

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 2373 of 2024

&

I.A. No. 8905 of 2024

IN THE MATTER OF:

Rahat Hussain

...Appellant

Versus

Divyesh Desai & Ors.

...Respondents

Present:

For Appellant : Mr. Akhilesh Shrivastava, Mr. Rishav Ranjan, Mr. Akash Sharma and Ms. Akriti Singh, Advocates.

For Respondents : Mr. Tishampati Sen, Mr. Ashish Parwani, Riddhi Sancheti, Mr. Anurag Anand, Ms. Gitika Makhija and Mr. Mukul Kulhari, Advocates for R-1.

O R D E R
(Hybrid Mode)

07.01.2025: Heard Counsel for the Appellant.

2. This Appeal has been filed against an Order dated 04.10.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench – I) in MA 1423/2019 in C.P. (IB) No. 1339/MB/2019. The IA was filed by the Liquidator under Sections 43, 44, 66 & 67 of the Insolvency and Bankruptcy Code, 2016 (for short ‘The IBC’), which Application has been allowed and the transaction has been held to be a fraudulent and not conveying any rights or interest of the Corporate Debtor in favour of the Appellant.

3. Learned Counsel for the Appellant challenging the Order submits that by an Agreement executed in 2006 for an amount of Rs.4,00,000/-, the Appellant has acquired rights on the shop in question which was taken from one Precision Fasteners Private Limited. It is submitted that none of the

documents including the documents executed document i.e., Sale Agreement for shops dated 07.09.2006 in favour of the Appellant was registered. It is submitted that property in question were part of the Government grant hence it was not required to be registered.

4. Learned Counsel for the Respondent submits that this property was always shown in the records in the name of the Corporate Debtor and the Promoters/Directors of the Corporate Debtor themselves have pleaded before the Adjudicating Authority that there was no authority in favour of the Executive Director who is claimed to have executed a Sale Agreement. He submits that there is no right in the Appellant and the entire CIRP is concluded. The Order has been passed by the Adjudicating Authority to handover the possession of the shops by the Appellant.

5. We have considered the submissions of Counsel for the Parties and perused the record.

6. Annexure D which is the Sale Agreement for shops dated 07.09.2006 which has been brought on the record by the Appellant and is the basis of rights of the Appellant admittedly is an unregistered document.

7. Adjudicating Authority in the Order impugned has referred to the Amendment Act 2001 inserted vide Act 48/2001 in Section 17(1A) of the Registration Act which required the compulsory registration of any document conveying title.

8. The submission of the Appellant that none of the documents are being registered by the Government since its part of the Government grant does not

appeal to us. The Appellant is claiming right on the basis of the Sale Agreement which Aale Agreement is admittedly unregistered and executed on a stamp of 20 rupees. The Promoter/Director has also pleaded before the Adjudicating Authority that the Executive Director from who it is claimed that he has executed the document was not authorised. The fact that the property is shown in the records in the name of the Corporate Debtor, Liquidator has every right to take possession of the shop on which the Appellant could not prove any title. The Appellant on the basis of the unregistered agreement to sell, cannot claim to have acquired any title.

9. Learned Counsel for the Respondent rightly relied on the Judgment of the Hon'ble Supreme in the matter of **'Shakeel Ahmed Vs. 'Syed Akhlaq Hussain'** in **Civil Appeal No. 1598/2023**, wherein Paragraph 10 of the Judgment following has been laid down:

"10. Having considered the submissions at the outset, it is to be emphasized that irrespective of what was decided in the case of Suraj Lamps and Industries(supra) the fact remains that no title could be transferred with respect to immovable properties on the basis of an unregistered Agreement to Sell or on the basis of an unregistered General Power of Attorney. The Registration Act, 1908 clearly provides that a document which requires compulsory registration under the Act, would not confer any right, much less a legally enforceable right to approach a Court of Law on its basis. Even if these documents i.e. the Agreement to Sell and the Power of Attorney were registered, still it could not be said that the respondent would have acquired title over the property in question. At best, on the basis of the registered agreement to sell, he could have claimed relief of specific performance in appropriate proceedings. In this regard, reference may be made to sections 17 and 49 of the Registration Act and section 54 of the Transfer of Property Act, 1882."

10. We thus are of the view that no error has been committed by the Adjudicating Authority in allowing the Application filed by the Liquidator and directing the Appellant to handover the possession declaring the transaction invalid and without transferring any title.

The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

himanshu/nn