

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH COURT -III  
INTERLOCUTORY APPLICATION NO. 1403/2023  
IN  
COMPANY PETITION NO. CP (IB) 168/ MB/C-III/2022  
(Under Section 33 of the Insolvency and Bankruptcy Code, 2016)**

**Mr. Ashish Saoji**

Resolution Professional of Makalu  
Trading Limited, having his office  
at 107, Kanchanganga Estate,  
Narendra Nagar, Nagpur- 440015

.... Applicant

*In The Matter Of*

**Zenil Traders Private Limited**

.... Operational Creditor

Versus

**Makalu Trading Limited**

.... Corporate Debtor

**Order Pronounced on 08.05.2024**

**Coram:**

MS. LAKSHMI GURUNG, HON'BLE MEMBER (J)

SH. CHARANJEET SINGH GULATI, HON'BLE MEMBER (T)

**Appearances:**

For Applicant: Adv. Shruti Sardesai i/b Yash Jariwala

**Per: SH. CHARANJEET SINGH GULATI, MEMBER (T)**

1. The above application has been filed by Resolution Professional, Mr. Ashish Avinash Saoji, under Section 33 (1) (a) of the Insolvency and Bankruptcy Code, 2016 (**'Code'**) since the CIRP period under Section 12 of the IBC have expired.
2. The Corporate Insolvency Resolution Process (**'CIRP'**) was initiated vide Order dated 05.04.2022 against MAKALU TRADING LIMITED, (**'Corporate Debtor'**) in Company Petition No. 168 of 2022 filed by ZENIL TRADERS PRIVATE LIMITED (**Operational Creditor**) under Section 9 of the Code. Tribunal declared moratorium in relation to the Corporate Debtor and appointed Mr. Rakesh Bothra as an Interim Resolution Professional (**'IRP'**) of the Corporate Debtor.

3. The IRP made public announcement on 14.04.2022 in Business Standard, Mumbai edition (English Newspaper), Financial Express, Mumbai edition (English Newspaper) and Pudhari, Mumbai edition (Marathi Newspaper) as per section 15 of the code read with Regulation 6 and 13 of the Insolvency and Bankruptcy Board of India ( Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and other applicable provisions of the Code to invite claims of the Creditors and formed Committee of Creditors (CoC).

4. The final composition of the CoC of the Corporate Debtor is as follow:

Sr. No.	Name of the Financial Creditor	Voting Share
1	Punjab National Bank	72.34%
2	Indian Overseas Bank	27.66%
Total		100%

5. The IRP received and collated claims of creditors in accordance with Section 21 of the Code. The 1<sup>st</sup> CoC meeting was held on 12.05.2022, wherein the CoC discussed about the developments in the CIRP of CD. The IRP also noted the claims received by him and set out present affairs of the CD.

6. From 16.06.2022 to 15.09.2022 the COC held as many as 6 meetings and took decisions to further proceed towards the resolution of the Corporate Debtor. In the 8<sup>th</sup> meeting of the COC convened on 26.09.2022 it was proposed to appoint Mr. Rakesh Bothara or the applicant as the RP of the Corporate Debtor and the matter was put up for voting. The majority of the COC voted in favour of the applicant and accordingly, it was resolved to appoint the Applicant as the RP of the Corporate Debtor. However, the applicant was not formally appointed as RP of the Corporate Debtor.

7. Subsequently, and in furtherance of the CIRP applications were moved before this Tribunal seeking extension of time which were allowed. Meanwhile, and in response to inviting expression of interest and subsequent actions taken plans were submitted by one Prospective Resolution Applicant. However, the same was rejected with 72.343% voting against such resolution plan.
8. In the 11<sup>th</sup> COC meeting convened on 08.12.2022 it was unanimously decided to resolve to public a fresh EOI and accordingly form G was published in Financial Express and Navakkal. One Resolution Plan was received from M/s Ashok Investors Trust Ltd. however, the same was also rejected in the 16<sup>th</sup> COC meeting with 72.343% voting against such resolution plan.
9. The Applicant submitted that vide Order dated 10.03.2023 ('RP appointment order') passed by this Tribunal, Mr. Rakesh Bothra, IRP of the CD was replaced and the Applicant, was appointed as the RP of the Corporate Debtor since in the Minutes of the 8th CoC meeting held on 26.09.2022, the CoC had voted in favour of the Applicant's appointment as the RP of the Corporate Debtor.
10. On 15.02.2024, the matter was kept for clarification during which this Tribunal pointed out that there was no resolution passed by the members of the CoC appointing the applicant as the RP of the Corporate Debtor. To which Applicant clarified that, since the applicant was appointed as the RP of the Corporate Debtor by Order dated 10.03.2023 subsequent to the 16<sup>th</sup> CoC meeting held on 06.03.2023, therefore there was no resolution passed at the 16<sup>th</sup> CoC meeting appointing the applicant as the RP of the Corporate Debtor.
11. The Applicant received a copy of the RP appointment order on 21.03.2023 when it was uploaded on the NCLT portal. Thereafter,

between 27.03.2023 to 03.04.2023, the applicant took charge of the documents etc. of the Corporate Debtor and physical handover from the erstwhile IRP, Mr. Rakesh Bothra.

12. Accordingly, on 08.04.2023, the applicant filed the I. A. 1403 of 2023 before this Tribunal under Section 33 of the Code as the RP of the Corporate Debtor seeking liquidation of the Corporate Debtor since the resolution plan was not approved by the members of the CoC and a resolution for liquidation of the Corporate Debtor was passed by the members of the CoC. Further, the CIRP period has also ended in the absence of any order granting further extension of the CIRP period.
13. Thereafter, the Applicant has held 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup> meetings with the members of the CoC on 26.07.2023, 05.10.2023, 29.12.2023 and 23.01.2024 respectively. The valuation reports were prepared in respect of the assets of the Corporate Debtor.
14. During clarification hearing dated 15.02.2024 this bench pointed out that name of proposed Liquidator was written as Mr. Avinash Saoji while annexed AFA was of Mr. Ashish Saoji and name of the Corporate Debtor in the prayer was Schema Enterprises Pvt. Ltd, while in application name of the CD was Makalu Trading Limited. Pursuant to the hearing dated 15.02.2024, the applicant filed an additional affidavit stating that, there were typographical errors in prayer clause 25(i) and in 25(i)(1) and in the present application, the name of the Corporate Debtor is Makalu Trading Limited and not Schema Enterprises Pvt. Ltd. Further the applicant seek appointment of Mr. Ashish Avinash Saoji and not the appointment of Mr. Avinash Saoji.
15. It is observed that in the 16<sup>th</sup> CoC meeting was held on 06.03.2023 the revised resolution plan of PRA, M/s. Ashok Investors Trust Limited with amendment was put to vote. However, the Plan was rejected by the

members of the CoC with 72.343% voting. Further, the members of the CoC with 72.343% voting resolved to liquidate the Corporate Debtor in the absence of approval of the resolution plan. Since the CIRP period have expired even after extension granted and including the exclusion sought, the Applicant applied for liquidation of the Corporate Debtor.

16. Pursuant to the Clarification hearing on 15.02.2024, at the 21<sup>st</sup> CoC meeting which was convened on 23.02.2024, after apprising the members of the CoC, it was inter alia resolved that the Applicant shall be appointed as the liquidator of the Corporate Debtor under Section 34(1) of the IBC.
17. We note that this Tribunal has not received any Resolution Plan for approval since no plan has been approved by the CoC. Consequently, the RP has filed the present application under section 33 (1) (a) read with Section 33 (2) of the IBC.
18. Further the CoC has passed a resolution in 16<sup>th</sup> CoC meeting fixing the fees of the liquidator, as Rs.30,000/- and exclusive of various expense at actuals) and additional liquidator fee which will be payable as provided under IBBI (Liquidation Process) Regulations, 2016 and IBBI Circulars.
19. The IRP/ Applicant had prepared and maintained an updated Information Memorandum setting out the details of the Corporate Debtor as required under section 29 of the IBC read with the applicable regulations. The IRP/Applicant has also obtained the valuation reports pertaining to the assets of the Corporate Debtor.
20. The IRP/RP has, from time to time, filed progress reports with this Tribunal, setting out the status of the CIRP of the Corporate Debtor.

21. In view of the facts of the case and resolution passed by the CoC for liquidation of the Corporate Debtor under Section 33(1) (a) read with Section 33 (2) of the Code and appointment of liquidator, this Authority finds this case fit for Liquidation and accordingly, the above Application is allowed by passing the following order:

**ORDER**

- a. The above I.A. 1403/ 2023 is **allowed** and the Corporate Debtor M/s Makalu Trading Limited is ordered to be liquidated.
- b. **Mr. Ashish Saoji** having Registration No. *IBBI /IPA - 001 /IP-P01268/2018-2019/12150* and having office at: 107, Kanchanganga Estate, Narendra Nagar, Nagpur- 440015, is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
- c. We found that Authorisation for Assignment (AFA) of the Liquidator attached to the Application was expired on 12.12.2023. During hearing counsel for Liquidator submitted that AFA is renewed. The fresh authorization for assignment has been filed by the Applicant for the proposed liquidator and form B it is seen that his authorization is valid till 18.12.2024.
- d. The Liquidator for conduct of the liquidation proceedings would be entitled to the fees as per decision taken by CoC.
- e. The Liquidator appointed in this case is directed 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.

- f. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of the Part- II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant Rules and Regulation.
- g. The Liquidator appointed under section 34(1) of the Code will have all powers of the board of directors, key managerial personnel and the Board of the Corporate Debtor, the Key Managerial Persons, the Partners as the case may be, shall cease to have effect and shall be vested with the liquidator.
- h. 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.
- i. 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.
- j. 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.
- k. 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.

1. Registry is directed to send the copy of the order to the IBBI as well as Liquidator.
  
- m. With the above directions, I.A. No. 1403 of 2023 is hereby **allowed and disposed of.**

Sd/-

**CHARANJEET SINGH GULATI**  
**MEMBER (TECHNICAL)**

(Saayli, LRA)

Sd/-

**LAKSHMI GURUNG**  
**MEMBER (JUDICIAL)**