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**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH - I
CHENNAI**

**ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH
NATIONAL COMPANY LAW TRIBUNAL, HELD AT ON 13.12.2021 at 10.30 AM
THROUGH VIDEO CONFERENCING**

**PRESENT: SMT. R.SUCHARITHA, MEMBER (JUDICIAL)
SHRI. SAMEER KAKAR, MEMBER (TECHNICAL)**

APPLICATION NUMBER	: Ivn.P/15(CHE)/2021 IN IA/1046(CHE)/2021 IN
PETITION NUMBER	: IBA/1180/2019
NAME OF THE PETITIONER(S)	: A Anand
NAME OF THE RESPONDENTS	: M Suresh Kumar & Others
UNDER SECTION	: Sec 60(5) of IBC, 2016

**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH - I
CHENNAI**

**ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH
NATIONAL COMPANY LAW TRIBUNAL, HELD AT ON 13.12.2021 at 10.30 AM
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**PRESENT: SMT. RSUCHARITHA, MEMBER (JUDICIAL)
SHRI. SAMEER KAKAR, MEMBER (TECHNICAL)**

IN THE MATTER OF : M/s Alkas Spinning Mills Pvt Ltd

PETITION NUMBER : IBA/1180/2019

APPLICATION NUMBER

IA/866(CHE)/2021, MA/111(CHE)2021 IN IBA/1180/2019, IA/1046(CHE)2021 IN IBA/1180/2019

- 2 IBA/1180/2019
Ivn.P/15(CHE)/2021 IN IA/1046(CHE)/2021
15 IBA/1180/2019
IA/866(CHE)/2021
MA/111(CHE)2021 IN IBA/1180/2019
IA/1046(CHE)2021 IN IBA/1180/2019

COMMON ORDER

Mr. T.K. Bhaskar, Advocate represents the erstwhile MSME / erstwhile Board of Directors, the RP is represented by Mr. V. Manivannan, Advocate along with the RP Mr. M. Sureshkumar through video conferencing platform.

Ivn.P/15(CHE)/2021 is filed by the erstwhile MSME / erstwhile Board of Directors against the RP and others seeking intervention in IA/1046(CHE)2021.

IA/1046(CHE)2021 is filed by the RP under Section 30 of the IBC, 2016 seeking approval of the Resolution Plan.

IA/866(CHE)/2021 is filed by the erstwhile MSME / erstwhile Board of Directors aggrieved by the action of the RP and seeks to set aside the Resolution passed in the 6th CoC meeting.

MA/111(CHE)2021 is filed by one of the unsuccessful Resolution Applicants, who has not submitted any Resolution Plan, however, expresses his interest in the EoI floated by the RP. Today he seeks permission for withdrawal of the Application.

IA/1046(CHE)2021 is taken up for hearing under Section 30 of the IBC, 2016. Learned RP states that on the 8th CoC meeting, the plan submitted by the Resolution Applicant was approved with 100% voting.

It is pertinent to mention here that when the CIRP commenced the Unit of the Corporate Debtor was not a going Concern, it was kept under lock and key and no activity took place during the CIRP period.

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In the 8th CoC meeting the Resolution Plan was taken up for approval, Resolution Plan submitted by the Resolution Applicant was approved and in the same meeting the CoC had decided to hand over the entire assets of the Corporate Debtor under the guise of a lease deed to the Resolution Applicant.

The 8th CoC meeting took place on 27.09.2021 and on the very same date with the approval of the CoC, it appears that the entire assets of the Corporate Debtor had been handed over to the successful Resolution Applicant.



Thereafter, IA/1046(CHE)2021 is filed before this Adjudicating Authority seeking approval of the Resolution Plan which is still pending on the file of this Adjudicating Authority.

The Respondent / RP shall file their reply in Ivn.P/15(CHE)/2021 in IA/1046(CHE)2021.

The Resolution Professional is directed to submit copy of the lease deed entered between the successful Resolution Applicant and the Corporate Debtor which was approved in the 8th CoC meeting and also submit copy of the list of Prospective and Final Resolution Applicants which was submitted by the RP to the IBBI / IPA along with all supporting e-mails / correspondences / forms.

The question before us is when the Resolution Plan for approval is pending before us, is it appropriate on the part of the CoC / RP to hand over the complete property of the Corporate Debtor into the hands of the successful Resolution Applicant under the lease deed? When the Resolution Plan has been approved by the CoC and the Plan is yet to be filed before this Adjudicating Authority for final approval is it not imperative on the legal point of view to maintain the status quo of the Corporate Debtor? Can the CoC / RP alter the nature, possession, ownership of the Corporate Debtor's property after getting approval of the Resolution Plan in the CoC meeting and before approval of the Adjudicating Authority?

The RP is directed to take property of the Corporate Debtor in his possession.



Since the Resolution Plan is pending before this Adjudicating Authority for final approval, it is inappropriate and beyond the scope of provisions of the IBC, 2016 to hand over the possession of the property to the successful Resolution Applicant without obtaining approval or permission from this Adjudicating Authority.

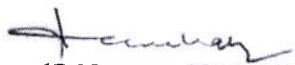
Hence, the RP is directed to immediately take possession of the assets of the Corporate Debtor today itself and await for further orders.

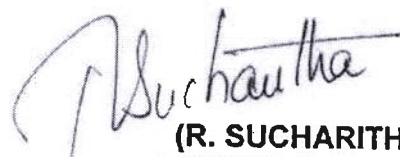
Meanwhile, the RP shall maintain status quo as on today (13.12.2021) the assets of the Corporate Debtor. Further, the RP shall not enter into any agreement in respect of the property of the Corporate Debtor or in connection with the Resolution Plan or with the erstwhile Board of Directors without prior permission of this Tribunal.

Both the parties are permitted to file their written submissions as well as counter and citations, if any, on or before the next date of hearing.

The Registry shall forward a copy of this order to the IBBI to enquire into the conduct of the RP and study if any strict regulations are needed to safeguard the assets of the Corporate Debtor.

List this matter on **10.01.2022**.


(SAMEER KAKAR)
MEMBER (TECHNICAL)
ghk


(R. SUCHARITHA)
MEMBER (JUDICIAL)