

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH**







IA 344 of 2018 in
C.P. (I.B) No.33/NCLT/AHM/2017

Coram: **Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**
Hon'ble Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 26.08.2019**

Name of the Company: Fenil Bharatbhai Shah
V/s
Ardor Global Pvt Ltd & Ors

Section of the Companies Act: Section 60(5)(c) of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Rasesh Parikh. Kishan Dama.	Advocate	Applicant.	
2.	NIPUN SINGHVI VISHAL J. DAVE PRAGATI TIWARI	Adv.	R.P.	  
3.	KETAN M PARIKH	Adv.	C.O.C.	
4.	Kalina R. Parvech For & on behalf of Ajay R. Sheth	Adv. Adv. & Solicitor	Sub-Management/ APPLICANT	 KRP.

ORDER

The parties are represented through their respective learned counsels.

The Order is pronounced in the open court, vide separate sheet.


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 26th day of August, 2019


MANORAMA KUMARI
MEMBER JUDICIAL

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

**I.A. No. 228 of 2018
with
IA No. 344 of 2018
in
CP(IB) No. 33 of 2017**

In the matter of:

IA 228/2018

Chandra Prakash Jain,
Resolution Professional (RP),
Ardor Global Private Limited
S.G. Road,
Ahmedabad – 380 060

...Applicant
(Resolution Professional)

Versus

Ardor Global Private Limited.,
S.G. Road,
Thaltej,
Ahmedabad – 380 059

...Respondent
(Corporate Debtor)

IA 344/2018

1. Fenil Bharatbhai Shah

...Applicant

Versus

1. Ardor Global Private Limited,
Represented through Resolution Professional
Chandra Prakash Jain
D-501, Ganesh Meridian,
Opp. Gujarat High Court,
S.G. Road,
Ahmedabad – 380 055

2. Bank of India,
Ahmedabad Mid Corporate Branch,
Navrangpura,
Ahmedabad – 380 009

3. Bank of Baroda,
Corporation Finance Service Branch,
Ellisbridge,
Ahmedabad – 380 009

Shakalajyoti

Chaman

4. Rajkot Nagrik Sahakari Bank Ltd.,
Mithakali,
Ahmedabad – 380 009
5. Oriental Bank of Commerce,
CG Road,
Ahmedabad
6. Union Bank of India,
Ashram Road,
Ahmedabad – 380 014
7. Central Bank of India,
Lal Darwaja,
Ahmedabad – 380 001
8. State Bank of India,
Overseas Branch,
S.G. Highway,
Ahmedabad – 380 015
9. GSEC Ltd.,
Ashram Road,
Ahmedabad – 380 009

.....Respondents

Order delivered on 26th August, 2019

Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance in I.A. No. 228

Advocate Ms. Krina R. Parekh for and on behalf of Mr. Arjun R. Sheth, Advocate and Solicitor, Advocates Mr. Rasesh Parikh and Mr. Kishan Dave for Suspended Management. Advocate Mr. Ketan M Parikh and Advocate Mr. Kuldeep K. Adesara for CoC. Advocates Mr. Nipun Singhvi, Mr. Vishal J. Dave and Ms. Pragati Tiwari for RP.

Appearance in I.A. No. 344

Advocate Ms. Krina R. Parekh for and on behalf of Mr. Arjun R. Sheth, Advocate and Solicitor, Advocates Mr. Rasesh Parikh and Mr. Kishan Dave for the Applicant. Advocate Mr. Ketan M Parikh for CoC. Advocates Mr. Nipun Singhvi, Mr. Vishal J. Dave and Ms. Pragati Tiwari for RP.

COMMON ORDER

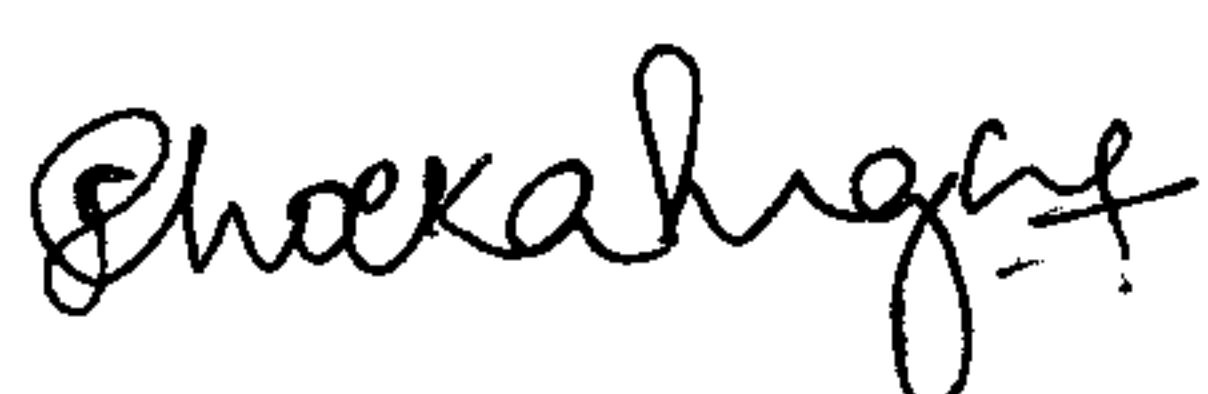
[Per : Ms. Manorama Kumari, Member (J)]

- 1.1 CP(IB)No. 33/2017 was filed by M/s Renish Petrochem FZF, UAE under Section 9 of the Insolvency and Bankruptcy Code, 2016 hereinafter referred to as IB Code, read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authorities) Rules, 2016 seeking reliefs under Section 9 of the IB Code in respect of M/s. Ardor Global Private Limited, a company having its registered office at Ahmedabad, Gujarat treating it as a Corporate Debtor.

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- 1.2 This Adjudicating Authority admitted the said CP(IB) No. 33/2017 on 31.07.2017, and appointed Shri Ravi Kapoor, as the Interim Resolution Professional (hereinafter referred to as "IRP") and directed the applicant Operational Creditor to make public announcement of initiation of Corporate Insolvency Process of the Corporate Debtor Company and call for submission of claims under Section 15 as required by Section 13(1)(b) of the IB Code.
- 1.3 However, CoC, in its meeting held on 04.09.2017 resolved to propose the name of Shri Ramubhai S Patel as the Resolution Professional, hereinafter referred to as "RP" and an IA to this effect being IA No. 277 of 2017 was filed before this Adjudicating Authority. However, there was opposition to the appointment of Shri Ramubhai S Patel and in connection therewith, three IAs were filed before this Adjudicating Authority.
- 1.4 In the meantime, the IRP, so appointed by this Adjudicating Authority, has already made public announcement on 04.08.2017 calling upon the claims from the creditors in view of the order dated 31.07.2017 of this Adjudicating Authority.
- 1.5 This Adjudicating Authority vide its order 14.11.2017 declined to recommend the name of Shri Ramubhai S Patel to the Insolvency and Bankruptcy Board of India (hereinafter referred to as IBBI) since the same was proposed by the CoC in violation of the prescribed provisions of the IB Code.
- 1.6 IRP Shri Ravi Kapoor was directed by this Adjudicating Authority to convene a meeting of CoC by giving notice to all the Financial Creditors as well as the Operational Creditors with the agenda of proposing the name of the Resolution Professional after following the procedures prescribed under Chapter VI of the IBBI (IR) Regulations, 2016 within fifteen days.
- 1.7 It is stated that a meeting of CoC was convened on 24.11.2017 wherein the name of Shri Chandra Prakash Jain was validly proposed by the prescribed majority of votes and thereafter an interim application bearing IA No. 396 of 2017 was filed on behalf of CoC before this Adjudicating Authority seeking the recommendation of IBBI for recommendation of Shri





Chandra Prakash Jain, the present applicant for his confirmation as Resolution Professional.

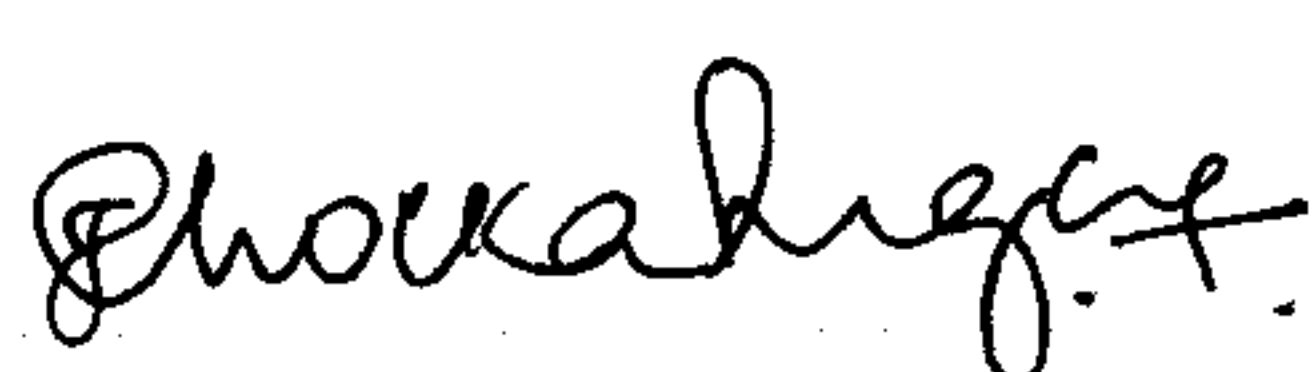
2. The RP of the Corporate Debtor Company, has filed IA No. 228 of 2018 in Company Petition (IB) No. 33 of 2017 for liquidation of the Corporate Debtor Company Ardor Global Private Limited under section 33(1), 33(2) and 34(1) of the IB Code, 2016 and for the appointment of the Liquidator and to constitute supervisory sale committee of CoC to monitor/supervise the process of liquidation of Corporate Debtor Company which is pending for adjudication.
3. It is stated by the RP that one potential Resolution Applicant was discussed by the CoC and their representative was posed queries with regard to resolution plan. The RP also obtained legal opinion for compliance of relevant regulations under the IB Code. However, the resolution plan was rejected by the CoC on the ground that plan was not upto the expectation and also the consideration of collateral securities in the plan was not accepted by the CoC.
4. Thereafter, resolution plan of one M/s. GSEC Limited was considered and rejected by CoC in its 11th meeting held on 17.4.2018 and CoC in its 12th meeting held on 24.04.2018 resolved to recommend Corporate Debtor Company for liquidation. However, CoC has not expressed its consent or dissent either for continuation of the applicant Resolution Professional as Liquidator or appointment of new candidate as the Liquidator.
5. That after filing of the application being IA No. 228 of 2018 under section 33(1), 33(2) and 34(1) of the IB Code, 2016 by RP, IA No. 344 of 2018 is filed by one Shri Fenil Bharatbhai Shah who is the suspended board of director of the Corporate Debtor Company with following prayers:
 - a. Pass order declaring that the resolution passed by the CoC in the 11th meeting dated 17.04.2018 rejecting the resolution plan of the Respondent No. 9 i.e. M/s. GSEC Ltd. as illegal, null and void and pass order setting aside and quashing the same.
 - b. Pass order declaring that the resolution passed by the CoC in the 12th meeting dated 24.04.2018 recommending the liquidation of the Respondent No. 1 i.e. Corporate Debtor Company as illegal, null and void and pass order setting aside and quashing the same.
 - c. Pass order directing Respondents Nos. 1 to 8 to reconsider the resolution plan submitted by the Respondent No. 9 afresh and to

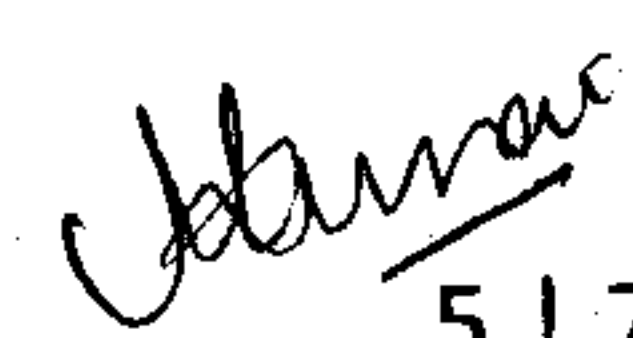
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consider the same as per the provisions of the IB Code and the object of the Code being to resolve the debts of the Corporate Debtor Company.

- d. In the event, the Respondent No. 9 is not inclined to proceed with the resolution plan, this Adjudicating Authority pass order permitting the Applicant to substitute the Respondent No. 9 with another resolution applicant on the same terms and conditions (in the resolution plan) as that submitted by the Respondent No. 9 and direct the CoC to consider such resolution plan afresh, to further the object of the Code to achieve resolution of the debts of the Corporate Debtor Company.
6. Heard the Ld. Counsels of the above mentioned Interlocutory Applications. Thus, before disposal of the IA 228 of 2018 for liquidation of the Corporate Debtor Company, it is imperative to dispose of the Interlocutory Application filed by the suspended board of director of the Corporate Debtor Company under section 60(5)(c) of the IB Code.
7. We, the Adjudicating Authority, at this Bench have gone through all the documents submitted with the application and also placed on record and are of the considered view that the Applicant who is the suspended board of director of the Corporate Debtor Company has no locus standi to make this application.
- 7.1 From the facts placed before this Adjudicating Authority, it is observed that RP in response to calling of Expression of Interest from the potential resolution applicants, received only one expression from M/s. GSEC Ltd. and the same was not to the expectation of the CoC and therefore, CoC rejected the resolution plan. However, before rejecting the resolution plan submitted by M/s. GSEC Ltd., sufficient opportunities were provided to M/s. GSEC Ltd to present their case.
- 7.2 It is further observed by this Adjudicating Authority that had the resolution applicant i.e. M/s. GSEC Ltd any grievances against the CoC, the resolution applicant would have preferred IA against the decision of the CoC. Whereas in the instant case, the IA is preferred by the suspended board of director of the Corporate Debtor Company.
- 7.3 Further, this Adjudicating Authority cannot question the wisdom of the CoC and their recommendation for liquidation of the Corporate Debtor Company. Reliance is placed upon the decision of Hon'ble National Company Law Appellate Tribunal in **Kannan Tiruvengandam v. M.K.**




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Shah Exports Ltd. & Ors. wherein it is held that commercial aspects of a resolution plan are to be dealt with by an expert body such as the Committee of Creditors. It was held that the Hon'ble NCLAT had no jurisdiction to sit in appeal over the same, unless such decision of the Committee of Creditors is perverse or contrary to the provisions of the Code or any other existing law. In this regard, it is also pertinent to refer to the recent decision given by the Hon'ble Supreme Court in Civil Appeal No. 10673 of 2018 in **K. Sasidhar v. Indian Overseas Bank & Ors.** It is held that supremacy of CoC and their commercial wisdom cannot be questioned. It is also observed that National Company Law Tribunal has no jurisdiction and authority to analyse or evaluate the commercial decision of the CoC to enquire into the justness of the rejection of the Resolution Plan by the dissenting financial creditors.


- 7.4 As far as substitution of the Respondent No. 9 with another resolution applicant as prayed for by the applicant of IA 344 of 2018, this Adjudicating Authority cannot consider this prayer being contingent in nature and in view of the time line prescribed by the IB Code for completion of CIR Process when CIRP has already expired on 26.04.2018.
- 7.5 Hence IA 344 of 2018 is not maintainable and disallowed.
8. As stated above in Para 4, the CoC recommended for liquidation of the Corporate Debtor Company. Further, the period of 180 days provided for arriving at resolution plan expired on 26.01.2018 and the CoC in its 4th meeting held on 28th December, 2017 unanimously agreed for extension of the period by further 90 days. Accordingly, IA 5 of 2018 was filed before this Adjudicating Authority for extension of duration of CIRP Process. This Adjudicating Authority vide its order dated 15.01.2018 extended the CIR Process for a further period of 90 days beyond 180 days. Accordingly, CIR Process expired on 26.04.2018.
9. Considering all the above said facts and circumstances, this Adjudicating Authority is of a considered view that there shall be an order of liquidation in respect of the Corporate Debtor Company Ardor Global Private Limited and direct the Liquidator to issue a public announcement stating that Corporate Debtor Company is in liquidation.
10. This Adjudicating Authority hereby appoint Mr. Chandra Prakash Jain, the Resolution Professional as 'Liquidator' under section 34(1) of the IB Code. The Liquidator shall send an intimation to the Registrar of Companies with which the Corporate Debtor Company is registered.

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11. The Liquidator shall act as per Section 35 of IB Code, subject to directions of this Authority.
12. Accordingly, the present IA No. 228 is allowed and stands disposed of with above said observations.
13. Any other IA(s), if pending, also stand(s) disposed of in view of the above order.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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