

**NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH**  
**COURT III**

27. I.A. 2406/2022

IN

C.P.(IB)-3698(MB)/2019

CORAM: SHRI H. V. SUBBA RAO, MEMBER (J)  
MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL  
COMPANY LAW TRIBUNAL ON **12.06.2023**

NAME OF THE PARTIES: Harshad V Vora

V/s.

Atharva Metals Pvt Ltd.

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

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**ORDER**

**I.A. 2406/2022**

Adv. Raina Birla appearing for the applicant/RP. The above application is filed by the RP/applicant for liquidation of the corporate debtor.

Heard the counsel appearing for the applicant. The above application is **allowed**. Detailed order would follow:

Sd/-  
MADHU SINHA  
Member (Technical)  
//RKS//

Sd/-  
H. V. SUBBA RAO  
Member (Judicial)

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

**I.A. 2406 OF 2022**

Under Section 33 of Insolvency &  
Bankruptcy Code, 2016

Filed by

**Uday Shreeram Sakrikar**

303, Rahul Vihar A, Lane Nos.8,  
Dahanukar Colony, Kothrud, Pune-  
411038

**...Applicant/Resolution  
Professional**

In the matter of

**C.P. No. 3698 of 2019**

**Harshad V. Vora**

(Proprietor of a firm namely Utkarsh  
Steel Corporation) 40, Carnac Siding  
Road, Iron Market, Stelyard building  
gate, Mumbai- 400009

**...Operational Creditor**

Versus

**Atharva Metal Private Limited**

102, A-wing, Bonzer Avenue CHS,  
Katrap Road, Near Hatti Bungalow &  
Old Petrol Pump, Badlapur East,  
Maharashtra- 421503

**... Corporate Debtor**

**Order dated: 12.06.2023**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble MS. Madhu Sinha, Member (Technical)

**Appearance:**

For the Resolution Professional: Ms. Raina Birla, Advocate

1. It is an application filed by Resolution Professional, Uday Shreeram Sakrikar seeking liquidation of Atharva Metal Private Limited, (hereinafter referred as Corporate Debtor) under Section 33(1) (a) and 34 (1) of Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”), praying for following reliefs:
  - a. *To pass an order for liquidation of the Corporate Debtor;*
  - b. *To pass any such other order and further orders as this Hon’ble Tribunal may deem fit and appropriate in the interest of justice.*
2. The Applicant submits that this Tribunal vide an order dated 25.03.2022 in Company Petition No. 3698 of 2019 admitted the petition under Section 9 of the Code. The applicant herein was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor by this Tribunal. Upon his appointment as the IRP, the applicant published a public announcement of CIRP in Form A dated 15.04.2022 in two newspapers i.e. Financial Express (English) and Pudhari (Marathi) inviting claims from all the creditors of the Corporate Debtor in which the applicant received one claim from Financial Creditor i.e. The Greater Bombay Co-operative Bank Limited and one from aforesaid Operational Creditor.
3. The applicant further submits that he is not able to trace the suspended directors of the Corporate Debtor in spite of serving notice and also due to non-availability of the books of accounts/financial record it would be unnecessary to extend the CIRP process as the Applicant is not be able to perform his duties as contemplated in the IBC, 2016 which will ultimately delay and

defeat the time frame of the duties, responsibilities of the applicant as mandated in the code.

4. The applicant further mentions that the last financial statement available with the MCA of the Corporate Debtor is of Financial Year 2019-20 which shows that there are:

- a) There are fixed assets with the corporate debtor of Rs. 38,36,534/- which includes plot & Machinery, Electric Equipment's & Computers (details of which are not available since the applicant is unable to get information from the erstwhile management of the Corporate Debtor.
- b) Non-current Investments of Rs. 10,96,000/- for which no detail is available with the applicant.
- c) Inventories of Rs. 7,75,24,265/-, trade receivables of Rs. 23,15,70,142/-, cash and bank balances of Rs. 34,25,805/-, Short -term loans and advances of Rs. 31,00,000/-, other current assets of Rs. 28,83,579/- for which no detail is available with the applicant.

5. The applicant further submits that in the 4<sup>th</sup> COC meeting held on 08.08.2022, it was decided that since there were no realizable assets and no details were available with the applicant because of no response received from the suspended directors and after reviewing the last financials for the year 2019-20, considering the nature of the business, the chances of revival of the company were very remote. Hence, in these circumstances issuance of Form G would only increase the CIRP cost and delay the timeline of CIRP. Therefore, the COC directed the applicant to file application for liquidation of the Company and the applicant be appointed as the Liquidator and his fees is fixed as per Regulation

4 of the IBBI (liquidation process) Regulations 2016. The CoC in its 4<sup>th</sup> meeting passed the following Resolution with 100% voting share:

**“RESOLVED** that pursuant to section 33(2) of the Insolvency and Bankruptcy Code, 2016 and any other applicable provisions of the code and its Regulations, consent of members of COC be and is hereby accorded to approve the liquidation of the corporate debtor”.

**“RESOLVED FURTHER THAT** Resolution Professional be and is hereby authorized to apply to Hon’ble Adjudicating Authority for getting the order of liquidation”.

**“RESOLVED FURTHER THAT** The Resolution Professional be and is hereby authorized to take such steps as may be necessary, in relation to the above, to the extent required and to settle all matters arising out of and incidental thereto sign and execute all applications, documents and writings that may be required and generally to do all acts, deeds and things that may be necessary, proper, expedient or incidental for the purpose of giving to the aforesaid resolution.”

6. The Applicant further submits that COC members noted that the applicant is eligible for appointment as liquidator and therefore following resolution was passed by the COC:

**“RESOLVED THAT** Mr. Uday Shreeram Sakrikar be appointed as official liquidator at a lumpsum fee of Rs. 45,000/- plus out of pocket expenses and taxes as applicable (subject to approval of NCLT)”.

**ORDER**

1. We have heard the Applicant and perused all the documents submitted by them. It is observed from the minutes of the 4<sup>th</sup> CoC meeting that the CoC has, with 100% majority, decided to liquidate the Corporate Debtor and relying on the settled principle of law regarding the Commercial Wisdom of the CoC, we hereby allow this Interlocutory Application Number 2406 of 2022 with the following observations and directions:
  - a. **Mr. Uday Shreeram Sakrikar**, having Registration No. IBBI/IPA-011/IP-P01230/2018-19/11927 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
  - b. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
  - c. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
  - d. The Liquidator is appointed under section 34(1) of the Code. All 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 liquidator.
  - e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice

stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.

- f. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.
  - g. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
  - h. That on having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding 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. This liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator as per section 33(7) of IBC.
2. With the above directions, this application i.e. I.A. No. 2406 of 2022 is hereby allowed and disposed of.

**Sd/-**

**MADHU SINHA**  
**MEMBER (TECHNICAL)**  
(Rks)

**Sd/-**

**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**