

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

IA 2345 of 2023

In

CP (IB) 3707 of 2019

Under section 60(5) of the Insolvency and
Bankruptcy Code, 2016

IN THE MATTER OF

Hemant Kumar Shah

Authorized Partner

AAA Insolvency Professionals LLP

Resolution Professional

M/s S. Kumar Limited

... Applicant

V/s.

Nagar Palika Nigam Dewas

Ward No. 27, Near S.P. Office and police
control room, AB Rd, Shivaji Nagar, Moti
Bungalow, Dewas, Madhya Pradesh - 455001.

... Respondent

IN THE MATTER OF

**Edelweiss Asset Reconstruction Co.
Limited**

... Financial Creditor

V/s.

M/s S. Kumar Limited

... Corporate Debtor

Order delivered on :- 18.12.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri Anil Raj Chellan, Member (Technical)

Appearances:

For the Applicant/RP : Adv. Prashansa Agarwal
For the Respondent : None present

ORDER

Per: - Coram

1. The present Application is filed by Mr. Hemant Shah, Authorised Partner of AAA Insolvency Professional LLP, being the Resolution Professional of S. Kumars Limited (the "Corporate Debtor") under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (the IB Code) inter alia seeking directions against the Nagar Palika Nigam, Dewas, Madhya Pradesh – 455001, claiming following reliefs:
 - a. Pass an order/direction allowing the present Application.
 - b. To issue direction against the Respondent and release the asset of the Corporate Debtor which is attached illegally and is a clear violation of breach of Moratorium.
 - c. Pass any order or direction as this Tribunal may deem fit and proper in the interest of justice.
2. It is stated that an Application u/s 7 of the IB Code, 2016 was filed by Edelweiss Asset Reconstruction Company Limited (Financial

Creditor) against the Corporate Debtor which was admitted on 08.11.2022. After the passing of the admission order the IRP issued public announcement inviting claims from the creditors of the Corporate Debtor, the Committee of Creditor was formed in pursuance of the meeting of the creditors held on 13.01.2023, Form G was issued in accordance with the Regulation 36A of the CIRP Regulations.

3. It is further alleged that Respondent i.e. Nagar Palika Nigam Dewas, Madhya Pradesh had seized the weaving division of S Kumars Limited on 02.11.2022 due to nonpayment of property tax. The erstwhile RP sent a mail to the Respondent intimating about the initiation of CIRP against the Corporate Debtor and also about the last date of submission of claims which was 02.12.2022. Subsequently on 02.12.2022 a claim was received from the Respondent which was not as per Insolvency and Bankruptcy Board of India (Insolvency Regulation for Corporate Persons) Regulations 2016 and thereafter a claim form was submitted with supporting documents by the Respondents. On 23.01.2023, the erstwhile IRP sent a mail to the Respondent requesting to keep the proceedings, if any, against the Corporate Debtor in abeyance as per Section 14 of the IB Code and also to file a claim if any in respect of outstanding dues. Another claim form was submitted by the Respondent on 09.03.2023 which was found to have been submitted on a wrong claim form. In this regard, an intimation was sent to the Respondent on 17.02.2023. Another email was sent to the Respondent to release the weaving section of S Kumars Limited. It is further stated that weaving division of the Corporate Debtor is an integral part of the final product of manufacturing division and due to its attachment, the valuers could not determine the value of the assets of the weaving division of the Corporate Debtor which is further impacting the interest

of the Resolution Applicant which may lead to the Liquidation of the Corporate Debtor.

4. Notice was issued to the Respondent but nobody appearing on behalf of the Respondent with the result that the Respondent was proceeded ex-parte vide order dated 07.09.2023.
5. We have heard the Counsel for the Applicant and have gone through the records.
6. As per provision of section 18 and 23 of the IB Code, after the commencement of CIRP, the RP is duty bound to take into custody all the assets belonging to the Corporate Debtor. The weaving division of the Corporate Debtor is stated to have been seized by the Respondent for nonpayment of property tax of about Rs. 14 lakhs by the Corporate Debtor. In the light of the moratorium imposed vide order dated 18.11.2022 whereby the CIRP was commenced against the Corporate Debtor the RP is under an obligation to take control of all the properties belonging to the Corporate Debtor. Therefore, even if the property in question is attached or seized by Respondent, after the commencement of CIRP, the remedy available with the Respondent is to recover its dues by filing a claim with the RP which will be considered in terms of the Section 53 of the IB Code, 2016. The Respondent however, cannot continue to seize the property of the Corporate Debtor indefinitely on the pretext of the recovery of the outstanding dues of the property tax. In the given circumstances, when the Application has not at all been opposed by the Respondent as the Respondent has chosen not to appear in contest despite a valid notice has served upon it, in our considered view, a direction ought to be issued to release the property in question from any attachment to enable the RP to proceed with the Resolution Process of the Corporate

Debtor.

7. As a result of above discussion, **IA 2345 of 2023 is allowed**, directing the Respondent to release the property in question forthwith to enable the RP to proceed with the Resolution Process of the Corporate Debtor. The Respondent however, shall be at liberty to lodge its claim, if any, with the RP as per law in respect of the outstanding dues of the property tax.

Sd/-
ANIL RAJ CHELLAN
Member (Technical)

Sd/-
KULDIP KUMAR KAREER
Member (Judicial)

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