IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)

I.A No. 361 of 2022
U/s. 231(1) of the Companies Act, 2013
R/w Section 60(5) of the I&B Code, 2016
& Rule 11 of the NCLT Rules, 2016 in
CP (IB) No.181/BB/2018

IN THE MATTER OF:

M/s. Innovative Studios Private Limited
Plot No. 24&25, Bidadi Industrial Area,
Ramanagara District, Bidadi,
Karnataka – 562 109. … Applicant

Versus

The Sub-Registrar, Ramanagara
Vidhanasoudha, NH275, Ijoor,
Ramanagara,
Karnataka – 562 159. … Respondent

Order delivered on: 31st March, 2023

CORAM: 1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Applicant : Shri Chandramouli Prabhakar, Adv.

For the Respondent : Shri Manjunath K.N

O R D E R

Per: T. Krishnavalli, Member (Judicial)

1. This Application has been filed by M/s. Innovative Studios Private Limited (hereinafter referred to as the "Applicant") against The Sub-Registrar, Ramanagara (hereinafter referred to as the "Respondent") U/s. 231(1) of the Companies Act, 2013 R/w Section 60(5) of the IBC, 2016 and Rule 11 of the NCLT Rules, 2016 seeking to clarify the order dated 08.01.2021 in CP (IB) No.181/BB/2018 sanctioning the Scheme of Compromise submitted by M/s. Suresh Productions LLP, which duly provides for the Respondent

(The Sub-Registrar, Ramanagara) to release the Charge on the Properties as mentioned in Annexure A and Annexure C of the approved Scheme of Compromise.

2. The brief facts of the case, as mentioned in the Application, which are relevant to the issue in question, are as follows:

(1) It is stated that this Adjudicating Authority vide order dated 11.04.2019 admitted the instant C.P. and the Liquidation process of the Applicant was passed vide order dated 06.01.2020 in I.A No. 678 of 2019. Further the Liquidator issued Public Announcement on 28.01.2020 calling for Scheme of Compromise or Arrangement u/s. 230 of the Companies Act, 2013. In pursuant to the above, M/s. Suresh Production Entertainment LLP had submitted its proposed Scheme dated 09.03.2020 and revised Amended Scheme on 19.03.2020 and the Secured Creditors of the Applicant also approved the Amended Scheme at the meeting held on 30.03.2020 without any modifications and the same was approved by this Hon'ble Tribunal *vide* its order dated 08.01.2021.

(2) It is further stated that M/s. Suresh Production LLP (hereinafter referred to as the "Investor") has duly complied with the order dated 08.01.2021 and taken steps to restart the Operations of the Corporate Debtor. The Applicant has relied upon certain paras of the order dated 08.01.2021 passed by this Tribunal and submits that the details of the Schedule Properties in respect of which reliefs were sought to direct the Sub-Registrar to release the charge on the said Property were duly provided at pages 39 to 40 of the said Scheme as Annexure C.

(3) The Applicant vide letter dated 14.05.2021 had duly submitted a letter to the Ld. Sub-Registrar, Ramanagara requesting to release the charge upon the said properties as per the Compromise and also submitted that the charges registered with the Registrar vide the following documents may kindly be released:

i. *Mortgage Deed dated 09.03.2009 registered in Book-1, Document No. RMN-1-05353-2008-09 stores in C D No: RMND89 dated 09.03.2009 registered as security for Inter Corporate deposit of Rs.3 Crores.*

ii. *Mortgage Deed dated 30.04.2009 registered in Book-1, Document No. RMN-1-00365-2009-10 stored in C D No: RMND91 dated 30.04.2009 registered as security for Inter Corporate deposit of Rs.60 Lacs.*

iii. *Mortgage Deed dated 14.05.2009 registered in Book-1, Document No: RMN-1-00603-2009-10 stored in CD No: RMND-92 dated 14.05.2009 registered as security for Inter Corporate deposit of Rs.72 Lacs.*

(4) It is further stated that the Authorised Representative of the Applicant Company thereafter personally visited the Office of the Sub-Registrar, Ramanagara several times to follow up on such letter requesting the release of the Charge upon such properties. However, the Respondent not taken any steps to ensure that the order of this Hon'ble Tribunal is duly complied, both in letter and in spirit to release the charge registered upon such properties. Further, during the discussion with the Respondent, the Respondent had merely stated that in the absence of any Specific Order from the Hon'ble Tribunal directing the Respondent to release the charge upon such property, the Respondent would not be in a position to take steps to release such charge registered upon the Schedule mentioned properties.

(5) The Applicant is advise to submit that this Hon'ble Tribunal exercising its Powers U/s. 230 of the Companies Act, 2013, while considering the Scheme which is presented for the Insolvency Resolution of a Company under Liquidation would also have necessary powers to direct the removal of any such Charges/Security Interest, if any, as a part of the implementation of the Scheme and thus the Applicant Company is constrained to approach this Hon'ble Tribunal to issue necessary clarification in respect of the order dated 08.01.2021 regarding the release of the charge upon such properties belonging to the Corporate Debtor as per the terms of the Scheme which has

already been duly sanctioned by this Hon'ble Tribunal without any modifications.

(6) In the event if the same is not allowed, immense prejudice would be caused to the Corporate Debtor and the Successful Resolution Applicant who are taking several steps to revive the Corporate Debtor through securing additional funding and the subsistence of such charges upon the properties would deter any prospective lenders and investors. The Applicant also declares that the instant Application does not contemplate any new waiver or condition which was not a part of the Scheme dated 19.03.2020, but the I.A is filed only in the nature of a clarification of the order dated 08.01.2021.

(7) The Applicant has relied upon Hon'ble NCLAT decision in the matter *Volkswagen Finance Private Limited v. Shree Balaji Printopack Pvt. Ltd. & Anr. bearing Company Appeal (AT) (Ins) No. 02 of 2020* and also on Regulation 37(1)(a), (b) and (d) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 and submits that as per the Provisions of the Regulations 37(1)(d), this Hon'ble Tribunal has the jurisdiction to provide for sale of Assets and Satisfaction/Modification of any Security Interest.

3. Heard Shri Chandramouli Prabhakar, learned Counsel for the Applicant and Shri Manjunath K.M, official from the Office of the Sub-Registrar, Ramanagara.

4. In this case Annexure-A in the Scheme was carefully perused and the security details mentioned in the Annexure-A are stated as follows:

> *"The Security interest on the Corporate Debtor held by secured creditors (other than existing third-party collaterals, existing third party guarantees, existing personal guarantees) as at the date of approval of Scheme by NCLT, will be until the last payment of the fund-based distribution to the financial creditors under this scheme.*
>
> *Also, secured Creditors shall continue to have the right to proceed against the existing personal guarantors, existing third party guarantees, existing third party collaterals in respect of unresolved debt even after the end of the last payment under the Scheme.*

We understand that there are securities created in favour one of the Financial Creditors viz., Rajesh Exports Ltd, which was not registered with the Registrar of Companies. The claim was admitted by the Resolution Professional as an Unsecured Loan as per the provisions of the Section 77 of Companies Act, 2013, since the same was not registered with Registrar of Companies. Therefore the PI is considering the same claim as an Unsecured Loan and ***prays the Adjudicating Authority*** *to direct the concerned Sub-Registrar, to release the charge on the said property. The details of such properties is listed out in Annexure C."*

5. As per the order passed on 08.01.2021 in CP (IB) No. 181/BB/2018 by this Adjudicating Authority, the Scheme for Compromise was approved. It is seen that in Page 37 of the Scheme at Annexure-A, with regard to Security Details, the Prospective Investor (PI) has made a prayer to the Adjudicating Authority to direct the concerned Sub-Registrar, to release the Charge on the said Properties, which are listed in Annexure-C of the Scheme.

6. However, after this Prayer, no direction has been issued to the Sub-Registrar for releasing the Charge in accordance with the prayer. Considering the Section-III of the Scheme (at Page 14 of the Scheme), we hereby direct the Sub-Registrar of Ramanagara to release the Charge on the Properties mentioned in Annexure-C of the Scheme for Compromise.

7. Accordingly, **IA No. 361 of 2022 in CP (IB) No.181/BB/2018 is allowed and disposed of.**

Sd/-
MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

Sd/-
T.KRISHNAVALLI
MEMBER (JUDICIAL)

jsr