till 16th July, 2014 as against the sale consideration of Rs.1.81 crores.

- b) The Applicants did not pay the agreed amount with interest @18%. The Applicants remitted only Rs.1.77 crores into the account of the CD till 15th September, 2015. When the entire amount was not received, the CD was right in not registering the sale deed in favour of the Applicants. The payment of Rs.28 lakhs was made by the Applicants in the personal accounts of various persons as detailed in para No.6 of the Reply. However, no instructions were given to the Applicants to make payment in the accounts of those persons.
- c) The Applicants were fully aware of the liquidation proceedings as is clear from the averments made in the Application.

9. Counter of Respondent No.1 (Liquidator)

- a) The Respondent No.1 has reiterated the stand already taken in IA No. 508 of 2021. In addition, it is submitted that agreement does not transfer the title of the property.

10. Findings:

- a) The CD was admitted into the CIRP on 28.11.2018, and prior to that, Mr. R.Lohariwala served as its CEO until his demise in November 2018. The CD was the owner of the disputed property, and the original title deeds were handed over to RFL on 23.01.2014 in consideration of a financial facility sanctioned on 26.12.2013. The handing over of title deeds constitutes an Equitable Mortgage under Section 58 of the Transfer of Property Act, 1882, which is a valid and recognized mode of creating

security. The Facility Agreement executed on 11.01.2014 already provided for the creation of such security, and therefore, RFL holds a legitimate mortgage interest over the property.

- b) With regard to the debt owed to RFL, it has already submitted its claim before the Liquidator. The claim is to be dealt with in accordance with the applicable provisions of the IBC, 2016, and the rules prescribed thereunder.
- c) As for the agreement of sale dated 23.12.2013, the matter of seeking its specific performance or damages falls within the jurisdiction of the civil court. Therefore, this document is being assessed solely in relation to its relevance in the present insolvency proceedings.
- d) Agreements for the sale of immovable property can be oral or written, but their legal enforceability depends on various factors, including the nature of the contract, the Indian Contract Act, 1872, the Transfer of Property Act, 1882, and the Registration Act, 1908. An oral agreement for the sale of property is legally valid under contract law but not always enforceable due to evidentiary issues. While a sale agreement can be oral or written, a purchaser can only invoke Section 53A of the Transfer of Property Act for protection of his possession if the agreement is registered. After the amendment of the Registration Act, 1908 (Amendment of 2001), an unregistered sale agreement cannot be used to claim protection under Section 53A. This was done to curb fraudulent transactions and ensure legal clarity in property dealings. [See *Ameer Minhaj vs. Dierdre Elizabeth (Wright) Issar, (2018)7 SCC 639*]

- e) The agreement in question is in writing but remains unregistered. Therefore, the alleged purchasers are not entitled to protection under Section 53A of the Transfer of Property Act.
- f) The sale agreement dated 23.12.2013, executed by Mr.R.Lohariwala, raises concerns regarding its validity and authorization. The agreement was unregistered and executed just three days before the loan facility was granted by RFL. There is no evidence that the CD authorized Mr. R.Lohariwala to execute such an agreement, and it was not referenced in the loan transaction or when the title deeds were handed over on 23.01.2014. Given that this document was executed by a person who is no longer alive and it is unregistered, there should be clear evidence that the company had duly authorized him to execute such an agreement. However, such evidence is lacking.
- g) About the payment of sale consideration, it is stipulated in the agreement that out of total sale consideration of Rs.1.81 crores, with the balance of Rs.1.61 crores to be paid by 15.06.2014, extendable by one month. Failure to pay would render the agreement null and void. However, the payment was not made by 15.07.2014, and Mr. Akhil Ahmed sought an extension until 31.12.2014, which was also not complied with. It is also not clear to whom such extension application was given.
- h) However, Mr. Sunil Krishna Khaitan, a Director of the CD, admitted to receiving Rs. 1.77 crores by 15.09.201, but these payments were not verified by the Liquidator. Therefore, the full payment was not made within the stipulated timeframe, and although Mr. Sunil Krishna Khaitan admitted receipt of Rs.1.77 crores till 15.09.2015, the remaining Rs.28 lakhs was

deposited into accounts of unrelated persons after the CIRP and this was also without the Liquidator's consent.

- i) The conduct of the Liquidator is also questionable. He has not verified about the correctness of the agreement or the payments as per the assertion of Akhil Ahmad or Sunil Kumar Khaitan. He has relied on physical possession of the alleged purchasers despite the agreement not stipulating possession transfer before full payment, and attempted to create evidence by claiming the discovery of a cheque of Rs. 28 lakhs in the drawer of Mr. R.Lohariwala more than two years after CIRP began, though the cheque was not encashed. The cheque for Rs.28 lakhs was seemingly used to cover up the pending payment.
 - j) Whatsoever, since the sale agreement remains unregistered and the entire sale consideration not paid, the alleged purchasers cannot claim protection under Section 53A of the Transfer of Property Act, 1882. Their only remedy is to file a claim for any payments made before the Liquidator in accordance with the IBC.
 - k) Thus, the disputed property is part of the liquidation estate, and the alleged purchasers must vacate the property. Regarding the usurpation of sale consideration by ex-directors, there is no direct evidence on record that the part payment of Rs.1.77 crores was misappropriated by them.
- 11.** Accordingly, IA(IBC)/641 of 2021 in CP(IB) No.326/7/HDB/2018 is dismissed and IA(IBC)/508 of 2021 in CP(IB) No.326/7/HDB/2018 is allowed with the following directions:
- (i) Religare Finvest Ltd. is directed to hand over the title deeds of the disputed property to the Liquidator within 30 days.

- (ii) The Liquidator is directed to take possession of the disputed property.
- (iii) If the possession of the property is with Mr. Akhil Ahmed and Ms. Tarannum, they are directed to hand over the possession to the Liquidator within 30 days.

Sd/-
(Sanjay Puri)
Member(Technical)

Sd/-
(Rajeev Bhardwaj)
Member (Judicial)

Vinod