NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
CAMP AT CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF PRINCIPAL BENCH, NEW DELHI, NATIONAL COMPANY LAW TRIBUNAL, HELD ON 03.04.2020 AT 10.45 A.M. THROUGH VIDEO CONFERENCING:

PRESENT : SHRI.B.S.V.PRAKASH KUMAR, ACTING PRESIDENT

APPLICATION NUMBER : IA/ /2020
IN

PETITION NUMBER : CP(IB)/358/ALD/2019

NAME OF THE PETITIONER(S) : MR.ANIL GOEL

NAME OF THE RESPONDENT(S): MR.AMIT AGRAWAL(RP) – SKY HIGH INFRAPROJECTS PRIVATE LIMITED

UNDER SECTION : 60(5) OF IBC

ORDER

Mr.Pankaj Agarwal, counsel for the RP, Mr.Amit Agrawal, RP and Mr.Rishabh, counsel for the Promoter Director of the Corporate Debtor appeared and the hearing has been conducted through Video Conferencing.

On hearing the application filed by one of the Promoter-Directors of the Corporate Debtor Company seeking stay over the Agenda point No.6 of the CoC meeting held on 28.03.2020 for sale of some of the assets of the Corporate Debtor to defray the salaries of the daily wagers and employees who have been suffering without any salary for the last three months, I understand after hearing all the parties, that these Directors permitted for release of some cash from the Corporate Debtor's Account after admission of the Company Petition i.e. on 07.01.2020, which held back their IRP/RP to clear the dues of the daily wagers, that apart, the RP's counsel has stated that these Promoter Directors have not been provided the information and the Account Statements to ascertain the correct picture of the company, in a situation like this, since there is no other go for the CoC to meet the expenditure of the company especially to pay the daily wagers of the company, they have taken a call in the CoC meeting to sell part of the assets of the company to clear the liabilities payable to the employees and daily wagers of the company.

On the contrary, the counsel appearing on behalf of the Promoter-Director has stated that no dues were payable until before the admission of the Company Petition thereby this RP or CoC should not have taken a decision to pay the monies to the people whom the money has already been paid just because by seeing the daily wagers / employees come and demanding for further payment on the ground that their employment has not been terminated.

In a distress company, decision taking should be in such a way so as to meet the immediate needs of the company, if the RP or CoC go by something said by the employees or daily wagers of the company and start selling the assets of the company even before the Resolution Plan is placed before the CoC, when time comes for filing the Resolution Plan, it is not viable to hold it out as going concern or to maximise the value of the company. Here the goods, the CoC wanted to sell are not perishable goods. In the Agenda No.6, the assets held out for sale are cement, iron bars and JCB machine.

Looking at those documents, if the RP is of the view that the Promoter-Directors mischievously taken away the money from the company and not provided the information compatible to their statements, he is at liberty to mention the matter before this Bench. Accordingly, the parties are at liberty to mention this application in the event of non-compliance of this order.

SD/-

(B.S.V.PRAKASH KUMAR)
ACTING PRESIDENT

The RP has categorically mentioned that these Promoter-Directors have not been provided information to ascertain as to whether payments have been made to them or not, whether money released after admission of the Company Petition has any justifiable support for release of the Corporate Debtor company having after admission, because it is a fact once the Company Petition is admitted, the Promoter-Directors are not expected to allow the Corporate Debtor's monies released in the light of Sec.14 of the Insolvency and Bankruptcy Code, 2016.

In view of the submissions and my observations, I am of the opinion that so far these Promoter Directors have not made full-fledged efforts to ensure an application u/s 12A is filed, request is made to the Applicant to file an application through RP u/s 12A. Therefore, to meet the immediate needs of the company, the RP is permitted as per the directions of the CoC to sell the cement stock. With regard to the remaining items, this Bench hereby orders the CoC not to sell those assets until further orders.

In the meanwhile, the Promoter-Directors are directed to provide all the information whatever the Corporate Debtor is presumed to maintain under the Companies Act, 2013 within one week hereof.

It is further made clear that since it has been envisaged in the IBC that the Promoter-Directors of the company shall handover all the records of the company to the RP, it is the bounden duty to unconditionally provide all the information to the RP.