

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

IA/268(AHM)2021 in CP(IB) 482 of 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 05.05.2021

Name of the Company: Dharit Kishorbhai Shah
RP for Maktel Power Ltd

Section 33 r.w 34 of the Insolvency and Bankruptcy Code, 2016..

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

1.
2.

ORDER
(through video conferencing)

Mr. Arjun Padiyar, Advocate appeared on behalf of Mr. Atul Sharma, Advocate for the 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. 482/2019 was admitted on 11.09.2019. In view of such admission, Mr. Dharit K Shah was appointed as IRP and thereafter was confirmed as RP.
- 3) The COC in its 8th meeting held on 08.03.2021 resolved to liquidate the Corporate Debtor authorising the RP to file application under Section 33 of the IB Code before this Adjudicating Authority. The copy of minutes of meeting is annexed as **Annexure-L** at page no. 251-275.
- 4) No one appeared on behalf of the Suspended management even after issuance of notice. The Suspended Management is also found absent in the said meeting held on 08.03.2021.
- 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*

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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

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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
- 7) Accordingly, 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 COC in its 8th meeting resolved to appoint RP as Liquidator. Hence, RP, Mr. Dharit Kishorbhai Shah having Registration Number IBBI/IPA-001/IP-P00993/2017-18/11640 is appointed 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 05th day of May, 2021


MANORAMA KUMARI
MEMBER JUDICIAL