

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

IA 491 of 2020 in CP(IB) 237/NCLT/AHM/2018

**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 07.09.2020**

Name of the Company: Umesh Harjivandas Ved RP of
Neuromed Imaging Centre Pvt Ltd
V/s
COC of Neuromed Imaging Centre Pvt
Ltd

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

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

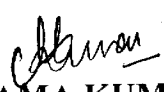
ORDER

Advocate, Mr. Pavan S Godiawala appeared on behalf of the Applicant.

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


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 7th day of September, 2020


**MANORAMA KUMARI
MEMBER JUDICIAL**

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

**I.A. No. 491 of 2020
in
CP(IB) No. 237 of 2018**

In the matter of:

Mr. Umesh Harjivandas Ved,
Resolution Professional
Neuromed Imaging Centre Private Limited ...Applicant

Versus

CoC of Neuromed Imaging Centre Private Limited ...Respondent

Order delivered on 7th September, 2020

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

Appearance: Advocate Mr. Pavan S Godiawala for Applicant.

ORDER

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

1. The Applicant, Resolution Professional (hereinafter referred as "RP") of the Corporate Debtor filed the instant IA No. 491 of 2020 in the aforesaid Company Petition (IB) No. 237 of 2018 for liquidation of the Corporate Debtor under section 33 & 34 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IB Code") and for the exemption of Lockdown period from the filling of the instant application.

2. The facts of the case are stated herein:

2.1 CP (IB) No. 237 of 2018 was filed by Financial Creditor, namely Mahaveer Transport, against the Corporate Debtor viz., Neuromed Imaging Centre Private Limited under Section 7 of the IB Code, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred as "CIRP"), which was admitted by this Adjudicating Authority vide its Order dated 12.07.2019 and appointed





Ms. Anjali Nirav Choksi as Interim Resolution Professional (hereinafter referred as "IRP") of the Corporate Debtor.

- 2.2 It is stated in the application that Committee of Creditors (hereinafter referred as "CoC") in its Third Meeting held on 05.10.2019 decided for replacement of the IRP with new RP namely Mr. Umesh Harjivandas Ved. The application for the same was filed by the CoC before this Adjudicating Authority and the order in the said application was passed on 01.01.2020.
- 2.3 It is stated by the Applicant that he came to know about the above order only on 15.01.2020 and further, that 180 days of CIRP expired on 08.01.2020. No application for further extension of 90 days beyond 180 days was made as on 08.01.2020 by the CoC or IRP/RP.
- 2.4 It is stated by the Applicant that in the 5th CoC meeting held on 29.01.2020, CoC resolved for further extension of 90 days beyond 180 days. The extension order of 90 days was passed on 10.02.2020.
- 2.5 It is stated by the Applicant that in the Sixth CoC meeting held on 17.02.2020, CoC resolved to go for Liquidation of the Corporate Debtor, as there is no possibility of receiving any Resolution Plan. Hence, CoC decided to file an application for Liquidation of the Corporate Debtor through RP under section 33 of the IB Code.
- 2.6 It is to be mentioned herein that due to typographical error, the date of the Sixth CoC meeting is shown as 17.01.2020. It may be read as 17.02.2020, in view of the additional affidavit filed by the Applicant.
3. Heard the applicant and also seen the records, it is found that there is no possibility of receiving any Resolution Plan. Therefore, the CoC has resolved for liquidation of the Corporate Debtor vide its Sixth meeting dated 17.02.2020. 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:




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"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.

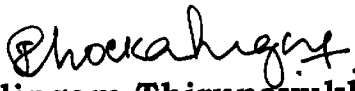
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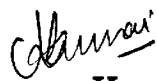
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- h) The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
- i) The Company Liquidator shall be entitled to charge such fee for 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. Hence, the IA 491 of 2020 in CP(IB) 237 of 2018 so filed by the RP under Section 33 & 34 of the IB Code, 2016 is allowed and the Adjudicating Authority passes an order for initiation of liquidation of the Corporate Debtor viz., Neuromed Imaging Centre Private Limited. The RP i.e. Mr. Umesh Harjivandas Ved, shall act as the Liquidator for the purpose of liquidation of the Corporate Debtor. Further, the period of lockdown i.e. from 25.03.2020 to 31.05.2020, is exempted from filing the instant application.

6. Accordingly, the instant IA is partially allowed and stands disposed of with the above observations.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Manorama Kumari
Adjudicating Authority
Member (Judicial)

Shreya