

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

IA 852 of 2020 in CP(IB) 228/NCLT/AHM/2019

**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 04.01.2021**

Name of the Company: Gaurav Ashok Adukia RP For Aswaraj
Infra Pvt Ltd

Section 33(1),33(2),34(1) of IBC, 2016.

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

ORDER

(Through Video Conferencing)

Advocate, Mr. Lalit M. Patel is present on behalf of the Applicant/RP.

- 1) The instant application is filed under Section 33(1), 33(2) and 34(1) of the Insolvency and Bankruptcy Code, 2016, with following prayers:-
 - i) To allow the instant Interlocutory Application filed under Section 33(1) (a) of the Insolvency and Bankruptcy Code, 2016.
 - ii) To pass an order for Liquidation of the Corporate Debtor i.e. Aswaraj Infra Private Limited, bearing Company Identification No. U45200GJ2010PTC062439 registered with the Registrar of Companies, Ahmedabad, in the manner as laid down in Chapter III of the IB Code.
 - iii) To appoint Mr. Gaurav Ashok Adukia, Interim Resolution Professional as the Liquidator in pursuance of the resolution passed by the CoC in its 2nd meeting held on 15.09.2020 through e-voting which concluded on 14.10.2020.





- 2) Notice has been issued to the CoC and Suspended Management, but none appeared.
- 3) On perusal of the record, it is found that the present applicant/RP has filed an application under Section 19 of the IB Code. However, the Suspended Management is not co-operating with the IRP/RP.
- 4) Gone through the record also seen the resolution passed by the CoC on 15.09.2020 in its 2nd meeting, wherein it is resolved that since corporate debtor is non-functional since long, as such, it may be liquidated.
- 5) There is only one Financial Creditor, i.e. Bank of Baroda (earlier Dena Bank), who is of the opinion that the corporate debtor is non-functional and as there are no transactions and operations in the matter of the corporate debtor, as such the CoC decided to go for liquidation of the corporate debtor and accordingly passed resolution for liquidation of the corporate debtor. There is 100% voting, being sole financial creditor/Bank of Baroda, in favour of liquidation of the corporate debtor company.
- 6) Learned lawyer appearing on behalf of the RP submitted that there are no Unsecured Creditors and Operational Creditors, since the company is not functioning.
- 7) On perusal of the record, the reason showing for proceeding for liquidation of the corporate debtor is reflected at page no. 119 of the Minutes of Proceedings of the 2nd meeting of Committee of Creditors. Since the CoC has taken its decision based on the commercial wisdom with 100% voting in favour of the liquidation, as such, this Adjudicating Authority is of the opinion that the company may be allowed to go for liquidation, under such circumstances.
- 8) It is also pertinent to mention herein that recently the Hon'ble Supreme Court of India in its judgement passed in Civil Appeal No.8766-67 of 2019- *Committee of Creditors of Essar Steel India Limited through Authorised Signatory vs. Satish Kumar Gupta & Ors* observed as follows:

The commercial wisdom of the Committee of Creditors cannot be interfered into by the Adjudicating Authority. The Hon'ble Supreme Court affirmed K. Sashidhar's judgement that neither the Adjudicating

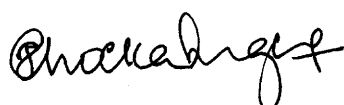
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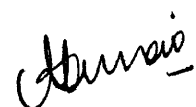
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Authority nor the Appellate Authority has been endowed with the jurisdiction to reverse the commercial wisdom of the CoC.

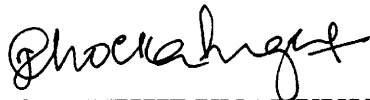
The Hon'ble Supreme Court took the view that the commercial wisdom has been exercised by the CoC after taking into count all the factors leading to maximisation of asset value of the Corporate Debtor, but the ultimate discretion of what to pay and how to pay each class or sub-class of creditors lies with the CoC.

- 9) Under the facts and circumstances as narrated hereinabove, this Bench allows the instant application, with following observations:-
- a) The moratorium declared under Section 14 of the IB Code shall cease to have effect from the date of the order of liquidation.
 - b) The Liquidator is further directed to issue public announcement stating that the Corporate Debtor is in liquidation.
 - c) The Liquidator is required to send certified copy of this order to the authority with which the Corporate Debtor is registered.
 - d) Subject to Section 52 of the IB Code, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.
 - e) This Authority makes it clear that para (d) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.
 - f) The Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.
 - g) All the powers of the Board of Directors, Key Managerial Personnel and the Partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the Company Liquidator. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the IB Code, 2016, read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
 - h) The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
 - i) The Company Liquidator shall be entitled to charge such fee for the conduct of the liquidation proceedings in such a proportion to the value of the liquidation estate assets as may be specified by the Board.





- j) The Registry is directed to communicate this order with immediate effect to the concerned Registrar of Companies, registered office of the Corporate Debtor and Company Liquidator for information and compliance.
- 10) The RP appointed for the CIRP, shall act as the Liquidator for the purpose of liquidation of the Corporate Debtor.
- 11) Accordingly, the instant IA is allowed and disposed of with the above observations.



CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)



MANORAMA KUMARI
MEMBER (JUDICIAL)

Dated this the 4th day of January, 2021.