

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.7420 of 2023

ATLANTI SPINNING AND WEAVING MILLS LIMITED

APPELLANT

VERSUS

DOLLY INVESTMENT COMPANY PRIVATE LIMITED

RESPONDENT

O R D E R

1. Heard learned counsel for the parties at length.
2. This appeal under Section 62¹ of the Insolvency Bankruptcy Code, 2016² impugns the order dated 2.8.2023 passed by National Company Law Appellate Tribunal³ dismissing the appeal of the appellant preferred under Section 61 against the order of National Company Law Tribunal⁴ dated 28.9.2022 by which application of the appellant, to declare sale transaction dated 11.08.2008 (at places incorrectly mentioned as 15.08.2008) in favour of respondent as void and fraudulent, was dismissed.

3. M/s Atlanti(c) Spinning and Weaving Mills Ltd. i.e., Corporate

1 **1 Appeal to Supreme Court.**— (1) Any person aggrieved by an order of the National Company law Appellate Tribunal may file an appeal to the Supreme Court **on a question of law** arising out of such an order under this Code within five days from the date of receipt of such order.

(2) The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within forty-five days, allow the appeal to be filed within a period not exceeding fifteen days.

- 2 2 IBC
- 3 3 NCLAT
- 4 4 NCLT

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Deepak Gupta
Date: 2023.08.12
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Reason: I am not a party to this case

Debtor⁵ was brought under Corporate Insolvency Resolution Process⁶ vide order dated 9.10.2018. CIRP was not successful. As a result, vide order dated 09.01.2020, NCLT ordered for liquidation of CD, and appointed a liquidator (i.e., the appellant).

4. The liquidator filed an application to declare the sale transaction dated 11.8.2008 executed by CD in favour of respondent as void and fraudulent, inter alia, on the following grounds:

- (a) Sale was to a related party.
- (b) Sale was without consideration.
- (c) Sale was fraudulent to defraud creditor.

5. The materials placed on record, inter alia, revealed that the subject matter of impugned sale transaction was purchased for Rs.50 lacs by CD in an auction held in the year 1989. The sale deed executed on 11.08.2008 by the CD in favour of respondent recited that sale was being executed to honour the agreement of 1989 whereunder entire sale consideration was paid to and received by the CD. Upon consideration of the materials placed before it, NCLT concluded that liquidator failed to discharge its burden of proving that sale was without consideration to defraud creditors. The reasons for the aforesaid conclusion were summarized in paragraph 19 of NCLT's judgment, which is extracted below:

"19. We hereunder summarize our reasons for the above conclusions:

5 5 CD
6 6 CIRP

- (i) The agreement to sell the subject property is dated 15/05/1989 and the registered sale deed is dated 11/08/2008. Admittedly, the sale at the first place, was pursuant to the permission granted by the Hon'ble High Court of Judicature, Goa Bench, to Bank of Baroda, in the year 1989. The letter of the Senior Manager, Bank of Baroda dated 06.09.1989 addressed to the corporate debtor clearly states that the bank had received an amount of rupees 37.5 lakhs vide banker's cheque number 455053 issued by Bank of India towards balance due of the bid.
- (ii) The audited financials of the respondent for financial year 2008-09 at page 110 of the application also discloses payment of the balance consideration of rupees 37.5 lakhs on behalf of the respondent in connection with the purchase of the subject property under the registered sale deed dated 11.8.2008.
- (iii) The property sold under the impugned sale transaction was admittedly unencumbered as on the above dates.
- (iv) No record has been placed before us by the petitioner to show the alleged indebtedness of corporate debtor other than to Bank of Baroda and that liabilities of the corporate debtor are far in excess of its assets as on the above said dates.
- (v) On the other hand, the notice dated 4th September 2009 issued by Bank of Baroda the lenders of the vendor/ corporate debtor under section 13(2) of the SARFAESI Act clearly discloses the corporate debtor has other valuable movable and immovable properties charged to the Bank.
- (vi) Thus, even the traces of placing the corporate debtor under insolvency as on 15/5/1989 and 11/8/2008 respectively, when the agreement to sell and the registered sale deed were entered and executed, (do not) exist. {Note: It appears that words '(do not)' are inadvertently missing in the typed copy annexed}
- (vii) The presumption under law that 'a registered document' is validly executed which applies with all its force to the sale transaction dated 11/8/2008 in this case is not rebutted by the applicant.
- (viii) The ruling in Dahiben versus Arvindbhai Kalyanji

Bhanusali (Gajra), through LRs and others, 2020 SCC Online, wherein it was held that,

"In view of the law laid down by this court, even if the averments of the plaintiffs are taken to be true, that the entire sale consideration had not in fact been paid, it could not be a ground for cancellation of the sale deed. The plaintiffs may have other remedies in law for recovery of the balance consideration but could not be granted the relief of cancellation of the registered sale deed."

squarely applies to this case.

- (ix) Declaration of the Account of the borrower as Non-Performing Asset (NPA) and issuance of notice under section 13 (2) of the SARFAESI Act, cannot be termed as the acts in contemplation of insolvency of the borrower, as the purpose of a notice under section 13 (2) of the SARFAESI Act, is the recovery whereas the object of IBC is not recovery but time bound resolution. While a borrower on receipt of a notice under section 13 (2) of the SARFAESI Act, can always get over from the status of NPA either by pumping necessary funds or by seeking restructuring of the facilities, besides the charged assets can also be alienated post and pre notice under section 13 (2) of the SARFAESI Act, however, with the written consent of the Lender.
- (x) Declaration of account of the borrower as NPA by itself will not give rise to cause of action for initiation of CIRP against the borrower as the default in repayment of the debt due by the corporate debtor is the sine qua non, for initiation of CIRP against the Corporate Debtor.
- (xi) Therefore, the sole ground repeatedly canvassed before us by the liquidator that in anticipation of declaration of the account of the borrower/corporate debtor herein as NPA, the corporate debtor has entered into agreement to sell and the registered sale deed with the respondent, as such the present application deserves to be allowed, is without any merit, substance or force."

(Emphasis supplied)

6. Aggrieved by the order of NCLT, the appellant filed an appeal before NCLAT. The thrust of the submission before NCLAT was

that there is no evidence worthwhile to demonstrate that respondent had the money or that it paid the consideration for sale to the CD, therefore, it was nothing but a fraudulent sale. It was also argued that the proof of payment of consideration filed by the respondent was a letter dated 25.5.1989 which was on the face of it bogus, therefore adverse inference ought to have been drawn against the CD in respect of receipt of sale consideration.

7. NCLAT did not accept the submissions, inter alia, on the grounds that-- (a) recital in the sale deed disclosed payment of sale consideration to the CD; (b) sale deed being a registered document would raise a presumption in respect of its due execution therefore, burden would be on one who seeks to rebut that presumption; (c) no documentary evidence is on record that transaction is a fraudulent one; and (d) auditor's financial statement of 2008-2009 reflects execution of sale deed in favour of respondent.
8. Assailing the impugned judgment and order(s) of NCLT and NCLAT, learned counsel for the appellant submitted:

- (a) When parties lead evidence, question of burden of proof loses its significance. Respondent's case is that Rs.50 lakhs was paid to CD. To prove that respondent produced a letter dated 25.5.1989 of CD acknowledging receipt of Rs.50 lakhs from the

respondent. This letter was prepared on a letter head of CD which disclosed mobile number of CD, when, in 1989, no mobile phones existed in India. Thus, letter was forged and this fact escaped notice of NCLAT. In absence of any other documentary evidence, payment of sale consideration was not proved. Once such was the position, the sale on the face of it was fraudulent and, therefore, both NCLT and NCLAT erred in not declaring it void.

- (b) The balance sheet of respondent for 2008-09 though discloses purchase of land at Goa (i.e., subject matter of impugned sale) but it was a self-serving document to show that Rs.50 lakhs was borrowed in financial year 2008-09 from Shivalika Leasing & Finance Ltd. If that was so, then how money was paid to CD in 1989 as mentioned in the receipt dated 25.5.1989. This clearly shows that no sale consideration passed from respondent to CD.
- (c) Admittedly, receipt of payment of auction price of the property was issued in favour of CD; the available record of CD indicated that it had the financial capacity to pay, therefore the case set up by respondent that it funded the purchase is bogus.
- (d) As all the aforesaid circumstances were not properly discussed and analyzed either by NCLT or NCLAT, the impugned order(s) rejecting the prayer to declare sale

transaction void are bad in law.

9. Per contra, learned counsel for respondent supported the judgment of NCLT and NCLAT and highlighted that it is proven on record that in 1994 CD approached the markets for raising funds. In that context, a prospectus was issued for collection of funds wherein information was given that though CD had purchased the property (i.e., subject matter of impugned sale) but the said property was already sold to a company in which the Directors were interested. This document, according to learned counsel for respondent, clinches the issue that the disputed property was subject to an agreement for sale and consideration thereof stood paid and, therefore, that property was excluded from the properties of the CD. The above document, coupled with recital in the sale deed, according to the respondent, establishes that sale consideration was paid. It was also submitted that there existed no material on record that in the year 2008, or any time prior to it, when sale was executed, there were any suits or claims of creditors pending against CD to suggest that the sale was made to defraud the creditors. Lastly, it was submitted that NCLT and NCLAT have drawn their conclusion on appraisal of materials/ evidence placed on record therefore, the issue of fraudulent sale being a question of fact, no question of law arises for adjudication in exercise of powers under section 62 of IBC.

10. We have considered the rival submissions and have perused the materials on record. Before we proceed to address the rival submissions it would be useful to notice Sections 66⁷ and 67⁸ of IBC under which the appellant filed the application to declare the sale void. Sub-section (1) of Section 66 makes it clear that before consequential directions as contemplated under sub-section (1) of Section 66, or under Section 67, are issued a finding would have to be recorded that the business of the corporate debtor has been carried on with the intent to defraud creditors of the corporate debtor or for any fraudulent

7 **7 Section 66. Fraudulent trading or wrongful trading.** – (1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor **has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose**, the adjudicating authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

(2) On an application made by a resolution professional during the corporate insolvency resolution process, the adjudicating authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if—

(a) before the insolvency commencement date, such director or partner knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and

(b) such director or partner did not exercise due diligence in minimizing the potential loss to the creditors of the corporate debtor.

(3) Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under sub-section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10 A.

Explanation.-- For the purposes of this section or director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.

8 **8 Section 67. Proceedings under section 66.**— (1) Where the Adjudicating Authority has passed an order under sub-section (1) or sub-section (2) of section 66, as the case may be, it may give such further directions as it may deem appropriate for giving effect to the order, and in particular, the Adjudicating Authority may –

(a) provide for the liability of any person under the order to be a charge on any debt or obligation due from the corporate debtor to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the corporate debtor held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf; and

(b) from time to time, make such further directions as may be necessary for enforcing any charge imposed under this section.

Explanation.-- For the purposes of this section, “assignee” includes a person to whom or in whose favor, by the directions of the person held liable under clause (a) the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration given in good faith and without notice of any of the grounds on which the directions have been made.

(2) Where the adjudicating authority has passed an order under sub-section (1) or sub-section (2) of section 66, as the case may be, in relation to a person who is a creditor of the corporate debtor, it may, by an order, direct that the whole or any part of any debt owed by the corporate debtor to that person and any interest thereon shall rank in the order of priority of payment under section 53 after all other debts owed by the corporate debtor.

purpose.

11. In the instant case, there exists no material, at least shown to us, to indicate that on 11.08.2008 when the disputed sale deed was executed a suit or claim of any creditor was pending against the CD. The materials brought on record would indicate that account of CD with the Bank was declared NPA much after the sale transaction. Moreover, that account was secured by other assets of CD as is clear from Bank's notice issued to CD under Section 13(2) of SARFAESI Act. The aforesaid aspects were noticed by NCLT in paragraphs 19 (iv) and (v) of its judgment extracted above and learned counsel for the appellant could not point out any material on basis whereof the correctness of those observations could be doubted. Admittedly, CIRP proceedings commenced in 2018, therefore, in absence of cogent material on record, it is difficult to conceive that in the year 2008 the sale was made to defraud the creditors. To prove that sale was with a view to defraud the creditors very heavy burden was on the liquidator which, according to NCLT and NCLAT, he failed to discharge.

12. No doubt learned counsel may be right in pointing out that letter dated 28.5.1989 acknowledging receipt of Rs.50 lakhs by CD appears doubtful because it reflects mobile number when, by that time, mobile telephony might not have commenced. But this alone cannot be a ground to hold that no consideration was paid particularly, when CD in its prospectus issued in 1994 for

raising funds acknowledged transfer of the land in question in favor of the respondent. The above document corroborates the recital in the sale deed which, in turn, corroborates Note 2 in the balance sheet of the respondent of 2008-09.

13. The argument that balance-sheet of 2008-09 was fudged only to show availability of funds for purchase of land is too far-fetched to be accepted, particularly, when no material is placed to demonstrate as to why such act would be done when no creditor's claim has been shown to be pending before any Court of law by that time. Insofar as SARFAESI Act proceedings were concerned they were initiated vide notice dated 4.9.2009 in respect of other assets of the CD. Interestingly, from the said notice, it appears, the advances by a consortium of Banks to the CD were made not before 2004, which was 10 years later to the prospectus of 1994 wherein the disputed property was reflected as already sold.
14. Insofar as lack of proper evidence to show payment by the respondent to CD is concerned, suffice it to say that more than a decade had passed since the date of sale before commencement of CIRP, and nearly three decades had passed since the date of alleged agreement for sale, in such circumstances, lack of old records with the respondent will not raise an adverse inference to the extent that it overrides the overall burden which lies on the liquidator to prove that transaction was fraudulent with the intent to defraud the creditors.

15. The argument that Note 2 in the balance sheet of the respondent for the year 2008-09 reflects arrangement with Shivalika Leasing and Finance Limited for sundry credit of Rs.50 Lakhs therefore availability of requisite funds with the respondent in 1989 becomes doubtful, is not acceptable because consideration need not be provided by the promisee itself, it may be by any other person on its behalf. What clinches the issue is own document of the CD i.e., the prospectus issued in 1994, which reflects a sale of the property in question to a Company in which the directors had an interest. This document fortifies the recital in the impugned sale deed executed in favour of the respondent in the year 2008. In these circumstances, if both NCLT and NCLAT have concurrently taken the view that no case of fraudulent transfer is made out, it is a plausible view which does not raise any question of law as to warrant an interference under section 62 of IBC. The appeal is, accordingly, dismissed.

16. Pending application(s), if any, shall stand disposed of.

.....J.
[MANOJ MISRA]

.....J.
[SANDEEP MEHTA]

New Delhi;

07th August 2025

ITEM NO.103

COURT NO.15

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 7420/2023

ATLANTI SPINNING AND WEAVING MILLS LIMITED

Appellant(s)

VERSUS

DOLLY INVESTMENT COMPANY PRIVATE LIMITED

Respondent(s)

IA No. 248264/2023 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES

IA No. 227395/2023 - STAY APPLICATION

Date : 07-08-2025 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MANOJ MISRA
HON'BLE MR. JUSTICE SANDEEP MEHTA

For Appellant(s) :

M/S. Dua Associates, AOR
Mr. Ramakrishnan Viraraghavan, Sr. Adv.
Mr. Munawwar Naseem, Adv.
Mr. Jaskran Singh Bhatia, Adv.

For Respondent(s) :

Mr. Mukul Rohatgi, Sr. Adv.
Ms. Misha Rohatgi, AOR
Mr. Ankur Goel, Adv.
Mr. Nakul Mohta, Adv.
Mr. Saket Singh, Adv.
Mr. Ayush Kashyap, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. Appeal is dismissed in terms of the Signed Order placed on the file.
2. Pending application(s), if any, shall stand disposed of.

(RASHI GUPTA)
COURT MASTER (SH)

(SAPNA BANSAL)
COURT MASTER (NSH)