

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

IA 650 of 2020 in CP(IB) 300 of 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 08.10.2020**

Name of the Company: Bhavi Shreyans Shah RP For Rutika
Creations Pvt Ltd

Section 33(1),33(2),34(1) IBC,2016.

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

ORDER

Advocate, Mr. Arjun Padhiyar on behalf of Advocate, Mr. Atul Sharma for the Applicant appeared. The RP, Ms. Bhavi Shreyans Shah is present in person.

- 1) The instant application is filed under section 33(1), 33(2), 34(1) of the IB Code.
- 2) On perusal of the records, it is found that the 8th meeting of the COC was held on 07.09.2020, wherein the COC resolved to file an application under section 33 of the IB Code, as the two Resolution Plans which are received by the COC are not up to the mark and in view of that both the Resolution Plans were rejected by the COC.
- 3) Under such circumstances, when no viable Resolution Plans are received, the COC decided to pass a resolution for liquidation of the Company and accordingly, the Resolution was approved by 68.88% of voting in favour of the liquidation, which is apparent from the minutes 8th meeting of the COC, page no. 163 to 175.

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- 4) On perusal of the records, it is found that at the time of passing of resolution, Mr. Sanjay Kanani, Suspended Board of Director was present. The names of the participants are reflected at page no. 163 and 164. There are as many as 11 participant consisting of creditors as well as suspended board of management.
- 5) In view of the above, it is also pertinent to mention herein that recently the 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.

- 6) 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,

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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
- 7) Hence, the application so filed by the RP is allowed and in the circumstances, the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33 of the IB Code, 2016. The RP appointed for the CIRP, shall act as the Liquidator for the purpose of liquidation of the Corporate Debtor.
- 8) Accordingly, the instant IA stands disposed of with the above observations.



CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 08th day of October, 2020



MANORAMA KUMARI
MEMBER JUDICIAL