

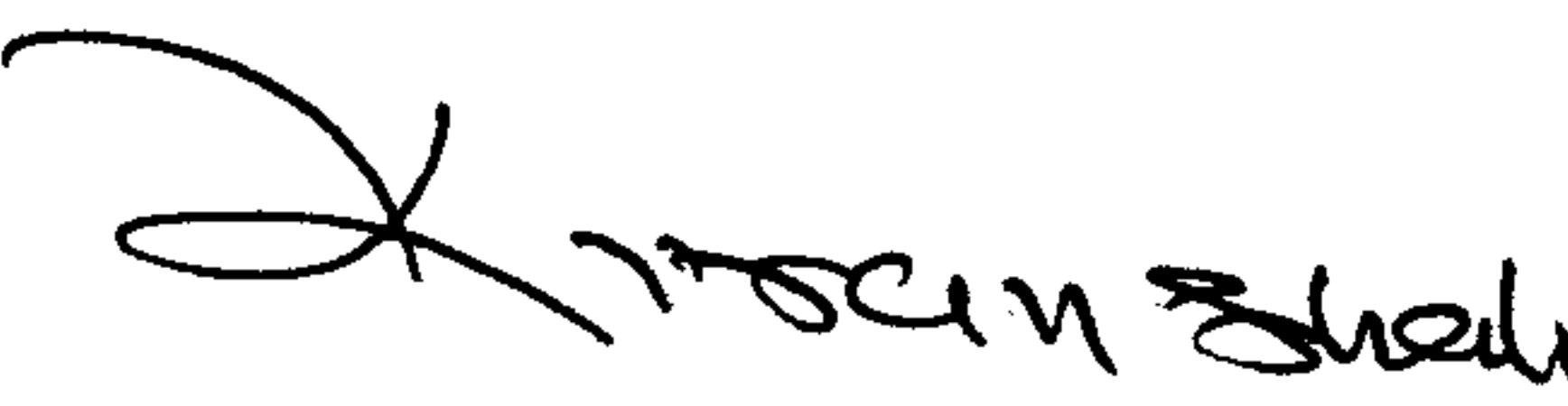
**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

IA 516 of 2019 in C.P. (I.B) No. 77/NCLT/AHM/2018

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 23.09.2019**

Name of the Company: Kiran Shah RP for API Industries Pvt. Ltd.
Section of the Companies Act: Section 33(1), 34(1) of the Insolvency and
Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	KIRAN SHAH	FCA	Applicant - RP	
2.				

ORDER

The Applicant is represented through learned FCA.

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


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL


MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 23rd day of September, 2019

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

**IA No. 516/NCLT/AHM/2019
in
C.P. No. (I.B) 77/10/NCLT/AHM/2018**

Mr. Kiran Shah
Resolution Professional of M/s API Industries Private LimitedApplicant

In the matter of:

M/s API Industries Pvt. Ltd.Corporate Debtor

Versus

M/s State Bank of India
.... Respondent
[Financial Creditor]

Order delivered 23rd September, 2019

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

Appearance: Advocate Mr. Kiran Shah for RP and PCS Rajesh Bohra for Corporate Debtor are present.

ORDER

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

1. The instant application is filed by the Resolution Professional seeking order of liquidation under section 33(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IB Code"). The Applicant is represented through learned counsel.
2. On perusal of the records, it is found that Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") was initiated on 19.02.2019. The Interim Resolution Professional (hereinafter referred as "IRP") made a public announcement on 08.03.2019 wherein the last date for submission of claims by the creditors was fixed as 19.03.2019 which in fact should be 19.05.2019 (ninetieth day from commencement of CIRP)

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in
C.P. No. (I.B) 77/10/NCLT/AHM/2018


as per Regulation 12(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

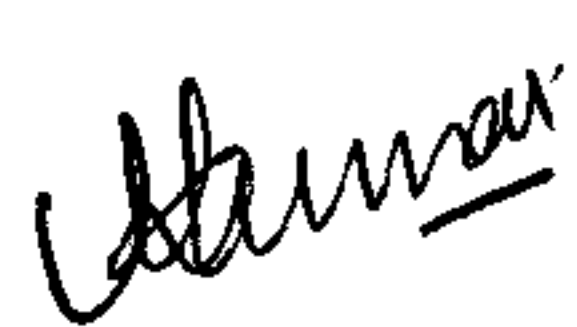
3. In response to public announcement made by the IRP, in all three claims were received, one from Financial Creditor i.e. State Bank of India and the other from Operational Creditor i.e. State Tax Officer-2 (1.C) Unit-75 Bhavnagar and KPL International Limited. The IRP constituted the Committee of Creditors (hereinafter referred as "CoC") and took the possession of the properties of the Corporate Debtor Company in the cities of Bhavnagar and Mumbai.
4. In the 1st CoC meeting held on 03.04.2019, the sole Financial Creditor was present along with the representatives of the Suspended Management wherein, the IRP was appointed and confirmed as Resolution Professional (hereinafter referred as "RP") by the CoC.
5. In the 2nd CoC meeting held on 01.06.2019, RP submitted that there was non-cooperation from the Suspended Management and desired to file an application for non-cooperation from the Suspended Management before this Tribunal, which was approved by the members of the CoC. Accordingly, IA No. 465/2019 in CP(IB) 77/2018 was filed by the RP before this Tribunal. Besides, RP appointed two registered valuers in the aforesaid 3rd meeting of CoC.
6. However, during the 2nd CoC meeting, the sole CoC member resolved not to ratify the costs incurred during the first month of CIRP as the Corporate Debtor Company itself have filed the main Company Petition for initiating Insolvency proceedings. It is also submitted by the RP that drafts of Form G, Expression of Interest (hereinafter referred as "EoI"), Bid Process Memorandum, Evaluation Matrix, etc were circulated to the sole CoC member and eligibility criteria of the prospective Resolution Applicants was approved in the same meeting by CoC.
7. After due discussions and deliberations, Form G for inviting EoI was published on 05.06.2019 and the last date for submission of resolution plan was fixed as 20.06.2019. However, no EoI was received in response to EoI.

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8. In the 3rd CoC meeting held on 09.08.2019, the representative of the sole CoC member came to the conclusion that since there was no chance of revival or resolution of the Corporate Debtor Company, there is no point in spending money and time on the same. Hence, the Corporate Debtor Company shall go into liquidation due to non receipt of resolution plan within the CIRP period.
9. In view of the order of the Hon'ble Supreme Court in a case of **Allahabad Bank vs. ARC Holding Ltd.**, {[2000] 28 SCL 394 (SC) (para 19)}, we pass the following orders:
- a) The Liquidator shall, as far as possible, try to dispose of 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 Company as a going concern, which will be applicable for 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 sale of the assets of the Corporate Debtor Company will be according to the provisions contained in Chapter VI of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. In case it is not concluded within this period, the order of this Tribunal directing the sale of the Corporate Debtor Company as a going concern shall stand set aside and the Corporate Debtor Company to be liquidated in the manner as laid down in chapter III of the Liquidation Process as provided in IB Code.
- b) The Liquidator is further directed to issue public announcement stating that the Corporate Debtor Company is in liquidation.
- c) It is also ordered that copy of the order be sent to the Registrar of Companies with which the Corporate Debtor Company is registered.
10. Accordingly, the instant IA stands disposed of with the above observations.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)