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

IA 119 of 2020 in C.P.(I.B) No. 122/NCLT/AHM/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 28.02.2020

Name of the Company: Sunil Kumar Kedia RP of ACE Tours Worldwide Ltd
V/s
IDBI Bank Ltd & Anr

Section : Section 33(1), 33(2) & 34(1) of the Insolvency and Bankruptcy Code, 2016

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	GUNJAN SHAH (For 77 PTH NAWAH)	CS	Respondent ms/	[signature]
2.	ATUL SHARMA	ADV	Applicant	[signature]

ORDER

The parties are represented through learned counsel and PCS.

The instant application is filed under Section 33(1) and 33(2) of the IB Code.

On 14.02.2020, the notices were issued to the Suspended Management and Committee of Creditors on moving the application.

Mr. Gunjan Shah (proxy), PCS requesting time on behalf of the Suspended Management. It is a matter of record that on 29.01.2020, the resolution was passed in presence of all the members and Suspended Management, since then, till date, Suspended Management have a vailed one-month time but has not filed any objection. However, today Proxy PCS seeking time to file reply / representation though the Vakalatnama has not yet been filed.

It is to be mentioned herein that the Suspended Management was all along present in the COC meeting and they are well aware of the passing of resolution by

Committee of Creditors in its 9th meeting held on 29.01.2020, wherein the proposal for liquidation was taken by the Committee of Creditors.

On passing of the said resolution by Committee of Creditors, the application has been filed by the Learned Lawyer of the RP and notice was duly issued to the Committee of Creditors on 14.02.2020.

We found no reason to adjourn the matter on the request of the Suspended Management, who has no role as of now. More so, if at all, Suspended Management wishes to file any objection or any representation, they could have done it just after passing of the resolution by the Committee of Creditors for liquidation of Corporate Debtor.

Under such circumstances, the matter cannot be adjourned. Moreover, Mr. Gunjan Shah is also not holding Vakalatnama, hence he has no locus-standi.

Heard the Applicant. It is submitted by the Learned Lawyer on behalf of the RP that the Resolution was passed unanimously for liquidation of the Corporate Debtor as there are no viable resolution plan received from the side of any Resolution Applicant. Page No. 97-100 of the application is the resolution dated 29.01.2020. On the resolution so passed, all the members of the Committee of Creditors voted in favour of liquidation as reflected from page No. 99.

It is also to be noted that this Adjudicating Authority has no jurisdiction to interfere in the commercial wisdom of the CoC as observed in ***K. Sasidhar's*** case and subsequently also reiterated by 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 CorporateDebtor, but the ultimate discretion of what to pay and how to pay each class or sub-class of creditors lies with the CoC."*

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

PC

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, 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

Hence, application so filed under Section 33 (1) and 33(2) of the IBC is allowed.

The instant application is disposed-off.

CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 28th day of February, 2020

PC