

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

83
12/02/2021

IA 919 of 2020 in CP(IB) 82/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 05.02.2021**

Name of the Company: Akhilkumar Thakkar RP of Pioneer
Globex Pvt Ltd
V/s
Narendrakumar Jayantilal Shah & Anr
Section 33 of IBC, 2016.

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

ORDER
(Through Video Conferencing)

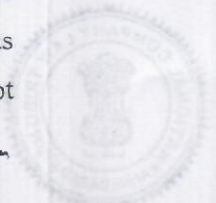
Advocate, Mr. Pratik Thakkar appeared on behalf of Applicant.

- 1) The instant application is filed under section 33 of the IB Code, 2016.
- 2) It is a matter of record that the C.P.(I.B) No. 82/2018 was admitted on 20.01.2020. In view of such admission the IRP, Mr. Sunil Kumar Agarwal is appointed and thereafter, Mr. Akhil Kumar Thakkar is appointed as RP replacing the IRP and has made deliberations to invite EOI but due to want of documents i.e. the Financial Statement of the Corporate Debtor from F.Y. 2018-19, the EOI could not be invited. Even the Suspended Management has not provided Audited Balance Report. Even in the ROC office it was not



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available, as such the applicant has filed an application being IA No. 561/2020, in C.P.(I.B) No. 82/2018 under section 19 of the code before this bench, but despite numerous order directing the Suspended Management to furnish the latest Audited Balance Report, the Suspended Management has failed to furnish the same. The applicant has also annexed the copy of each order passed in IA 561/2020 along with instant application.

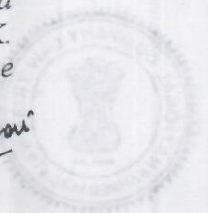
- 3) It is also a matter of record and conceded by the Learned Lawyer appeared on behalf of the COC that after filing the application under section 33 of the IB Code the Suspended Management has provided the documents, when the total period of CIRP has been completed.
- 4) Looking to the object of the IB Code, at this stage when the Suspended Management himself is not cooperating, as such, we cannot reverse the clock for initiating further CIRP, which will be against IB Code.
- 5) Under such circumstances, no alternative remains than to liquidate the applicant company and accordingly, the COC has passed its resolution on 15.12.2020 as reflected from **Annexure-F, page-39** i.e. the Minutes of 6th meeting of the COC.
- 6) On perusal of the Minutes of Meeting, it is found that one Mr. Hardik Shah on behalf of Suspended Management was present. There is 100% voting of the COC in favour of the liquidation.
- 7) The Learned Lawyer appeared on behalf of the RP fairly submitted that there is no consent of the RP to continue as Liquidator, hence, independent Liquidator can be appointed.
- 8) In view of the above situation, 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



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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.

- 9) 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.
 - 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

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10) Hence, the application so filed by the RP is allowed and in the circumstances, the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33 of the IB Code, 2016. PCA, Mr. Manish Kumar Bhagat, having Registration Number IBBI/IPA-001/IP-P00856/2017-18/11438 is appointed as the Liquidator for the purpose of liquidation of the Corporate Debtor.

11) Accordingly, the instant IA stands disposed of with the above observations.

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CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 05th day of February, 2020

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MANORAMA KUMARI
MEMBER JUDICIAL

