

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

**IA 743 of 2020 in CP(IB) 217/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 11.01.2021**

Name of the Company: Omkar Maloo RP For Steps Dumask  
Waste Processing Services Pvt Ltd

Section 33 of IBC,2016

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

**ORDER**

(Through Video Conferencing)

Advocate, Mr. Lalit M. Patel is present on behalf of the applicant in IA. Advocate, Mr. Yuvraj Thakore is present on behalf of the Original Petitioner.

This matter is listed for clarification today.

Learned lawyer appearing on behalf of the applicant submitted that there is only one Operational Creditor, who constituted the Committee of Creditor, as per the report submitted by the RP, and there are no financial creditors.

Heard learned counsel for the parties.

The order is pronounced, vide separate sheet.



**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER (TECHNICAL)**



**MANORAMA KUMARI  
MEMBER (JUDICIAL)**

Dated this the 11<sup>th</sup> day of January 2021

**ORDER**

The instant application is filed under section 33 of the IB Code.

- 1) On issuance of notice, Suspended Management appeared on 03.12.2020 and one-week time was granted to the Suspended Management for filing reply. However, till date no reply has been filed. Hence, we are constrained to pass order on the application so filed under section 33 of the IB Code.
- 2) It is a matter of record that there is only one member in the Committee of Creditors i.e. Operational Creditor, who has passed the resolution for liquidation of the Corporate Debtor with 100% voting, as Corporate Debtor is having no revenues since incorporation and no commercial operations were started since inception. The Corporate Debtor is also not having any assets, hence, there are no chances of its revival. The said fact is reflected in the Minutes of 8<sup>th</sup> meeting of COC held on 30.09.2020 at page no. 92-97.
- 3) In view of the above situation, 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.*

- 4) 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.

*Sharma*

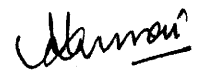
*Chennai*

- 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, 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
- 5) 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.

Accordingly, the instant IA stands disposed of with the above observations.



**CHOCKALINGAM THIRUNAVUKKARASU**  
MEMBER TECHNICAL



**MANORAMA KUMARI**  
MEMBER JUDICIAL