

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II**

COMPANY APPLICATION. No. 331/2022

In

C.P. No. 404/MB/C-II/2021

*Application filed under Rule 11 of the N.C.L.T
Rules, 2016.*

In the matter of

D-Vois Communications Private Limited

...Applicant

V/s

D-Vois SSV Broadband Private Limited & Ors.

...Respondents

In the matter between:

D-Vois Communications Private Limited

...Petitioners

V/s

D-Vois SSV Broadband Private Limited & Ors.

...Respondents

Order Pronounced on :- 24.07.2024.

Coram:

Shri. Anil Raj Chellan : Member (Technical)

Shri. Kuldip Kumar Kareer : Member (Judicial)

Appearances (Hearing in physical mode):

For the Applicant : Khaitan & Co.

For the Respondent : DSK Legal for Respondent Nos. 02 to 04.

: RMG Law Associates for Respondent No.06.

ORDER

Per: Coram

1. This is an application preferred by the Applicants invoking the inherent powers of this Tribunal under Rule 11 of the N.C.L.T Rules, 2016 seeking the reliefs from this Tribunal against the Respondent Nos. 02 to 04 and Respondent No. 06, inter-alia, to declare the sale of Lamborghini Urus (bearing Registration Number MH 43 BU 9999) in favour of the Respondent No.06, as null and void. The other reliefs sought by the Applicant are incidental and ancillary to the main relief described hereinabove.

The facts of the case, the events and circumstances leading to the filing of this application, as averred by the Applicant, are broadly stated hereafter:

2. The above-captioned Petition has been filed on an array of grounds including, inter alia, the mismanagement, misappropriation and misuse of the first Respondent company's funds. As set out in the above-captioned Petition, the third Respondent and/or his father, late Mr Bhupesh Gupta (Mr Gupta) had availed of various unauthorized loans and finances in the name of the First Respondent from banks based on

resolutions passed in purported board meetings without the knowledge, consent and/or concurrence of the Petitioners and their nominee Directors. These loans were unauthorizedly obtained for purchasing ultra-luxury cars for the personal use of the SSV Group (i.e. Second to Fourth Respondents), without the Petitioners' consent and to the financial detriment of the First Respondent. At the time of filing of the above-captioned Petition, the Petitioners therein had ascertained that the SSV Group had unauthorizedly obtained the following two loans in the name of the first Respondent from Indian Bank for the acquisition of the ultra-luxury vehicles:

<u>Loan Sanction No. and Date</u>	<u>Loan Amount</u>	<u>Purpose</u>
IB/ST/VL/VASHI/2020-21 dated 31.12.2020	3,50,00,000/-	Purchase of Lamborghini Urus SSUV
IB/ST/VL/VASHI/2020-21 dated 29.12.2020	90,00,000/-	Purchase of Lamborghini Urus SSUV

3. The SSV Group had, without the knowledge and consent of the D-Vois Group and in flagrant violation of the AOA and law, also utilised the First Respondent's funds to make payment of the monthly loan instalments aggregating to a sum of INR 55,75,000 for the aforesaid two loans, out of which an amount of INR 43,24,000 was towards the monthly instalments for the Lamborghini Urus.
4. Pending the hearing of present Petition, on or about 14 January 2022, the SSV Group's advocates addressed a letter of even date to the Petitioners' advocates. By this letter, inter alia, the SSV Group proposed to sell the two ultra-luxury cars that were purchased by availing

unauthorized loans from Indian bank and sought the D-Vois Group's co-operation in this regard. Notably, in the letter, the SSV Group expressed their desire to repay the said loans at the earliest. The aforesaid letter was followed by issuance of another letter dated 19 January 2022 addressed by the SSV Group's advocates to the Petitioners' advocates. By this letter, the Petitioners' advocates were informed that the SSV Group had received a purchase offer from an agency, Infinity Motors, for purchasing the Lamborghini Urus at a price of INR 3,15,00,000.

5. The Petitioners replied to the aforesaid letters by their advocates' letter dated 20th January, 2022. The SSV Group was informed that while the Petitioners are agreeable to the sale of the luxury vehicles without prejudice to all their rights and contentions in the pending proceedings, the SSV Group remains liable to discharge all obligations relating to the unauthorized loans. On or about 1 February 2022, the SSV Group through their advocates addressed a letter to the Petitioners' advocates. In the letter, inter alia, the SSV Group notified the Petitioners that they had received a further offer from two other buyers for purchase of the said vehicles, viz., (i) INR 3,16,85,000 for purchase of the Lamborghini Urus from one Mr Ashok Bhogan; and (ii) INR 80,15,000 for purchase of Porsche Macan from M/s. Kings Car Care LLP. The SSV Group then sought the Petitioners' no objection for sale of the aforesaid cars in favour of the said buyers through two letters dated 01.02.2022.
6. The aforesaid correspondence culminated in the SSV Group filing an Interim application dated 8 February 2022 in the captioned Petition, being Interim Application No. 69 of 2021, seeking the following reliefs:

"14. In the circumstances, it is humbly prayed that pending the hearing and final disposal of the Company Petition:

(a) This Hon'ble Tribunal be pleased to grant its approval to sale of the Lamborghini Urus and Porsche Macan to the following persons at the following consideration:

(i) Mr. Ashok Parshuram Bhogan- Lamborghini Urus at Rs. 3,16,85,000/-and

(ii) M/s. King Car Care LLP- Porsche Macan at Rs. 80, 15, 000/-

(b) This Hon'ble Tribunal be pleased to direct the Petitioners to co-operate in the sale of the Lamborghini Urus and Porsche Macan by signing the formal no-objection letters in favour of the buyers;

7. By an order dated 23 February 2022 passed by this Hon'ble Tribunal in the said application, this Hon'ble Tribunal permitted the sale of the two cars, viz., Lamborghini Urns and Porsche Macan, and directed the immediate discharge of the outstanding car loan amounts. Pertinently, at the hearing of the matter on 23 February 2022, at the request of the SSV Group through its advocates, this Tribunal did not record (in the said order) the purchasers' names to whom the cars were proposed to be sold. Pursuant to passing of the said order, while the Porsche came to be sold without any controversy, it was not the same in the case of the Lamborghini Urus. The SSV Group has, even after the passing of the said order, sought to cause a loss to the First Respondent by selling the Lamborghini Urns at a lower price. The Applicant surmises that the SSV Group has usurped the balance amount from the First Respondent.

8. After the said order was passed, the SSV Group had informed the Petitioners that they had identified NFS Wheelz (NFS), a car dealer

based out of Kurla, Mumbai as the purchaser of the two cars. At the relevant time, the Petitioners were informed that the purchase consideration for the Lamborghini Urus, as finalized with NFS, was INR 3,12,00,000 (Indian Rupees Three Crore Twelve Lakh Only). Accordingly, draft of the proposed purchase agreement in respect of Lamborghini Urus was shared with the Petitioners, wherein the aforesaid sum of INR 3,12,00,000 (Indian Rupees Three Crore Twelve Lakh Only) was recorded as the purchase consideration. After finalization of the Purchase Agreement, Mr. Sathyanarayana even signed the Purchase Agreement on behalf of the Applicant/First Petitioner.

9. On or about 01st April 2022, the Petitioners received an offer from another prospective purchaser, one Mr. Ranjit Bindra of Aallia Hospitality Private Limited, through a car dealer called Lush Engines, for purchasing the Lamborghini Urus at a sum of INR 3,45,00,000 (Indian Rupees Three Crore Forty-Five Lakh Only). Since this offer was higher than the aforesaid offer of INR 3,12,00,000 (Indian Rupees Three Crore Twelve Lakh Only), the SSV Group was notified of the same by the Petitioners through their advocates' letter dated 4 April 2022. Thereafter, on or about 5 April 2022, Mr. Sathyanarayana was shocked to learn from NFS's representative, one Mr. Navneet Nanda, that the actual purchase offer that was received from NFS for the Lamborghini Urus was INR 3,48,00,000 (Indian Rupees Three Crore Forty-Eight Lakh Only) and not INR 3,12,00,000 as was initially informed to the Petitioners and as recorded in the Purchase Agreement. Mr. Sathyanarayana was given to understand that on this basis, a deal that was finalized between NFS and the third Respondent at the latter's office

on 25 February 2022. The above is recorded in an email dated 5 April 2022 addressed by Mr. Nanda to Mr Sathyanarayana. This unanticipated development struck the Petitioners as a bolt from the blue. This also reaffirmed the SSV Group's mala fides.

10. As if the above was not enough, on or about 8 April 2022, it came to the knowledge of the Petitioners that a sum of INR 3,10,00,000 (Indian Rupees Three Crore Ten Lakh Only) was credited to the First Respondent's Indian bank loan account bearing number 6966731279 from an unknown third party (Unknown Purchaser). Having regard to the chain of events that transpired in relation to the proposed sale of the Lamborghini Urus, the Petitioners reasonably apprehended that the aforesaid amount of INR 3,10,00,000 (Indian Rupees Three Crore Ten Lakh Only) was received against sale of the Lamborghini Urns at a lesser consideration than what was agreed with NFS. This despite the initial actual offer amount being higher i.e., INR 3,48,00,000/- and further, despite the Petitioners subsequently receiving the aforesaid offer of INR 3,45,00,000 (Indian Rupees Three Crore Forty-Five Lakh Only).

11. In these circumstances, the Petitioners instructed their advocates to address a letter dated 12 April 2022 to the SSV Group's advocates recording the above facts. In the letter, the Petitioners sought, inter alia, full details in relation to the transaction executed between the SSV Group and the Unknown Purchaser. By their advocates' letter dated 22 April 2022, the SSV Group issued a response to the above letter. The SSV Group disclosed that they had purportedly received an offer from the Sixth Respondent herein (Mr. Raghiv Khan) on 04 April 2022 to purchase the Lamborghini Urus for a sum of INR 3,10,00,000 (Indian

Rupees Three Crore Ten Lakh Only). Curiously, they claimed that since the Sixth Respondent was willing to make immediate payment, they closed the deal with him, even though admittedly, the offer was less than that received from NFS. Lastly, the SSV Group sought to feebly justify their non-consideration of the offer received from Mr. Bindra for a sum of INR 3,45,00,000 (Indian Rupees Three Crore Forty-Five Lakh Only) on the basis that this offer was received by them purportedly after they had finalized the deal with the Sixth Respondent. Even worse, the aforesaid sale was at a grossly undervalued sum.

12. Notably, the sale of the Lamborghini Urns for a grossly undervalued consideration of INR 3,10,00,000 (Indian Rupees Three Crores Ten Lakhs Only) by the SSV Group has caused a substantial financial loss to the First Respondent. At the very least, this loss constitutes the aggregate of: (i) sums paid towards loan installments of the Lamborghini, being INR 43,24,000 (Indian Rupees Forty-Three Lakh Twenty-Four Thousand Only); and (ii) down payments made to the tune of INR 75,00,793 (Indian Rupees Seventy-Five Lakh Seven Hundred Ninety-Three Only). The above aggregates to INR 1,18,24,793 (Indian Rupees One Crore Eighteen Lakh Twenty-Four Thousand Seven Hundred and Ninety-Three Only). For ease of reference and convenience, the sum of INR 1, 18,24, 793 (Indian Rupees One Crore Eighteen Lakh Twenty-Four Thousand Seven Hundred and Ninety-Three Only) is hereinafter referred to as "Aggregate Loss".

13. By selling the Lamborghini to the Sixth Respondent behind the Applicant's back and without its consent and/or knowledge, the SSV Group deliberately and intentionally misled the Applicant and this

Hon'ble Tribunal. Further, by doing so, they went to the extent of craftily acting contrary to the purport and intent of the said order. The SSV Group clearly perpetrated a fraud on this Hon'ble Tribunal and the Applicant. In the aforesaid circumstances, the sale transaction is ex facie fraudulent and illegal. It is evidently an underhand dealing. Having regard to the circumstances, it is clear that at the time of finalizing the sale with the Sixth Respondent, the SSV Group falsely represented to the Sixth Respondent that the aforesaid sale was with the Applicant's knowledge and consent. Moreover, despite a higher offer being available, the SSV Group proceeded to carry out the sale at a lesser value to the First Respondent's detriment, with the sole view to personally benefit themselves from such sale.

14. In these circumstances, the Applicant is constrained to prefer the present Application and approach this Hon'ble Tribunal. It is necessary and in the interests of justice that this Hon'ble Tribunal intervene in the matter and grant the reliefs sought herein.

Reply of Respondent Nos. 02 to 04

15. Respondent Nos. 02 to 04 have filed their affidavit in reply denying the allegations and contentions raised by the Applicant against them. The extracts of their reply are briefly stated hereinbelow:

16. The Respondents deny the allegations of obtaining unauthorized car loans for purchasing luxury cars. The Respondents state that the Applicant's consent was recorded in the form of a resolution of the Respondent No.01 Company dated 28th December, 2020 authorising Mr. Bhupesh Gupta and Respondent No.03 to borrow from Indian Bank

for purchase of the cars. The Respondents submit that from January, 2021 to April 2021, all car loan instalments were paid through funds transferred by Mr. Gupta and the Applicant from the ICICI Bank account of the Company to the Indian Bank account of the Company. Post the demise of Mr. Gupta, Respondent No.01 provided the Applicant with accounting statements demonstrating the utilization of funds transferred from ICICI Bank to Indian Bank. Therefore, the plea taken by the Applicant that they were not aware of the purchase of cars and loan transactions, is factually incorrect.

17. The Respondents have denied that they have caused any loss to the Respondent No.01 Company by selling the car for a lower price. The Respondents state that the transaction of sale of car with Respondent No.06 was done bona fide and in good faith so as to close the loan account immediately. The Respondents were allowed by the Tribunal vide Order dated 23rd February, 2022 to sell the two cars with a direction to discharge the outstanding car loans immediately. Respondent No.06 was in a position to make the payment immediately thereby discharging the Respondents of its loan liability as directed in the Order passed by this Tribunal. The Respondents submit that merely because there is no additional sale amount realized after the Indian Bank Loan being repaid, does not mean that the Respondent No.01 has suffered a loss.

18. The Respondents deny that they have deliberately sold the car at an undervalued price and further deny that they did not consider the higher offer. The Respondents did, in fact, receive an offer of Rs. 3.45 crore for the car only after they had finalized the deal with Respondent No.06, who had already made a part payment of Rs. 1 crore towards the loan

amount to Indian Bank. The Respondents further deny that the actual purchase offer received from NFS for the Urus was Rs. 3.48 crores and not Rs. 3.12 crores. As regards the offer of Rs. 3.12 crores, the NFS was unable to find a buyer and also failed to make the payment. Thereafter, nearly waiting for about two weeks for NFS to reply, the Respondents No.02 to 04 found and received an offer on April 04, 2022 from a car dealer named Mr. Raghiv Khan, sole proprietor of Wish Wheels (Respondent No.06), who made the part payment referred-to-above on the same date. The Applicant's Advocates informed the Respondents of the offer of Rs. 3.45 crore on April 04, 2022 by when the car deal with Respondent No.06 had already been finalized and the payment was received. Respondent No.06 made subsequent payments on April 05, 2022 and April 06, 2022 and the loan was foreclosed on April 06, 2022.

Reply of Respondent No.06

19. Respondent No.06 named Mr. Raghiv Khan is a car dealer running a sole proprietorship in the name of Wish Wheels. The Respondent No.06 purchased the Lamborghini Urus for a purchase consideration of Rs 3.10 crores. After purchasing the car, the Respondent No.06 was contacted by M/s. Nadiadwala Grandson Entertainment Private Limited for further sale of car. The Respondent No.06 states that he has sold and transferred the car to the buyer under an agreement duly executed in July, 2022. As per the market practice, the Respondent No.06 did not register the car in his name as on account of the number of transfers, the car value decreases. Therefore, the Respondent No.06 asked the Respondent Nos. 02 to 04 to sign on the transfer forms keeping the name of the buyer blank.

20. The Respondent No.06 states that on account of ad-interim ex-parte order dated 05th July 2022, the Respondent No.05 (i.e. RTO) is not transferring the car in the name of buyer, thereby putting the reputation of the Respondent No.06 as a car dealer at stake. The Respondent No.06 states that as the entire purchase consideration has been paid in accordance with the agreement, the title in the car has already vested upon the Respondent No.06. The only thing now remains is the ministerial act of effecting the change in the records of the road transport authorities. Thus, the Respondent No. 06 has prayed for dismissal of application and vacation of ad-interim ex-parte order dated 05th July 2022.

FINDINGS

21. We have heard the Counsels on for the Applicant as well as for the Respondent No. 6 and have also gone through the written arguments submitted on behalf of the Respondent Nos. 2 to 4.

22. On perusal of application, we find that the Applicant is, inter alia, praying to declare the sale of a luxury car viz. Lamborghini Urus (bearing registration number MH 43 BU 9999) by Respondent Nos. 01 to 04 in favour of Respondent No.06, as null and void. The Counsel for the Applicant submits that the Respondent Nos. 02 to 04 have acted illegally by purchasing the luxury car on loan in the name of Respondent No.01 for the personal use of Respondent Nos. 02 to 04. In this regard, the Applicant Company has filed the above-captioned Company Petition u/s 241-242 read with Section 244 of the Companies Act, 2013

against the Respondents alleging oppression and mismanagement of the affairs of the Respondent No.01. Counsel for the Applicant submits that while the case of oppression and mismanagement was pending, the Respondents had agreed to sell the two luxury cars and to foreclose the car loans. The Counsel for the Applicant has alleged that the sale of Lamborghini was at under-valued price causing grave loss to the Respondent No.01 which is nothing but an act of mismanagement of the affairs of the Respondent No.01 company and hence, by way of this Application, the Applicant seeks to undo the mismanagement of the Respondents by setting aside the undervalued sale transaction of luxury car.

23. On the other hand, Counsel for the Respondent Nos. 2 to 4 submit that the car was sold pursuant to the leave granted by this Tribunal vide order 23.02.2022. Respondent Nos. 2 to 4 informed the Applicant through their Advocate's letter dated 19.01.2022 that they had received an offer of Rs. 3.15 crores in respect of the car and the Applicant through their Advocate's letter dated 20.01.2022 expressed no objection to the sale of the car. No objection was raised that the offer of Rs. 3.15 crores was undervalued. Even the IA seeking permission of the sale of car was filed on the basis of the offer of Rs. 3,16,85,000/-. It has further been pointed out on behalf of the Respondent Nos. 2 to 4 that through his letter dated 20.01.2022, the Applicant gave its consent for sale of the car for Rs. 3.15 crores. It has further been submitted on behalf of the Respondent Nos. 2 to 4 that the Applicant's purported offer of Rs. 3.45 crores came on 04.04.2022 at 11:03 PM whereas by that time, the Respondents had closed the deal with Respondent No. 6 for Rs. 3.10 crores and an advance of Rs. 1 crore had also been received from Respondent No. 6.

It has also been submitted on behalf of the Respondent Nos. 2 to 4 that the allegation made by the Applicant that the car was surreptitiously sold at a lesser consideration despite there being an offer of Rs. 3.45 crores is misconceived and unfounded. In fact, the sale has been conducted bona fide with a view to conduct the sale forthwith so that the car loans on the Respondent No.01 could be discharged at the earliest in compliance of the Tribunal's Order dated 23.02.2022 in C.A. No. 69/2022.

24. Counsel for the Respondent No.06 submits that his client had bought the luxury car viz. Lamborghini Urus from Respondents No. 02 to 04 in good faith and for adequate consideration and the title in the property has already vested upon his client in the month of April, 2022 when the agreement for sale was entered and purchase consideration for acquiring the luxury car was also disbursed. Counsel for the Respondent No.06 further submits that his client has already sold the car to another buyer. Therefore, the Ld. Counsel for the Respondent No.06 submits that ticking the clock back to status quo ante will gravely prejudice the rights of his client as well as the rights of the purchaser to whom the Respondent No.06 has further sold the luxury car. Further, the Respondent No.06 states that he is not concerned about the disputes existing between the Applicant and the other Respondents since he is a bona fide purchaser and that the title to the property has already vested in him, setting aside such a bona fide sale transaction would be inequitable and unjust. Therefore, the instant application should be dismissed.

25. We have carefully examined the rival contentions and we have also perused the pleadings and documents placed on record.

26. By way of this application, the Applicant is essentially seeking to set-aside the sale of luxury car viz. Lamborghini Urus made by the Respondents No. 02 to 04 on behalf of Respondent No. 01 to the Respondent No.06 for the reason that the transaction is under-valued, which has caused grave loss and prejudice to the interests of the Respondent No.01 and selling the car at a lesser value is nothing but an act of oppression and mismanagement. Therefore, according to the Counsel for the Applicant, this Tribunal has the jurisdiction to set aside the aforesaid transaction.

27. On perusal of the record, we find that the Respondent No.06 has purchased the luxury car namely Lamborghini Urus for Rs. 3,10,00,000/- (Rupees Three Crores and Ten Lakhs only) from the Respondents No. 02 to 04 acting on behalf of Respondent No.01 in the month of April, 2022. The Respondent No.06, in discharge of his purchase consideration, had cleared the entire outstanding car loan of the Respondent No. 01, which was foreclosed on April 06, 2022. Since Respondent No.06 is a car dealer, he has further sold the luxury car purchased from the Respondents Nos. 01 to 04 to another buyer. Therefore, setting aside the alleged undervalued sale transaction of car would definitely prejudice the bona fide rights of the Respondent No.06 and the purchaser who has bought the said luxury car from the Respondent No.06. Also, one cannot be oblivious of the fact that the car is a depreciating asset and more than two years have already expired since its sale in April 2022. Now, even if the sale of car is set aside on the grounds agitated by the Applicant, the car would fetch even lesser value causing further loss to the Respondent No.01. Hence, setting aside

the sale of luxury car at this stage would not be in the interest of any of the parties.

28. Even otherwise, the fact as to whether the car in question has been sold at an undervalued price or not and further whether this act on the part of Respondent Nos .02 to 04 constitutes an act of oppression or mismanagement would be considered at the final stage of the above-captioned company petition after both the parties have led evidence in detail to establish their respective cases and not at the present stage. Therefore, we are not inclined to grant the relief of setting aside the sale of the car as prayed for in para 46 (b), (c), (d) of the application at this stage and the relief claimed in para 46 (f) to (j) would be considered at the final stage. However, so far as regards prayer made in para 46 (a), we hereby direct Respondent Nos. 2 to 4 and 6 to make full disclosures along with documents pertaining to the sale of the Lamborghini Urus car in favor of the Respondent No. 6.

29. In view of the above discussion, **Company Application No. 331/2022 is dismissed.** However, Respondent Nos. 2 to 4 and 6 are directed to make full disclosures along with documents pertaining the sale of the Lamborghini Urus car by way of an affidavit within a period of one month from the date of this order. The application stands disposed of in the aforesaid terms.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)