

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT 3, MUMBAI BENCH**

**IA 515/2022 in
C.P. No. CP(IB)-4513/2018**

Under Section 14(1) r/w Section
18(1)(f) of the Insolvency and
Bankruptcy Code, 2016

In the matter of

M/s S K Ganguli
.... Operational Creditor

Versus

D. Thakkar Constructions Private
Limited
..... Corporate Debtor

And in the matter of

IA 515/2022

Mr. Ram Ratan Kanoongo

... Applicant/ Resolution
Professional

Versus

Patsons Constructions
S/9, Tirupati House,
Near GIDC Gate,
Vishnagar,
Gujarat – 384315

..... Respondent

Order delivered on : 25.03.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

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For the Applicant: Mr. Ayush Rajani, Counsel.

For the Respondent: Mr. Sachin Sinha, Advocate.

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. This Application **IA 515/2022** has been filed by the Resolution Professional in CP(IB)-4513/2018 u/s 14(1) read with Section 18(1)(f) of the Code for seeking necessary directions from the Bench to the Respondent M/s Patsons Constructions to hand over the asset of the Corporate Debtor and also deposit the usage charges for the asset @ Rs 2 Lakh per month for 24 months, totalling to Rs 48 Lakhs.
2. The Applicant submits that the asset of the Corporate Debtor is a machinery Komatsu Motor Grader GD – 511 (MH 40 P 961), deployed on Warora Site of the Corporate Debtor and is currently in the possession of the Respondent for more than last two years. The Applicant mentions that the Respondent is not cooperating in handing over the asset back to the Corporate Debtor. The Resolution Professional mentions that this asset is an expensive machinery which is a secured asset exclusively mortgaged with Reliance Commercial Finance Limited but currently in possession of the Respondent. It is the contention of the Applicant that the Respondent is attempting to keep the said asset for its own personal financial gains under the garb of outstanding receivables from the Corporate Debtor.
3. The Bench here notes that no Creditor can use this Code as a recovery mechanism. It was always open to the Creditor to file its legitimate claim with the Resolution Professional against the outstanding receivables from the Corporate

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Debtor. Therefore, keeping back the property of the Corporate Debtor is clearly a breach of Section 14 r/w Section 18(f) of the Code. The relevant portion of Section 14 of the Code is reproduced below:-

“(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

(emphasis supplied)

Similarly, Section 18 of the Code relating to duties of Interim Resolution Professional reads as under:-

“(1) The interim resolution professional shall perform the following duties, namely:--

- a) ...*
- b) ...*
- c) ...*
- d) ...*
- e) ...*

*f) **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;*

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*(ii) assets that may or may not be in possession
of the corporate debtor;*

*(iii) tangible assets, whether movable or
immovable;*

(iv)

(v)

(vi)"

4. The Resolution Professional submits that in reply received on 08.06.2021, the Respondent had admitted that it is in possession of the said asset. However, to defend its act the Respondent claims that the Corporate Debtor owes Rs. 45.93 Lakhs and therefore he will not return the said asset.
5. It is very clear to the Bench that the Respondent is misusing its possession of asset of the Corporate Debtor and is clearly attempting to recover its dues by keeping the asset of the Company, which is, as mentioned by the Applicant, approximately worth Rs 75 Lakhs towards its alleged outstanding amount of Rs.45.93 Lakhs. This act is clearly in contravention of the Code and, therefore, the Respondent is required to return back the said asset of the Corporate Debtor to the Applicant and also deposit the usage charges for the asset of the Corporate Debtor @ Rs 2 Lakh per month for 24 months totalling to Rs 48 Lakhs.
6. In view of the above, the Bench "**Allows**" the IA No.515/2022 filed by the Resolution Professional and directs the Respondent M/s Patsons Constructions the following:-
 - (a) The Respondent to handover the asset of the Corporate Debtor namely Komatsu Motor Grader GD-511 (having Registration No. MH 40 P 961) which is in the possession of the Respondent since last two years;

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(b) The Respondent is also directed to deposit the usage charges for the above mentioned asset @ Rs 2 Lakh per month for 24 months totalling to Rs 48 Lakhs in the account of the Corporate Debtor.

7. **IA 515/2022** in CP(IB)-4513/(MB)/2018 is disposed of on the above terms.

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
H V Subba Rao
Member (Judicial)