

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**JAIPUR BENCH**

**CORAM: Dr. P.S.N. PRASAD,  
HON'BLE JUDICIAL MEMBER  
SHRI RAGHU NAYYAR,  
HON'BLE TECHNICAL MEMBER**

**Company Petition No. (IB)- 258/9/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:**

**MAHAVIR AGARWAL**

**...OPERATIONAL CREDITOR/  
APPLICANT**

**VERSUS**

**M/S KHETAN APPAREL PRIVATE LIMITED**

**...CORPORATE DEBTOR/  
RESPONDENT**

**For the Applicant : Abhimanyu Singh, Adv.**

**For the Respondent : Jatin Chawla, Adv.**

Mahavir Agarwal  
Vs.  
M/s Khetan Apparel Private Limited



**MEMO OF PARTIES**

**Mahavir Agarwal  
16 No, Seth Agaiary Lane,  
1<sup>st</sup> Floor, Room No. 14,  
Bandarawala Bldg, Kalbadevi Road,  
Mumbai (Maharashtra)**

**...Operational Creditor/Applicant**

**VERSUS**

**M/s Khetan Apparel Private Limited  
Plot No. 63, Subhash Colony, Shastri Nagar,  
Jaipur (Rajasthan) - 302016**

**...Corporate Debtor/Respondent**

**Order Pronounced On: 12.02.2020**

**ORDER**

**Per : Shri Raghu Nayyar, Technical Member**

1. This Application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC') read with Rule-6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Mahavir Agarwal ('Applicant') claiming to be an Operational Creditor with a prayer for initiation of Corporate Insolvency Resolution Process against M/s Khetan Apparel Private Limited ('Respondent').

Mahavir Agarwal  
Vs.  
M/s Khetan Apparel Private Limited



2. The Applicant is the proprietor of Agarwal Textiles Mills and its office is located at 16 No, Seth Agaiary Lane, 1<sup>st</sup> Floor, Room No. 14, Bandarawala Bldg, Kalbadevi Road, Mumbai (Maharashtra).
3. The Respondent/ Corporate Debtor is a Limited Company incorporated under the provisions of Companies Act, 1956 on 08.12.2011, duly registered with the Registrar of Companies, Jaipur, bearing CIN: U18101RJ2011PTC049256 and the Registered Office of the respondent company is at Plot No. 63, Subhash Colony, Shastri Nagar, Jaipur (Rajasthan) - 302016. The authorized share capital of the company is Rs. 10,82,000/- (Rupees Ten Lakhs Eighty-Two Thousand Only) and paid up share capital is Rs. 1,65,730/- (Rupees One Lakh Sixty-Five Thousand Seven Hundred Thirty Only), as per Master Data of the said Company.
4. It is the case of the Applicant that the Applicant had supplied goods to the Corporate Debtor in respect of which a sum of Rs. 5,73,641/- (Rupees Five Lakhs Seventy Three Thousand Six Hundred Forty One Only), inclusive of interest @ 2% per month from 18.04.2019 upto 10.09.2019, is due and payable by the Corporate Debtor as per the bills and accounts maintained by the Applicant.
5. The Applicant submitted that initially the debt fell due against the first invoice dated 20.04.2018 and thereafter against subsequent invoices. The last

invoice with respect to the goods rendered was raised on 13.02.2019, against which no payment has been made till date by the Corporate Debtor.

6. The Applicant further submitted that a part payment from the Corporate Debtor was received against the Invoice dated 20.04.2018, indicating the same to be a 'running account' being maintained between the parties as indicated by the said ledger statement. The transactions between the parties depict that the accounts remain open and unsettled.
7. Furthermore, the Applicant had sent a Demand Notice in Form 3 dated 20.08.2019 demanding payment of the unpaid operational debt to the Corporate Debtor by hand at the registered office stated in the Master Data on the MCA portal. This demand notice was also sent to the Corporate Debtor at the place where the books of accounts and other papers are maintained as also stated in the Master Data of the Ministry of Corporate Affairs.
8. As a consequence of non-payment of the due amount and interest, this application was filed. As claimed by the Applicant, the Corporate Debtor is liable to pay an amount of Rs. 5,73,641/- (Rupees Five Lakhs Seventy Three Thousand Six Hundred Forty One Only) as an outstanding amount, as mentioned in Part IV.

PART IV

Particulars of Operational Debt	
Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due.	Outstanding Invoice Amount Rs. 4,81,489/- Add:- Interest upto 10.09.19 <u>Rs. 92,152/-</u> <b>Total amount of Default = Rs. 5,73,641/-</b> (Rupees Five Lakhs Seventy Three Thousand Six Hundred Forty One Only)
Amount claimed to be in default and the date on which the default occurred	Total amount of debt claimed to be in default is Rs.5,73,641/- including interest @ 2% per month from 18.04.2019 to 10.09.2019. Date of default: 15.05.2019

9. The Director of the Corporate Debtor appeared in person and submitted its inability to make good the debt, as enunciated in the Order dated 14.11.2019, which was reiterated by the Counsel for the Corporate Debtor as can be seen from the Order dated 06.12.2019. The Corporate Debtor has also admitted the liability towards the operational debt via affidavit dated 05.12.2019, wherein it was stated that the Corporate Debtor Company is not in a position to settle the claim of the Applicant, and also there are no funds available in the company by which the claim of the Applicant could be satisfied and the

company does not have funds in its bank accounts by which the claim of the creditor can be settled.

10. Upon a detailed consideration of the application and documents filed by the Applicant, it is apparent that the payment of claim amount has been defaulted by the Corporate Debtor.
11. Hence, this Tribunal is inclined to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor as envisaged under the provisions of IBC, 2016.
10. This Tribunal appoints Mr. Sourabh Malpani, with the Registration No. IBBI/IPA-001/IP-P01265/2018-2019/12047 (email : [malpanijpr@gmail.com](mailto:malpanijpr@gmail.com)), as the Interim Resolution Professional ('IRP') of the Corporate Debtor. The IRP is directed to take all such steps as are required under relevant provisions of the Code.
11. Consequences of initiation of CIRP shall be inter-alia as follows:
  - (i) The Resolution Professional Mr. Sourabh Malpani, having Registration No. IBBI/IPA-001/IP-P01265/2018-2019/12047 (email: [malpanijpr@gmail.com](mailto:malpanijpr@gmail.com)), is hereby appointed as the Insolvency Resolution Professional (IRP) to take over the affairs of the Corporate Debtor and discharge duties as required to be performed by him under the provisions of IBC, 2016 including issue

of publication in widely circulated Newspaper as contemplated under the provisions of IBC, 2016, and calling for the claims from the creditors of Corporate Debtor and collation of the same.

- (ii) Further, as a sequel 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 the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP 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 and with a view to defray his expenses to be incurred and fees on account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lacs Only) to the account of IRP within three days from the date of this order. The IRP shall duly file a status report from time to time apprising this Tribunal about the progress of CIRP unfolding in relation to the Corporate Debtor. In terms of Section 17 & 19 of IBC, 2016 all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall 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, this order shall be communicated to the Applicant, Corporate Debtor as well as the Interim Resolution Professional (IRP) 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.

12. Accordingly, CP No. (IB)-258/9/JPR/2019 is admitted.

Sd-

**SH. RAGHU NAYYAR,  
MEMBER (TECHNICAL)**

Sd-

**SH. P.S.N PRASAD,  
MEMBER (JUDICIAL)**