IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

<u>MA 2776/2019 in C.P. (IB) 1333/(MB)/2018</u>
(Under Section 33(2) of the IBC, 2016)

Mr. Mukesh Khathuria
...Applicant /
Resolution Professional

In the matter of:
Machhar Polymer Private Limited
...Operational Creditor
Versus
Sabre Helmets Private Limited
... Corporate Debtor

Order delivered on 20th January 2020

Coram:	Shri Rajesh Sharma Hon'ble Member (Technical)	Shri Bhaskara Pantula Mohan Hon'ble Member (Judicial)

For the Applicant: Mr Mukesh Khathuria, Resolution Professional

Per: Rajesh Sharma, Member (Technical)

<u>ORDER</u>

1. MA 2776/2019 has been filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016, seeking liquidation of **Sabre Helmets Private Limited,** the Corporate Debtor. Applicant Resolution Professional, **Mr Mukesh Khathuria** has filed this application stating that Application filed under Section 9 of IBC, 2016 was admitted by order of this Bench dated 22.02.2019 and the Applicant was appointed as the Interim Resolution Professional (IRP).

2. It is stated in the application that as per the order dated 22.02.2019 passed by this Tribunal, the IRP issued a Public Announcement on 03.03.2019 in newspapers, in compliance with Section 13, Section 15

and other applicable sections of the Code read with Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (IBBI Regulations).

3. The Applicant further stated that the Committee of Creditors (CoC) was constituted and meetings of CoC were convened on 25.03.2019, 08.05.2019, 10.06.2019, 25.07.2019 and 12.08.2019. Copy of the minutes of the CoC meetings are annexed to the application as Annexure 2, 4, 5, 8 and 9.

4. The Applicant submitted that he was unanimously appointed as Resolution Professional (RP), in the 1st CoC meeting held on 25.03.2019. The Applicant submitted that the Corporate Debtor had not availed any financial assistance from any Bank / Financial Institution or any Financial Creditor and therefore the CoC comprised of Operational Creditors in pursuance of Regulation 16 of IBBI (CIRP) Regulations, 2016. The Applicant further submitted that the Corporate Debtor had discontinued its sales operations from Financial Year 2014-2015 and limited its operations to winding up the business affairs and disposal of its assets to discharge some of its liabilities.

5. The Applicant submitted that subsequent to 1st CoC meeting the CoC was reconstituted considering the additional claims received and admitted by the RP. The Applicant submitted that in the 2nd CoC meeting held on 08.05.2019, the Applicant informed the CoC that there being no fixed assets of the Corporate Debtor, nor any inventory as on insolvency commencement date, there was no reason to appoint Valuers for valuation of assets of the Corporate Debtor. The Applicant submitted that the CoC agreed to the reasoning of the Applicant and ratified his decision for not appointing any Valuer for valuation of assets of the Corporate Debtor. The Applicant further informed the CoC that Information Memorandum for Corporate Debtor was prepared as per section 29 of the IBC 2016.

6. The Applicant submitted that in the 3rd CoC meeting held on 10.06.2019 the CoC resolved to close the bank accounts of the Corporate Debtor maintained with HDFC Bank, Vadodara and SBI Bank, Vadodara. The Applicant also informed the CoC that there are

no assets in the Corporate Debtor except Sales Tax refund of approximately ₹17,00,000/- (Rupees Seventeen Lakh Only), which was subject to completion of pending assessments by Sales Tax Department Vadodara. The Applicant informed that there being no fixed assets, no inventory or stock, no continuity of business or ongoing operations, there is no scope for revival or resolution of the Corporate Debtor. Therefore, the CoC opined and advised the Applicant that an application be made to the Adjudicating Authority for liquidation of the Corporate Debtor since no resolution or revival of the company is possible.

7. The Applicant submitted that he sought a forensic audit of the books of accounts of the Corporate Debtor and Maheswari & Company prepared a detailed audit report dated 22.07.2019 which is annexed as Annexure 6 to the application. As per the said report no suspicious transactions were found in the books of Corporate Debtor, except the payments towards Security Charges and Property Tax. The Applicant further submitted that in the 4th CoC meeting held on 25.07.2019 the Applicant presented the forensic audit report for review by the COC. Therefore, the CoC in the 4th meeting after deliberations on the findings of the forensic audit, decided to liquidate the Corporate Debtor and passed the resolution for liquidation of the Corporate Debtor with 91.65% vote share and further authorized the RP to file necessary application before the Adjudicating Authority seeking order of liquidation as per the provisions of Section 33(2) of the IBC 2016. The CoC also resolved with 91.65% vote share that the Applicant (RP) be appointed as Liquidator for the Corporate Debtor.

8. The Applicant further submitted that in the 5th CoC meeting held on 12.08.2019 the CoC passed a resolution and appointed Sales Tax consultant for necessarily follow up and getting the VAT refund from Commercial Tax Department, Vadodara. The CoC further resolved that the estimated liquidation costs are approved and the shortfall if any in the Liquidation expenses to be met out of the refunds receivable from the State Tax Department, Vadodara.

9. The Applicant submitted that CIRP period expired on 27.08.2019. Therefore, according to the resolution passed in the 4th CoC meeting

for liquidation of Corporate Debtor, the Applicant filed the present Miscellaneous Application seeking orders under Section 33 of the Code for liquidation of the Corporate Debtor.

10. In the above circumstances, since the Corporate Debtor has already ceased business operations and as there are no fixed assets or inventory and since the liquidation value of the assets of the Corporate Debtor is negligible, the Applicant has filed this application for liquidation of the Corporate Debtor in terms of Section 33(2) of the Code. Given the provisions of Section 33 of the Code, this application deserves to be allowed. The Resolution Professional has given his consent to act as a **Liquidator** of the Corporate Debtor.

ORDER

MA 2776/2019 filed by Applicant Resolution Professional, **Mr Mukesh Khathuria** seeking liquidation of **Sabre Helmets Private Limited,** is **allowed**. We pass the order of liquidation under Section 33 of IBC as follows:

a. That the Corporate Debtor is liquidated in the manner as laid down in the Chapter III by issuing a Public Announcement stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to Registrar of Companies (ROC) under which the Corporate Debtor has been registered.
b. As to the appointment of Liquidator, **Mr Mukesh Khathuria**, Resolution Professional is appointed to act as a Liquidator of the Corporate Debtor company with all powers as envisaged in the Code.
c. On such appointment under Section 34 of the Code, all powers of the board of directors and key managerial personnel of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.
d. That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
e. That the Liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate

assets as specified under Regulation 4 of IBBI (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.

f. Since this liquidation order has been passed, subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor and initiation of a suit or legal proceeding by the Liquidator on behalf of the corporate debtor shall be with the prior approval of this Adjudicating Authority, save and except as mentioned in sub-section 6 of Section 33 of the Code.

g. This liquidation order shall be deemed to be notice of discharge to the officers, employees and workmen of the Corporate Debtor, except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

11. Moratorium declared vide Order dated 22.02.2019 in C.P.(IB)1333/(MB)/2018 ceased to exist.
12. The registry is directed to communicate this order to the Liquidator immediately even by way of e-mail.
13. MA 2776/2019 is disposed of accordingly.

Sd/-	**Sd/-**
RAJESH SHARMA	**BHASKARA PANTULA MOHAN**
Member (Technical)	Member (Judicial)

20th January 2020

राष्ट्रीय कम्पनी विधि अधिकरण NATIONAL COMPANY LAW TRIBUNAL मुंबई न्यायपीठ MUMBAI BENCH

Certified True Copy
Copy Issued "free of cost"
On 23.01.2020
Assistant Registrar
National Company Law Tribunal Mumbai Bench