



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT III**

**C.P. No. 4160/IBC/MB/2018**

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*

**5-Elements**

(A Sole Proprietorship Firm)

Having registered office at:

T-180, Tiger Lane,

Near Country Club, Sanik Farms,

New Delhi – 110062

Through its Sole Proprietor Ms.

Radhika Gupta

**.....Operational Creditor**

Versus

**1. Kimaya Fashions Private  
Limited**

(A Company incorporate under the  
Companies Act, 1956)

Registered office at:

2, Asha Colony, Juhu Tara Road,

Juhu, Mumbai – 400049

**2. Mr. Pradeep Kishan Hirani**

Director,



Kimaya Fashions Private Limited,  
2, Asha Colony, Juhu Tara Road,  
Juhu, Mumbai - 4000049

**.....Corporate Debtor**  
**Reserved for order on: 23.12.2022**  
**Order delivered on: 17.02.2023**

**Coram:**

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

Hon'ble Smt. Madhu Sinha, Member (Technical)

**For the Applicant:** Ms. Nikita Abhayankar, Advocate

**For the Respondent:** Mr. Aditya Khanna, Advocate

**Per: Madhu Sinha, Member (Technical)**

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1. The above Company Petition is filed by *5-Elements* hereinafter called as "Operational Creditor" seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Kimaya Fashions Private Limited* hereinafter 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. 55,85,253.40/- (Rupees Fifty Five Lakh Eight Five Thousand Two Hundred Fifty Three and Forty Paisa Only).

**2. The brief facts of the case are as follows:-**

- i. The Applicant is a sole proprietorship firm engaged in the business of manufacturing, supply and sale of fashion wear and fashion accessories etc., and by way of the present application is seeking to initiate corporate insolvency resolution process under section 9 of the Insolvency and Bankruptcy Code, 2016



against M/s Kimaya Fashions Private Limited i.e. the Corporate Debtor/ Respondent No. 1 company herein for non-payment against invoices and stock aggregating to Rs. 55,85,253.40/- (Rupees Fifty-Five Lakh Eighty-Five Thousand Two Hundred Fifty-Three and Forty Paise only) for the fashion merchandise and accessories supplied by the Applicant along with interest @ 24% per annum till the date of actual realization of the said outstanding amount.

- ii. That around the year 2011, the Corporate Debtor through its director Mr. Pradeep Kishan Hirani, represented itself to be a premium fashion wear company having several stores including in posh malls in Mumbai and Delhi and satisfied itself with the quality of the products displayed in fashion/ trade shows and approached the Applicant for supply of fashion merchandise and accessories for sale through corporate debtor's upmarket stores on consignment sale or return basis.
- iii. Pursuant to such request, the Applicant started to supply fashion wear/ merchandise to the Corporate Debtor's stores in Mumbai and New Delhi as per the requirement and requests of the corporate debtor and upon sale of the same, the corporate debtor released the due sums to the Applicant.
- iv. That with effect from the year 2011 and upto 19.12.2014, the corporate debtor regularly released payments from time to time to the Applicant and thereafter stopped releasing payments despite acknowledging sale of merchandise supplied by the Applicant. Upon repeated requests and follow ups by the Applicant for release of the outstanding payments, Shri Pradeep Kishan Hirani, Director of the corporate debtor while acknowledging the payments due and outstanding against invoices and stock, represented that the Corporate Debtor is a renowned name in the Indian fashion industry and since past



payments have been made, the Applicant should continue to supply the merchandise/accessories as requested and not to worry about the payments.

- v. The Applicant on assurance of the Corporate Debtor continued to supply the goods till May 2015, when the total outstanding amount accumulated to Rs. 55,85,253.40/- (Rupees Fifty-Five Lakh Eighty-Five Thousand Two Hundred Fifty-Three and Forty Paisa only).
- vi. That the Applicant regularly followed up with the corporate debtor for release of outstanding payments and each time the corporate debtor and its director Mr. Pradeep Kishan Hirani acknowledged the outstanding payments to be made to the Applicant and sought time for release of the same. However, despite passage of long time the corporate debtor released only three small amounts of Rs. 25000/- (Rupees Twenty-Five Thousand only) each on 23.11.2017, 14.02.2018 and 12.04.2018 respectively.
- vii. That since the outstanding dues were not paid despite several requests, the Applicant issued the demand notice dated 08.05.2018 as prescribed in Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the unpaid invoices to the corporate debtor. That as per the speed post tracking website, the said notice was received by the corporate debtor on 12.05.2018. However, till date the corporate debtor has neither responded nor released the outstanding balance sum of Rs. 55,85,253.40/- (Rupees Fifty-Five Lakh Eighty-Five Thousand Two Hundred Fifty Three and Paisa Forty only), due to which the Applicant is constrained to approach this Tribunal for initiation of insolvency process against the corporate debtor.



- viii. Hence, the present petition be admitted, and corporate insolvency resolution process be initiated against the Corporate Debtor.
3. The Corporate Debtor filed affidavit in reply dated 12.09.2019 in a routine manner. The main contentions raised by the Corporate Debtor on limitation, maintainability and pre-existing disputes opposing the above Company Petition.
4. In response to the above reply filed by the Corporate Debtor the Operational Creditor also filed rejoinder dated 18.11.2019 contradicting the pleas raised by the Corporate Debtor in their reply.

#### **FINDINGS / OBSERVATIONS**

5. The Learned Counsel for the Corporate Debtor in his reply contended that no payment was due on their account as the supplies of apparels and clothes by the Petitioner to the Corporate Debtor was always on invoice to invoice basis only and payments made by the Respondent No. 1 were always on invoice basis. Therefore, no payment is due on their part as there was no running account arrangement between the parties. On the same line the counsel for the Corporate Debtor states that the claim is completely and wholly barred by limitation as the Present Petition is filed in September, 2018 while the last alleged outstanding invoice is dated 31.05.2015.
6. Further, the counsel for the Corporate Debtor claimed that the company has not made part-payment of any of the alleged outstanding invoices annexed by the Operational Creditor with the Company Petition but they have made payment for only one invoice dated 31.05.2015 which is for a sum of Rs. 1,61,727/- (Rupees One Lac Sixty One Thousand Seven Hundred Twenty



Seven only) against which a sum of Rs. 75,000/- (Rupees Seventy Five Thousand only) has been paid leaving an outstanding of Rs. 86,000/- (Rupees Eighty Six thousand only). As the outstanding is below the pecuniary limit of Rs. 1,00,000/- (Rupees One Lac Only) under the Code to invoke the provisions of the Code thereby the present Petition is non-maintainable.

7. The Learned Counsel for the Corporate Debtor also submits that time and again the Corporate Debtor has raised several disputes pertaining to the quality of goods supplied by the Petitioner and they have also returned the several goods citing the poor quality and defects in the goods which were duly accepted by the Petitioner and it shows that there was pre-existing disputes over the poor quality of goods supplied by the Petitioner.
8. The learned counsel appearing for the Operational Debtor invited the attention of this bench to the Ledger Account of the Corporate Debtor which was annexed at Annexure 7 at Page No. 112 of the Company Petition wherein an amount of Rs. 49,33,116/- (Rupees Forty Nine Lacs Thirty Three Thousand One Hundred and Sixteen only) is outstanding for the Mumbai stores. Further, he also brought the attention of this Bench to the Calculation Sheet which is annexed as Annexure 8 at Page No. 116 of the Company Petition wherein an amount of Rs. 55,85,253.86 /- (Rupees Fifty Five Lakhs Eighty Five Thousand Two Hundred Fifty three and Eighty Six Paise only) is due as per the Operational Creditor on part of the Corporate Debtor which replicated here in below for the ready reference as follows:

Sr. No.	Particulars	Amount (Rs.)
1.	Mumbai Store	49,33,116.00 /-
2.	Delhi Store	1,44,381.40/-



3.	Unsold Stock	5,07,756/-
Total		55,85,253.40/-
		Rupees Fifty Five Lakhs Eighty Five Thousand Two Hundred Fifty Three and Forty Paise Only

9. The Learned Counsel for the Operational Creditor further annexed the Copy of Bank Statement of the Operational Creditor at Page No. 118 of the Company Petition wherein the each payment of Rs. 25,000/- (Rupees Twenty Five Thousand only) dated 23.11.2017, 14.02.2018 and 12.04.2018 respectively were made by the Corporate Debtor which can be taken as part payment made on the behalf of the Corporate Debtor. The counsel for the Operational Creditor further brought the attention of this bench to the WhatsApp conversation between the parties dated 10.14.2019 annexed at Page No. 64 of the Rejoinder wherein the Corporate Debtor has acknowledged the debt and stated that he is trying to arrange the funds.
10. Heard both the sides and perused the material available on record. The contentions raised by the Operational Creditor and the documents present before this Bench are convincing and the Corporate Debtor has not raised any substantive dispute regarding the authenticity of the Bank Statement and Invoices annexed by the Operational Creditor.
11. The arguments made by the Operational Creditor and documents annexed to the Company Petition clearly establishes the “debt” and “default” on the part of the Corporate Debtor. The above Company Petition being filed on 11.09.2019 is well within 3 (three) years from the date of last payment made by the



Corporate Debtor (i.e., 12.04.2018), hence is not time barred under the provisions of the Limitation Act, 1963.

12. This Bench is of the considered opinion that the defences raised by the Corporate Debtor in their reply to the present Company Petition are invented only for the purpose of avoiding the liability and no inference of “pre-existence of dispute” can be drawn from the pleas raised by the Corporate Debtor. The disputes mentioned by the Corporate Debtor are mainly about the quality of product, raised in the usual course of business. The bench therefore rejects the pleas to this effect raised by the Corporate Debtor’s pleas in their defence.
13. In view of the above, this Bench is of the view that the above Company Petition satisfies all the legal requirements for admission and deserves to be admitted. Accordingly, this bench admits the above Company Petition by passing the following:

### **ORDER**

- a. The above Company Petition No. 4160/IBC/MB/2018 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Kimaya Fashions 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. Sandeep D. Maheshwari**, having Registration No: IBBI/IPA-001/IP-P00640/2017-2018/11093, email: ayunish@yahoo.com and Mobile No. (+91) 8369170484, 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. 5 Lacs 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.
- 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, this Petition is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**  
**MADHU SINHA**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**