

THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH – I,
MUMBAI

CP (IB)-1882/MB/2018

CORAM : SHRI V.P. SINGH, MEMBER (J)
SHRI RAVIKUMAR DURAISAMY, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON 16.01.2019

NAME OF THE PARTIES: ASSET RECONSTRUCTION COMPANY (INDIA)
PVT. LTD.

v/s
SHIVAM WATER TREATERS PVT. LTD.

SECTION 7 OF INSOLVENCY & BANKRUPTCY CODE, 2016

ORDER

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Ld. Counsel representing the Resolution Professional has filed the status report on CIRP, which is taken on record.

It is stated that the Corporate Debtor has not handed over the required documents and the information to him and his team members. Earlier on this basis, RP has moved an application to restrain R1 and R2 from using the company's properties, assets directly or indirectly in defiance of the provision of IBC, 2016. The RP has also annexed an email send to the promoter-director wherein it is stated that the Ex-Director, **Mr Gaurav Dave abused the RP and created hindrance in the working of the CIRP process.** By the application submitted by the RP, we have passed the order that RP is acting as an officer of the Court and any hindrance in the working of the CIRP will amount to contempt of court. It was also directed to the promoter-ex director of the Corporate Debtor to remain present in the court on 16.1.2019. But today, the Ex-director is not present in the court in defiance of Court order. The presence of his advocate is of no excuse.

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Section 19 of the IBC provides that **“the personnel of the Corporate Debtor, its promoters or any other person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the Interim Resolution professional as may be required by him in managing the affairs of the Corporate Debtor. Where any personnel of the Corporate Debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application the Adjudicating Authority for necessary directions.”** Under the said provision, the RP has made an application, and we had issued the notice on the ex-director of the Company Mr Gaurav Dave, but he is not present in the court.

In reply to the notice dated 15.1.2019, the Ex-Director Mr Gaurav Dave has filed an application stating that *“the applicant is the suspended director of Shivam Water Treaters Pvt Ltd and R2 is the Corporate Debtor and R3, and R4 are the creditors of the Corporate Debtor. The order to remain present in person was communicated on 10.1.2019 by the RP to the applicant. By this application, Ex-Director is seeking exemption from personal appearance on 16.1.2019 allegedly on the ground that on 12.1.2019 the applicant is advised to complete rest at home for one week because of swelling and pain in the left leg by qualified doctor Ms (Ortho). The genesis of aforesaid is that the applicant was operated on both the legs in August 2016 and there he has been suffering from pain and swelling in the left leg. The medical prescription is signed by Dr Nehil B Shah who is qualified MS(Ortho). The applicant will be operated shortly on his left leg by the doctors to remove the plates and screw fitted during the operation of August 2016”*. In the circumstances, the applicant has prayed that this exemption for appearance on 16.1.2019.

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The documents attached with the application is only the photocopy of the prescription and medical receipt regarding the sale of some medicines from Pharmacy, which can be easily made available. The applicant has not filed any medical certificate. Photocopy of prescription of any doctor or any cash receipt from the medical store is not authenticated document, which can be relied upon. It appears that Mr Gaurav Dave intentionally avoided to appear in the court and he does not want to hand over the documents required by the RP. Counsel for the RP has stated that their entry in the office is also restricted and the Ex-Director of the Corporate Debtor is creating hindrance in the CIRP. Grounds for exemption from appearance in Court are sham excuses.

In the circumstances, we pass an order for police assistance so that the Resolution Professional can take full control of the company without any interference from ex Director's or his officials. The Police Commissioner, Ahmedabad is directed to provide police assistance to RP and his team, so that the Resolution Professional can take control of the entire unit. All the powers of the Corporate Debtor and its Directors relating to the operation of the Bank Account anywhere in India are frozen. The RP is directed to serve a copy of this order to the concerned Bank so that the Corporate Debtor and its directors cannot operate the bank account.

Ex-Director of the Corporate Debtor Mr Gaurav Dave and all other Directors are directed to appear in person before this Bench on 31.1.2019, failing which order shall be passed under the Contempt of Court Act.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-

V. P. SINGH
Member (Judicial)