



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

**IA(I.B.C)/469(KB)2025
IN
C.P. (IB)/211(KB)2023**

Ms. Sayantani Banerjee, Adv.]

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Court convened via hybrid mode of conferencing.
2. The Learned Advocate for the parties were heard *in extenso*.
3. This application has been preferred by the Kotak Mahindra Bank, having its registered office at 27, BKC, C-27, G Block, Bandra Karla Complex, Bandra (E), Mumbai- 400051 and also at Kotak Infinity, IT Park, Building No.21, 4th Floor, Zone-2, General A.K. Vaidya Marg, Malad, East Mumbai- 400097 against the Resolution Professional of Gemus Engineering Limited, Calforge Steel Private Limited and Punjab National Bank, to seek the following reliefs:
 - (a) *A declaration that the sale notice dated 31.01.2025 issued by the Respondent No.1/Liquidator is infructuous.*
 - (b) *An order of injunction be passed restraining the Respondent No.1 from accepting any expression of interest pursuant to the sale notice dated 31.01.2025.*
 - (c) *A declaration that the e-auction notice, and sale certificate dated 02.09.2022 issued by the Respondent no.3 be declared wrong, invalid, null and void.*
 - (d) *An order of injunction restraining the Respondent No.2 from exercising any right on and/or disposing of, alienating and/or selling and/or creating any third party interest in the machinery hypothecated to the Applicant, as detailed under Schedule A of the Deed of Hypothecation dated 30.09.2019.*
 - (e) *An order directing all Respondents no. 2 and 3 to disclose the whereabouts of the hypothecated Plant and*

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Machinery, described at Serial no. 2 and 3 of the Schedule A of the Deed of Hypothecation dated 30.09.2019, to protect the security interest of the Applicant and if found in their custody an order to release the said hypothecated assets mentioned in Schedule A herein in favour of the Applicant.

- (f)** *An order appointing a receiver to take stock, charge and possession of plant and machinery hypothecated to the Applicant and listed in Schedule A of the Deed of Hypothecation dated 30.09.2019.*
- (g)** *A direction upon the Respondent no. 2 to permit and/or assist the receiver in accessing the premises to take charge and possession of the machinery hypothecated to the Applicant and listed in Schedule A of the Deed of Hypothecation dated 30.09.2019.*
- (h)** *Pending the hearing and final disposal of this Application, an order directing the Respondent no. 2 to pay monthly rent of Rs.27,123/- to the Applicant, for the unjust enrichment received from the Hypothecated Plant and Machinery from 20.10.2023 till date.*
- (i)** *An order directing Respondents No. 2 and 3 to jointly and severally compensate the Applicant to the tune of Rs.10,00,000/- for the monetary loss incurred due to the depreciation of the hypothecated plant and machinery, along with interest thereon, arising from the unlawful possession of the said assets by Respondent No. 2 for a period exceeding 16 months and the illegal auction sale conducted by Respondent No. 3, thereby causing financial loss to the Applicant.*

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- (j) On the alternative this Hon'ble Tribunal may direct enquiry into damages.*
- (k) Ad-interim orders in terms of prayers a, b, c, d, e, f, above;*
- (l) Such further orders as this Hon'ble Tribunal deems fit and proper.*

- 4.** It is argued by the learned Advocate, Ms. Zeba Khan, appearing on behalf of Kotak Mahindra Bank that the Bank is one of the members of Stakeholders Consultation Committee (SCC), it is a secured Financial Creditor by way of Deed of Assignment dated 27th June, 2024 executed with Hero Fincorp Limited (HFCL) for assignment of receivables of HFCL to the Applicant and also and enforcement of security interest in the loan account,. It is claimed that by way of such assignment, the Applicant Bank has become absolute owner of the said debt and entitled to recover of standing dues upon exercising its security interest on the hypothecated asset.
- 5.** It is alleged by the learned Advocate that the Respondent No.2, namely, Calforge Steel Private Limited is in illegal possession of plant and machinery being assets of the Corporate Debtor, namely, Gemus Engineering Limited, by way of an illegal sale by the Respondent No.3 without having any right/title to sell. It is also submitted that the Respondent No.3, Punjab National Bank had extended loan to the Corporate Debtor, Gemus Engineering Limited securing factory land/premises in its favour as collateral. Upon taking possession of the secured factory land on 7th July, 2022, the Respondent No.3 illegally conducted an e-auction of the land on 8th August, 2022 purportedly including plant and machineries

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lying on such land including machineries hypothecated to the Applicant, Kotak Mahindra Bank.

6. It is further alleged that the Respondent No.2, namely, Calforge Steel Private Limited being a successful bidder, is relying upon a wrongly issued e-auction notice and sale certificate dated 2nd September, 2022 to assert illegal ownership over the plant and machinery hypothecated to the Applicant Bank.
7. However, it is also submitted that the Respondent No.3 by its possession hand-over notice dated 20th October, 2023 and attached inventory, had expressly informed the Respondent No.2 about the hypothecated assets. Further the Respondent No.3 in its letter dated 11th August, 2022 had specifically stated that no “no objection certificate” or “NOC” was granted in respect of the said hypothecated assets. Thus, according to the Applicant not only the Respondent No.3 lacked authority to sell the said assets to the Respondent No.2 but the Respondent No.2’s possession is also without legal basis and liable to be vacated.
8. The prayer has been vehemently opposed by Calforge Steel Private Limited, the Respondent No.2.
9. Learned Advocate, Mr. Shaunak Mitra, appearing on behalf of Calforge Steel Private Limited would forcefully assert that as per the auction notice, Punjab National Bank proposed to auction all the assets of the Corporate Debtor situated at Mouza Chandipur, J.L. No.09, Plot No.24P and 25P WBIIDC, Industrial Growth Centre, Uluberia, Howrah, PIN 711316 including entire plant and machinery located therein. Further that all the assets of the Corporate Debtor was sold by way of an auction notice in

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accordance with the provisions of SARFAESI Act and the auction notice clearly mentioned the following:

“Factory land, Building, all constructions, structures, sheds, services, fitting, amenities etc. therein situated at Mouza Chandipur J.L. No. 09, Plot no. 24 P & 25 P WBIIDC, Industrial Growth Centre, Uluberia, Howrah, containing an area of more or less 1.2904 Acres or 78.25 cottah (Under WBIIDC Lease deed no 3948, recorded in volume No. 84. Book No. 1 pages from 444 to 462 for 99 years w.e.f 19.12.1999 registered in the office of the Registrar of Assurances Kolkata) lease owned by Gemus Engineering Limited along with the stocks of RM, SIP, FG, and all other current assets of the company and entire plant and machineries lying therein therein”.

- 10.** It is further submitted that the Respondent No.2, namely, duly participated in the auction sale, emerged as the highest bidder and was declared as a successful auction purchaser. It had rightfully acquired the title to the said factory premises of Gemus Engineering Limited and became absolute owner of all the assets within the factory premises which, *inter alia*, included all machineries situated therein. It is thus alleged that the reliefs pleaded by the Applicant are inherently contradictory and cannot be granted inasmuch as on one hand the Applicant seeks possession of its assets on the other seeks directions upon the answering respondent to disclose whereabouts of the said assets.
- 11.** Learned Advocate appearing on behalf of the Liquidator submitted that the entire sale was conducted by Punjab National Bank in the year 2022 in full compliance of the provisions of the SARFAESI Act. At no point of time during the auction or

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thereafter, did the Applicant or Hero Fincorp Limited ever raise any objection despite being specifically informed about the auction.

- 12.** Learned Advocate would further submit that none of the claimed machines could be identified inside the factory premises. It is stated that at the time of handing over physical possession of the assets of the Corporate Debtor on 20th October, 2023, the representatives of the Punjab National Bank carried a pre-printed document titled *“Transfer of Physical Possession of the Property (of NPA A/c Gemus Engineering Limited) located in Mouza- Chandipur...”* and the notation was as follows:

“N.B: The information about one machine reportedly identified as ‘CNC Vertical Turret’ lying in the concerned premises is reportedly hypothecated to Hero Fincorp Ltd.”

However, at the time of taking over possession, no such machines could be located.

- 13.** It is also submitted that during the physical verification of assets and preparation of inventory, it was categorically recorded that *“Informed that the said machinery is with Hero Fincorp”*, further against the *“Place were kept for safe custody”* corresponding to the entry for CNC Vertical Turret, one of the machineries claimed to be hypothecated to Kotak Mahindra Bank was deliberately left blank. Thus, no specific location for the same was provided.
- 14.** It is alleged that Hero Fincorp Limited never chose to exercise its rights at the relevant time instead assigned its rights to the Applicant, Kotak Mahindra Bank, who has belatedly sought to take steps.

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15. Finally, it is submitted that since the location of the said machines could not be identified and the whereabouts could not be located at the premises, handed over to Calforge Steel Private Limited, this belated application has no merit whatsoever.
16. We have heard the learned Advocate for the parties and perused the sale certificate issued to Calforge Steel Private Limited which is as under:

 **ਪੰਜਾਬ ਨੈਸ਼ਨਲ ਬੈਂਕ**
punjab national bank
Stressed Assets Targeted Resolution Action (SASTRA) Division, Zonal Office, Kolkata
United Tower, 3rd Floor, 11, Hemanta Basu Sarani, Kolkata-700 001

SALE CERTIFICATE

Whereas

The undersigned being the Authorised Officer of the Punjab National Bank (secured creditor) under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and in exercise of powers conferred under Section 13 read with Rule 8 & 9 of the Security Interest (Enforcement) Rules, 2002 sold on behalf of the Punjab National Bank on AS IS WHERE IS BASIS and AS IS WHAT IS condition in favour of **Calforge Steel Private Limited, located at Rasoi Court, 4th Floor, 18, R.N. Mukherjee Road, Dalhousie Square, Kolkata- 700001** (purchaser), the immovable property shown in the schedule below secured in favour of the Punjab National Bank by **Gemus Engineering Limited** towards the financial facility of cash credit, term loan, etc. availed by **Gemus Engineering Limited** from Punjab National Bank. The undersigned acknowledges the receipt of the sale price **Rs 10,15,69,576/- (Rupees Ten crores Fifteen lakhs Sixty nine thousand Five hundred and Seventy six only)** in full and hand over the delivery and possession of the scheduled property.

The sale of the scheduled property was made free from all encumbrances known to the secured creditor.

Description of immovable property

All that part and parcel of land (lease hold rights of residual period of 75 years approx) situated in Mouza Chandipur, J.L. No. 9, P.S. Uluberia, District Howrah containing an area of more or less 1.2904 acres of land comprising plot numbers 24 (Part) and 25 (Part), WBIIDC Uluberia Growth Centre, Uluberia, Howrah including plant & machineries, building, structure, sheds therein.

Bounded:

On the North by: Land of NH-6

On the South by: WBIIDC Road

On the East by: Land of Sait Mine Line

On the West by: WBIIDC Land

Date: 02.09.2022

Place: Kolkata

ਪੰਜਾਬ ਨੈਸ਼ਨਲ ਬੈਂਕ
For Punjab National Bank

Authorised Officer
SASTRA Division, Zonal Office, Kolkata
(Abhijit Mukherjee)

Authorised Officer & Chief Manager

17. The said sale certificate as it appears describes the immovable property and categorically mentions and includes the plants and machineries, building, structure, sheds therein, without

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excluding any particular machine as claimed by Kotak Mahindra Bank.

- 18.** Further Form CGH-1 indicating charge over the property in favour of Punjab National Bank merely indicates the following:

“(i) PRIMARY –CC(H): 1st charge on entire current assets, present & future, including stock of raw materials, stock in process, finished goods, lying at co’s premises or godowns situated all over India and”

Here also no specific charge over any particular machine is made out.

- 19.** A letter dated 20th September, 2022 seems to be by Calforge Steel Private Limited to the Officer-in-Charge, Uluberia Police Station which indicates that one Mr. Rakesh Kumar Mishra, Hero Fincorp Limited is disturbing the peaceful possession of Calforge Steel Private Limited and trying to remove one CNC machine from the factory.
- 20.** It is also evident that while transfer of the assets to Calforge Steel Private Limited, it was recorded by Punjab National Bank that CNC Vertical Turret lying in the concerned premises is reportedly hypothecated to Hero Fincorp Limited. The said letter indicating transfer of physical possession, dated 20th October, 2023 also mentions letters dated 11th August, 2022 and 18th August, 2022 and an e-mail of Hero Fincorp Limited dated 17th August, 2022 as enclosed to the said letter. There are subsequent communications to Hero Fincorp Limited and Mr. Rakesh Kumar Mishra of Hero Fincorp Limited requesting them to remove the machines from factory premises but there was no response from their side.

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- 21.** Accordingly, since neither Hero Fincorp Limited nor its assignee Kotak Mahindra Bank has taken any steps to remove the machines in question which they claimed to hold charge over created by the Corporate Debtor in their favour, this belated application for disclosure of whereabouts of the machines and their hand-over cannot be allowed.
- 22.** However, for the ends of justice, we direct Calforge Steel Private Limited to try to locate and identify the machines in question being CNC Vertical Turret which was admittedly hypothecated to Hero Fincorp Limited and if identified and located, within the premises in question hand-over the same to Kotak Mahindra Bank within a period of one month from the date of uploading of this order.
- 23.** Accordingly, **IA(I.B.C)/469(KB)2025** stands **disposed of**.
- 24.** There will be no order as to costs.
- 25.** The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 26.** Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**Siddharth Mishra
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order signed on this the 12th day of June, 2026.

SM (Steno)