

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

**IA 423 of 2020 in CP(IB) 188/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 01.09.2020**

Name of the Company: Ritesh Prakash Adatiya IRP of Electra  
Accumulators Ltd

Section : 12(2) of IBC, 2016

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

**ORDER**

IRP, Mr. Ritesh Adatiya appeared in person.

- 1) This application is filed under section 12(2) of the IB Code by the IRP Mr. Ritesh Prakash Adatiya with the following prayer:

*To extend the time period of Corporate Insolvency Resolution Process by 90 days as under section 12(2) of the IB Code, 2016.*

The C.P.(I.B.) 188/2019 was admitted on 16.09.2019 and accordingly Mr. Ritesh Prakash Adatiya was appointed as IRP.

- 2) It is a matter of record that 180 days expired on 16.03.2020. It is submitted by the IRP (erstwhile) that COC has been constituted and there is only sole COC member i.e. Union Bank of India. It is also a matter of record that Applicant (erstwhile IRP) vide order dated 29.05.2020 was replaced by RP Mr. Mahesh Chand Gupta.

*Shoekha Gupta*

*Manorama*

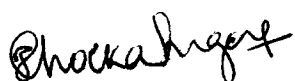
- 3) Now, the instant application is filed by the erstwhile IRP when he has already been replaced. Admittedly, he has no locus standi to file the application for extension of time for further 90 days beyond 180 days. It is also a matter of record that 180 days expired on 16.03.2020, however, the Applicant (erstwhile IRP) have not produced any resolution with regard to extension of time for further 90 days beyond 180 days. It is strange that when RP has already been appointed vide order dated 29.05.2020, how erstwhile RP will move this application for extension of time.
- 4) On perusal of record, it is found that instant application is filed after three months of expiring of 180 days of CIRP, thereby by 90 days have already been consumed for the fault of IRP as well as RP, as both of them have never made any endeavour to perform their duty as provided in the IB Code.
- 5) It is to be mention herein that 330 days of outer limit has also been expired as provided under section 12(3) of the IB Code. The instant application is ought to be filed sometime in the month of March, 2020 i.e before expiry of 180 days. It is fact that till date no EOI has been invited, either by IRP or by RP, even after laps of 330 days.
- 6) Now IRP is requesting for further extension of 90 days by filing this application when he does not hold any locus standi to file the instant application.

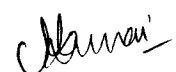
Under such circumstances, this Adjudicating Authority is constrained to pass any order with regard to the extension of time as the very application is void ab initio.

- 7) It is very strange that IRP and RP till date has not done anything and have not taken any endeavour to save the company from its death, rather the application which ought to be filed by the RP has been filed by the erstwhile IRP, the reason best known to him. To justify their fault, the IRP submitted that one IA application filed against the Dy. Commissioner Tax was pending before this Adjudicating Authority, as such, till its disposal IRP could not file the application for extension of time.

On perusal of the records, it is found that the said application was disposed off on 02.01.2020 and the CIRP expired on 16.03.2020. Therefore, the excuses shown by the IRP are mere eyewash. Even if, it is assumed any IA is pending before this Adjudicating Authority during the CIRP, but then even if 180 days is going to expire, it is the primary duty of the IRP/RP to get the resolution passed by the COC and get the time extended for another 90 days without any further delay, looking to the essence of the time as enshrined in the IB Code. During the course of arguments, the IRP could not able to explain the delay in filing the instant application for extension of time, however, during the course of video conferencing, Mr. Mahesh Chand Gupta, RP also shown his appearance in person and submitted that, "***I have asked the IRP to file the instant application because during the relevant time, IRP was working***". It is difficult to understand by saying this what RP is trying to justify?

- 8) The very objective of the IB Code is to bring the resolution and in the event of failure the Company shall go for liquidation. But in the instant matter neither IRP, Mr. Ritesh Prakash Adatiya and nor on replacement by Mr. Mahesh Chand





Gupta on 29.05.2020 has taken any steps to revive the company or have passed any resolution. There is no proof of making any paper publication or inviting any claim, as report of CIRP has not been filed.

Under such circumstances, the company is compelled to go for automatic liquidation for the conduct of IRP as well as RP. It is very sad affair that even after taking the assignment, the IRP and RP has totally failed to perform their duties save and except bring the company to its death.

- 9) Since, the IRP has no locus standi to maintain this application, we are constrained to pass the order for extension of any time and accordingly, the instant application is dismissed.
- 10) The Registry is directed to issue notice to the COC along with this order for their appearance on 07.09.2020 calling for the reports of CIRP and/or any resolution passed so far.
- 11) Registry is also directed to send copy of this order to IBBI for information and appropriate action therein.



**CHOCKALINGAM THIRUNAVUKKARASU**  
**MEMBER TECHNICAL**

Dated this the 1st day of September, 2020



**MANORAMA KUMARI**  
**MEMBER JUDICIAL**