

105-118

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

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**  
**Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF  
THE NATIONAL COMPANY LAW TRIBUNAL ON 26.07.2019**

- 1. IA 435 /2019 in/with C.P. (I.B) No. 248/NCLT/AHM/2018**  
Manish Kanubhai Raval Proprietor of Divya Packaging V/s Abhishek Nagori RP for Osaka Pharmaceuticals Pvt. Ltd.
- 2. IA 436 /2019 in/with C.P. (I.B) No. 248/NCLT/AHM/2018**  
Shell & Seals V/s Abhishek Nagori RP for Osaka Pharmaceuticals Pvt. Ltd.
- 3. IA 437 /2019 in/with C.P. (I.B) No. 248/NCLT/AHM/2018**  
Classic Print V/s Abhishek Nagori RP for Osaka Pharmaceuticals Pvt. Ltd.
- 4. IA 438 /2019 in/with C.P. (I.B) No. 248/NCLT/AHM/2018**  
Rajesh P Patil Proprietor of Krishnaraj Enterprises V/s Abhishek Nagori RP for Osaka Pharmaceuticals Pvt. Ltd.
- 5. IA 440 /2019 in/with C.P. (I.B) No. 248/NCLT/AHM/2018**  
Galpa Laboratories V/s Abhishek Nagori RP for Osaka Pharmaceuticals Pvt. Ltd.
- 6. IA 343 /2019 in/with C.P. (I.B) No. 248/NCLT/AHM/2018**  
Pharmica V/s Abhishek Nagori RP for Osaka Pharmaceuticals Pvt. Ltd.
- 7. IA 344 /2019 in/with C.P. (I.B) No. 248/NCLT/AHM/2018**  
Devang Shah Proprietor of Daksh Medicare V/s Abhishek Nagori RP for Osaka Pharmaceuticals Pvt. Ltd.
- 8. IA 345 /2019 in/with C.P. (I.B) No. 248/NCLT/AHM/2018**  
Chemisol Complex V/s Abhishek Nagori RP for Osaka Pharmaceuticals Pvt. Ltd.
- 9. IA 346 /2019 in/with C.P. (I.B) No. 248/NCLT/AHM/2018**  
Rainbow Printing Press V/s Abhishek Nagori RP for Osaka Pharmaceuticals Pvt. Ltd.
- 10. IA 380 /2019 in/with C.P. (I.B) No. 248/NCLT/AHM/2018**  
Spansules Pharmatech (P) Ltd. V/s Abhishek Nagori RP for Osaka Pharmaceuticals Pvt. Ltd.

**11. IA 381 /2019 in/with C.P. (I.B) No. 248/NCLT/AHM/2018**

Saga Elastomer Pvt. Ltd. V/s Abhishek Nagori RP for Osaka Pharmaceuticals Pvt. Ltd.

**12. IA 382 /2019 in/with C.P. (I.B) No. 248/NCLT/AHM/2018**

Ishan Industries V/s Abhishek Nagori RP for Osaka Pharmaceuticals Pvt. Ltd.

**13. IA 383 /2019 in/with C.P. (I.B) No. 248/NCLT/AHM/2018**




Kamlesh K Patel (Proprietor) of Maa Print Pack V/s Abhishek Nagori RP for Osaka Pharmaceuticals Pvt. Ltd.

**14. IA 384 /2019 in/with C.P. (I.B) No. 248/NCLT/AHM/2018**

Western Pharma V/s Abhishek Nagori RP for Osaka Pharmaceuticals Pvt. Ltd.

Section of the Companies Act: Section 60(5) of the Insolvency and Bankruptcy Code


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

1. ISHAN SHAH <del>IA 435 of 2019 in</del> 2. IA 435 of 2019 in CPCIR 248 of 18 (SR No. 105)	Adv.	Petitioner	
VISHAL RAVAL } Adv HIZRA RAVAL } (Ser No. 2, 3, 4, 6 to 14)	Adv	App <sup>t</sup>	
2. AKSHAT KHARE (ser no. 110 to 118). & IA NO. 343/19 to 384/19.)	Advocate	RP	


**ORDER**

The parties are represented through their respective learned counsels.

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

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

Dated this the 26th day of July, 2019

  
**HARIHAR PRAKASH CHATURVEDI**  
**MEMBER JUDICIAL**

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

I.A. No. 343 of 2019  
with  
IA No. 344 of 2019  
with  
I.A. No. 345 of 2019  
with  
I.A. No. 346 of 2019  
with  
I.A. No. 380 of 2019  
with  
I.A. No. 381 of 2019  
with  
I.A. No. 382 of 2019  
with  
I.A. No. 383 of 2019  
with  
I.A. No. 384 of 2019  
with  
I.A. No. 435 of 2019  
with  
I.A. No. 436 of 2019  
with  
I.A. No. 437 of 2019  
with  
I.A. No. 438 of 2019  
with  
I.A. No. 440 of 2019  
in  
CP(IB) No. 248 of 2018

**In the matter of:**

**IA 343/2019**

Pharmica

...Applicant

**Versus**

Mr. Abhishek Nagori,  
Resolution Professional,  
Osaka Pharmaceuticals Pvt. Ltd.,

...Respondent

**IA 344/2019**

Devang Shah,  
Proprietor,  
Daksh Medicare

...Applicant

**Versus**

*Abhishek Nagori*

*Devang Shah*

Mr. Abhishek Nagori,  
Resolution Professional,  
Osaka Pharmaceuticals Pvt. Ltd.,

...Respondent

**IA 345/2019**

Chemisol Complex

...Applicant

**Versus**

Mr. Abhishek Nagori,  
Resolution Professional,  
Osaka Pharmaceuticals Pvt. Ltd.,

...Respondent

**IA 346/2019**

Rainbow Printing Press

...Applicant

**Versus**

Mr. Abhishek Nagori,  
Resolution Professional,  
Osaka Pharmaceuticals Pvt. Ltd.,

...Respondent

**IA 380/2019**

Spansules Pharmatech (P) Ltd.,  
...Applicant

**Versus**

Mr. Abhishek Nagori,  
Resolution Professional,  
Osaka Pharmaceuticals Pvt. Ltd.,

...Respondent

**IA 381/2019**

Saga Elastomer P. Ltd., Pharmica

...Applicant

**Versus**

Mr. Abhishek Nagori,  
Resolution Professional,  
Osaka Pharmaceuticals Pvt. Ltd.,

...Respondent

**IA 382/2019**

Ishan Industries,

...Applicant

*Chandra*

**Versus**

Mr. Abhishek Nagori,  
Resolution Professional,  
Osaka Pharmaceuticals Pvt. Ltd.,

...Respondent

**IA 383/2019**

Kamlesh K Patel,  
Proprietor,  
Maa Print Pack

...Applicant

**Versus**

Mr. Abhishek Nagori,  
Resolution Professional,  
Osaka Pharmaceuticals Pvt. Ltd.,

...Respondent

**IA 384/2019**

Western Pharma

...Applicant

**Versus**

Mr. Abhishek Nagori,  
Resolution Professional,  
Osaka Pharmaceuticals Pvt. Ltd.,

...Respondent

**IA 435/2019**

Manish Kanubhai Raval,  
Proprietor,  
Divya Packaging

...Applicant

**Versus**

Mr. Abhishek Nagori,  
Resolution Professional,  
Osaka Pharmaceuticals Pvt. Ltd.,

...Respondent

**IA 436/2019**

Shell & Seals,

...Applicant

**Versus**

Mr. Abhishek Nagori,  
Resolution Professional,  
Osaka Pharmaceuticals Pvt. Ltd.,

...Respondent

**IA 437/2019**

Classic Print

...Applicant

*Abhishek Nagori*

*W*

**Versus**

Mr. Abhishek Nagori,  
Resolution Professional,  
Osaka Pharmaceuticals Pvt. Ltd.,

...Respondent

**IA 438/2019**

Rajesh P Patil,  
Prop.  
Krishnaraj Enterprises

...Applicant

**Versus**

Mr. Abhishek Nagori,  
Resolution Professional,  
Osaka Pharmaceuticals Pvt. Ltd.,

...Respondent

**IA 440/2019**

Galpha Laboratorties Ltd.  
...Applicant

**Versus**

Mr. Abhishek Nagori,  
Resolution Professional,  
Osaka Pharmaceuticals Pvt. Ltd.,

...Respondent

**in**

**CP(IB) No. 248 of 2018**

Western Pharma

...Applicant

**Vs.**

Resolution Professional,  
Osaka Pharmaceuticals Pvt. Ltd.

...Respondent

**Order delivered on 26<sup>th</sup> July, 2019**

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)  
Hon'ble Ms. Manorama Kumari, Member (Judicial)**

**Appearance in I.A. No. 343/344/345/346/380/381/382/383/384 of 2019**

Advocate Mr. Akshat Khare with Damini Purohit for the RP. Advocate Hina Raval and Vishal Raval for the Applicant. Advocate Purvi Dave for the Respondent.

**Appearance in I.A. No. 435 of 2019**

Advocate Mr. Akshat Khare for the RP. Advocate Ishan Shah for the Applicant.

*Manor*

**Appearance in I.A. No. 436/437/438 of 2019**

Advocate Mr. Akshat Khare for the RP. Advocate Hina Raval and Vishal Raval for the Applicant. Advocate Purvi Dave for the Respondent.

**Appearance in I.A. No. 440 of 2019**

Advocate Mr. Akshat Khare for the RP. Advocate Anshul Jain for the Applicant.

**Appearance in CP(IB) No. 248 of 2018**

PCA Komal Majmudar for the Petitioner. PCS Mr. Ashish Doshi for the Respondent.

**COMMON ORDER**

**[Ms. Manorama Kumari, Member (Judicial)]**

- 1.1 CP(IB)No. 248/2018 was filed by the Proprietor of M/s Western Pharma under section 9 of the Insolvency and Bankruptcy Code, 2016 hereinafter referred to as IB Code, read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authorities) Rules, 2016 seeking reliefs under section 9 of the IB Code in respect of M/s. Osaka Pharmaceuticals Private Limited, a company having its registered office at Ahkarba, Dist. Baroda treating as a Corporate Debtor.
- 1.2 This Adjudicating Authority admitted the said CP(IB) No. 248/2017 on 10.10.2018 and appointed Shri Hiten M. Parikh, as the Interim Resolution Professional (hereinafter referred to as "IRP"). However, CoC, in its first meeting held on 12.11.2018 replaced the IRP, so appointed by this Adjudicating Authority, unanimously and appointed Mr. Abhishek Nagori, as the Resolution Professional, hereinafter referred to as "RP".
- 1.3 In the meantime, the IRP, so appointed by this Adjudicating Authority, has already made public announcement on 15.10.2018 calling upon the claims from the creditors in view of the order dated 11.10.2018 of this Adjudicating Authority.
2. The RP of the Corporate Debtor Company, in the meantime, has filed IA No. 439 of 2019 in Company Petition (IB) No. 248 of 2018 for liquidation of the Corporate Debtor Company Osaka Pharmaceuticals Limited under section 33(1) and 33(2) of the Insolvency and Bankruptcy Code, 2016 and for the appointment of the Liquidator, which is pending for adjudication.

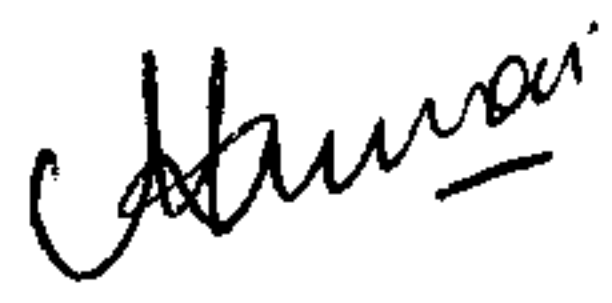
*Manouri*


3. That before filing of the application being IA No. 439 of 2019 under section 33 of the IB Code by RP and during the pendency of the said IA No. 439 of 2019, while the notice was issued to the Suspended Management of the Corporate Debtor company as well as to the CoC, the various Interlocutory Applications as mentioned above in the Title Page being 14 in number, were/are filed by the various Operational Creditors more or less on the flimsy/similar grounds viz. either their claims were not accepted on account of delayed submission or submission of claims not in appropriate forms by the RP.
4. Heard the Ld. Counsels of the above mentioned Interlocutory Applications. On perusal of the records, it is found that RP has rejected the claims of the Operational Creditors as stated above. Thus, before disposal of the IA 439 of 2019 for liquidation of the Corporate Debtor company, it is imperative to dispose of the Interlocutory Applications filed by the various Operational Creditors under section 60(5) of the IB Code.
5. We, the Adjudicating Authority, at this Bench have gone through all the Interlocutory Applications filed by the Operational Creditors as mentioned above and also gone through the judgments passed by the various contemporary authorities as well as by this Bench of this Tribunal. This Adjudicating Authority, is of the considered view, as observed in the case of **Reliance Industries Ltd., Vs. Satish Kumar Gupta, IA No. 54 of 2019 & CP(IB) No. 39** that Resolution Professional is not vested with any adjudicatory power. He is legally expected to collate and verify the claim submitted before him by the various claimants and to place the same before the CoC for proper consideration under the provisions of section 21 and in case, if any need arises for clarification(s)/direction(s), he is expected to approach the Adjudicating Authority under the relevant provisions of the IB Code.
6. Moreover, in the judgment passed by the Hon'ble NCLAT in the matter Arcelor Mittal Vs. Essar Steel India, Operational Creditors are to be treated on a par with Financial Creditors at the time of settling claims.
7. In view of the above referred judgments and the facts and circumstances as above, the Interlocutory Applications so filed by the Applicants/Operational Creditors are allowed. The RP is hereby directed to register the claims of the Applicants in the list of the Operational Creditors/Claims so as to apprise the CoC for its consideration and

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communicate to the Applicants urgently enabling this Bench to consider IA No. 439 of 2019 filed under section 33 of IB Code for liquidation of the Corporate Debtor Company.

8. Accordingly, all the above applications are allowed and stand disposed of. No order as to cost.
9. The RP is further directed to report in IA No. 439 of 2019 which is fixed for hearing on 16.08.2019 for necessary orders for the liquidation of Corporate Debtor Company Osaka Pharmaceuticals Limited.
10. Any other IA(s), if pending, also stand(s) disposed of in view of the above order.

  
**Ms. Manorama Kumari,**  
**Adjudicating Authority**  
**Member (Judicial)**

  
**Harihar Prakash Chaturvedi,**  
**Adjudicating Authority**  
**Member (Judicial)**

**LCT**