

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

**IA 770 of 2020 in CP(IB) 304/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 03.12.2020**

Name of the Company: Pinakin Shah Liquidator of DBS  
Affordable Home Strategy Ltd  
V/s  
Agam Printers Through Its Proprietor  
Samir N Shah  
Section 33 & 34 of IBC, 2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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**ORDER**

Advocate, Ms. Shree M Kotwal appeared on behalf of the Applicant.

- 1) The instant application is filed under section 33 & 34 of the IB Code.
- 2) It is submitted by the Applicant that no EOI has been received till the last date of submission of EOI. COC also deliberated in detail that the Corporate Debtor does not have significant assets except book debts. Therefore, the COC was of the view that the revival and the resolution of the Corporate Debtor was not feasible. Therefore, the liquidation is only the viable option left out to the creditors. COC has also convened the meeting time to time, however, in view of the above, the COC in its 7<sup>th</sup> meeting held on 30.09.2020, decided to send the company under liquidation and accordingly has authorised the RP to file an application for getting order of the liquidation from the Adjudicating Authority.
- 3) On perusal of the resolution so passed by the COC on 30.09.2020, it is found that all the Operational Creditors are present, who are 2 in number. On the date of 7<sup>th</sup> meeting, Mr. Shah Sanjay Rameshchandra on behalf of the Suspended Management was also present.
- 4) On perusal of the records, it is found that, as such there is no objection from any corner and the resolution of the liquidation of the company was passed by

*Shankar Singh*

*Shankar Singh*

members of the Committee of Creditors having 100.00% of voting share. The said fact is reflected from page no. 50 of the Application.

- 5) 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 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.*

- 6) 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.

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



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

Dated this the 3<sup>rd</sup> day of December, 2020



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