

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

**IA 278 of 2020 in CP (I.B) No. 107/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 02.07.2020**

Name of the Company: Pinakin Shah RP For Brew Berrys  
Hospitality Pvt Ltd  
V/s

Pooja Electronic Allicances

Section : Section 33 & 34 of the Insolvency and Bankruptcy  
Code,2016

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

**ORDER**

2.

Learned Lawyer, Mr. Pavan S Godiawala is present for the Applicant.

1. The instant application is filed by the RP under section 33 and 34 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IB Code") in Company Petition (IB) No. 278 of 2018 for liquidation of the Corporate Debtor.

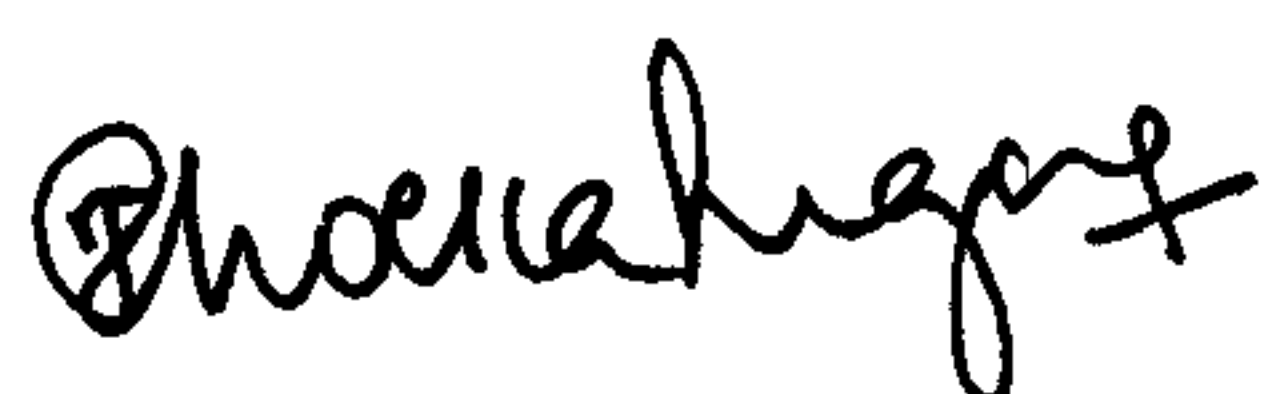
2. The facts of the case are stated hereunder:

2.1 CP(IB)No. 107 of 2019 was filed by Operational Creditor, namely M/s. Pooja Electronic Appliances, against the Corporate Debtor viz., M/s. Brew Berrys Hospitality Private Limited under Section 9 of the IB Code, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against the Corporate Debtor. The said application was admitted by this Adjudicating Authority vide its Order dated 29.05.2019 and appointed Mr. Nitin Parikh as Interim Resolution Professional (hereinafter referred as "IRP") of the Corporate Debtor.





- 2.2 It is found that the COC in its first meeting held on 27.06.2019 decided to replace the IRP with RP, Mr. Pinakin Surendra Shah. Hence, Bank of Baroda, being one of the member of COC, moved an application i.e. IA 723/2019 for replacement of IRP and the same was allowed by this Adjudicating Authority vide order dated 17.12.2019 appointing Mr. Pinakin Shah as Resolution Professional.
- 2.3 It is a matter of record that in the Second Meeting of the COC held on 11.11.2019, it was decided to apply for extension of CIRP period by 90 days beyond 180 days and the same was allowed by this Adjudicating Authority vide order dated 02.12.2019.
- 2.4 On perusal of the record, it is found that 5<sup>th</sup> meeting of the COC was held on 13.02.2020, wherein, CoC resolved to liquidate the Corporate Debtor by 94.34% voting and directed the RP to file an application for Liquidation as per the provisions of the IB Code for liquidation of the Corporate Debtor. The Resolution regarding continuation of the RP as Liquidator was also passed unanimously by COC in the 5<sup>th</sup> COC Meeting (**Page 46-53**).
3. Heard the applicant and also seen the records, it is found that for the reasons mentioned hereinabove CoC does not wish to continue the CIRP process and therefore, the CoC has resolved for liquidation of the Corporate Debtor vide its 5<sup>th</sup> CoC meeting held on 13.02.2020. It is also to be noted that this Adjudicating Authority has no jurisdiction to interfere in the commercial wisdom of the CoC as observed in **K. Sasidhar's** case and subsequently also reiterated by 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:



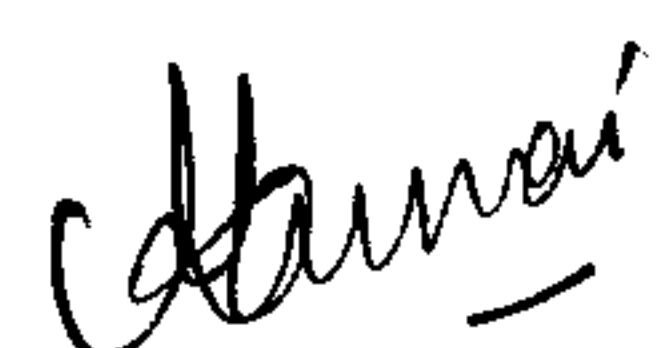


*“The commercial wisdom of the Committee of Creditors cannot be interfered into by the Adjudicating Authority. The Hon’ble Supreme Court affirmed K. Sashidhar’s judgement that neither the Adjudicating Authority nor the Appellate Authority has been endowed with the jurisdiction to reverse the commercial 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.”*


4. 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
5. In view of the above, the instant IA 278 of 2020 in CP(IB) 107 of 2019 so filed by the RP under Section 33 and 34 of the IB Code, 2016 is allowed and the Adjudicating Authority passes an order for initiation of liquidation of the Corporate Debtor viz., M/s. Brew Berrys Hospitality Pvt. Ltd. The RP namely Mr. Pinakin Shah, shall act as the Liquidator for the purpose of liquidation of the Corporate Debtor.
6. Accordingly, the instant IA is allowed and stands disposed of with the above observations.

  
**CHOCKALINGAM THIRUNAVUKKARASU**  
**Adjudicating Authority**  
**Member (Technical)**

  
**MANORAMA KUMARI**  
**Adjudicating Authority**  
**Member (Judicial)**