

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV**

**IA 4532/ND/2023
IN
CP IB 1059/ND/2018**

IN THE MATTER OF:

CONCORD INFRASTRUCTURE PVT. LTD.

...OPERATIONAL CREDITOR/APPLICANT

VERSUS

SHUBHKAMANA BUILDTECH PVT.LTD

...CORPORATE DEBTOR/RESPONDENT

AND IN THE MATTER OF:

**ANAND SONBHADRA,
CHAIRMAN, MONITORING AGENCY
SHUBHKAMANA BUILDTECH PVT.LTD.**

...APPLICANT

VERSUS

SUNIL AGARWAL & ANR.

...PROFORMA RESPONDENTS

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on: 12.07.2024

PRESENT:

For the RP

**: Mr. Abhishek Anand,
Ms. Megha Sharma,
Mr. Nipun Gautam, Advs.**

ORDER
PER: DR. SANJEEV RANJAN, MEMBER (T)

1. This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“IBC”) read with Rule 11 of the NCLT Rules, 2016 seeking the following reliefs: on behalf of Mr. Anand Sonbhadra (Chairman, Monitoring Agency of the Corporate Debtor) ("Applicant") seeking following reliefs:

“ (a) To grant permission to the Chairman, Monitoring Professional to Auction the Porsche Car bearing Registration No. bearing Registration number "DL 1 CQ21 71”

(b) To direct the Regional Transport Office to transfer the said Porsche Car in the name of auction Purchaser, if so auctioned;

(c) Any such order that this Hon'ble Tribunal deems fit to serve the end of justice”

2. Brief facts as averred by the Applicant in the Application are –

- a) That M/s Shubhkamana Buildtech Pvt. Ltd. ("Corporate Debtor") was incorporated in the year 2006 and was engaged in the business of real estate as a builder/developer. That a Company Petition No. (IB).1059/ND/2019 under section 9 of Insolvency and Bankruptcy Code, 2016 was filed before this Adjudicating Authority by one of the Operational creditors, namely M/s Concord Infrastructure Pvt.

Ltd. for initiation Corporate Insolvency Resolution Process ('CIRP') of Corporate Debtor.

- b) That vide order dated 26.11.2018, passed by Hon'ble Adjudicating Authority, in Company Petition No. (IB).1059/ND/2019, one Interim Resolution Professional ('IRP'), was appointed. Accordingly, public announcements were made in Form A on 30.11.2018 and 07.01.2019 wherein the last dates for submission of claims were mentioned as 11.12.2018 and 12.01.2019 respectively.
- c) That it is important to mention that IRP was replaced by the Applicant vide order dated 12.02.2019 by this Adjudicating Authority.
- d) That in pursuance to the public announcement, one Canara Bank filed their claim as a financial creditor having security over the Porsche Car. It has been submitted that the Corporate Debtor had availed a Loan from Canara Bank to Purchase a Porsche Cayenne Car (Diesel car Chassis no. WP1ZBD923DLA36961, Engine no. CRCA116517). This car was hypothecated to Canara Bank and same was repossessed by the Bank on default of repayment. Subsequent to commencement of CIRP the custody of Car was handed over to the applicant by Canara Bank but the original RC was never handed over.
- e) That the resolution plan as submitted by Mr. S.K. Singhal and Mr. Sunil Agarwal (Successful Resolution Applicant) ("SRA"/Respondent) was duly approved by the CoC on 17.10.2019

by requisite voting share as per the Code. Thereafter, the resolution plan was further approved by this Hon'ble Adjudicating Authority as on 12.09.2022

- f) It has been submitted that since the registration of Porsche Car was expiring in 2023, the Applicant wrote emails seeking Canara Bank to provide no objection to sale of the secured asset and also, requested copy of the Registration Certificate ('RC')
- g) The Applicant wrote multiple emails and reminder emails to the Canara Bank vide dated 07.03.22, 21.06.2022, 04.11.2022, 07.12.2022, 18.01.2023, 27.04.2023 & 02.06.2023. Despite several emails, initially the Canara Bank was un-responsive, however, vide Email dated 06.06.2023, the Canara Bank replied that though the Porsche Car was hypothecated to the Canara Bank and the Bank had repossessed this asset from Corporate Debtor on default of EMIs, the Branch did not have the Original RC of the Porsche Car.
- h) The Successful Resolution Applicant (SRA) had filed an application before the Adjudicating Authority seeking permission to add an escalation clause to their pending Resolution Plan before it was approved. However, the same was dismissed on 12.09.2022. Subsequently, the SRA (Respondents) appealed to the NCLAT, which allowed the appeal on the basis of home-buyers decision accepting the escalation. Further, the matter was remanded back to the Hon'ble Adjudicating Authority to take a fresh decision wherein

this Hon'ble bench allowed the escalation clause vide its Order dated 26.04.2023

- i) It has been submitted by Applicant that the resolution and action regarding the sale of the Porsche Car are crucial for maximizing its value. The diesel car, registered in 2013, is set to expire in September 2023, and its value is diminishing annually, posing significant potential losses for the Corporate Debtor. Despite continuous follow-ups by the Applicant over the past year, Canara Bank has failed to provide the Non-Objection Certificate and Original RC for the Porsche Car, neglecting its statutory obligations.
- j) That the Canara Bank finally provided with the NOC dated 03.08.2023, on 04.08.2023. That post receiving the NoC from the Canara Bank, the Chairman, Monitoring Agency convened the 3rd Monitoring Committee meeting on 08.08.2023 wherein the committee resolved and authorized the Applicant to file the present application. The relevant part of the meeting is as follows:

“In Furtherance, the Erstwhile RP and the Chairman of the Monitoring Agency presented the proposal before the members of the Committee of filing an application before Hon'ble NCLT to sell/transfer the aforementioned car in response to which the SRAs, also members of Committee gave their acceptance/approval for the filing of an application, for the sale of the car/asset.”

3. The urgency to auction the car stems from the inevitable decrease in its sale value, worsened by the expiry of its registration. This situation underscores the critical need to maximize the asset's value promptly, in accordance with the provisions of the Insolvency and Bankruptcy Code (IBC). Delay in resolving these issues could lead to further depreciation of the asset, ultimately resulting in reduced returns for the stakeholders involved. Therefore, swift action is imperative to ensure that the sale is conducted expeditiously and optimally, mitigating financial losses and maximizing recovery under the prevailing legal framework.
4. The Bankruptcy Law Reform Committee Report, Nov 2015 in the executive summary notes addressed the need for speed for resolution process-

“Speed is of essence Speed is of essence for the working of the bankruptcy code, for two reasons.....

From the viewpoint of creditors, a good realisation can generally be obtained if the firm is sold as a going concern. Hence, when delays induce liquidation, there is value destruction. Further, even in liquidation, the realisation is lower when there are delays. Hence, delays cause value destruction. Thus, achieving a high recovery rate is primarily about identifying and combating the sources of delay.”

5. We have pursued the relevant paragraph of C.A.485/ND/2019 IN C.P. No. IB-1059/ND/2018 wherein the Resolution Plan was approved by this Adjudicating Authority vide order dated 12.09.2022

“The clause 3 (Monitoring and Supervision) of Chapter -XI of the Resolution Plan, provides for the monitoring committee which states

that upon the NCLT approval stage an implementation and monitoring committee comprising of Mr. Anand Sonbhadra, the present resolution professional shall be appointed as the supervisor and chairperson of the monitoring agency or as the monitoring professional to monitor and supervise the implementation of the plan. The period of implementation of the plan to be monitored by the Monitoring Professional is a period of 36 months.”

6. In **Binani Industries Limited Vs. Bank of Baroda, Company Appeal (AT) (Insolvency) No. 82 of 2018**, the **Hon’ble NCLAT** had observed that the objective of the IBC is Resolution. The Purpose of Resolution is for maximization of value of assets of the CD and thereby for all creditors. It is not maximization of value for a ‘stakeholder’ or ‘a set of stakeholders’ such as Creditors and to promote entrepreneurship, availability of credit and balance the interests. The first order objective is “resolution”. The second order objective is “maximization of value of assets” of the Corporate Debtor and the third order objective is “promoting entrepreneurship, availability of credit and balancing the interests.
7. Further, it is undisputed that the Monitoring Committee is responsible for the implementation of the resolution plan, including the sale of these Assets.
8. Therefore, in order to maximize the value of the Corporate Debtor and balance the interest of all stakeholders, we direct the Chairman of Monitoring Committee to conclude with the execution of the auction of the car – **“Porsche Cayenne”, bearing Registration No. DL1CQ2171, having specification - Chassis no. WP1ZBD923DLA36961, Engine no.**

CRCA116517 as per procedure established by law and is further directed to put it up for reporting before this Adjudicating authority after the auction sale of the Car.

9. Accordingly, in view of the above discussions, **the present application stands partly allowed.**

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (T)

Sd/-
(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)