

NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH - I
CHENNAI

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ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD AT 2.00 PM ON 11-03-2020

PRESENT: SHRI R.VARADHARAJAN, MEMBER-JUDICIAL
SHRI ANIL KUMAR B, MEMBER - TECHNICAL

APPLICATION NUMBER : MA/576/2019 IN
PETITION NUMBER : CP/551/IB/2017
NAME OF THE PETITIONER(S) : AJAY AGARWAL
NAME OF THE RESPONDENT(S) : ASHOK MAGNETICS PVT LTD
UNDER SECTION : SEC 60 OF IBC

S.No. Name (in Capital) Represented by Signature

| S.No. | Name (in Capital) | Represented by | Signature |
|-------|--|-----------------------|----------------------------------|
| | R. Sankar Narayanan (Senior Counsel) for Geethajalli T for M/s Aggar & Dolia | Applicant | Geethajalli T |
| | R. SUBRAMANIAM Ad - M. L. Banerjee | Respondent For coc | R. Subramaniam M. L. Banerjee |

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH-I, CHENNAI**

MA/576/2019 and MA/1344/2019 in
CP/551/IB/2017 filed under Section 60(5) of the
Insolvency & Bankruptcy Code, 2016 r/w Rule
11 of the NCLT Rules, 2016

In the matter of **M/s. Ashok Magnetics Limited**

MA/576/2019

Ajay Agarwal,
Flat No.1162, 1st Block, TVH Lumbini Square,
127A Bricklane Road, Purasawalkam,
Chennai-600 007

..... Applicant/Promoter/Director

Vs.

- 1. M/s. Ashok Magnetics Limited,**
B-73, SIPCOT Industrial Complex,
Gummidipoondi – 601 201.
- 2. V.Nagarajan,**
Liquidator,
M/s. Ashok Magnetics Limited,
New No. 29, Kavari Street,
West Mambalam,
Chennai – 600 033.

.... Respondents

MA/1344/2019

- 1. Central Bank of India,**
Asset Recovery Branch,
Represented by its Assistant General Manager,
48/49, Montieth Road,
Egmore, Chennai – 600 008.



2. State Bank of India,
Stressed Assets Management Branch,
Represented by its Assistant General Manager,
2nd Floor, Red Cross Building,
No.32, Montieth Road,
Egmore, Chennai – 600 008.

3. The Federal Bank Ltd,
Asset Recovery Branch,
Represented by its Senior Manager,
No.57, 1st Floor,
Royapettah High Road, Royapettah,
Chennai – 600 014.

... Applicants/Proposed Respondents 3 to 5

Vs.

1. Ajay Agarwal,
Suspended Director of
M/s. Ashok Magnetics Ltd (Formerly AML Steel Ltd),
Flat No.1162, 1st Block, TVH Lumbini Square,
127A Bricklane Road, Purasawalkam,
Chennai-600 007

... 1st Respondent/Applicant

2. M/s. Ashok Magnetics Ltd (Formerly AML Steel Ltd),
No.B73, SIPCOT Industrial Complex,
Gummidipoondi – 601 201.

3. Mr. Venkataramanarao Nagarajan @ V.Nagarajan,
Interim Resolution Professional,
IBBI/IPA-002/IP-N00055/2016-2017/10107
New No.29, Kavari Street,
West Mambalam, Chennai – 600 033.

.... Respondents 2 and 3/Respondents 1 and 2

CORAM:

R.VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Applicant : M/s. Aiyar & Dolia, Advocate
For Respondent : R.Balasubramanian, Advocate
For CoC : M.L.Ganesh, Advocate

COMMON ORDER

Per: R.VARADHARAJAN, MEMBER (JUDICIAL)

Order pronounced on 11th of March, 2020

1. The Application in MA/576/2019 is moved by one Mr. Ajay Agarwal claiming to be the Promoter/Director of the Corporate Debtor namely M/s. Ashok Magnetics Limited, which is presently under Liquidation, seeking for the following reliefs:-

- a. *That this Hon'ble Tribunal may be pleased to grant an interim injunction against sale of the assets of the Corporate Debtor by the Liquidator till the scheme of compromise is approved.*
- b. *That this Hon'ble Tribunal may be pleased to direct the Liquidator to submit the Scheme of Compromise / Arrangement proposed by the Applicant under Section 230 of the Companies Act, 2013 before this Hon'ble Tribunal.*



c. That this Hon'ble Tribunal may be pleased to extend period for further 180 days to complete the process of compromise.

d. For such other and further reliefs as the nature and circumstances of the case may require.

2. CP/551(IB)/CB/2017 filed under Section 7 of the I&B Code, 2016 by the Financial Creditors namely the Central Bank of India (CBI) and the State Bank of India (SBI) against the Corporate Debtor namely M/s. Ashok Magnetics Limited, was admitted by this Authority vide Order dated 04.09.2017, the CIR Process was initiated against the Corporate Debtor and the 2nd Respondent namely V. Nagarajan was appointed as Interim Resolution Professional (IRP). Thereafter, the CoC was constituted by the IRP and in the 1st Meeting of the CoC held on 19.10.2017 the IRP was appointed as RP.



3. In the process, the Applicant moved an Application MA/478/2018 under Section 60(5) read with Rule 11 of the NCLT Rules, 2016 seeking to issue a direction to the RP and CoC to reconsider their decision dated 18.09.2018 by which the Resolution Plan filed by the Applicant was rejected. This Authority vide Order dated 09.11.2018 rejected the said MA/478/2018 and proceeded to pass an order of liquidation of the Corporate Debtor as prayed for by the RP in MA/163/2018. Aggrieved by the Orders passed by this Authority, the Appellants filed Appeal before the Hon'ble NCLAT.

4. The Hon'ble NCLAT in *Company Appeal (AT) (Insolvency) No. 792/2018* vide Order dated 22.02.2019 passed an order granting liberty to the Applicant to file the Scheme of Compromise or Arrangements in terms of Section 230 of the Companies Act, 2013 and the Liquidator was directed to act in accordance with law and in view of the decision and stand taken by the Appellate Tribunal in



S.C. Sekaran Vs. Amit Gupta & Ors., in Company Appeal (AT) (Insolvency) No.495& 496/2018.

5. It is contended in the Application that pursuant to the Order passed by the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No.792/2018 on 22.02.2019, the 2nd Respondent herein has caused public notice on 25.02.2019 and that in response to the same, the Applicant has submitted a revised Scheme to be considered before the Liquidator under Section 230 of the Companies Act, 2013, on 10.05.2019. It is also highlighted in the Application that the proposed Scheme of Compromise offers Rs. 19 Crores against the liquidation value of Rs.9.55 Crores.

6. In addition, besides the Scheme which has been filed by the Applicant with the Liquidator, two more Schemes were also placed namely one by M/s. Corbin Trades Investments Ltd. in the capacity of being shareholder of the



Corporate Debtor and the other by M/s. Shakambri Traders, being the creditor of the Corporate Debtor.

7. It is stated in the Application that directions were given by the Appellate Authority vide Order dated 22.02.2019 to the Liquidator to file the Scheme under Section 230 of the Companies Act, 2013, however, the Liquidator had failed to take any steps in this regard till date, and hence, the Applicant has filed this present Application before this Tribunal seeking reliefs as stated above.

8. The 1st Respondent Company represented by the 2nd Respondent in the capacity of Liquidator has also filed Counter Affidavit. At this juncture, it is brought to the notice of this Authority that an Application in MA/1344/2019 has been filed by secured Financial Creditor namely Central Bank of India, State Bank of India and the Federal Bank Ltd., to implead themselves as Respondents in the present Application namely



MA/576/2019. The Learned Counsel has submitted that the Liquidator has not taken any steps to prosecute MA/576/2019 and as such delayed the same for obvious reasons.

9. During the course of the submissions, the Learned Counsel for the Liquidator vehemently contended by relying upon the decision passed by Hon'ble High Court of Madras in the case of **N.A.P. Alagiri Raja and Co., Vs. N. Guruswami and Ors.** ^{1989 65 CompCas 758} that during the process of liquidation even a member or a creditor can directly approach this Authority and file an Application. In the circumstance, it is not necessary for the Liquidator to file any Application. It is also highlighted by the Learned Counsel for the Liquidator that in view of Liquidation, the CoC has become *functus officio*, and any decision for approval of the Scheme of Compromise under Section 230 shall arise only after consideration and approval of the Scheme by all the creditors.

10 The decision relied upon by the Learned Counsel for the Liquidator appears to be the decision made based upon the Companies Act, 1956. However, the decision of the Hon'ble NCLAT as passed in the case as already referred to in paragraph *supra* as well as in **Y. Shivram Prasad -Vs- S. Dhanapal** – Company Appeal (AT) Insolvency No.224 of 2018, will be more apposite to the case on hand, more particularly, in Paragraph 18, which is extracted below for ready reference:-

“18. During proceeding under Section 230, if any, objection is raised, it is open to the Adjudicating Authority (National Company Law Tribunal) which has power to pass order under Section 230 to overrule the objections, if the arrangement and scheme is beneficial for revival of the ‘Corporate Debtor’ (Company). While passing such order, the Adjudicating Authority is to play dual role, one as the Adjudicating Authority in the matter of liquidation and other as a Tribunal for passing order under Section 230 of the Companies Act, 2013. As the liquidation so taken up under the ‘I&B Code’, the arrangement of scheme should be in consonance with the statement and object of the ‘I&B Code’. Meaning thereby, the scheme must ensure maximisation of the assets of the ‘Corporate Debtor’ and



balance the stakeholders such as, the 'Financial Creditors', 'Operational Creditors', 'Secured Creditors' and 'Unsecured Creditors' without any discrimination. Before approval of an arrangement or Scheme, the Adjudicating Authority (National Company Law Tribunal) should follow the same principle and should allow the 'Liquidator' to constitute a 'Committee of Creditors' for its opinion to find out whether the arrangement of Scheme is viable, feasible and having appropriate financial matrix. It will be open for the Adjudicating Authority as a Tribunal to approve the arrangement or Scheme in spite of some irrelevant objections as may be raised by one or other creditor or member keeping in mind the object of the Insolvency and Bankruptcy Code, 2016."

11. From the above extract of the judgement, it is seen that the Adjudicating Authority is required to follow the same principle as enunciated under Section 230 of the Companies Act, 2013 and also allow the liquidator to constitute the Committee of Creditors in order to ascertain whether the arrangement of the Scheme, as available in the hands of the Liquidator, is feasible and having appropriate financial matrix. The CoC has to take a call in consonance with the statement and object of the I&B Code



ensuring maximization of the value of the assets of the Corporate Debtor and balancing the interest of stakeholders. This Authority has to play dual role, one as the Adjudicating Authority under I&B Code, 2016 and the other as a Tribunal to pass orders as envisaged under Section 230 of the Companies Act, 2013. The guidelines has also been broadly provided by the Hon'ble NCLAT that in case of the irrelevant objection, if any, raised by either of the members or the creditors, it need not to be considered by this Authority at the time of approval of Scheme.

12. Taking into consideration the above decision of Hon'ble NCLAT in **Y. Shivram Prasad -Vs- S. Dhanapal** as well as exercising the inherent power conferred under Rule 11 of the NCLT Rules, 2016, we direct the Liquidator to constitute the CoC and place all the three Schemes, the details of which have already been given as extracted from the Application filed by the Applicant, before the CoC and the CoC shall take a call on the Scheme in the light of Section 230 of the Companies Act, 2013.

13. Let the CoC be constituted within one week from the date of receipt of copy of this Order and the Liquidator shall place the Schemes before the CoC for its consideration. Thereafter, upon consideration by the CoC, the Liquidator to communicate before this Tribunal by way of report along with the Scheme which is placed and approved by the CoC, within 15 days thereafter.

14. With the above direction, these Applications stand disposed of. The Liquidator is restrained from alienating any of the assets of the Corporate Debtor which form part of the Liquidation assets till then.

-SD-

(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)