

(2020) 01 NCLT CK 0061

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : (IB) No. 15(PB) Of 2017

In Re: Clutch Auto Ltd. Vs

Date of Decision : 06-01-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 14, 44, 52, 53
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(9)

Citation : (2020) 01 NCLT CK 0061

Hon'ble Judges : B.S.V. Prakash Kumar, J;Santanu Kumar Mohapatra, Member (Technical)

Bench : Division Bench

Advocate : Karan Kanwal, Parth Tandon, Ichchha Kalash, Mukund Rawat, Sanjeev Bajaj, Vipul Jai, Vipin, Shekhar Raj Sharma, Anuj Bhandari, Shitij Chakrawarty

Final Decision : Dismissed

Judgement

CA-1433(PB)/2019

1. This is an application filed against Municipal Corporation Faridabad-respondent to remove the lock and de-seal the land of the corporate debtor and for handing over the possession of the same to the Liquidator on the ground that the land belongs to the corporate debtor.

As against this application, the respondent defence is that it was not aware of the moratorium imposed upon this company whereby since tax was not paid by the corporate debtor, the property was sealed without being aware of the fact of operation of moratorium under Insolvency & Bankruptcy Code over the asset of the Corporate Debtor.

On hearing the submissions from both sides, it appears that this property has been sealed by the Municipal Corporation during the continuance of moratorium in violation of moratorium imposed under Section 14 of the Insolvency & Bankruptcy Code. Therefore we hereby direct the Municipal Corporation-

respondent to de-seal the property. Likewise, the liquidator is also directed to consider the claim application of the Municipal Corporation with regard to the tax relating to the property sealed by the Municipal Corporation.

CA-1433(PB)/2019 stands disposed of.

CA-1432(PB)/2019

This is an application filed by the Liquidator seeking directions against the respondent to respond to the repeated requests of the Liquidator seeking relinquishment of their security interest over the assets of the corporate debtor to the liquidation estate and to cooperate with the liquidator in completing the liquidation process and also for exclusion of time which was lost in receiving the requisite consent from the financial creditors while computing the time period for completion of liquidation process provided under Section 44 of IBBI Liquidation Process Regulation, 2016.

2. As against this application, the respondents who have security interest over the assets of the corporate debtor have categorically mentioned that they have already notified the factum of their intention not to relinquish their interest over the assets of the corporate debtor, therefore, the Liquidator/applicant should not have filed such kind of application as if right is vested under the law to file such an application before the Bench.

3. On verification of the Section 52 along with Section 53, it is evident that as and when the secured creditor notified the fact that their intention is not to relinquish interest over the security interest over the assets of the corporate debtor, the liquidator is bound to verify the same. In the event of verification, if at all the liquidator comes to a conclusion that the respective claimants have security interest over the assets the corporate debtor, he shall permit those creditors to exercise the right under Section 52 of the Insolvency & Bankruptcy Code.

4. As to the legal proposition laid under Section 13(9) of the SARFAESI Act, this Liquidator must have seen that whatever threshold limit of 60% mentioned under Section 13(9) of SARFAESI Act is subject to Insolvency & Bankruptcy Code, therefore it is clear that IBC has overriding effect over the SARFAESI thereby, the Liquidator should not have filed this application based on the provision under SARFAESI Act.

5. The applicant having not denied the respondent notifying to opt out of Section 53 to realise its 'security interest' under Section 52 of the Insolvency & Bankruptcy Code, the Liquidator is liable to consider such claim in the manner as envisaged under Section 52.

6. Therefore, we are of the view that this application seeking a direction against the creditors compelling to relinquish their security interest over the assets of corporate debtor is not supported by any provision of Insolvency & Bankruptcy Code, thereby the application stands dismissed as misconceived with further

direction to the Liquidator to act in accordance with law.