

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**

ITEM No.139  
IA/731(AHM)2022 in CP(IB) 39 of 2020

**Order under Section U/s 33 r.w 34 IBC, 2016**

**IN THE MATTER OF:**

Rahul Nareshbhai Shah RP of Male Square Retails Pvt Ltd .....Applicant  
V/s  
Mukul Nandkishor Koshti & Anr .....Respondents

**Order delivered on ..01/11/2022**

**Coram:**

Dr.Madan B. Gosavi, Hon'ble Member(J)  
Kaushalendra Kumar Singh , Hon'ble Member(T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-SD-

**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

-SD-

**DR. MADAN B GOSAVI**  
**MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT-1**

**I.A. No. 731 of 2022 IN  
C.P. (I.B.) No.39/NCLT/AHM/2020**

(Application under Section 33 read with 34 of the Insolvency and  
Bankruptcy Code, 2016)

**In the Matter of:**

**Mr. Rahul Nareshbhai Shah**

Resolution Professional of,  
Male Square Retails Private Limited,  
Address at: 20 Sudershan Society,  
Part 2, Naranpura, Near Naranpura  
Busstop, Ahmedabad, Gujarat 380013

**...Applicant/ RP**

**Versus**

**Mr. Mukul Nandkishor Koshti**

Suspended Management of  
Male Square Retails Private Limited,  
Residing at A/26, Vagheshwari Society,  
B/h Ghodasar Gam, Ahmedabad Gujarat 380050

**Nama Surya Bhagvan Shashi Kiran,**

Suspended Management of  
Male Square Retails Private Limited,  
Residing at No. 4/1 Kempanna Street,  
Karnataka 560004

**...Respondents**

**In the Matter of:**

**Hardik Fakirchand Shah**

Proprietor of Cotton Hub

**...Operational Creditor**

**Versus**

**Male Square Retails Private Limited**

**...Corporate Debtor**

Order Pronounced on: 01.11.2022

**Coram: Dr. Madan B. Gosavi, Member (Judicial)  
Kaushalendra Kumar Singh, Member (Technical)**

**Appearance:** Mr. Sumit Parikh for the Applicant.

**ORDER**

1. The instant Application is filed by Mr. Rahul Nareshbhai Shah, Resolution Professional of Corporate Debtor Male Square Retails Private Limited, under Section 33 read with 34 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 27.04.2022, had admitted the application filed by Mr. Hardik Fakirchand Shah Proprietor of Cotton Hub, under Section 9 of Code for initiation of Corporate Insolvency Resolution Process (‘CIRP’) of the Corporate Debtor and appointed Mr. Mr. Rahul Nareshbhai Shah as the Interim Resolution Professional (‘IRP’). Thereafter, Mr. Rahul Nareshbhai Shah was confirmed as Resolution Professional (‘RP’) in the 1<sup>st</sup>CoC meeting held on 28.05.2022.
3. It is evident from the record that in compliances of Section 21 of Code read with Rule 6 & 8 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.
4. The CoC in its 2<sup>nd</sup> meeting dated 27.06.2022, resolved to publish Form G. Pursuant to the Resolutions Passed in 2<sup>nd</sup> meeting, the applicant made public announcement in Form - G for inviting the Resolution plan and published Financial Express (English and Gujarati Language) on 28.06.2022. Further, the last date for submission of EOI was decided as 13.07.2022. The applicant submitted that not any single Expression of Interest form was received.
5. The CoC in the 3<sup>rd</sup> meeting held on 16.08.2022 the CoC dissented to initiate fresh EoI as Corporate Debtor being non- operating and having no

fixed assets therefore the chance of Resolution is rare. Thus, the CoC decided to liquidate the Corporate Debtor and further resolved to appoint the Applicant herein Mr. Rahul Nareshbhai Shah bearing registration No. IBBI/IPA-001/IP-P-02170/2020-2021/13367 as a liquidator under Section 34 (4) of the Code and the Applicant submitted its written consent. Further the members of CoC Also approved the Estimated Liquidation Cost of Rs. 70,000/- in accordance with the provisions contained in Regulation 39 B of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It was further discussed that the Corporate Debtor being the non- operative unit and having no assets (except cash and Bank Balance) to sale it as a going concern as per Regulation 39 C of the CIRP Regulations. Further in accordance with Regulation 39D of CIRP Regulations, liquidator's fee was fixed to the tune of Rs. 25,000/-.

6. We have carefully heard and considered the arguments of the learned counsel for the RP and have also perused the records. Taking into consideration the above facts in relation to the affairs of the Corporate Debtor, the provisions of Section 33 of Code are as follows:

*“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)”*

7. The Hon’ble National Company Law Appellant Tribunal (‘NCLAT’), in *Praveen Kumar Nand Kumar Vs. VSL Securities Pvt. Ltd.* in CA No. 1/2020 in CA No. 308/2000, dated 09.06.2020, observed as under: -

*“Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review.”*

8. In view of the foregoing, with this, we proceed to pass the following order:
- i. We hereby pass the order of liquidation of the Corporate Debtor Male Square Retails Private Limited, and allow IA No. 731 of 2022. The liquidation of the Corporate Debtor is effective from the date of this order.
  - ii. The liquidation of the Corporate Debtor is effective from the date of this order and the Moratorium declared vide order dated 27.04.2022 in CP (IB) No.39/NCLT/AHM/2020, henceforth, ceases to exist.
  - iii. As per the Section 34(1) of the I.B. Code, Mr. Rahul Nareshbhai Shah having Registration No. IBBI/IPA-001/IP-P-02170/2020-2021/13367 is hereby appointed as a Liquidator of the company, Male Square Retails

Private Limited, who shall complete the liquidation process as per the provisions of Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

- iv. 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.
- v. The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provisions of Section 19 of the Code shall apply in relation to liquidation process as they apply in relation to CIRP process with the substitution of references to the Interim Resolution Professional for references to the Liquidator.
- vi. As per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor, Provided that a suit or other legal proceedings may be instituted by the Liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority;
- vii. The provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator; and
- viii. This order of liquidation under Section 33 of the Code 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; and

- ix. 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 to be sent by the registry to Operational Creditor, Corporate Debtor, Registrar of the Company, Resolution Professional cum Liquidator by Speed-post within one week from this order.

Accordingly, the present I.A. No. 731 of 2022 in CP (IB) 39/NCLT/AHM/2020 stands disposed of.

**-SD-**

**KAUSHALENDRA KUMAR SINGH  
MEMBER (TECHNICAL)**

**-SD-**

**DR. MADAN B GOSAVI  
MEMBER (JUDICIAL)**

Divya/LRA