

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH**

IA 461 of 2018 in
C.P. (I.B) No. 148/NCLT/AHM/2017

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 28.08.2019**

Name of the Company: Devendra P Jain RP of Asis Logistics Ltd.

V/s.

Asis Logistics Ltd.

Section of the Companies Act: Section 33 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Jaimin R. Dave	}	}	}
2.	Prinyank S. Dave			
	Shrinam D. Parikh			
	Hirsh R. Dave			
	Yuvraj Thakore	ADU.	Suspended managers	Y. Thakore

ORDER

The parties are represented through their respective learned counsels.

The Order is pronounced in the open court, vide separate sheet.


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 28th day of August, 2019


MANORAMA KUMARI
MEMBER JUDICIAL

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH**



IA 50 of 2019 in
C.P. (I.B) No. 148/NCLT/AHM/2017

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 28.08.2019**

Name of the Company: Association of All Employees
V/s
Devendra Padamchand Jain & Anr

Section of the Companies Act: Section 60 of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Jaimin R. Dave Pratik S. Dave Shivam D. Parikh Hirish R. Dave	ADV.	RP	
2.	TIRTH NAYAK	Adv.	Petitioner	

ORDER

The parties are represented through their respective learned counsels.

The Order is pronounced in the open court, vide separate sheet.


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 28th day of August, 2019


MANORAMA KUMARI
MEMBER JUDICIAL

**BEFORE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

**IA No. 461 of 2018 with
IA No. 50 of 2019 in
C.P. No.(IB) 148/10/NCLT/AHM/2017**

In the matter of:

IA No. 461 of 2018

Shri Devendra P. Jain,
Resolution Professional (RP) of
M/s. Asis Logistics Limited,
Unit No. 611, Skylon Co-operative Housing Society,
GIDC, Char Rasta,
Vapi Valsad
Gujarat

.....Applicant
[Resolution Professional]

Versus

M/s. Asis Logistics Limited,
Unit No. 611, Skylon Co-operative Housing Society,
GIDC, Char Rasta,
Vapi Valsad
Gujarat

.....Respondent
[Corporate Debtor]

With

IA No.50 of 2019

Association of ALL Employees,
Flat No. 308, Trimurti Apartment,
Mahatma Phule Nagar,
J.K. Gram Pokhran Road No. 1,
Thane (Wet) – 400 006

.....Applicant

Versus

1. Shri Devendra P. Jain,
Resolution Professional (RP) of
M/s. Asis Logistics Limited,
A/43, Prime Plaza,
Opp. DLA School,
Bodakdev,
Ahmedabad – 380 005

Shri Devendra P. Jain

U. K. K.

2. Committee of Creditors of
Asis Logistics Limited,
 - a. State Bank of India,
SME Backbay, Mittal Court,
Nariman Point,
Mumbai – 400 021
 - b. Dena Bank,
IFB, Horniman Circle,
Fort,
Mumbai – 400 001
 - c. Janakalyan Sahakari Bank Ltd.,
Vivek Sagar, Sindhi Society,
Chambur,
Mumbai – 400 071
 - d. ICICI Bank
Vehicle Loan Divn,
BKC, G-Block,
Bandra East,
Mumbai – 400 051

.....Respondents

Order delivered on 28th August, 2019

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

Appearance:

IA No. 461 of 2018

Advocates Mr. Jaimin R Dave and Mr. Shivam D Parikh for the RP.

IA No. 50 of 2019

Advocates Mr. Jaimin R Dave and Mr. Shivam D Parikh for the RP and
Advocate Mr. Tirth Nayak for the Petitioner.

COMMON ORDER

[Per: Ms. Manorama Kumari, Member (Judicial)]

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1. This application is filed by the Resolution Professional seeking order of the liquidation under Section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to IBC).
2. This Authority, vide order dated 11.01.2018 on the basis of petition filed by M/s. Asis Logistics Limited., (hereinafter referred to as the Corporate Debtor) under Section 10 of the IBC, commenced the CIRP by appointing IRP.
3. CoC in its 7th meeting held on 26.10.2018 resolved to close the process of CIRP and instructed the RP to file application for initiation of liquidation before this Adjudicating Authority due to non-receipt of any resolution plan from any prospective applicant.
4. Accordingly, the instant application is filed under Section 33 of the IBC by RP vide resolution dated 26.10.2018. The said fact is reflected in the minutes of the CoC meeting held on 26.10.2018 at Item No. 4 at Page 103 annexed with IA 461 of 2018 in CP(IB) No. 148 of 2017.
5. On perusal of the records, it is found that CIRP has closed on 28.10.2018. The instant application is filed on 06.11.2018.
6. That after filing of the application being **IA No. 461 of 2018** under section 33 of IBC by RP, **IA No. 50 of 2019** is filed by one Association claiming to be Association of all Employees of Suspended Management under Section 60 of IBC with following prayers:
 - a. Direct the Respondents to consider Resolution Plan of the Applicant at Annexure C hereto.
 - b. Quash and set aside the decision of the Respondent No. 2 to liquidate Asis Logistics Limited taken in the meeting dated 26.10.2018.
 - c. During the pendency and final disposal of this Interlocutory Application, stay the proceedings of Interlocutory Application No. 461 of 2018 before this Tribunal.
7. Heard the Ld. Counsels of the above mentioned Interlocutory Applications. Thus, before disposal of the **IA 461 of 2018** for liquidation of the Corporate Debtor Company, it is imperative to dispose of the Interlocutory Application No. **IA 50 of 2019** filed by the above said Association of all Employees of the Suspended Management filed under section 60 of IBC.

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8. We, the Adjudicating Authority, at this Bench have gone through all the documents submitted with the application and also placed on record.
- 8.1 From the facts placed before this Adjudicating Authority, it is observed that RP in response to calling of Expression of Interest from the potential resolution applicants, received one response in the form of email dated 6th May, 2018 from one Mr. Ajay Wadkar on behalf of employees of the Suspended Management stating that together they shall be able to arrange the affront amount of Rs.100 lacs and arrange more funds for revival and repayment. They wanted an opportunity with the RP to understand more about the process and the procedures but did not submit any Resolution Plan.
- 8.2 The RP in the minutes of the 2nd meeting of CoC has mentioned that above referred mail has been received from the above said Association of all Employees of the Suspended Management viz. Asis Logistics Limited.
- 8.3 The Applicant of **IA 50 of 2019** has annexed with the application, an notarised agreement dated 21st January, 2019 signed by 6 persons forming the Association solely for the purpose of submitting Resolution Plan in respect of insolvency proceedings against the Corporate Debtor Company. The agreement does not mention that signatories to the agreement are the employees of the Suspended Management. Further, nowhere, it is mentioned that the said Association is a registered body. Therefore, this Adjudicating Authority is of the considered view that this Association is not a registered body.
- 8.4 Since the CoC did not thought it fit to consider the above referred mail received from the above said Association of all Employees of the Suspended Management, this Adjudicating Authority cannot question the wisdom of the CoC and their recommendation for liquidation of the Corporate Debtor Company. Reliance is placed upon the decision of Hon'ble National Company Law Appellate Tribunal in **Kannan Tiruvengandam v. M.K. Shah Exports Ltd. & Ors.** wherein it is held that commercial aspects of a resolution plan are to be dealt with by an expert body such as the Committee of Creditors. It was held that the Hon'ble NCLAT had no jurisdiction to sit in appeal over the same, unless such decision of the Committee of Creditors is perverse or contrary to the provisions of the Code or any other existing law. In this regard, it is also pertinent to refer to the recent decision given by the Hon'ble Supreme

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Court in Civil Appeal No. 10673 of 2018 in **K. Sasidhar v. Indian Overseas Bank & Ors.** It is held that supremacy of CoC and their commercial wisdom cannot be questioned. It is also observed that National Company Law Tribunal has no jurisdiction and authority to analyse or evaluate the commercial decision of the CoC to enquire into the justness of the rejection of the Resolution Plan by the dissenting financial creditors.

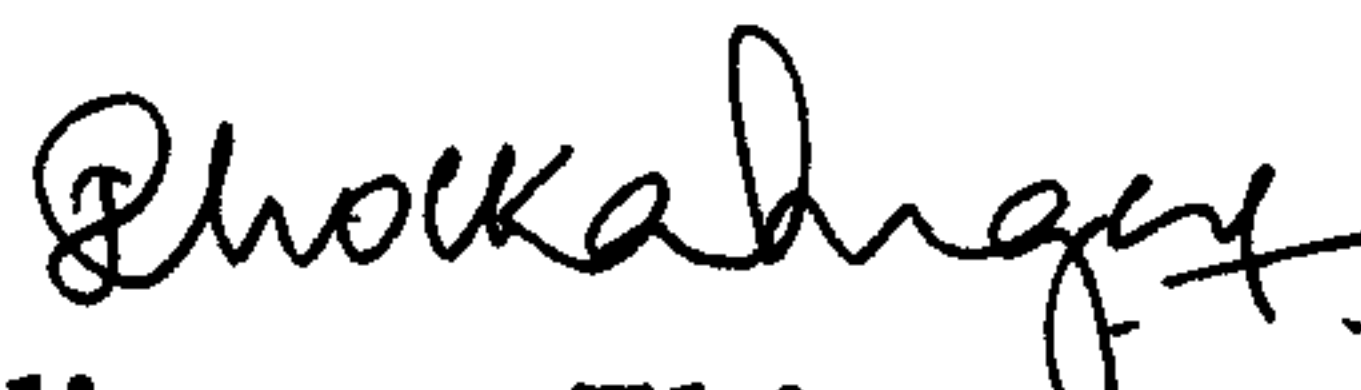
8.5 Hence **IA 50 of 2019** is not maintainable and disallowed.


9. Considering all the above said facts and the documents annexed with the application, this Adjudicating Authority is of the considered view to pass an order for liquidation in respect of the Corporate Debtor viz. Asis Logistics Limited and direct the Liquidator to issue a public announcement stating that the Corporate Debtor is in liquidation. However, this Adjudicating Authority would like the Liquidator to make sincere efforts to sell the liquidating unit as a going concern since this would entail realisation of higher value by the creditors and would also save the employment of many workers and employees whose daily bread is dependent on the Corporate Debtor.

10. This Adjudicating Authority hereby appoints the **“Resolution Professional as Liquidator”** under Section 34(1) of the IBC. The Liquidator shall send intimation to the Registrar of Companies with which the Corporate Debtor is registered.

11. The Liquidator shall act as per Section 35 of the Insolvency and Bankruptcy Code, 2016 (hereinabove referred as “IBC”) subject to directions of this Adjudicating Authority.

12. This application is disposed of accordingly.


Chockalingam Thirunavukkarasu
Member (Technical)


Ms. Manorama Kumari
Member (Judicial)