

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P. No.(IB)852(MB)/2017
M.A. 564/2019, M.A 561/2019

CORAM: SHRI V. P. SINGH
MEMBER (J)
SHRI RAVIKUMAR DURAISAMY
MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON 2.4.2019

NAME OF THE PARTIES: Aeshtetique Solutions (Heena Prakash Desai)

Vs

Best Deal TV Pvt. Ltd.

Section 9 of the Insolvency and Bankruptcy Code, 2016.

ORDER

31. **MA 564/2019, MA 561/2019 IN C.P.(IB)-852(MB)/2017**

MA 564/2019 has been filed for an urgent listing of MA 561/2019. Prayer is allowed.

MA 561/2019 has been filed by the Liquidator to release the NOC for registration of car Hyundai Elantra by the Financial Creditor Kotak Mahindra Prime Ltd in favour of the new buyer Mr Shreedhar Rapolu in respect of Hyundai Elantra which is the hypothecated asset sold by the Liquidator in the process of liquidation under auction.

It is stated in the application that Section 9 Petition filed by the Operational Creditor was admitted against the Corporate Debtor by order of this Tribunal dated 5.5.2017. Under the public notice, the Respondent who

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is the sole Financial Creditor submitted his claim in Form C through email dated 1.6.2017 for a total claim of Rs.5,99,638/- against the hypothecation of the car Hyundai Elantra bearing Vehicle No.MH01BY6197. Copy of Form C as proof of claim is annexed with the application as Annexure II. The Resolution Professional under Regulation 27 of the Insolvency Resolution Regulations, 2018 had appointed two registered Valuers and have received the valuation of the same from the valuers on 26.10.2017 and 2.11.2017 of the assets of the Corporate Debtor.

As an application for Liquidation was filed before this Tribunal, Liquidation order was passed by this Tribunal on 2.2.2018. Under the liquidation order, a public announcement was made by the Liquidator in two newspapers, i.e. Business Standard and Navakal dated 11.2.2018.

As per Regulation 18(1) of the Liquidation Process Regulation, 2016, a person claiming to be a Financial Creditor shall submit a proof of claim with the Liquidator in electronic means in Form D. Despite Public Announcement on 11.2.2018 and personal calls, the Financial Creditor Respondent has not filed the claim form. After completion of the period of 30 days, i.e. 5.3.2018, the Liquidator has compiled the information of Stakeholders. The copy of the stakeholder's report was submitted to this Bench on 15.5.2018.

The Liquidator has determined the liquidation estate as per the provisions of Section 36. The assets forming part of Liquidation Estate are as follows:

1. Car Hyundai Elantra having Vehicle Number MH-01-BY-6197;
2. The total Bank Balance of Rs.50,500/-
3. Short term loans and advances Rs.8,72,188 (not realisable).

Copy of the Liquidation Estate filed on 29.5.2018 is annexed with the application as Annexure VI.

The Liquidator has appointed two Valuers M/s. Mai's Sons Consultancy and M/s. Kishore Karamsey and Co. and the fair market value is Rs.8,25,000/- and the Liquidation Value is Rs.7,01,250.

It is further stated that the Liquidator has conducted an auction on 7.8.2018. Reserve price was Rs.8,00,000/- and the Earnest Money Deposit was Rs.80,000/- The car realised for an amount of Rs.8,50,000/-

It is further stated that as per Regulation 42(3) of IBBI (Liquidation process) Regulation, 2016, the insolvency resolution process costs, if any, and the liquidation costs shall be deducted before such distribution is made to the creditors. As per Section 53(1) of IBC, 2016, the proceeds from the sale of the Liquidation assets shall be distributed in the order of priority and within such period and in such manner as may be specified.

The Liquidator has realised Rs.8,50,000 from the sale of Car Hyundai Elantra hence the amount due to Liquidator/RP is more than the amount realised of Rs.8,50,000/-. Therefore, there is no amount available for the distribution to the Respondent, i.e. the Secured Creditor.

The Liquidator has sent a letter to the Respondent dated 4.9.2018 to give NOC in favour of the buyer Mr Shreedhar Rapolu for buying Hyundai Elantra Car for consideration of Rs.8,50,000/- held in e-auction on 7.8.2018.

In response to the above letter, the Liquidator received the mail on behalf of Kotak Mahindra Prime Ltd. dated 25.10.2018 that they have given no written consent or communication for selling the said vehicle which was duly hypothecated to Respondent concerning the loan agreement.

In reply of the email from the Respondent, Liquidator vide his letter dated 26.10.2018 informed the above-concerned person that there was a public announcement made in the two newspapers, i.e. Business Standard and Navakal dated 11.2.2018 and the last date of claims was on 5.3.2018.

Despite repeated reminders and personal calls made to the representative of the Respondent failed to lodge the claim and as a consequence there was no financial creditor in the list of stakeholders report. The refusal to grant the NOC to the buyer is causing him hardship; therefore, Liquidator requested to reconsider the matter by giving the NOC in favour of Mr Shreedhar Rapolu.

It is pertinent to mention that the Financial Creditor has failed to file any claim even after advertisement; therefore, Liquidator had every authority for auctioning. During the auction, the said car has been sold. The Respondent is intentionally delaying the matter, and they are withholding the NOC despite that they have not submitted any claim before the Liquidator.

In the circumstances, the application deserves to be allowed.

Respondent is directed to issue NOC within one week from today inspect of the mortgaged asset, i.e. car Hyundai Elantra in favour of Mr Shreedhar Rapolu who is the new buyer, so that he can register the car with RTO as it is causing him substantial hardships and costs.

MA 561/2019 and MA 564/2019 is disposed of accordingly.

Copy of the order may be communicated to the Respondent.

List other MA's relating to the preferential transaction and fraudulent transaction on 9.5.2019 for hearing.

Sd/-
RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-
V. P. SINGH
Member (Judicial)