

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON ~~13-05-2020~~ *21.05.2020*.

THROUGH VIDEO CONFERENCING

CAUSE LIST

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP (IB) No. 157/BB/2018	For pronounce ment of order on IA No.11/2020	Sec 9 of I&B code 2016	M/s Rang Emei Gonmei	Naveen Kumar	M/s Aditazz Design Technologies Pvt Ltd	Shri Basavaraj M Salimath, RP, Shyam V Prasad, Adv. for RP

ADVOCATE FOR PETITIONER/s:

Shyam v. Prasad. for RP

ADVOCATE FOR RESPONDENT/s:

ORDER

IA No. 11/2020 in CP (IB) 157/2018 is dismissed by separate order

Sh
Member (T)

Ashu
Member (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A. No.11 of 2020 in
C.P. (IB) No.157/BB/2018
U/s 19(2) of the IBC, 2016
R/w Section 60(5) of the IBC, 2016

Mr. Basavaraj Salimath
Resolution Professional of
M/s. Aditazz Design Technologies Pvt. Ltd.
#92, 1st Cross, 'B' Sector,
Amruth Nagar, Sahakar Nagar,
Bangalore – 560 092.

- Applicant/
Resolution Professional

Order Pronounced on: 21st May, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Applicant/RP : Shri Shyam V. Prasad
Applicant/Resolution Professional : Shri Basavaraj M. Salimath

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. I.A. No.11 of 2020 in C.P. (IB) No.157/BB/2018 is filed by Mr. Basavaraj Salimath, Resolution Professional of M/s. Aditazz Design Technologies Private Limited (hereinafter referred to as 'Applicant/RP') under Section 19(2) R/w Section 60(5) of the IBC, 2016, by inter alia seeking to direct the R-1 to R-6, either jointly or severally to handover the detailed and duly signed Balance Sheet, P&L Statement and Audit Report for the last 3 years, etc.
2. It is submitted by the Applicant that :
 - (1) C.P. (IB) No.157/BB/2018 filed by Mr. Rang Emei Gonmei, U/s 9 of the IBC, 2016, R/w Rule 6 of the I&B (AAA) Rules, 2016, was admitted by this Adjudicating Authority vide order dated 28th August, 2019, by initiating



CIRP, appointing Shri Basavaraj M. Salimath, as the IRP, imposing moratorium etc., and he was confirmed as RP vide order dated 29th November, 2019. He has made several attempts to conduct the CIRP, but the same have not elicited any response from the different parties, as under.

- (2) Letter dated 16th September, 2019 to the Respondent No.6 of the Corporate Debtor to provide documents under Section 17 to 19 of the IBC, 2016: no documents or even reply submitted.
- (3) E mail to Respondent No.1 on 16th October, 2019 intimating that the operations since 3rd March, 2018, in the account may have to be treated as Preferential Transactions under Section 43 of the IBC. Also requested him to provide/arrange for the books of accounts of the Company, but to no avail. Respondent No. 1 is Statutory Auditor of the CD; the Authorised Signatory of its Bank; but in contravention to Section 144 of the Companies Act, 2013 has been providing managerial services such as maintaining and operating the bank account of the Corporate Debtor and making payments without any authorization, and was in full control of the management of the Corporate Debtor. But he has barely made any payment to the creditors of the Corporate Debtor and that no efforts are seen to have been put to recover from the debtors.
- (4) E mail dated 16th October, 2019 and 21st October, 2019 to Respondent No.3 to arrange for submission of the requested documents at the earliest. Since there was no response, a follow up email was sent on. However, the documents have not been submitted till date.
- (5) E mail dated 16th November, 2019 to the Respondent No.1 asking for the quick books and data backup of the Corporate Debtor. However, only quick books backup data in Excel format is provided and no other documents are provided to the Applicant even as on today.
- (6) E mails to Respondent No.6 (As per Respondents No 1 and 3, Mr Ankur Kumar, who is stated to have taken all the records of the company of Corporate Debtor in his custody) on 16th September, 2019, 4th October,



2019, 16th October, 2019, 19th October, 2019, 22nd October, 2019 and 16th November, 2019 apart from many whatsapp messages, requesting for the books of accounts and the Audited financials. However Respondent No.6 has denied being part of the Corporate Debtor. He has handed over certain documents like FIRC, Minutes of Meeting and few of the Resignation/Termination letters, although, the said set of documents are incomplete.

- (7) Increased share capital of Rs.1,15,000/- comprising of 15,000 shares of the Corporate Debtor has been subscribed by Aditazz Inc. of which the Respondent No.3 is a promoter, with 60% voting share, while Mr. Jagdeesh Krishna Hemmady i.e., Respondent No.4 remained at 40% shareholding. Respondent No.3 has been one of the signatories and one of the major participants in the decisions of the Corporate Debtor and was in full control of the Corporate Debtor's administration and financial decisions. In response to E mails he has since submitted back up data and no other administrative files/papers/back up etc.
- (8) Letter to Respondent No.3 and Respondent No.6 on 23rd November, 2019 calling upon them to provide documents under Section 17 to 19 of the IBC, 2016 for conducting CIRP. However, the documents has still not been received by the Applicant.
- (9) Respondent No.4 was a Director of the Corporate Debtor from 1st January, 2015 to 2nd March, 2018. He demitted the office on 2nd March, 2019 without handing over the official properties of the Corporate Debtor such as common seal, correspondences etc. One 16th November, 2019, the Applicant issued a letter to Respondent No.4 requesting him to inform to whom the handover of the post has been done but the same came back with the remarks 'Left'.
- (10) Similar was the case with Respondent No.5, who was a Director of the Corporate Debtor from 26th February, 2016 to 2nd March, 2018, and demitted the office on 2nd March, 2019 without handing over the official properties of the Corporate Debtor. Letter dated 16th November, 2019 to him was not responded

- (11) Letter to Respondent No.7 dated 16th October, 2019 and reminders dated 5th November, 2019 and 23rd November, 2019 requesting the details of the Agreements entered into by them with the Corporate Debtor were not replied.
- (12) Respondent No.6 on behalf of the Corporate Debtor terminated the Consulting Agreement dated 13th September, 2017 stating that the remaining work will be completed by Abhiyukti Design Consulting India Pvt. Ltd. without assigning any reasons.
- (13) On 4th December, 2019, the Respondent No.7 responded to the Applicant annexing certain documents. One such document was a Letter addressed to the Respondent Nos.4&5 dated 29th October, 2018, which is termed as mutual termination letter claiming that the agreement is mutually terminated by the parties. However, as on the said date, the Respondent Nos.4 & 5 had already resigned from the Company and could not have executed the said letter. However, there are no documents such as board resolution authorizing him to terminate the agreement.
- (14) Letters to Respondents No.8, No. 9, No. 10, No. 11 and No. 12 dated 16th October, 2019 requesting them to send the details of the Agreements entered into by them with the Corporate Debtor, and reminders on 5th November, 2019 and 23rd November, 2019 were issued. However, they have failed to respond or provide the documents.
- (15) It is stated that the Applicant has made multiple diligent attempts to gain access to key documents and books of accounts of the Corporate Debtor, but all attempts have gone in vain due to non-cooperation by the key personnel of the Corporate Debtor, and hence this Application seeking the interference of this Adjudicating Authority to pass necessary order against the Respondents to enable the Applicant to conduct CIRP.
3. Heard Sri Shyam V Prasad, learned Counsel for the Applicant/RP as well as Sri Basavaraj M. Salimath, Applicant / learned Resolution Professional. We have also considered the facts of the case and the extant provisions of the Law and Rules in this regard.



4. The Applicant has made out a case that while he has been diligently carrying out his duties, the Corporate Debtor and other connected persons were not cooperating with him in the discharge of his functions as a Resolution Professional. In these circumstances, as narrated in detail in the petition, he has sought our intervention.
5. The Applicant Sri Basavaraj M Salimath was appointed IRP vide para 9(2) of our order dated 28.08.2019 on an application filed by Sri Rang Emei Gonmei, U/s 9 of the IBC, 2016, R/w Rule 6 of the I&B (AAA) Rules, 2016, in r/o of the Corporate Debtor M/s.Aditazz Design Technologies Pvt. Ltd., for carrying out his functions as mentioned under the IBC 2016 and various Rules issued by the IBBI from time to time.
6. At para 9(3) of the said order, moratorium was placed, inter alia, on the transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein. Further, per Para 9(4) the Board of Directors and all the staff of the Corporate Debtor were directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and the Rules made by the IBBI. Also, in para 9(5) the IRP was directed to strictly adhere to the time schedules as mentioned under the Code. Thus, the Adjudicating Authority has given clear directions to the Corporate Debtor and his staff for extending their cooperation during the CIRP. The RP has to act as per the Code and the Rules framed by the IBBI. The correspondences and matters brought before us in the IA are in the normal course of the discharge of his duties and the Adjudicating Authority cannot be expected to step into his shoes and play the role of the RP. It is to be decided by the RP as to what steps he has to take to implement the order of the Adjudicating Authority and ensure that the Corporate Debtor and his staff also comply with our directions. Mere correspondences with the Corporate Debtor and other connected persons by E-mails do not appear to be sufficient. Besides, unless those persons are also heard we cannot reach a conclusion as to their non-cooperation with the RP or even as to their role in the process.



7. In view of the foregoing, this Adjudicating Authority is not inclined to intervene in the CIRP and the Resolution Professional is directed to act diligently exercising all the powers at his disposal under the Code and the Rules framed by the IBBI, as per the directions contained in our order dated 28.08.2019 and to ensure that the time limes are strictly adhered to.
8. In the result, the I.A No. 11 of 2020 in C.P. (IB) No.157/BB/2018 is dismissed.
No order as to costs.

**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**

**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**

Shruthi