

NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, COURT- I

I.A. NO. 193 of 2024 in Company Petition (IB) No. 130/Chd/HP/2018

IN THE MATTER OF:

Bhagat Ram Motorways Pvt. Ltd.

...Petitioner/Financial Creditor

AND IN THE MATTER OF:

(I.A. NO. 193 OF 2024)

State Bank of India

Having branch office at:

Stressed Assets Management Branch,

S.C.O. 99-107, Madhya Marg,

Sector- 8C

Chandigarh- 160009

...Applicant/Financial Creditor/Stakeholder

v/s

1. Arvind Kumar, Liquidator of M/s Bhagat Ram Motorways Pvt. Ltd.

c/o 3rd Floor, Plot D 190,

Phase 8B, Sector 74,

Industrial Area, S.A.S. Nagar,

Mohali

2. Bahadur Singh Bhalru (Successful Bidder)

c/o 3rd Floor, Plot D 190,

Phase 8B, Sector 74,

Industrial Area, S.A.S. Nagar,

Mohali

...Respondent/Liquidator

Order delivered on: 25.04.2024

SECTION: Section 60(5) of IBC 2016

CORAM:

HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

HON'BLE MR. L.N. GUPTA, MEMBER (TECHNICAL)

PRESENT :

**For the Applicant/Financial Creditor
/Stakeholder** : 1. Advocate Pulkit Goyal
2. Advocate Rakshit Gupta
3. Advocate Rakesh Gupta

For the Respondent/Liquidator : Advocate Atul V. Sood

ORDER

PER: SH. L.N. GUPTA, M (T) & SH. HARNAM SINGH THAKUR, M (J)

The present application is filed by the State Bank of India, (for brevity, the “**Applicant**”) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016, with the prayers that (a) Sale held in view of e-auction dated 26.12.2023 may be canceled in interest of justice; and (b) An interim order may be passed restraining the respondent No. 1- Liquidator from confirming the sale held vide e-auction dated 26.12.2023; on the ground that the assets do not belong to the corporate debtor and these are mortgaged with the applicant bank/ stakeholder in a personal capacity by the Suspended Directors.

2. Brief facts as mentioned in the application are that the corporate debtor, i.e., M/s Bhagat Ram Motorways Pvt. Ltd., filed an insolvency petition under Section 10 of the Insolvency and Bankruptcy Code, 2016, which was admitted by this Tribunal vide order dated 10.12.2018, and Mr. Arvind Kumar was appointed as Interim Resolution Professional, whose appointment was confirmed by the COC in its meeting held on 01.01.2019.

3. It is submitted that the resolution plan submitted by the resolution applicant was rejected with 93.86% vote, and the COC resolved in its 10th meeting that the corporate debtor be liquidated. Accordingly, the liquidation application was filed before this Tribunal, which was allowed vide order dated 24.09.2019, and Respondent no.1 was appointed as the Liquidator, pursuant to which, he prepared the liquidation estate of the assets of the corporate debtor in view of provisions of Section 36 of IBC, 2016.

4. The Applicant in its application and written submissions dated 06.02.2024 filed vide diary no. 00218/3, has submitted that respondent No. 1 Liquidator has included the following assets, viz., (i) Land and building of Showroom in Rakkar Colony, Una; (ii) Guest House land situated at Up Mohal Rakkar Colony, Una, in the liquidation estate, which are in the name of personal guarantors of the corporate debtor and not in the ownership of the corporate debtor. The respondent liquidator sold them via e-auction dated 26.12.2023.

5. The applicant bank has further stated that the corporate debtor was incorporated in the year 2011 and property no. 1 was purchased in the year 2004 and property no. 2 was purchased in the year 1981, and both these assets were mortgaged with the applicant bank in the account of M/s Motorways since 2005.

6. The applicant bank further submitted that from the balance sheet relied upon by the respondent liquidator, it is evidenced that some property was purchased by the corporate debtor, but the specific details of the property are

not mentioned. Further, even if the two aforesaid properties are evidenced in the balance sheet of the corporate debtor, the same cannot be part of the liquidation estate by virtue of Section 36(4) of the Code, which excludes assets owned by a third party from the definition of liquidation estate. Reliance is placed by Applicant upon the judgment in the case titled “**The Assistant Provident Fund Commissioner & Recovery Officer Vs. Florind Shoes Pvt. Ltd. (CD) & Ors. Company Appeal (AT) (Insolvency) No. 167 of 2020**”, in which the Hon’ble NCLAT has confirmed the validity of the exclusion clause provided under section 36 (4) of IBC, 2016 qua the liquidation estate.

7. The applicant bank further submitted that it had earlier filed an application bearing IA No. 2935 of 2023 taking up the above-said issue, which was dismissed by this Tribunal vide order dated 22.12.2023 being pre-mature and non-maintainable. It was opined that the Applicant, being a member of the SCC and the said property being part of the liquidation estate, the matter should have been first dealt with in the SCC meeting before the Applicant Bank approaching this Tribunal. Respondent liquidator’s contention that the present application is barred by res-judicata is not applicable, since the previous application was not decided on merits. Reliance is placed upon the Hon’ble Apex Court’s judgment in the matter of **Prem Kishore & Ors. v. Brahm Prakash & Ors. dated 29.03.2023**.

8. The Liquidator Respondent No.1, filed its reply via diary no. 00218/1 dated 31.01.2024 and written submissions dated 05.02.2024 vide diary no. 00218/2, stating that as per the Audited Balance Sheet for the year 2012-13,

'land' has been purchased out of the funds of the company during the year 2012-13, which is also shown in the Audited Balance Sheet for the year 2017 at a valuation of Rs. 4.83 Crore. Reliance is placed on Hon'ble NCLAT's judgment in the matter of **"Kineta Global Ltd. vs. IDBI Bank Ltd. & Ors.", 2024, Comp App (AT)(CH)(Ins) No. 302/2021**, wherein it has been held that where a property has been included in audited financial statements, even if the corporate debtor does not have a valid or marketable title, *ipso facto*, the value of such property cannot be treated as 'nil' and has to be valued and would be part of the "liquidation estate".

9. The Liquidator Respondent No.1 further submitted that the SCC in its 15th meeting held on 18.11.2023, which the applicant bank did not attend, decided to conduct an e-auction held on 26.12.2023, with a reserve price of Rs. 2.50 crore. Accordingly, in the said e-auction, the highest bid received is for Rs. 3.86 crore from Respondent No. 2 and a sum of Rs. 2.25 crore has already been deposited by the successful bidder with the Liquidator.

10. Heard the Ld. Counsels for both parties. The moot issue in the case in hand is whether the properties in question have been purchased by and in the name of the Directors of the Corporate Debtor as contended by the applicant bank, OR the said properties were purchased out of the funds and in the name of the corporate debtor and liable to be included in the liquidation estate, as argued by the Respondent/Liquidator.

11. After a careful perusal of the record, we observe that the applicant bank is claiming that the properties were purchased by and in the name of the

Directors of the company, but no document/agreement in support of the title/ownership of the said properties has been placed on record or produced during hearing by the applicant bank. Similarly, the respondent Liquidator too has failed to establish how the “land” as mentioned in the balance sheet of 2012-13 or 2017 are the same properties which are claimed by the applicant to have been mortgaged to it, without any specific details of the said “land” mentioned therein. Mere reflection of a property as “land” in the balance sheet does not confer a valid legal title of the same on the corporate debtor. This Bench is of the view that neither party, i.e., the applicant bank nor the respondent liquidator has produced cogent evidence in support of their respective claims.

12. The authority “***Kineta Global Ltd. vs. IDBI Bank Ltd. & Ors.***” (*supra*), relied upon by the Ld. Counsel for the Respondent/Liquidator is not applicable to the facts and circumstances of the present case as both parties have failed to produce any cogent and convincing evidence regarding the right and title over the property in question.

13. We also note that the Applicant herein is a member of SCC with 38.23% voting share and despite notice, it did not opt to participate in the relevant meeting of SCC, in which the decision for auction of the properties in question on 26.12.2023 was taken and instead of contending on this issue of its right over properties in the SCC meeting, has preferred to file the present application.

14. In the absence of sufficient documents and evidence in support of the legal title of the properties in question, we have no other option but to dismiss the application. Since, we have not decided the issue on merits, the parties are

at liberty to approach the civil court or any other appropriate forum to agitate about their right and title over the said properties.

15. The present I.A. NO. 193 of 2024 is dismissed and disposed off accordingly.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(HARNAM SINGH THAKUR)
MEMBER (J)