IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT-V, MUMBAI BENCH

C.P. No. 53/IBC/MB/2021

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

In the matter of
M/s. Faiz Enterprises
Having registered office at:
B. P. T. Plot No. 90/91, Tank Bunder Road, Ashapura Lane, Opposite- Reay Road Railway Station (West), Mumbai - 400010

……Operational Creditor

Vs

M/s. Kalpak Industrial Technologies (India) Private Limited
(CIN: U29253PN2014PTC150867)
Registered office at:
D II Block MIDC, PL NO 58/59/22 MIDC Chinchwad Pune MH 411019 IN

…….Corporate Debtor

Order delivered on: 15.07.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Petitioner: Mr. Shehzad Naqvi, Advocate

For the Corporate Debtor: None Present.

1. The above Company Petition is filed by M/s. Faiz Enterprises hereinafter called as Operational Creditor seeking to initiate of Corporate Insolvency Resolution Process (CIRP) against M/s. Kalpak Industrial Technologies (India) Private Limited called as Corporate Debtor by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called "Code" read with rule 6 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of an unresolved Operational Debt of Rs. 25,08,868/-.
2. The Operational Creditor from 2018 started supplying MS CEW and M.S. Seamless Pipes to the Corporate Debtor and all the materials were supplied as per Purchase Orders.
3. On 24.11.2018, the Operational Creditor supplied M.S. Seamless Pipes to the Corporate Debtor, and raised invoice bearing No. SAL00000077 of an amount of Rs.2,64,947/-, and out of the said invoice amount the Corporate Debtor paid an amount to the tune of Rs. 1,78,730/- on 20-04-2019, and hence, the outstanding amount on the said invoice is Rs.86,217/-.
4. The Corporate Debtor again ordered M.S. Seamless Pipes from the Operational Creditor and Operational Creditor raised Invoice on 03-12-2018 of an amount of Rs.4,49,079/- towards the same, and no amount has been paid by the Corporate Debtor towards the said invoice. Thereafter, the Corporate Debtor once again ordered M.S. CEW Pipes from the Operational Creditor on the assurance to clear all pending payments immediately after receiving the material, along with 60 days post-dated cheque against the ordered material of Rs. 14,12,986/-.
5. Further, the Operational Creditor raised Invoice bearing No. SAL00000084 on 14-01-2019 of an amount of Rs. 14,12,986/-

. On 24-03-2019, the Petitioner raised Invoice, bearing No. SAL000000109 of an amount of Rs.90,860/-.

6. 0n 09-10-2019, the Corporate Debtor assured the repayment of the outstanding amounts towards the aforesaid Invoices and hence, handed over Cheques bearing No. 102731 drawn on The Kalyan Janata Sahkari Bank Ltd of a n amount of Rs.2,50,000/- (Rupees Two Lacs Fifty Thousand Only) towards the partial payment thereof and Cheque bearing No. 102732, drawn on the said bank of an amount of Rs.2,50,000/- (Rupees Two Lacs Fifty Thousand Only), towards partial repayment of the amount.

7. On 20-11-2019, the Corporate Debtor sent email to the Operational Creditor, assuring and promising therein that all the outstanding dues of the Operational Creditor will be cleared in 15 days' time but no payment has not forthcomed.

8. The Corporate Debtor's right to file reply has been already forfeited *vide* an order dated 18.04.2022. Learned Counsel appearing for the Petitioner brought the attention of this Bench to the invoices annexed at Page Nos. 32, 33, 34 and 35 of the Company Petition.

9. The counsel for the Petitioner also invited the attention of this Bench to the Demand Notice dated 27.10.2020 and the relevant acknowledgement under which the Corporate Debtor received the Demand Notice. The Counsel appearing for the Petitioner submitted that the Corporate Debtor did not sent any reply after receiving the Demand Notice nor paid any amount. Hence, he prayed for admission of the Company Petition.

10. After hearing the submissions and upon perusal of the material available on record, the Bench is of the considered opinion that there is a clear admission of debt and Default in this case and since the Corporate Debtor did not choose to file any reply, the claim of the Operational Creditor remained unchallenged. Hence, this Bench did not find any reason to

dismiss the above Company Petition. Accordingly, the above Company Petition is allowed.

ORDER

a. The above Company Petition No. 53/IBC/MB/2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s. Kalpak Industrial Technologies (India) Private Limited.

b. Since the Operational Creditor has not suggested the name of any person to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Devang Sampat** (dpsampat@sampatassociates.in) (Mobile No. 9820925550) Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00224/2017-18/10423 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Operational Creditor shall deposit an amount of Rs. 2 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.

d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

k. Accordingly, Company Petition No. 53/IBC/MB/2021 is **admitted**.

l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-	**SD/-**
ANURADHA SANJAY BHATIA	**H.V. SUBBA RAO**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**