



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT – III**

I.A. No. 1882 of 2020

IN

C.P. (IB) 1600/MB/2019

Under Section 33(2) read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016

P. Shivan Raju

Interim Resolution Professional of Virgo Marine Shipyards Private Limited

Having its office at:

214-215, 2nd Floor, Om Dutta CHS,
Khamdeo Nagar, 1882 Feet Road,
Sion-Bandra Link Road,
Mumbai – 400 017.

**.... Applicant/ Interim Resolution
Professional**

In the matter of:

Under Section 10 of the Insolvency and Bankruptcy Code, 2016

Virgo Marine Shipyards Private Limited

[CIN: U45400MH2010PTC207769]

Having its registered office-:

F-408, Kailash Complex,
Parksite, Vikhroli (West),
Mumbai – 400 079.

.... Petitioner/ Corporate Applicant

Order Pronounced on: 03.06.2025



Coram:

Shri Hariharan Neelakanta Iyer
Hon'ble Member (Technical)

Smt. Lakshmi Gurung
Hon'ble Member (Judicial)

Appearances:

For the Applicant/ Interim Resolution Professional: Adv. Deepak Saxena a/w
Adv. Shivanjali Mane & Adv. Kaushal Ameta i/b Legal Prism for RP.

Per: Ms. LAKSHMI GURUNG, MEMBER (Judicial)

1. The present **I.A. No. 1882 of 2020** has been filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as '**Code**') by the Interim Resolution Professional of Virgo Marine Shipyards Private Limited ('**Corporate Applicant**') Mr. Shivan Raju Palavesam ('**Applicant**'/ '**IRP**') seeking following reliefs as follows:
 - i) *To pass the liquidation order for Corporate Debtor;*
 - ii) *To appoint Mahesh Sureka having Reg. No. IBBI/IPA-001/IP-P00413/2017-2018/10736 as liquidator;*
 - iii) *To fix the liquidator fee.*

Background of the case:

2. Virgo Marine Shipyards Private Limited was admitted into Corporate Insolvency Resolution Process ('**CIRP**') vide order dated 21.01.2020 in CP 1600 of 2019 and the Applicant was appointed as the Interim Resolution Professional.
3. The IRP issued a Public Announcement in the Free Press Journal dated 25.01.2020 (in English) and in Tarun Bharat dated 25.01.2020 (in Marathi) inviting claims from creditors, where the last date of submission of claims was 06.02.2020.



Constitution of Committee of Creditors

4. In response to the public announcement, the Applicant received and collated claims from the creditors as per Section 21 of the Code and accordingly, Committee of Creditors (**‘CoC’**) was constituted as under:-

Sr. No.	Name of the Creditor	Amount Claimed by Creditor (in Rs.)	Amount Admitted (in Rs.)	% of Voting Right
1.	Union Bank of India (earlier Corporation Bank)	10,68,38,840/-	10,68,38,841/-	62.93
2.	The Akola Janata Commercial Co-Operative Bank Limited, Akola	6,29,33,415/-	6,29,33,415/-	37.07
	Total	16,97,72,255/-	16,97,72,255/-	100

1st CoC Meeting

5. The Applicant informed the CoC members in the 1st CoC meeting held on 18.02.2020 that the Applicant had visited Yard No. H-107, situated at Ghodbunder Village, Reti Bunder, Thane District and found that M.V.VM Hooper Barge was in the custody and possession of M/s Vyankatesh Engineers & Contractors Private Limited. Thereafter, the Applicant received a letter dated 14.02.2020 from Nagpur Nagrik Sahakari Bank Limited about sale of M.V.VM Hooper Barge in favour of M/s Vyankatesh Engineers & Contractors Private Limited for a bid price of Rs.825 Lakhs and the said asset was handed over to the successful bidder on 03.02.2020, under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (**‘SARFAESI Act’**). The proceeds from sale of secured



asset is appropriated by Nagpur Nagrik Sahakari Bank Limited towards outstanding dues of principal, interest, and a part of the expenses due from the Corporate Applicant. No amount was remitted to the Corporate Applicant as no balance was left.

6. Furthermore, Corporation Bank, was the only Financial Creditor present in the meeting, holding 62.93% of the voting share. Therefore, following issues were discussed in the meeting-:

- i) For Replacement of IRP by another Resolution Professional/ Liquidator nominated by Corporation Bank;
- ii) Corporation Bank to appoint their own Advocates/Lawyers to pursue any legal proceedings against Nagpur Nagrik Sahakari Bank Limited, as well as in any Arbitration proceedings and other legal proceedings, if deemed necessary; and
- iii) An application for the initiation of the Liquidation process and the appointment of Liquidator to be filed by Corporation Bank.

However, no resolution was passed by the CoC for want of more than 66% voting share. Copy of minutes of 1st CoC Meeting is attached as **Annexure – ‘3’** to the Application.

2nd CoC Meeting

7. In the 2nd CoC meeting was held on 28.08.2020, the CoC deliberated upon liquidation of the corporate applicant without running the Insolvency Resolution Process for the following reasons:

- a) *As the Corporate Debtor/ Company is not in running condition.*
- b) *Latest Balance sheet is not filed with RoC.*
- c) *There are no assets in the name of the Company except barge which is mortgaged (first charge) to Nagpur Sahakari Bank. Nagpur Sahakari Bank Limited sold the property under SARFAESI Act. However, sale proceeds of the barge came to the*



*account of Nagpur Sahakari Bank Limited after CIRP admission
dated 06.01.2020.*

8. As per the voting result annexed to the application, it is noted that the CoC has approved the following two (2) resolutions with 100% voting:

Resolution No.1

“RESOLVED THAT M/s Virgo Marine Shipyards Private Limited shall be initiated for liquidation as the CoC does not want to proceed in the matter of Corporate Insolvency Resolution Process of Virgo Marine Shipyards Private Limited in accordance with provisions of the IBC, 2016.”

Resolution No.2

“RESOLVED THAT remuneration of Rs. 1,15,773/- be and is hereby approved towards professional fees of Interim Resolution Process which shall be paid by the Corporate Applicant from his account.

RESOLVED THAT the expenses of Rs. 27,000 incurred by IRP shall be borne by CoC members in their proportionate share.”

9. Thus, CoC has decided to liquidate the Corporate Applicant for the reasons discussed in 2nd CoC Meeting. Copy of minutes of 2nd CoC Meeting along with the voting results is attached as **Annexure – ‘4’** to the Application.

Sale of Secured Asset

- 10.1 The suspended directors of the Corporate Applicant had challenged the sale of *M.V.VM Hooper Barge* in IA No. 1047 of 2020 under Section 60(5) of the Code. The said application was dismissed vide order dated 26.11.2021, citing lack of locus standi. Subsequently, the suspended directors preferred appeal against the said order dated 26.11.2021 in Company Appeal (AT)(Ins) No. 82 of 2022 before the Hon’ble National



Company Law Appellate Tribunal (**'NCLAT'**). The Hon'ble NCLAT vide order dated 16.09.2022 remanded the matter to Adjudicating Authority to decide the matter afresh on merit.

- 10.2 Upon fresh consideration of the case, vide order dated 24.10.2024, it was held that the sale of the secured asset by Nagpur Nagrik Sahakari Bank Limited was in contravention of Section 14(1)(c) of the IBC, thereby setting aside the sale.
- 10.3 On an appeal was preferred against the order dated 24.10.2024 in CA(AT)(Ins) No. 2382 of 2024 & I.A. No. 8961 of 2024 titled as Nagpur Nagrik Sahakari Bank Ltd. versus Mohanlal Ayyapan Pillai & Ors.. The Hon'ble NCLAT relying on its judgment in the matter of ***Pratibha Industries Limited Vs. Yes Bank Limited, Company Appeal (AT) (Insolvency) No. 1049 of 2024*** held “*that relationship between the parties i.e. mortgager and mortgagee for the purposes of redemption exist till date of issuance of notice of sale and in the present case notices for auction under Section 13(8) were issued much prior to commencement of the CIRP*” and allowed the appeal.
11. It is submitted that the CoC had neither proposed any liquidator nor fixed liquidator's fee in the CoC meeting but afterwards Union Bank of India with the consent of the other financial creditor invited interest from liquidator to be appointed and after shortlisting, recommended the name of Mr. Mahesh Sureka, having Registration No. **IBBI/IPA-001/IP-P00413/2017-2018/10736**, as the liquidator of the Corporate Debtor. One letter dated 18.09.2020 issued by Union Bank of India to Mr. Mahesh Surekha stating that “*we confirm your appointment as liquidator for M/s Virgo Marine Private Limited*” is annexed to the application as **Annexure- '7'**.
12. We would like to refer to section 33 of the Code at this stage:

“(1) Where the Adjudicating Authority, —



- a. *before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or*
- b. *rejects the resolution plan under Section 31 for the non-compliance of the requirements specified therein, it shall—*
 - (i) *pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;*
 - (ii) *issue a public announcement stating that the corporate debtor is in liquidation; and*
 - (iii) *require such order to be sent to the authority with which the corporate debtor is registered.*

(2) *Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).”*

13. Considering the resolution passed by the CoC by 100% voting to initiate liquidation of the corporate applicant for the reasons discussed in the 2nd CoC meeting the present case falls under section 33(2) of the Code. We note that the CoC has taken decision to liquidate the Corporate Debtor without issue of Form-G as discussed above.
14. We also note that though the instant application was filed on 27.10.2020 but was still pending probably due to the final outcome of the sale of secured asset of the corporate applicant, which has now been adjudicated by the Hon’ble National Company Law Appellate Tribunal vide order dated 05.05.2025.
15. We also note that CoC has not passed any resolution for liquidator’s fee and has left it to the Adjudicating Authority for fixing Liquidators fee.



As per Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the fee payable to the liquidator shall be in accordance with the decision taken by CoC but where no fee has been fixed, the consultation committee may fix the fees of the liquidator in the first meeting.

ORDER

16. The Corporate Applicant, **Virgo Marine Shipyards Private Limited**, is order to be liquidated under Section 33(2) of the Code, in the manner as laid down in Chapter-III of Part-II of the Code.
- a. We hereby appoint **Mr. Mahesh Sureka**, having Registration No. **IBBI/IPA-001/IP-P00413/2017-2018/10736** having e-mail id: mahesh@mrsureka.com and contact no.: +022-42950667, +91 9870944469, as per Section 34(4) of the Code, as the Liquidator of **“Virgo Marine Shipyard Private Limited”** to conduct liquidation process. The Insolvency Professional has given its written consent dated 07.10.2020 and further we note from the IBBI website that Authorization of Assignment (AFA) is valid till 31.12.2025.
 - b. The fee of the Liquidator shall be fixed by the Consultation Committee.
 - c. The Moratorium declared under Section 14 of the IBC 2016 shall cease to operate from the date of this order. A fresh moratorium shall commence under Section 33(5) of IBC.
 - d. The Liquidator is directed to proceed with the process of liquidation as laid down under Chapter III of the Part II of Insolvency and Bankruptcy Code, 2016 and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.



- e. The Corporate Debtor shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- f. The Liquidator shall comply with the Liquidation Regulations and accordingly submit Progress Reports as per Regulation 15 of the IBBI (Liquidation Process) Regulations, 2016; and shall further apprise the Bench about the Liquidation Process of the Corporate Debtor.
- g. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the Corporate Applicant, except when the business of the Corporate Applicant is continued during the liquidation process by the liquidator as per Section 33(7) of the IBC.
- h. Subject to Section 52 of the Code no suit or other legal proceedings shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.
- i. All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.
- j. The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of Chapter III Part-III of the Code read with the Liquidation Process Regulations.



k. All persons connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.

1. Registry shall forward a copy of this Order to:

- i. Insolvency and Bankruptcy Board of India, New Delhi;
- ii. Regional Director (Western Region), Ministry of Corporate Affairs, e-mail id: rd.west@mca.gov.in;
- iii. Registrar of Companies – Maharashtra, e-mail id: roc.mumbai@mca.gov.in;
- iv. Erstwhile Interim Resolution Professional, Mr. P. Shivan Raju, e-mail id: shivan.raju@gmail.com
- v. Liquidator, Mr. Mahesh Sureka, e-mail id: mahesh@mrsureka.com;

10. A certified copy of this order may be issued, if applied by the concerned parties upon the compliance of all necessary formalities.

11. Accordingly, this Application, stands disposed of.

Sd/-

**HARIHARAN NEELAKANTA IYER
(MEMBER TECHNICAL)**

Akshita, L.R.A.

Sd/-

**LAKSHMI GURUNG
(MEMBER JUDICIAL)**