

NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH COURT II

Item No.42

IA(IBC)(Liq.)/111/2024 in C.P. (IB)-1253(MB)/2022

CORAM

SHRI SANJIV DUTT

SHRI ASHISH KALIA

HON'BLE MEMBER (TECHNICAL)

HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **01.04.2025**

NAME OF THE APPLICANT: **Mr. Haresh Babulal Shah**

Appearance:

For Applicant : Adv. Avinash R Khanolkar a/w Adv. Surekha Yadav

& Adv. Khushbu Bhanushali

IBC Under Section 33(2)

ORDER

1. The present I.A. 111 of 2024 has been filed under the provisions of Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as '**the Code**') by **Mr. Haresh Babulal Shah**, Resolution Professional (hereinafter referred to as '**RP/Applicant**') for **M/s. Mahila Udyog Limited** (hereinafter referred to as '**Corporate Applicant**') seeking the following reliefs: -

"a. Admit & Allow the Application;

b. Pass an Order Commencing Liquidation of M/s. Mahila Udyog Limited as per the Part I, Chapter III of the Insolvency and Bankruptcy Code, 2016;

- c. *Pass an Order appointing Mr. Milind Kasodekar having Registration Number IBBI/IPA-002/IP-N00116/2017-18/10285 as Liquidator of M/s. Mahila Udyog Limited;*
- d. *Pass an Order fixing fee of the appointed Liquidator as decided by the Committee of Creditors of M/s. Mahila Udyog Limited in its 2nd meeting held on 30.09.2024;*
- e. *Pass an order U/s. 35(1)(k) of the Code allowing the appointed Liquidator to represent M/s. Mahila Udyog Limited before any Court of Law for the institution of suits/proceedings and/or in pending suits/proceedings;*
- f. *Pass an Order directing the present Committee of Creditors of M/s. Mahila Udyog Limited to meet the shortfall, if any, remains there between the Liquidation Cost and actual realized amount from the sale proceeds of M/s. Mahila Udyog Limited.”*

Brief Facts

2. The Corporate Applicant (i.e., M/s. Mahila Udyog Limited), filed the **C.P.(IB)1253/MB/C-II/2022** before this Tribunal under Section 10 of the Code, to initiate Corporate Insolvency Resolution Process (**'CIRP'**). This Company Petition was admitted by the Tribunal and the CIRP of Corporate Applicant commenced vide Order dated 30.07.2024.
3. Mr. Haresh Babulal Shah bearing Registration No: IBBI/IPA-001/IP-p00378/2017-2018/10635 was appointed as the Interim Resolution Professional (**'IRP'**) to conduct the CIRP. On 01.08.2024, the IRP published a Public Announcement in Form A in **'Loksatta'** (*Marathi Language*) and **'The Financial Express'** (*English Language*) in the Pune region, inviting claims from the creditors of the Corporate Applicant. Pursuant to this public announcement, a claim was received from One Operational Creditor. In light of the claim received, the IRP examined Corporate Applicant's books of account and established that it had no Financial Creditors.

Committee of Creditors

4. Pursuant to the provisions laid down under Regulation 16 of the CIRP Regulations, the IRP constituted the Committee of Creditors (hereinafter referred to as 'CoC') on 21.08.2024 comprising of the Operational Creditor as its Sole Member in terms of Section 21 of the Code. The composition of the CoC along with the claim received and admitted has been reproduced below: -

Sr. No.	Name of Creditor	Claim Received (in Rs.)	Amount Admitted (in Rs.)	% of Voting
1.	Kirloskar Industries Limited	3,85,87,033.84/-	3,85,87,033.84/-	100%
Total		3,85,87,033.84/-	3,85,87,033.84/-	100%

5. The IRP called for the 1st CoC Meeting on 26.08.2024, wherein the IRP was confirmed as the Resolution Professional ('RP') of the Corporate Applicant.
6. The 2nd CoC Meeting was convened on 30.09.2024. After perusing the minutes of the 2nd CoC Meeting annexed to the Application, it came to light through the RP's assessment that the only assets in the Company were in the nature of Deposits and other Miscellaneous financial assets approximately amounting to **Rs.90,33,610/-** whereas the Operational Creditor's admitted claim is **Rs.3,85,87,033.84**. The following resolutions were put for voting and approved by the CoC unanimously: -
- "RESOLVED THAT** consent of the committee of creditors be and is hereby accorded to make application to the Adjudicating Authority to Liquidate the Corporate Debtor."
- "RESOLVED FURTHER THAT** the Resolution Professional be is hereby authorized to make application to the Adjudicating Authority to Liquidate the Corporate Debtor and to do all such necessary acts, deeds and things in this regard."
7. It is thus observed that the CoC unanimously approved the resolution for liquidation of the Corporate Debtor and authorised the RP to make application to the Adjudicating Authority to Liquidate the Corporate

Debtor, since the assets of the Corporate Applicant by way of fixed deposits and Security Deposits were insufficient to pay off the creditors.

8. It is well settled that the power given to the CoC to take decision for liquidation is of a wide amplitude which can be exercised immediately after constitution of the CoC. In terms of the statutory construct of IBC, it is, therefore, not required for the CoC to complete all the steps relating to resolution of the Corporate Debtor prior to the liquidation of the Corporate Debtor and any interpretation to the contrary would clearly be antithetical to the spirit of Section 33(2) and Explanation appended to it wherein the legislature has consciously used the words 'any time' for liquidation even before inviting resolution plans [**Sunil Surrendrakumar Kakkad Vs. Sujot Infrastructure Pvt. Ltd. & Anr.** 2024 SCC OnLine NCLAT 1316].
9. Therefore, we are of the considered view that Section 33(2) of the Code read with its *Explanation* clause empowers the CoC to initiate liquidation even before inviting resolution plans. Accordingly, this Bench is of the opinion that the Corporate Debtor is required to be liquidated in the manner as laid down under the Code. Hence, we pass the following order:
 - a. That Mr. Milind Kasodekar having Registration Number IBBI/IPA-002/IP-N00116/2017-18/10285 and email address milind.kasodekar@kmdscs.com is appointed as the Liquidator of M/s. Mahila Udyog Limited in terms of Section 34 of the Code;
 - b. The Liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by IBBI and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code;
 - c. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence from the date of this order;

- d. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Code;
 - e. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Code and in accordance with the relevant rules and regulations;
 - f. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code;
 - g. The Liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor, if any, as per law;
 - h. The Liquidator 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;
 - i. Registry is directed to communicate this Order to the Registrar of Companies, Mumbai and to the Insolvency and Bankruptcy Board of India;
 - j. Copy of this order be sent to the operational creditor, corporate debtor, the RP and the Liquidator for taking necessary steps.
 - k. The present RP is direct to hand over the relevant documents and control of the Corporate Debtor to the newly appointed Liquidator forthwith.
10. Accordingly, the **I.A. 111/2024** in **C.P.(IB)1253/MB/2022** filed by the RP for liquidation of the Corporate Debtor stands **allowed and disposed of** in aforesaid terms.

Sd/-

SANJIV DUTT
MEMBER (TECHNICAL)

Sd/-

ASHISH KALIA
MEMBER (JUDICIAL)

Vaishnavi