IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT – VI

Item No.1
IA/877/2023 IN IB-1528/PB/2018

In the matter of:

BANK OF BARODA

...FINANCIAL CREDITOR

VERSUS

KASHYAP MOTORS INDIA PRIVATE LIMITED

...CORPORATE DEBTOR

And in the matter of:

MR. JATIN MADAN

...APPLICANT

Order under Section 60(5) of IBC, 2016.

Order delivered on 29.05.2023

CORAM:
SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

IA-877/2023 stands dismissed.

SD/-	SD/-
(RAHUL BHATNAGAR)	**(BACHU VENKAT BALARAM DAS)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

I.A. 877/2023

IN

Company Petition No. (IB) – 1528/(PB)/2018

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016.

In the matter of:

BANK OF BARODA

…FINANCIAL CREDITOR

VERSUS

KASHYAP MOTORS INDIA PRIVATE LIMITED

…CORPORATE DEBTOR

And in the matter of:

MR. JATIN MADAN

Liquidator for M/s. Kashyap Motors India Private Limited

Regd. No. IBBI/IPA-001/IP-00222/2017-18/10421

Office at: 25 DDA LSC, Block M1, Vikaspuri, New Delhi 110018

…APPLICANT

Order Pronounced on: 29.05.2023

Coram:

Shri. Bachu Venkat Balaram Das, Member (Judicial)

Shri. Rahul Bhatnagar, Hon'ble Member (Technical)

For the Applicant: Mr. Anoop Kumar Sharma

ORDER

PER- BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present Application has been filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016 praying for the following reliefs:

a. Allow the present application; and

b. Permit the Applicant to withdraw his consent dated 14.11.2019 to act as the Liquidator of Kashyap Motors India Pvt. Ltd. and;

c. Discharge the Applicant from his role as the Liquidator of the Corporate Debtor;

d. Pass such other order/ order(s) as may be deemed fit and proper in the facts and circumstances of the case

2. The brief facts as averred by the Applicant for filing the present Application are as follows:

i. That this Adjudicating Authority vide order dated 05.03.2019 was pleased to admit the captioned petition i.e. C.P (IB) No. 1528 (PB) of 2018 filed by the financial creditor, Bank of Baroda (Earlier known as Dena Bank) under Section 7 of the Insolvency and Bankruptcy Code, 2016('Code') seeking initiation of Corporate Insolvency Resolution Process(CIRP) of the Corporate Debtor i.e. M/s. Kashyap Motors India Private Limited and appointed the applicant herein i.e. Sh. Jatin Madan as the Interim Resolution Professional ('IRP') of the Corporate Debtor.

ii. That in the 2nd meeting of Committee of Creditors ('CoC') held on 22.04.2019, the applicant was further appointed as the Resolution Professional of the Corporate Debtor by the CoC.

iii. That pursuant to an application filed by the Applicant herein (CA No. 2689(PB) of 2019), this Tribunal, vide its order dated 04.12.2019, was pleased to direct the liquidation of the Corporate Debtor under Section 33 of the Code. That furthermore, vide the said order the applicant was also appointed as the Liquidator of the Corporate Debtor.

iv. That the liquidator has nothing to realise in the liquidation estate of the Corporate Debtor as the financial creditor i.e. Bank of Baroda (Earlier Known as Dena Bank) has not relinquished their security interest over the assets of the Corporate Debtor and proceeded to enforce its security interest in the property located at Plot No. 18, Block C, Phase –II, Noida,4 Uttar Pradesh 201301 in terms of Section 52 of the Code.

v. That the auction/sale conducted by the financial Creditor, Bank of Baroda was contested by the Ex-directors of the Corporate Debtor, who filed a Securitization Application (SA) No. 292 of 2020 before the Hon'ble Debt Recovery Tribunal, Lucknow Bench on 26.09.2020.

vi. That the liquidator had filed an application under Section 54 of the Code read with Regulation 14 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 for early dissolution of the Corporate Debtor on 06.01.2021 and the same was withdrawn and refiled as a fresh application for dissolution under Section 54 of the Code on 08.09.2021 before this Adjudicating Authority.

vii. That on 09/11/2022, the dissolution application and other pending applications in the captioned matter came up for hearing before this Tribunal. The Liquidator apprised this Tribunal about the status of aforementioned legal proceedings in respect of the immovable property/ asset of the Corporate Debtor sold by Bank of Baroda. That in light of the sale of the immovable property being set aside by the Hon'ble DRAT, the dissolution application, being IA No.4086 of 2021 was disposed of as withdrawn vide order dated 09.11.2022.

viii. That the Liquidation Bank Account was closed and an audit of the liquidation account was conducted on 12.11.2020.

ix. That the outstanding liquidation cost as on 31/10/2022 is Rs.44,81,558.00 and the secured financial creditor, Bank of Baroda has contributed Rs. 11,35,878.00 till date towards liquidation cost i.e. payment to be made in terms of Regulation No. 21A of the Liquidation Process, Regulation, 2016. The Balance outstanding liquidation cost of Rs. 33,45,679.00 is yet to be paid/ defrayed by the secured financial creditor, Bank of Baroda.

x. The Liquidator has already completed all his formalities under the Code and the Regulations framed thereunder. However, owing to the one asset, over which the Bank has charge, being embroiled in litigation, the Liquidator is unable to prefer an application for dissolution of the Corporate Debtor.

xi. That owing to his ill health the Applicant is unable to discharge his duties as a liquidator, as envisaged under Section 35 of the Code, to the best of his abilities. Therefore, the Applicant wishes to withdraw his consent to continue as a liquidator in the captioned matter.

3. The present I.A has been filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 for seeking discharge of the Applicant from his role as the Liquidator of the Corporate Debtor. The Applicant has stated that due to his ill-health, he is unable to discharge his duties as the Liquidator to the best of his ability. However, the Applicant has failed to attach any documents to substantiate the same. There are no medical reports/documents on record. Further, as has been stated by the Applicant, there is nothing much in the Liquidation process left for the Applicant to do as the only asset of the Corporate Debtor is embroiled in litigation. Therefore, we do not find any reason to discharge the Liquidator and appoint a new Liquidator at this stage. The Liquidator shall endeavour to complete the process expeditiously.

4. Accordingly, IA/877/2023 stands dismissed. No orders to cost.

File be consigned to records.

Let a copy of order be served to parties.

SD/- SD/-

(RAHUL BHATNAGAR) **(BACHU VENKAT BALARAM DAS)**

MEMBER (TECHNICAL) **MEMBER (JUDICIAL)**