

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

IA 179 of 2020 in C.P.(I.B) No. 200/NCLT/AHM/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 02.07.2020**

Name of the Company: Kailash T Shah RP For Ashapuri Metals
Pvt Ltd
V/s

Section : COC of Ashapuri Metals Pvt Ltd
Section 33 & 34 of the Insolvency and Bankruptcy
Code,2016

| <u>S.NO.</u> | <u>NAME (CAPITAL LETTERS)</u> | <u>DESIGNATION</u> | <u>REPRESENTATION</u> | <u>SIGNATURE</u> |
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1.


2.

**ORDER
(through video conferencing)**

The Order is pronounced in the open court vide separate sheet.


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 2nd day of July, 2020


**MANORAMA KUMARI
MEMBER JUDICIAL**

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

**I.A. No. 179 of 2020
in
CP(IB) No. 200 of 2019**

In the matter of:

Mr. Kailash T Shah,
Resolution Professional,
M/s Ashapuri Metals Private Limited. ... Applicant

And in the matter of:

Mr. Alkesh Govindbhai Patel ... Operational Creditor

Versus

M/s Ashapuri Metals Private Limited. ... Corporate Debtor

Order delivered on 02 July, 2020

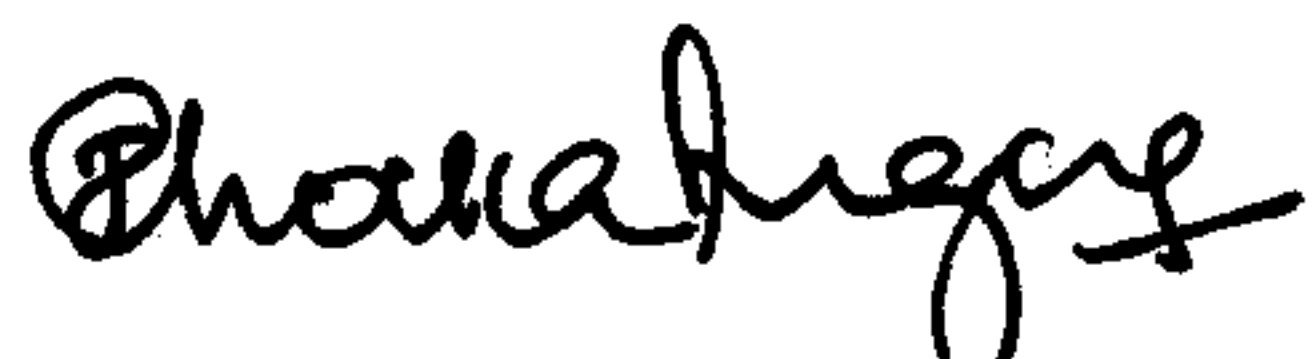
**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**


Appearance: Advocate, Mr. Pavan S. Godiawala for the RP.

ORDER

[Per: Ms. Manorama Kumari, Member (Judicial)]

1. The instant application is filed by the RP under section 33(1), 33(2) and 33(3) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IB Code") in Company Petition (IB) No. 200 of 2019 for liquidation of the Corporate Debtor.
2. The facts of the case are stated herein:
 - 2.1 CP(IB)No. 200 of 2019 filed by Operational Creditor, namely Mr. Alkesh Govindbhai Patel, against the Corporate Debtor viz., M/s. Ashapuri Metals Private Limited under Section 9 of the IB Code, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") was admitted by this Adjudicating



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Authority vide its Order dated 05.07.2019 and appointed the Applicant, Mr. Kailash T Shah as Interim Resolution Professional (hereinafter referred as "IRP") of the Corporate Debtor.

- 2.2 It is stated in the application that Committee of Creditors (hereinafter referred as "CoC") in its First Meeting held on 17.08.2019 decided for continuation of the IRP as RP.
- 2.3 On perusal of the record, it is found that the 4th meeting of the CoC was held on 24.12.2019, wherein, CoC decided to waive the requirement of issue of Expression of Interest for inviting Resolution Applicant in relation to the Corporate Debtor, as there were no activities going on in the Company.
- 2.4 It is also seen that in the 4th CoC meeting itself CoC passed a resolution to liquidate the Corporate Debtor with 100% voting and directed the RP to file an application for Liquidation as per the provisions of the IB Code for liquidation of the Corporate Debtor.
3. Heard the applicant and also seen the records, it is found that for the reasons mentioned hereinabove CoC does not wish to continue the CIRP process and therefore, the CoC has resolved for liquidation of the Corporate Debtor vide its 4th CoC meeting held on 24.12.2019. It is also to be noted that this Adjudicating Authority has no jurisdiction to interfere in the commercial wisdom of the CoC as observed in **K. Sasidhar's** case and subsequently also reiterated by Hon'ble Supreme Court of India 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**, wherein, it is observed as follows:

"The commercial wisdom of the Committee of Creditors cannot be interfered into by the Adjudicating Authority. The Hon'ble Supreme

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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."

4. 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 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.


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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
5. In view of the above, the instant IA 179 of 2020 in CP(IB) 200 of 2019 so filed by the RP under Section 33(1), 33(2) and 33(3) of the IB Code, 2016 is allowed and the Adjudicating Authority passes an order for initiation of liquidation of the Corporate Debtor viz., M/s. Ashapuri Metals Pvt. Ltd. The RP i.e. Mr. Kailash T Shah, shall act as the Liquidator for the purpose of liquidation of the Corporate Debtor.
6. Accordingly, the instant IA is allowed and stands disposed of with the above observations.


CHOCKALINGAM THIRUNAVUKKARASU
Adjudicating Authority
Member (Technical)


MANORAMA KUMARI
Adjudicating Authority
Member (Judicial)