

NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 13

IA 1648/2022 IA 1701/2022 APPEAL 16/2024 In C.P. (IB)/1967(MB)2019

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON 16.07.2024

NAME OF THE PARTIES: **CREATIVE GARMENTS PVT. LTD. V/s**
DILIP CHHABRIA DESIGN PVT. LTD.

Section 7 of the Insolvency & Bankruptcy Code, 2016

ORDER

IA 1648/2022 IA 1701/2022

1. Mr. Amit Tungare, Advocate appeared for the Liquidator.
2. Mr. Shyam Kapadia, Counsel a/w Ms. Anushka Shetty i/b MLS Vani & Associates appeared for the Respondent no. 23 in IA No. 1648/2022.
3. Mr. Pawan Kulkarni, Advocate a/w Mr. Ativ Patel, Advocate i/b M/s. AVP Partners appeared for the Respondent no. 1, 11, 15 & 20 in IA No. 1648/2022 and Respondent no. 1, 5 & 6 in IA No. 1701/2022.
4. Learned Counsel for the Respondent nos. 1, 11 & 26 seeks further time to file reply. One weeks' time granted to file reply as last chance.
5. Learned Counsel for the Applicant submits that he needs to seek further instructions in relation to Mahindra and Mahindra who is Respondent no. 23. He is directed to have instructions on the next date of hearing.
6. List these IAs' on **06.08.2024** for hearing.

APPEAL 16/2024

1. Mr. Dhruv Gupta, Advocate appeared for the Appellant.
2. Mr. Amit Tungare, Advocate appeared for the Liquidator.
3. The present Appeal is being filed by the Appellant, in its capacity as a Financial Creditor of Dilip Chhabria Design Pvt. Ltd. ("Corporate Debtor"), invoking the jurisdiction of this Tribunal under Section 42 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("IB Code"), read with Rule 11 of the National Company Law Tribunal Rules, 2016, seeking directions to the Respondent herein, who is the Liquidator of the Corporate Debtor, to admit, recognize and classify the claim of the Appellant as a 'Secured' Financial Creditor.
4. The Respondent herein erred in refusing to classify the claim of the Appellant as a secured debt, and consequently, refusing to identify the Appellant as a secured Financial Creditor of the Corporate Debtor in respect of the aforementioned loan accounts. The 2 two-wheeler auto loans bearing numbers 43193651 and 45180084 were sanctioned on 21.10.2016 and 31.01.2017 respectively, for amounts of INR 16,75,000/- and INR 11,97,268/- respectively. Further, the four-wheeler auto loan bearing number 43331748 was sanctioned on 04.11.2016 for an amount of INR 26,75,000/-. The loans were secured in favor of the Appellant by way of creation of hypothecation over the vehicles in the manner noted above. In the meanwhile, vide an order dated 17.09.2019, passed by this Tribunal, CIRP against the Corporate Debtor commenced. Thereafter, vide an order dated 11.10.2023, the Corporate Debtor was ordered to be liquidated. The Appellant herein was pleased to file its claim in Form D on 09.02 2024, along with supporting documents, claiming a total outstanding debt of Rs. 41,78,131.17 as due and payable on 11.10.2023 i.e. the liquidation commencement date. Along with the claim, the Appellant herein informed the Respondent about its security interest in the three vehicles noted above which it desired to realize outside the liquidation proceedings. However,

vide communications dated 17.03.2024 and 18.03.2024, the Respondent herein wrote to the Appellant alleging, inter alia, that in terms of Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016, the Appellant has to prove security interest based on the documents mentioned in the said regulation and that upon a search report being obtained from the ROC, Central Registry of Securitization Asset Reconstruction and Security Interest of India ("CERSAI), no vehicle was found as mentioned in Form D. The Respondent drew the Appellant's attention to the decision of the Hon'ble NCLAT rendered in the case of *Volkswagen Finance Private Limited v Shree Balaji Printopack Pvt Ltd [Company Appeal (AT) (Ins) No. 02 of 2020]*, to claim that unless the charge is registered under the provisions of Section 77(1) of the Companies Act, 2013 and was also not registered with CERSAI, a creditor cannot be classified as a 'Secured Creditor'.

5. On 19.03.2024 and 20.03.2024, the Appellant herein promptly wrote back to the Respondent drawing its attention to the notification issued by the ministry of finance whereby integration of CERSAI with Vahan Register was notified. It was informed to the Respondent that, in terms of the circular, as the hypothecation of the vehicles was registered with Vahan, it was equivalent to the registration with CERSAI. The Appellant apprised the Respondent about the Notification No. S.O. 1 695(E) dated 03.05.2019 and Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016, to state that any vehicle registered with the Vahan " shall be deemed to be registered with CERSAI.
6. On 20.03.2024, despite being made aware of an authoritative judicial pronouncement of the Delhi bench of this Tribunal in support of the Appellant's case, the Respondent refused to identify and recognize the Appellant herein as a secured Financial Creditor and claimed that since the decision referred was rendered by NCLT, Delhi, it was not binding on the

Respondent who was subject to the jurisdiction of the Mumbai bench of NCLT.

7. Therefore, the Respondent conclusively denied the claim of the Appellant but conceded that it would be bound by whatever direction this Tribunal renders.
8. Heard Counsel appearing for both sides and perused the record.
9. We note that Notification No. S.O. 1 695(E) dated 03.05.2019 declares that from 03.05.2019 i.e. the date of integration of registration system of Central Registry with Vahan National Register, the registration system of the Motor Vehicle Act, 1988 and from this date the integrated records in so far as it relates to registration of vehicle shall be available. In other words, any recording in the Vahan National Register shall automatically reflect in the CERSAI Registry. The Regulation 21 of IBBI (Liquidation Process), Regulation, 2016 reads as follows:

"21. Proving security interest: The existence of a security interest may be proved by a secured creditor on the basis of-

(a) the records available in an information utility, if any;

(b) certificate of registration of charge issued by the Registrar of Companies; or

(c) proof of registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India."

12. Regulation 21(c) clearly provides that security interest may be proved by Secured Creditor on the basis of *proof of registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India. It is a disputed fact that security interest of the Applicant is duly registered in the Vahan National Register which upon integration with Central Registry is also reflected therein. Accordingly, the security interest stands proved on the basis of such entry in CERSAI register as provided in Regulation*

21. Accordingly, we have no hesitation to hold that the Applicant has to be classified as secured Creditor. The Liquidator is directed to take note of this and classify the claim of the Applicant as secured debt on the basis of charge reflected in CERSAI register.

In view of the aforesaid, **Appeal No. 16/2024** is **allowed** and **disposed of**.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-
JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)

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