

BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT 1

IA No. 755 of 2020 in CP (IB) No. 105/NCLT/AHM/2019

Coram: MADAN BHALCHANDRA GOSAVI, MEMBER (JUDICIAL)  
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE  
NATIONAL COMPANY LAW TRIBUNAL , AHMEDABAD BENCH ON 20.01.2021

Name of the Company: Kailash T Shah RP for  
H. Sharda Texfab Pvt Ltd.

Section: 33/9 the Insolvency & Bankruptcy Code, 2016

**ORDER**

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.

  
(VIRENDRA KUMAR GUPTA)  
MEMBER (TECHNICAL)

  
(MADAN B GOSAVI)  
MEMBER (JUDICIAL)

Dated this the 20<sup>th</sup> day of January, 2021.

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT -I**

**I.A. No. 755 of 2020  
IN  
CP(IB) No. 105/9/NCLT/AHM /2019**

**In the matter of :**

[An Application is filed under Section 33 & 34 of the Insolvency & Bankruptcy Code, 2016]

AND

**In The Matter Of:**

**Mr. Kailash T Shah**

Resolution Professional for

H. Sharda Texfab Private Limited (Corporate Debtor )

having address at:

505, 21<sup>st</sup> Century Business Centre,  
Ring Road, Surat-395002

..Applicant

**Order Reserved on: 18<sup>th</sup> January, 2021**  
**Order Pronounced on: 20<sup>th</sup> January, 2021**

**Coram: MADAN B GOSAVI, MEMBER(J)  
VIRENDRA KUMAR GUPTA, MEMBER (T)**

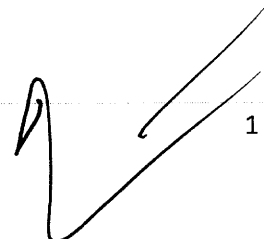
**Appearance:**

Learned Counsel Mr. M.K. Shah appeared for the Applicant.

Resolution Professional Mr. Kailash T Shah appeared.

**ORDER**

**[Per: VIRENDRA KUMAR GUPTA, Member (T) ]**



1. The present Interlocutory Application is filed by the Resolution Professional seeking for passing an Order of liquidation under Section 33 & 34 of the Insolvency & Bankruptcy Code, 2016 for initiation of Liquidation Process of **H. Sharda Texfab Private Limited** -the Corporate Debtor.
2. The facts, in brief, are that :
  - I. This Adjudicating Authority admitted Corporate Debtor in to Corporate Insolvency Resolution Process vide its order dated 13<sup>th</sup> January, 2020 in CP(IB) No. 105/9/NCLT/AHM/2019 filed under Section 9 of the IBC, 2016, wherein Mr. Bhawan Trivedi, Insolvency Professional appointed as "IRP". Later on with the 100% of voting rights CoC had passed a resolution to change the IRP and appoint Mr. Kailash Shah as "Resolution Professional", which was also allowed by this Authority vide order dated 29<sup>th</sup> June, 2020 in IA No. 339 of 2020.
  - II. The Resolution Professional/Applicant visited the premises of Corporate Debtor and it was being observed that there were no operations and there



were no employees available. No claims had been received from the workman or employees.

III. The Applicant submits that public announcement was made by way of an advertisement on 26<sup>th</sup> January, 2020 in Form-A of the Schedule in English edition "English Daily" and Gujarati edition "Surat Daily".

IV. In the Sixth meeting of CoC dated 25.09.2020 it was resolved that :

*" RESOVED THAT the Corporate Debtor M/s. H. Sharda Texfab P. Ltd shall be go into liquidation and Resolution Professional to authorised to file liquidation application before the Adjudicating Authority"*

*"FURTHER RESOVED THAT and appoint IP Mr. Kailash T Shah to act as "Liquidator" of the Corporate Debtor". Hence, the Resolution Professional herein authorised to file the Application before this Adjudicating Authority under Section 33 of the Insolvency & Bankruptcy Code, 2016.*

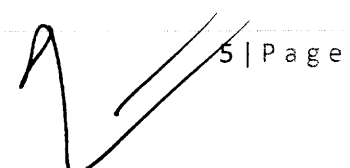
*It is stated that the CoC had further resolved to pay the Liquidation remuneration of Rs. 50,000/- to the Liquidator.*

V. The Applicant submits that there are no fixed assets owned by the Corporate Debtor and there is only one claim received from Financial Creditor. It was decided by the CoC for liquidation of the Corporate Debtor as invitation for expression of interest shall be entirely futile exercise and time consuming and expensive and CoC consist of single member has decided not to invite EOI as there are no fixed assets and cash & bank Balance on the books of the Corporate Debtor. The cost of CIRP is in fact could not be recovered as there are no realize assets which can be liquidated hence commercially the Corporate Debtor has lost its financial and economic substratum and could not be revived and, hence, EOI was not invited.

3. Learned Counsel for the Applicant appeared and narrated these basic facts. In addition to this, he drew our attention to the required resolutions passed by the CoC in terms of provisions of IBBI (Liquidation Process) Regulations, 2016. Considering to the facts of the case, we are of the view that liquidation is the only option. The CoC has also held so. It



appears that there are no significant assets. In the present case, it is noted that the CoC has fixed the remuneration of proposed Liquidator at Rs. 50,000/- p.m. It is also noted that thus CoC has not passed to liquidate the Corporate Debtor as a going concern. Hence, considering the fact there are no assets, the liquidator shall take a call on the same as per the relevant regulations. It is further noted that the CoC is constituted by Sole Financial Creditor, hence in case of short fall there is resolution passed, the necessary implication is that short fall in between the sale proceed assets and the liquidation costs would be made by the Sole Financial Creditor constituting the CoC. Before parting we made it clear that we are passing the liquidation order. It is desires that Resolutions as per Regulation 39(b), (c) and (d) of IBBI (CIRP) Regulations 2016 r.w. Regulation 4 of IBBI (Liquidation Process) Regulations 2016 should be passed in more specific manner. The Form-H has also been filed. Thus, considering the facts and observations made by us, we hold that Corporate Debtor needs to be liquidated as soon as possible. Accordingly, we pass the order of liquidation in terms indicated.



5 | Page

**ORDER**

1. We hereby pass the order of liquidation of the Corporate Debtor Company **H. Sharda Texfab Private Limited.**

We allow IA No. 755 of 2020. The Liquidation of the Corporate Debtor is effective from the date of this order.

2. The Moratorium declared vide order dated 13.01.2020 in CP(IB) No. 105/9/NCLT/AHM/2019, henceforth, ceases to exist.

As per the Section 34(1) of the I.B. Code, the Applicant/Resolution professional, **Mr. Kailash T Shah**

**(Registration No. IBBI/IPA-001/IP-P00267/2017-**

**18/10511** is hereby appointed as a 'Liquidator' of the

Company **H. Sharda Texfab Private Limited.**, which has been duly approved by CoC in its sixth meeting dated 25.09.2020.

4. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter cease to exist. All these powers henceforth, vest with the Liquidator.


5. The Liquidator will charge fees for 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.

6. That once having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suite or other legal proceeding on behalf of the corporate debtor with prior approval of this Adjudicating Authority as mentioned in Sub-Section 6 of Section 33 of the I.B. Code.
7. The Liquidator shall take necessary legal action to recover the trade receivables and other credits such as loans and advances from the parties which are reflected in the latest balance sheet of the Corporate Debtor, if any. This direction is hereby given in concurrence of the jurisdiction prescribed under Section 33(5) of the Code.
8. This liquidation order shall be a deemed to be 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.

9. The Registry is directed to upload this order on the Official Website within maximum two working days from the date of this order. The authenticated copy of this order also be sent by the registry to the Financial Creditor, Corporate Debtor, Registrar of the Company, Resolution Professional cum Liquidator by Speed-post within one week from this order.
10. **Accordingly, I.A. No. 755 of 2020 is allowed and stands disposed of a.w. main CP(IB) No. 105 of 2019.** The Liquidator to file preliminary/progress report as per the Regulations before this Authority.

  
(VIRENDRA KUMAR GUPTA)  
MEMBER (T)

  
(MADAN B GOSAVI)  
MEMBER (J)

Signed on this, the 20<sup>th</sup> January, 2021.