

IN THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD

COURT - II

CP (IB) 04/NCLT/AHM/2022

[Application for initiation of Corporate Insolvency Resolution Process  
under Section 9 of the Insolvency & Bankruptcy Code, 2016]

In the Matter of:

**Kotharishah Texturisers Private Ltd.**

**Applicant/  
Operational Creditor**

**Versus**

**Kimaya Industries Private Limited**

**Respondent/  
Corporate Debtor**

**Order Pronounced on: 03/02/2023**

**Coram:**

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

CP (IB) 04/NCLT/AHM/2022



**MEMO OF PARTIES**

**Kotyharishah Texturisers Private Limited**

113-114, Super Yarn Market

Zampa Bazar

Surat 395 003

Gujarat State

... **Applicant/Operational Creditor**

**Versus**

**Kimaya Industries Private Limited**

C-22/7, Road No. 15

Hojiwala Industrial Estate

Sachin, Palsana Road,

Sachin, Surat 363 421

Gujarat State

... **Respondent/Corporate Debtor**



**Appearance:**

For Applicant : Mr. Dhiren Dave, Advocate

For the Respondent : Mr. Kunjal Dalal, PCS

CP (IB) 04/NCLT/AHM/2022

## ORDER

1. This application is filed on 17.12.2021 under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Mr. Kushal Kantiprasad Tayal, authorised signatory of M/s. **Kotharishah Texturisers Private Limited** (for brevity 'Applicant') authorised vide Board Resolution dated 12.08.2021, with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. **Kimaya Industries Private Limited** (for brevity 'Corporate Debtor').
2. The Applicant is a private limited company incorporated under the Companies Act, 1956 having CIN U17119GJ1989PTC012838 and having office at 113-114, Super Yarn Market, Zampa Bazar, Surat 395 003. The applicant is supplier of yarn and grey fabrics.
3. The corporate debtor is a private limited company, incorporated under the provisions of Companies Act, 1956 on 04.06.2009 duly registered



with Registrar of Companies, Ahmedabad, Gujarat State with CIN: U17120GJ2009PTC057158, having registered office at C-22/7, Road No. 15, Hojiwala Industrial Estate, Sachin Palsana Road, Sachin, Surat 363 421, Gujarat State. The authorised share capital of the corporate debtor is Rs. 90,00,000/- and paid up share capital is Rs. 88,73,630/-. The corporate debtor is engaged in the trading of textile items.

4. It is submitted by the applicant that a total sum of 1,63,57,009.49 (Rupees one crore sixty-three lacs fifty-seven thousand nine and paise forty-seven only) is due and payable by the corporate debtor which includes interest amount of Rs. 56,78,665.47 (Rupees fifty-six lacs seventy-eight thousand six hundred sixty-five and paise forty-seven only) towards the goods supplied during the period from 02.09.2019 to 19.12.2019. Copies of the invoices are annexed with the application. Corporate debtor is maintaining a running account with the applicant and the last payment made by the corporate debtor was on 05.03.2020. As per the terms and conditions in each invoice, payment of each invoice was to be made on the same date and interest @ 24% per annum is payable for late payments.



5. The applicant further submits that having failed to receive the overdue payments from the corporate debtor, demand notices in Form 3 and Form 4 under Section 8 of the Insolvency & Bankruptcy Code read with Rule 5 of the Insolvency and Bankruptcy Regulations, 2016, respectively dated 14.08.2021 and 12.08.2021, were issued. Track consignment report evidencing delivery of said notices at the registered address available at MCA portal on 19.08.2021, was annexed to the application. The applicant has submitted a copy of reply sent by the corporate debtor vide letter dated 18.10.2021 inter alia denying the debt.
6. Thereafter, the applicant filed the instant application on 17.12.2021 under Section 9 of the Insolvency and Bankruptcy Code, 2016.
7. The corporate debtor filed affidavit in reply inter alia stating that:
  - The PCS who has issued the demand notice has no authority to issue notice on behalf of applicant.
  - Except invoice, the applicant has not produced any other document to show that the invoices have been made as per purchase order from the corporate debtor and that the goods have actually been supplied.



- Since the applicant has failed to establish the debt towards unpaid invoices, there is no question of debt towards interest on such invoices.
- The claim of interest is not reflected in the ledger account attached to the application.
- The parties have been conducting business since August, 2016 and no interest has been charged for any late payment as evident from the ledger account annexed with the application.
- The goods supplied to other parties have been included in the claim and the applicant has not given any clarification/explanation as to how the amounts have been billed upon the corporate debtor for goods supplied to other parties.
- 49 invoices aggregating to Rs. 32,86,933/- has been wrongly claimed from the corporate debtor.
- The claim for interest is not an operational debt.

8. The applicant filed rejoinder on 06.06.2022 and submitted the following documents:

- Board resolution dated 12.08.2021 whereby the applicant has given authority to the PCS who has signed the notice.



- Copies of ledgers of the applicant acknowledged and shared by the corporate debtor by WhatsApp.
  - Copy of board resolution dated 28.08.2021 of the corporate debtor confirming undisputed outstanding debts of the applicant.
  - Draft copy of Memorandum of Understanding dated 15.09.2021 and details of the post-dated cheques as shared by the corporate debtor proposing settlement of outstanding dues.
  - Copies of WhatsApp instructions by corporate debtor for supplying goods to other parties viz. Shree Balaji Textiles, Agam Textiles, Baljogi Enterprise, Balkrishan Dying, Laxmi Syntex and Vidhi Industries.
  - Copies of duly acknowledged delivery challans of the goods supplied to buyers of the corporate debtor.
  - Copies of GST returns as downloaded from GST portal for the invoices of goods supplied as per instruction of corporate debtor.
9. The applicant filed written submissions on 31.01.2023 reiterating the contents of rejoinder already filed.

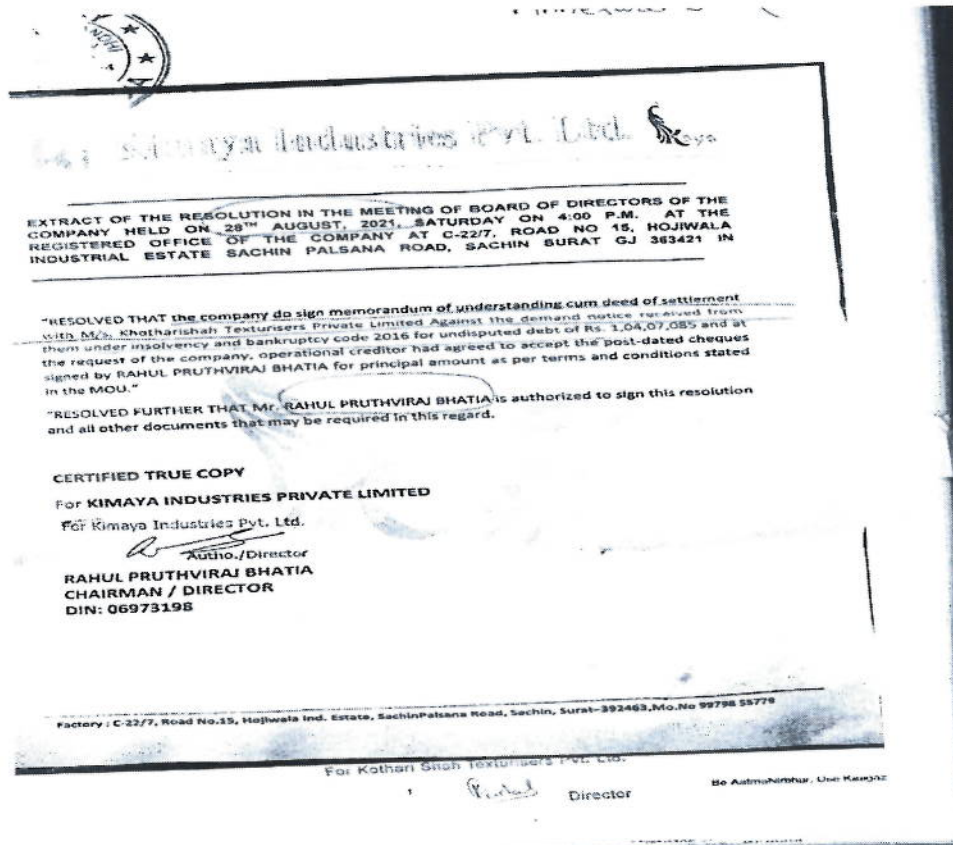


10. The corporate debtor filed written submissions on 31.01.2023 inter alia stating that:
- The Board resolution dated 12.08.2021 filed at page 43 of rejoinder to reply is not a genuine resolution since no Board meeting was held on 12.08.2021 as per MCA 21 filings by petitioner and thus resolution giving authority is fake document.
  - The document filed with the rejoinder like ledger account of applicant in books of corporate debtor, resolution dated 28.08.2021 by corporate debtor for signing memorandum of understanding and unsigned memorandum of understanding received by the applicant from Mr. Rohitji, were confidential documents shared by the corporate debtor with mediator involved in settlement.
11. As per part IV, Form 5 total amount of debt is Rs. 1,63,57,009.47 (Rupees One crore sixty-three lacs fifty-seven thousand nine and paise forty-seven only). Date of last invoice raised is 19.12.2019 and date of last payment received by the applicant is 05.03.2020. Accordingly, date of default is 05.03.2020. Therefore, application filed on 17.12.2021 is within limitation and not barred by law.



12. Registered office of the corporate debtor is situated in Sachin, Surat District, Gujarat State and, therefore, this Tribunal has jurisdiction to entertain and try this application.
  
13. Heard submissions and perused the documents on record. The documents annexed with the rejoinder filed by the applicant clearly establishes that default has occurred and operational debt is due and payable by the corporate debtor. On perusal of the draft Memorandum of Understanding for settlement of admitted debt dated 15.09.2021 stated to have been sent to the applicant by the corporate debtor, it is found that the corporate debtor has admitted an amount of Rs. 1,63,57,009.47 which includes interest of Rs. 56,78,665.47.
  
14. We have perused the Board Resolution of the corporate debtor dated 28.08.2021 which is scanned below, where the corporate debtor has admitted undisputed debt of Rs. 1,04,07,085/- as principal amount repayable to the applicant.





15. The applicant is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt. Moreover, in view of the admission and acknowledgement of debt and default by the corporate debtor, it is apparent that the corporate debtor is incapable of discharging its debts and requires resolution. Though corporate debtor has attempted to create/raise a dispute by filing reply to the statutory notice as well as to the present application, which is not sustainable, as thereafter corporate debtor has acknowledged the debt in its own ledger account of applicant as well as passed Board Resolution dated 28.08.2021 whereby confirming undisputed debt of



Rs. 1,04,07,085/- and authorising Mr. Rahul Bhatia to sign memorandum of understanding cum deed of settlement with the applicant. The present application is complete, is filed within limitation and meets the threshold required under the Code. This application is hereby admitted, in terms of section 9 (5) of IBC, 2016 and CIRP is ordered to be initiated.

16. The applicant has not proposed the name of the Interim Resolution Professional (IRP). Therefore, we hereby appoint Mr. Rajendra Jain, A-1103, ISCON Riverside, Opp. Police Stadium, Shahibaug, Ahmedabad 380 004 with registration No. IBBI/IPA-002/ IP-N-00732/2018-19/12353 and having email ID iprajendragjain@gmail.com as IRP of the corporate debtor subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP in Form 2, along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 be filed within a period of one week from the receipt of this order.



17. We direct the Operational Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Rajendra Jain to meet the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
  
18. As a consequence of the application being admitted in terms of Section 9 (5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1) shall follow in relation to the Corporate debtor, prohibiting actions as per clauses (a) to (d) of Section 14 (1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall remain in force.
  
19. A copy of the order be communicated to the applicant, IRP and the corporate debtor. A copy of order along with complete copy of



application be served to IRP by the applicant within 7 days of order. In addition, a copy of the order be forwarded to IBBI for its records and taking steps for updating the Master Data of the corporate debtor in MCA portal, and to forward the compliance report to the Registrar, NCLT.

Sd/-

Sd/-

**AJAI DAS MEHROTRA  
MEMBER (TECHNICAL)**

**DR. DEEPTI MUKESH  
MEMBER (JUDICIAL)**

*NairAbhishek.LRA*



Prepared by Vimal  
Signature af  
Date 6-2-23

