

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

I.A. 2505 OF 2020

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

HDFC Bank Limited

...Applicant

V/s

Avil Menezes

Liquidator of Sunil Hitech Engineers
Limited

...Respondents

In the matter of

C.P.(IB) No. 2295/MB/2018

American Express Bank Corp.

.... Financial Creditor

Vs.

Sunil Hitech Engineers Limited

...Corporate Debtor

Order delivered on: 01/11/2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

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

Appearances:

For the Applicant : Mr. Sahil Sayyed, Advocate

For the Respondent : Mr. Viraj Parikh, Advocate

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ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application IA 2505/2020 was filed by M/s HDFC Bank Limited (“Appellant”) in the matter of M/s Suni Hi-tech Engineers India Limited [In Liquidation] (Corporate Debtor) under Section 42 /w 60(5)/(6) of The Insolvency and Bankruptcy Code, 2016 ("Code"), for direction to the Liquidator Sh. Avil Menezes (“Respondent”) in the Liquidation Process of the Corporate Debtor. The Appellant seeks admission of its claim as a secured creditor of the Corporate Debtor having security interest in the Jaguar Car bearing model No. Jaguar XJ 3.0 D Portfolio bearing Chassis No. SAJAC2650CNV26180, Engine No. 058306306DT and Registration No.- MH12HZ7020 to the extent of the outstanding claim of Rs 30,64,866.06/-, including for the purposes of distribution of assets and/or sale proceeds under Section 53 (1) (b) (ii) of the Insolvency and Bankruptcy Code, 2016 and/or otherwise, set aside of the decision of the Respondent as communicated vide email dated 18th November, 2020 refusing to recognize the Appellant Bank as a secured creditor of the Corporate Debtor and restraining the Respondent from distributing any sale proceeds realized from the sale of the Jaguar Car bearing model No. Jaguar XJ 3.0 D Portfolio bearing Chassis No. SAJAC2650CNV26180, Engine No. 058306306DT and Registration No.- MH12HZ7020 amongst any of the creditors of the Corporate Debtor.

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2. The Corporate Insolvency Resolution Process against the Corporate Debtor commenced pursuant to an Order dated 10/09/2018 in CP(IB)2295(MB) /2018, and the Respondent was appointed as the Liquidator of the Corporate Debtor by this Tribunal vide the liquidation Order dated 25/06/2019.

3. The Appellant claims to hold security interest in respect of a Jaguar Car bearing model No. Jaguar XJ 3.0 D bearing Chassis No. SAJAC2650CNP26180. Engine No. 058306306DT and Registration No.- MH12HZ7020 (hereinafter referred to as 'the said Jaguar car') hypothecated by the Corporate Debtor in favor of the Appellant against the loan outstanding amount of Rs 30,64,866.06/
 - 3.1. The Appellant granted credit facilities in the sum of Rs 45 lacs to the Corporate Debtor (CD) for purchase of a used jaguar car and an auto loan agreement No. 32174395 dated 6th April, 2015 (hereinafter referred to as 'the said Auto loan Agreement") was executed whereby the Corporate Debtor alongwith one Ratnakar Gutte hypothecated the jaguar car in favor of the Appellant. The Corporate Debtor also passed necessary Board resolution for availing loan.

 - 3.2. The name of the CD came to be reflected as the purchaser of the jaguar car in the Vahan National Register viz. the Registration system under the Motor Vehicles Act 1988 maintained by the Ministry of Road Transport & Highways Government of India (hereinafter referred to as 'the said Vahan Register') and the name of the Appellant also came to be

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reflected as the Financer establishing that the said jaguar car was hypothecated as a security in favor of the Appellant bank.

3.3. Another Auto loan Agreement bearing No. 44902890 dated 18th January, 2017 (hereinafter referred to as "the said Audi agreement") was executed by the Appellant and the Corporate Debtor for the purchase of a used Audi A8 3.0 Quattro (hereinafter referred to as 'the said Audi car') and a sum of Rs 99,93,150/- was disbursed by the Appellant Bank towards purchase of the said Audi car.

3.4. The Appellant states that it filed its Claim against the Corporate Debtor with the Respondent Liquidator in the sum of Rs 58,69,347.06/- under the said audi agreement. The claim was admitted and the Respondent permitted the Appellant to realize the security interest in the said audi car which was done leaving an amount of Rs 30,64,866.06/- (hereinafter referred to as "the said outstanding claim') due and payable by the CD to the Appellant.

3.5. Out of oversight and inadvertence in the maintenance of appropriate records of Co- Borrowers, the Appellant Bank did not notice and did not disclose in the aforesaid claim dated 20th July, 2019 that the said jaguar car was also hypothecated by the CD in favor of the Appellant and some amounts were due to it under the said Auto loan Agreement. The Appellant on realizing its mistake filed a revised claim form with the Respondent for the said outstanding claim seeking recognition

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as a secured creditor of having security interest in the said jaguar car for the said outstanding claim.

3.6. The Respondent vide its email dated 21st October, 2020 admitted the said outstanding claim of the Appellant but raised an objection on the Appellants holding security interest in the jaguar car. The Appellant vide email dated 10th November, 2020 tried to substantiate its claim and satisfy the Respondent with respect to its security interest in the jaguar car inter alia relying on provisions of the Code, Regulations under the Code as also Notification dated 3rd May, 2019 issued by the Government of India for integration of the registration system of the Central Registry Securitisation Asset Reconstruction and Security Interest of India (CERSAI) with the said Vahaan Register.

3.7. The Respondent ultimately issued its email dated 18th November, 2020 reiterating its earlier stand on the basis of judgements and whilst admitting the entitlement of the Appellant to receive/recover the said outstanding claim from the liquidation estate, refused to recognize the Appellant as a secured creditor of the CD having security interest in the jaguar car for the said outstanding claim.

4. The Respondent, in its reply, has stated that the Appellant had filed a revised claim dated 10.07.2020 for a total claim amount of Rs. 30,64,866.06, and had stated that some amount was pending under the 'auto loan agreement' with respect to the Jaguar car. The Respondent has also placed on record a copy of Statement of

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Account for the loan availed for the Jaguar Vehicle which shows that an outstanding amount of Rs. 3,053/- only as on 31.3.2020.

5. We have heard the Counsel and perused the material available on record.
6. We find that the Liquidator had sent an email dated 18.11.2020 to the Appellant explaining the reasons for rejection of claims as follows –

“the Borrower a/w Co-Borrower had availed first Loan for the purchase of Jaguar the details of which is appearing in the Vahan Extract, Therefore, as stipulated regulation stated by you in your email dated 10th November, 2020 that as per clause 5.5 of the Loan Agreement, the charge created shall continue unless and until the Bank shall issue a certificate discharging the security interest created herein and shall not affect, impair or discharge the liability of the Borrower(s) by winding up (voluntary or otherwise) by merger or amalgamation, reconstruction, takeover of the management, dissolution or nationalization (as the case may be) of the Borrowers shall be limited to the extent of Jaguar as the charge created over the said Vehicle i.e. Jaguar under the Loan Agreement and pursuant to clause 5.5 was in relation to secure the First Loan availed by the Borrowers under the Loan Agreement i.e. for the purchase of Jaguar”. It is further stated therein that “Vahan Extract shared with us does not reflect any details of credit facilities availed by the Company as against the Audi Car. Therefore, we have not come across any details in Vahan Extract of Jaguar I towards security interest created for Audi Car Loan Facility”.

- 6.1. The Appellant has not brought on record any evidence proving its claim that the hypothecation on Jaguar Car also extended to

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the loan facility obtained in respect of Audi Car. Further, the Bank statement in relation to Jaguar Car Loan explicitly shows that there was an outstanding of Rs. 3,053/- as on 31.03.2020 only and this outstanding came into existence on account of levy of overdue interest on that date.

6.2. We find that the loan facility in respect of Jaguar Car was repayable in 60 monthly instalment of Rs. 1,01,790/-, and the Corporate Debtor had issued 59 post dated cheques towards repayment of such loan, as first instalment was collected in advance. The statement relied upon by the Liquidator (Pg 31 – 33 of Reply) clearly shows that out of 59 cheques, only 24 cheques were honoured and remaining 35 cheques were bounced during the period starting from 05.05.2016 till 05.03.2020. Accordingly, we find that the Liquidator erred in reading the Bank Statement correctly; we find force in the contention of the Applicant that there remains an outstanding claim against the Corporate Debtor in relation to Jaguar Car Loan, for which it held valid hypothecation. The fact of hypothecation in favor of the Applicant has not been denied by the Respondent also. Accordingly, we are of considered view that the Liquidator erred on the facts of the case and ought to have admitted the fact that the appellant held hypothecation rights qua Jaguar Car Loan and the Corporate Debtor owed money in lieu of 35 bounced post dated cheques on that account.

6.3. We also find that the Respondent has admitted that he is ready to recognise the Appellant's security interest to the extent of the outstanding on account of Jaguar loan only, which as per incorrect reading of the Liquidator is Rs. 3,053/-. As explained

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in the preceding para, we find that the Corporate Debtor owes the amount claimed as outstanding in respect of Jaguar Car only and the Jaguar Car loan is secured against the hypothecation of Jaguar Car, which is admitted by the Respondent also.

6.4. Accordingly, we direct the Respondent Liquidator to admit the Appellant as Secured Creditor and distribute the proceeds of Jaguar Car auction, if already taken place, towards the satisfaction of their outstanding first. In case, any balance is left out undischarged, the same shall be distributed in accordance with Section 53(1)(e)(ii) of the Code (debts owed to a secured creditor for any amount unpaid following the enforcement of security interest).

7. With the aforesaid directions, the IA 2505 of 2020 is disposed of as allowed.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)