

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH  
KOCHI**

**IA(IBC) No. 168/KOB/2022**

**In**

**IA(IBC) No.27/KOB/2021**

**In**

**IBA/133/2019(Chennai Bench)**

***In the Matter of:***

Application filed under Rule 56 of the National Company Law Tribunal Rules,2016 read with Section 424 (3) of the Companies Act.

***In the Matter of:***

**Ashok Velamur Seshadri, Liquidator of M/s. Archana Motors Private Limited,**  
2018/11541, No. A2, Dynamic Flats, Parangusapuram Street, Kodambakkam,  
Chennai- 600 061

**...Applicant/Liquidator**

**-Versus-**

**1. Shibu Job Cheeran Suspended Managing Director of Archana Motors Private Limited,** Door No.10/537-1 ADM Arcade Near- LBS Computer Centre P.O Chiyaram, Koorkkenchery, Thrissur-680 026

**2. Bency Shibu, Suspended Director of Archana Motors Private Limited,** Near- LBS Computer Centre, P.O- Chiyaram, Koorkkenchery, Thrissur- 680 026

**3. Makkattukulam Georage Ittimathew, Suspended Director of Archana Motors Private Limited,** Near- LBS Computer Centre, P.O- Chiyaram, Koorkkenchery, Thrissur- 680 026

**...Respondents/Erstwhile Directors of C.D**

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***Appearances (through video conferencing)***

For the Petitioner : Mr. Vinod P.V. and Mr. Reetha D. Adv.

For the Respondent : Mr. Sankar P Panicker, Adv.

**Order reserved on: 27.10.2022**

**Order pronounced on: 02.11.2022**

Coram:

Shri P. Mohan Raj : Member (Judicial)  
Shri Satya Ranjan Prasad : Member (Technical)

**ORDER**

1. This Petition is filed by the Liquidator as an Execution Application under Section 424 (3) of Companies Act, 2013 R/w Rule 56 of NCLT Rules, 2016.

**The brief background of the case necessary to dispose of this Application are as follows:**

2. M/s. Archana Motors Private Limited, the CD, was on 10.01.2020 ordered to be liquidated by this Adjudicating Authority in M.A.No.38/KOB/2020, and pursuant thereto appointed the Applicant herein as the Liquidator. The Respondents are erstwhile directors of the CD. During the liquidation process, it was discovered that certain fraudulent acts were committed by the Respondents, which consequently caused a loss of Rs.21.37 crores to the CD.

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3. The Applicant filed I.A. No. (IBC) 27/KOB/2021 under Sec.66, IBC, seeking payment of the said Rs.21.37 crores by the Respondents to CD. The application was allowed on 13.07.2021 and the Respondents directed to pay the sum to CD to enable its distribution under Sec.53 of IBC, 2016.

4. This Execution Application to attach and sell the immovable properties belonging to the 3<sup>rd</sup> Respondent was filed on failure of the Respondents to pay the amount. The Applicant furnished the particulars of events in a tabular format, strangely in this execution application, and the objection, rejoinder and sur rejoinder were also filed. It is not disputed by the Respondents that the scheduled mentioned properties belong to the third of them herein.

5. At the outset, it was made clear to the Counsel for the respective parties that Adjudicating Authority cannot go back on its earlier order/decreed but will only consider the relevant objections of the Respondents to this execution application. Against the earlier order/decreed, an appeal is pending before NCLAT–Chennai, but in the absence of any interim order there is no impediment to proceed with this application.

6. The Application in schedule 1 to 9 describes nine items of properties along with the extent, boundaries and survey numbers enabling their identification. The simple declaration as provided in Form No. 8 part is not specific as in respect of immovable property, but the insignificant deviation neither is fatal nor prejudices the Respondents.

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7. The Respondents argue that the third of them herein, who is aged and reputed, was a non-executive director and has not never taken active part in the management of the CD, and hence is irrelevant to decide this application. Besides, the properties without the boundaries have not been correctly described and further this Application, albeit filed in Form No.8 of NCLT Rules, 2016, the declaration therein is not in accordance therewith. Patently, the objections of the Respondents are only technical attempting to find fault with the procedural Law rather than the substantial Law. It is settled proposition a procedural law is only a handmaid to the substantive law.

8. The Applicant filed the petition under Companies Act, 2013, R/w Rule 56 of NCLT Rules, 2016, to execute the order passed under Sec.66, IBC. Time and again it is held that IBC is a self-contained code with objective to maximise value in a timely manner. When the Code provides certain mode for execution of orders it is unnecessary to proceed under the different Act. In fact, it is *ultra vires* the IBC to invoke the provisions of the Companies Act, in the absence of any specific provision in the Code or Rules permitting such invocation.

9. This application has been filed under Section 424 (3) of Companies Act, 2013. The said Section is not an enabling section to execute order, but only a section require to refer the Tribunals order for execution to the concern territorial limit Civil Courts. But Section 231 IBC,2016 ousted the Civil Court's jurisdiction

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in toto, hence this application cannot be proceeded under Section 424 (3) of the Companies Act,2013.

10. Rule 56, NCLT Rules, 2016, is not applicable to the proceedings before this Adjudicating Authority, as patent from Rule 10 (1) of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, which reads as follows:

*“Filing of application and application fee. — (1) Till such time the rules of procedure for conduct of proceedings under the Code are notified, the application made under subsection (1) of section 7, subsection (1) of section 9 or sub-section (1) of section 10 of the Code shall be filed before the Adjudicating Authority in accordance with rules 20, 21, 22, 23, 24 and 26 of Part III of the National Company Law Tribunal Rules, 2016.”*

11. The Applicant argued that he was constrained to invoke Companies Act, 2013, and Rule 56, since this Adjudicating Authority specifically directed him to do so in the earlier Application in M.A.(IBC) 07/KOB/2022 filed by him under Sec's.65 & 67, IBC to execute the order passed in I.A.(IBC) No.27/KOB/ 2021, and consequently dismissed it on 18.05.2022. The Respondents refute this by arguing that there is no such specific direction in the dismissal order.

12. However, the respective Counsel lost sight of the true spirit behind the observation in Para (15) thereof, extracted below, viz.: –

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*“15. In view of the above, again a direction of this Tribunal to the respondents is not called for. If the aforesaid order is not complied with, the appropriate remedy is not to file another case and sought a similar direction from this Tribunal. The Liquidator can proceed for the remedy, as per the IBC Regulations. ... ”*

13. The self-contained IBC in Sec.35(2) empowers the liquidator to take possession (custody) and control of all properties and actionable claims of the CD. It has been adjudicated that the Respondents indulged in fraudulent transactions and they are personally liable to pay the amount of Rs. 21.37 Crores/- While so, when the Respondents fail to pay the amounts due to CD, the latter is entitled to recover them from attaching their properties and selling them to recover the amounts due to it and distribute the proceeds thereof to the creditors of the CD. Thus, the CD has actionable claims upon the schedule mentioned properties belonging to the Respondents. Regulation 33 in Schedule I of the IBBI (Liquidation Process) Regulations, 2016, provide ways and means to sell the assets of the CD by the liquidator in public action and/or by Private sale.

14. On similar facts, the Principal Bench, New Delhi, in **CA. (AT)(Ins.) No.234 of 2021 T.S. Murali (Ex Director) and another -Vs- Liquidator of Helpline Hospitality Pvt. Ltd;** dated 18.10.2022 upheld the Order of Adjudicating Authority, extracted below, viz.: –

*“Since the property belongs to the Corporate Debtor i.e., M/s. Helpline Hospitality and Ex-Director Sh. T.S Murali has fraudulently recorded the same in his name, the property bearing Plot No. G-158, Sector-41, Noida, Uttar Pradesh-201302 is hereby attached. Warrants of attachment be affixed to the said property by the Liquidator, who shall take further steps for public auction of the same. The Respondents are directed to not to alienate, lease or create any kind of encumbrance or third-party interest in the property in question till the Order is fully complied.”*

15. In accordance with the Companies Act, only the ROC is furnished with a statement describing the properties of a company. The public are alerted not to deal with those properties only when the order of CIRP or Liquidation furnished to the ROC is reflected in the public domain. However, the schedule mentioned properties are in the name of the 3<sup>rd</sup> Respondent.

16. In the meantime, until the schedule mentioned properties are sold by the liquidator, the interests of third-party strangers must be protected. Hence, to prevent the Respondents from encumbering those properties and to caution the public not to deal with them, it is just and necessary to attach the properties and the same communicated to the Jurisdictional Sub-Registrar Office to reflect the necessary encumbrance in the relevant registers.

**In the result the application is ordered as follows:**

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- 1) The schedule nos. (1) to (9) mentioned properties in this application are hereby attached and the 3<sup>rd</sup> Respondent herein is hereby prohibited from transferring or charging them by sale, gift, or mortgage or otherwise, and that all persons be and that they are hereby prohibited from receiving the same by purchase, gift or otherwise;
- 2) The Liquidator is directed to file the necessary forms within three days to this Authority addressed to the Jurisdictional Sub-registrar Offices wherein the schedule nos. (1) to (9) mentioned properties are situated requiring the Sub-Registrars to reflect the attachment entries (encumbrances) in Book-I;
- 3) After the receipt of above forms, the Registry is directed to communicate the attachment order to the Jurisdictional Sub-registrar Offices with directions to reflect the attachment entries (encumbrances) in Book-I in respect of the schedule nos. (1) to (9) mentioned properties;
- 4) The Liquidator is directed to take custody and control of the schedule nos. (1) to (9) mentioned properties along with their respective title deeds following the due procedure in accordance with law and affix Warrants of attachment at conspicuous places in them;
- 5) In the event the schedule nos. (1) to (9) mentioned properties are tenanted, the Liquidator is directed to take their symbolic possession by proclaiming to the tenants/occupants following the due procedure in accordance with law, and

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- 6) The liquidator is directed to sell the schedule nos. (1) to (9) mentioned properties in accordance with Regulation 33 in Schedule I to the IBBI (Liquidation Process) Regulations, 2016.
- 7) The Liquidator can also avail the Police Aid to execute the order if needed.

Thus, with the above directions, this IA(IBC)No.168/KOB/2022 is ordered and **disposed of**. No cost.

17. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps,

18. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Sd/-  
**Satya Ranjan Prasad**  
**Member (Technical)**

Sd/-  
**P. Mohan Raj.**  
**Member (Judicial)**

Signed on this 2<sup>nd</sup> day of November, 2022.

Supriya-P.s\_