

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

*In the matter of*

**Beacon Trusteeship Limited**

... Financial Creditor

V/s.

**Modela Textile Industries Limited**

...Corporate Debtor

**CP (IB) No. 68/MB-IV/2021**

*AND*

*In the matter of*

**IA-1439/2023**

**IN**

**CP (IB) No. 68/MB-IV/2021**

Under Section 7 of the IBC, 2016

*In the matter of*

**Bhrugesh Amin**

... Applicant/Resolution Professional

V/s.

**City Development & Planning Officer and Ors.**

... Respondents

Order Pronounced on: **06.06.2023**

***Coram:***

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Applicant/RP:

Mr. Ayush Rajani, Ld. Authorized  
Representative.

For the Corporate Debtor/Respondent: Mr. Ameya Ranade a/w Neha Chaudhari and Purva Kshatriya, advocates.

## **ORDER**

*Per: Prabhat Kumar, Member (Technical)*

1. This Interlocutory Application No. 1439/2023 is filed on 02.03.2023 by the Resolution Professional Sh. Bhruvish Amin (“RP”) seeking direction to City Development & Planning Officer, Thane Municipal Corporation (“Respondent No. 1”) and Sr. Inspector of Police, Thane (West) (“Respondent No. 2”) for stopping the usage of land of the Modella Textile Industries Limited (“Corporate Debtor”) for unauthorised parking of the vehicles.
2. The Corporate Insolvency Resolution Process (CIRP) commenced in the case of Modella Textile Industries Limited (“Corporate Debtor”) on 04.05.2022 pursuant to the order of admission passed by this Tribunal under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“IBC”). Consequent to commencement of the CIRP in case of the Corporate Debtor, the moratorium u/s 14 of the Code came to be imposed and the Applicant took over control and possession of the affairs of the Corporate Debtor in terms of the IBC. During such exercise, the applicant came to know that Plot No. Land bearing C.S. No. 1592 to 1597 and 1599 to 1638, Tikka No. 33,34 and 37 of Village Panchpakhadi belongs to the Corporate Debtor and the same is being utilized for parking of vehicles unauthorizedly.
3. Since, such land is an "asset" of Corporate Debtor, the applicant, being duty bound to preserve and protect the assets of the Corporate Debtor u/s 25 of IBC, wrote a letter dated 13.12.2022 (stated to have been delivered on 14.12.2022) to Respondent No. 1 seeking his indulgence for stopping the unauthorised parking on the said land of the Corporate Debtor immediately.

However, neither any communication was received by the applicant nor the unauthorised parking on the said land stopped.

4. Accordingly, the Applicant wrote a letter dated 23.02.2023 (stated to have been delivered on 25.02.2023) to Respondent No. 2 seeking indulgence and assistance to stop such unauthorised usage of land of the corporate debtor, which is detrimental and prejudicial to the interest of the Corporate Debtor as such unauthorised usage has a bearing on the Resolution of the Corporate Debtor, which is in progress. However, neither any communication was received by the applicant nor the unauthorised parking on the said land stopped.
5. The Applicant has submitted that he has received one Resolution Plan from Prospective Resolution Applicant, and discussion and deliberations with Resolution Applicant in relation thereto is ongoing.
6. A copy of this application was served upon the Respondents through speed post acknowledgement dated 13.03.2023 and the matter was listed on 19.04.2023, when this Bench ordered issuance of Court Notice to the Respondents returnable on 17.05.2023. However, neither any written submission was filed nor any one appeared on behalf of the Respondents. Considering the ongoing resolution process and need for timely resolution of the Corporate Debtor, the matter was heard.
7. This Bench perused the material available on record and heard the counsel.
8. Section 18(1)(f) to take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including
  - (i) Assets over which the corporate debtor has ownership rights which may be located in a foreign country;
  - (ii) Assets that may or may not be in possession of the corporate Debtor;
  - (iii) Tangible assets, whether movable or immovable;
  - (iv) Intangible assets including intellectual property;
  - (v) Securities including shares held in any subsidiary of the Corporate Debtor, financial instruments, insurance policies;

- (vi) Assets subject to the determination of ownership by a court or authority;
- (vii) To perform such other duties as may be specified by the Board.
9. Further, Section 25(1) of IBC mandates the Resolution Professional to preserve and protect the assets of the Corporate Debtor and section 25(2)(a) mandates the Resolution Professional to take immediate control and custody of all the assets of the Corporate Debtor. It is not in dispute that the land over which vehicles are being park is owned by the Corporate Debtor as no party as led any claim there at.
10. This Bench feels that it is bounden duty of Respondent No. 1, who is responsible to ensure usage of land falling within its jurisdiction in accordance with the approved plan; and of Respondent No. 2 to maintain order so as not to allow any person from encroaching upon or misusing the property of any person, when such encroachment or mis-use is brought to its notice. This Bench is vested with powers to issue directions to such authorities u/s 60 of the Code, as are required and necessary to carry out the process under the IBC. Accordingly, this Bench directs the Respondent No. 1 to immediately issue necessary order(s) directing the person(s) utilising the land of the Corporate Debtor for parking of vehicles without any authority; and the Respondent No. 2 to evict such persons from the land belonging to the Corporate Debtor immediately. The Applicant will be at liberty to approach the higher authorities, in case, the Respondents do not assist him to stop the mis-use of said land of the Corporate Debtor and in taking over the physical control and possession over the said land. The higher authorities of the Respondents shall extend the necessary assistance to the Applicant, when it is sought from them.
11. Accordingly, **IA-1439/2023** is allowed with the aforesaid directions.

Sd/-

**Prabhat Kumar**  
**Member (Technical)**

Sd/-

**Kishore Vemulapalli**  
**Member (Judicial)**