

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

IA 400 of 2020 in CP (I.B) No. 430/NCLT/AHM/2018

**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 10.08.2020**

Name of the Company: Kiran Shah RP of Dhorajia Engineering
Company Pvt Ltd

Section : Section 33 & 34 IBC

| <u>S.NO.</u> | <u>NAME (CAPITAL LETTERS)</u> | <u>DESIGNATION</u> | <u>REPRESENTATION</u> | <u>SIGNATURE</u> |
|--------------|-------------------------------|--------------------|-----------------------|------------------|
| 1. | | | | |
| 2. | | | | |

**ORDER
(through video conferencing)**

Learned FCA Mr. Kiran Shah appeared on behalf of the Applicant.

The instant application is filed under Section 33 & 34 of the IBC, 2016 for liquidation of the Corporate Debtor. On perusal of the record, it is found that the CP (IB) No. 430 of 2018 was filed by Operational Creditor, namely Larsen & Toubro Limited, against the Corporate Debtor viz., Dhorajia Engineering Company Private Limited under Section 9 of the IB Code, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") which was admitted by this Adjudicating Authority vide its Order dated 21.11.2019 and appointed the Applicant, Mr. Kiran Shah as Interim Resolution Professional (hereinafter referred as "IRP") of the Corporate Debtor.

It is stated in the application that Committee of Creditors (hereinafter referred as "CoC") in its Second Meeting held on 09.01.2020 decided for continuation of the IRP as RP.

Meanwhile, Suspended Management was in the process of settlement with the Operational Creditor and hence, requested for time from the CoC but the suspended management could not reach the settlement. It is stated by the Applicant that in the Seventh CoC meeting held on 30.06.2020, CoC resolved to go for Liquidation of the Corporate Debtor with 97.83% voting in favour of the Liquidation. Hence, CoC decided to file an application for Liquidation of the Corporate Debtor through RP





under section 33 of the IB Code. However, it is to be noted that the CIRP expired on 18.05.2020 i.e. during the lockdown period

Heard the applicant and also seen the records, it is found that the CoC has resolved for liquidation of the Corporate Debtor vide its Seventh meeting dated 30.06.2020. 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."

Under the facts and circumstances as narrated above, we pass the following orders:

- 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.

Shreehari

Chamrao

- 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

Hence, the IA 400 of 2020 in CP(IB) 430 of 2018 so filed by the RP under Section 33 & 34 of the IB Code, 2016 is allowed and the Adjudicating Authority passes an order for initiation of liquidation of the Corporate Debtor viz., Dhorajia Engineering Company Private Limited. The RP i.e. Mr. Kiran Shah, shall act as the Liquidator for the purpose of liquidation of the Corporate Debtor. Further, the lockdown period of 68 days i.e. from 25.03.2020 to 31.05.2020, is exempted from the CIRP period.

Accordingly, the instant IA is allowed and stands disposed of with the above observations.



CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 10th day of August, 2020



MANORAMA KUMARI
MEMBER JUDICIAL