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29/07/19

BEFORE THE AJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD

Free of Cost Copy

IA 362 of 2018 in  
C.P. (I.B) No. 149/NCLT/AHM/2017

Coram: Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 22.07.2019

Name of the Company: Ramubhai S. Patel RP of Varia Engineering Works Pvt. Ltd.  
V/s.  
Bank of Baroda & Anr.  
Section of the Companies Act: Section 33(1) of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Kamya Shah i/b. Nankwari Associate	Adv.	Petitioner	
2.	HANMISH K. SHAH i/b. KUNAL P VASHTANU	Adv	Respondent Exp Management	

**ORDER**

The parties are represented through their respective learned counsels.

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



Dated this the 22nd day of July, 2019

MANORAMA KUMARI  
(MEMBER JUDICIAL)

Certified to be True Copy of the Original

Deputy Registrar  
NCLT, Ahmedabad Bench  
Ahmedabad

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

**IA No. 362 of 2018  
in  
C.P.(IB) No. 149/NCLT/AHM/2017**

**In the matter of:**

Shri Ramubhai S. Patel,  
Resolution Professional (RP) of  
M/s. Varia Engineering Works Ltd.,  
801, Popular House,  
Ashram Road, Ahmedabad  
Gujarat

.....Applicant

**Versus**

Bank of Baroda,  
Acting through its Corporate Financial  
Services Branch,  
1<sup>st</sup> Floor, Bank of Baroda Towers,  
Opposite Law Garden,  
Ellisbridge, Ahmedabad-380006

.....Respondent

**Order delivered on 22 July, 2019**

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)**

**Appearance:** Advocate Ms. Kamyia Shah i/b Nanavati Associates is present for the Petitioner. Advocate Mr. Harmish K Shah i/b Mr. Kunal P Vaishnav is present for the Respondent.

**ORDER**

1. The instant application is filed by the RP under section 33 of the IB Code with the following prayers:
  - 1) To pass an order requiring the Corporate Debtor to be liquidated, in terms of the provisions of Section 33(1)(a) of the Code;
  - 2) To issue a public announcement stating that the Corporate Debtor is in liquidation;
  - 3) To direct that a copy of the order be sent to the Registrar of Companies at Ahmedabad;
  - 4) To direct that pending hearing and final disposal of the present Application, till the pronouncement of the commencement of



*Manori*

liquidation, (i) the moratorium in terms of Section 14 of the Code to continue till the pronouncement of the order of liquidation for the Corporate Debtor (ii) The RP shall continue its role as an RP of the Corporate Debtor, till the pronouncement of the order of liquidation for the Corporate Debtor by this Hon'ble Tribunal;

- 5) To pass an appropriate direction with regard to the protection of the actions undertaken in good faith by the RP in terms of Section 233 of the Code;
  - 6) To direct that upon the order of liquidation, the RP does not continue to manage the affairs of the Corporate Debtor as a liquidator.
2. On perusal of the record, it is found that the CP(IB) 149/2017 was admitted on 21.12.2017. Thereafter, first meeting of the Committee of Creditors was held on 23.01.2018, wherein, the Interim Resolution Professional was confirmed as RP vide order dated 21.12.2017. It is further submitted by the Learned Lawyer of the RP that due to the non-co-operation of the Corporate Debtor RP failed to retrieve the relevant information to which the Committee of Creditors made a strong observation in the Minutes of Meeting held on 23.01.2018 and unanimously directed the Corporate Debtor to extend the co-operation to the Applicant. The said fact is reflected in the Minutes of first meeting of the Committee of Creditors.
  3. The RP vide a paper advertisement, published an expression of interest in the "Economic Times" and "Divya Bhaskar" dated 25.04.2018 for revival of Corporate Debtor setting the last date as 04.05.2018. Thereafter, in 7<sup>th</sup> meeting of the Committee of Creditors held on 11.05.2018 decided to publish a fresh addendum in the "Economic Times" and "Divya Bhaskar" extending the last date for submission of expression of interest until 18.08.2018 and submission of Resolution Plan until 27.08.2018.
  4. That ever after the extension of time for submission of Expression of Interest no Resolution Plan received to revive the Company, thereby 180 days are also lapsed, as such an IA i.e. IA 197/2018 is filed by the RP under section 12 of the IB Code seeking for extension of time for CIRP by further 90 days. The said extension was granted by this Bench on 08.06.2018.



*Adhikari*

5. Meanwhile, the Committee of Creditors in its 10<sup>th</sup> meeting held on 29.08.2018 recorded that RP received no Resolution Plan from the potential Resolution Applicant, as such by way of majority of 90.61% of voting share the Committee of Creditors in its 11<sup>th</sup> meeting resolved to file liquidation application as post extension period of 90 days is also going to expire. Hence, the Committee of Creditors in its 11<sup>th</sup> meeting authorised the RP to file application under section 33 of the IB Code which said meeting was approved by 96.61% voting share in favour of the liquidation as reflected in the Agenda Item no. 9 of the Minutes of 11<sup>th</sup> Meeting held on 12.09.2018 which read as under:

**Agenda Item: 9**

*To discuss and decide about filing an application for Liquidation before Hon'ble NCLT, if Resolution Plan is not received or if received and not approved by COC.*

*Resolution Professional invited the voting on the proposal for filing the liquidation application subject however to outcome of the application of Resolution Applicant filed in NCLT dated 12.09.2018.*

*Representative of Bank of India opposed to filing the liquidation application subject to outcome of the application filed by Resolution Applicant but stated that in view of no resolution plan is received by COC u/s 33(1(a)), the company is going in auto liquidation mode. Therefore, he voted against the proposed resolution.*

**Resolution no. 5**

*Resolved that the Resolution Professional be and is hereby authorized to file the Liquidation Application u/s 33(1(a)) in view of the fact that no Resolution Plan is received by COC till date subject, however to outcome of the application filed by Superlink International Inc as Resolution Applicant before Hon'ble NCLT-Ahmedabad Bench dated 12.09.2018.*

*Further Resolved that the RP be and is hereby authorized to decide and pay the fees of advocate Nanavati Associates.*

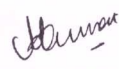
*The Resolution was approved by 90.61% voting share in favour except Bank of India voted against the resolution at 9.39% of share in voting.*

6. Seen the application as well as the documents annexed in the application and on hearing the Applicant, it is found that, it is a fit case to pass an order for liquidation which is pending since long as the CIRP has already been expired long back i.e. somewhere 16.09.2018. Since, Resolution does not reflect with regard to the appointment of Liquidator, the Adjudicating Authority hereby recommend the name of Mr. Sunil Kumar Agarwal,



having IBBI Registration No. IBBI/IPA-001/IP-P01390/2018-2019/12178 from the Panel of Insolvency Professionals recommended for appointment as Liquidator for Corporate Debtors located in the States of Gujarat and Madhya Pradesh.

7. Meanwhile, RP will discharge his duty till the appointment of Liquidator. Dy. Registrar is directed to refer the matter to the IBBI recommending the name of Liquidator as referred to above for approval of the name of Liquidator and confirmation thereto.
8. Accordingly, the instant IA is allowed and stands disposed of.

  
**Ms. Manorama Kumari**  
**Adjudicating Authority**  
**Member (Judicial)**

AB

