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NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH - I  
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI  
NATIONAL COMPANY LAW TRIBUNAL, HELD AT 10.30 AM ON 09-03-2020

PRESENT: SHRI R.VARADHARAJAN, MEMBER-JUDICIAL  
SHRI. ANIL KUMAR B, MEMBER (TECHNICAL)

APPLICATION NUMBER : MA/1427/2019 IN  
PETITION NUMBER : CP/737/IB/2018  
NAME OF THE PETITIONER(S) : RAJAGURUSWAMI MAHESWARAN (RP)  
NAME OF THE RESPONDENT(S) : (SANDHYA SHIPPING SERVICES PVT LTD)  
UNDER SECTION : RULE 11 OF NCLT

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
		REPRESENTATION BY WHOM	

	<del>Raja Gururaj Swami Maheswaran</del> G. VETRI (MEZHAYAN FOR (Sandhya shipping services pvt ltd) Darani M.	Counsel for Respondent/pet Counsel for the Applicant	G. vetri chesliyan 
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**ORDER**

This is an Application filed seeking for the following reliefs.

*“a. Pass Order under Section 12 of the Code excluding a period of 275 days from 14<sup>th</sup> March 2019 until 13<sup>th</sup> December 2019 and thus render justice.*

*b. Pass such other or further Orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and thus render justice.”*

The averments contained in the Application and in support of reliefs disclose that the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor was initiated by this Tribunal on 14.03.2019 based on the Petition filed by the Operational Creditor.

It is further averred in the Application that the Applicant has not tendered his consent in Form-2 for appointment as IRP to the Operational Creditor. In the circumstance, the Applicant did not have any knowledge of the appointment of the Applicant as the IRP in relation to the Corporate Debtor.

It is also brought to the notice of this Tribunal that only on 27.11.2019 the Operational Creditor who initiated the proceedings before this Tribunal in the main CP.No. 737 of 2018 brought to the notice of the IRP/Applicant about his appointment vide Order of this Tribunal dated 14.03.2019. Immediately thereafter the IRP had

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contacted the Counsel for the Operational Creditor. Further the Applicant represents that the appointment itself is not based on the consent given by the IRP and it has been made from the panel of the IRP as circulated by the Insolvency and Bankruptcy Board of India (IBBI) to the respective Benches.

It is also represented by the Ld. Counsel for the IRP/Applicant that Rule 50 of the NCLT Rules, 2016 stipulates that the Registry of this Tribunal is required to communicate to the parties concerned in relation to the Order passed by this Tribunal and that the same was not communicated, however, on the verification by the IRP/Applicant it was noticed that the same available in the SPAM folder of his mail ID sent on 19.03.2019 from which it is evidenced that the Registry had duly communicated about the appointment, however, the same was not opened for the reasons stated in the Application. Even though the CIRP has been initiated as early as on 14.03.2019 and 275 days have been lost it is to be seen even without making the public announcement calling for the claims of the Corporate Debtor by the IRP/Applicant and for the constitution of the CoC.

Upon query posed by this Tribunal to the Ld. Counsel for the Operational Creditor as to why the communication of the Order passed



by this Tribunal was not communicated immediately to the IRP/Applicant, the Counsel for the Operational Creditor was not in a position to answer the same before this Tribunal.

The communication it is seen was made only on 27.11.2019 and all the above facts points out to an all around dereliction of duty and are absolute negligence on the part of the Operational Creditor and as well as the IRP. The Operational Creditor in its own interest and acting on behalf of the other creditors, the CIRP being a proceeding in rem had to communicate the same to the IRP/Applicant for proceeding with the CIRP which has not been done in this case.

Further the plea of the Ld. Counsel for the IRP/Applicant that a specific consent has not been given by the IRP to act as the IRP in relation to the Corporate Debtor, however, this Tribunal has chosen to appoint the IRP/Applicant in relation to the Corporate Debtor based on the circular issued by the Insolvency and Bankruptcy Board of India (IBBI) which also does not hold much water as one of us sitting in the Delhi Bench in the matter of **M/s. Takkshill Enterprises -vs- M/s. IAP Company Pvt. Ltd in CA.No.60/C-III/ND/2018** has condemned the attitude of the IRP in not taking up the assignment in earnest even though having given the consent to the IBBI for the



reasons stated therein and vide the said Order even though imposed penalty/fine upon the Interim Resolution Professional in the said case, however, the Appellate Tribunal had chosen to waive the fine imposed by this Tribunal and stated that if any dereliction of the duties on the part of the IRP only IBBI can initiate action on the IRP and in the circumstance we deem it appropriate in this matter to transmit the records to the IBBI by the **Registry** and the IBBI to initiate suitable action as may be deemed appropriate.

In these circumstances, this Application stands **disposed of** with the above directions.

-SD-

**(ANIL KUMAR B)**  
MEMBER (TECHNICAL)

-SD-

**(R.VARADHARAJAN)**  
MEMBER (JUDICIAL)