**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**MUMBAI BENCH-IV**

**CP (IB) 2204/MB-IV/2019**

Under section 9 of the Insolvency & Bankruptcy Code, 2016

*In the matter of*

**Mayur Wovens Private Limited**
…Operational Creditor

Versus

**Audax Protective Fabrics Private Limited**
Corporate Debtor

**Order Delivered on 22.10.2019**

***Coram:***

| | | |
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| Mr. Rajasekhar V.K. | : | Hon'ble Member (Judicial) |
| Mr. Ravikumar Duraisamy | : | Hon'ble Member (Technical) |

***Appearances:***

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| For the Operational Creditor | : | CA Pradeep G. Tulsian, Authorised Representative |
| For the Corporate Debtor | : | Mr Sanjay Udeshi, Advocate |

## ORDER

***Per: Rajasekhar V.K., Member (Judicial)***

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 **(IBC)** by Mayur Wovens Private

Limited ("the Operational Creditor"), a company within the meaning of section 2(20) of the Companies Act, 2013 and represented by its Director, Mr. Shyam Sunder Tibrewal, on the basis of a Board Resolution dated 25.04.2019 seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Audax Protective Fabrics Private Limited ("the Corporate Debtor").

2. The Corporate Debtor is a private company limited by shares and incorporated on 07.01.2014 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharastra, Mumbai. Its Corporate Identity Number (CIN) is U74120MH2014PTC251831. Its registered office is at Room No. 2, 2nd Floor, Shreeram Bhuvan, 772, Opp. Best Office, Tilak Road, Dadar TT, Mumbai, Maharastra 400014. Therefore, this Bench has jurisdiction to deal with this petition.

3. The present petition was filed on 06.06.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹7,63,821.00 (Rupees seven lakh sixty-three thousand eight hundred and twenty-one only) as principal and ₹1,53,890.00 (Rupees one lakh fifty-three thousand eight hundred and ninety only) as interest as on 03.12.2017, which is the date of default.

4. The case of the Operational Creditor is as follows: -

(a) The petitioner is a supplier of Polypropylene Woven Fabric (para 3 at page 5 of the Petition);

(b) Operational Creditor has dispatched the goods according to the terms and conditions of Purchase Order which was duly received and acknowledged by the Corporate Debtor. The said material was duly accepted by Corporate Debtor without raising any kind of dispute. The Operational Creditor used to maintain a running account and Corporate Debtor used to regularly make payments against each invoice to Operational Creditor (para 4 at page 5 of the Petition);

(c) With respect to Invoice No. L0486 dated 03.12.2017 and No. L0367 dated 18.09.2018, the Corporate Debtor failed and neglected to make payment in aggregate of ₹7,63,821/- even though the goods were accepted by the Corporate Debtor without any kind of dispute and the goods were duly consumed. (para 6 at page 6 of the Petition).

(d) Invoices have been placed on record at pp.22-27. The invoices provide for interest in case of delayed payments, to be charged at the rate of 18% per annum. The total debt due and payable to the Operational Creditor is ₹9,17,711.00 (Rupees nine lakh seventeen thousand seven hundred and eleven only).

5. The Operational Creditor had served a Demand Notice in Form 3 dated 27.03.2019 to the Corporate Debtor (pp.15-20) in terms of

section 8 of the IBC. The Corporate Debtor has not replied to the Demand Notice.

6. Mr Sanjay Udeshi, Learned Counsel appeared on behalf of the Corporate Debtor and made his submissions.

7. In its reply dated 02.09.2019, the Corporate Debtor has set up the following defence:-

   (a) There is no debt due and payable as per the provision of the Insolvency and Bankruptcy Code, 2016. There is a pre-existing dispute between parties and the Corporate Debtor has counter claim of ₹30,00,000/- against the Operational Creditor (para 5 at page 2-3 of the Reply);

   (b) The Corporate Debtor deployed its quality controller to the Operational Creditor's factory till September 2017. The Corporate Debtor ceased to undertake quality control checks at Operational Creditor's factory. There were admittedly various quality issues with respect to the goods supplied. (para 9-10 at page 4 of the Reply);

   (c) Out of two invoices payment against invoice bearing no. L0486 dated 03.12.2017, was withheld on account of goods being defective (para 32 at page 11 of the Reply). As against the payment invoice bearing no. L 0367 dated 18.09.2018, the

respondent claims to have made full payment. (para 25 at page 9 of the Reply).

8. We have heard the arguments of both sides and perused the records.

9. **Exhibit 'B' of the reply** is the correspondence dated 15.11.2017 which has with it a trailing mail of same date. This pertains to the invoice under consideration i.e. 03.12.2017 (Invoice No. L0486).

10. **Exhibit 'C' of the reply** appears to be a copy of an email dated 09.12.2017. From the copies attached, we are unable to make out whether these are genuine or not since they lack the usual email headers.

11. **Exhibit 'D' of the reply** is supposed to be a debit note voucher bearing no. 46 dated 02.02.2018 apparently on account of quality issue in the scrim supplied under invoice No. L0486 dated 03.12.2017. There is no proof whatsoever that these were returned to the Operational Creditor.

12. **Exhibit 'E' of the reply** is a copy of alleged email correspondence dated 29.02.2018. Once again these cannot be taken at face value as the emails lack the usual headers.

13. These defences only appear to be an afterthought since there is no written record as such about such communication with Operational Creditor.

14. The defences put up by the Corporate Debtor in respect of the claim of the Operational Creditor are, therefore, not credible and are, therefore, unsustainable.

15. Therefore, there is no doubt that there was supply of goods by the Operational Creditor in favour of the Corporate Debtor and also that a sum of ₹7,63,821.00 (Rupees seven lakh sixty-three thousand eight hundred and twenty-one only) is due and payable against the two unpaid invoices.

16. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

17. It is, accordingly, hereby ordered as follows: -

    (a) The petition bearing **CP (IB)-2204/MB-IV/2019** filed by **Mayur Wovens Private Limited,** the Operational Creditor, under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Audax Protective Fabrics**

**Private Limited [CIN: U74120MH2014PTC251831],** the Corporate Debtor, is **admitted**.

(b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

(i) 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;

(ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(iii) 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 Operational Assets and Enforcement of Security Interest (Sarfaesi) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium, -

(i) 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;

(ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(f) **Mr. Sandeep Jawaharlal Singhal,** Registration No.IBBI/IPA-001/IP-P-00519/2017-18/10920, having address at 313/314, Girishikhar, Plot No. 88-91, Opposite Goenka Hall, J B Nagar, Andheri (East), Mumbai 400 064, email: sandeepjsinghal@hotmail.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC.

The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.

(g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. 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, in default of which coercive steps will follow.

(h) The Operational Creditor shall deposit a sum of ₹1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

(i) The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor by Speed Post and email immediately, and in any case, not later than two days from the date of this Order. A copy of this Order shall also be communicated to the IRP immediately such appointment.

(j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

**Sd/-** **Sd/-**

**RAVIKUMAR DURAISAMY** **RAJASEKHAR V.K.**
**Member (Technical)** **Member (Judicial)**

22.10.2019