

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) (Ins) No.719 of 2019**

[Arising out of Order dated 15.03.2019 passed by National Company Law Tribunal, Mumbai Bench in MA 82/2018 in C.P.(IB)-65(MB)/2017]

**IN THE MATTER OF:**

**Before NCLT**

**Before NCLAT**

Rohit P Chhabra  
802/6 Sagar Darshan,  
Sector 18, Nerul,  
Navi Mumbai – 400706

....

...Appellant

**Versus**

- |   |                                     |                 |
|---|-------------------------------------|-----------------|
| 1. Mr. Sushil Kumar Gupta,<br>Resolution Professional<br>of Magna Opus<br>Hospitality Pvt. Ltd.<br>A 417, 2 <sup>nd</sup> Floor,<br>Vashi Plaza,<br>Sector 17, Vashi,<br>Navi Mumbai – 400703 | Applicant                           | Respondent No.1 |
| 2. Mr. Sanjay Kumar Ruia<br>M/s Sanjay Ruia &<br>Associates,<br>B – 3/1/1/1:3,<br>Sector 2, Vashi,<br>Navi Mumbai – 400703  | Petitioner/<br>Operational Creditor | Respondent No.2 |

**For Appellant:**                      **Ms. Prachi Johri, Advocate**

**For Respondents:**                **Ms. Ruchika Sharma, Advocate (R-1)**  
   **Shri Saksham Ahuja and Shri Pankaj Jain,**  
   **Advocates (R-2)**

**ORDER**

**24.02.2020**            Heard learned Counsel for the Appellant. She states that the Impugned Order shows that earlier, IRP/RP – Sushil Kumar Gupta was appointed and later on, by Order dated 27<sup>th</sup> June, 2017, he was required to be substituted. Copy of the said Order has been filed with Diary No.19092.

The learned Counsel states that by this Order, another Resolution Professional - Amit Gupta was appointed but he was also not willing to take over and did not take charge. It is stated that subsequently, the earlier IRP – Sushil Kumar Gupta filed Miscellaneous Application No.82 of 2018 seeking Order under Section 33 of Insolvency and Bankruptcy Code, 2016 (IBC – in short). The Counsel states that in this matter, the Application under Section 9 of IBC was admitted on 12<sup>th</sup> April, 2017 and the time to conduct CIRP has passed without a proper IRP (Insolvency Resolution Professional) conducting the Corporate Insolvency Resolution Process (CIRP). It is stated that by the Impugned Order, the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) did not take cognisance of the Application filed by the earlier IRP. It is stated that the Impugned Order did not effectively give directions for further or proper conducting of the CIRP. The learned Counsel states that now before the Adjudicating Authority, there are various Applications pending like MA No. 289/2017 which has been filed by the Appellant claiming that the admission Order itself is wrong. The learned Counsel - Shri Saksham Ahuja for Respondent No.2 – Original Operational Creditor claims that two more Applications are pending under Sections 68 and 69 of IBC regarding concealment of property and money laundering. It is stated that there are further Applications pending before the Adjudicating Authority including claim to lead evidence.

2. We have gone through the Impugned Order dated 15.03.2019 and although the Adjudicating Authority expressed surprise that substituted IRP had filed the Application under Section 33 of IBC, it appears to have missed

the fact that the Order dated 27<sup>th</sup> June, 2017 shows that till the handing over and taking over gets completed, the present Resolution Professional shall continue to act as Resolution Professional to implement the insolvency proceedings. At that time, the “present Resolution Professional” was Sushil Gupta. Admittedly, the substituted RP has not taken charge.

3. We notice that more than 330 days have passed after initiation of the CIRP. We notice Section 33(1)(a) which lays down the consequence to follow when prescribed CIRP period is over. We do hope Adjudicating Authority will consider the provisions and take suitable actions. We do not pass any specific Order considering that the Adjudicating Authority is already seized with a couple of Applications which it has to decide. Adjudicating Authority may consider if filing and pendency of such Applications can stop consequences flowing from Section 33(1)(a) of IBC.

4. For above reasons, we do not find any reason to pass any Orders in the context of the present Impugned Order.

The Appeal is disposed with above observations. No orders as to costs.

[Justice A.I.S. Cheema]  
Member (Judicial)

(Justice A.B. Singh)  
Member (Judicial)

[Kanthi Narahari]  
Member (Technical)

*/rs/md*