



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA-1072/2023 IN

CP(IB) No.1123/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of

Bhrugesh Amin

(Resolution Professional)

...Applicant

Versus

Sanjay Rajkumar Chhabriaa & Ors.

...Respondent

In the matter of:

Yes bank Limited

[CIN: L65190MH200PLC143249]

...Financial Creditor

V/s

Radius Infra holdings Private Limited

[CIN: U45209MH2014PTC256382]

...Corporate Debtor/Respondent

Order Dated: 18.05.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) :

Mr. Ayush Rajani, Adv.

For the Respondent(s) :

None present.



ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This Interlocutory Application no IA-1072/2023 is filed on 18/03/2023 by the Resolution Professional, Shri. Bhruvish Amin of M/s Radius Infra Holdings Limited (**Corporate Debtor**) seeking directions against Mr. Sanjay Rajkumar Chhabriyaa and Mr. Anil Nandlal Chhabriyaa (both Suspended Directors of the Corporate Debtor) for contribution of a sum of Rs.1,17,93,242/- u/s 67 of the Insolvency and Bankruptcy Code,2016(I&B Code) and imposition of fine u/s 71,72and 73 of the Code.
2. The Corporate Insolvency Resolution Process (CIRP) commenced in the matter of Corporate Debtor i.e. Radius Infra Holdings Private Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) on 09th May, 2022.
3. During the course of CIRP, M/s Pipara & Co LLP, Chartered Accountants was appointed to undertake the transaction audit of the books of the Corporate Debtor in accordance with the provisions of IBC and basis the available information with the Corporate Debtor.
4. Subsequently, the Transaction auditors filed their Forensic Audit Report dated 10 March 2023, which provides sufficient reasons to believe that the Respondent has undertaken preferential transaction with an intent to defraud the creditors which are covered under the provisions of Section 66 of the Code.
5. It is stated that the Corporate Debtor had purchased MERCEDES AMG G 63 for approx. Rs. 2.45 crore (before deduction of TDS) from M/s. Auto Hangar India Pvt Ltd. bearing registration number MH02FE9213 in September 2021. As per the desktop review, first owner for the said car is the Corporate Debtor and as per Cars info app the current owner is third party Mr. Juris Consillis. A copy of Snapshot is placed in the application. However, as per the latest audited Balance Sheet & Cash Flow Statement for FY 2021-22, the Motor car which was earlier forming part of the Fixed Assets



schedule has been reduced from the closing balance of the Fixed Assets under the head Property, plant and equipment (Note 10) thereby reducing gross block of motor cars from Rs. 2,59,96,777/- to Rs. 10,19,377/-.

6. The Applicant submits that these facts proves that a sale of car for Rs. 2,49,77,400/-, on which accumulated depreciation was also considered for Rs.1,31,84,158/-, has taken place in the financial year ended on 31.03.2022. Accordingly, balance amount of Rs.1,17,93,242/- {Rs.2,49,77,400/- (value of sale of car) Rs.1,31,84,158/- (Accumulated depreciation)} ought to be recovered from the Respondents. It is evident that the said assets have been disposed off by the Respondents and no amount has been deposited / received in the bank account of the Corporate Debtor. In absence of the proper details from the Corporate Debtor, no clarity could be gathered on facts i.e. when the asset was transferred to Mr. Juris Consillis and at what amount. Since the asset is shown in the books of accounts, it seems the Respondent has not brought the consideration in the Corporate Debtor's Bank accounts/books.
7. Considering the findings of the Transaction audit report, the Applicant submits that the transaction so identified and as explained in detail in this Application stands covered under the provisions of Section 66 of the Code. Hence this Application. Accordingly, the applicant has sought directions against the Respondents to make such contributions to the Corporate Debtor aggregating to sum of Rs. 1,17,93,242/- on account of the financial benefit derived from the Corporate Debtor by each such Respondents jointly and equally.
8. This bench heard the Counsel and perused the material on records, this bench finds have not filed any reply despite the service of application. It is also noted that the respondents have not been providing support and cooperation to the Resolution Professional in CIRP and an application u/s 19(2) of the is under consideration of this bench.



9. On perusal of the Financial Statement and Auditors Report annexed thereto, it is found that the auditors have confirmed that the fixed assets were physically verified by the management and no discrepancy was found. It implies there from that the said motor car is not owned by the Corporate Debtor as on 31.03.2022, however, it was owned in the preceding year and was in ownership of the Corporate Debtor as on 31.03.2021, a fact which is confirmed from the perusal of the Financial Statements. This bench also notes that a profit of Rs.5,82,996/- was earned on such sale as per scheduled 19 of the Financial Statement. Considering these facts, this bench finds that the motor car was sold for a consideration of Rs.1,23,76,238/- (Written down value in the books amounting to Rs. 1,17,93,242/- and profit on sale 5,82,996/-). Since, the transaction auditor could not tress the amount of consideration receipt from sale of this car in the bank account of the Corporate Debtor and the suspended directors i.e. Respondents have not explained, how this amount was received in the books of Corporate Debtor. We find that the said transaction of sale is squarely covered u/s 66 of the Code which deals with conduct of business of the Corporate Debtor for any fraudulent purpose. Section 66 (2) of the code makes the wrong door liable to contribute to the assets of the Corporate Debtor. In the absence of clarification from the Respondents, who are duty bound to provide explanation of the transactions of the Corporate Debtor, this bench is left with no option but to presume that a sum of Rs.1,23,76,238/- is to be recovered from the Respondents jointly or severally in terms of section 66 of the Code.

10. In view of the above, the present application IA-1072/2023 is **allowed and disposed of.**

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Kishore Vemulapalli
Member (Judicial)

18.05.2023.