

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT 1**

IA 33 of 2018 In C.P. (I.B) No. 5/NCLT/AHM/2017

**Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 28.01.2020**

Name of the Company: Ramchandra D Chaudhary, RP
V/s.
Steel Konnect (India) Pvt. Ltd. & Ors.

Section: Section 33(1),33(2) and 34(1) of the Insolvency and
Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
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1.	Nafasha Dhruvan Shah	Applicant		Nafasha
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2.


ORDER

The Applicant is represented through its Learned Counsel.


The present matter, i.e., IA 33 of 2018 in CP (I.B) 5 of 2017, deserves to be allowed. Hence, it is allowed.

Accordingly, the Present IA 33 of 2018 in CP (IB) 5 of 2017 is allowed and stands disposed of.

Detailed order is recorded vide separate sheet.


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)

Dated this the 28th day of January, 2020


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

[Per – Hon’ble HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL)]

The present Application is filed under Section 33 of the Insolvency & Bankruptcy Code, by the Applicant/RP, seeking for Liquidation of the Corporate Debtor Company. It is stated that the Committee of Creditors (CoC) in its 4th meeting dated 10.11.2017, with majority of 100% of its member has passed resolution to for Liquidation of the Corporate Debtor Company. It is further contended that the CoC earlier decided to reject the proposed Resolution Plan, which was not found inconformity with the provisions of I&B Code. Hence, the CoC left with no option but recommended for Liquidation of the Corporate Debtor Company.



Having heard the learned counsel for the RP, and during the course of hearing, this Court earlier observed and issued some interim direction issued vide an order dated 22.11.2019 for the sake of convenience, the same are being reproduced here in below.

*“It is now settled position of law that as per the decision of the Hon’ble Supreme Court of India in **Sashidhar vs Indian Overseas Bank and Ors.** and further Committee of Creditors(CoC) to **Essar Steel Ltd. and Ors. vs Union of India** that this Adjudicating Authority is not expected to sit in appeal of the commercial wisdom of the Committee of Creditors (CoC) and substitute its view unless it is contrary to the provision of the IB Code, there its jurisdiction limited only to supervisory, hence, the present application deserves to be allowed for passing an appropriate direction by this Adjudicating Authority liquidation of the Company.*

Notwithstanding with above, it is matter of record that later on one of the lead member of the CoC, the Bank of Baroda which is having debt value of more than 51% and voting percentage equal to 51.08% in the CoC took subsequent decision not to approve candidature of the proposed Liquidator, Mr. Ramchandra D. Choudhary (then Resolution Professional) and has serious grievances with his performance as Resolution Professional. The Bank of Baroda has filed formal objection to the present Interlocutory Application although, it is stated in paragraph no. 2 of its Affidavit-in-Reply i.e. “it has having no objection to the liquidation of Corporate Debtor Company in terms of unanimously resolution passed by the members of CoC. In its 8th meeting of the CoC held on 04.01.2018 to liquidate the corporate debtor, however, it is having serious grievances against the present Resolution Professional Mr. Ramchandra D. Choudhary about his performance and the manner he conducted Corporate Debtor Insolvency Resolution Process, therefore, the lead Bank/member of the CoC has suggested the name of another RP namely, Shri. Kedar Laddha to be Liquidator, who has also given his consent if he is appointed so.

We duly considered such objection of the Bank of Baroda being member of the Committee of Creditors(CoC), however, it is also a matter of record that the Bank of Baroda being member of the Committee of Creditors (CoC) in its Resolution dated 04.01.2018 had recommended not only for Liquidation of the Corporate Debtor Company but also to keep continuing with the present Resolution Professional as a Liquidator, thus the CoC passed unanimously resolution, now he is withdrawing his consent and has proposed another person on the pretext of some subsequent development

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Despite, the above stated we are of the view that it is not appropriate for this Adjudicating Authority to reverse or modify the Resolution passed by the CoC, because it may amount to substitute a conscious decision taken by the CoC not to proposed Resolution Professional as Liquidator and recommend some other person until and unless a reason and proof are given on the alleged lack of performance or misconduct on the part of the Resolution Professional.

Considering to this above stated and factual position of the present case and the law as stand today it is settled that if a Liquidation order is passed and the corporate debtor is ordered to be go~~s~~ under liquidation, then under Section 34(1) of the Insolvency & Bankruptcy Code the Resolution Professional shall be liquidator. Further, the moratorium declared and shall have seized to its effect and when the declaration of liquidation is pronounced, then the CoC consequent thereof also shall stand dissolved, hence in the interest of justice and by considering the paramount interest of the Company we feel appropriate to direct to the CoC to revisit its decision by convening a fresh meeting preferably within one week from the date of receipt of the Authentic Copy of this order and to consider the objection of the Bank of Baroda and may approve alternate RP in place of Mr. Ramchandra D. Choudhary to be appointed as a Liquidator the CoC is at liberty to consider the candidature of other IP including Mr. Kedar Laddha, who is proposed by the Bank of Baroda.

The CoC is at liberty to consider the same and to take appropriate decision for appointment as a Liquidator, with its requisite majority and to appraise of to this Court Thereafter, the present IA can be considered for passing appropriate order on liquidation as well as on appointment of Liquidator”.

In compliance of the above stated directions issued and observations made by this Court, the Applicant/RP has filed a report stating that the CoC duly considered the same in its subsequent meetings dated 16.12.2019 and minutes prepared on 18.12.2019. The CoC has reiterated its decision to recommend for Liquidation of the Corporate Debtor Company. However, it has now proposed the name of Mr. Kedarram Ramratan Laddha, having Reg. No: IBBI/IPA-001/IP-P00586/2017-2018/11115, to act as Liquidator in place of the present RP Mr. Ramchandra D. Choudhary, as observed~~4~~our previous proceedings dated 22.11.2019.

By taking into consideration the above stated report of the RP, by reporting subsequent decision of the CoC to propose for Liquidation of the Company.

Having heard the learned counsel for the RP in respect of the present I.A, we are of the view that the legal position in this respect has been well settled by the Hon'ble Supreme Court in the matter of **Sashidhar Vs. Indian Overseas Bank and Ors. And further the Essar Steel Ltd. Ors. Vs Union of India**” that this Adjudicating Authority is not expected to sit in appeal over the Commercial decision taken and probe commercial wisdom. As its jurisdiction is supervisory in the nature and not appealed.

Further the Resolution pertaining to the replacement of the RP has further been approved by the CoC in its meeting dated 16.12.2019.

In view of this, the present IA 33 of 2018 in CP (IB) 5 of 2017 deserves to be allowed.
Hence, it is allowed as per the report of the Applicant RP.

Consequently, this Adjudicating Authority in exercise of its inherent power conferred to it under Section 33 of the I&B Code, hereby order with the Corporate Debtor Company shall go into Liquidation and the moratorium declared under Section 14 of the I&B Code in respect of the Corporate Debtor Company shall cease to have its effect from the date of this order.

Further, Mr. Kedarram Ramratan Laddha (Reg. No. IBBI/IPA/001/IP-P00586/2017-2018/11115) is now hereby appointed as a Liquidator and he is authorised and directed to act as per the provisions of the Section 33 and 38 of the I&B Code to complete the Liquidation Process within stipulated period.

Accordingly, the present IA 33 of 2018 in CP (IB) 5 of 2017 is allowed and stands disposed of.



(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)



(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 28th day of January, 2020