

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

Free of Cost Copy

3937
22/09/2020

IA 546 of 2020 in CP(IB) 448/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 07.09.2020**

Name of the Company: Suhas Bhattbhatt RP For Mass
Infrastructure Pvt Ltd
V/s
Committee of Creditors & Ors
Section : 60(5) IBC r.w 22 r.w 12 r.w 19 IBC,2016

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

1.

2.

ORDER

Advocate. Mr. I. S Modi appeared on behalf of the Applicant.

RP. Mr. Suhas Bhattbhatt appeared in person.

The instant application is filed by the RP/Applicant under section 60(5) r.w 22, 12, and 19 of the IB Code with the following prayer:

- i. To take on records the facts mentioned in the present application and may be further pleased to allow the present application filed by the Applicant.
- ii. To direct the Resolution Professional to approach and apprise the Hon'ble High Court of Gujarat by filing an appropriate application with a prayer to pass appropriate orders and directions in the matter considering the present set of facts of the case.
- iii. To direct the Committee of Creditors to infuse/contribute funds in relation to the Corporate Insolvency Resolution Process expenditure in the bank account of the Mass Infrastructure Private Limited (in CIRP) bank account. To appoint regular Resolution Professional in place of the Deemed Resolution Professional as per section 22 of the IB Code, in light of the facts that the members of the Committee of Creditors are not in position to pass appropriate resolution as defined under the Insolvency and Bankruptcy Code.



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- v. To direct the members of the Committee of Creditors to pay professional fees of the Applicant and expenses incurred incidental thereto in relation to the CIRP period.
- vi. Pending hearing and final disposal of the present application the Hon'ble Tribunal my please to stay/suspend the CIRP process in light of the order dated 22.01.2020 passed by the Hon'ble High Court of Gujarat in Company Petition no. 356 of 2016 till the matter is finally adjudicated.
- vii. To exclude CIRP period from 21.03.2020 till the issue in relation to the jurisdiction over the assets of the Corporate Debtor is resolved as there are two orders in operation since January, 2020.

On perusal of the records, it is found that on 22.01.2020, the Hon'ble High Court of Gujarat has already passed an order for liquidation and the C.P.(I.B) 448/2019 was admitted on 23.01.2020. Neither the Petitioner nor the Respondent apprised this Adjudicating Authority with regard to the pendency of winding up application and order passed therein by the Hon'ble High Court of Gujarat. Consequent upon which, this Bench passed an order on 23.01.2020 under section 9 of the IB Code admitting the C.P.(I.B) 448/2019, appointing Mr. Suhas Bhatbhatt as an IRP in the C.P.(I.B) 448/2019.

Since then, Mr. Suhas Bhatbhatt, IRP is working, as the management has been suspended and now he is working as deemed RP, alleging, inter alia, that the COC is not cooperating. At the same time, the RP who is present in person along with lawyer submitted that he has come to know about the winding up order passed by Hon'ble High Court of Gujarat in the month of March, 2020 and they have placed/inform the same before the Committee of Creditors. Since, the COC is not cooperating, as alleged, he is not in position to take any step by filing application.

It is very strange that the RP being the appointee of the Adjudicating Authority, has the duty to inform this Bench when he has the knowledge about any conflicting order, but instead of doing so, the Applicant/RP filed the instant application with the above prayers. He further justified that due to Covid Pandemic and non-cooperation of COC, the RP could not file any application and as such, there is a delay in filing the application.

It is pertinent to note that this Adjudicating Authority is taking urgent matters through Video Conferencing and the urgent petitions are being accepted through mail since May, 2020. Even today, the matters are being taken through Video Conferencing but the instant application is filed on 02.09.2020.

Had the COC not cooperating then the RP would have filed the instant application as the appointee of the Adjudicating Authority and would have informed about the order of the Hon'ble High Court of Gujarat of winding up and appointment of liquidator.

Since, the Hon'ble High Court of Gujarat has already passed an order on 22.01.2020 in winding up application appointing liquidator, it would be unfair to allow the CIRP to proceed further in which the admission order is passed on 23.01.2020.



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Under such circumstances, we being the Adjudicating Authority in exercise of power under Rule 11 of NCLT Rules, 2016, do hereby terminate the CIRP proceeding and hereby dispose off the application with following direction:

Impugned order dated 23.01.2020 passed in C.P. (I.B.) 448/2019 stands terminated forthwith and Corporate Debtor is released from the rigour of the CIRP. Consequently, the status of the Corporate Debtor stands restored prior to the initiation of CIRP/includes restoration of the accounts of the Corporate Debtor with the Financial Creditor, if any.

The RP is also discharged from his duties. No order as to cost.

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CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 7th day of September, 2020

Manor

MANORAMA KUMARI
MEMBER JUDICIAL

