

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH**
(through web-based video conferencing platform)

IA No.45 of 2022
In
CP (IB) No.52/Chd/PB/2022
(Admitted)

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

In the matter of:-
Daljit Singh and Others

...Financial Creditor

Versus

SMD Infra Ventures Private Limited

...Corporate Debtor

And in the matter of:-
Kuljeet Singh, Liquidator,
SMD Infra Ventures Private Limited (In Liquidation)
Insolvency Professional
Regd. No.IBBI/IPA-002/IP-N00411/2017-18/11203
Resident of 381, Phase 2, Urban Estate, Dugri Road, Ludhiana

(IA No.45 of 2022)

...Applicant

Order pronounced on 17.02.2022

Coram: HON'BLE SHRI HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE SHRI SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present through Video Conferencing :-

For the Applicant :- Mr. Arora Vishwas Kumar, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

ORDER

The present application has been filed by Mr. Kuljeet Singh, Liquidator of SMD Infra Ventures Private Limited (for short the '**corporate debtor**') under Section 60 (5) (c) of Insolvency and Bankruptcy Code, 2016 (for short the '**Code**'), read with Section 276 of the Companies Act, 2013 (for short the '**2013**

Act') and Rule 11 of National Company Law Tribunal Rules, 2016, seeking his replacement.

2. According to the applicant, this Tribunal passed an order dated 25.01.2019, initiating the liquidation process of the corporate debtor. It is submitted that during the liquidation process, the applicant submitted various progress reports on quarterly basis, mentioning the details of events occurred in respective quarters. He has also filed IA No.159 of 2021 during the liquidation process of the corporate debtor, whereby he submitted his opinion that in order to achieve the object of the Code for maximization of value of assets of the corporate debtor, it would be better if the assets be sold or disposed off by way of private sale. The said application is still pending, due to which the liquidation process could not be completed.

3. It is further submitted that the applicant/liquidator is a senior citizen of 63 years of age and during the liquidation process of the corporate debtor, the applicant/liquidator developed serious ailments due to his elderly age and recently, he has been diagnosed with ailments relating to essential hypertension and blood pressure, due to which doctors have advised the applicant to not undertake and perform such tasks which involves travelling and pressure. Accordingly, he has filed the instant application for seeking his replacement on medical grounds. The medical reports of the applicant is annexed with the application as Annexure-2. Moreover, according to the applicant, his son has been transferred to Bangalore for his service and he has been persisting the applicant to reside with his family so that he can take care of the applicant in his elderly age. Copy of posting letter has also been annexed as Annexure-3 with the application.

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4. It is also submitted that no such similar application has earlier been filed by the applicant before this Tribunal.

5. We have heard learned counsel for the applicant and gone through the record available on the file.

6. After hearing learned counsel for the applicant and careful perusal of the record, we are of the considered view that the applicant in hand is maintainable. The provisions of 2013 Act enable this Tribunal to remove and replace the liquidator. Section 276 of the 2013 Act, is being reproduced hereunder for ready reference.

“Section 276: Removal and replacement of liquidator.

276. (1) The Tribunal may, on a reasonable cause being shown and for reasons to be recorded in writing, remove the provisional liquidator or the Company Liquidator, as the case may be, as liquidator of the company on any of the following grounds, namely:—

(a) misconduct;

(b) fraud or misfeasance;

(c) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;

(d) inability to act as provisional liquidator or as the case may be, Company Liquidator;

(e) conflict of interest or lack of independence during the term of his appointment that would justify removal.

(2) In the event of death, resignation or removal of the provisional liquidator or as the case may be, Company Liquidator, the Tribunal may transfer the work assigned to him or it to another Company Liquidator for reasons to be recorded in writing.

(3) Where the Tribunal is of the opinion that any liquidator is responsible for causing any loss or damage to the company due to fraud or misfeasance or failure to exercise due care and diligence in the performance of his or its powers and functions, the Tribunal may recover or cause to be recovered such loss or damage from the liquidator and pass such other orders as it may think fit.

(4) The Tribunal shall, before passing any order under this section, provide a reasonable opportunity of being heard to the provisional liquidator or, as the case may be, Company Liquidator.

7. It is evident from the medical record, Annexure 2, that the applicant is suffering from essential hypertension and blood pressure and that he is a senior citizen. Further, Annexure-3 reveal that his son has been transferred to Bangalore and in this way, he is unable to act as liquidator.

8. Keeping in view the above mentioned facts and circumstances, the ends of justice would be met, if the applicant Kuljeet Singh, Insolvency Professional, appointed as Liquidator in this case, is replaced.

9. In view of foregoing facts and circumstances and provision of Section 276(1)(d) of the 2013 Act, we allow the instant application and appoint Mr. Amit Kumar Goyal, IBBI/IPA-003/IP-N00317/2020-2021-13342, Mobile No.9815451777, e-mail akgoyal47@yahoo.com, to act as liquidator, whose name appears in panel of Insolvency Professionals (IPs) for the period January-June 2022 prepared by Insolvency and Bankruptcy Board of India applicable for this Bench. The Law Research Associate of this Tribunal has checked the credentials of Mr. Amit Kumar Goyal, and nothing adverse has been found on record.

10. Although, the applicant has not prayed for his fee in the application, yet Section 34(8) and (9) of the Code, provide for payment of fee to the liquidator. Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, lays down the procedure for determining the liquidator's fee. Accordingly, in the present case, if need arises, the liquidator's fee is to be determined as per the aforementioned provisions.

11. Accordingly, IA No.45 of 2022 is disposed of with the following directions:-
- a. Mr. Kuljeet Singh, Liquidator, shall hand over the entire record and the assets of the of the corporate debtor, if any, in his possession to the newly appointed liquidator immediately;
 - b. Mr. Amit Kumar Goyal shall take over the charge of the entire records and assets of the corporate debtor and perform his duties, as required under the Code and the Regulations;
 - c. Mr. Amit Kumar Goyal, is directed to file his written consent along with affidavit within 7 days, stating therein that no disciplinary proceedings have been initiated against him by the Board or the Insolvency Professional Agency;
 - d. Mr. Amit Kumar Goyal, Liquidator, is directed to file quarterly progress reports before this Tribunal.

Registry is directed to supply copy of this order to the learned counsel for the applicant and newly appointed Liquidator.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

February 17, 2022
MK