

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

CP (IB) No.238/MB/2022

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

SUNRISE KNITTING MILLS PRIVATE LIMITED

[CIN:U17100TZ2015PTC022071]

A1, SF No. Part of 559

Netaji Apparel Park, Eettiveerampalayam Village

New Tirupur

Coimbatore – 641666

Tamil Nadu.

...Operational Creditor

Vs.

M/s OBAN FASHIONS PRIVATE LIMITED

[CIN: U18204MH2015PTC271385]

102, VIP Plaza, B-7 Veera Industrial Estate

Off Andheri Link Road, Andheri (West)

Mumbai – 400053

Maharashtra.

...Corporate Debtor

Pronounced: 07.01.2025

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances : Hybrid

Operational Creditor : Adv. Rohan Rajadhyaksha a/w Adv. Amey Hadwale

a/w Adv. Geeta Lundwani

Corporate Debtor : Adv. Shyam Kapadia a/w Adv. Amogh Joshi

ORDER***[PER: SANJIV DUTT, MEMBER (TECHNICAL)]*****1. BACKGROUND**

- 1.1 This Application bearing C.P.(IB) No.238/MB/2022 was filed by Sunrise Knitting Mills Private Limited, the Operational Creditor on 21.12.2021 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as “the AAA Rules”) through Mr. Mahesh, Director and Authorised Representative of the Operational Creditor for initiating Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in respect of Oban Fashions Private Limited, the Corporate Debtor.
- 1.2 The Operational Creditor is engaged in the business of manufacturing and export of all kinds of knitted inner and outer garments. The Corporate Debtor approached the Operational Creditor in December, 2015 for procuring the goods manufactured by the Operational Creditor. The Operational Creditor supplied goods to the Corporate Debtor as per the orders received. It was agreed between the parties that payment will be made once the goods were received and the invoices were raised.
- 1.3 However, in due course, the Corporate Debtor started making irregular payments. The Operational Creditor issued notice dated 04.11.2019 through its Advocate and called upon the Corporate Debtor to make payment of the outstanding dues. Thereafter, the Operational Creditor issued Demand Notice dated 11.12.2019 as required under Section 8 of the Code calling upon the Corporate Debtor to make payment of outstanding operational debt of

Rs.1,57,02,791/-. The Corporate Debtor replied to the Demand Notice *vide* its letter dated 19.12.2019, wherein it raised dispute in respect of the amount claimed as well as the quality of goods supplied by the Operational Creditor. Thus, the Corporate Debtor failed to make payment of the aforesaid amount of operational debt due and payable to the Operational Creditor. This led to the filing of the present Application by the Operational Creditor seeking initiation of CIRP in respect of the Corporate Debtor.

2. AVERMENTS OF THE OPERATIONAL CREDITOR

- 2.1 The Corporate Debtor approached the Operational Creditor for purchasing the goods manufactured by the Operational Creditor. Pursuant thereto, orders were placed and goods were supplied. The parties agreed that the payment would be made once the goods were received and the invoices were raised.
- 2.2 As the business relations matured, the Corporate Debtor started making irregular payments. Despite supply of defect-free and quality goods, the Corporate Debtor failed to perform its obligation of honouring the amounts raised under the invoices.
- 2.3 As per the running Ledger Account of the Corporate Debtor maintained in the books of Operational Creditor, the Corporate Debtor is liable to pay a sum of Rs.1,57,02,791/- (One Crore Fifty-Seven Lakh Two Thousand Seven Hundred and Ninety-One Rupees) to the Operational Creditor as on 08.08.2019. No transaction took place since then.
- 2.4 The Operational Creditor approached the Corporate Debtor to release the outstanding payment. The Corporate Debtor never denied or raised any objection as to the quality of the goods supplied and assured payment of dues by seeking further time. The acknowledgement of liability by the Corporate Debtor can be

seen *vide* email dated 23.04.2019 sent by the Corporate Debtor to the Operational Creditor. Despite repeated requests and reminders, the Corporate Debtor defaulted in making payment of the outstanding dues to the Operational Creditor.

2.5 Thereafter, the Operational Creditor sent a notice through its Advocate and called upon the Corporate Debtor to make the payment of outstanding dues. Further, the Operational Creditor issued Demand Notice under Section 8 of the Code to the Corporate Debtor on 11.12.2019 to repay the unpaid amount of Rs.1,57,02,791/- within 10 days of the receipt of the Notice failing which the Operational Creditor would have no option but to file Application before the Adjudicating Authority for initiating CIRP under Section 9 of the Code.

2.6 The Corporate Debtor responded to the said Demand Notice *vide* its letter dated 19.12.2019 wherein the Corporate Debtor tried to create an illusory and hypothetical dispute in respect of the amount claimed by the Operational Creditor. The Operational Creditor has attached the relevant 24 (Twenty-Four) tax invoices pertaining to the period between January, 2019 and June, 2019 and Ledger Account of the Corporate Debtor for the financial years 2017-18; 2018-19 and 2019-20 along with the present Application. The Corporate Debtor is unable to pay off its debts arising in the ordinary course of its business and has become commercially insolvent. Hence, the present Application has been filed for the purpose of initiating CIRP in respect of the Corporate Debtor as it has lost its substratum.

2.7 An Affidavit dated 25.10.2021 under Section 9(3)(b) of the Code was filed stating that the Operational Creditor had sent Demand Notice calling upon the Corporate Debtor to make the payment of the operational debt due against the goods

supplied to the Corporate Debtor, but the Corporate Debtor has only tried to create moonshine dispute which is untenable in law.

3. CONTENTIONS OF CORPORATE DEBTOR

- 3.1 The Corporate Debtor *vide* its Affidavit-in-Reply dated 16.10.2023 denies at the very outset that any amount, much less a sum of Rs.1,57,02,791/- is due and payable by it to the Operational Creditor. The Application is misconceived and does not bring out as to how the alleged amount is due and payable by the Corporate Debtor to the Operational Creditor.
- 3.2 The Demand Notice does not adhere to the provisions of Section 8 of the Code. The demand has not been raised under Rule 5(1) of the AAA Rules as it has to be accompanied by copies of all the invoices with regard to the alleged demand raised by the Operational Creditor. The address mentioned in the statutory Demand Notice is not the registered address of the Corporate Debtor. The purported notice dated 11.12.2019 has made reference to certain invoices whereas no invoice was attached to the same. Therefore, the mandatory requirement of law has not been complied with and hence, the Application is not maintainable.
- 3.3 The Operational Creditor has merely attached the proof of delivery of the Demand Notice which does not in any manner demonstrate due service of the notice on the Corporate Debtor, as mandated by the Code and the Regulations made thereunder.
- 3.4 The Application fails to disclose as to how the Operational Creditor has calculated the date of default. There is no basis or calculation to show the date of default in the absence of a written contract between the parties.

- 3.5 The affidavit filed under Section 9(3)(b) of the Code is false, defective and misleading. The Operational Creditor has concealed the material fact that there are pre-existing disputes in respect of the claim by the Operational Creditor.
- 3.6 The Corporate Debtor has suffered tremendous loss of its goodwill and market reputation because of the defective and/or inferior quality goods supplied by the Operational Creditor. In fact, the Operational Creditor is liable to pay a sum of Rs.1,78,51,015/- to the Corporate Debtor towards the returns, loss of business, shortage and logistics cost and damages to the reputation and goodwill of the Corporate Debtor. The Corporate Debtor has repeatedly intimated the same to the Operational Creditor but the Operational Creditor has not taken any steps towards rectifying the defective products and continued to supply the inferior quality products. The sales of the Corporate Debtor were affected as the customers started rejecting and returning the supplies made to them. Further, the inferior and/or defective quality of goods exceeded more than 2% of the total quantity supplied by the Operational Creditor. A chart showing quality deficiency issues which were pointed out by the Corporate Debtor to the Operational Creditor is placed on record.
- 3.7 The Operational Creditor was duty-bound to follow the norms and practices as laid down under the Suppliers Manual executed between the parties while supplying materials to the Corporate Debtor. Clause SF 8(a) of the Suppliers Manual explicitly states that to recover the loss of the sales and business opportunity, the Corporate Debtor has the right to return the defective goods and issue a debit note at MRP value for the returned quantity if the collective customers return in a style exceeds 2% of the ordered quantity. An additional handling charge of 20% of agreed Free on Board (FOB) value will also be added

for the rejected quantity. Further, in cases of major claims higher than the aforesaid returns of 2%, the entire sale would be called back to the warehouse of the Corporate Debtor and the same shall be returned to the supplier after agreement of debit percentage, which will be on the basis of MRP Value and not FOB value. Moreover, such fact was also indicated in the purchase orders which were issued to the Operational Creditor at the time of placing relevant orders. In spite of knowing the same, the Operational Creditor has failed to put on record the Purchase Orders that were allotted to the Operational Creditor. The Purchase Orders made it clear that payments would not be made for supply of defective or inferior quality of goods.

3.8 The Corporate Debtor raised major issues and/or disputes with regard to the quality of materials sent by the Operational Creditor which were never resolved by the Operational Creditor. The Operational Creditor has suppressed material facts that there exist pre-existing disputes between the parties in order to steal a march on the Corporate Debtor. Owing to the increasing complaints from the consumers and/or customers of the Corporate Debtor in respect of the goods supplied by the Operational Creditor, sometime in 2019, the Director of the Corporate Debtor met with the Director of the Operational Creditor to discuss the issue. During the meeting, it was discussed and explained to the Operational Creditor that the goods which were being returned owing to quality issues exceeded 2% of the total ordered quantity and that the retailers had stopped accepting new stock from the Corporate Debtor. Consequently, the Director of the Corporate Debtor having no other alternative, invoked clause SF8(a) of the Suppliers Manual and requested the Operational Creditor once again to take back the defective stock. There was thus a breach of contract on part of the

Operational Creditor owing to which the Corporate Debtor was compelled to terminate its agreement with the Operational Creditor. Moreover, it is pertinent to mention here that during the said meeting in 2019, the Corporate Debtor made it clear that the services of the Operational Creditor would not be reinstated unless they took back the defective goods. Since the pre-existing disputes remained unsolved between the parties, none of the invoices annexed to this Application was ever raised by the Operational Creditor or received by the Corporate Debtor.

- 3.9 The Corporate Debtor filed I.A No.5720 of 2023 on 19.12.2023 praying for taking on record the Applicant's Supplementary Affidavit affirmed on 02.12.2023 filed by way of the instant application. The Corporate Debtor through the said I.A, brought on record the email dated 28.08.2019 as well as the calculation to demonstrate that no monies were payable by the Corporate Debtor to the Operational Creditor in respect of the alleged claim under Section 9 of the Code. This email communication is said to be relevant as it indicates pre-existing dispute prior to the alleged notice issued by the Operational Creditor invoking the provisions of the Code. The Corporate Debtor contended that no debt existed between the parties, as it had already made payments of Rs.1,79,57,599/- to the Operational Creditor against the outstanding invoices amounting to Rs.1,61,22,692/- annexed to the Application. The I.A. was allowed *vide* order dated 01.03.2024 and the Affidavit was taken on record and the Operational Creditor was permitted to file response to the same.

4. REJOINDER OF OPERATIONAL CREDITOR

- 4.1 In is Affidavit-in-Rejoinder dated 04.12.2023, the Operational Creditor has reiterated that the Corporate Debtor was duly served with the Demand Notice and the Operational Creditor had already placed the proof of postal

acknowledgement on record. The Corporate Debtor has accepted in its reply dated 19.12.2019 that the Demand Notice was sent by the Operational Creditor to the registered office of the Corporate Debtor viz., 102, VIP Plaza, Veera Desai Industrial Estate, Andheri (W), Mumbai.

- 4.2 The Operational Creditor rebuts the contention of the Corporate Debtor and reiterates that the outstanding invoices were served along with the Demand Notice dated 11.12.2019 as evident from the Demand Notice "*Subject: Notice attached to invoice demanding payment*". The Corporate Debtor responded to the Demand Notice *vide* its letter dated 19.12.2019. However, there was no whisper of the invoices not being served along with the Demand Notice.
- 4.3 As regards the date of default, the Operational Creditor submits that it has correctly and specifically mentioned the date from which debt fell due i.e., 06.06.2019 (date of last invoice raised) and the date on which default occurred i.e., 08.08.2019 (date on which last payment was received) in Form 5 of the Application.
- 4.4 It is denied by the Operational Creditor that there is any pre-existing dispute as there is not even a single document on record to show the same. The claim of the Corporate Debtor regarding pre-existing dispute is a completely mischievous afterthought and is liable to be rejected.
- 4.5 The Corporate Debtor for the very first time in its reply to Demand Notice dated 19.12.2019 claims that the supplies were not usable due to substandard quality. The Corporate Debtor *vide* email dated 23.04.2019 has admitted its liability and its books of account show a debit balance amounting to Rs.1,56,44,780/- due to the Operational Creditor.

- 4.6 The Operational Creditor has placed sufficient proofs on record which will establish the transaction between the parties and expose mala fide acts of the Corporate Debtor.
- 4.7 The Operational Creditor has relied on the judgment of Hon'ble Supreme Court in ***Mobilox innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353*** wherein it has been held that the adjudicating authority must reject a petition under Section 9(5)(ii)(d) if there is existence of dispute between the parties. It is submitted by the Operational Creditor that the Corporate Debtor has mischievously raised this objection and has come with unclean hands before this Tribunal. The Operational Creditor has also relied on Hon'ble NCLAT's judgment in ***Ahluwalia Contracts (India) Limited Vs. Raheja Developers Limited [CA(AT) (Ins) No. 703/2018]*** wherein it was held that if the operational debt exceeds the monetary threshold and the debt is due and payable and has not been paid and there exists no dispute between the parties before the receipt of the demand notice of an unpaid operational debt, the Adjudicating Authority cannot reject the application under Section 9 but is required to admit it.
- 4.8 At the time of filing the rejoinder, the Corporate Debtor served a copy of the Supplementary Affidavit on 03.12.2023 to the Operational Creditor. The Operational Creditor opposed the filing of the aforesaid Supplementary Affidavit as it was not done with the prior permission of the Tribunal and was being filed at a belated stage to cause inordinate delay. The Operational Creditor sought leave of this Tribunal to file an additional rejoinder to deal with the Supplementary Affidavit served on them. Thereafter, the Operational Creditor filed its Additional Affidavit on 22.01.2024.

4.9 The Operational Creditor has referred to the purchase orders and emails dated 23.04.2019; 06.07.2019; 22.07.2019; 28.08.2019 and 29.08.2019 exchanged with the Corporate Debtor. These emails indicate admission of liability by the Corporate Debtor, assuring the Operational Creditor payments against Post-Dated Cheques (PDCs) and requesting the Operational Creditor not to stop the production due to payment issues. The Operational Creditor had sent several reminders and granted enough time for the Corporate Debtor to make the payments, but the Corporate Debtor had deliberately defaulted in fulfilling the assurances of payment. The emails also show that the Corporate Debtor started raising quality concerns only when the Operational Creditor aggressively started following up on the payments.

4.10 The Corporate Debtor has chosen to ignore the opening/closing balance of the Ledger Account annexed to the Application and has tried to confuse the Tribunal by adjusting the Corporate Debtor's payments only against the invoices annexed to the Application. The said invoices pertain to the period from 05.01.2019 to 06.06.2019 totalling Rs.1,69,48,937/-.

5. ANALYSIS AND FINDINGS

5.1 We have heard the Ld. Counsel for both the parties and duly considered the pleadings along with the materials available on record. It is now proposed to deal with the main issues arising in the matter.

5.2 It is well-settled that while examining an application under Section 9 of the Code, the Adjudicating Authority will have to determine:-

- (i) Whether there is an 'operational debt' as defined exceeding the threshold limit under Section 4 of the Code;

- (ii) Whether the documentary evidence furnished with the Application shows that the aforesaid debt is due and payable and has not yet been paid; and
- (iii) Whether there is existence of a dispute between the parties or the record of pendency of a suit or arbitration proceeding filed before the receipt of the Demand Notice of the unpaid operational debt in relation to such dispute?

If any of the aforesaid conditions is found to be lacking, the application would have to be rejected [*Mobilox Innovations Private Limited (supra)*]. It is also a settled proposition of law that an application under Section 9 of the Code has to be mandatorily admitted if all the conditions stipulated in clauses (a) to (e) of Section 9(5)(i) are satisfied.

5.3 In order to prove the existence of debt, the Operational Creditor has placed on record copies of Purchase Orders, relevant invoices and Goods Consignment Notes along with Ledger Account of the Corporate Debtor for the Financial Years 2017-2018 to 2019-2020 showing outstanding amount of Rs.1,57,02,791/- (rounded off) due from the Corporate Debtor as on 08.08.2019. It is noticed from the record that the Corporate Debtor has been making partial payments to the Operational Creditor and that the last payments made by the Corporate Debtor were on 08.08.2019 amounting to Rs.13,59,162/- and Rs.9,68,310/- respectively, as per the Ledger Account of the Corporate Debtor maintained in the books of account as well as the Bank Account Statement of the Operational Creditor for the period from 01.04.2019 to 31.01.2020. Therefore, the outstanding amount of Rs.1,57,02,791/- payable by the Corporate Debtor as on 08.08.2019 has been

claimed to be the amount in default in Part-IV of the Application. Thus, it is clear from perusal of the record that an amount more than the threshold limit of Rs.1,00,00,000/- (One Crore Rupees) was due and payable by the Corporate Debtor to the Operational Creditor towards supply of the garments. The debt so owed by the Corporate Debtor to the Operational Creditor against the supply of garments clearly falls within the definition of "operational debt" under Section 5(21) of the Code. Hence, we find that the Operational Creditor has been able to substantiate the existence of an operational debt in excess of the threshold limit prescribed under the Code due and payable by the Corporate Debtor which remained unpaid. Reliance of the Corporate Debtor on judgment of Hon'ble NCLAT dated 18.04.2023 in ***Oyster Steel & Iron Pvt. Ltd. Vs. Brilliant Metals Pvt. Ltd.*** [CA (AT)(Ins) No.1089/2022] will be of no avail due to distinguishable facts because unlike the present case, the operational creditor in that case had not filed any bank statement and there was no acknowledgement of debt on the part of the corporate debtor.

- 5.4 Next issue relates to the determination of date of default. It is now well-settled that in a case of operational debt based on invoices, the date of default is to be reckoned not from the date of first invoice but from the date of last invoice, because the total outstanding amount becomes due and payable only on the date of last invoice or the date on which such invoice falls due for payment. It is observed that the Operational Creditor has maintained a running account of the Corporate Debtor in its books of account. It is also noticed from the record that the invoices remaining unpaid in the present case pertain to the period from January, 2019 to June, 2019 and that the last invoice was issued on 06.06.2019

against Purchase Order No.DPO-253 dated 17.11.2018. A perusal of the relevant Purchase Order reveals that as per the agreed terms, payment for the invoice was to be made on expiry of 60 days from the date of despatch of goods. Further, a perusal of the relevant Goods Consignment Note No.TPR-3071 shows that the goods sold *vide* invoices raised on 06.06.2019 were despatched through ST Roadways, Tirupur on 07.06.2019. Therefore, we find that the Operational Creditor has rightly taken 08.08.2019 as the date of default. Merely because some part payment was received from the Corporate Debtor on the same date will not detract from the fact that outstanding operational debt exceeding the prescribed pecuniary threshold under Section 4 of the Code was still due and payable by the Corporate Debtor to the Operational Creditor, which remained unpaid.

5.5 The next issue for determination is whether the statutory Demand Notice dated 11.12.2019 mandated under Section 8(1) of the Code was properly delivered to the Corporate Debtor. On perusal of the said Demand Notice, it is observed that it was issued in Form 4 under Rule 5 of the AAA Rules and that the Operational Creditor *vide* this notice titled "Notice attached to invoice demanding payment" sought repayment of the unpaid amount of Rs.1,57,02,791/- that was in default "as reflected in the invoices attached to this notice". The Operational Creditor has also placed on record copy of Regd. A.D. evidencing postal acknowledgement of the said notice by the Corporate Debtor on 17.12.2019. In view of this position, we are unable to accept the Corporate Debtor's contentions that the said Demand Notice did not adhere to the provisions of Section 8 of the Code and that no invoices were attached thereto and the same are rejected as mere afterthought. In this connection, reliance placed by the Corporate Debtor on the judgment of

Hon'ble NCLAT dated 24.02.2020 in **Neeraj Jain Vs. Cloudwalker Streaming Technologies Pvt. Ltd. And anr. [CA (AT)(Ins) No.1354/2019]** as well as order of Hyderabad Bench of this Tribunal dated 25.04.2023 in *Ven Infra Projects Vs. Srichaitanya Chlorides Pvt. Ltd.* [CP(IB) No.54/9/HDB/2020] will be of no avail in view of distinguishable facts. In the present case, we find that the Demand Notice under Section 8 was issued to the Corporate Debtor in the prescribed format as per Rule 5 of the AAA Rules; that the relevant invoices were attached with Form 4 and that it was duly served on the Corporate Debtor on 17.12.2019. However, despite service of the said Demand Notice, the Corporate Debtor neither responded to the same nor made any payment of the unpaid operational debt. Hence, we find that the Corporate Debtor defaulted in payment of the operational debt owed to the Operational Creditor.

5.6 Another issue for consideration is whether the Corporate Debtor is correct in claiming that no debt exists between the parties as it had already made payments to the tune of Rs.1,79,57,599/- against the invoices amounting to Rs.1,61,22,692/- annexed to the Application. The Corporate Debtor admits the fact that it was maintaining a "running account" with the Operational Creditor wherein payments were made on a lump sum basis and not on invoice to invoice basis. The concept of a "running account" is now well-recognised in judicial pronouncements. The Hon'ble Delhi High Court in **Bharat Skins Corporation Vs. Taneja Skins Corporation Pvt. Ltd. (2012) 186 DLT 290** has brought out the ingredients of a running account as follows:-

"19. In case of a running and non-mutual account between the buyer and seller, when goods are delivered by the seller to the buyer, the value of the goods is debited in the debit column and when amounts are paid by the buyer to the seller, they are

entered in the credit column. The difference is continuously struck in the column for balance. In such a case, when the buyer defaults to make balance payment, the seller's action is not for the price of goods sold and delivered but for the balance due at the foot of an account".

In view of the above position, the Corporate Debtor cannot escape from its liability by merely pleading that it had already made payment of greater amount than the amount of invoices claimed in the Application, because the Corporate Debtor remains liable for the balance due at the foot of its account with the Operational Creditor, i.e., Rs.1,57,02,791/- being the amount claimed to be in default in the Application. Hence, the claim or plea of the Corporate Debtor on this count is found to be devoid of merit and is accordingly dismissed.

5.7 Finally, it is proposed to examine the merits of the Corporate Debtor's vociferous plea that there was a pre-existing dispute raised by it with the Operational Creditor before service of the Demand Notice on 17.12.2019. The nature and scope of adjudicating authority's enquiry at this stage is now well-defined and well-settled. All that the adjudicating authority is to see is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. Nor does the Court at this stage go into the merits of the dispute. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.

5.8 On perusal of the materials available on record, it is noted that the Operational Creditor has filed an Affidavit under Section 9(3)(b) of the Code, *inter alia*, affirming that the Corporate Debtor neither specified existence of any suit or

arbitration proceedings nor annexed a record of the pendency of the suit or arbitration proceedings filed before the receipt of the Demand Notice issued by the Operational Creditor nor sent a proof of repayment of unpaid operational debt as required under Section 8(2) of the Code. It is also affirmed that the Operational Creditor has not received any notice of dispute regarding the outstanding amount from the Corporate Debtor in terms of Section 8(2) of the Code.

5.9 On the other hand, the Corporate Debtor in its Affidavit-in-Reply has vehemently claimed that there was a pre-existing dispute between the parties in regard to the quality of the products supplied by the Operational Creditor. However, we find that such claim is not supported by any concrete and credible evidence. For example, the Corporate Debtor refers to the Suppliers Manual purportedly executed between the parties, but copy of the said Manual has not been placed on record. In the absence of the said Suppliers Manual, it is not possible to ascertain the respective rights and obligations of the parties in case of supply of inferior quality and/or defective goods. Under the terms and conditions of the Purchase Orders issued by the Corporate Debtor, it reserved the right to return the rejected goods due to manufacturing and quality aspects on the “freight to pay” basis with due advance intimation to the Operational Creditor. Although the Corporate Debtor also claims the right to return the defective goods and issue a debit note based on purported Clause SF 8(a) of the Suppliers Manual, it is noteworthy that the Corporate Debtor did not return any defective goods to the Operational Creditor during the course of their dealings from October, 2017 to June, 2019.

5.10 Further, the Corporate Debtor has merely furnished a chart showing alleged “quality deficiency issues” but there is nothing on record to show that the said

“quality deficiency issues” were ever communicated to the Operational Creditor. Likewise, no contemporaneous correspondences, whether by email or otherwise, exchanged with the Operational Creditor have been brought on record with regard to the alleged claim for return of goods, loss of business, shortage and logistics cost and damages to the reputation and goodwill of the Corporate Debtor. Last but not the least, though the Operational Creditor is alleged to have committed a breach of contract owing to which the Corporate Debtor was forced to terminate its purported agreement with the Operational Creditor, yet copy of the alleged agreement has not been placed on record. Therefore, mere bald assertions and hollow claims of the Corporate Debtor without an iota of corroborating evidence are not sufficient to prove the factum of any pre-existing dispute between the parties.

5.11 At this juncture, it will be worthwhile to take note of certain emails exchanged between the Operational Creditor and the Corporate Debtor. For example, the Corporate Debtor *vide* email dated 23.04.2019 shared with the Operational Creditor its Ledger Account for F.Y.2018-19 for confirmation showing outstanding amount of Rs.1,56,44,780/- payable to the Operational Creditor as on 31.03.2019. In other words, the Corporate Debtor unequivocally acknowledged the aforesaid amount of operational debt as owed to the Operational Creditor as on 31.03.2019. Then the Operational Creditor has furnished copy of internal email dated 06.07.2019 between employees of the Corporate Debtor stating that the Operational Creditor had “stopped the production” of all the goods for the Corporate Debtor “due to payment issues”. The same day, the Corporate Debtor sent an email to the Operational Creditor urging that “..*stopping the production will not solve any purpose.....It will be better to produce and ship the garments*

on monthly basis against PDC. Hoping for your support..". If the Operational Creditor had been supplying inferior quality or defective goods in the past, as claimed by the Corporate Debtor, there was no valid reason for the latter to seek "support" of the former by agreeing to procure supplies of garments from it "on monthly basis against PDCs". This clearly shows that the plea of pre-existing dispute raised by the Corporate Debtor is nothing but a hoax and deserves to be rejected.

5.12 As a matter of fact, it is noticed from the record that whenever the Operational Creditor approached the Corporate Debtor seeking payment of outstanding dues, the latter would come up with alleged quality issues, defective products, customer complaints, losses, etc., in order to avoid or delay the honouring of its payment obligations. A glaring example of this approach is the Corporate Debtor's email dated 28.08.2019 in response to Operational Creditor's email dated 28.08.2019 asking for immediate payment of dues wherein instead of making any offer of payment to the Operational Creditor, the Corporate Debtor started complaining how it had faced a severe backlash and criticism from domestic market retailers on account of inferior quality and defective products supplied by the Operational Creditor and incurred losses and suffered damage to its market reputation and how the Operational Creditor should compensate the Corporate Debtor on this account. This is despite the fact that the Operational Creditor had shared copy of the Quality Certificate issued by the Worldwide Responsible Accredited Production (WRAP), USA with the Corporate Debtor *vide* email dated 16.08.2019 and, more importantly, the Corporate Debtor had at no stage been able to adduce even an iota of evidence to corroborate or substantiate its allegations. Once again, when the Operational Creditor sent a legal notice dated 04.11.2019 to the

Corporate Debtor calling upon it to pay the outstanding dues, the Corporate Debtor in its reply through its Advocates dated 19.12.2019 harped on the same tune by referring to the Suppliers Manual and alleged supply of defective products to Corporate Debtor which resulted in significant losses to the Corporate Debtor. In the absence of the purported Suppliers Manual and supporting evidence of alleged supply of inferior quality/defective goods, the so-called dispute raised by the Corporate Debtor can by no stretch of imagination be called a genuine pre-existing dispute. There is nothing authentic or credible on record to show that any dispute with regard to alleged defective quality of goods was raised by the Corporate Debtor until reminders for payment were sent by the Operational Creditor to the Corporate Debtor. Thus, we find that the plea taken by the Corporate Debtor in this regard is nothing more than a show or a pretence, giving rise to a hypothetical or illusory dispute. The same is found to be devoid of substance and is accordingly dismissed.

5.13 From the above discussions, it is evident that the Corporate Debtor committed default in the payment of operational debt owed to the Operational Creditor exceeding Rs.1,00,00,000/- (One Crore Rupees), being the threshold monetary limit laid down under Section 4 of the Code prevailing on the date of filing of the present Application. The Application is complete and has been filed in the prescribed form. There is no payment of the unpaid operational debt till date. No notice of pre-existing dispute has been received by the Operational Creditor in response to the Demand Notice. The Corporate Debtor has also failed to establish the factum of any pre-existing dispute between the parties, as brought out above. The Operational Creditor has proposed the name of Mr. Sanjay Ramdas Mahajan to act as the Interim Resolution Professional (IRP) and no

disciplinary proceeding is shown to be pending against him. In view of the above, we find that all requisite conditions necessary to trigger CIRP in respect of the Corporate Debtor are satisfied and the matter is fit for admission under Section 9(5)(i) of the Code.

ORDER

In view of the aforesaid findings, this Application bearing C.P.(IB) No.238/MB/2022 filed under Section 9 of the Code by Sunrise Knitting Mills Pvt. Ltd., the Operational Creditor, for initiating CIRP in respect of Oban Fashion Pvt. Ltd., the Corporate Debtor is **admitted**.

We further declare moratorium under Section 14 of Code with consequential directions as follows:

I. We prohibit-

- a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b) transferring, encumbering, alienating or disposing of by the Corporate Debtor of any of its assets or any legal right or beneficial interest therein;
- c) any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- II. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under sub-section (1) of section 31 of the Code or passes an order for the liquidation of the Corporate Debtor under section 33 of the Code, as the case may be.
- IV. That the public announcement of the CIRP shall be made immediately in accordance with Section 13 of the Code and the relevant Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Mr. Sanjay Ramdas Mahajan, a registered Insolvency Professional having Registration Number IBBI/IPA-001/IP-P-02122/2021-2022/13523, Email address sanjaymahajan@hotmail.com** and valid Authorisation for Assignment till 30.06.2025 as the Interim Resolution Professional (IRP) to carry out the functions under the Code.
- VI. That the fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.
- VII. That during the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Sections 17 and 25 of the Code. The officers and managers of the Corporate Debtor are directed to provide effective assistance to the IRP as and

when he takes charge of the assets and management of the Corporate Debtor. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the Code. Coercive steps will follow against them under the provisions of the Code read with Rule 11 of the NCLT Rules for any violation of law.

- VIII. That the IRP/IP shall submit to this Tribunal periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- IX. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, we order the Operational Creditor to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Operational Creditor on priority upon funds from the Committee of Creditors (CoC) becoming available with IRP/CP. The expenses, incurred by IRP out of this fund, are subject to approval by the CoC.
- X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.
- XI. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the IRP including by way of email and WhatsApp.

XII. Besides, a copy of this order shall also be forwarded by the Registry of this Tribunal to the IBBI for their record.

XIII. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)
Vani/JNK

Sd/-
K. R. SAJI KUMAR
MEMBER(JUDICIAL)