

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

IA/27(MP)2021 in TP 34 of 2019 [CP(IB) 229 of 2019]

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. VIRENDRA KUMAR GUPTA, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF INDORE BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON 23.04.2021**

Name of the Company: Bhavi Shreyans Shah RP of Brain Masters Classes Pvt
Ltd
V/s
HDFC Bank & Ors

Section 12(3) r.w 60(5) of the Insolvency and Bankruptcy code r.w Rule
11 of NCLT,2016.

S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

- 1.
- 2.

**ORDER
(through video conferencing)**

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

**VIRENDRA KUMAR GUPTA
MEMBER TECHNICAL**
Dated this the 23rd day of April, 2021


**MANORAMA KUMARI
MEMBER JUDICIAL**

**BEFORE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH at AHMEDABAD
Court-2**

IA /27 (MP) 2021 in
TP 34 of 2019 [CP (IB) 229 of 2019]

In the matter of:

CA Bhavi Shreyans Shah
Resolution Professional of
M/s. Brain Master's Classes Private
Limited
and having correspondence address at:
9B, Vardan Tower, Lakhudi Circle
Naranpura, Ahmedabad-380 014

..... Applicant

Versus

1. HDFC Bank
Having its office at:
Retail Portfolio Management
Legal HDFC Bank House
Behind Bombay Hospital
Brilliant Avenue
2nd Floor, Scheme No.94
Sector B, Ring Road
Indore-452 010
2. Edelweiss Financial Services Ltd.
Having its office at:
Tower 3, Wing B
Kohinoor City Mall
Kohinoor City Kirod Road
Kurla West
Mumbai-400 070
3. Indusland Bank Ltd.
Having its office at:
C 201, 2nd Floor
Business Square
Opp. Kanakiya Mall Street
Chakala Andheri East
Mumbai-400 093
4. India Bulls Housing Finance Ltd.
Having its office at:
IndiaBulls House
448-451, Udyog Vihar
Phase-V
Gurugram-122 016
Haryana

..... Respondents



Order delivered on 23rd April 2021.

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
and
Hon'ble Mr. Virendra Kumar Gupta, Member (T).**

Appearance:

For the Applicant : Mr. Atul Sharma, Advocate.

ORDER

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

1. The instant application is filed, under Section 12(3) read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 along with Rule 11 of National Company Law Tribunal Rules, 2016, by the Resolution Professional, namely, CA Bhavi Shreyans Shah, being the Resolution Professional (RP) of M/s. Brain Master's Classes Private Limited (hereinafter referred as Corporate Debtor), seeking exclusion of 538 days (from 20.07.2019 to 08.01.2021) i.e. from the date of appointment of erstwhile RP to the date of appointment of the present applicant as the RP of the Corporate Debtor from the prescribed CIRP Period.
2. The brief fact of the case is as under:-

2.1 Mr. Sanjay Kumar (Operational Creditor) had filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as 'IB Code') for initiating Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Brain Master's Classes Private Limited (hereinafter referred as 'Corporate Debtor'), before this Bench. The said application was admitted by this Adjudicating Authority on 14.06.2019 appointing Mr. Sunil Kumar

Agrawal, as an Interim Resolution Professional (IRP) in respect of the Corporate Debtor company, for taking necessary steps in accordance with the provisions of the IB Code.

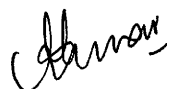
2.2 That the IRP had made public announcement as per Section 15 of the IB Code on 20.06.2019 for inviting claims from all the creditors.

2.3 That the IRP convened the first meeting of the Committee of Creditors (hereinafter referred as CoC) on 20.07.2019 and members of the CoC resolved to appoint the IRP as the Resolution Professional.

2.4 That the 2nd CoC meeting was held on 19.08.2019, and in the said meeting, the RP apprised the members of the CoC to carry out the valuation of categories, viz., Land and Building, Plant & Machinery and Financial Assets by appointing 2 valuers in each category as per the valuation norms of the IBBI, but since there are no such assets of the Corporate Debtor in the first categories, the erstwhile RP suggested to appoint only 2 valuers to do the brand valuation of the security and financial assets. That the erstwhile RP also explained the CoC about the EoI and RFRP process and the documents required therein.

2.5 That, pursuant to resolution passed in the 2nd CoC meeting dated 19.08.2019, the erstwhile RP had filed an application under Section 19 and Section 66 of the Code, against the Suspended Directors of the corporate Debtor, which was listed on 08.01.2019 before this Tribunal.

- 2.6 That, in the 3rd CoC meeting dated 23.09.2019, the erstwhile RP requested the CoC members to appoint two valuers from the panel for valuation of security and financial assets for which the members replied that they shall appoint and reply to the erstwhile RP within a week and if CoC fails to appoint then the erstwhile RP shall appoint the same.
- 2.7 That the 4th CoC meeting was held on 13.11.2019. Pursuant to resolution passed in the 4th CoC meeting, the RP filed application, under Section 12 of the Code for extension of CIRP period beyond 180 days for a period of 90 days, the said application was allowed by this Tribunal on 12.12.2019 on a prayer made by the erstwhile RP that CoC may get some Resolution Plan, if the period is extended.
- 2.8 That the 5th CoC meeting was held on 02.01.2020 and the erstwhile RP informed the members of the CoC that Form G will be published as the order is passed in relation to Section 19 and Section 66 application.
- 2.9 That the CoC in its 6th meeting dated 10.09.2020 unanimously resolved to replace the erstwhile RP and appoint applicant as the RP. This Tribunal vide order dated 08.01.2021, passed in IA 168 of 2020, approved the appointment of applicant as the RP of the Corporate Debtor.
- 2.10 It is submitted by the RP that in the 7th CoC meeting dated 18.01.2021, the applicant apprised the members about the appointment of applicant as the RP. That, in the said meeting, the members of the CoC informed the RP about the non-performance of duties by the erstwhile RP.



That the applicant has reproduced the relevant portion of the minutes, in the instant application. For the sake of brevity, the same is reproduced herein below:

- i) The erstwhile RP failed to publish Form G, not shared Information Memorandum with the members of the CoC and has not appointed valuers which is required to be done under the provisions of the Insolvency & Bankruptcy Code, 2016 (IBC, 2016).
- ii) The members of CoC informed that the erstwhile RP had mentioned in minutes of CoC that members of CoC has approved non-publication of Form G till the final order is pronounced by the Hon'ble NCLT, Indore Bench, in the application under Section 19 and Section 66 of the IBC, 2016; however, the members of the CoC clarified that they only told to hold the publication for the time being and update in the next meeting. Thus it was the duty of the RP to intimate the CoC that Form G cannot be kept on hold for long time, which was not done by the erstwhile RP.
- iii) The members of CoC also stated that erstwhile RP informed that no valuers are required to be appointed as there are no assets in the Corporate Debtor.
- iv) The members of the CoC stated to the Applicant that the erstwhile RP did not conduct CoC meeting for around 8 months on the ground of Covid-19 pandemic. Later on, the erstwhile RP conducted CoC meeting only after the members of the CoC strongly insisted to hold the same on 10.09.2020. However, the erstwhile RP was conducting CoC in his other CIRP cases.

2.11 It is further submitted that the CIRP period of 270 days expired on 10.03.2020. However, no further extension of CIRP period has been filed by the erstwhile RP because of the pandemic scenario and as per the notifications / circulars issued by the IBBI, President (NCLT) all the filings were suspended and filing counters were closed.

2.12 It is further submitted by the RP that the Hon'ble NCLAT has also passed direction on 30.03.2020, for exclusion of period of Lockdown announced by the Central Government, for the purpose of calculation of the period of Corporate Insolvency Resolution Process.

2.13 It is further contended that, the IBBI vide its notification dated 20.04.2020, has also made a suitable amendment in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, by inserting a new clause in the regulation (i.e. Regulation 40C) that provides for exclusion of period of lockdown imposed by the Central Government, in the wake of Covid-19 outbreak from the computation of timelines for CIRP, which could not be completed due to such lockdown situation.

2.14 It is also submitted that, the State of Government has further extended the lockdown in Madhya Pradesh with certain direction/s for lifting the restriction in phased manner during such Lockdown due to which there was hindrance in conducting the CIR Process.

3. Heard learned lawyer for the applicant and also gone through the records.

4. It is a matter of record that CP (IB) 229 of 2019 was admitted on 14.06.2019 and after completion of 180 days, CoC in its meeting



dated 13th November, 2019 resolved to get extended the period of CIRP and, accordingly, an application, under Section 12 of the IB Code, is filed for extension of 90 days beyond 180 days. The said application was allowed by this Adjudicating Authority on 12.12.2019. Copy of the said order is annexed with the application as Annexure-L. In view of that, CIRP period of 270 days was expired on 10.03.2020, i.e. before imposing nationwide Lockdown (started from 23.03.2020 to 31.05.2020) by the Government, due to Covid-19 Pandemic. Thereafter, so far, no application was filed for further extension on any ground.

5. It is pertinent to mention herein that the time is sacrosanct in the IB Code. The CIRP period of 270 days was expired on 10.03.2020, that is much prior to the Lockdown period. Hence, RP was supposed to file an application either for approving Resolution Plan or Liquidation application for the liquidation of the corporate debtor company. However, the erstwhile RP and CoC totally failed to do so. It is also to be mentioned herein that, if at all, the RP was not performing his duties in accordance with the provisions of the IB Code, as alleged by the present applicant / RP, in that event, CoC could have filed an application before expiry of 270 days, i.e. on or before 10.03.2020, for replacing the erstwhile RP. It seems that the members of the CoC deliberately not taken any steps, so as, to replace the erstwhile RP, if at all, they are not satisfied. It is pertinent to mention herein that an application for replacement of RP was filed after expiry of more than seven months of CIRP period of 270 days, when as per provision there was no

CoC, in view of completion of 270 days and / or any steps taken for extension of further time, before moving an application for replacement of erstwhile RP.

6. On going through the record, it appears that the CoC has not taken any efficient measures to complete the CIRP of the Corporate Debtor Company. Rather suppressing all the facts, the CoC has filed an IA, under Section 27 of the Insolvency and Bankruptcy Code, 2016, on 09.11.2020, bearing No. IA 168 of 2020, for replacement of the erstwhile RP, namely, Mr. Sunil Kumar Agrawal, that too after expiry of 270 days on 10.03.2020.

7. It is to be mentioned herein that, when 270 days of CIRP was expired on 10.03.2020 itself, the CoC on 09.11.2020 realised that RP is required to be replaced when there is no CoC due to want of any further extension of time beyond 270 days. It is a serious lapse on the part of CoC, now after lapse of one year, when CIRP period is expired on 10.03.2020 itself, CoC has passed resolution for extension of time showing the negligence on the part of the erstwhile RP. That itself shows that CoC was not vigilant at the time of CIR process of the corporate debtor company and, now at a belated stage, they have woke-up and alleging, *inter alia*, that due to lapse on the part of the erstwhile RP, CIRP of the corporate debtor company could not be concluded.

8. On perusal of the pleadings, it is found that the applicant has given total allegation on the erstwhile RP with regard to his deficiency in discharge of his duties. On the other hand, on perusal



of the record it is found that, CoC meetings are being conducted from time to time without any allegation(s) upon the erstwhile RP. Further, on perusal of the pleadings, the applicant has given sequence of the meetings and, that apart, admittedly, the erstwhile RP on 06.12.2019 filed report with this Bench, certifying the reconstitution of CoC.

9. On perusal of the application, it is found that the applicant has taken the plea of Lockdown, that apart, in paragraph-15 of the application, it is specifically stated that, ***“due to outbreak of the Covid-19 pandemic, Central Government imposed unprecedented lockdown in the country from 24.03.2020 to 31.05.2020. Further, Hon’ble NCALT was also pleased to issue a direction for exclusion of period of Lockdown announced by the Central Government, for the purpose of calculation of the period of Corporate Insolvency Resolution Process”***. Admittedly, there was Lockdown from 24.03.2020 to 31.05.2020, but in the instant matter CIRP was expired on 10.03.2020 itself, i.e. much prior to Lockdown. However, the CoC never filed any application for replacement of erstwhile RP, if the RP was not working / performing his duty properly. The CoC not even approached this Bench for extension of time beyond 270 days at any point of time after 10.03.2020, when CIRP was expired. Even after, 68 days of Lockdown is excluded, then even the CoC is supposed to file application for replacement of RP immediately after 31st May 2020, which has not done by the CoC.

10. However, on perusal of the record, it is found that the applicant has prayed for exemption of 538 days i.e. from 20.07.2019 till 08.01.2021 (including lockdown period), for which no relevant explanation has been given. However, the applicant has cited one judgement of Hon'ble NCLAT, in the matter of **Quinn Logistics India Pvt. Ltd. vs. Mack Soft Tech Pvt. Ltd.**, wherein the Hon'ble NCLAT has given certain grounds, for excluding time from counting of the total periods of 270 days, same is reproduced herein below, for the sake of brevity:-

- i) *If the corporate insolvency resolution process is stayed by a court of law or the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court.*
- ii) *If no 'Resolution Professional' is functioning for one or other reason during the corporate insolvency resolution process, such as removal.*
- iii) *The period between the date of order of admission / moratorium is passed and the actual date on which the 'Resolution Professional' takes charge for completing the corporate insolvency resolution process.*
- iv) *On hearing a case, if order is reserved by the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court and finally pass order enabling the 'Resolution Professional' to complete the corporate insolvency resolution process.*
- v) *If the corporate insolvency resolution process is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reserved by the Hon'ble Supreme Court and corporate insolvency resolution process is restored.*
- vi) *Any other circumstances which justifies exclusion of certain period.*

On perusal of the above said grounds, it can be deduced that none of the aforesaid grounds is attracted in the instant case nor any bonafide is shown by the CoC/RP. In the instant application, the



applicant has taken the plea that the filing counters were closed. This plea is not maintainable, in as much as, the counters were opened from 1st week of June, 2020 onwards, i.e. after lifting of lockdown.

11. Admittedly, the CoC has replaced the erstwhile RP with the applicant / RP after completion of 574 days of the CIRP period. It is needless to mention herein that the IB Code provides that in any case the CIRP period cannot be exceeded beyond the outer limit of 330 days. However, the Hon'ble Supreme Court has extended in some matter, but those are under exceptional circumstances, whereas, in this matter there is / are no such exceptional circumstance(s), in as much as, CoC as well as erstwhile RP acted in a very casual manner, taking everything as granted and after completion of more than 485 days of CIRP period, CoC filed an application for replacement of RP and, thereafter, the instant application for exclusion of 538 days.

12. It is pertinent to mention herein that, while an application, bearing No. IA 168 of 2020, is filed on 02.11.2020 for replacement of erstwhile RP with the instant applicant/RP, the CoC has not made any prayer for extension of time, though as on date of filing of IA 168 of 2020 for replacement of RP, more than 485 days is passed after initiation of CIRP period. Admittedly, on the date of appointment of the instant applicant more than 574 days have already been completed. The said fact is suppressed in IA 168 of 2020 and, consequent upon which, without extension of CIRP



period, the CoC got succeeded in replacement of the erstwhile RP, which is against the objective of IBC.

13. On perusal of the record, it is found that, though the allegation has been given upon the erstwhile RP, it appears that CoC time to time convened its meetings and have never raised any dissatisfaction with regard to the conduct of the erstwhile RP or had there been lapse on the part of the erstwhile RP, in that event, why CoC is tight lipped, so long, when the time is sacrosanct of the IB Code and has to be completed within the stipulated time not beyond the outer limit of 330 days as provided in Section 12 (3) of IB Code, as also observed by the Hon'ble Apex Court on a number of occasions. For the sake of convenience, Section 12(3) of the IB Code is reproduced herein below:-

- (3) *On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:*

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.

Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor

14. More so, there is no whisper by the CoC or the applicant that there is any possibility of getting viable Resolution Plan. Further, if the prayer made in the instant application is allowed, i.e. exclusion of period of 538 days, in that event, it is nothing more than restarting of CIRP process, which is not permissible in the Code.
15. On perusal of the record, it appears that due to the negligence on the part of CoC as well as RP, the corporate debtor is pushed into liquidation.
16. Under such circumstances, the instant application so filed by the applicant / RP, is bad in the eye of law. Hence, exclusion of time period from Corporate Insolvency Resolution Process of the Corporate Debtor, i.e., M/s. Brain Master's Classes Private Limited, for a period of 538 days (including the Lockdown Period) i.e. from 20.07.2019 till 31.01.2021 i.e. from appointment of erstwhile RP to the appointment of the applicant as the RP of the Corporate Debtor, cannot be allowed as that would be not only beyond the provisions of law.
17. In view of the above, this is a fit case for Liquidation. Accordingly, this Tribunal pass the following order / directions:-
- 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) **Mr. Navin Khandelwal**, having Registration No. IBBI/IPA-001/IP-P00703/2017-2018/11301, having address at: 206, Navneet Plaza, 5/2 Old Palasia, Indore-452 018, Email ID: navink25@yahoo.com is hereby



appointed as Liquidator of the Corporate Debtor Company.

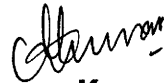
- c) The RP is directed to handover all the documents / record to the Liquidator.**
- d) The Liquidator is further directed to issue public announcement stating that the Corporate Debtor is in liquidation.
- e) The Liquidator is required to send certified copy of this order to the authority with which the Corporate Debtor is registered.
- f) 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.
- g) 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.
- h) 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.
- i) 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.
- j) 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.
- k) 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.
- l) 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.

18. Accordingly, the instant IA is disposed of with the above
observations / directions.
19. No order as to costs.



Virendra Kumar Gupta
Adjudicating Authority &
Member (Technical)



Manorama Kumari
Adjudicating Authority &
Member (Judicial)

Sudha