

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

IA/422/2020 in CP/472/IB/2017 filed under
Section 60(5) of the Insolvency & Bankruptcy
Code, 2016

In the matter of **M/s. BKR Hotels and Resorts Private Limited**

R. Venkatakrisnan,
Liquidator,
M/s. BKR Hotels and Resorts Private Limited
Rajparis Trimeni Towers,
1st Floor, 147, G.N. Chetty Road,
T.Nagar, Chennai-600 017.

..... *Applicant*

Vs.

Mr. Balakrishnaraja Dhanuskodi Raja,
Suspended Director,
New No.9, Old No.6,
Venkatesan Street,
T. Nagar, Chennai- 600 017.

.... *Respondent*

CORAM:

**R.VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Applicant : R. Venkatakrisnan *party in person*
For Respondent : R. Chandra Mohan, *Advocate*

ORDER

Per: R.VARADHARAJAN, MEMBER (JUDICIAL)

Order pronounced on 23rd of July, 2020



1. This Application is moved by the Liquidator of the Company in liquidation namely, M/s. BKR Hotels and Resorts Private Limited seeking the following reliefs:-

- a. *Direct the Respondent for immediate surrender of the BMW car having registration number TN 09 BU 2525 which is part of the assets of the Corporate Debtor which is undergoing Liquidation by the order of Honourable National Company Law Tribunal, Chennai Bench-I.*
- b. *Direct the Deputy Commissioner of Police, R4 Police Station, T. Nagar, Chennai – 600 017 who is having the jurisdiction with the matter, to assist the Liquidator at any resistance from Respondent in surrendering the BMW car having registration number TA. 09 BU 2525.*
- c. *To allow the disposal of the assets by the way of private sale according to the Regulations 33 (2)(d) of the Insolvency and Bankruptcy Board of India(Liquidation Process) Regulation, 2016.*
- d. *Pass any other or such orders as this Honourable National Company Law Tribunal may deem fit and proper in the facts and circumstances of the present case.*



2. The facts leading to filing of this Application by the Applicant as averred in the Application are as follows:-

i) The Corporate Insolvency Resolution Process (CIR Process) based on an Application filed by the Financial Creditor namely, '*Indian Bank*' against the Corporate Debtor namely, *M/s. BKR Hotels and Resorts Private Limited* under Section 7 of the Insolvency and Bankruptcy Code, 2016 (I&B Code, 2016) read with attendant Rules, was ordered by this Tribunal on 14.08.2018. At the time of admitting the Application, the Applicant herein was appointed as Interim Resolution Professional and subsequently, confirmed as Resolution Professional of the Company in Liquidation. In view of the fact that no Resolution Plan was received by the Corporate Debtor, the Company was also ordered to be liquidated on 03.05.2019 wherein the Applicant was appointed as Liquidator.



ii) It is averred in the Application that the Corporate Debtor owns the BMW car bearing registration No. *TN 09 BU 2525* and the said car which belongs to the Company in Liquidation had been used by the Director namely the Respondent herein, who is now ceased to be the Director of the Company /suspended, due to initiation of CIR Process as against the Corporate Debtor.

iii) It is further averred in the Application that even though based on the sympathetic or compassionate ground the Liquidator granted some more time to the Respondent to hand over the car as the other suspended Director namely his wife was not well, however, subsequently she has deceased, and in the said circumstance, the vehicle is required to be handed over to the Liquidator as it forms part of the 'Liquidation Estate' as defined under Section 36 of the I&B Code, 2016. Despite repeated intimations sent to



the Respondent on several dates as contemplated in the Application as under:-

S. No.	Dates of Intimation	Mode of Intimation
1	03 rd June 2019	E-Mail
2	20 th August 2019	Letter
3	14 th October 2019	E-Mail
4	30 th October 2019	E-Mail
5	05 th November 2019	E-Mail
6	12 th November 2019	E-Mail
7	20 th November 2019	E-Mail
8	06 th January 2020	E-Mail
9	13 th January 2020	E-Mail
10	20 th January 2020	E-Mail
11	27 th January 2020	E-Mail

the Respondent has failed to hand over the vehicle and if the possession of the vehicle is allowed to continue to be retained by the Respondent further, it will cause prejudice to the interest of the other stakeholders. It is further averred in the Application that despite approaching the concerned Police authorities with a view to prefer a compliant, however, the same has not been handed over by the Respondent. Thus, in view of the resistance on the part of the Respondent to return the car which belongs to the Company in Liquidation, which forms

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part of the 'Liquidation Estate', this Application has been moved before this Tribunal.

3. Upon notice, the Respondent is being represented by one Mr. R. Chandra Mohan, Learned Advocate. It is seen from the records of the Tribunal that the matter was listed on 24.06.2020 and based on the request made by the Learned Counsel for the Respondent 10 days' time was granted to the Respondent to file response to the Application despite a strong resistance made by the Learned Counsel for the Applicant/Liquidator. As it is seen from the said Order that the Respondent is dragging on the matter for too long and the matter was listed before this Tribunal on 10.07.2020 and on 10.07.2020, again some more time was sought by the Respondent to file the response and a submission was also made that the Respondent is willing to settle the debts due to the Company in Liquidation and thereby take the Company out of the Liquidation. In relation to the said representation, again resistance was shown by the Learned



Liquidator as the said representation was repeatedly made by the Learned Counsel for the Respondent for the past one year ever since the date of liquidation as ordered by this Tribunal.

4. The repeated promises made by the Respondent to cooperate with the Liquidator and handing over the asset of the Corporate Debtor for the Company in Liquidation has not rendered any result. It is also pointed out by the Learned Liquidator that under the provisions of the I&B Code, 2016 particularly under Section 35 (1) (d) of the I&B Code, 2016, the Liquidator is required to take such measures to protect and preserve the assets and properties of the Corporate Debtor as he considers it necessary, of course, subject to the directions of the Adjudicating Authority, and in the circumstance, this Application has been preferred.

5. From the averments as made in the Application, it is found that the Respondent has not as yet delivered the

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possession of the vehicle namely BMW make being Model No. BMWXI 2.0D BS IV bearing Registration No. TN 09 BU2525, to the Liquidator, even though the said vehicle is found to be forming part of the 'Liquidation Estate' of the Company in Liquidation. As rightly pointed out by the Learned Liquidator, the onus is placed on the Liquidator under the provisions of Section 36 of the I&B Code, 2016 to form an estate of the assets of the Company in Liquidation called the 'Liquidation Estate', and a perusal of the provisions of Section 36 (3) of I&B Code, 2016 *prima facie* discloses that, any assets over which the Corporate Debtor has ownership rights *inter alia* shall form part of the 'Liquidation Estate'. In the said circumstance, as the assets are required to be in the custody and possession of the Liquidator under the said provisions, it is held that the asset of the Corporate Debtor is being withheld by the Respondent illegally, contrary to the provisions of I&B Code, 2016 as well as the provisions of Companies Act, 2013 resulting in wrongfully withholding the property of the Company namely in Liquidation.



6. Under such circumstance, the following order is passed:-

i) We direct the Respondent herein namely Balakrishnaraja Dhanuskodi Raja to forthwith to handover the possession of the vehicle namely BMW make being Model No. *BMW XI 2.0D BS IV* bearing Registration No. *TN 09 BU2525*, to the Applicant namely the Liquidator of the Company in Liquidation within 10 days from the date of this Order;

ii) Failing which, the Liquidator shall take possession of the said vehicle from the Respondent, for which, the Deputy Commissioner of Police, R4 Police Station, T. Nagar, Chennai – 600 017, who is having the jurisdiction with the matter, is directed to assist the Liquidator in case of any resistance on the part of the Respondent in surrendering the vehicle as detailed above.



7. With the above directions, this Application stand disposed of.

-SD-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

P. ATHISTAMANI