

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

IA 145 of 2020 in C.P.(I.B) No. 106/NCLT/AHM/2019

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 31.07.2020**

Name of the Company: Saaurabh Jhaveri IRP For H Sakhiya
Fashions Pvt Ltd

Section : Section 33 IB Code, 2016

<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
(through video conferencing)

Learned PCS, Mr. Dhiren Dave appeared on behalf of the Applicant.

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


MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 31st day of July, 2020

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

**I.A. No. 145 of 2020
in
CP(IB) No. 106 of 2019**

In the matter of:

Saurabh Jhaveri,
Interim Resolution Professional
For H. Sakhiya Fashions Private Limited ...Applicant

In the matter of:

B. G. Textile ...Operational Creditor

Versus

H. Sakhiya Fashions Private Limited ...Corporate Debtor

Order delivered on 31st July, 2020


Coram: Hon'ble Ms. Manorama Kumari, Member (J)

Appearance: PCS Mr. Dhiren Dave.

ORDER

[Ms. Manorama Kumari, Member (J)]

1. The Applicant, Interim Resolution Professional (hereinafter referred as "IRP") of the Corporate Debtor filed the instant IA No. 145 of 2020 in the aforesaid Company Petition (IB) No. 106 of 2019 for liquidation of the Corporate Debtor under section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IB Code") and for the appointment of the Liquidator.
2. The facts of the case are stated herein:
 - 2.1 CP(IB)No. 106 of 2019 filed by Operational Creditor, namely M/s B. G. Textile, against the Corporate Debtor viz., H. Sakhiya Fashions



Private Limited under Section 9 of the IB Code, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") which was admitted by this Adjudicating Authority vide its Order dated 17.10.2019 and appointed the Applicant, Saaurabh Jhaveri as Interim Resolution Professional (hereinafter referred as "IRP") of the Corporate Debtor.

- 2.2 It is stated in the application that in the First Meeting of Committee of Creditors (hereinafter referred as "CoC") held on 18.11.2019, IRP apprised the CoC members about the status of the company and non availability of documents from the suspended management, except the Annual Financial Statements which are available of MCA website.
- 2.3 It is stated by the Applicant that in the Third CoC meeting held on 23.01.2020, the situation of the company was discussed at length. CoC opined for liquidation of the company since there is no scope for revival of the company, considering the situation of the company and further, there is no asset and income of the company to meet the CIRP expenses. Hence, CoC decided to file an application for Liquidation of the Corporate Debtor through IRP under section 33 of the IB Code.
- 2.4 It is further stated by the Applicant that CoC failed to appoint a Resolution Professional (hereinafter referred as "RP") after 40 days of commencement of CIRP. After repeated reminders CoC agreed to appoint a new RP in the Third CoC meeting but till date no appointment has taken place. However, the IRP has continued to act as deemed RP.
3. Heard the applicant and also seen the records, it is found that there is no scope for revival of the company, considering the situation of the company and further, there is no asset and income of the company to meet the CIRP expenses. Therefore, the CoC has resolved for liquidation of the Corporate Debtor vide its Third meeting dated 23.01.2020. 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 Authority nor the Appellate Authority has been endowed with the jurisdiction to reverse the commercial wisdom of the CoC.

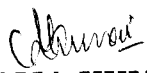
The Hon’ble Supreme Court took the view that the commercial wisdom has been exercised by the CoC after taking into count all the factors leading to maximisation of asset value of the Corporate Debtor, but the ultimate discretion of what to pay and how to pay each class or sub-class of creditors lies 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. Hence, the IA 145 of 2020 in CP(IB) 106 of 2019 so filed by the IRP/RP under Section 33 of the IB Code, 2016 is allowed and the Adjudicating Authority passes an order for initiation of liquidation of the Corporate Debtor viz., H. Sakhiya Fashions Private Limited. **Mr. Kailash Shah** (Registration No. IBBI/IPA-001/IPP00267/2016-17/10511) shall act as the Liquidator for the purpose of liquidation of the Corporate Debtor as he has given his consent, which is on record.
6. Accordingly, the instant IA is allowed and stands disposed of with the above observations.


MANORAMA KUMARI
Adjudicating Authority
Member (Judicial)