

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**I.A.(IB) No. /KB/2020
In
CP (IB) No. 182/KB/2018**

In the matter of:

An application u/s. 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 along with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016;

And

In the matter of:

The Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

And

In the matter of:

M/S. GUJARAT NRE COKE LIMITED (IN LIQUIDATION) represented by the Liquidator Mr. Sumit Binani, Registration No. IBBI/IPA-001/IP-N00005/2016-17/10025 having his office at 4th Floor, Room No. 6, Commerce House, 2A, Ganesh Chandra Avenue, Kolkata 700013;

... **Corporate Debtor**

And

In the matter of:

Mr. Sumit Binani, Liquidator having Registration No. IBBI/IPA-001/IP-N00005/2016-17/10025 having his office at 4th Floor, Room No.6, Commerce House, 2A, Ganesh Chandra Avenue, Kolkata 700013.

... **Liquidator/Applicant**

Counsel appeared through Video Conferencing:

- | | |
|---------------------------------|-------------------------|
| 1. Mr. Sumit Binani, Liquidator |] Self |
| 1. Mr. Ajay Gaggar, Advocate |] Counsel For SBI |
| 2. Mr. Rajesh Chaubey |] Representative of SBI |
| 3. Mr. Dillip Kumar Mohapatra, |] AGM, Law of SBI |

Coram: Shri Jinan K.R., Hon'ble Member (Judicial)
Shri Harish Chander Suri, Hon'ble Member (Technical)

Date of hearing : 17th July, 2020.

Order pronounced on : 17th July, 2020.

ORDER

Per Shri Jinan K.R., Hon'ble Member (Judicial)

1. Mr. Sumit Binani / liquidator of M/S. GUJARAT NRE COKE LIMITED (IN LIQUIDATION) filed the unnumbered interlocutory applications, u/s. 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016, praying for permission to appoint valuers for a second time to conduct re-valuation of the assets of the Corporate Debtor for determining the value as on date.

2. The urgency set out in the unnumbered I.A. has been explained satisfactorily. As lockdown is still continuing due to pandemic COVID-19, the normal operation of NCLT, Kolkata Bench yet to be resumed, the unnumbered I.A. was listed for hearing on today through Video Conferencing (VC) by giving notice from the Registry to the applicant and the respondents with direction to submit their defence, if any.

3. Brief Facts.

4. By an order dated 11/01/2018 passed by this Adjudicating Authority liquidation of the Corporate Debtor was passed appointing the applicant, Mr. Sumit Binani , as the Liquidator, with a direction that the Liquidator shall try to dispose off the Corporate Debtor company as a going concern after publication of notice in newspaper with the reserve price which shall be equal to the total debt amount including interest and maximum period applicable for trying the sale of the Corporate Debtor as a going concern will be only three months from the date of the order, if the process of sale as a going concern is failed during this period then process of the sale of the assets of the company will be according to the

provisions of sale of asset of the Corporate Debtor prescribed under section 33, Chapter VI of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016. In case it is not concluded within this period, the order of this Court directing the sale of the company as a going concern shall stand set aside and corporate debtors to be liquidated in the manner as laid down in Chapter III of the Liquidation Process provided in Insolvency & Bankruptcy Code. Copy of the order dated 11/01/2018 is annexed and marked as Annexure – ‘A’. After the liquidation order was passed, for valuation of the assets of the Corporate Debtor in terms of Regulation 35 of the IBBI (Liquidation Process) Regulations, 2016, Anmol Sekhri Consultants Private Limited was appointed on 01/02/2018 to carry out fresh valuation of the assets of the Corporate Debtor, who submitted their valuation reports on 27/06/2018. The Liquidator had also appointed Multi Engineers Private Limited on 05/02/2018 for carrying out valuation of financial assets of the Corporate Debtor. However, Multi Engineers Private Limited had later on expressed their inability to value financial assets of the Corporate Debtor, which they had initially agreed to. In view of the above, the Liquidator had appointed M. Jhavar & Co. on 20/06/2018 for carrying out valuation of financial assets. M. Jhavar & Co. had submitted their valuation reports on 29/06/2018.

5. Thereafter, between July, 2018 till the judgement and order dated 24/10/2019 was passed, the Liquidator took the steps as provided in law and also in accordance with the various orders of the Adjudicating Authorities from time to time including taking steps to sit with the promoter to propose a scheme of compromise and arrangement as directed by the Hon’ble NCLAT vide interim order dated 01/02/2019.

6. By a judgement and final order dated 24/10/2019 passed by the Hon’ble NCLAT in an appeal filed by Jindal Steel and Power Limited, being CA(AT) No. 221 of 2018 (Jindal Steel and Power Limited –vs- Arun Kumar Jagatramka) it was held that the scheme submitted by a Promoter of the Corporate Debtor is not maintainable as he is not eligible u/s. 29A of the Code to revive the Corporate Debtor and passed the following order (Annexure ‘B’ at page 27) :

“12. From the aforesaid provision, it is clear that the Promoter, if ineligible under Section 29A cannot make an application for Compromise and

Arrangement for taking back the immovable and movable property or actionable claims of the 'Corporate Debtor'

13. The National Company Law Tribunal by impugned order dated 15th May, 2018, though ordered to proceed under Section 230 to 232 of the Companies Act, failed to notice that such application was not maintainable at the instance of 1st respondent - Arun Kumar Jagatramka (Promoter), who was ineligible under section 29A to be a "Resolution Applicant".

14. For the reasons aforesaid, we set-aside the impugned order dated 15th May, 2018 and remit the case to 'Liquidator'/Adjudicating Authority to proceed in terms of the decision of this Appellate Tribunal in Y. Shivram Prasad (supra). The appeal is allowed with the aforesaid observations and directions. No costs."

7. As per the aforesaid order, the applicant/Liquidator has already taken steps with regard to the scheme u/s. 230 of the Companies Act, 2013 and has submitted the same on behalf of the 109 equity shareholders, being CA(CAA) No. 20/KB/2019, which become infructuous in view of the order dated 09/06/2020 passed by this Adjudicating Authority. (Annexure 'C' at page 44).

8. Vide an order dated 24/06/2020 this Adjudicating Authority has finally disposed of CA(CAA) No. 20/KB/2019 and passed the following order :

"i) In view of the fact that since the Scheme having not been approved by the Secured Creditors and could not be proceeded with, therefore vide orders dated 9.6.2020, the prayer made in application was rejected. Such a prayer therefore cannot be entertained again or reconsidered on the same similar grounds.

ii) In view of the aforesaid facts, the Liquidator, has no option but to proceed with sale by complying with the provisions of the Code read with Regulations under Chapter VI (Realisation of Assets), of IBBI (Liquidation Process) Regulations, 2016, in letter and spirit, in the light of the orders passed by Hon'ble Appellate Tribunal and Hon'ble Supreme Court, as mentioned above. We order accordingly.

iii) In the result this unnumbered I.A.(IB) No. /KB/2020 along with CA(CAA) No. 20/KB/2019 stands dismissed as infructuous. No order as to costs."

9. In the aforesaid circumstances, the matter was discussed in a consultative meeting between the Liquidator and the Monitoring Committee on 18/06/2020 after the order dated 09/06/2020 was passed, wherein it was agreed that the Liquidator should take steps for

fresh valuation of the assets in order to move the sale process of the Corporate Debtor and give a finality to the liquidation process. A copy of the minutes of the meeting dated 18/06/2020 is annexed as Annexure – 'D' (page 49) to the application. Upon the said submissions he prays for passing an order allowing him to conduct revaluation of the assets of the CD.

10. Heard the Ld. Liquidator as well as the Ld. Counsel for the SBI/the financial creditor and perused the records.

11. Ld. Liquidator Mr. Sumit Binani, submitted that he had already carried out the valuation exercise of the assets of the Corporate Debtor upon commencement of liquidation process and such reports had been furnished in the month of July, 2018. However, due to peculiar circumstances and prolonged litigations in the matter, the sale process could not be carried out by the Liquidator. Since the valuation was carried out 2 years 6 months back, with the passage of time, the valuation of assets of the Corporate Debtor may have undergone a change. Hence, it would be prudent to carry out a fresh set of valuation exercises to which the stakeholders have also agreed. Since there has no provision in the law authorising the Liquidator to carry out a valuation exercise for the second time during the liquidation process, the Liquidator, therefore, prays that in the interest of justice by invoking the inherent power of this Hon'ble Tribunal allow the prayer for fresh valuation of the assets of the Corporate Debtor.

12. The Id. Counsel Mr. Ajay Gaggar, for the SBI submitted that during the CIRP Process Windmill Division of the Corporate Debtor has been sold to one Sun Pharma and an application has been filed before the Calcutta High Court for termination of the agreement. The matter is sub-judice on the question whether termination is correct or not. Sun Pharma challenged the termination of the agreement. In view of the matter, he said that if re valuation is ordered the WindMill should be excluded from its purview. Coming to re valuation he submitted that lapse of time I.e two and half years period of time the valuation of the assets is definitely may gone down and that since the power to reduce the upset

price fixed on the basis of valuation is with the liquidator, a re valuation question doesn't arise. However, he left it open for determination by us.

13. From the aforesaid discussion the short question for considerations is whether a revaluation of the assets of the CD undergoing liquidation can be ordered invoking inherent power under Rule 11 of NCLT Rules, for the reason of delay in completing the sale proceeding due to litigation?

14. Before we answer the question, let us have a look at the provisions applicable to the liquidator in regards to conducting sale of the assets of the CD for the purpose of liquidation of the assets. The mode of sale is provided under Schedule I of the IBBI (Liquidation Process) Regulations, 2016. The relevant clauses for the consideration of the point under consideration is reproduced below:

MODE OF SALE

(Under Regulation 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016)

1. AUCTION

(1) Where an asset is to be sold through auction, a liquidator shall do so the in the manner specified herein.

(2) The liquidator shall prepare a marketing strategy, with the help of marketing professionals, if required, for sale of the asset. The strategy may include-

(a) releasing advertisements;

(b) preparing information sheets for the asset;

(c) preparing a notice of sale; and

(d) liaising with agents.

(3) The liquidator shall prepare terms and conditions of sale, including reserve price, earnest money deposit as well as pre-bid qualifications, if any.

(4 - A) The reserve price shall be the value of the asset arrived at in accordance with regulation 35.

(4A) Where an auction fails at the reserve price, the liquidator may reduce the reserve price by up to twenty-five percent of such value to conduct subsequent auction.

(4B) Where an auction fails at reduced price under clause (4A), the reserve price in subsequent auctions may be further reduced by not more than ten percent at a time.”;

(4) The reserve price shall be the value of the asset arrived at in accordance with Regulation 34. Such valuation shall not be more than six months old. However, in the event that an auction fails at such price, the liquidator may reduce the reserve price up to seventy-five per cent of such value to conduct subsequent auctions.

(5) The liquidator shall make a public announcement of an auction in the manner specified in Regulation 12(3);

Provided that the liquidator may apply to Adjudicating Authority to dispense with the requirement of Regulation 12(3)(a) keeping in view the value of the asset intended to be sold by auction.

(6) The liquidator shall provide all assistance necessary for the conduct of due diligence by interested buyers.

(7) The liquidator shall sell the assets through an electronic auction on an online portal, if any, designated by the Board, where the interested buyers can register, bid and receive confirmation of the acceptance of their bid online.

(8) If the liquidator is of the opinion that a physical auction is likely to maximize the realization from the sale of assets and is in the best interests of the creditors, he may sell assets through a physical auction after obtaining the permission of the Adjudicating Authority. The liquidator may engage the services of qualified professional auctioneers specializing in auctioning such assets for this purpose.

(9) An auction shall be transparent, and the highest bid at any given point shall be visible to the other bidders.

(10) If the liquidator is of the opinion that an auction where bid amounts are not visible is likely to maximize realizations from the sale of assets and is in the best interests of the creditors, he may apply, in writing, to the Adjudicating Authority for its permission to conduct an auction in such manner.

(11) If required, the liquidator may conduct multiple rounds of auctions to maximize the realization from the sale of the assets, and to promote the best interests of the creditors.

(12)(12) On the close of the auction, the highest bidder shall be invited to provide balance sale consideration within ninety days of the date of such demand:

Provided that payments made after thirty days shall attract interest at the rate of 12%:

Provided further that the sale shall be cancelled if the payment is not received within ninety days.

(13) On payment of the full amount, the sale shall stand completed, the liquidator shall execute certificate of sale or sale deed to transfer such assets and the assets shall be delivered to him in the manner specified in the terms of sale

15. From the above referred clauses, it is understood that the reserve price shall be the value of the asset arrived at in accordance with regulation 35. Admittedly, the liquidator have had two valuation reports. One valuation was done in accordance with Regulation 35 of CIRP Regulations and one was done immediately after appointing him as the liquidator under Regulation 35 (2) of the IBBI (Liquidation Process)Regulations,2016. Sub regulation 1 of Regulation 35 of the liquidation process regulation empowers the liquidator to consider the average of the estimates of the values arrived under Regulation 35 of CIRP regulation. In case he is of the opinion that fresh valuation is required under the change of circumstances, he shall do it within seven days of the liquidation commencement date. He has invoked his power to have fresh valuation as per Regulation 35(2) of the Liquidation Process Regulation. That being so it appears to us that inherent power cannot be applicable in the nature of the case in hand. Inherent power can be invoked by an Adjudicating Authority (AA) to make such orders as may be necessary for the ends of justice. Since the mode of sale as provided under schedule 1 of the Liquidation process regulation empowers the liquidator to reduce the reserve price fixed on the basis of the valuation determined under Regulation 35(2) in case want of bidders a revaluation of the assets to be sold doesn't arise. The submission that it would be a time consuming process is not a ground to order revaluation. If revaluation is ordered as prayed for even then it is a time consuming process and cost effective too.

16. In view of the above said legal position, and considering the peculiar circumstances brought to our notice in order to continue the sale proceedings so as to liquidate the assets, revaluing the assets not at all arise for consideration under inherent power invoking Rule 11 of NCLT Rules. Admittedly there are no provisions in the Code and Regulations enabling the Liquidator to apply for a revaluation. Interest of justice does not demand a revaluation of the assets for enabling the liquidator to arrive at a reserve price. Accordingly this application is liable to be dismissed.

17. In the result the unnumbered IA(IB) No. /KB/2020 in CP(IB) No. 182/KB/2019 is dismissed . No order as to cost.

18. The Registry is directed to send e-mail copies of the order forthwith to all parties inclusive of the Counsel.

Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)

Member (Technical)

(Jinan K.R)

Member (Judicial)

Signed on this, the 17th day of July, 2020.

hb.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH,
KOLKATA**

**I.A. (IB) No. /KB/2020
In
C.P.(IB) No. 182/KB/2019**

In the matter of:

**An application under Section 19 (2) read with Section 34 (3) of the
Insolvency and Bankruptcy Code, 2016**

AND

In the matter of:

**M/s. Gujarat NRE Coke Limited (in Liquidation) represented by the
Liquidator Mr. Sumit Binani, IBBI / IPA – 001/IP-N00005/2016-17/10025
having his office at 4thFloor, Room No. 6, Commerce House, 2A, Ganesh
Chandra Avenue, Kolkata – 700013.**

..... Corporate Debtor

AND

In the matter of:

**Mr. Sumit Binani, Liquidator having registration No. IBBI/IPA-001/IP-
N00005/2016-17/10025 having his office at 4th Floor, Room No. 6,
Commerce House, 2A, Ganesh Chandra Avenue, Kolkata- 700013.**

... Applicant

VERSUS

1. **Mr. Pawan Kumar Agarwal, Chief Commercial Officer,** Gujarat NRE Coke Limited (in Liquidation) having official email address as pawan@gujaratnre.com
2. **Mr. Nitin Daga, Chief Financial Officer** Gujarat NRE Coke Limited (in Liquidation) having having official email address as nitin@gujaratnre.com
3. **Mr. Mukund Chandak, Company Secretary,** Gujarat NRE Coke Limited (in Liquidation) having having official email address as mukund@gujaratnre.com
4. **Mr. Rajesh Kumar Agarwal, Vice President, Incharge of Accounts,** . Gujarat NRE Coke Limited (in Liquidation) having his email address as rajesh@gujaratnre.com

..... Respondents

**Coram: Shri Jinan K.R., Hon'ble Member (Judicial) &
Shri Harish Chander Suri, Hon'ble Member (Technical)**

Counsel on Record :

- | | |
|--|-------------------|
| 1. Mr. Sumit Binani |] Liquidator |
| 1. Mr. Shaunak Mitra, Advocate |] |
| 2. Mr. Saurav Jain, Advocate |] For respondents |
| 1. Mr. Rajesh Chaubey |] For SBI |
| 2. Mr. Dilip Kumar Mohapatra (AGM Law) |] For SBI |

Date of hearing : 17/07/2020

Order delivered on : 17/07/2020

ORDER

Per Shri Harish Chander Suri, Member (Technical):

1. This unnumbered application (I.A.(IB) no. _____/KB/2020, has been filed by **Mr. Sumit Binani** acting as the Liquidator of **M/s. Gujarat NRE Coke Limited** (in Liquidation) for directions seeking to the Key Senior Personnel of the Corporate Debtor, to provide co-operation, for resumption of work at the registered office of the Corporate Debtor by following social distancing norms and /or assist the liquidator in creation of necessary infrastructure to enable work from home as may be required enabling the Liquidator to carry on his functions. It is stated that the Liquidator has been pursuing with the Respondents for a period of more than around 40 days for the same, offering various suggestions but his suggestions and instructions have not been adhered to by the aforesaid personnel.

2. It is further stated that pursuant to enforcement of Lockdown 4.0 and the numerous relaxations granted by the Central, as well as the State Government, the Liquidator, vide his email dated 18.05.2020, requested the Respondent No. 2 to contemplate on the possibility of opening of the office of the Corporate Debtor at Camac Street. It was apprised by the Liquidator that documents pertaining to, *inter alia*, ineligibility criterion specified under Section 29A of the Insolvency and Bankruptcy Code, 2016 as well as the due diligence of the Section 230 of the Companies Act, 2013 were lying at the office of the Corporate Debtor and the same were required by the Liquidator for continuing the Liquidation Proceedings of the Corporate Debtor. The Liquidator further submitted that on various occasions, he issued numerous emails and communications to the Respondents in order to open the office and resume the work following the social distancing norms directed by the

Government. However, on one pretext or the other, the Respondents kept on citing reasons on the ground of COVID 19 pandemic, thus causing great hindrance on the liquidation proceedings of the Corporate Debtor, and that the Respondents have time and again refused to cooperate with the Liquidator for resumption of work at the registered office of the Corporate Debtor by a combination of work from home/office (by following social distancing norms) as has been suggested by the Liquidator despite the fact that the office of the Corporate Debtor, was not in the containment zone after 1st June 2020 and further all other offices and showrooms in the same building and vicinity have already resumed their work.

3. It is further stated that the Respondents had initially informed the Liquidator that the office keys are with office boys who were not able to travel amidst the lockdown. However, when the Liquidator finally got the contact numbers of the office boys and contacted them, it was apprised to the Liquidator that the office boys did not have any keys and that the keys of the office were handed over to Ms. Kavita Jagatramka, the owner of the office premises of the Corporate Debtor before the lockdown. Finally after 20 days of regular communication, the office was opened for a short duration on 11th June, 2020 so that the liquidator could collect his urgent papers. Thereafter again the office has not been opened in spite of several communications from the liquidator to the Respondents. It is stated that the Respondents have not extended any co-operation or support to the Liquidator to resume the operations of office which has been refused by the Respondents and the same clearly shows that the Respondents are not inclined to extend any support and co-operation to the Liquidator in the matter.

4. It is further submitted that the steel plant of the corporate debtor has resumed partial operations from end of April, 2020, the accounting entry of the Corporate Debtor is pending for a period of more than 3 months now resulting in absence of accounting control of the Corporate Debtor which is very critical. It is stated that the receipts and payments for 31st March 2020 is further required to be audited and submitted before this Tribunal in accordance with the Regulations very soon. It is further imperative to mention here that the quarterly receipts and payments for 30.06.2020 is also required to be submitted before this Adjudicating Authority within the deadline. However, as a consequence of the complete non-cooperation and support by the Respondents including refusal to provide plans and creation of necessary infrastructure for work from home, as advised by the Liquidator, the Liquidator is not in a position to have effective control over the accounts of the Corporate Debtor including compliances as required in law. There are various other steps that are required to be taken by the Liquidator for the successful and timely completion of the Liquidation Proceedings of the Corporate Debtor. The same shall require opening of office by following social distancing norms as well as creating necessary infrastructure for work from home. However, despite repeatedly apprising all the Respondent, none of the Respondents have bothered to come forward and extend their support to the Liquidator.

5. In its defence, the learned counsel for suspended board of directors submitted that the allegations of non-cooperation and attempt to delay the liquidation process labeled on the Respondents by the Applicant is baseless and harassing. The Respondents only want revival of the Corporate Debtor for which they supported the Scheme under Section 230 of Companies Act filed by shareholders but never acted upon to stall liquidation. It is submitted in the Defence note as also in the oral arguments submitted on their behalf, that since

7.04.2017 till date, there is not a single instance of non-cooperation raised by the Applicant/Liquidator which itself speaks about the throughout co-operation of the Respondents. It is submitted that the present situation of Covid-19 virus pandemic is beyond the control of the Respondents and therefore the Respondents are hesitant to step out of home due to increase in spread of the virus. Despite such scenario the Respondents sincerely supported the Applicant during the ongoing lockdown phase which is evident from the attached emails exchanged between the Applicant and Respondents. It is submitted that the Applicant is falsely blaming Respondents for non finalization of accounts on time. Presently, the accounts are maintained in software called FACT which does not support work from home. Therefore, in June 2020 Respondents proposed the Applicant that FACT be substituted with Tally ERP 9 along with cloud facility (total cost of 10 users for Tally is Rs. 1,16,075 + GST)which allows control of accounts to the Applicant and also facilitate of work from home. Applicant approved the software but did not approve the payment for such software for reasons best known to him.

6. The Ld Counsel further submitted that the Applicant is asking the Respondents and accounts staff to join office for finalizing accounts without ensuring the mandatory safety guidelines stated in MHA Notification dated 29.06.2020. This is evasion of duty by Applicant. Further, MCA in its circular dated 24.03.2020 has extended the timeline to file documents till 30.09.2020. IBBI also notified on 17.04.2020 and excluded lockdown period from liquidation process by virtue of Regulation 47A. As such there is no urgency to call the staffs without ensuring the safety measures. Respondent No. 1 also mailed the Applicant on 2.07.2020 stating various safety guidelines which are essential to ensure safety of staffs. Other Respondents too sent identical mails to Applicant on 2.07.2020.

7. The Ld. Counsel also stated that most staff members of accounts department reside at Howrah, suburban areas thereto and interior parts of Kolkata and uses public transport to reach office. Presently the public transport system is poor and most importantly risky. The local trains and Metro Rail are also not running which are essential transport systems for most of the staffs to reach office.

8. It is stated that the Applicant is asking the Respondents to open office despite the fact that none of the Respondents holds the office keys and never opened office by themselves. It is stated that the Respondents are only employees working under the Applicant being the custodian of the Corporate Debtor since April 2017 and that the Respondents are not responsible for maintaining the office or for opening or closing it. It is submitted that the Applicant is supposed to provide safe working environment to Respondents and others for discharging their duties. The respondents further submit that the Applicant himself admitted that he opened office on 11.06.2020, hence he must have the office keys and that the Applicant suppressed the fact that on 11.06.2020 upon his instruction Respondent No. 2 despite increasing spread of the virus risked his life and accompanied the Applicant and went to the office and assisted him to avail the requisite documents. It is submitted that the Applicant has been chasing the Respondents in the matter ever since the time when the entire office campus was a containment zone and entire area was declared a buffer zone. Some of the offices which started with skeleton staff within same campus in June, some of them got infected with Covid and had to shut down again as per guidelines. This was informed by the campus manager of Corporate Debtor's office on 3.07.2020. Hence it's apparent that resuming office in May/ June was never a safe proposition.

9. It is submitted that this application is an attempt towards demoralizing the employees as a result of which the Chief Operating Officer of the Corporate Debtor and Respondent No. 1 herein are presently serving their notice period post acceptance of their respective resignations.

10. The way the respondents have placed the facts in an irresponsible manner, it seems the respondents are reluctant in providing the desired information and cooperation to the liquidator, which they are duty-bound to do under the provisions of the Code. We must remind the respondents that Section 19 (2) of the Insolvency and Bankruptcy Code, 2016, specifically mandates that –

“19. Personnel to extend co-operation to interim resolution professional. (1) The personnel of the Corporate Debtor, its promoters or any other person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor.

(2) Where any personnel of the corporate debtor, its promoter or any other person required to assist or co-operate with the interim resolution professional does not assist or co-operate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions.”

11. Similarly, the respondents must understand the contents of Section 34(2) of the Insolvency and Bankruptcy Code, 2016, which runs thus:-

“34. Appointment of liquidator and fee to be paid.

(1) Where the Adjudicating Authority passes an order for Liquidation of the Corporate Debtor under Section 33, the Resolution Professional appointed for the Corporate Insolvency Resolution Process (under Chapter II shall subject to submission of a written consent by the Resolution Professional to the Adjudicating Authority in specified form) act as the Liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under Sub Section (4).

“34(2) On the appointment of a liquidator under this Section, all 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 in the liquidator.”

12. We have heard **Mr. Sumit Binani**, learned Liquidator, and **Mr. Shaunak Mitra**, learned counsel for the respondents. After carefully assessing the present situation, the circumstances, and in the light of the legal position, we hereby issue orders/directions as under:-

- (i) The respondents, including the members of erstwhile board of directors, and other key personnel associated with the management of the corporate debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor;
- (ii) The respondents and/or the owner of the premises, whosoever is in possession of the keys of the registered office premises, shall hand over the keys to the Liquidator immediately, as and when required by the Liquidator;
- (iii) The respondents shall depute at least 20% of their skeleton staff/ officers/ officials, on rotational basis, who are conversant with their respective jobs, for running the office and for providing full cooperation and assistance to the Liquidator.
- (iv) The remaining staff shall work from home and provide all assistance to the Liquidator as and when required;
- (v) The liquidator shall provide all the basic facilities to the staff attending the office or work from home, as the case may be in accordance with the guidelines issued by Government during the period of lockdown;

- (vi) In case any of the staff refuses or fails to attend the office or work from home or provide necessary cooperation, as per the directions of the Liquidator, the Liquidator shall be free to cut his proportionate salary/wages, as per the applicable rules.
- (vii) In case of failure to comply the directions from the side of the respondents, the Liquidator shall be at liberty to move an application for initiating action under the Contempt of Courts Act.
- (viii) With these directions, the **I.A.(IB) No. /KB/2020** in C.P.(IB) No. 182/KB/2017 **is disposed of.** There is no order as to costs.
- (ix) The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.

(Harish Chander Suri)
Member (T)

(Jinan K.R.)
Member (J)

Signed on this, the 17th day of July, 2020

VC