

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

IA/25(AHM)2021 in CP(IB) 404/NCLT/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 22.01.2021**

Name of the Company: Aaryavart Infrastructure Pvt Ltd
V/s
Parthiv Parikh RP For M.V.Omni Projects
(India) Ltd & Anr
Section 60(5) of IBC, 2016.

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

ORDER

(Through Video Conferencing)

Advocate, Mr. Jaimin Dave is present on behalf of the respondent.

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


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)


MANORAMA KUMARI
MEMBER (JUDICIAL)

Dated this the 22nd day of January 2021

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

**I.A. No. 571 of 2020
&
I.A. No. 25 of 2021
in
CP(IB) No. 404 of 2019**

In the matter of:

M/s. Aaryavart Infrastructure Private Limited ... Applicant

Versus

Shri Parthiv Parikh
Resolution Professional of
M/s. M. V. Omni Projects (India) Limited & Ors ... Respondent

Order delivered on 22nd January, 2021

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

Appearance: Advocate Ms. Natasha Dhruman Shah for the Applicant
and Advocate Mr. Jaimin R Dave for the Resolution
Professional.

COMMON ORDER

[Per se: Ms. Manorama Kumari, Member (J)]

IA 571 of 2020

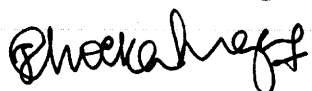
1. The instant application is filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IB Code") with the prayer to direct the Respondent No. 1 to provide the list of assets along with such description that has formed the basis to determine the valuation of the Corporate Debtor and to direct the Respondent No. 1 to facilitate the





Applicant to conduct visit at the premises of the Corporate Debtor to ascertain the value of assets of the Corporate Debtor, apart from other prayers as stated in Para 18 & 19 of the application.

2. The facts of the case, as stated in the application, the Applicant seeks direction upon the Resolution Professional (hereinafter referred as "RP") to discharge his duties as RP and as against the Respondent No. 2, to take necessary steps towards such successful resolution process of the Corporate Debtor by ensuring maximization of assets. The Applicant further submitted that the Applicant is also constrained to file the instant application so as to bring to the notice of this Hon'ble Tribunal the lack of transparency and impartiality in conducting the Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") of the Corporate Debtor.
3. It is submitted by the Applicant that the Applicant is an eligible Resolution Applicant that has submitted its Resolution Plan dated 02.07.2020 along with the Bank Guarantee of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs Only). It is further submitted by the Applicant that Applicant is involved in the business of Infrastructure Project Construction, trading of building material, Project Management Consultancy, etc.
4. While going through the total pleadings, it is found that the total pleadings is nothing more than a conversation between the

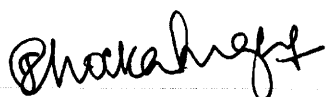


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Applicant and RP and allegations upon RP as well as on Committee of Creditors (hereinafter referred as "CoC"). With regard to the fact that RP has not responded the Applicant though they are Eligible Resolution Applicant, there is no whisper about any rejection of Resolution Plan or the Applicant is able to show that any cause of action has arose to file the instant application.

5. It is needless to mention herein that the approval or acceptance of Resolution Plan is the prerogative of the CoC and their commercial wisdom. The Hon'ble Supreme Court in its judgment in Civil Appeal No. 10673 of 2018 in **K. Sashidhar Vs. Indian Overseas Bank & Ors.** comprising of Hon'ble Justice A.M. Khanwilkar and Hon'ble Justice Ajay Rastogi observed that Adjudicating Authority has no jurisdiction to interfere with the commercial wisdom of the CoC. It is a matter of fact that on publication or invitation of Expression of Interest, any Resolution Applicant may file their Expression of Interest. Mere filling of Expression of Interest does not create any right over the proposed Resolution Applicant, so as to prevail over the commercial wisdom of CoC.

The RP has to act as per Section 30 of the IB Code and the decision are being taken by the member of CoC and on verification of Resolution Plan, they may take the decision upon the Plan so submitted by the Resolution Applicant(s).





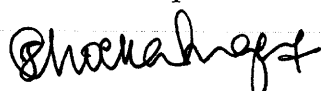
6. As such, the allegations so given by the Applicant upon the RP or CoC without any substantial evidence cannot be entertained or can give any cause of action to file the instant application.
7. Under such circumstances, we found that there is no substantive material in the application so as to be maintainable at this stage when the resolution plan is already reserved for approval by this adjudicating authority.
8. Accordingly, the instant application is dismissed and stands disposed of.

IA 25 of 2021

9. The instant application filed by the Applicant, who is also the Applicant in IA 571 of 2020. While going through the record, it is found that the instant application is the true copy of IA 571 of 2020. However, the change is only in the prayer which is as under-

A. That this Hon'ble Tribunal may be pleased to set aside the result of any voting on Resolution Plan by Respondent No. 2 till the order is passed in Interlocutory Application No. 571 of 2020;

B. That this Hon'ble Tribunal may be pleased to defer hearing and final adjudication of the Application filed under Section 30 of the Code by respondent no. 1 seeking sanction of the approved resolution plan filed by the suspended management;





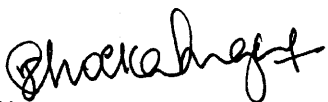
C. That this Hon'ble Tribunal may be pleased to declare and thereby reject the resolution plan so submitted by the suspended management as being contrary to the provisions of the Code and Regulations framed thereunder;

D. That this Hon'ble Tribunal may be pleased to direct respondent no.2 to reconsider the resolution plan dated 27.10.2020 submitted by the applicant.

10. It is pertinent to mention herein that Resolution Plan has already been filed in respect of the Corporate Debtor which was duly approved by the CoC by the majority of voting share. It is to be mention herein that on number of occasions, the Apex Court has given importance to the commercial wisdom of the CoC.

11. Under such circumstances, when the CoC has already approved and filed the Resolution Plan, it cannot be interfered into unless there is any grave error apparent on record.

12. Under such situation, when Resolution Plan is pending for approval before the Adjudicating Authority, the instant application is not maintainable. Hence, dismissed and stands disposed of.



Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)



Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)