

**THE NATIONAL COMPANY LAW TRIBUNAL
COURT V, NEW DELHI**

I.A No. 5828/2022

IN

Company Petition No. (IB) – 2165/(ND)/2019

*Under Section 66 of the Insolvency and Bankruptcy
Code, 2016, read with Regulation 9 (1) (C) IBBI
(Liquidation Regulation), 2016 and Rule 11 of NCLT
Rules, 2016.*

IN THE MATTER OF:

M/S LAXMI DIA JEWELS PRIVATE LIMITED

.... OPERATIONAL CREDITOR

VERSUS

SHREE ASHTVINAYAK GEMS & STONES PRIVATE LIMITED

.... CORPORATE DEBTOR

AND IN THE MATTER OF-

SUMAN KUMAR VERMA
LIQUIDATOR OF SHREE ASHTVINAYAK GEMS & STONES PRIVATE LIMITED
IP Regn. No. (IBBI/IPA-003/IPA-N00342/2021-2022/13657)
R-Z-26P/205E, LANE NO. 10,
INDRA PARK PALAM COLONY, NEW DELHI- 110045

.... APPLICANT

VERSUS

1. DEEPAK CHANDILA
S/O SHRI NARENDER CHANDILA
VILLAGE BADOLI, FARIDABAD,
HARYANA- 121001
2. SANJAY SINGLA
HOUSE NO. 618, SECTOR 8,
FARIDABAD, PIN- 121006,
HARYANA

3. SANDEEP KUMAR
HOUSE NO. 195, SECTOR-9,
FARIDABAD, PIN – 121006
HARYANA
4. ANIL JINDAL
S/O SHRI GIRIRAJ PRASAD JINDAL
EROS ROYALE RETREAT
CHARM WOOD VILLAGE,
PLOT NO. 2, SURAJ KUND ROAD,
FARIDABAD PIN- 121009
HARYANA

.... RESPONDENTS

Order Pronounced on: 03.07.2024

CORAM:

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)
DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Applicant:

For the Respondent:

For the SBD: Mr. R K Raman, FCA

For the Liquidator: Mr. S K Verma, Liquidator

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This application has been filed under Section 66 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 9 (1) (C) IBBI (Liquidation Regulation), 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016 by Liquidator for the act of wrongful trading of the vehicle no. HR 51, AY 5913, Car Fortuner, seeking peaceful possession of the said vehicle and relevant documents.
2. The applicant in the present application has prayed for the following reliefs: -
 - a) *Handover the peaceful possession of the vehicle HR-51, AY- 5913, CAR Fortuner along with all the relevant documents to the applicant,*

b) *Pass direction for any other relief, which may be deemed just and proper in the interest of justice.*

3. Briefly stated the facts of the case as mentioned in the instant application, which are just and necessary for adjudication, are as follows: -

- i. The instant Applicant has been appointed to act as liquidator under the provisions of Insolvency and Bankruptcy Code, 2016 (IBC) vide the order dated 24.11.2021 passed by this Adjudicating Authority. That at the time of taking over the company from his predecessor, no asset was handed over to the Applicant but after a lot of efforts, the Applicant could trace about the assets of the company and recovered the possession of the vehicles bearing registration number HR-51 AV 5013 (INNOVA), DL7 CQ-0448 (1-20), HR-51 BM-9386 (CRETA) respectively from unauthorized person, having their illegal possession but in absence of the complete record of the books of accounts, finding very difficult to trace and recover the possession of other assets of the company.
- ii. Further, the corporate debtor was the owner of the above said vehicle, registered with the Registrar of Transport Office at Faridabad. A copy of the transfer document issued by Regional Transport Office, Faridabad showing the detail of the aforesaid vehicle is placed on record as ANNEXURE A-2. That the respondents No.2 to 3 are the suspended board of the directors, whereas, the respondent No.4 is the de-facto director of the company. The afore said respondents in connivance of the respondent No.1 made a fraudulent transaction, wherein the vehicle mentioned above was sold and surprisingly, no amount has been received in the corporate debtor's account against the consideration of the aforesaid vehicle.
- iii. Further, the moment, the applicant came to know about the fraudulent transactions by the respondents, he vide his letter dated 23.06.2022 and 04.07.2022 requested the respondent no. 1 to establish the entire relevant document in connection with the sale of the aforesaid vehicle but to no avail. To settle the matter amicably in peaceful manner, the applicant got issued legal notice dated 25.08 2022 to hand over the possession of the above said vehicle as the same was sold to the respondent No.1 by the respondent No. 2 to 4 fraudulently. Surprisingly, instead of handing over the peaceful possession of the

above said vehicle, the respondent no.1 got issued reply to the above mentioned legal notice by narrating cock and bull story. A copy of the letter, legal notice and reply thereto is placed on record as Annexure A-3.

- iv. Further, it is pertinent to mention that the respondent No.2 and 3 stated in their statement that they were the directors in the company for the name sake only, rather they were employed as multitasked in the category of peon. For the sake of their service, they used to sign the document whatever being produced by the respondent No.4 only. The respondent No. 4 is the de-facto director of the company and the epicenter around whom every activity of the company was centered. A copy of the statement given by the respondent No.2 and 3 is placed on record as Annexure A-4.
- v. The applicant came to know that the respondent No.4 is in jail at Faridabad. He has been charged with the offence under section 406, 420 and 467 Indian Penal Code, FIR No SC/4225/2018, Police Station Sector 31, and Faridabad /238/2018. The charge sheet in the aforesaid FIR has been filed and the matter is pending for trial before the Additional Session Judge, Faridabad. That a perusal of the above cited facts, establishes that the above said modus operandi of the respondents is highly illegal, irregular and against the settled principles of law. The respondents are duty bound to hand over the entire asset of the corporate debtor to the applicant enabling him to proceed in accordance with the provision of the IB Code, 2016 and its applicable regulation with avowed object to maximize the asset of the company. Shockingly, the respondents have siphoned off the funds of the company and used the same for their personal and illegal purposes. They have not only transferred the vehicles of the company but also made illegal transactions causing wrongful loss to the company and its creditors and other stakeholder. Moreover, all the efforts made by the applicant to recover the vehicle in question have turned out to be fruitless, hence, the present application.

4. Briefly stated that the reply on behalf of Respondent No. 1 are as follows:

- i. The Respondent No. 1 has no relation whatsoever with the Corporate Debtor Company. Admittedly Respondent No. 1 is neither any officer nor employee nor agent nor have any business transaction with the Corporate Debtor Company.

Respondent No. 1 is not party in main petition or any of the proceedings of Corporate Debtor Company. Respondent No. 1 is a farmer from village Badoli, Faridabad, Haryana. Respondent No. 1 has no concern with the Corporate Debtor Company. In fact, Respondent No. 1 is stranger to the Corporate Debtor Company. Fraudulent trading requires that person concerned is carrying or carried the business of Company but Respondent No. 1 has no association of any kind with the Corporate Debtor Company or has never carried the business of the Corporate Debtor Company.

- ii. The Applicant himself filed an application being IA No. 5677 wherein it was stated that no book of accounts and other records of the company has been handed over by the suspended management to the Applicant/IRP. Said application was disposed of vide order dated 23.12.2022 directing the suspended management to handover the books of accounts and other records of the Corporate Debtor company to the applicant/IRP. In fact, contempt application of said order is still pending before this Adjudicating Authority. There is no record/document available with applicant/IRP as stated by himself then on what basis the present false and frivolous application has been filed. No record/supporting document or audit report or forensic audit report has been filed with the application which itself shows that application is baseless and not maintainable.
- iii. That the Applicant has made a false statement contrary to the record that suspended directors of the Corporate Debtor Company i.e Respondent No. 2, 3 and 4 have denied the acceptance of sale consideration amount. In fact, their reply states that they were office boy and had no knowledge of affairs of the Corporate Debtor Company. Even they denied knowledge of becoming directors in the Corporate Debtor Company. Respondent No. 4 director is in jail and has not filed not filed any reply. In fact, none of the directors/Respondent No. 2, 3 and 4 have denied the payment of sale consideration amount for the purchase of vehicle in question.
- iv. That vehicle/car in question was a used second hand old diesel car and the same was purchased by the Respondent No. 1 in good faith in July, 2017 against the payment of sale consideration amount of Rs. 10 lacs and Registration Certificate of said vehicle was duly transferred in his name. Said vehicle was initially

purchased by the Corporate Debtor Company in February, 2014 and same was hypothecated to Axis Bank. Infact till the issuance of No Objection Certificate (NOC) hypothecated vehicle's ownership legally vest in Bank and same can be purchased only after obtaining NOC. After the issuance of required NOC from the Financer Axis Bank, said vehicle's ownership was transferred in the name of Respondent No. 1. (Annexure A2-Pg. 12 of Application – transfer Date is 28-July-2017 while Termination of Hypothecation date is 01-August-2017 i.e after date of purchase). Since July, 2017 from its purchase Respondent No. 1 is paying all the statutory dues and other expenses including tax, insurance, pollution, service maintenance, repair etc. Respondent No. 1 has already suffered huge loss on account of as expiry of 10 years of validity of said diesel vehicle has already expired in February, 2024.

- v. The present Application has been filed under section 66 of The Insolvency and Bankruptcy Code, 2016 for Fraudulent Trading. Corporate Debtor Company Shree Ashtvinayak Gems and Stones Pvt. Ltd. deals Gems and Stones with while Respondent No. 1 has no such business transaction or other transaction with the Corporate Debtor Company. Respondent No. 1 only purchased the used second-hand diesel vehicle from the Corporate Debtor Company hence as per Section 66 of The Code Respondent No. 1 is not carrying any business or trading with the Corporate Debtor. Suspended management/Respondent No. 2, 3 and 4 are responsible and answerable to any transactions concerning the company and consequently liable to contribute to the assets of Corporate Debtor Company.
- vi. Respondent No. 1 purchased the said vehicle in July, 2017 while present application was filed in December 2022 i.e after more than 5 ½ years. Since July, 2017 the Registration Certificate (RC) of said vehicle was in the name of Respondent No. 1 and if there would have been any mala fide intention Respondent No. 1 could have sold the said vehicle. In fact, even after the receipt of legal notice from Applicant Respondent No. 1 did not sell the vehicle and reply to said legal notice was duly made. After filing of present application Respondent No. 1 appeared before this Adjudicating Authority and duly replied the said application. It ipso facto proves that Respondent No. 1 has never any kind of mala fide intentions to defraud the creditors of the Corporate Debtor Company.

- vii. Respondent No. 1 purchased the said vehicle in July, 2017 while present application was filed in December 2022 i.e after more than 5 ½ years. That the present application is even otherwise barred by law of limitation (Limitation 2 years).
5. Briefly stated that the reply on behalf of Respondent No. 2 and 3 are as follows:
- i. Mr. Sanjay Singla (Respondent No. 2) and Mr. Sandeep Kumar (Respondent No. 3) hailing from a poor family from a small village of Faridabad, had joined SRS group in the year 2008 as an office boy and is matriculate with no knowledge of company affairs, and they are unknown about the fact when they became the director of Corporate Debtor. Respondent No. 2 & 3 had signed documents and cheques simply for the reason of fact that the Corporate Debtor is an Associate company of SRS limited.
 - ii. Respondent No. 2 & 3 are brother in law of Shri Vinod Jindal who was key promoter director of SRS limited. Corporate Debtor was part of the main company SRS limited and completely controlled by directors of latter. Further, Respondent No. 2 & 3 were only the face in the company i.e. dummy director otherwise entire business operations were controlled by promoters of SRS limited. Both Respondent No. 2 & 3 are fully cooperating with other agencies such as EOW Faridabad, SFIO, CBI & Trial Courts in the investigating proceedings of SRS group.
 - iii. The NCLT Chandigarh Court has already ordered ROC Delhi to file a criminal complaint against all the directors & Key Managerial Persons(KMP's) u/s 74 of The Companies Act 2013 of Promoters of SRS Group. In compliance to the impugned order, ROC had already filed criminal case in the special court of Gurugram. Shri Anil Jindal chairman of SRS limited is in judicial custody since April, 2018 in Neemrana Jail, Faridabad. Some of the directors and KMP's have taken bail, ROC had also reported to Serious Fraud Investigation Office (SF10) in 2018 u/s 208 of The Companies Act 2013.
 - iv. In compliance to the impugned order, ROC had already filed criminal case in the special court of Gurugram. Shri Anil Jindal chairman of SRS limited is in judicial custody since April, 2018 in Neemrana Jail, Faridabad. Some of the directors and

- KMP's have taken bail, ROC had also reported to Serious Fraud Investigation Office (SFIO) in 2018 u/s 208 of The Companies Act 2013. SFIO is carrying out investigation and it is in the process of framing the final report U/S 212 of the Companies Act 2013, taking all the shell companies as a whole in its investigation.
- v. Further, some depositors had filed FIR under section 406, 420, 1208, 457,468 & 471 of the IPC before the Economic Offence Wing (ROW) Faridabad & Sh. Anil Jindal and some of the promoters of SRS Group are in judicial custody since 5th April 2018 & facing trial in these cases and they are not getting any bail. Moreover, Respondent No. 2 & 3 are innocent and were not involved in any manner in the affairs of business operations. They do not have any income as on date to bear the cost of litigation or cost of CIRP/Liquidation.
- vi. Section 211 of the Companies Act, 2013 enables the Central Government to establish an office to be called as Serious Fraud Investigation Office (SFIO) to investigate corporate fraud. Further, Section 212 (2) puts bar on any other agency to investigate the matter unless the SFIO files its Final report. Therefore, if any investigation is undergoing or proposed to be started by any other agency of CG/SG other than those of SFIO then statute directs for transfer of all records pertaining to fraud to SFIO. Further, Respondent No. 2 & 3 are not aware about existence of any Fortuner car registered with CD or its transfer to Respondent No. 1. There signatures were forged on various documents.
6. We have gone through documents on record filed and arguments advanced by the counsel for the Applicant and Respondent No. 1, Respondent No. 2 and Respondent No. 3. It is pertinent to mention that Respondent No. 4 was set as *exparte* vide this Adjudicating Authority's order dated 12.12.2023.
7. In the present case, the Applicant was appointed as a liquidator of the Corporate Debtor by this Adjudicating Authority's order dated 24.11.2021. The instant Application has been filed by the Applicant seeking handing over the peaceful possession of the vehicle HR-51, AY- 5913, CAR Fortuner along with all the relevant documents to the applicant. It is stated by the Applicant that at the time of taking over the company from his predecessor, no asset was handed over to the Applicant but after a lot of efforts, the Applicant could trace about the assets of the company.

8. Further, the Corporate Debtor was owner of the vehicle HR-51, AY- 5913, CAR Fortuner. The said vehicle was sold by Respondents No. 2, Respondent No. 3 and Respondent No. 4 to Respondent No. 1, however, no amount has been received in the corporate debtor's account against the consideration of the aforesaid vehicle. Thereafter, when the Applicant came to know about the said transaction, the Applicant vide letter dated 23.06.2022 and 04.07.2022 requested the Respondent No. 1 to establish the entire relevant document in connection with the sale of the aforesaid vehicle, but to no avail. Thereby, to settle the matter amicably in peaceful manner, the applicant issued legal notice dated 25.08 2022 to hand over the possession of the above said vehicle, as the same was sold to the Respondent No.1 by the Respondent No. 2 to 4 fraudulently.
9. Further, Respondent No. 1 replied to notice dated 25.08 2022, vide letter dated 09.09.2022 stating that he had purchased the said vehicle and got it transferred in his own name. Moreover, Respondent No. 1 in Para 4 of its Written Submission submitted before this Adjudicating Authority has stated that the said vehicle was purchased by the Respondent No. 1 in good faith in July, 2017 against the payment of sale consideration amount of Rs. 10 lacs and Registration Certificate of said vehicle was duly transferred in his name. However, there is no such document placed on record by Respondent No. 1 to substantiate that he had made any payment with respect to the consideration amount of Rs. 10 Lakh to the Corporate Debtor. Further, in his reply dated 09.09.2022, Respondent No. 1 did not show any proof to the Liquidator showing that the said vehicle was purchased by the Respondent No. 1, after due payment to the Corporate Debtor. Therefore, in this regard, we observe that, mere averments without any substantiating document, is a mere contention and hence it does not hold ground.
10. Further, with respect to the documents on record there is no substantial material, which indicates that Respondent No. 2 and Respondent No. 3 had knowledge of any such transaction. Thus, in absence of any payment made by the Respondent No. 1 to the Corporate Debtor, it is presumed that it was done with some malicious and fraudulent intent. Therefore, this Adjudicating Authority is of the view that the peaceful possession of the said vehicle must be handed over to the Applicant.

11. In light of the above observations Respondent No. 1 is directed to handover the peaceful possession of the vehicle HR-51, AY- 5913, CAR Fortuner along with all the relevant documents to the Applicant. Therefore, the instant Application bearing I.A. 5828 of 2022 in CP (IB) No. 2165/ND/2019 stands allowed.

12. Accordingly, I.A. 5828 of 2022 in CP (IB) No. 2165/ND/2019 stands disposed off.

Let a copy of the order be served to the parties.

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

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)