

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

IA 347 of 2020 in IA 362 of 2019 IN CP (I.B) No. 149/NCLT/AHM/2017

**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 22.07.2020**

Name of the Company: Himanshu Prafulchandra Varia
V/s
Sunil Kumar Agarwal Liquidator of varia
Engineering Pvt Ltd & Ors
Section : Section 60(5) of IBC

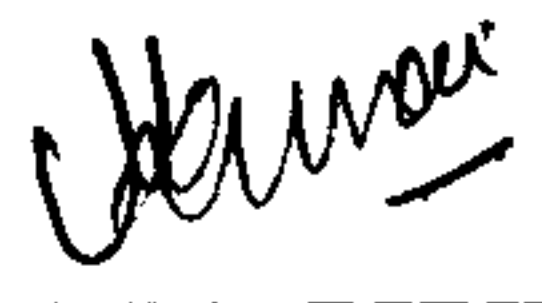
S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

ORDER
(Through Video Conferencing)

Ms. Natasha D. Shah, Learned Lawyer, appeared on behalf of the Applicant.

The order is pronounced in the open court, vide separate sheet.


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)


MANORAMA KUMARI
MEMBER (JUDICIAL)

Dated this the 22nd day of July, 2020

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

IA No. 347 of 2020 in IA No. 362 of 2019 in
CP (IB) No.149/NCLT/AHM/2017

In the matter of:

Shri Himanshu Prafulchandra Varia Applicant

Versus

Shri Sunil Kumar Agarwal
Liquidator
Varia Engineering Works Pvt. Ltd. & Ors. Respondents

Order delivered on 22nd July, 2020.

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

Appearance

Ms. Natasha D. Shah, Learned Lawyer, for the Applicant.

ORDER

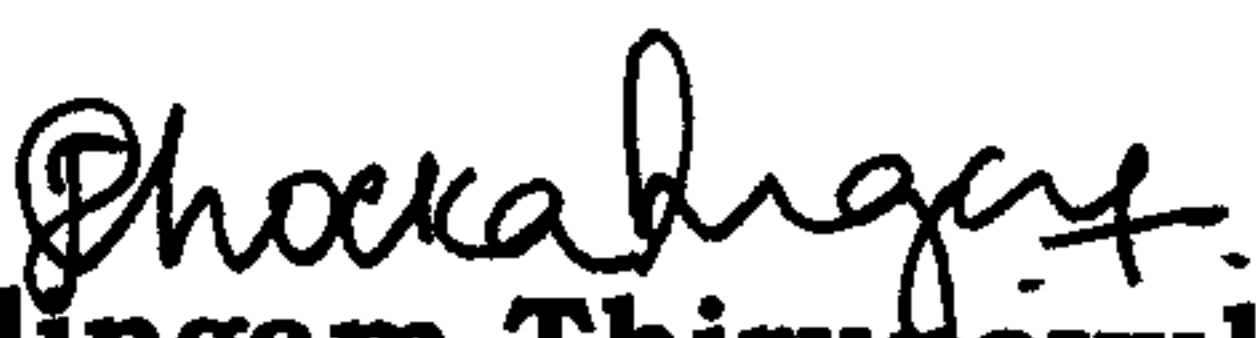
(Per se: Ms. Manorama Kumari, Member (Judicial))

1. The instant application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016, by the applicant (Suspended Management) with prayer to:
 - (i) Allow present application;
 - (ii) That pending adjudication and final disposal, this Tribunal may be pleased to direct respondents to allow applicant to commence the operations and assignments of the company;
 - (iii) That pending adjudication and determination of the present application, this Tribunal may direct respondent no.1 to defer the process of segregated sale of the assets of the company;

Chockalingam

Manor

- (iv) That this Tribunal may direct Respondents to allow applicant to commence/reinitiate the business operations of the company till the company is sold as a going concern;
 - (v) That this Tribunal may direct the liquidator to sell/transfer the company as a going concern; and
 - (vi) That this Tribunal may direct the Respondent No.1 to sell the company at a fair market value;
2. It is matter of record that the company is under Liquidation vide order dated 07.08.2019 passed in IA 362 of 2019 in CP (IB) No. 149 of 2017, as no viable Resolution Plan is received.
3. Now, when the liquidation process is in the verge of completion, the applicant (Suspended Management) filed the instant application with above prayers having no locus standi. It is quite unheard that how the suspended management can seek direction from this Adjudicating Authority to allow him to run the company till it is not being sold as a going concern, when the company is under liquidation. In fact, the suspended management has no *locus standi* to move such kind of application, when Corporate Debtor company is under the control of the liquidator. Moreover, there is no such statutory provision which allows the Corporate Debtor to run the company till it is sold as going concern.
4. The application so filed by the applicant is not only bad in the eye of law but is blatant misuse of the process of law.
5. Further, the statements made in the application are also not only contradictory, but misrepresentation of actual fact.
6. Under such circumstances, the instant application deserves to be dismissed as bad in law and is not maintainable. Hence, the application is dismissed in toto.


Chockalingam Thiruvavukkarasu
Adjudicating Authority &
Member (Technical)


Manorama Kumari
Adjudicating Authority &
Member (Judicial)