

12

BEFORE THE AJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD

IA 360 of 2017 in C.P. (I.B) No. 27/7/NCLT/AHM/2017

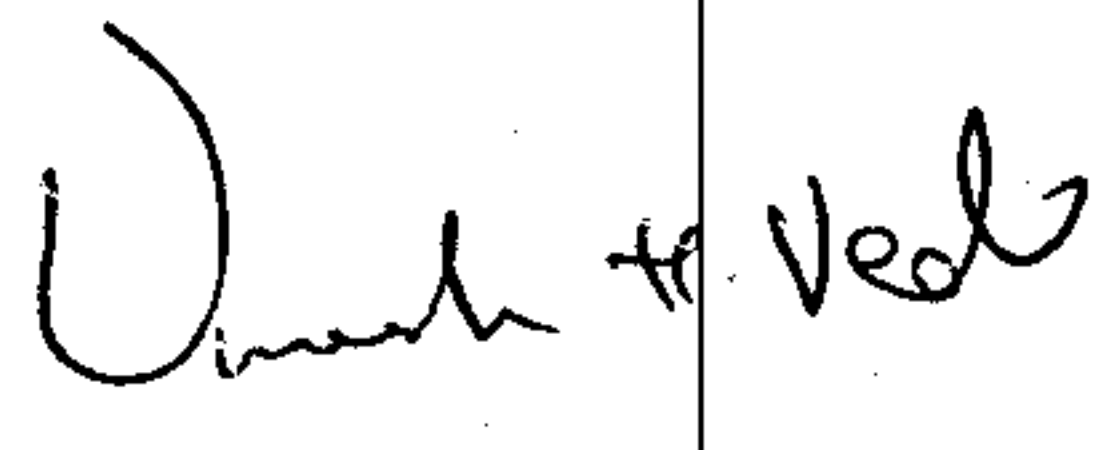

Coram: Hon'ble Mr. BIKKI RAVEENDRA BABU, MEMBER JUDICIAL
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 22.11.2017

Name of the Company: Umesh Ved, RP.
V/s.
Jhaveri Trading & Investment Pvt. Ltd

Section of the Companies Act: Section 30 of the Insolvency and Bankruptcy
Code

S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

1.	UMESH VED	PCS	Resolution Professional	
2.	NAVIN PAHWA WITH RITU SHAH	Sr. ADV ADV	Financial Creditor	

ORDER

RP Mr. Umesh Ved present. Learned Senior Advocate Mr. Navin Pahwa with
Learned Advocate Ms. Ritu Shah present for Respondent (Financial Creditor) in IA
360/2017.

None appeared for operational Creditor.

Proof of service of notice of date of hearing to the Financial creditor and operational
creditor filed.

Heard arguments of Learned PCS for Applicant.

Order pronounced in open Court. Vide separate sheets.


MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 22nd day of November, 2017.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

22-11-17

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

IA No. 360 of 2017

In

C.P. (IB) No. 27/7/NCLT/AHM/2017

In the matter of:

Umesh Ved
Resolution Professional
Of Oasis Textile Limited
Having Registered Office at
Shop No. 107, Sai Majastic Road,
Koparali Road,
Vapi-396195

: Applicant.

Versus

Jhaveri Trading and Investment
Private Limited,
Financial Creditor,
410 Wall Street,
Opp: Orient Club,
Ellisbridge,
Ahmedabad-380006

: Respondent.

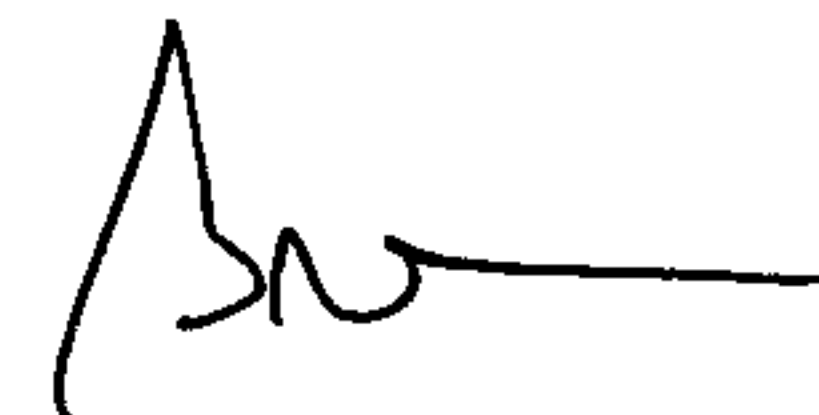
Order delivered on 22nd November, 2017.

**Coram: Hon'ble Mr. Bikki Raveendra Babu, Member (J) – And -
Hon'ble Ms. Manorama Kumari, Member (J).**

Appearance:

Mr. Umesh Ved, Resolution Professional, Applicant in person.

None present for Respondent.



ORDER

1. Committee of Creditors, in its 2nd Meeting held on 4th September, 2017, passed a Resolution authorising the Resolution Professional to make an application seeking liquidation of the Corporate Debtor, namely Oasis Textile Limited, in case no Resolution Plan is received within four weeks.

2. Pursuant to such Resolution, the Resolution Professional filed this Application seeking an order of liquidation of Corporate Debtor.

3. The facts in brief, that are germane for the purpose of this order, are as follows;

3.1. Financial Creditor, Jhaveri Trading And Investment Private Limited, filed CP (IB) No. 27/NCLT/565/2017 seeking Corporate Insolvency Resolution Process (CIRP). The said Petition has been admitted by this Adjudicating Authority by order dated 31.5.2017. This Adjudicating Authority appointed Mr. Umesh Harjivandas Ved, as 'Insolvency Resolution Professional' (IRP) under Section 13(1)(a) of the Code.

3.2. The IRP conducted First Meeting of the Committee of Creditors on 28th June, 2017 and constituted a Committee of Creditors and invited claims. The Committee of Creditors constitutes only one Financial Creditor, i.e., Jhaveri Trading And Investment Private Limited. The IRP also prepared Information Memorandum as required by Regulation 36 of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 along with Annexures relating to assets, liabilities, material litigation, ongoing investigation or processing, liquidation

Ali

value and other related information. In the First Meeting of the Committee of Creditors itself, it was decided to continue the IRP as 'Resolution Professional' and the same was informed to this Adjudicating Authority vide letter dated 1st July, 2017.

3.3. The Resolution Professional gave an intimation to the Promoters and Financial Creditor seeking Resolution Plan, but no Resolution Plan was proposed either by the Promoter or by the Financial Creditor. It is further stated by the Resolution Professional that the existing assets of the Company consist of shares of some Listed Companies (which are under suspension) and likely refund from Income Tax. There are no other assets available with the Company. In these facts and circumstances, the Resolution Professional filed this Application seeking liquidation order.

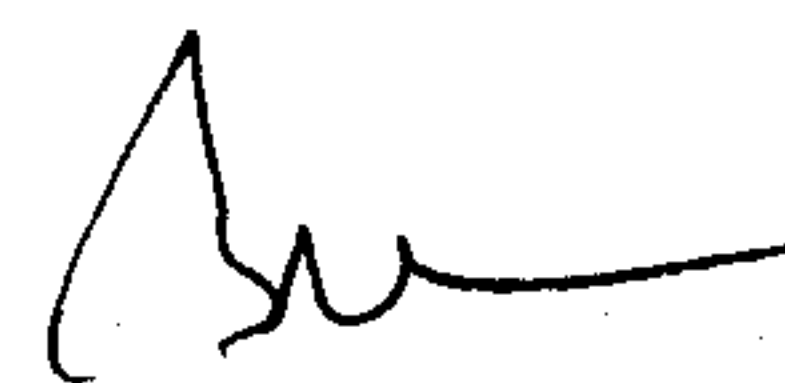
4. On this Application, Notice is given to the Financial Creditor as well as Operational Creditor.

5. None appeared for Operational Creditor. No objection raised by the Financial Creditor. Heard Mr. Umesh Ved, the learned Resolution Professional appearing in person.

6. Section 33 is the relevant Section of the Insolvency and Bankruptcy Code, 2016 ("Code" for short) where-under this Adjudicating Authority has to pass a liquidation order. But, this Application is filed under Section 30 of the Code. However, the contents of the Application coupled with the relief clearly goes to show that the correct Section of law is 'Section 33' of the Code.

7. For the sake of ready reference, Section 33 is reproduced as under;





"Initiation of liquidation

33.(1) Where the Adjudicating Authority, -

- (a) before the expiry of the insolvency resolution process 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 creditors to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii), and (iii) of clause (b) of sub-section (1).

(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

Attorney



(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate sector:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

(6) The provisions of sub-section (5) 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.

(7) The order for liquidation under this section 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.”

8. In the case on hand, the 180 days' period would be over by 27th November, 2017. Therefore, the period of 180 days is not yet over. In the instant case, no Resolution Plan was submitted. Therefore, this is not a case covered by Section 33(1) of the Code. Section 33 (2) of the Code says, “the resolution professional during the corporate insolvency resolution process before confirmation of resolution plan intimate the Adjudicating Authority of the decision of the Committee of Creditors to liquidate the Corporate Debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1). This case comes under sub-section (2) of Section 33.

8-A Hence, this Adjudicating Authority hereby pass an order of liquidation in respect of Corporate Debtor, Oasis Textiles Limited, and direct the Liquidator to issue a public announcement stating

Abu

B N Page 5 | 6

that the Corporate Debtor, Oasis Textiles Limited, is in liquidation. This Adjudicating Authority hereby appoint the Resolution Professional as 'Liquidator' under Section 34(1) of the Code. The Liquidator shall send an intimation to the Registrar of Companies with which the Corporate Debtor is registered.

9. The Liquidator shall act as per ~~Act~~ Section 35 of Insolvency and Bankruptcy Code, 2016 subject to directions of this Authority.

10. This Application is disposed of accordingly.

Signature:


**Ms. Manorama Kumari,
Member (J).**

Signature:


**Sri Bikki Raveendra Babu,
Member (J).**