IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-507
IB-2083/ND/2019
(1) IA/1153/2021
(2) IA/2715/2020
(3) IA 687/2021
(4) IA/565/2021

IN THE MATTER OF:
M/s Modern Credit Pvt Ltd ....**Applicant**
V/s.
M/s KPG International Pvt Ltd ....**Respondent**

SECTION
U/s 7 IBC **Order delivered on 27.09.2021**

CORAM:
SHRI ABNI RANJAN KUMAR SINHA
HON'BLE MEMBER (JUDICIAL)

SHRI K.K. VOHRA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:
For the Applicant : Abhishek Anand, Adv. and Akshay Maloo, Adv. for the Resolution Applicant
For the Respondent :

ORDER

IA/1153/2021:-

Ld. Counsel for respondent no. 1 to 3 submits that against the order of closure of right to file the reply, the respondents preferred an appeal before the Hon'ble NCLAT and the Hon'ble NCLAT vide order dated 08.09.2021 in Company Appeal No. 693/2021 has allowed the appeal and directed the NCLT, the reply filed by the respondents may be placed on the record but that order has not been placed on the record. Therefore, the Ld. Counsel for respondent no. 1 to 3 is directed to place the order passed by the Hon'ble NCLAT in Company Appeal No. 693/2021 on record within one week from today.

List the matter on **20.10.2021.**

IA/2715/2020:-

By filing this application, the applicant has prayed for following reliefs:-

a. ***Allow the present application.***
b. ***Direct the respondents/Suspended Directors to assist and cooperate with the IRP and completing the CIRP process under the Code and notice to create any kind of hinderance & from creating nuisance value in CIRP.***
c. ***Direct the Suspended Directors not to leave country for any purpose till completion of CIRP and assist and cooperate with the IRP and completing the CIRP process under the Code and not to create any kind of hindrance & from creating nuisance value in CIRP.***
d. ***Direct the Transport Department of NCT of Delhi Government not to transfer Car BMW having Registration No. DL8CAR5582 and other Mercedes E200CGIA car having Registration No. HR26CZ2277 in any other person name without approval from NCLT as both card belong to Corporate Debtor.***
e. ***Direct Ministry of External affairs to revoke passport issued in the name Gaurav Mahendru, suspended Director and not to issue any Visa to him.***
f. ***Pass any such other order/directions as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances.***

Heard. Ld. Counsel for the applicant as well as respondent and perused the averments made in the application.

Ld. Counsel for the applicant submits that the respondent has already handed over both the Cars as referred to in Prayer (d).

He further submits that the respondent had already left the country (India). So, considering this submissions, in our considered view, so far the Prayer (c) and (d) are concerned, since, both the cars have already been handed over and the respondents have already left the country (India). Therefore, these two prayers have becomes infructuous.

So, far Prayer (d) is concerned, as informed by the Ld. Counsel for the respondents that he has already handed over the financial statement but Ld. Counsel for RP submits that the complete records have not been handed over as yet.

Therefore, considering this, we direct the respondents to furnish all the required information within 15 days from today failing which RP is directed to **initiate criminal proceedings** against the respondents under the provision of law.

With this, the present application i.e. **IA/2715/2020 stands disposed of.**

IA 687/2021

List this IA on **20.10.2021**.

IA-565/2021:-

By filing this application, the applicant RP has prayed for the following reliefs:

> ***a) Allow the present applicaton and issue necessary directions to Sub-Registrar, Revenue Authority for registration of the property- B-354, Mangolpuri Industrial Area, Phase-I, New Delhi - 110083 in favor of the Corporate Debtor-KPG International Pvt. Ltd. from KPG Industries.***
>
> ***b) To authorize any person to execute Title Deed/Transfer Deed on behalf of M/s KPG Industries, the Proprietorship Firm of Mr. Gauarav Mahendru.***
>
> ***c) Pass any other order as deemed fit and proper by this Hon'le Tribunal in the facts and circumstances of the case.***

Heard the Ld. Counsel appearing for the applicant and perused the averments made in the application. Ld. Counsel appearing for the RP referred to an agreement dated 16.12.2016, at Page 24 of the application and submits that in pursuance of that agreement, a direction may be given to the District Sub-Registrar, Respondent No. 1 to execute and Register the sale deed in favour of the Corporate Debtor. He further submits that the fact of take over of M/s KPG Industries by KPG International Private Limited was also clarified by the Chartered Accountant which is Annexure A-3 of the application. He further submits that the property was also shown in the financial statement of the Corporate Debtor for the Financial Year 2017-18 and the same is shown as fixed asset of the Corporate Debtor. He further submits that the Oriental Bank of Commerce (now Punjab National Bank) sanctioned certain credit facilities in the name of the Corporate Debtor in Feb 20, 2017 and the said property was mortgaged by Mr. Gauarav Mahendru the Suspended Director of the Corporate Debtor and the proprietor of M/s. KPG

Industries as collateral security for these facilities. He further submitted that now the Suspended Board of Director of Mr. Gauarav Mahendru is out of India, so, the District Sub-Registrar, Respondent no. 1 may be directed to execute and register the sale deed, in favor of the Corporate Debtor.

In course of hearing, Ld. Counsel appearing for the Resolution Applicant Mr. Abhishek Anand submits that this property is included in the Resolution Plan, as it is shown as the asset of the Corporate Debtor in the Information Memorandum published by the RP. He also share a judgment of Hon'ble NCLAT in Company Appeal (AT) 995/2019 decided on 04.03.2021 and submits that in this matter, the Hon'ble NCLAT has dismissed the application of the promoter, on the ground that the said property was mortgaged and the bank had taken possession of the property under the SARFAESI Act. He further submitted that in this matter also the property is shown under the Resolution Plan, so, he is supporting the prayer of the Resolution Professional.

On the other hand, Ld. Counsel appearing for the respondent no. 2, Mr. Kamal Chaudhary opposed the prayer on the ground that the property do not belong to the Corporate Debtor.

In the light of submissions made on behalf of the parties, now we consider the prayer of the Applicant. Admittedly, the decision upon which Mr. Abhishek Anand, Advocate appearing for the Resolution Applicant has placed reliance, in that matter the property was mortgaged by the promoters and the bank took the possession of the property and enforced the security under Section 13 of the SARFAESI Act and when that property was included under the Resolution Plan then the Promoter/Suspended Board of Director had preferred Appeal before the Hon'ble NCLAT, and challenged on the ground that that property never belonged to the Corporate Debtor. The Hon'ble NCLAT after considering the submissions, rejected the contention of the promoters and dismissed the appeal.

Whereas in the case in hand , admittedly, the possession of the property has never been taken up by the Oriental Bank (Punjab National Bank). Rather, the prayer of the applicant is based on the basis of an agreement executed in between the parties. It is seen the present application is filed with a prayer to direct the District Sub-Registrar, Respondent no. 1 to execute and register the sale deed, on the basis of an agreement dated 16.12.2016.

So far the decision upon which the Resolution Applicant has placed reliance, the facts of that case is different from the case in hand. Therefore, that decision is not applicable here.

At this juncture, we would like to refer Section 54 of the TP Act which defines the sale and the procedure how the sale made. The said Section also defines the contract for sale same is also quoted below:-

Section 54 in The Transfer of Property Act, 1882

> ***54. "Sale" defined.—"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Sale how made.—3Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. 1In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.***

Contract for sale.—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property.

A bare perusal of the provisions shows that a contract for sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not of itself create any interest in or charge on such property and this has also been decided by the Hon'ble Supreme Court in (2010) 8 SCC 383 that an agreement does not create any right or title in favor of intending buyer, therefore, in view of the aforesaid decisions and provision of law, we are of the considered view that merely there was an agreement to transfer the property, it does not create any right or any interest in favor of the Corporate Debtors. Therefore, merely this property is shown as an asset of the Corporate Debtor and it is included under the Resolution Plan submitted by the Resolution Applicant, in our considered view, on this ground alone, we

cannot direct the District sub-Registrar, Respondent no. 1 to execute and register a sale deed in favor of the Corporate Debtor. The remedy available to the Resolution Professional is to file an application before Competent Court for the specific performance of contract.

For the reasons discussed above, we are not inclined to allow the prayer of the applicant. Accordingly, the prayer of the applicant is hereby rejected. However, it is made clear that by passing this order, we have not decide the merit of agreement arrived in between the parties. The Resolution Professional is at liberty to file an appropriate case before the Competent Court under the relevant provision of law. Accordingly, the present **application is dismissed.**

Sd/-

(K.K. VOHRA)
MEMBER (T)

Sd/-

(ABNI RANJAN KUMAR SINHA)
MEMBER (J)

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