IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI AJAY KUMAR VATSAVAYI,
HON'BLE JUDICIAL MEMBER

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 239/9/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:

Leomine Organics Private Limited
24, Shree Diamond Centre, LBS Marg,
Near Punjab & Sindh Bank,
Vikhroli (West), Mumbai-400083

...Operational Creditor / Applicant

VERSUS

Khator Fibre and Fabrics Limited
G-67, Moti Nagar,
Ajmer Road, Jaipur-302019 (Rajasthan)

...Corporate Debtor / Respondent

For the Applicant : Nikhil Yadav, Adv.

For the Respondent : Ajay Kumar Atolia, CA

Order Pronounced On: - 23.03.2021

ORDER

Per: Shri Raghu Nayyar, Technical Member

1. This Application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule-6 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, by Leomine Organics Private Limited ('Applicant' / 'Operational Creditor'), claiming to be an Operational Creditor, seeking initiation of Corporate Insolvency Resolution Process ('CIRP') against Khator Fibre and Fabrics Ltd. ('Corporate Debtor' / 'Respondent'). The instant Application is filed through an authorised representative of Applicant, Mr. Vishal Narandas Sejpal, authorised through board resolution dated 03.09.2019.

2. The Applicant is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 12.12.2003 and duly registered with the Registrar of Companies, Mumbai, with CIN: U24119MH2003PTC143520. The registered office of the Applicant Company is at 24, Shree Diamond Centre, LBS Marg, Near Punjab & Sindh Bank, Vikhroli (West), Mumbai-400083. The Applicant is in the business of manufacturing of textiles, chemicals and auxiliaries.

3. The Respondent is a Company limited by shares, incorporated under the provisions of the Companies Act, 1956 on 02.05.1986 and duly registered with the Registrar of Companies, Jaipur with CIN:

L17124RJ1986PLC003629. The registered office of the Company is at G-67, Modi Nagar, Ajmer Road, Jaipur-302019 (Rajasthan). The authorised share capital of the Respondent is of Rs. 5,00,00,000/- (Rupees Five Crores Only) and the paid-up share capital is of Rs. 4,25,00,000/- (Rupees Four Crores Twenty Five Lakhs Only).

4. It is the case of the Applicant that the Applicant had supplied goods to the Respondent and raised various invoices from July 2016 to June 2019. Copies of various invoices of the said period are annexed as Exhibit-A of the Application. The Respondent failed to make payment for invoices raised by Applicant for an amount of Rs. 69,39,639.20/- (Sixty-Nine Lakh Thirty-Nine Thousand Six Hundred Thirty-Nine Rupees and Twenty Paisa Only). The first default had occurred on 14.09.2016 and continued. Thereby, the Applicant had issued a demand notice dated 28.08.2019 in Form 4 through post and also via email, demanding an amount of Rs. 69,39,639.20/- which includes outstanding invoiced amount of Rs 50,15,074/- with interest of Rs. 19,24,565.20/- @ 20% p.a. The Respondent had 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 the Code.

5. As claimed by the Applicant, the Respondent is liable to pay an amount of Rs. 69,39,639.20/- as reflected in Part IV of Form- 5 filed.

Part IV

S. 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. 69,39,639.20/- (Sixty Nine Lakh Thirty Nine Thousand Six Hundred Thirty Nine Rupees and Twenty Paisa Only) Due Date of first invoice: 14.09.2016 Due Date of last invoice: 26.08.2019
2.	Amount claimed to be in default and the date on which the default occurred	Principal outstanding Rs. 50,15,074/- with interest of Rs. 19,24,565.20/- @ 20% on outstanding invoices from due dates.

6. The Applicant has filed a copy of bank certificate under Section 9(3)(c) of the Code, from SVC Cooperative Bank Limited certifying that the Applicant had received last payment of Rs. 2,70,810/- vide Cheque No. 434429 from the Respondent on 17.08.2019 and thereafter no payment has been received from the Respondent. Copy of certificate is at Exhibit-D of the Application.

7. In reply to the Application it is stated that Respondent was regularly making payment of due bills raised by the Applicant from time to time and the last payment was made on 17.08.2019, therefore there is no default. It is further contended that the instant Application is filed by the Applicant to avoid the liability arising on account of inferior material supplied. However, it is noted that the Respondent has not supported its contention with any document establishing the fact that the payment with respect to all the invoices raised

has been made or that there is any deficiency in goods supplied. At best these appear to be bald denials.

8. The registered office of the Respondent Corporate Debtor is situated in Jaipur and therefore this Adjudicating Authority has jurisdiction to entertain and try this Application.

9. The first default has occurred on 14.09.2016 which continued till 26.08.2019 and it is an admitted fact that the last payment was made 17.08.2019, hence the debt is not time barred and the Application is filed within the period of limitation.

10. In the given facts and circumstances, we find that the application in Form 5 is complete; no payment of the unpaid operational debt of Rs. 69,39,639.20/- has been made and demand notice in Form No. 4 was duly served on the Corporate Debtor through registered post but no reply was received by the Operational Creditor. The Applicant has filed an affidavit under Section 9(3)(b) of the Code to the effect that there is no notice given by the Respondent relating to dispute of the unpaid operational debt. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the Application and direct the initiation of CIRP of M/s Khator Fibre and Fabrics Limited.

11. Under sub-section (4) of Section 9 of the Code, the Operational Creditor may propose the name of Resolution Professional to be appointed as Interim

Resolution Professional ('IRP') but it is not obliged to do so. In the instant case, the Operational Creditor has not proposed the name of any Resolution Professional to be appointed as IRP. Section 16(3)(a) of the Code covers such situations and reads as follows-

> *"a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;*
> *b) x x x x x"*

12. Sub-section (4) of Section 16 says that the Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

13. In this regard, a letter has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of letter No. IP-12011/1/2020-IBBI/978/1290 dated 31.12.2020 along with the guidelines and the panel of resolution professionals approved for NCLT, Jaipur Bench for appointment as IRP or Liquidator. The panel is valid for six months from 01.01.2021 to 30.06.2021. We select Ms. Garima Diggiwal, appearing at Serial No. 12 of the panel to be appointed as Interim Resolution Professional ('IRP').

14. The credentials of the proposed IRP have been checked from IBBI website (www.ibbi.gov.in) and nothing adverse is found on record. In view of the

same, this Adjudicating Authority appoints Ms. Garima Diggiwal with Registration No. IBBI/IPA-001/IP-P02018/2020-2021/13158 (email id: garima286@gmail.com, Mob: 9636655600) duly registered with the Insolvency and Bankruptcy Board of India, as the IRP. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20 and 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.

15. Consequences of initiation of CIRP shall be inter-alia as follows:

(i) The IRP appointed by the Adjudicating Authority, Ms. Garima Diggiwal is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by her under the provisions of Code including issue of publication in widely circulated Newspapers as contemplated under the provisions of the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same shall be done.

(ii) Further, as a sequel of admission, moratorium as envisaged under Section 14 of the Code is invoked in relation to the Corporate Debtor which will be in vogue during CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per timelines specified and as envisaged under the provisions of the Code in relation to the Corporate Debtor.

(iii) The said IRP shall act strictly in accordance with the provisions of the Code and with a view to defray her expenses to be incurred and fees on account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lakhs Only) to the account of IRP within three days from the date of this order. The IRP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP as unfolding in relation to the Corporate Debtor. In terms of Section 17 and 19 of the Code 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 her tenure as such and management of the affairs of the Corporate Debtor shall vest with the IRP.

(iv) In terms of Section 9 of the Code, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.

16. In the circumstances CP No. (IB)- 239/9/JPR/2019 is admitted.

Sd/-

SH. RAGHU NAYYAR,
TECHNICAL MEMBER

Sd/-

SH. AJAY KUMAR VATSAVAYI,
JUDICIAL MEMBER