NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

CA (AT) (Ins) No. 1522 of 2026

IN THE MATTER OF:

PTC Engineering India Pvt. Ltd. ...Appellant(s)

Versus

Dharmendra Kumar Liquidator of Nipman Fasteners Industries Pvt. Ltd. & Anr. ...Respondent(s)

Present:

For Appellant(s)	:	Mr. Abhijeet Sinha, Sr. Advocate with Mr. Shashank Agarwal, Mr. Keshav Kiradro, Mr. Aridaman Raghav, Advocates.
For Respondent(s)	:	Mr. Sumant Batra, Sr. Advocate with Mr. Vinod Chaurasia, Mr. Sarthak Bhandari, Ms. Riya Kaur Arora, Mr. Aditya Jain, Advocates for R-1. Mr. Harshit Khare, Mr. Prafful Saini, Mr. Ayuj Aggarwal, Advocates for R-2.

With
CA (AT) (Ins) No. 1523 of 2026

IN THE MATTER OF:

PTC Engineering India Pvt. Ltd. ...Appellant(s)

Versus

Dharmendra Kumar Liquidator of Nipman Fasteners Industries Pvt. Ltd. & Anr. ...Respondent(s)

Present:

For Appellant(s)	:	Mr. Shashank Agarwal, Mr. Keshav Kiradro, Advocates.
For Respondent(s)	:	Mr. Sumant Batra, Sr. Advocate with Mr. Vinod Chaurasia, Mr. Sarthak Bhandari, Ms. Riya Kaur Arora, Mr. Aditya Jain, Advocates for R-1.

<u>O R D E R</u>
<u>(Hybrid Mode)</u>

<u>25.08.2026</u>: **<u>IA No. 5846 of 2026 in Company Appeal (AT) (Ins) No. 1522 of 2026</u>**

Above mentioned Company Appeal (AT) (Ins) No. 1522 of 2026_has been filed by the appellant under Section 61 of the Insolvency and Bankruptcy Code, 2016 within (Code) against the order dated 04/08/2026 (impugned order) passed by the Learned Adjudicating Authority (National Company Law Tribunal) New Delhi Bench III, in IA No. 4528 of 2023 moved by the appellant has been dismissed and the interim order granted during the pendency of the application has also been vacated.

2. The Appellant has also moved aforesaid IA No. 5846 of 2026 for grant of following prayers;

> **"a.** *Pending decision on this appeal, stay the effect and operation of the order dated August 04, 2026 ("**Impugned Order**") passed by the Adjudicating Authority (i.e. the National Company Law Tribunal, New Delhi Bench-Ill ("**Adjudicating Authority**") in I.A. No. 4528 of 2023 ("**IA 4528**") in CP (IB) No. 908 (ND) OF 2022 ("**Insolvency Petition**");*
>
> ***b.*** *Restrain the Liquidator, Mr. Dharmendra Kumar ("**Respondent No.l** ") of M/ s Nipman Fasteners Industries Private Limited ("**Corporate Debtor**") from taking any steps towards auctioning, selling, transferring, alienating, encumbering, mortgaging, creating third-party rights in, or otherwise parting with possession of the factory premises including land and building situated at Plot No, C198, Yadav Nagar Industrial Area, Bulandshahar Road, Ghaziabad, Uttar Pradesh ("**Subject Property**") till the final adjudication of the accompanying Appeal.*
>
> ***c.*** *Pass such other and further order as this Hon'ble Appellate Tribunal may deem fit in the facts and*

circumstances of the case, and in the interests of justice".

3. The aforesaid IA No. 4528 of 2023 was moved by the appellant before the Ld. Adjudicating Authority with following prayers;

> *"a. The present Application be allowed; and*
>
> *b. The factory premises (including the land and building) situated at Plot No.C-198, Yadav Nagar Industrial Area, Bulandshahar Road, Ghaziabad, Uttar Pradesh and run by the Applicant be excluded from the asset pool of the Corporate Debtor;*
>
> *c. Directions be issued to the RP/Respondent to not include the said factory premises in the Information Memorandum prepared during the corporate insolvency resolution process ("CIRP") of the Corporate Debtor as an asset of the Corporate Debtor.*
>
> *d. direct the State Bank of India ("SBI"), the Respondent No.2, to issue the 'No-Objection Certificate' for releasing the charge over the Property;*
>
> *e. directions be issued to the Respondent to take appropriate and necessary actions for execution and registration of the Sale Deed of the Property in favour of the Applicant upon receipt of the balance consideration from the Applicant;*
>
> *f. such orders may be passed, which Hon'ble Tribunal may deem fit & proper, in interest of justice and equity".*

4. Shri Abhijeet Sinha Learned Sr. counsel for the appellant submits that the appellant had entered into an agreement to sell dated 1/3/2019 with M/s Nickman Fasteners Industries Private Limited, (corporate debtor), for the purchase of the subject property for total concentration of Rs.6.31 crore and in pursuance thereof the appellant in total paid Rs.5 crore while the balance amount of Rs.1.31 crore was agreed to be paid upon the release of the bank charges over the subject property and completion of the other necessary

formalities with regard to the execution of sale deed and was put in possession of the property by the CD.

5. It is further submitted that having paid Rs. 5 Crore as part consideration and having been put in possession of the subject property, the appellant has established its factory on the property and the only thing which was required to be done was to obtain the NOC from the State Bank of India, where the property was charged and to execute the sale of deed and consequently, the appellant was treated by the CD as the owner of the property and throughout remained in uninterrupted possession of the property.

6. It is further submitted that the CD failed to obtain the requisite NOC of Bank charges and in providing requisite documents to the appellant to obtain UPSIDC's approval for transfer of property in terms of the agreement to sell and as a solution to its own wrong, in order to regularize and protect the appellant's undisturbed possession on the property and with a view to enable the appellant to obtain various licenses and approvals required for running its factory the CD proposed and the parties entered into a sub-lease agreement dated 21/9/2019 (sub-lease agreement) and it was stipulated that since the appellant had already paid rupees five crores and the balance consideration is only Rs. 1.31 crores required to be paid only upon fulfilment of the contractual obligations by the CD pertaining to the release of charge over the property, the lease rent under the sub-lease agreement was fixed as a nominal rent of Rs. 50,000 monthly.

7. It is further submitted that since the execution of the agreement to sell, the appellant is in possession of the subject property and had never been

disturbed by the CD even after commencement of the CIRP and the appellant has been operating a factory on the subject property wherein more than 200 workmen are employed and the CD is having no concern with the property since the execution of the agreement to sell and sublease agreement.

8. It is further submitted that the CD repeatedly represented to the appellant that it is in the process of obtaining the requisite NOC from the Bank and even in a meeting held on 21-05-2022 the CD informed that the debt restructuring proposal given by the CD is under consideration before the Banks and it is for this reason the proposal of obtaining the NOC is also pending with the Banks.

9. It is further submitted that appellant came to know from the sanction letter issued by the SBI on December 2, 2019, whereby the sale of the subject property was approved and the said letter was never disclosed by the CD to the applicant and also about the pendency of an avoidance application, IA number 416 of 2024, filed by the RP during the CIRP sometime in January 2024. The appellant received a possession notice dated February 2, 2023 from the SBI under Section 13 (4) of the SARFAESI Act and immediately thereafter, met with the officials of the bank and was assured that no coercive action would be taken against the appellant.

10. It is vehemently submitted that appellant is the victim of the fraud played by the CD as it was never disclosed to it that the bank had already approved the sale of the subject property on 2/12/2019 and in pursuance of the agreement to sell, the appellant had always remained ready to perform its part of the contract but it was the CD who by playing the fraud on the appellant had put the appellant in hot waters and now the factory established

by the appellant on the subject property and the future of two hundred workers employed therein are at stake.

11. It is also submitted that with regard to the same transaction, an avoidance application has been moved by the erstwhile resolution professional which is still pending for disposal before the learned adjudicating authority and without disposal of the said application and without labelling the transaction as avoidance transaction, the appellant could not be dispossessed from the subject property and if the appellant is dispossessed from the subject property, the same will cause irreparable injury to the rights of not only of the appellant but of the rights of the 200 workmen who are working in the factory, therefore by granting interim stay the operation of the impugned order be stayed and the possession of the Appellant be protected.

12. Shri Sumant Batra Ld. Sr. Counsel for the Respondent liquidator submits that originally the lease of the property in question was made by the Uttar Pradesh State Industrial Development Corporation Limited(UPSIDC) in favour of the corporate debtor for a period of 90 years and there was a clear stipulation in the lease deed that the leased property shall not be subleased to anyone without the prior consent in writing of the UPSIDC. Therefore, the agreement to sell as well as the sublease agreement is not having any sanctity in law as the same have been executed without obtaining prior permission from the UPSIDC.

13. It is further submitted that a perusal of the agreement to sell dated 1/3/2019 would clearly reflect that it was the appellant who was under the obligation to obtain all permissions/approvals for the transfer of the property and the execution of the sale deed on or before 31st July 2019 and there was

clear stipulation in the agreement itself that the agreement would stand terminated if the deal was not executed within the stipulated time and it was also specifically provided in the agreement that in any case the time up to 31st august 2019 may only be extended in any exigency and not beyond and the agreement to sell on which the reliance has been placed by the appellant, does not appears to be a genuine document and the appellant cannot rely on the same.

14. It is further submitted that as the deal did not complete within the stipulated time, therefore, in view of the various clauses of the agreement to sell, the agreement stood terminated on 31st August 2019. Elaborating further, it is submitted that as the agreement to sell stood terminated on 31st August 2019, the necessity to execute a sublease agreement arises, and it is only on this score a sublease agreement was executed on 21st September 2019 whereby the property in question was sub-leased to the appellant for a period starting from 1st October 2019 till 30th September 2020 on a monthly rent of Rs. 50,000 and thereafter the term of the sublease was not extended, and therefore the same had also terminated by the efflux of the time.

15. It is vehemently submitted that on account of the termination of the agreement to sell and also non-extension of the sublease agreement, the appellant is not having any right to remain in possession of the said property. It is submitted that in both the agreements, i.e., the agreement to sell as well as the sublease agreement, the time is the essence of the contract and therefore the same could not be executed on account of non-action of the appellant, therefore, appellant cannot take any advantage of any of the contract and is liable to be evicted from the said property.

16. It is further submitted that an interim order was granted to the appellant during the pendency of the IA No. 4528 of 2023, however, the same has also been vacated by passing the impugned order, therefore, the appellant is not having any legal right to remain in possession of the subject property. Moreover, the Auction Sale with regard to the Subject Property has concluded and the Maximum Bid of Rs. 25 Crore has been submitted by the Successful Auction Purchaser and the EMD has also been deposited and if any interim order is passed in favour of the appellant, the same shall derail the liquidation process and would be detrimental to the interest of the CD.

17. Ld. Counsel for the SBI submits that the permission to sell the aforesaid property had been given to the corporate debtor much earlier and it appears that a sham document has been prepared by the appellant in collusion with the corporate debtor and on the basis of which no right could be claimed by the appellant.

18. It is further submitted that both the documents on which the reliance has been placed by the appellant have become non-existent due to the lapse of time as the agreement to sell could only be executed till 31st August 2023 and the sub-lease deed was only made for a period of one year and therefore beyond the dates mentioned in the documents, the appellant is not having any right to remain in possession of the said property.

19. We have heard learned counsel for the parties and have perused the record.

20. We notice that there are certain facts which are admitted to the parties. It is admitted to the parties that that earlier UPSIDC has executed the lease deed of the aforesaid property in favour of the corporate debtor and thereafter

an agreement to sell dated 01.03.2019 was executed between the CD and the appellant and in pursuance of the same Rs. 5 Crore in two tranches, one of Rs. 2 Crore and another Rs. 3 Crore has been paid to the CD. It is also an admitted fact to the parties that on 21st September 2019, a sub-lease agreement was executed between the CD and the appellant. It is also admitted to the parties that an application was moved by the erstwhile Resolution Professional before the learned adjudicating authority to declare the agreement to sell as an avoidance transaction. It is also admitted that erstwhile Resolution Professional had filed an IA No. 3923 of 2023 seeking directions to the appellant to handover control and custody of the subject property to the Resolution Professional of the CD. It is also beyond dispute that during the pendency of the application moved by the appellant for exclusion of the aforesaid property from the pool of liquidation assets of the CD and an interim order was passed by the Learned Adjudicating Authority in terms that the Auction shall be conducted as per schedule, however, it shall not be given effect till the final outcome of the decision of the interlocutory applications filed by the parties. It is also not in dispute that the possession of the aforesaid property is with the appellant who had established a factory on the same and it is contended by the appellant that in the said factory about two hundred workmen are working and employed and if the appellant is dispossessed from the subject property, these two hundred persons employed there will become jobless and an irreversible injury would be caused to the appellant as well as to the workforce employed with it.

21. We have also noticed that the minutes of the meeting of date 21 May 2022 have been placed by the appellant at page No.160 of the appeal paper

book with regard to the alleged meeting held between the CD and the appellant, wherein it is recorded that due to financial stress, the CD has made some proposals with regard to restructuring of debt to the banks and the same is pending at the end of the banks and therefore the proposal of extending NOC for sale of the aforesaid property is also pending with the banks and request of the appellant is also recorded therein to expedite the process of obtaining NOC from the banks. This document has not been specifically denied by the Respondent Liquidator while Ld. Counsel for the appellant submits that this document is genuine and for this reason the respondents did not disputed it before Ld. Adjudicating Authority.

22. Various submissions have also been advanced by Learned Counsels appearing for both the parties, against each other, with regard to the fact that whether time is the essence of agreement of sell or not and also with regard to the various clauses of the agreement to sell and also accusing each other for not getting the sale deed executed for not completing the pre requirements of obtaining necessary permissions from the authorities including the NOC from the banks, in order to show that the obligation of obtaining NOC from the banks and also with regard to the other requirement to be fulfilled pertaining to the execution of the sale deed, was the obligation of other party, but these allegations and counter allegations may be decided and adjudicated at the time of final disposal of the appeal. However, it could not be denied that the possession of the appellant on the subject property was protected by the Ld. Adjudicating Authority during the pendency of the proceedings before Ld. Adjudicating Authority.

23. Thus, considering all the facts and circumstances of this case and also having an eye on the fact that the possession on the aforesaid property is of the appellant and the same was also protected during the course of the pendency of the proceedings before the Ld. Adjudicating Authority, we are of the view that appellant is having prima facie case and balance of convenience is also with Appellant and in case of dispossession the appellant will suffer irreparable loss. Therefore, we are inclined to protect the possession of the appellant till the next date of listing.

24. In view of above we direct that the appellant shall not be dispossessed from the said property situated at Plot No. C -198, Yadavnagar Industrial Area, Bulandshahar Road, Ghaziabad, Uttar Pradesh, 201009, till the next date of listing.

25. The Respondents are already represented before us. Two weeks' time is granted to them to file reply. One week thereafter shall be available to Appellant to file rejoinder.

26. List on **16.09.2026** under the caption 'For Admission (After Notice)'.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

sr/mr