

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

IA 854 of 2020 in CP(IB) 178/NCLT/AHM/2019

**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 08.01.2021**

Name of the Company: Sunil Kumar Agarwal RP of Baid Narrow
Fab Pvt Ltd
V/s
Ashok Kumar Baid & Anr
Section 33(2) & 34 of IBC, 2016

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

(Through Video Conferencing)

Advocate, Mr. Pratik Thakkar is present on behalf of the applicant/RP. Advocate, Ms. Khyati Punjabi is present on behalf of the Suspended Management.

1) The instant application is filed under Section 33(2) and Section 34 of the Insolvency and Bankruptcy Code, 2016, by the RP, viz., Mr. Sunil Kumar Agarwal, of M/s. Baid Narrow Fab Private Limited, with following prayers:-

- i) To pass appropriate order for Liquidation of the Corporate Debtor, in the interest of justice; and
- ii) To pass appropriate order for appointment of the Applicant / Resolution Professional as Liquidator of the Corporate Debtor, in the interest of justice.

2) Learned lawyer appearing on behalf of the applicant submitted that no response was received from any Resolution Applicant after the publication of Expression of Interest. Hence, the Committee of Creditors consist of one Financial Creditor, i.e. State Bank of India, passed resolution on its 7th meeting dated 12.11.2020 for liquidation of the corporate debtor company as well as to appoint the RP as

Chockalingam

Manorama

Liquidator of the corporate debtor company. Copy of minutes of 7th CoC meeting is annexed with the application as Annexure-E.

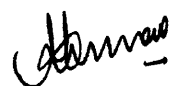
- 3) Learned lawyer appearing on behalf of the Suspended Management fairly submitted that appropriate order may be passed.
- 4) Heard the learned lawyers of both sides also seen the record.
- 5) Since the CoC has taken its decision based on the commercial wisdom with 100% voting in favour of the liquidation, as such, this Adjudicating Authority is of the opinion that the corporate debtor company may be allowed to go for liquidation, under such circumstances.
- 6) 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.

- 7) Under the facts and circumstances as narrated hereinabove, this Bench allows the instant application, with following observations:-
 - 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.

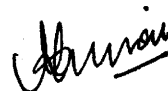




- d) Subject to Section 52 of the IB Code, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.
- e) This 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, 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.
- 8) The RP appointed for the CIRP, shall act as the Liquidator for the purpose of liquidation of the Corporate Debtor.
- 9) Accordingly, the instant IA is allowed and disposed of with the above observations.



CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)



MANORAMA KUMARI
MEMBER (JUDICIAL)

Dated this the 8th day of January 2021