

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

IA 397 of 2020 in CP(IB) 586 /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 04.12.2020**

Name of the Company: Pani Logistics
V/s
Sona Alloys Pvt Ltd & Anr

Section 60(5) IBC,2016

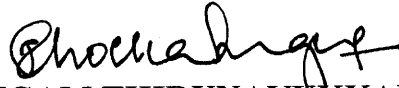
| <u>S.NO.</u> | <u>NAME (CAPITAL LETTERS)</u> | <u>DESIGNATION</u> | <u>REPRESENTATION</u> | <u>SIGNATURE</u> |
|--------------|-------------------------------|--------------------|-----------------------|------------------|
| 1. | | | | |
| 2. | | | | |

ORDER

(Through Video Conferencing)

Advocate, Mr. Karan Sanghani is present on behalf of the applicant and Advocate, Mr. Shashvata U. Shukla 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 4th day of December, 2020.

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

I.A. No. 397 of 2020
in
CP(IB) No. 586 of 2019

In the matter of:

M/s Pani Logistics
No. 35A, Ward No. 19,
Patel Nagar, 3rd Cross,
Opp. Post Office,
Ananthpur Road, Ballari,
Karnataka-583101

... Applicant

Versus

1. Sona Alloys Private Limited
Represented by its IRP,
Mr. Jagdishchandra B. Mistri,
4th Floor, Medi-Max House,
Opp. Karnavati Hospital, Ellis Bridge,
Ahmedabad-380006
2. Ganga Advisory Pvt. Ltd.,
(In Liquidation)
Represented by its Liquidator,
Haresh Babulal Shah,
E-302, Ashwari Apartment,
Nr. Fun Republic Satellite,
Ahmedabad-380055
3. Neuromed Imaging Centre Pvt. Ltd.
Represented by its IRP,
Mr. Umesh Harjivandas Ved,
403, Sakar-1, Nr. Gandhigram,
Railway Station, Opp Nehru Bridge,
Navrangpura, Ahmedabad-380006
4. Lonand Cemebt Pvt. Ltd.
4th Floor, Medi-Max House,
Opp. Karnavati Hospital, Ellis Bridge,
Ahmedabad-380006
5. Yamuna Advisory Pvt. Ltd.
403, Sakar-1, Nr. Gandhigram,
Railway Station, Opp Nehru Bridge,
Navrangpura, Ahmedabad-380006

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Sharma

6. Tulsi Trimpex Pvt. Ltd.
17 Deodar Streer,
Kolkata 700019

... Respondents

Order delivered on 04th December, 2020

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

Appearance: Advocate, Mr. Lakshmy Iyer with Advocate, Mr. Karan Sanghani for the Applicant. Sr. Advocate, Mr. Manish Bhatt with Advocate, Mr. Shashvata Shukla for the Respondent No. 1. PCS, Mr. Umesh Ved for the Respondent No. 3

ORDER

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

1. The instant application is filed by the Liquidator under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IB Code") read Rule 11 of the NCLT rules, 2016 with the following prayers:

- i. Order and direct the substantive consolidation of the Corporate Debtor and the Respondents Nos. 2-6 into a single proceedings solely for the purpose of CIRP in accordance with the provisions of the Code, including but not limited to the acceptance, confirmation and all other actions with respect to the resolution plan for the Corporate Debtor and the Respondent Nos. 2-6 and any and all amendments or modifications thereto, in such consolidated proceedings;
- ii. Order and direct that solely for the purpose of the consolidated proceedings, all assets and liabilities of the Corporate Debtor and the Respondent Nos 2-6 are

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- consolidated and are deemed to be assets and liabilities of all the consolidated Corporate Debtors;
- iii. That each and every claim filed in the individual proceedings against the Respondent Nos. 2&3 be deemed to be filed against the Corporate Debtor and Respondent Nos. 2-6;
 - iv. That the appointment of a common Resolution Professional be made in order to carry out the obligations and functions of a Resolution Professional in accordance with provisions of the Code for the consolidated proceedings;
 - v. That a common Committee of Creditors be constituted for the Corporate Debtor and the Respondents Nos. 2-6;
 - vi. That a comprehensive Resolution Plan dealing with the Corporate Debtor and the Respondent Nos 2-6 may be formulated and approved by the common Committee of Creditors and put up for approval before this Tribunal for its approval in accordance with the provisions of the Code;
 - vii. Any such order and/or relief that this Hon'ble Tribunal deems fit in the interest of justice and equity.

2. The facts of the case are herein under:

2.1 Operational Creditor, P & M associates LLP filed an application under section 9 of the IB Code, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against the Corporate Debtor i.e. Sona Alloys. However, during the pendency of this application another Petition i.e. CP(IB) No. 586 of 2019 was filed against the Corporate Debtor by Noble Resources, under section 9 of the IB Code, seeking

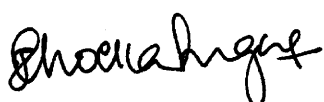
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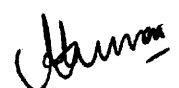
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initiation of Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against the Corporate Debtor which was admitted on 16.06.2020 by this Adjudicating Authority. Mr. Jagdishchandra B. Mistri was appointed as Interim Resolution Professional (hereinafter referred as "IRP").

2.2 With regard to Respondent No.2 (Ganga Advisory Pvt. Ltd.), Pani Logistics being Financial Creditor filed an application under section 7 of the IB Code, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against the Respondent No. 2 i.e. Ganga Advisroy which was admitted on 24.01.2019 by this Adjudicating Authority. Mr. Haresh Babulal Shah was appointed as IRP. Thereafter, in the 9th meeting of the Committee of Creditors (hereinafter refereed as "CoC"), a resolution with 94.51% majority was passed in favour of Liquidation. Liquidation order was passed on 04.03.2020.

2.3 With regard to Respondent No.3 (Neuromed Imaging Centre Pvt. Ltd.), one Mahaveer Transport being Financial Creditor filed an application under section 7 of the IB Code, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against the Respondent No. 3 i.e. Neuromed Imaging Centre Pvt. Ltd. which was admitted on 12.07.2019 by this Adjudicating Authority. Ms. Anjali Nirav Choksi was appointed as IRP. Thereafter, in the 6th meeting of the CoC, a resolution was passed in favour of Liquidation.





- 2.4 It is stated in the application that Respondent 2-6 hold substantive shares in the Corporate Debtor and hence, is seeking for consolidation of the proceedings initiated against the Corporate Debtor and Respondent Nos 2-6.
3. On receipt of notice Respondent No. 1 appeared and filed his reply denying the statement made in the application stating inter-alia that the application is bad in the eye of law and is not maintainable. It is further submitted by the Respondent No. 1 that Applicant is not a Financial Creditor of Respondent No. 1. Further on filing of his claim, the IRP has verified the same and upon verification, it is found that the Applicant has failed to submit the proof of claims as required by Regulation 12 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 and in view of want of proper proof, the claim of the Applicant was rejected. Therefore, as on today, admittedly the Applicant is neither the Financial Creditor nor Operational Creditor or fall under the category of any stakeholder in respect to Respondent No.1. The Applicant is as good as a stranger to the CIRP of Respondent and has no locus standi to file the instant application.
4. It is further submitted by the learned lawyer of the Respondent No. 1 that there is/are no provision under the IB Code, 2016, under which an application can be filed seeking consolidation of property of Respondent No. 1 with that of Respondent No. 3-6 into single proceeding for the purpose of CIRP.
5. Heard both sides at length, also seen the record and perused the documents and case laws filed by the Applicant.

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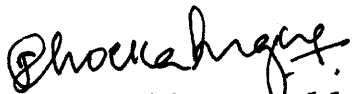
6. It is a matter of record that the CIRP of the Corporate Debtor/Respondent No. 1, Sona Alloys Pvt. Ltd., admitted on 16.06.2020 vide C.P.(I.B) No. 586/2019. Thereafter, against the Ganga Advisory Pvt. Ltd. (Respondent No. 2) CIRP is initiated by the Adjudicating Authority on 24.01.2019 on filing an application under section 7 of the IB Code by Pani Logistics and thirdly against Neuromed Imaging Centre Pvt. Ltd., CIRP is initiated on 12.07.2019 by this Adjudicating Authority on filing an application by Mahaveer transport under section 7 of the IB Code.
7. Evidently, as also matter of record that there are 3 separate orders of admission against the 3 different Companies (Corporate Debtors) having separate entities. Further, the CIRP is initiated on the basis of separate cause of actions, defaults and the amount due to the different creditors. As such, when these three companies are separate entities, the consolidation is not at all possible.
8. It is a matter of record that the Ganga Advisory Pvt. Ltd. and Neuromed Imaging Centre Pvt. Ltd. are under liquidation. It is also a matter of record that Respondent No. 1, 2 and 3 are not group companies, hence, the question of any consolidation of the properties does not arise at all.
9. Though, the Respondent No. 2, 3, 5 and 6 hold substantial share in the Corporate Debtor but mere shareholding does not mean that these are group companies. Had it been group company, there would have been a single order for initiation of CIRP. Since, the companies are holding separate entities and there is separate


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cause of action and date of default on the part of the Corporate Debtor, the CIRP proceeding has been initiated separately. Moreover, the IB Code does not provide for any consolidation of the Company when the Companies are holding substantial shares in each other. It is seen that the Applicant has placed on record number of citations and the case laws. There is no dispute with regard to those case laws, however, it varies from case to case as well as factual parameters. Moreover, the object of IB Code is resolution and not the liquidation, as such.

10. It is pertinent to note that Substantial consolidation as a remedy should always be treated as an exception rather than the rule. Moreover, this remedy can be an option for group companies however, in the instant matter the companies are not group companies but only hold substantive shares in the Corporate Debtor.
11. Under the above facts and circumstances, the instant application is not maintainable. Accordingly, stands disposed of.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Manorama Kumari
Adjudicating Authority
Member (Judicial)