

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

IA 597 of 2020 in CP(IB) 572/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 29.09.2020**

Name of the Company: Bhavi Shreyans Shah RP of CLS
Enterprise Pvt Ltd

Section 33(1),33(2) & 34(1) 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)

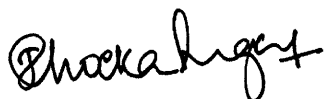
Advocate Mr. Atul Sharma is present on behalf of the Applicant.

- 1) The instant application is filed under Section 33(1), 33(2) and 34(1) of the Insolvency and Bankruptcy Code, 2016 (I&B Code), with following prayers:-
 - a) To allow the present application;
 - b) To pass an order under Section 33(1) and 33(2) of the Code for liquidation;
 - c) To pass an order under Section 34(1) of the Code appointing the Applicant as the Liquidator;
 - d) To pass an order directing the issuance of the public announcement in terms of Section 33 (1) (b) (ii) of the Code; and
 - e) To grant any other relief or relief as may deem fit in the interest of justice.
- 2) On perusal of the record, it is found that on 22.09.2020 notice was issued, through Registry, to the Suspended Management and the same was delivered on 24.09.2020. Hence, service is complete.

Chockalingam

Atul Sharma

- 3) It is also matter of record that CP (IB) No.572 of 2019 was admitted on 16.12.2019 and appointed IRP for initiation of Corporate Insolvency Resolution Process (CIRP). The IRP has made all due diligence by publishing Form-A in the newspaper, as required in the I&B Code, for inviting claims from the creditors.
- 4) The first meeting was held on 03.02.2020 and the IRP invited Expression of Interest (EoI) from the prospective resolution applicants in the prescribed Form G and the same was published in "Times of India" – English and "Sandesh" – Gujarati newspaper on 12.06.2020 and the same was apprised before the CoC in its 2nd meeting held on 18.06.2020.
- 5) It is also matter of record that, during the CIRP and invitation of EoI, the IRP had received only one Resolution Plan from one Mr. Sanjay Punglia, and the same was rejected by the CoC on the ground that the offered amount was insufficient to address the pending claim of the creditors and other stakeholders. In view of that the CoC is of view approved to take necessary steps for initiating liquidation process of the Corporate Debtor in absence of any viable resolution plan received by them. Accordingly, the CoC decided to go for liquidation of the Corporate Debtor. It is further submitted by the RP that the period of 170 days of CIRP was completed on 28.06.2020, exempting period of Lockdown, i.e. 67 days. Since there is no likelihood of getting resolution plan, the CoC did not go for further extension of further 90 days.
- 6) Heard the applicant and also seen the records, it is found that there is no possibility of receiving any Resolution Plan. Therefore, the CoC has resolved for liquidation of the Corporate Debtor vide its fifth meeting dated 25.08.2020 with 100% voting in favour of Liquidation, and accordingly the CoC appointed the Resolution Professional (RP) to file an application for liquidation, under Section 33(1) of the I&B Code. The CoC also proposed that the RP, namely, CA Bhavi Shreyans Shah, shall continue as Liquidator. Copy of the minutes of 5th meeting of the CoC is annexed with the application, as Annexure-I, recording the detailed discussion of the meeting.
- 7) It is also to be noted that this Adjudicating Authority has no jurisdiction to interfere in the commercial wisdom of the CoC as observed in *K. Sasidhar's*





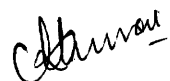
case and subsequently also reiterated by Hon'ble Supreme Court of India in its judgement passed in Civil Appeal No.8766-67 of 2019- *Committee of Creditors of Essar Steel India Limited through Authorised Signatory vs. Satish Kumar Gupta & Ors* observed as follows:

"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."

- 8) Under the facts and circumstances as narrated above, the instant application is allowed 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.
- 9) Hence, IA 597 of 2020 in CP(IB) 572 of 2019 so filed by the RP under Section 33(1), 33(2) and 34(1) of the Insolvency and Bankruptcy Code, 2016 (I&B Code) is allowed and the Adjudicating Authority passes an order for initiation of liquidation of the Corporate Debtor, viz., CLS Enterprise Private Limited. The RP i.e. CA Bhavi Shreyans Shah, shall act as the Liquidator for the purpose of liquidation of the Corporate Debtor.
- 10) Accordingly, the instant IA stands disposed of with the above observations.



CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)



MANORAMA KUMARI
MEMBER (JUDICIAL)

Dated this the 29th day of September, 2020.