BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB) NO. 362 OF 2020

APPLICATION BY OPERATIONAL CREDITOR TO INITIATE CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

(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 pilgrimage
M/s Silcotex Silicones Private Limited.
Address : 2nd Floor, Yarn Centre, Navi Begamwadi, Salabatpura, Surat - 3950003.

……**Operational Creditor**

Versus

M/s. Cubatics Undustries Private Limited.
Registered Office : B/1006-1007, Express Zone, Western Express Highway, Near Patel Uanika, Malad (East) Mumbai Highway - 400063.

…….Corporate Debtor

Order delivered on: 29.10.2021

Coram:
Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance:

For the Petitioner: Mr. Rohit Patil.

Per: Shri H.V. Subba Rao, (Judicial Member)

ORDER

1. This Company Petition is filed by M/s Silcotex Silicones Private Limited, (hereinafter called "Operational Creditor") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Cubatics Industries Private Limited (hereinafter called "Corporate Debtor") by invoking the provisions of Section 9 of Insolvency and Bankruptcy Code (hereinafter called the "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. **The brief facts of the petition are stated herein below:**
   a. The present Petition arises out of the commercial transaction between the Operational Creditor and the Corporate Debtor.
   b. The Operational Creditors engaged in the business of trading of textile auxiliaries. On the basis of verbal orders placed by Corporate Debtor for supply of Textiles auxiliaries, Operational Creditor complied its order by supplying the required quantity to the Corporate Debtor (hereinafter referred to as 'Said Supply of Goods' and raised various invoices. However, despite the invoices are duly received and acknowledged by the Corporate Debtor, the Corporate Debtor has not paid only a meagre amount of Rs. 36,40,866.66/- (Rupees Thirty Six Lakhs Forty Thousand and Eight Hundred and Sixty Six and Sixty Six paise Only) and failed, neglected and omitted to pay the dues of Rs. 36,40,866.66 (Rupees Thirty Six Lakhs Forty Thousand and Eight Hundred and Sixty Six and Sixty Six paise Only). Following are the details of outstanding invoices:

Invoice Number	Invoice amount Rs.	Invoice Date	Invoice Amount in Due Rs.	Due date of Invoice	Interest Calculated till date below	Delay in days	Interest @ 24% (Rupees)	Date on Which the default occurred
822	140,846.39	01.11.2018	80,962.79	01.12.2018	24.08.2019	266	14,160.72	12.04.2019
847	48,416.00	16.11.2018	48,416.00	16.12.2018	24.08.2019	251	7,990.63	12.04.2019
849	24,838.58	17.11.2018	24,838.58	17.12.2018	24.08.2019	250	4,083.05	12.04.2019
857	116,638.40	21.11.2018	116,638.40	21.12.2018	24.08.2019	246	18,866.66	12.04.2019
869	46,485.07	26.11.2018	46,485.07	26.12.2018	24.08.2019	241	7,366.29	12.04.2019
879	40,434.46	29.11.2018	40,434.46	29.12.2018	24.08.2019	238	6,327.72	12.04.2019
898	69,527.24	03.12.2018	69,527.24	02.01.2019	24.08.2019	234	10,697.67	12.04.2019
914	48,416.00	07.12.2018	48,416.00	06.01.2019	24.08.2019	230	7,322.09	12.04.2019
919	87,509.21	08.12.2018	87,509.21	07.01.2019	24.08.2019	229	13,176.73	12.04.2019
953	68,222.40	17.12.2018	68,222.40	16.01.2019	24.08.2019	220	9,868.88	12.04.2019
954	64,642.47	17.12.2018	64,642.47	16.01.2019	24.08.2019	220	9,351.02	12.04.2019
991	79,170.65	22.12.2018	79,170.65	21.01.2019	24.08.2019	215	11,192.34	12.04.2019
994	48,416.00	24.12.2018	48,416.00	23.01.2019	24.08.2019	213	6,780.89	12.04.2019
1007	48,416.00	28.12.2018	48,416.00	27.01.2019	24.08.2019	209	6,653.55	12.04.2019
1017	68,222.40	01.01.2019	68,222.40	31.01.2019	24.08.2019	205	9,196.01	12.04.2019
1036	70,578.18	02.01.2019	70,578.18	01.02.2019	24.08.2019	204	9,467.14	12.04.2019
1058	116,638.40	08.01.2019	116,638.40	07.02.2019	24.08.2019	198	15,185.36	12.04.2019
1080	93,110.28	12.01.2019	93,110.28	11.02.2019	24.08.2019	194	12,122.19	12.04.2019
1082	48,416.00	12.01.2019	48,416.00	11.02.2019	24.08.2019	194	6,176.02	12.04.2019
1098	48,416.00	17.01.2019	48,416.00	16.02.2019	24.08.2019	189	6,176.02	12.04.2019
1118	126,281.80	23.01.2019	126,281.80	22.02.2019	24.08.2019	183	15,693.54	12.04.2019
1143	78,806.30	28.01.2019	78,806.30	27.02.2019	24.08.2019	178	9,482.66	12.04.2019
1182	106,796.02	04.02.2019	106,796.02	06.03.2019	24.08.2019	171	12,499.52	12.04.2019
1183	121,303.42	04.02.2019	121,303.42	06.03.2019	24.08.2019	171	13,639.16	12.04.2019
1184	42,491.51	04.02.2019	42,491.51	06.03.2019	24.08.2019	171	4,777.68	12.04.2019
1212	66,702.30	13.02.2019	66,702.30	15.03.2019	24.08.2019	162	7,499.90	12.04.2019
1223	140,846.39	15.02.2019	140,846.39	17.03.2019	24.08.2019	160	15,003.03	12.04.2019
1224	72,623.99	21.02.2019	72,623.99	23.03.2019	24.08.2019	154	7,640.44	12.04.2019
1285	114,442.90	02.03.2019	114,442.90	01.04.2019	24.08.2019	145	11,588.52	12.04.2019
1287	48,679.43	13.03.2019	48,679.43	12.04.2019	24.08.2019	134	4,641.22	12.04.2019
1328	121,039.97	16.03.2019	121,039.97	15.04.2019	24.08.2019	131	10,664.78	12.04.2019

1338	68,222.40	16.03.2019	68,222.40	15.04.2019	24.08.2019	131	5,876.47	12.04.2019
1352	14,424.47	20.03.2019	14,424.47	19.04.2019	24.08.2019	127	1,242.48	12.04.2019
1377	77,865.80	27.03.2019	77,865.80	26.04.2019	24.08.2019	120	6,502.33	12.04.2019
1378	101,870	27.03.2019	101,870	26.04.2019	24.08.2019	120	6,502.33	12.04.2019
22	114,442.90	03.04.2019	114,442.90	03.05.2019	24.08.2019	113		12.04.2019
23	86,709.34	03.04.2019	86,709.34	03.05.2019	24.08.2019	113	6,841.72	12.04.2019
26	64,009.10	03.04.2019	64,009.10	03.05.2019	24.08.2019	113	4,755.96	12.04.2019
69	140,846.39	03.04.2019	140,846.39	03.05.2019	24.08.2019	113	10,465.08	12.04.2019
89	129,873.47	13.04.2019	129,873.47	13.05.2019	24.08.2019	103	9,649.78	12.04.2019
101	68,222.40	19.04.2019	68,222.40	19.05.2019	24.08.2019	97	4,620.43	12.04.2019
141	101,472.92	01.05.2019	101,472.92	31.05.2019	24.08.2019	85	6,472.03	12.04.2019
142	68,222.00	01.05.2019	68,222.00	31.05.2019	24.08.2019	85	3,812.96	12.04.2019
196	140,846.39	13.05.2019	140,846.39	12.06.2019	24.08.2019	73	7871.96	12.04.2019
Total	**3,700,750.26**		**3,640,866.66**				**346,479.08**	

c. The Corporate Debtor is liable to make payment of the debt amount of Rs. 36,40,866.66/- (Rupees Thirty Six Lakhs Forty Thousand and Eight Hundred and Sixty Six and Sixty Six paise Only) along with interest at the rate of 24% p.a. from the date of default i.e. due date of each invoice till the date of actual payment.

d. Therefore, the Operational Creditor is entitled to interest of Rs. 3,46,479.08/- (Rupees Three Lakhs Forth Six Thousand and Four Hundred and Seventy Nine and Eight paise Only) up to 24th August 2019 and further interest up to the date of actual payment @ 24% p.a. The total amount claimed to be in default comes to Rs. 39,87,345.74/- (Rupees Thirty Nine Lakh Eighty Seven thousand Three hundred Forty Five and seventy Four paise Only) upto the date of this application.

e. The Corporate Debtor has failed to make any payment till date towards the aforesaid invoices. Various messages were exchanged between the parties for the payment of outstanding dues.
f. The Operational Creditor has issued Demand Notice dated 24th August, 2019 in Form 3 and Form 4 under Rule 5 of the Insolvency and Bankruptcy Code 2016 calling upon the Corporate Debtor to clear the outstanding dues.
g. The Demand Notice in Form 3 and 4 was issued by Operational Creditor on 29th August, 2019. However, even after the receipt of the Demand Notice, the Corporate Debtor has not made any payment towards the amount in default till the date of this application and the entire outstanding amount is due and payable by the Corporate Debtor to the Operational Creditor.
h. However, to the shock and surprise of the Operational Creditor, the Corporate Debtor through its Advocate has issued Legal Notice dated 03rd October on the Operational Creditor making false, frivolous and baseless allegation against the Operational Creditor.

   Hence, the present petition under Section 9 of the Insolvency and Bankruptcy Code, 2016.

3. Since the Corporate Debtor has failed to appear before this bench despite service of notice, the Corporate Debtor was set ex-parte by this bench vide order dated 20.10.2021.
4. Heard the counsel appearing for the Operational Creditor and perused the record. The counsel appearing for the Operational

Creditor invited the attention of this bench to the relevant invoices, Demand Notice and track report of service of Demand Notice on the corporate debtor along with other relevant documents which are annexed to the company petition and successfully demonstrated the existence of debt and default. Since the corporate debtor remained ex-parte, the claim of the Operational Creditor remained un challenged. To add this the subject matter of the invoices relates to 2018 and the company petition being filed on 17.01.2020 is well within limitation. The petitioner has also suggested the name of proposed Interim Resolution Professional in part-3 of the Petition along with his consent letter in Form-2.

5. After hearing the counsel appearing for the Operational Creditor and upon perusing the material available on record this bench is satisfied that the above company petition fulfills all the necessary requirements for admission Under Section 9 of the Code and is liable to be admitted.

6. Accordingly, the above company petition admitted by passing the following:

ORDER

(a) The above Company Petition No. (IB) -362(MB)/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s. Cubatics Undustries Private Limited.

(b) This Bench hereby appoints **Mr. Kailas T. Shah,** Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00267/2016-2017/10511 (ipktshah@gmail.com) having office at : 505, 21st Century

Business Centre, Near World Trade, Ring Road, Surat 395002 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 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

(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.

Accordingly, this Petition is allowed.

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

Sd/-	**Sd/-**
CHANDRA BHAN SINGH	**H.V. SUBBA RAO**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**