

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

IA No.394 of 2020 in CP(IB) 326/ 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 14.08.2020**

Name of the Company: Tejas Shah RP For Devansh International
Pvt Ltd

Section : Section 33(2) IBC,2016

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

2.

ORDER

(through video conferencing)

Mr. Vinit Nagar, learned PCS, appeared on behalf of Applicant(RP).

The notice has already been issued to the Committee of Creditors and Suspended Management.

None appeared on behalf of CoC and Suspended Management.

The instant application is filed under Section 33(2) of the IBC, 2016 for liquidation of the Corporate Debtor. On perusal of the record, it is found that the CP (IB) No. 326 of 2019 was filed by Operational Creditor, namely, Mr. Jani Mitkumar Anantray, against the Corporate Debtor viz., Devansh International Private Limited under Section 9 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 16.12.2019 and appointed the Applicant, CA Tejas Shah as Interim Resolution Professional (hereinafter referred as "IRP") of the Corporate Debtor.

On perusal of the records it is found that the Committee of Creditors (hereinafter referred as "CoC") in its First Meeting held on 20.01.2020 decided for continuation of the IRP as RP.





It is stated by the Applicant that in the Second CoC meeting held on 24.02.2020, wherein, CoC resolved to go for Liquidation of the Corporate Debtor with 100% voting share in favour of liquidation, as Corporate Debtor does not hold any tangible or intangible asset, neither, it is presently carrying on any business operations. Hence, CoC decided to file an application for Liquidation of the Corporate Debtor through RP under section 33 of the IB Code.

Heard the Applicant and also seen the records, it is found that CoC decided to send the company under liquidation as the company has no business and assets except loans, advances and bank balances. Under such circumstances, if expression of interest will be invited, in that event it will be extra burden on the CoC/RP. Hence, to minimise the cost, the CoC has taken decision to liquidate the Company. (The agenda is reflected at page no. 56 and 57)

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."

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.

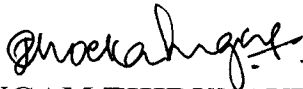
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- d) Subject to Section 52 of the IB Code, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, 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 IA 394 of 2020 in CP(IB) 326 of 2019 so filed by the RP under Section 33 of the IB Code, 2016 is allowed and the Adjudicating Authority passes an order for initiation of liquidation of the Corporate Debtor viz., Devansh International Private Limited. The RP i.e. CA Tejas Shah, shall act as the Liquidator for the purpose of liquidation of the Corporate Debtor.

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



CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 14th day of August, 2020



MANORAMA KUMARI
MEMBER JUDICIAL