

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
(COURT NO. II)**

IA/795/2021

IN

CP (IB) 788/9/NCLT/AHM/2019

(Under Section 33(2) and 34(1) of the Insolvency and Bankruptcy Code,
2016)

In the Matter of:

Mr. Kailash T Shah,
Resolution Professional of
M/s. Virar Fabrics Private Limited

...Applicant

Versus

Ms. Asha Pansari
Member of the Suspended Management
of Virar Fabrics Private Limited

...Respondents

Order Pronounced On: 02.08.2022

Coram:

**DR. DEEPTI MUKESH,
HON'BLE MEMBER (JUDICIAL)
AJAI DAS MEHROTRA,
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

Mr. Kailash T Shah,
Resolution Professional of
M/s. Virar Fabrics Private Limited
Having office at:
505, 21st Century Business Centre,
New World Trade Centre, Ring Road,
Surat-395002.

...Applicant

Versus

1. Ms. Asha Pansari

Member of the Suspended Management
of Virar Fabrics Private Limited
Address at:
4-C Ratan Jyoti Apartment,
Ravidham Complex, Panjara Pole,
Ghod Dod Road,
Surat-395001.

2. Ms. Ruchi VimalkumarNangalia

Member of the Suspended Management
of Virar Fabrics Private Limited
Address at:
A-1001, Shyam Luxury Building
Nr. Sudha Bhawan, Vesu,
Surat-395007.

...Respondents

Present:

For the Applicant:

Mr. Vinod Kumar Shah, PCS.

ORDER

1. The instant Application is filed by Mr. Kailash T Shah, Resolution Professional of corporate debtor M/s. Virar Fabrics Private Limited, under Section 33(2) and 34(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**Code**”) for liquidation of the Corporate Debtor.
2. This Adjudicating Authority, vide order dated 01.03.2021, admitted the application filed by M/s. Kuber Texlen Private Limited under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (‘CIRP’) of the Corporate Debtor (M/s. Virar Fabrics Private Limited) and appointed Mr. Kailash T Shah as the Interim Resolution Professional (‘IRP’).
3. The applicant submits that the public announcement was made and claims were invited by the IRP. In compliance of Section 21 of Code read with Rule 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as “**CIRP Regulation**”), the IRP constituted CoC comprising of the sole operational creditor namely M/s. Kuber Texlen Private Limited. In the 1st CoC meeting held on 30.03.2021, the IRP was confirmed as Resolution Professional(‘RP’) of the corporate debtor.
4. The 2nd CoC meeting held on 7th May, 2021, passed the resolution for the filing of an application under section 19 of the Code against the suspended directors/management of corporate debtor for non-cooperation.

5. IA 357 of 2021 was filed by the resolution professional under section 19 of the Code. This application was allowed and disposed of vide order dated 27.07.2021 with following directions:

“Learned counsel for the Suspended Management submitted that the documents are with the Bank of Baroda. They will approach the Bank and try to get the documents and hand over to RP.

We direct the suspended management to take them back on the basis of this order within two weeks and hand over to the RP.”

6. The applicant submits that the resolution professional proposed CoC to consider passing a resolution for the publication of the Form-G, invitation of EoI's, information memorandum, RFRP, eligibility/ineligibility criteria, EoI process memorandum, and evaluation matrix, in the 3rd CoC meeting held on 26th June, 2021. In this meeting, sole member of CoC deferred the resolution with 100% majority.

7. In the 4th CoC meeting held on 17.08.2021, the resolution professional once again proposed to CoC to decide issue of passing the resolution for the publication of the Form-G, EoI, process memorandum, RFRP, eligibility/ineligibility criteria, and evaluation matrix. The said resolution was rejected by the CoC member with 100% voting share.

8. The 5th CoC meeting was held on 26.08.2021, in which the resolution professional informed the CoC that resolution professional has not received any documents from the suspended management, except two balance sheets. CoC again rejected, with 100% voting share, proposal to go ahead with the

publication of the Form-G and EoI, process memorandum, RFRP, eligibility/ineligibility criteria, and evaluation matrix by resolution professional. In this meeting, further, resolution professional informed member of CoC that no assets are available with corporate debtor and corporate debtor was not having any business since long time. CoC resolved and passed the resolution, with 100% voting share, recommending dissolution of the corporate debtor pursuant to section 54 of IBC 2016 without going into liquidation process as envisaged under IBC and also authorised the resolution professional to file an application before Hon'ble NCLT to this effect.

9. IA 648(AHM) 2021 was filed under section 54 of the Code and Rule 11 of NCLT Rules 2016, read with section 60(5) of the Code, 2016 by the applicant for dissolution of the corporate debtor. This application was rejected and disposed of by the Adjudicating Authority vide order dated 27.09.2021 with following observation:

“This application is not maintainable as per the scheme of the IBC, 2016, as dissolution can be ordered only after completion of liquidation process and in the present case this step is being skipped. Hence, IA No. 648(AHM) 2021 in CP(IB)788 of 2019 stands rejected and disposed of.”

10. The applicant further submitted that after receipt of order dated 27.09.2021, resolution professional called the 6th CoC meeting on 09.10.2021. CoC resolved and passed the following resolution:

“RESOLVED THAT since no EoI is issued as there are no assets with the corporate debtor, CoC recommends liquidation of the corporate debtor M/s Virar Fabrics P. Limited subject to approval of the Hon’ble NCLT.”

11. CoC in the 6th meeting also resolved to appointed Mr. Kailash T Shah (herein applicant) as the liquidator of the corporate debtor. Hence, the resolution professional filed this application for the liquidation of the corporate debtor.
12. The Income Tax Department filed its reply stating that there is no demand outstanding, and no assessment proceedings pending, against the corporate debtor. Hence, no objection is filed.
13. In light of the above facts in present case and as per provisions of Section 33 of Code which are reproduced for reference, we consider to order the liquidation of corporate debtor.

“Section- 33. Initiation of liquidation. –

(1) Where the Adjudicating Authority, -

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast-track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30;

or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall -

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation;

and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) where the resolution professional at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the adjudicating authority of the decision of the committee of creditor approved by not less than sixty-six percent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clause (i), (ii) and (iii) of clause (b) of Sub-Section (1)”

12. Considering the submissions and documents on record, since the COC in its commercial wisdom has decided to take the Corporate Debtor into liquidation, we are of the opinion that the decision of COC should not be interfered with. The present application seeking liquidation of the Corporate Debtor M/s. Virar Fabrics Private Limited, in the manner laid down in Chapter III of Part II of the Code, is allowed.

13. The CoC has proposed name of Mr. Kailash T Shah to be appointed as the Liquidator, who also consented to act as a Liquidator and filed his written consent, having Registration No. IBBI/IPA-001/IP-P00267/2017-2018/10511, having address at 505, 21st Century Business Centre, New World Trade Centre, Ring Road, Surat-395002. Hence, we appoint Mr. Kailash T Shah, as liquidator of corporate debtor, in terms of Section 34 (1) of the Code with the following directions:

- a. The liquidator to issue a Public Announcement stating that the corporate debtor is in liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
 - b. The liquidator to proceed with the process of liquidation in a manner laid down in Chapter-III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
 - c. The liquidator to follow up and continue to investigate the financial affairs of the corporate debtor to determine any undervalued and preferential transactions etc.
 - d. This order is deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016.
 - e. The Liquidator to submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
14. As a consequence of the application being admitted, the moratorium as envisaged under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence.

15. A copy of the order shall be communicated to the applicant RP and the corporate debtor as well as to the liquidator above named. The liquidator is to be informed of his said appointment by the Registry. In addition, a copy of said order shall also be forwarded to IBBI for its records and ROC for updating the Master Data. ROC shall send a compliance report to the Registrar, NCLT.

16. Application is allowed and disposed of in terms of above order.

-SD-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-SD-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

Abhishek Singh