



**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**IA (IBC)/22/60(5)/GB/2023
In CP (IB)/20/GB/2021**

Coram:

**Hon'ble Shri Deep Chandra Joshi, Member (J):
Hon'ble Shri Subrata Kumar Dash, Member (T):**

**Hearing through
Video Conference**

**ATTENDANCE-CUM-ORDER SHEET OF HEARING OF THE NATIONAL
COMPANY LAW TRIBUNAL, GUWAHATI BENCH ON 04.08.2023**

In the matter of:

Sapna Singhal
In
(Byrnihat Coal Private Limited
Vs
Sharma and Sons Corporation and others)

Section: Under Section 60(5) of the IBC, 2016

<u>S. NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	MR. A.K MISHRA	Advocate	Applicant	Present in Video Conference.

ORDER

The Parties are represented through respective Learned Counsel(s).

The case is fixed for pronouncement of order.

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

**-Sd-
(Subrata Kumar Dash)
Member (Technical)
& Adjudicating Authority**

**-Sd-
(Deep Chandra Joshi)
Member (Judicial)
& Adjudicating Authority**



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In the matter of:

Sapna Singhal
In
(Byrnihat Coal Private Limited
Vs
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Order Delivered on 04.08.2023

ORDER

[Per: Shri Subrata Kumar Dash, Member (T)]

1. This Application has been filed under Section 60(5) of IBC, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 on behalf of Successful Resolution Applicant of the Corporate Debtor- Mrs. Sapna Singhal, seeking the following reliefs:

- a. Pass an order permitting the name of the proposed Applicant i.e. Mrs. Sapna Singhal, in her capacity as the successful resolution applicant, to be substituted by the name of Mr. Purshottam Gaggar, being the Resolution Professional, as the Applicant, in terms of the pending application under Section 49 of the Code i.e. I.A No. 73/49/GB/2022 and the same be amended at the cause title of the Interlocutory Application with the details of the Petitioner provided at the cause title;
- b. Pass such further and other orders and directions as the nature and circumstances of the case may require and as this Tribunal may deem fit and proper.



2. Brief Summary of the facts as stated by the Applicant are as follows:
 - 2.1 The Petitioner is the Successful Resolution Applicant in respect of the CD i.e. Byrnihat Coal Private Limited. The Resolution Plan submitted by the Petitioner was filed for approval of the Adjudicating Authority, which application was heard and stood allowed in terms of an order dated 10th February, 2023.
 - 2.2 In terms of the approved Resolution Plan and pursuant to Regulation 38(d) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), 2016 inserted pursuant to the Insolvency and Bankruptcy Board of India (Insolvency resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022 which mandated that the instant proceedings filed by the Resolution Professional under Section 49 of the Code, pending consideration of the Adjudicating Authority, shall be pursued by the Resolution Applicant, upon approval of Resolution Plan by the Adjudicating Authority. The approved resolution Plan further states that the proceeds/restoration of transfer of 'shares' received by the CD in terms of the avoidance application filed by the Resolution Professional shall be retained by the CD only and further any order passed in terms of prayer 6.2 in I.A No. 91/30(6)/GB/2022, being the avoidance application, shall be retained exclusively for the Financial Creditors.
 - 2.3 The Resolution Plan has been approved by the Adjudicating Authority vide order dated 10th February, 2023 and in terms of the Resolution Plan, the Petitioner has become the only person legally entitled to pursue and continue the pending avoidance application under Section 49 of the Code in its own name and right and take such other actions as may be required in terms of the instant application with the proceeds thereof being dealt with and distributed in accordance with the terms of the approved Resolution Plan.
 - 2.4 The Petitioner is seeking to have herself impleaded as the Applicant and its name and address be substituted in place and stead of the



Resolution Professional, being the Applicant to the instant avoidance application to enable it to proceed with and continue with the said application before this Adjudicating Authority in terms of the approved Resolution Plan. In the facts and circumstances and for the reasons set out hereinabove, the name of the petitioner together with its address mentioned at the cause title herein fore is required to be substituted in place and stead of the Resolution Professional i.e. Mr. Purshottam Gaggar to enable it to proceed with the instant proceedings against the Respondents.

- 2.5 It has become necessary to amend the application filed in the instant proceedings in order to substitute the name of the name of the petitioner in place of the Resolution Professional i.e. Mr. Purshottam Gaggar and amend the cause title to the instant application, being I.A No. 73/49/GB/2022 in C.P (IB) No. 20/10/GB/2021 pending adjudication before this Tribunal. In view of the above-mentioned facts and circumstances, it is required that the name of the petitioner be substituted in place and stead of the Applicant, being the Resolution Professional and amendment of the Interlocutory Application be made at the cause title to the application filed before this Tribunal and this Tribunal may be pleased to give necessary reliefs as prayed for.
- 2.6 The amendment sought for is a formal one and will not change the nature and character of the instant proceeding.

ORDER

3. Heard the Counsels at length. This Application has been filed under Section 60(5) of IBC, 2016 requesting for passing an order permitting the name of the Applicant i.e. the Successful Resolution Applicant to be substituted in place of the Resolution Professional in IA 73 of 2022 and the said IA 73 of 2022 be amended accordingly.

4. As per the approved resolution, it had been agreed upon that the Successful Resolution Applicant would further pursue IA 73 of 2022 in C.P (IB) No. 20/10/GB/2021 after the approval of the Resolution Plan. Hence, We, as the adjudicating authority do no find any reason to reject the prayers



made in the present application and **therefore prayers made in IA IBC 22 of 2023 in C.P (IB) No. 20/10/GB/2021 is hereby allowed.**

5. The Registry is directed to amend the case title and substitute the name of RP- Mr. Purshotam Gaggar with that of SRA i.e., Mrs. Sapna Singhal in IA IBC 73 OF 2022 in C.P (IB) No. 20/10/GB/2021.

6. Hence, the **IA (IBC)/22/60(5)/GB/2023 stands admitted and disposed of accordingly.**

-Sd-
(Subrata Kumar Dash)
Member (Technical)
& Adjudicating Authority

-Sd-
(Deep Chandra Joshi)
Member (Judicial)
& Adjudicating Authority