

financial buyers / investors for resolution of the corporate debtor company and even Kotak Mahindra Bank too extended all the possible cooperation to the corporate debtor. However, erstwhile management could not find any buyers/investors. Under such circumstances, the CoC has compelled to decide to go for liquidation and accordingly passed resolution on 19.11.2020 in its 2nd meeting, wherein members of CoC has voted 100% in favour of the liquidation of the corporate debtor company. The said copy of the Minutes of Meeting has annexed at page no. 199 of the instant application.

- 4) Gone through the record and also seen the documents annexed herein. It is found that the members of the CoC as well as Suspended Management is present in the 2nd meeting and RP has also chaired the meeting, wherein resolution was passed for taking the company under liquidation.
- 5) Since the CoC has taken its decision based on the commercial wisdom with 100% voting in favour of the liquidation, as such, this Adjudicating Authority is of the opinion that the company may be allowed to go for liquidation, under such circumstances.
- 6) It is also pertinent to mention herein that recently the 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.

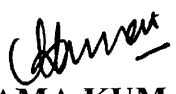
- 7) Under the facts and circumstances as narrated hereinabove, this Bench allows the instant application, with following observations:-
 - a) The moratorium declared under Section 14 of the IB Code shall cease to have effect from the date of the order of liquidation.





- 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.
- 8) The RP appointed for the CIRP, shall act as the Liquidator for the purpose of liquidation of the Corporate Debtor.
- 9) Accordingly, the instant IA is allowed and disposed of with the above observations.


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)


MANORAMA KUMARI
MEMBER (JUDICIAL)

Dated this the 4th day of December, 2020.