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BEFORE THE AJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD

IA 569 of 2019 in C.P.(I.B) No. 75/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 23.10.2019

Name of the Company: Kiran Shah RP For UIC Corporation Pvt  
Ltd  
V/s

Suspended Management of UIC  
Corporation Pvt Ltd

Section of the Companies Act : Section 33(1), 33(2), 33(3) of the Insolvency and  
Bankruptcy Code

**S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE**

1. KIRAN SHAH FCIA Applicant - RP Kiran Shah  
2.

**ORDER**

The Applicant is represented through learned counsel.

The order is pronounced in the open court vide separate sheet.

Chockalingam  
CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL

Dated this the 23th day of October, 2019

Manorama  
MANORAMA KUMARI  
MEMBER JUDICIAL

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

**IA No. 569 of 2019**

**in**

**C.P.(IB) No. 75/10//NCLT/AHM/2018**

**In the matter of:**

Kiran Shah  
Resolution Professional (RP) of  
M/s. UIC Corporation Private Ltd.

.....Applicant

**Versus**

Suspended Management of  
M/s. UIC Corporation Private Ltd.,

.....Respondent

**Order delivered on 23<sup>rd</sup> October, 2019**

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

**Appearance:** Mr. Kunal Sharma, Learned CA for the respondent is present. Mr. Kiran Shah  
Learned FCA for the applicant is present.

**ORDER**

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

1. The instant application is filed under Section 33(1)(2) & (3) of I&B Code, 2016 with the following prayer:
  - (a) To issue necessary directions / clarifications in view of the winding up order passed by the Hon'ble High Court of Bombay and appointment of the Official Liquidator in respect of the Corporate Debtor.
  - (b) To pass an order for liquidation of the Corporate Debtor in terms of clause (a) of sub Section (1) of Section 33 of the Insolvency and Bankruptcy Code, 2016 owing to non-receipt of resolution plan.
  - (c) To issue a public announcement stating that the Corporate Debtor is in liquidation.
  - (d) To direct the Applicant to send the order of the authority with which the Corporate Debtor is registered – Registrar of Companies, Gujarat, Dadra and Nagar Haveli i.e. ROC, Ahmadabad.





- (e) To appoint Resolution Professional i.e. the Applicant as the Liquidator of the Corporate Debtor in terms of sub Section (1) of Section 34 of the Insolvency and Bankruptcy Code, 2016 as the Committee of Creditors have neither approved any resolution plan nor decided to liquidate the Corporate Debtor.
- (f) To fix the fees of the liquidator in terms of sub regulation (2) of regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 as the Committee of Creditors have not fixed the fees of the liquidator in terms of regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (g) To direct the Opponent No.4 herein, being the member of the Committee of Creditors of the Corporate Debtor, to make payments to the Resolution Professional of the Corporate Debtor, the applicant herein, relating to the Corporate Insolvency Resolution Process as due and incurred by the applicant herein including his professional fees, costs of publication of Form G and other expenses as and when applicable.
2. On filing of the instant application, notice was issued to the Committee of Creditors as well as Suspended Management. However, during the time of hearing, none appeared on behalf of the Committee of Creditors. However, on behalf of the Suspended Management, Mr. Kunal Sharma, CA was present and who fairly submitted that he has no objection towards passing of the order of liquidation. It is pertinent to mention herein that at the time of filing of the application under Section 10 of the I&B Code, 2016, one winding up application was also pending wherein the Official Liquidator has already been appointed. The said fact was not disclosed during the hearing of the application filed under Section 10 of the I&B Code, 2016. However, subsequently, RP has come to know that one winding up application was pending before the Hon'ble High Court of Mumbai. In view of this, this Adjudicating Authority sent a notice to the Official Liquidator, but the Official Liquidator never appeared.

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3. Meanwhile, Mr. Kunal Sharma, who was present, representing the Suspended Management submitted that he will take appropriate steps in winding up application pending before Hon'ble High Court of Mumbai.
4. The RP submitted that in view of Section 238 of I & B Code, 2016 which prevails over all other Acts and have relied on the judgment passed by the Hon'ble Supreme Court in Civil Appeal No.12023 of 2018 in **Jaipur Metals & Electricals Employees Organization Vs. Jaipur Metals & Electricals Ltd** wherein it is observed that the Section 238 of I & B Code will prevail over all other Acts. For the sake of convenience, the relevant para is reproduced herein below:

*“18. Shri Deve’s ingenious argument that since Section 434 of the Companies Act, 2013 is amended by the Eleventh Schedule of the Code, the amended Section 434 must be read as being part of the Code and not the Companies Act, 2013, must be rejected for the reason that though Section 434 of the Companies Act, 2013 is substituted by the Eleventh Schedule of the Code, yet Section 434, as substituted, appears only in the Companies Act, 2013 and is part and parcel of the that Act. This being so, if there is any inconsistency between Section 434 as substituted and the provisions of the Code, the letter must prevail. We are of the view that the NCLT was absolutely correct in applying section 238 of the Code to an independent proceedings instituted by a secured Financial Creditor, namely, the Alchemist Asset Reconstruction Company Ltd. These being the case, it is difficult to comprehend how the High Court could have held that the proceedings before the NCLT were without jurisdiction. On this score, therefore, the High Court judgment has to be set aside. The NCLT proceedings will now continue from the stage at which they have been left off. Obviously the company Petition pending before the High Court cannot be proceeded with further in view of Section 238 of the Code. The Writ Petitions that are pending before the High Court have also to be disposed of in light of the fact that proceedings under the Code must run their entire course. We, therefore, allow the appeal and set aside the High Courts judgment.*”

In view of the abovesaid judgment, we do not find any impediment in allowing the instant application.

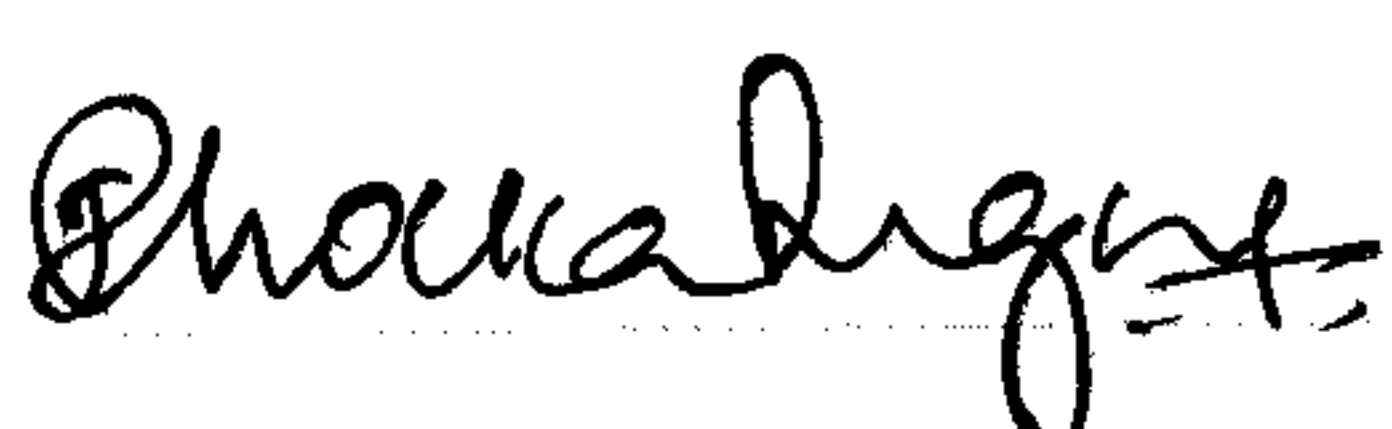
5. Heard the RP and Suspended Management and also seen the Resolution so passed by the Committee of Creditors.
6. On perusal of the records, it is found that the Corporate Insolvency Period of 180 days expired on 08.07.2019. Accordingly, the RP called the meeting of the Committee of Creditors to consider the extension of Corporate Insolvency Process period. However, one of the members of the Committee

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of Creditors viz. Union Bank of India i.e. Opponent No.3, with the voting share of 48.41% rejected the resolution through E-voting for extension of Corporate Insolvency Process Period.

7. Since the extension of Insolvency Period is rejected by the Committee of Creditors, the present Corporate Debtor automatically become eligible to be entered into the liquidation in terms of Clause-A of (1) of Section 33 of I&B Code, 2016. Moreover, it is settled by the Hon'ble Supreme Court in the matter of **K. Sashidhar Vs. Indian Overseas Bank & Ors**, wherein the Hon'ble Supreme Court has observed that National Company Law Tribunal has no jurisdiction and authority to analyse or evaluate the commercial decision of the Committee of Creditors (CoC) to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. It is further observed that upon receipt of a rejected resolution plan, the Adjudicating Authority is obligated to initiate liquidation process under section 33(1) of the Insolvency and Bankruptcy Code, 2016.
8. In view of the facts and circumstances recorded by the RP in the instant application as IA No.569/19 and in exercise of power conferred in sub Section (i)(ii) & (iii) of Clause (a) of sub Section (1) of Section 33 of the I&B Code,2016, this Adjudicating Authority proceed to pass order as follows:
- (i) This Adjudicating Authority orders the liquidation of the Corporate Debtor viz. M/s. UIC Corporation Pvt. Ltd., which shall be conducted in the manner as laid down in Chapter-III of the I & B Code, 2016.
  - (ii) This authority appoints RP viz., Mr. Kiran Shah as Company Liquidator, who shall issue a publicannouncement stating that the Corporate Debtor is in liquidation.
  - (iii) The moratorium declared under Section 14 of the I&B Code, 2016 shall cease to have effect from the date of the order of liquidation.
  - (iv) Subject to Section 52 of the I&B 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 prior approval of this Adjudicating Authority.


- (v) This Adjudicating Authority makes it clear that Para No.(iv) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any Financial Sector / Regulatory.
- (vi) This 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.
- (vii) All the powers of the Board of Directors, Key Managerial Personnel and Partners of the Corporate Debtor, as the case may be, shall cease to have the effect and shall be vested with the company liquidator, i.e. Mr. Kiran Shah.
- (viii) The personnel of the Corporate Debtor shall extend all the assistance and cooperation to the company liquidator as may be required by him in managing the affairs of the Corporate Debtor.
- (ix) The company liquidator shall be entitled to charge such fees for the conduct of the liquidation proceedings and in such a proportion to the value of the liquidation estate / assets as specified under Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016.
- (x) Copy of this order shall be sent to the concerned Registrar of Companies, RD, OL and Registered office of the Corporate Debtor by the company liquidator viz. Mr. Kiran Shah for information and compliances.
9. Notwithstanding above, the company liquidator shall try to dispose of the corporate debtor company as a going concern and the interests of workers / employees be protected to their level best, as observed in the matter of **M/s. Gujarat NRE Coke Limited** as under:
- (a) *The Liquidator shall try to dispose off the Corporate Debtor company as a going concern after publication of notice in newspaper with the reserve*


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*price which shall be equal to the total debt amount including interest and maximum period applicable for trying the sale of the Corporate Debtor as a going concern will be only 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 the sale of the assets of the company will be according to the provisions of sale of asset of the Corporate Debtor prescribed under Section 33, Chapter-VI of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016. In case of it is not concluded within this period, the order of this Court directing the sale of the company as a going concern shall stand set aside and corporate debtor to be liquidated in the manner as laid down in Chapter III of the Liquidation process provided in Insolvency & Bankruptcy Code.”*

10. Further, the RP has also submitted that Opponent No.4 has not yet cleared the dues of the RP, while all other members of Committee of Creditors have cleared their dues. In this regard, this Adjudicating Authority directs the Opponent No.4 to clear the dues of RP forthwith without any further delay.
11. In terms of the above, the instant IA No.569 of 2019, filed in CP (IB)75 of 2018 by the RP under Section 33 of the I&B Code, 2016 for initiation of liquidation proceedings against the Corporate Debtor viz. UIC Corporation Pvt. Ltd. is allowed and disposed of.
12. The Registry is directed to send the copy of this order to the Company Liquidator immediately for information and compliance.

  
**CHOCKALINGAM THIRUNAVUKKARASU**  
**ADJUDICATING AUTHORITY**  
**MEMBER TECHNICAL**

  
**MANORAMA KUMARI**  
**ADJUDICATING AUTHORITY**  
**MEMBER JUDICIAL**

Dated this the 23<sup>rd</sup> day of October, 2019

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