

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**I.A. 1917 OF 2021**

Under Section 60(5) of Insolvency &  
Bankruptcy Code, 2016

**M/s Kajaria Ceremics Limited**

...Applicant

Vs.

Dilip Chhabria Design Private Limited  
Represented through the  
The Resolution Professional

...Respondent

In the matter of

C.P.(IB) No. 1967/MB/2019

Creative Garments Private Limited

**Financial Creditor**

Vs.

Dilip Chhabria Design Private Limited

**Corporate Debtor**

*Order delivered on: 05.12.2023*

*Coram:*

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

**Justice Shri V.G. Bisht**  
Hon'ble Member (Judicial)

*Appearances*

For the Applicant : None  
For the Respondent : Mr. A. K. Mishra a/w Mr. Siddharth  
Samie, Advocate

**ORDER**

*Per: V.G. Bisht, Member (Judicial)*

1. This Interlocutory Application 1917/2021 is filed by M/s Kajaria Ceramics Limited (“Applicant”) in the Corporate Insolvency Resolution Process (“CIRP”) of M/s Dilip Chhabria Design Private Limited (“Corporate Debtor”) for the release of the vehicle being a Tempo Traveller-26 manufactured by Force Motors Limited bearing registration no. HP-38-G-4243 owned by the Applicant (“Vehicle”).
2. It is the case of the Applicant Company that, with intent to create state of art hospitality & comfort for its Senior Management Officials while they are travelling by road, it had decided to buy a vehicle and to get it customized as per their requirement & specifications to meet the specific needs of comfort for its senior management officials.
  - 2.1. Mr. Jaskaran Singh Nanda & Mr. Nihal Bajaj officials of Dilip Chhabria Design Private Limited made a proposal through the name of their group company i.e. DC Auto Soft Private Limited for the customization of the vehicle. It was also suggested by them to buy a Tempo Traveller manufactured by Force Motors to meet out the specifications criteria.
  - 2.2. Relying and acting upon the assurances of the above said officials namely Mr. Jaskaran Singh Nanda & Mr. Nihal Bajaj, the Applicant agreed to avail the services of the Respondent Company for vehicle customization and purchased Tempo Traveller in the name of the Applicant Company.

- 2.3. As per the terms of the agreement, customization was agreed to be done for an amount of Rs.49,92,000/- out of which an amount of Rs.29,95,200/- was paid as a 60% advance on 04.06.2019.
- 2.4. The Applicant wrote a letter to the Tempo Traveller Dealer ie Tempo Automobiles Private Limited to deliver the vehicle to Dilip Chhabria Design Private Limited at its Gurugram Office from where it was to be taken to its Pune facility for needful customization.
- 2.5. Upon the personal request of Mr. Dilip Chhabria, an amount of Rs.15,00,000/- was further paid on 27.09.2019 against the total agreed amount.
- 2.6. There were several communications exchanged between the parties for modifying the vehicle and delivering the same to the Applicant. However, nothing fruitful came out from the dialogues and communications.
- 2.7. The Applicant filed an application before Resolution Professional for release of the vehicle viz. Tempo Traveler-26 manufactured by Force Motors bearing registration number HP-38-G-4243 from the possession of the Corporate Debtor.
- 2.8. The Applicant neither received any reply from the Respondent. nor has any positive action been taken by the Respondent till date. Hence, the present application for the release of vehicle bearing registration number HP-38-G-4243 of Tempo traveller-26 make manufactured by Force Motors from the possession of the Corporate Debtor represented by Resolution Professional.
3. The Resolution Professional Mr. Jitendra Kumar Pamboran Yadav ("RP") has filed reply stating that the Applicant had signed the proposal and agreement in respect of the work of customizing the vehicle with M/s D C Autosoft Pvt. Ltd. and paid the advance payment against the

total agreed amount, the said company outsourced the work to the Corporate Debtor, who performed the customization on the said vehicle. Due to non-receipt of the payment, the applicant's vehicle is parked in the Corporate Debtor's workshop. It is further stated that the Respondent has no objection to release the vehicle subject to approval from Crime Branch officials and receipt of payment of work done by the Corporate Debtor and parking charges from 2019 till date. It is further stated that the application is bad for non-joinder of necessary parties to the proceedings.

4. We have heard the learned counsel and perused the material available on record.
  - 4.1. We find that the Respondent has expressed no objection to release of the vehicle in case the dues of the Corporate Debtor as well as charges for Parking the said Vehicle from 2019 till date are cleared. This clarifies that the vehicle is still in custody and possession of the Respondents, even though the understanding for customisation was principally between D C Autosoft Pvt. Ltd. and the Applicant, and the Corporate Debtor was only a job worker for D C Autosoft Pvt. Ltd. Merely because, D C Autosoft Pvt Ltd is a related party of the Corporate Debtor, the Applicant can not make a claim directly on the Corporate Debtor, who has a right to retain the goods subject to payment of its charges under the bailment provisions.
  - 4.2. Though, this Bench does not find it appropriate to deal with the matter, however, since the vehicle is in custody and possession of the Corporate Debtor and its dues are also pending, we consider it appropriate to direct the Applicant to clear the dues of the Corporate Debtor after appropriation of money paid to D C Autosoft Pvt Ltd so far.
  - 4.3. We find that the vehicle does not form part of assets of the Corporate Debtor, as the vehicle is held in trust by it. Accordingly, upon payment of such sum, the Corporate Debtor shall release the vehicle

to D C Autosoft Pvt Ltd., who in turn will release the vehicle to the Applicant after getting no objection from Crime Branch in this respect. It is clarified that the Respondent shall be within its right to claim the balance dues from D C Autosoft Pvt. Ltd., if any remains unpaid after receipt of payment from the Applicant.

- 4.4. The parking charges can not be claimed, because the vehicle remained parked due to delayed completion of work on part of the Corporate Debtor.
5. In view of aforesaid directions, this IA 1917/2021 is disposed of as partly allowed.

Sd/-

**Prabhat Kumar**  
Member (Technical)

Sd/-

**Justice V.G. Bisht**  
Member (Judicial)