THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT-V

I.A. 2303 OF 2021

IN

CP (IB) – 987/IBC/MB/2020

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

Filed by

Suraksha Asset Reconstruction Ltd.

…Applicant

V/s

1. **Unity Small Finance Bank Ltd.**
2. **Sr. Inspector of Police, Banking II Economic Offences Wing, Mumbai.**
3. **Interim Resolution Professional/Resolution Professional of the Corporate Debtor**

…Respondents

In the matter of

Suraksha Asset Reconstruction Ltd.

…Financial Creditor

Versus

Sapphire Land Development Private Ltd.

…Corporate Debtor

Order delivered on: 17.10.2023

Coram:

Hon'ble Ms. Reeta Kohli, Member (Judicial)

Hon'ble Sh. Sanjiv Dutt, Member (Technical)

Appearance:

For the Applicant: Adv. Saurabh Gandhi a/w Adv. Harsh L, Behany a/w Adv. Gaurav Gandhi a/w Adv. Prachi Sanghvi i/b HN Legal

For the Respondent: Adv. Maulik Chokshi i/b Adv. Amr Khanna (R1)

ORDER

1. The above application I.A. No. 2303 of 2021 is filed by the Applicant i.e. Suraksha Asset Reconstruction Ltd. (hereinafter referred to as the "Applicant") seeking directions in respect of the Assets of the Corporate Debtor attached/sold by the Respondent No. 1 & 2 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code"), praying for following reliefs:

   a. *That this Hon'ble Tribunal be pleased to cancel and set aside the entire auction process of Seized Asset No. 1 i.e. Yacht make Ferreti 881 (2006 model) undertaken by the Respondent No. 1.*

   b. *That this Hon'ble Tribunal be pleased to restrain the Respondent No. 1 from appropriating the sale proceeds realised from sale of Seized Asset No. 1 i.e. Yacht make Ferreti 881 (2006 model);*

   c. *That this Hon'ble Tribunal be pleased to direct the Respondent No. 1 to deposit the amounts realised from sale of Seized Asset No. 1 i.e. Yacht make Ferreti 881 (2006 model) with the Respondent No. 3;*

   d. *That this Hon'ble Tribunal be pleased to restrain the Respondent No. 2 from auctioning the Seized Asset No. 2 i.e. Range Rover Reg No. MH04-EK-2100 and handover the possession of the Seized Asset No. 2 to the Respondent No. 3;*

2. Vide this IA, the Applicant Suraksha Asset Reconstruction Limited has confined himself to the prayer for cancellation and setting aside the auction process of seized Yacht make Ferreti 881 (2006 model) undertaken by the Administration of PMC Bank Limited.

3. The case of the Applicant is that the Corporate Debtor i.e. Sapphire land Development Private Limited was admitted to CIRP vide order dated 30.04.2021. The Respondent No. 3 was appointed as IRP and thereafter CoC with 100% voting replaced the IRP with Ms. Snehal Kamdar having registration No. IBBI/IPA-001/IP-P00415/2017-18/10738 as RP. The case of the Applicant is that in the first meeting of Committee of Creditors held on 07.06.2021, the RP had informed that the assets of the Corporate Debtor particularly the Yacht make Ferreti 881 (2006 model) is in possession of Economic Offence Wing/Administrator of PMC Bank and PMC Bank had taken possession of this Asset pursuant to the case No. EOW C.R. No. 86/2019 (PMC Bank Fraud case) filed by the EOW. The RP had further informed the CoC that he had sent a letter to the Administrator PMC Bank to hand over the possession of this asset in view of Section 18(f), Section 63 and Section 238 of IBC. The RP was informed that as per the order dated 25.11.2019 received from 47th MM Court, the auction of the Yacht had been completed and the PMC Bank has received the demand draft for 10% of the offer amount from M/s Marine Solutions Distributions and Services Private Limited. It was also informed that the sale is not yet concluded as the same had to be informed to the 47th MM Court. The case of the Applicant is that in view of the fact that the Corporate Debtor was admitted to CIRP, it is the onerous responsibility of the RP to sell the assets of the Corporate Debtor so as to protect the interest of the Creditors and also in view of the fact that on the admission of the Corporate Debtor i.e. on 30.04.2021, Section 14 of IBC came into operation meaning thereby that the said asset could not be auctioned/sold irrespective the order of any court. The asset thus has to be given in the hands of the RP for an effective resolution process. In support of the same, the Counsel for the Applicant also relied upon judgment rendered in IA 962 of 2022 in CP 3703 of 2019 dated 10.07.2023 wherein the Hon'ble NCLT has been placed to hold as under:-

> *From the above, 14(1)(a), it is clear that continuation of pending suits or proceedings against the Corporate Debtor including Execution of any Judgment, decree or order in any 'Court of Law', 'Tribunal' 'Arbitration Panel' or other 'Authority' will temporarily cease to operate during*

> *'Moratorium'. The purpose of the Section 14 is to ensure that no depletion of 'Assets' of the 'Corporate Debtor' takes place during the 'Corporate Insolvency Resolution Process' and the 'Corporate Debtor' is allowed to continue as a going concern in order to maximize the value for all the 'Stakeholders'. Accordingly, this Bench is of the considered view that Section 14(1)(a) imposes complete embargo on any proceeding against the Corporate Debtor by any Authority till the completion of CIRP. Moratorium covers attachment of Bank accounts by any Authority including 'EPFO' and it is required to be lifted to grant Corporate Debtor a fair chance of revival and to ensure that Resolution Plans are received. It may also be inferred from the circumstances and intent of legislation that in the present cases, the lien created prior to the initiation of the 'Corporate Insolvency Resolution Process cannot sustain as it will hinder the entire resolution process.*

The auction of the asset i.e. Yacht make Ferreti 881 (2006 model) was held on 22.03.2021.

4. On the other hand, the case of the Respondent is that they had specific order by the 47th Court of the Chief Metropolitan Magistrate specifically granting them permission to sell the attached immovable properties vide order dated 25.11.2019 thus they were fully competent to auction the same. It was further pleaded that it was the Corporate Debtor who had unilaterally allowed the Respondent No. 1 i.e. Bank via Board Resolution dated 12.11.2019 to sell and dispose of the Yacht make Ferreti 881 (2006 model). The entire emphasis of the Counsel for the Respondent is that the order of the Chief Metropolitan Magistrate is much prior in time, i.e. 25.11.2019 and in terms of the order, the auction was to be held much before the Corporate Debtor was admitted to CIRP. In view thereof, they were fully authorized to auction the immovable asset. It was also the case of the Respondent that at the said auction M/s Marine Solutions and Distribution Services was the highest bidder and he offered a bid of Rs. 3,50,00,000/-. The Respondent vide order dated 25.03.2021 had asked

the Successful bidder to deposit the sum of Rs. 87,50,00,000/- on or before 30.03.2021 after deducting the earnest money deposited.

5. During the course of arguments, the entire emphasis of the Respondent was on the order of that of the Chief Metropolitan Magistrate (CMM) granting them the permission to auction. After having heard the submissions of the parties and appreciating the law laid down by the Hon'ble Courts more particularly by the Hon'ble Supreme Court in ***Sundaresh Bhatt, Liquidator of ABG Shipyard Vs. Central Board of Indirect Taxes and Customs (2022) SCC OnLine SC 1101,*** wherein Section 14 of the IBC prescribing moratorium on the initiation of CIRP proceedings and its effects have been explained. It has been held that one of the purposes of the moratorium is to keep the assets of the Corporate Debtor together during the insolvency resolution process and to facilitate orderly completion of the processes envisaged under the statute. Such measures ensure the curtailing of parallel proceedings and reduce the possibility of conflicting outcomes in the process. The Hon'ble Supreme Court while referring to the report from the February 2020 Report of the Insolvency Law Committee (para 8.2), states that one of the motivations of imposing a moratorium is for Section 14(1)(a), (b), and (c) of the IBC to form a shield that protects pecuniary attacks against the Corporate Debtor.

6. In view of the above stated facts and circumstances and the principles of law settled above, we are left with no other option but to allow the present I.A. 2303 of 2021 and set aside the auction proceedings having been carried out by the Respondent. We further direct the Respondents to hand over the asset to RP in view of admission of the Corporate Debtor in CIRP.

7. Accordingly, the above IA is **allowed.**

Sd/-
Sanjiv Dutt
Member (Technical)

Sd/-
Reeta Kohli
Member (Judicial)

/Ziyaul/Abhay/