

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

**IA 80 of 2020 in C.P. (I.B) No.76/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 02.07.2020**

Name of the Company: Kiran Shah RP For VHCL Industries Ltd

Section : Section 33(1),33(2),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>
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1.

2.

**ORDER**

Learned FCA, Mr. Kiran Shah is present in person for the RP.

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. 76 of 2018 for liquidation of the Corporate Debtor.

2. The facts of the case are stated herein:

2.1 CP(IB)No. 76 of 2018 was filed by Corporate Applicant itself viz., M/s. VHCL Industries Limited under Section 10 of the IB Code, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") was admitted by this Adjudicating Authority vide its Order dated 19.02.2019 and appointed the Applicant, Mr. Kiran Shah as Interim Resolution Professional (hereinafter referred as "IRP") of the Corporate Applicant.

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- 2.2 It is found that the Committee of Creditors (hereinafter referred as "CoC") in its First Meeting held on 03.04.2019 decided for continuation of the IRP as RP.
- 2.3 It is a matter of record that 180 days were expired on 09.01.2020. The Adjudicating Authority exempted 145 days vide its order dated 16.10.2019 in IA 331/2019 filed by the Applicant, in view of the litigation pending before the Official Liquidator, Mumbai.
- 2.4 On perusal of the record, it is found that the 4<sup>th</sup> meeting of the COC was held on 14.01.2020, wherein, CoC decided to liquidate the Corporate Debtor, as there is no Resolution Plan available in respect of the Corporate Debtor and directed the RP to file an application for Liquidation as per the provisions of the IB Code for liquidation of the Corporate Debtor, as 330 days have been expired (as reflected from Page No. 61 to 69 of the Application, Item No. B-3).
3. Heard the applicant and also seen the records, it is found that for the reasons as mentioned in the 4<sup>th</sup> Meeting of the COC, the COC does not wish to continue the CIRP process and therefore, the CoC has decided for liquidation of the Corporate Debtor in its 4<sup>th</sup> CoC meeting held on 14.01.2020. 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** observed as follows:

*"The commercial wisdom of the Committee of Creditors cannot be interfered into by the Adjudicating Authority. The Hon'ble Supreme Court affirmed K. Sashidhar's judgement that neither the Adjudicating*

*Shoona Ingey*

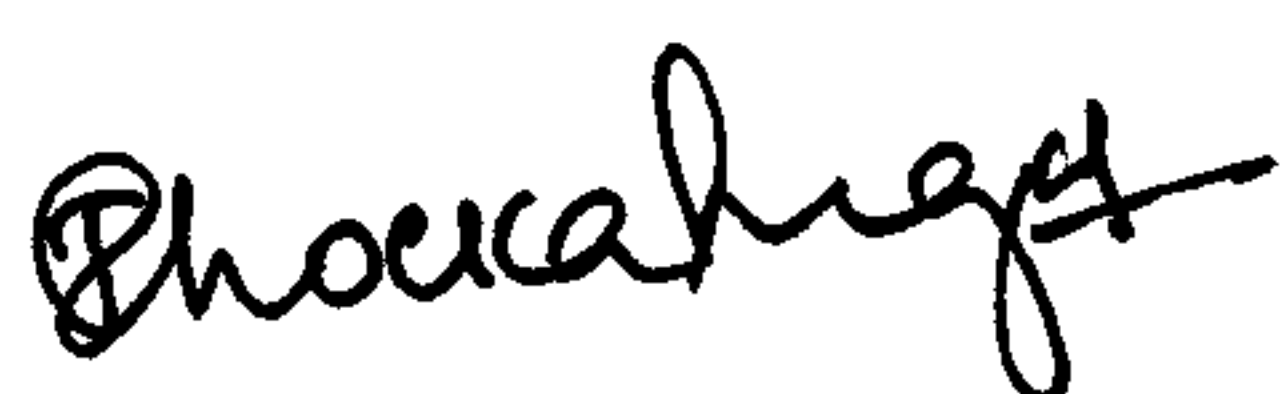
*Munna*

*“The commercial wisdom of the Committee of Creditors cannot be interfered into by the Adjudicating Authority. The Hon’ble Supreme 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. 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 80 of 2020 in CP(IB) 76 of 2018 so filed by the RP under Section 33(1), 33(2) and 34(1) 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. VHCL Industries Limited filed under Section 10 of the IB Code. The RP namely Mr. Kiran 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)**