

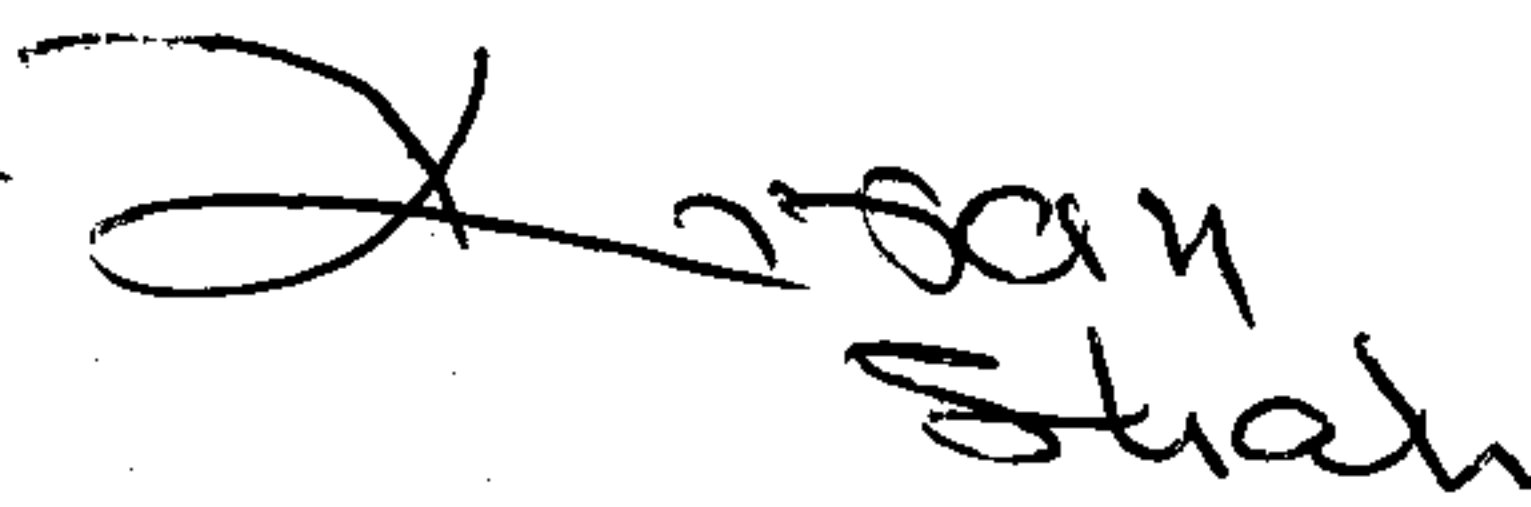

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

IA 610 of 2019 in C.P.(I.B) No. 120/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 20.11.2019**

Name of the Company: Kiran Shah IRP For
ORG Informatics Ltd
V/s
COC of ORG Informatics Ltd
Section of the Companies Act : Section 33(1), 33(2), 34(1) of the Insolvency and
Bankruptcy Code

| <u>S.NO.</u> | <u>NAME (CAPITAL LETTERS)</u> | <u>DESIGNATION</u> | <u>REPRESENTATION</u> | <u>SIGNATURE</u> |
|--------------|---------------------------------|--------------------|---|---|
| 1. | KIRAN SHAH | FCA | Applicant IRP |  |
| 2. | Aman Shankar i/b Atul Sharma | Adv. | POC namely PNB, BOI, BOB & Edelweiss ARC Limited |  |

ORDER

The parties are represented through learned counsel & PCA.

The instant application is filed under Section 33(1), 33(2) & 34(1) of Insolvency and Bankruptcy Code 2016 (hereinafter referred as "IB Code"). The matter is pending since long for one or the other reason on the behest of one of the member of Committee of Creditors (hereinafter referred as "CoC") i.e. Punjab National Bank.

Today also one proxy counsel Mr. Aman Shankar, on behalf of the conducting lawyer, is pressing hard for adjournment without any cogent reason.

On perusal of the record, it is found that the resolution for liquidation of the Corporate Debtor was passed by the CoC on 12.06.2019 in terms of Section 33(2)





of the IB Code before the expiry of CIRP which was to expire on 14.07.2019 including the period of exemption granted by this Adjudicating Authority.

On perusal of the record, it is also found that at page no.3 of the Application, there are as many as six Financial Creditor viz. Punjab National Bank, Edelweiss ARC, Bank of Baroda, Barclays Bank, Standard Chartered Bank and Bank of India. It is pertinent to mention that five out of six members of CoC voted for liquidation of the Corporate Debtor. The percentage of voting for liquidation comes to 80.61% owing to the fact that one member namely, Edelweiss ARC having voting share 19.39% abstained from voting. It is also pertinent to mention that the said member never objected to the liquidation at any point of time though it abstained from voting.

It is also pertinent to mention herein that on 22.10.2019, an order was passed in IA 494/2019 disposing the application. The Punjab National Bank has submitted that they have no dispute with regards to the liquidation of the Corporate Debtor. The CoC was represented by one Mr. Ketan Parikh, Advocate.

In view of the above situation, we find no reason to further adjourn the matter. 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 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.

Thus, in view of the resolution so passed by the CoC and at the time of passing of the resolution when none of the Financial Creditor has objected for such resolution, the application so filed by the IRP/RP for liquidation of the Corporate Debtor is allowed.

On perusal of the record, it is found that 7 days' time was granted to Suspended Management, Bank of Baroda, Bank of India as well as Barclays Bank to file the reply but so far no reply has been filed save and except by Barclays Bank.

On the other hand, on perusal of the record, it is found that the Barclays Bank, Bank of Baroda, Bank of India and Punjab National Bank have already submitted that they have no dispute with regard to the liquidation as reflected from the order dated 22.10.2019 and the same was conveyed on behalf of them by their Learned Counsel Mr. K. M. Parikh and Mr. P. G. Sabnis for Barclays Bank.

Under such circumstances, we find no reason to allow further time to the proxy lawyer praying time on behalf of the Punjab National Bank to file reply when they are the member of the CoC and has also voted for the liquidation as well as given their no objection vide order dated 22.10.2019 in IA 494/2019.

Phakar Singh

Chauhan

We have gone through the pleadings and resolution and also heard the IRP/RP, who is present in person.

Under the facts and circumstances as narrated above, we pass the following orders:

- 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


Hence, the application so filed by the IRP/RP is allowed and in the circumstances, the Adjudicating Authority passes an order for liquidation of the Corporate Debtor

Shankar Singh

Chauhan

under Section 33 of the IB Code, 2016. The IRP/RP appointed for the CIRP, shall act as the Liquidator for the purpose of liquidation of the Corporate Debtor.

Accordingly, the instant IA stands disposed of with the above observations.


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL
Dated this the 20th day of November, 2019


MANORAMA KUMARI
MEMBER JUDICIAL