

**NATIONAL COMPANY LAW TRIBUNAL**  
**MUMBAI BENCH**  
**COURT-IV**

22. IA 1188(MB)2024  
IN  
C.P. (IB)/1239(MB)2021

CORAM:

MS. ANU JAGMOHAN SINGH  
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI  
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **18.06.2024**

Name of the Party: Car Bazaar Automobiles Private Limited

Section 10, 60(5) of Insolvency and Bankruptcy Code, 2016, Rule 11 of NCLT Rules, 2016

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**ORDER**

1. Adv. Jayom Shah a/w Adv. Mily Ghosha i/b Adv. Tanvi Vira a/w Adv. Sophia Hussain for the Applicant present through physical mode. C.S. Nithish Bangera for the Liquidator present through physical mode.

**IA-1188/2024**

2. This is an Application filed u/s 60(5) by the Applicant seeking an appropriate direction from this Bench against the Respondent/ Corporate Debtor. The prayer is sought by the Applicant is as under:-
  - i. *allowed the present Application and exclude the amount of Rs. 18,06,897/- (Rupees Eighteen Lakhs Six Thousand Eight hundred and Ninety-seven Only) from the Liquidator estate;*
  - ii. *Direct the Respondent i.e. Liquidator to remit the amount of Rs. 18,06,897/- (Rupees Eighteen Lakhs Six Thousand Eight hundred and Ninety-seven Only) being held in trust by the Corporate Debtor to the Applicant.*
3. Counsel for the Applicant submits that the Applicant had paid of Rs. 50,000/- booking of the Car to the Corporate Debtor and further paid sum of Rs.18,60,897/- to the Corporate Debtor on 13.08.2018 vide RTGS No. 403336 to ensure that the delivery of the said Car to the Applicant. The said payment was duly acknowledged by the Corporate

Debtor for the same, the Corporate Debtor had issued receipt towards part payment of the said Car. The Corporate Debtor failed to remit the said amount to the dealer.

4. In the meantime, the Corporate Debtor had filed the Company Petition invoking section 10 of the Code and the same was allowed on 03.03.2023. Thereafter, on completion of the CIRP period, the Resolution Professional filed an application i.e. IA-4149/2023 seeking liquidation of the Corporate Debtor, which was allowed vide order dated 09.11.2023.
5. Ld. Counsel for the Applicant submits that the money paid by the Applicant to the Corporate Debtor was held by the Corporate Debtor in trust and was required to be remitted to the dealer for the purchase of the said Vehicle. Ld. Counsel for the Applicant further submits that the Corporate Debtor is neither a dealer of the Vehicles nor manufacturer, the Corporate Debtor is only facilitator and held the said amount in the trust.
6. Ld. Authorised Representative for the Liquidator submits the Liquidator published form-B inviting the claims from the Creditors. Accordingly, the Applicant filed their claim amount of Rs.18,60,897/- before the Liquidator. The Liquidator has considered their claim as an Operational Creditor and the SCC also confirmed that it is an operational debt.
7. Ld. Authorised Representative for the Liquidator submits that there is no contract between the three parties and there is no tripartite agreement executed amongst the customer, dealer and Corporate Debtor i.e. M/s Car Bazaar Automobiles Private Limited. The Applicant utilized the services of the Corporate Debtor for getting the vehicle in the competitive price through its services of delivery without waiting period and providing the VIP Number Registration etc. For the services of the Corporate Debtor, the Applicant paid said amount for the purchase of the Car.
8. Heard both the Counsel and upon perusal of the records. This Bench is of the considered view that the Applicant herself admitted that, the Corporate Debtor is neither dealer of the Vehicle nor manufacturer, the

Corporate Debtor is only a facilitator. The Applicant paid the said amount for availing the services of the Corporate Debtor for getting the delivery of the vehicle with the competitive price and the services of delivery without waiting period.

9. From the facts stated supra, it is clear that the Applicant paid said amount for availing the services of the Corporate Debtor. The Liquidator and the SCC have rightly admitted their claim as an Operational debt. Hence, once the claim is admitted, the refund of the said admitted amount does not arise at this liquidation stage. They are entitled distribution of the said amount under the process of Waterfall Mechanism. Hence, the present Application is devoid of merits.
10. In view of afore-stated submission(s), the present Application is **dismissed**.

Sd/-

**ANU JAGMOHAN SINGH**  
**Member (Technical)**

/Dubey/

Sd/-

**KISHORE VEMULAPALLI**  
**Member (Judicial)**