

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: DR. POONDLA BHASKARA MOHAN,**  
**HON'BLE JUDICIAL MEMBER**

**SHRI RAGHU NAYYAR,**  
**HON'BLE TECHNICAL MEMBER**

**Company Petition No. (IB)- 166/9/JPR/2019**

(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:**

**SAHIL AGARWAL**

**...OPERATIONAL CREDITOR/  
APPLICANT**

**VERSUS**

**KHATI DESIGN PRIVATE LIMITED**

**...CORPORATE DEBTOR/  
RESPONDENT**

**For the Applicant:**

**SANDEEP TANEJA, Adv.**  
**PUNEET MAHESHWARI, Adv.**

**For the Respondent:**

**SHIVANGSHU NAVAL, Adv.**

Sahil Agarwal  
Versus  
Khati Design Private Limited



**MEMO OF PARTIES****SAHIL AGARWAL**

236, Mahaveer Nagar-I,  
Tonk Road, Jaipur- 302018 (Rajasthan)

**...Operational Creditor/Applicant****VERSUS****KHATI DESIGN PRIVATE LIMITED**

G-73, RIICO Industrial Area,  
Bagru Extn. Bagru Jaipur -303007 (Rajasthan)

**...Corporate Debtor/Respondent****Order Pronounced On: 27.09.2019****ORDER**

1. This Application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Sahil Agarwal (for brevity 'Applicant') claiming to be an Operational Creditor with a prayer for initiation of Corporate Insolvency Resolution Process against Khati Design Private Limited (for brevity "Corporate Debtor").

Sahil Agarwal  
Versus  
Khati Design Private Limited



2. The Applicant is an individual and an expert in software & product development on social media and website development for the purpose of marketing business. The Applicant resides at 236, Mahaveer Nagar-I, Tonk Road, Jaipur- 302018 (Rajasthan).
3. The Corporate Debtor is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 16.12.2005, duly registered with the Registrar of Companies, Jaipur having CIN: U74994RJ2005PTC021774 and the Registered Office of the Corporate Debtor is at G-73, RIICO Industrial Area, Bagru Extn. Bagru Jaipur-303007 (Rajasthan).
4. It is the case of the Applicant that on 24.10.2018 one Mr. Banwari Lal Kumawat, a representative of the Corporate Debtor, expressed his desire to seek advise from the Applicant in relation to developing the website and social media handles of the Corporate Debtor. During the meetings with the Corporate Debtor on 25.09.2018 and 26.09.2018, the Applicant has provided consultancy by way of presentations to the Corporate Debtor and raised invoice dated 25.09.2018 for amount of Rs. 4,50,000/- to be cleared within 15 days. Copy of invoice is annexed as Annexure – A with the Application. The Applicant submits that the Corporate Debtor has used his advice, consultancy and idea for their online and digital marketing, however, without paying for the services obtained from the Applicant.



5. The Applicant has awaited for his payment but no payment has been made. Thus, the Applicant has issued a notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 for an amount of Rs. 4,50,000 excluding interest @ 12% p.a. on 04.04.2019 on the Corporate Debtor, which was duly received by Corporate Debtor through post on 10.04.2019 and also sent said notice by emails dated 21.04.2019 and 22.04.2019. Copy of tracking report as proof of service of the said Section 8 notice is annexed. The Corporate Debtor has neither replied to the Demand Notice nor raised any dispute of the unpaid operational debt. Thus, the Applicant filed the present Application under Section 9 of Insolvency and Bankruptcy Code, 2016.
6. The total amount claimed by the Applicant as mentioned in Part IV is a sum of Rs. 4,50,000/- excluding interest @ 12% per annum as an outstanding amount which is due and payable by the Corporate Debtor as described below:

## PART IV

| Sr. No. | Particulars of Operational Debt  |                |
|---------|--|----------------|
| 1.      | Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due. | Rs. 4,50,000/- |

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|----|--|--|
| 2. | Amount claimed to be in default and the date on which the default occurred | Rs. 4,50,000/- as Principal amount + Rs. 31,500/- as interest @ 12% p.a. upto 10.05.2019.<br>Date of Default: 10.10.2018 |
|----|--|--|

7. The Corporate Debtor has filed its reply vide Dairy No. 1984/2019 on 19.09.2019 and submits as under:

“That in the facts obtaining and without any liquid funds left in the account of the corporate debtor by the actions or omissions by Mr. Shabi Mohammad, the Corporate Debtor is presently not in a position to repay the amount owed to the Applicant and therefore this Hon'ble Tribunal is the best Judge to pass appropriate orders in the matter.”

8. In view of admission made in the reply, the Corporate Insolvency Resolution Process can be initiated against the Corporate Debtor as it has committed default.

9. This Tribunal perused all the relevant papers and found them to be in order. The Registered Office of the Corporate Debtor is situated in Jaipur and therefore this Tribunal has jurisdiction to entertain and try this Application. The matter is within the purview of Law of Limitation.

10. The Applicant has named the Interim Resolution Professional (IRP), to be appointed by the order of Tribunal, one Mr. Satyendra Prasad Khorania

ORP

MS

having Registration Number IBBI/IPA-002/IP-N00002/2016-17/10002 (email: [skhorania@live.com](mailto:skhorania@live.com), Mobile No. : 9352132134), duly registered with the ICSI Insolvency Professional Agency, as the Interim Resolution Professional. The Applicant has filed consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 stating therein that no disciplinary proceedings are pending against the named IRP.

11. It is apparent from the reply of the Respondent that the payment of claim amount has been defaulted by the Corporate Debtor to the Applicant.
12. In these circumstances, the claim stands established and prima facie presumption raised that there is default in payment of the amount due to the Applicant and in view of the reply of the Respondent the debt is admitted by the Respondent.
13. Hence, this Tribunal is inclined to initiate the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor as envisaged under the provisions of IBC, 2016.
14. The consequences of initiation of CIRP shall be inter alia are as follows: -
  - (i) The Resolution Professional Mr. Satyendra Prasad Khorania, having Registration No. IBBI/IPA-002/IP-N00002/2016-17/10002 is hereby appointed as the Interim Resolution Professional (IRP) to take over the



affairs of the Corporate Debtor and duties as required to be performed by him under the Provisions of IBC, 2016, including issue of publication in widely circulated newspapers as contemplated under the Provisions of IBC, 2016 and calling for the claims from the creditors of the Corporate Debtor and collating of the same shall be done.

- (ii) Further as a consequence of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked in relation to the Corporate Debtor which will be in vogue during CIRP of the Corporate Debtor. The IRP shall carry out Corporate Insolvency Resolution Process strictly as per the timelines specified and as envisaged under the Provisions of IBC, 2016 in relation to the Corporate Debtor.
- (iii) The said IRP shall act strictly in compliance with the provisions of IBC, 2016. With a view to defray his expenses to be incurred and fees on account, the Operational Creditor is directed to deposit a sum of Rs. 2,00,000/- (Two Lakh only) to the account of IRP within 3 days from the date of this order. The IRP shall duly file the status report appraising this Tribunal about the progress of CIRP unfolded in relation to the Corporate Debtor. In terms of Sections 17 and 19 of IBC, 2016 all personnel of the Corporate Debtor including its promoters and Board of Directors, whose powers shall stand suspended will extend all




cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

- (iv) In terms of Section 9 of IBC, 2016 a copy of this order shall be communicated to the Operational Creditor, Corporate Debtor as well as the Interim Resolution Professional appointed by this Tribunal to carry out the CIRP at the earliest not exceeding one week from today. A copy of this order shall also be communicated to IBBI for its records.

Accordingly, this CP. No. (IB)- 166/9/JPR/2019 is admitted.

  
SH. RAGHU NAYYAR,  
MEMBER (TECHNICAL)

  
DR. POONDLA BHASKARA MOHAN  
MEMBER (JUDICIAL)