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

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IA 758 of 2019 in C.P.(LB) No.181/NCLT/AHM/2019

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 05.12.2019**

Name of the Company: Manish Kumar Bhagat IRP For Atrium
Infocomn Pvt Ltd

Section of the Companies Act : Section 33(1), 33(2), 33(3) of the Insolvency and
Bankruptcy Code.

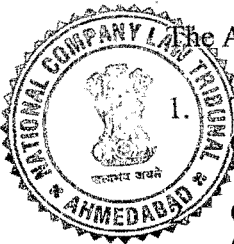
S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Honee Raval Vishal Raval	Adv	App ^t	
2.				

ORDER

The Applicant is represented through learned counsel.

1. The instant application is filed under section 33(1), 33(2), 33(3) of the IB Code on 24.10.2019.

On perusal of the record, it is found that there is an order passed on 08.11.2019 by the erstwhile Division Bench under section 22(3)(b) of the IB Code for replacement of IRP, Mr. Manish Kumar Bhagat with the RP, Mr. Parag Sheth.

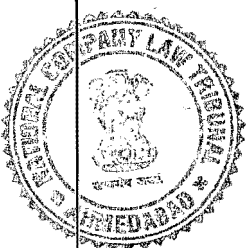


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3. It is a matter of record that application under section 33(1), 33(2), 33(3) of the IB Code was filed on 24.10.2019 on the resolution so passed by the COC having a 100% voting share in favour of the liquidation. On the other hand, the order on the application for replacement of IRP was passed on 08.11.2019, much after the application filed for liquidation by the IRP when IRP/RP become functus officio. It was the duty of conducting lawyers of the COC to apprise the Bench before getting order of replacement of IRP when the IRP/RP already become functus officio.
 4. Heard the arguments of the Applicant on the application filed under section 33 of the IB Code.
 5. It is found that the Committee of Creditors passed resolution in its 3rd meeting dated 01.10.2019, wherein, COC voted in favour of the liquidation vide 100% voting. Since, the decision is taken by the Committee of Creditors, this Adjudicating Authority has no jurisdiction to interfere into the commercial wisdom of the Committee of Creditors in view of the settled position as observed by Hon'ble Supreme Court 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:

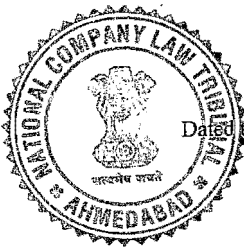
The commercial wisdom of the Committee of Creditors cannot be interfered into by the Adjudicating Authority. The Hon'ble Supreme Court affirmed K. Sashidhar's judgement that neither the Adjudicating Authority nor the Appellate Authority has been endowed with the jurisdiction to reverse the commercial 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 and the ground mentioned in the Application, the Application so filed by the Committee of Creditors is allowed with the following observation:
 - 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.



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- 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
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. This Adjudicating Authority do hereby appoint Mr. Sunil Kumar Agrawal [Registration Number: IBBI/IPA-001/IP-P01390/2018-2019/12178] as liquidator.
8. Accordingly, the instant IA stands disposed of with the above observations.



Dated this the 5th day of December, 2019.

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MANORAMA KUMARI
(MEMBER JUDICIAL)

