

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT 1, MUMBAI BENCH

MA 33/2020 in CP(IB)1633(MB)/2019

(Under Section 60(5) of the IBC, 2016)

Manoj Kumar Agarwal

... Applicant/Resolution Professional

Vs.

1. State of Maharashtra ...R1
2. Serious Fraud Investigation Office R2
3. Assistant Commissioner of Police ... R3
4. Sub-Divisional officer
and Competent Authority ... R4

In the matter of

Bank of Maharashtra ...Financial Creditor

Vs

D. S. Kulkarni Developers Ltd. Corporate Debtor

Order delivered on 14.2.2020

Coram:

Hon'ble Member (Judicial) Smt Suchitra Kanuparthi

Hon'ble Member (Technical) Shri V Nallasenapathy

For the Applicant: Ms. Namrata Zaveri, i/b DSK Legal.

For the Respondent: None present

Per: V. Nallasenapathy, Member(Technical)

ORDER

This is an application filed by the Resolution Professional for the following Reliefs: -

- A. *“That this Tribunal be pleased to order and direct the Superintendent of Police and Jailor at Yerwada Central Jail Complex to allow the Applicant*

any other member of his team as approved by the COC for interviewing them for information regarding the Company;

- B. That this Hon'ble Tribunal be pleased to order and direct the said Directors, erstwhile Key Managerial Personnel and any other employees or associates who may be aware of the whereabouts of the Company's records and books of accounts;*
- C. That this Hon'ble Tribunal be pleased to order and direct the ED, EOW, SFIO and the Competent Authority under the MPID Act, to allow the Applicant to access any records of the Company which may be in their custody, and which are required for the purpose of completing the resolution process;*
- D. That this Hon'ble Tribunal be pleased to pass any order as they may deem fit under the section 60(5) of the IBC.*

Subsequently, the Resolution Professional filed another Affidavit 10.02.2020 in this application saying that the cars belonging to the Corporate debtor which are mentioned below, are taken over by the Respondents and an Auction sale is to be held on 15.02.2020.

- A. Toyota Etios bearing No. MH 16/AT 4993,*
- B. Toyota Innova bearing No. MH 12 JZ 9830*
- C. Toyota Innova bearing No. MH 12/ FU 0428,*
- D. Toyota Innova Car bearing No. MH 12/KE 7703, and*
- E. Toyota Innova Car bearing No. MH 12/HN 1358.*

The applicant is a Resolution Professional appointed by this Bench on admission of the CIRP petition on 26.9.2019. He is responsible for managing the affairs of the Corporate Debtor and to assist in the process of bringing the resolution to the Corporate Debtor. In his capacity as an Administrator appointed by this Court, he has filed this application.

Counsel for the applicant submits that the Advertisement for the said auction sale is enclosed in the petition. We have gone through the Petition and particularly Registration certificates of the said Vehicles (enclosed to the petition at page No. 87-91) which clearly proves that the said cars belong to the Corporate debtor.

The applicant as the Resolution Professional of the corporate debtor, as required under Section 25 (1) of the code, is duty bound to preserve and protect the assets of the corporate debtor. Further under Section 25 (2) (a) of the code, the Resolution professional is mandate to take immediate custody in control of all the assets of the corporate debtor. In view of the above legal position the application filed by the Resolution Professional is in order.

On going through these Registration certificates, we are satisfied with these properties belongs to the Corporate debtor. Since the Respondents have already issued advertisements for sale of this cars through public auction, even though the resolution professional is entitled to take possession of the vehicles, we are not inclined to stay public auction for the reason that the Respondents would have spend already substantial sum for advertisements and other expenses relating to the public auction and if the auction is stayed the whole expenses will go waste and once again the resolution profession by incurring expense have to bring this properties for sale. In the interest of justice the following interim order is passed: -

- A. The respondents can conduct the Public Auction as planned.
- B. Resolution Professional (RP) is directed to attend the public auction sale and if he is satisfied with the price fetched in the auction sale the same may be confirmed by the auctioning authorities. In case RP feels that cars may fetch more value, he need not confirm the sale and

the sale is subject to the confirmation of this Tribunal, for which the RP can make appropriate application, if required.

- C. The respondents are directed to deposit the proceeds of the sale with the Resolution Professional after deduction of expenses relating to public auction within 15 days of the confirmation of sale through the public auction.

Sd/-
V NALLASENAPATHY
Member (Technical)

Sd/-
SUCHITRA KANUPARTHI
Member (Judicial)