

Through Videoconference

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT - II**

**MA No. 403 of 2020
In
CP No. 380/MB/C-II/2019**

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

**Continental Transport Organisation Private Limited,
[CIN: U63090MH1989PTC052210]
410, Bharat Chamber, Baroda Street, Mumbai
Maharashtra - 400009 IN.**

... Applicant

In the matter of

CP No. 380/MB/C-II/2019

**Indiabulls Housing Finance Limited
[CIN: L65922DL2005PLC136029]
M - 62 & 63 First Floor, Connaught Place, New Delhi
- 110001 IN**

... Financial Creditor

Versus

**RRC International Freight Services Limited
[CIN: U63090MH2003PTC138507]
Great Social Building, 2nd Floor, 60 Sir P.M. Road
Mumbai, MH 400001 IN.**

... Corporate Debtor

Order pronounced on 07.09.2021

Coram:

Hon'ble Member (Judicial) : Mr. Ashok Kumar Borah
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearance:

For the Applicant : Mr. Amir Arshiwala, Advocate.
For the Respondent : Mr. Amey Hadwale a/w Ms.
Geeta Lundwani, Advocates.

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. This is an Application by **Continental Transport Organisation Private Limited**, Applicant (hereinafter referred to as the Applicant) Under Section 60 (5) of Insolvency and Bankruptcy Code, 2016 seeking direction against the Liquidator of the Corporate Debtor for declaration in relation to the 10 Nos. of hydraulic axels purchased and to restrain the liquidator from auctioning or dealing in any manner with the said assets.

SUBMISSIONS ON BEHALF OF APPLICANT:

2. The transaction between the Applicant and the Corporate Debtor (“**CD**”) is enumerated in tabular format:

4 th November, 2015	A sale deed was executed between the Corporate Debtor (“ CD ”) and the Applicant for the sale of 10 Global Series Hydraulic Axels (“ Hydraulic Axels ”) used
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	for transportation against a consideration of Rs. 37,00,000/-.
6 th November, 2015	Possession of 10 Hydraulic Axels along with RC Books were given to the Applicant in pursuance of the aforesaid sale deed.
29 th December, 2015	A letter of approval was sent by the Union Bank of India (“the Bank”) stating that the hydraulic axels were hypothecated with the said bank and therefore, No Objection Certificate (“NOC”) was not required to be obtained.
9 th February, 2016	A pay order bearing the name of the Bank was issued for obtaining the NOC. However, the said pay order was cancelled by the Applicant on suspecting the malicious intentions of the CD and the Liquidator.
10 th April, 2018	On failure of obtaining the NOC by the Applicant from the Bank, a letter was addressed to the CD to obtain the said NOC, failing which the Applicant will be left with no choice but to take legal recourse.
30 th April, 2018	False allegations were made against the Applicant vide a letter sent by the CD.
5 th July, 2018	A letter was addressed to the CD countering the frivolous allegations in the letter date 30th April, 2018.
2 nd November, 2018	A letter was addressed to the Bank by the CD affirming the proposal laid down in the letter dated 5th July, 2018.

26 th December, 2018	The Corporate Insolvency Resolution Process (“CIRP”) of the CD was initiated and Mr. Ashish Singh came to be appointed as the Interim Resolution Professional (“IRP”).
21 st January, 2019	The Advocate appointed by the CD informed the Applicant vide a letter that CIRP of the CD was initiated.
	On appraisal of the 26 th December, 2018 order, the Applicant filed its claim with the IRP and all the information in relation to the 18 hydraulic axels were provided as and when required by the IRP.
22 nd October, 2019	This Bench confirmed the initiation of the liquidation process of the CD vide an MA No. 2602 of 2019 and the erstwhile IRP came to be appointed as the Liquidator of the CD.
	The CD fraudulently manipulated the books of accounts, thereby, declaring the said hydraulic axels were handed over to the Applicant on rent with the intention of duping the Applicant of lakhs of rupees.
3 rd March, 2020	The Applicant purchased the remaining 8 hydraulic axels from the CD during an auction conducted by the Liquidator, totaling it to 18 hydraulic axels in possession of the Applicant, today.

3. The contentions of the Applicant are as set out below:

I. **Execution of the Sale Deed and Procurement of the NOC:**

The Applicant submits that the sale deed was executed between the Corporate Debtor and himself in accordance with the law, for 10 hydraulic axels for a consideration of Rs. 37,00,000/-, which were duly paid as narrated in the sale deed dated 4th November, 2015. Thereafter, on the 6th of November, 2015, the Applicant was given possession of the 10 hydraulic axels. Further, in pursuance of the letter addressed by Union Bank of India on 29th December, 2015, to the Corporate Debtor the Applicant obtained the NOC from the bank and further stated since the hydraulic axels were hypothecated with the Bank, NOC was not required to be obtained along with certain terms and conditions as laid down in the said letter. Here, it is pertinent to note that, procurement of NOC was not a pre-requisite condition to the sale deed. A mere non-receipt of NOC would not invalidate the sale deed and the fact that possession was transferred before the NOC was given, indicated that the NOC was never a condition precedent to the sale deed. Moreover, the Applicant was in possession of the said hydraulic axels since the 6th of November, 2015. No dispute had been raised by the Corporate Debtor ever since.

II. *Whether the sale deed was duly stamped?*

In pursuance of the Maharashtra Stamp Act, 1958, there is no provision specifically mentioning that a particular amount of stamp duty shall be payable on a transaction of sale of hydraulic axels (Since Hydraulic Axels are only a component

of a vehicle and not an entire vehicle by itself as per the Motor Vehicles Act). However, if this were to be the case, then the sale would fall under the exemption of Article 5 of Schedule I, by which a transaction for a sale of goods exclusively is exempted from the payment of Stamp duty. Therefore, the sale deed was not only duly stamped but was also paid out of abundant caution as the Corporate Debtor had insisted upon it. Nevertheless, assuming the sale deed is insufficiently stamped, the same would not affect the ownership of the hydraulic axels in question.

III. ***Whether hydraulic axels are considered as motor vehicles?***

A bare reading of section 2(28) of the Motor Vehicles Act, 1988, states that “*a motor vehicle is a vehicle which is a mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto.*” In the present case, hydraulic axels solely cannot be adapted for use upon roads, there has to be some attachment to the axels in order to make them mechanically propelled for the roads. Moreover, section 50 of the Motor Vehicles Act, 1988, also states that “where the ownership of any motor vehicle registered under this chapter is transferred”, stating that this particular section only applies to Motor Vehicles. However, hydraulic axels are only the components of a Motor Vehicle and not the entire Motor Vehicle. Therefore, hydraulic axels cannot be considered as a Motor Vehicle in relation to Motor Vehicles Act, 1988.

IV. **Barred by Limitation Act, 1963:**

Section 27 of the Limitation Act refers to extinguishment of right to property, which states that “At the determination of the period for instituting a suit for possession of any property, his right to such property shall be extinguished.” This section shall be read with Article 29 in Part VI of the Schedule of the Limitation Act, 1963, which deals with other specific movable properties and states that if the property is wrongfully taken, the period of limitation for institution of appropriate proceedings to recover the possession is 3 years and even therefore, the Corporate Debtor today is hopelessly barred by limitation in order to recover the possession of the said hydraulic axels.

4. In addition to the above, the Applicant submits that, the Liquidator has maliciously proceeded with the Liquidation process of the Corporate Debtor thereby treating 10 hydraulic axels belonging to the Applicant as the assets of the Corporate Debtor. Further, despite the execution of the sale deed on 4th November, 2015, the Corporate Debtor fraudulently manipulated its books of accounts thereby declaring the said hydraulic axels to be handed over to the Applicant only on rent. However, whatever the acts of the Corporate Debtor maybe, today to showcase the bonafides, the Applicant has purchased 8 more hydraulic axels vide an auction conducted by the Liquidator on 3rd March, 2020,

and is therefore now an owner of all the 18 hydraulic axels. Therefore, this act of the Applicant, only shows the bonafides of the Applicant.

5. For all of these reasons, it is humbly submitted that the Liquidator of the Corporate Debtor be directed to declare that the Applicant is the sole owner of the 10 hydraulic axels in pursuance of the sale deed dated 4th November, 2015 and to exclude such axels from the assets of the Corporate Debtor.

SUBMISSIONS ON BEHALF OF RESPONDENT/ LIQUIDATOR:

6. The submissions are preferred to oppose unsubstantiated reliefs sought by the applicant in present Interlocutory Application. Before canvassing the submissions, it is imperative to set out a summary of List of Dates and Events ("**LOD**") which are enumerated below:

Dates	Particulars	Document/ Page No.
4 th Nov 2015	Corporate Debtor and Applicant entered into Sale Deed dated 4 th Nov 2015 for sale of 10 Hydraulic Axels for consideration of 37,00,000/-	Application / Pg 19
	However, the said deal could not materialized and the applicant thereafter decided to purchase 18 Hydraulic Axels along with some equipment's and accessories at a consideration of Rs. 74,00,000/- Out which Rs. 38,00,000/- (Thirty-Eight Lakhs) was paid in advance and the balance amount of Rs 36,00,000/- (Thirty-Six Lakhs) was agreed to be paid directly to Union Bank of India (" UBI ") (in whose favour said axles were hypothecated) upon issuance of its NOC	

23 rd Nov 2015	Corporate Debtor approached UBI to provide its NOC in lieu of sale of axels	Reply/Pg 16
29 th Dec 2015	Vide its letter dated 29 th Dec 2015 UBI issued its conditional NOC which <i>interalia</i> included those 18 axels. It is noteworthy to mention that the said NOC was subject to certain terms and conditions as stipulated thereunder.	Application / Pg 58
31 st Dec 2015	Corporate Debtor vide Applicant in regard to the NOC issued by the UBI and requested the applicant to issue a demand draft of Rs. 36,00,000/- (Thirty-Six Lakhs) in favour of UBI	Reply/ Pg 18
9 th Feb 2016	Demand draft bearing no. 946537 dated 9 th Feb 2016 for an amount of 27 Lakhs against the part payment of 36 lakhs was issued by the Applicant and subsequently cancelled due to which NOC of UBI stood to be infructuous	Application / Pg 59
	Meanwhile the Continental Transport stated that, it is not interested to purchase these 18 Hydraulic Axles and shall return the same. It was agreed to adjust the advance amount of Rs. 38,00,000/- towards the rental for the actual period used.	
10 th April 2018	After a period of almost 28 months, the applicant with its utmost malicious intent issued a letter dated 10 th April 2018 to the Corporate Debtor demanding NOC from UBI in respect of 10 axels	Reply/ Pg 19
30 th April 2018	Corporate Debtor vide its reply dated 30 th April 2018 fittingly replied to Applicant denying the allegations and setting out true and correct facts	Reply /Pg 20
5 th July 2018	Most interestingly the Applicant vide its letter dated 5th July 2018 again showed its interest to purchase the very same 18 Hydraulic Axels which were in its possession but now for a reduced consideration of 18,00,000/- (Eighteen Lakhs Only).	Reply/ Pg 22
	Corporate Debtor vide its letter dated 2 nd Dec 2018 appraised the UBI about the applicants offer however UBI refused the same as the consideration value of 18 Lakhs offered by the	

	applicant was much lower than what was acceptable by UBI.	
24 th April 2019	Form B dated 24 th April 2019 sent by the Continental Transport to the Resolution Professional as an operational creditor claiming the amount of 37,00,000/-	Reply/ Pg 26
15 th Jan 2020	Letter dated 15 th Jan 2020 sent by the liquidator demanding the rent accrued	Reply/ Pg 23
22 nd Jan 2020	Reply dated 22 nd Jan 2020 sent by the Continental Transport denying any payments due.	Reply/ Pg 24

7. The aforesaid LOD summarily narrates the factual backdrop of the issue at hand. A detailed explanation in regard to happening of events is set out in *Para 6(a) to (6k) of the Affidavit in Reply of Respondent/ Liquidator*. A bare perusal of the same clearly suggest that the applicant was initially desirous in purchasing 10 Global Series Hydraulic Axels owned by Corporate Debtor and entered into Sale Deed dated 4th Nov 2015. However, the said deal could not materialize and the applicant thereafter decided to purchase 18 Hydraulic Axels along with some equipment's and accessories at a consideration of Rs. 74,00,000/- (Seventy-Four Lakhs). Out of which Rs. 38,00,000/- (Thirty-Eight Lakhs) was paid in advance and the balance amount of Rs 36,00,000/- (Thirty-Six Lakhs) was agreed to be paid directly to Union Bank of India (in whose favour said axles were hypothecated) upon issuance of its NOC. However, the sale of could not be fructified as the Demand draft bearing no. 946537 dated 9th Feb 2016 for an

amount of 27 Lakhs against the part payment of 36 lakhs issued by the Applicant was cancelled for the reasons best known to him.

8. Further the applicants stand is completely demolished vide its letter dated 5th July 2018 wherein it made a revise offer to purchase 18 axles from the corporate debtor. Most surprisingly, it appears that those 18 axels *interalia* included 10 axels which the applicant is claiming to have purchased vide sale deed dated 4th Nov 2015. It is inconvincible as to why will the applicant on 5th July 2018 (almost 2.5 years later) would make an offer for those 10 axels, which according to him were already allegedly purchased by him on 4th Nov 2015. It is clearly apparent that applicant has fallen prey to its greed and is now belatedly making desperate attempts to take undue advantage of the Liquidation process.
9. Apart from the aforesaid, the applicants stand of ownership qua the said axels is further unsustainable in light of the following submissions.

I. **Sale deed dated 4th Nov 2015 is Insufficiently stamped:**

It is imperative to mention that the said sale deed dated 4th Nov 2015 is stamped for Rs 100/- which is ex-facie insufficient. A conjoint reading of Section 3 along with Article 25 (Schedule I) of Maharashtra Stamp Act, 1958 states that sale/conveyance of the movable property attracts 3% of the stamp duty of market value of the property. Further, it may also be pertinent to mention that there no express exemption from payment of stamp duty for sale of Axels under any law. Since the sale deed enumerated consideration of 37,00,000/- a stamp duty to the extent of Rs 1,11,000/-

(3% of 37,00,000) was payable. As the purported sale deed is insufficiently stamped for only 100rs, the same cannot be admissible as an evidence in any court of law.

II. **Transfer is not absolute:**

As seen from the afore mentioned LOD, the payment of Rs. 38,00,000/- made by the applicant was a part of the larger transaction for procurement of 18 axels. As the applicant cancelled its Demand Draft and filed to make complete payment, the transaction never concluded. It is evident from the documents annexed to the application that, the axels are still under the name and ownership of the Corporate Debtor in the records of the concerned RTO Authorities. Hence even if the applicant is in possession of those axels, it does not have a clear and marketable title over the same.

III. **Assets were hypothecated with Union Bank of India (“UBI”):**

Without prejudice to the aforesaid, the Liquidator states that the assets forming subject matter of the said sale deed were hypothecated with UBI by the Corporate Debtor. The ownership of the said assets couldn't had been transferred without absolute consent of UBI. The letter dated 29th Dec 2015 issued by UBI is a conditional NOC. Admittedly, at relevant point of time the conditions set out in the said letter were never fulfilled and the transfer of the assets could not be

complete. The aforesaid position is clearly evident from the letter 10th April 2018 issued by the applicant itself, demanding NOC from UBI in respect of 10 axles.

IV. **Applicant had submitted its claim during the CIRP period:**

It is imperative to state that the applicant during the CIRP period of the Corporate Debtor had submitted its claim in Form B before the Resolution Professional. A noteworthy point herein in the applicant in Form B claimed the amount of Rs 37,00,000/- given under the sale deed to be an operational debt. However, the applicant after initiation of liquidation has conveniently shifted its stand and treated the said amount as consideration of 10 axles, with an intent to wilfully claim ownership over the said 10 axles. The Liquidator states that the Applicant should be estopped from changing its stands in order to take undue advantage of the liquidation process. *(Refer Pg 27 of Reply)*

V. **Limitation Act won't be applicable in the present case:**

The Applicant cannot take the shelter section 27 and/ or of Article 29 in Part VI of the scheduled of Limitation Act, 1963, firstly, for the reason that Article 69 applies only to 'SUITS' and not to the present proceedings. Secondly, Article 69 shall only come into play when the property is 'wrongly taken' and the possessor has constantly been claiming its rights over the said property. In the instant case, letter dated 30th April 2018

issued by the Corporate Debtor clearly stated that the axels shall be deemed to be given on rent and the accrued rent shall be adjusted against the advance received (*Refer Affidavit in Reply Pg 20*). Most importantly, letter dated 5th July 2018 issued by applicant clearly shows that it has disclaimed having any rights over the said axels and made a revise offer to the Corporate Debtor (*Refer Affidavit in Reply Pg 22*). Since the axels were treated to be given on rent, read with the letter dated 5th July 2018 issued by applicant clearly suggest that the axels were never 'wrongfully taken', hence Article 69 of Limitation Act has no application in the present case.

10. In furtherance of submissions the Respondent/the Corporate Debtor prayed to dismiss the instant application filed by the applicant and declare the axels to be the part of the Liquidation estate of the Corporate Debtor.
11. We have perused the records, it is observed that Applicant and Corporate Debtor had executed Deed of Sale dated 04.11.2015 for sale of hydraulic Axels which are subject matter of this application. The Liquidator has overlooked this fact and included the hydraulic Axels in the pool of assets of Corporate Debtor. Where the Deed of Sale was executed on 04.11.2015 and CIRP was initiated against the Corporate Debtor on 26.12.2018, the Corporate Debtor had entered into agreement much prior to CIRP therefore, at this juncture it is not appropriate for the liquidator to change the implications of contractual bindings of the Corporate Debtor. It is also observed that Applicant has

not paid the consideration which was agreed, part consideration was paid the reason being the NOC from the Union Bank of India with whom the hydraulic Axels were hypothecated was not arranged by the Corporate Debtor as per Clause 4 of the Deed of Sale. As per the Deed of Sale dated 04.11.2015 NOC supposed to be obtained by Corporate Debtor. In the lights of these facts and circumstances, we direct the liquidator to transfer the said hydraulic Axels subject to the payment of remaining consideration.

12. With the above observations and directions MA 403 of 2020 is disposed of.

Dated the 7th day of September, 2021

Sd/-
SHYAM BABU GAUTAM
Member (Technical)

Sd/-
ASHOK KUMAR BORAH
Member (Judicial)

SAM