

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

MA/716/2019

In

CP/114/IB/CB/2018

Application filed u/s 35(1)(b) & 35(1) (n) r/w section 60(2) of the IBC, 2016

In the matter of M/s. Velohar Infra Private Limited

Mr. Murugesan, Liquidator

For M/s. Velohar Infra Private Limited

---Applicant

Vs

Ms. Vijayalakshmi and Ors

--- Respondents

Order delivered on: 07.08.2019

Coram:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Applicant : *Shri. S. Sathiyamarayanan, Advocate*
Counsel for R1 : *Shri. Anil Relwani, Advocate*
Shri. A. Santhana Sinakarthan, Advocate

ORDER

Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

Heard and dictated in Open Court on 05.08.2019

It is an MA filed by Liquidator of M/s. Velohar Infra Private Limited seeking further reliefs as mentioned below:-

- a. *Direct the Respondents to produce the original title documents vide Doc. No.663/2018 before this Hon'ble Tribunal and to provide copies of all the relevant documents pertaining to the property before this Hon'ble Tribunal.*
- b. *Initiate action against the Respondents for dis-obedience and for not complying with the orders of this Hon'ble Tribunal.*
- c. *Initiate appropriate criminal action as per Section 340 of Cr. P.C. against the 1st Respondent for commission of offence under Section 193 of the IPC for committing perjury by false representing before this Hon'ble Tribunal, knowing the same to be false, with the intention of obtaining favourable orders from this Hon'ble Tribunal.*

2. Before this MA has been filed by the Liquidator, the Liquidator had already filed MA411/2019 seeking directions against R1 (Ms Vijayalakshmi, Suspended Managing Director of M/s. Velohar Infra Private Limited (Corporate Director) – herein after called as “MD”) for production of the original title deeds of the property situated at “SUN RISE AVENUE”, Sholinganallur Village, Sholinganallur Taluk, Kanchipuram District, bearing Old Survey No. 1/1g and New Survey No. 1G/294/A1/B1 (herein after called as

"the property"), upon which, MD having undertaken that the property has already been mortgaged and would hand over original documents of it to the Liquidator, basing on that undertaking, this Bench on **03.05.2019** disposed of MA 411/2019 by passing an order, which is as follows:

"Counsel appearing on behalf of the suspended Directors having given an undertaking to provide all documents as stated in this application with a rider saying with regard to the property situated at "SUN RISE AVENUE", Sholinganallur Village, Sholinganallur Taluk, Kanchipuram District, bearing Old Survey No. 1/1G and New Survey No. 1G/294/A1/B1 has already been mortgaged to some third party, as to that property also, the counsel has stated that they would provide all copies of documents to the Resolution Professional within four days hereof.

Accordingly, this MA/411/2019 is hereby disposed of."

3. In furtherance of the above said order, MD on **10.05.2019** wrote a letter to the Liquidator (Mr. Murugesan) which is as follows:



"10.05.19

From

*S. Vijayalakshmi (Velohar Infra Private Limited)
1F, 7th Cross St, Nandambakkam
Wood Creek County, Chennai-89*

To

*Mr. Murugesan
Asst. General Manager (Retd)
SBI, Chennai
Insolvency Resolution Professional
Reg.No.IBBA/IPA-002/IP-No.0527/2017-
2018/11679
Cell: 8754037002
Property Document – Originals (Akkarai)*

Respected Sir,

- 1. This is with respect to the originals of the property document registered in the name of Velohar Infra Private Limited.*
- 2. As per the NCLT directions, we were to hand over the original documents to you.*
- 3. The documents are available with Advocate Rajiv Gandhi who is a practising lawyer for the land owner Mr. Vijendran and Dr. Arumelkumar.*
- 4. The same can be collected by both of us from him and his office today.*
- 5. Since there is an ongoing dispute the document were handed over to liquidate and pay the company's dues spent on that.*

Thanking you,

Yours faithfully,

Sd/- "

4. For this MD has failed to hand over originals of the same to the Liquidator in furtherance of the undertaking given by her, and since those originals are essential for sale of the assets, when the liquidator has filed this MA, this MD has today come out with a new defence stating that though the sale deed was executed in favour of the Corporate Debtor, since this property was encumbered long before execution of the sale deed, MD had already demanded the Power Attorney Holder (Vendor) to return the money paid to him through cheque, on the ground this property sold to the Corporate Debtor is found encumbered. To buttress this argument, MD has filed a letter issued by Bank of India on 24.12.2018 stating that Power of Attorney Holder has not encashed the cheque till date.

5. When registered sale deed is executed on consideration, if at all consideration is not paid as stated by this R1, the recourse available to the Purchaser is to proceed against such Power of Attorney Holder as mentioned under Section 31 of Specific Relief Act for cancellation of the same, but till date, no such proceeding

has been initiated by this MD or the Corporate Debtor against the Power of Attorney Holder for refund of that money or cancellation of registered sale deed.

6. Since sale deed was executed in favour of the Corporate Debtor, and the same not being invalidated till date by any court of law, the Liquidator is bound to consider the said property as an asset of the Corporate Debtor. Moreover, this MD has not filed any document showing that the property was already encumbered as on the date of execution of the registered sale deed in favour of the Corporate Debtor. If at all any encumbrance is created over the said property, this MD should have obtained Encumbrance Certificate from the Sub-Registrar to show that the property was sold and the person executed the sale deed has no right to convey title to the Corporate Debtor.

7. When this Bench has been dictating this order stating that MD has not produced any Encumbrance Certificate before this Bench, R1 (MD) Counsel has stated that there is some sale

agreement entered into with third party. But no such agreement is placed before this Bench.

8. That apart, when sale deed was executed in favour of the Corporate Debtor, whatever sale agreements, if at all in existence as on the date of execution of sale deed, will have no bearing unless a decree has been obtained from court of law. Till date, there is no information any such proceeding is initiated either for cancellation of the registered sale deed executed by the Power of Attorney Holder (Vendor) in favour of the Corporate Debtor or by the third party disputing the title conveyed in favour of the Corporate Debtor.

9. Now R1 Counsel has stated that since documents are not available with MD, she shall be relieved from this proceeding and no action should be taken against her.

10. As against this argument, if we see the order passed by this Bench on 03.05.2019, it is clear that this same MD gave the undertaking in MA/411/2019 to release the originals of the sale deed, not only that, she herself addressed the letter to the RP stating

that those documents are available with Advocate Mr. Rajiv Gandhi and R1 & the Liquidator could collect them from that Advocate.

11. It is not the case of the Liquidator that he has agreed to collect them from that advocate, who is cited as R2 in this MA. Moreover, writing a letter to somebody will not relieve anybody from their duties, and even in that letter addressed by R1, it is evident that R1 said that the Liquidator and herself would go to the Counsel (R2) and collect them. This could not be construed as MD is relieved from complying with the order passed by this Bench on 10.05.2019.

12. As to the letter given by the Bank regarding encashment of cheque, since it was asked to say as to whether the cheque with certain number is encashed, it is obvious that Bank would say that it was not encashed. The same was said by the Bank. There is a possibility that this Cheque might have been given as additional security or for some other reason. In any event, remaining cheque not encashed with the vendor will not have any bearing on the title conveyed to the Corporate Debtor through a registered sale deed.

Therefore the letter will not have any bearing for production of the originals lying in the custody of R1 or in the custody of her Counsel (R2).

13. In view of the same, it is her bounden duty to cause them produced before the Liquidator. It is her lookout to collect them from her counsel, if at all lying with her advocate, therefore MD/R1 is hereby directed to produce the original of the Sale deed to the Liquidator **within two weeks** from the date of release of this order.

14. Since the document has been executed in favour of the Corporate Debtor and R1 being the Managing Director of the Corporate Debtor, and she herself having stated that these originals lying with her Counsel, R1 cannot be relieved from her duties cast upon her to produce the originals to the Liquidator.

15. In view of the aforesaid reasons, since the original documents are essential to the liquidator for liquidating the assets of the Corporate Debtor, for doing so, since he is required to show them to intending purchasers telling that the Corporate Debtor is vested with title over the property, therefore R1 is hereby directed

to hand over the original documents **within two weeks**, failing which, the Liquidator is at liberty to take the assistance of the Commissioner of Police, Chennai, in the event the Liquidator has approached the police concerned, the Authority concerned is hereby suggested as contemplated under section 429 of the Companies Act to provide necessary assistance to the Liquidator for expeditious release of the said originals from these Respondents to the Liquidator herein. Accordingly, this MA is hereby **disposed of**.


(S. VIJAYARAGHAVAN)
MEMBER (Technical)


(B. S.V. PRAKASH KUMAR)
MEMBER (Judicial)

VS/TJS