

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.302

**Cont.P/11(AHM)2023 in
CP(IB)/4(AHM)2022**

Order under Section 425 of Co.Act, 2013

r.w 60(5) IBC, 2016 Reg 33 of IBBI Reg, 2016 & Rule 11 of NCLT Rule, 2016

IN THE MATTER OF:

Rajendra Jain RP For Kimaya Industries Pvt Ltd

.....Applicant

V/s

Kotharishah Texturisers Pvt Ltd

.....Respondent

Order delivered on: 29/04/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of the order.

The common order is pronounced in the open court, vide separate sheet.

Sd/-

**DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)**

Sd/-

**CHITRA HANKARE
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT-II**

Contempt Petition No. 11 of 2023
in
CP(IB)4/NCLT/AHM/2022

In the matter of:

Mr. Rajendra Jain
Resolution Professional
Kimaya Industries Private Limited Applicant

Versus

Kotharishah Texturisers Pvt. Ltd. Respondent

MEMO OF PARTIES

In the matter of

Rajendra Jain
Resolution Professional of
Kimaya Industries Private Limited
Having Correspondence at
A-1103, Iscon Riverside
Nr. Dafnala, Opp. Police Stadium
Nr. Shilalekh, Shahibaug
Ahmedabad-380 004
Gujarat Applicant

Versus

Kotharishah Texturisers Private Limited
113-114, Super Yarn Market
Zampa Bazar, Surat-395 003
Gujarat Respondent

Order Pronounced on 29.04.2024

Coram:

Mrs.Chitra Hankare, Member (Judicial)

Dr.Velamur G Venkata Chalapathy, Member (Technical)

Appearance:

For the Applicant/RP : Mr. Sumit Parikh, Advocate.

For the Respondent : Mr. Dhiren Dave, Advocate.

JUDGMENT

1. This contempt application is filed under Section 425 of the Companies Act, 2013 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (IB Code) read with Regulation 33 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016 for initiating Contempt Proceedings against the Respondent for non-compliance and wilful disobedience of the admission order dated 03.02.2023 in CP(IB) 4 of 2022 passed by this Tribunal.
2. The corporate debtor was admitted into Corporate Insolvency Resolution Process (CIRP) under Section 9 of the Insolvency and Bankruptcy Code, 2016 on 03.02.2023. The applicant was appointed as Interim Resolution Professional (IRP) for the corporate debtor. The Tribunal has also directed the respondent/operational creditor to deposit

Rs.2,00,000/- with the applicant towards expenses to perform the functions. The applicant made public announcement and started functioning as per IB Code. The applicant also demanded the expenses from the respondent but no reply was given by the respondent. On several demands, the respondent through email dated 27.03.2023 and 11.04.2023 informed applicant to take costs from CoC. It is further stated that the CoC had not approved the amount of costs. Thus, the respondent/operational creditor has breached the order dated 03.02.2023 passed in CP(IB) 4 of 2022 by failing to release Rs.2,00,000/- to the IRP. The applicant, therefore, prayed for directing respondent to release Rs.2,00,000/- to make the costs along with legal costs for filing this application and other reliefs.

3. The respondent failed to appear in spite of service of notice. However, when the matter was heard and reserved for orders, respondent has filed written submissions contending that it has filed IA 339 of 2023 challenging constitution of CoC. The applicant has wrongly constituted CoC in connivance with erstwhile Directors, CoC and RP. As an afterthought, this contempt application was filed at a belated stage to save him from mischief done. Hence, prayed for keeping the order on this Application on hold and to pronounce orders in IA No. 339 of 2023. It is also submitted that if IA 339 of 2023 is allowed entire CIRP costs shall come on the respondent CoC.

4. Head Ld. Counsel for the applicant/RP and perused the written submissions filed by the Ld. Counsel for the Respondent.
5. The order, which is subject to Contempt, was passed by this Adjudicating Authority on 03.02.2023 in CP(IB) 4 of 2022. The relevant paragraph, i.e. para-17 of the aforesaid order, is reproduced hereunder:

“ We direct the Operational Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Rajendra Jain to meet the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.”

6. According to applicant, he has sent various mails to the respondent demanding payment but payment was not made. At last, the respondent sent an email stating that the costs to be taken from CoC. Thus, it is clear that it has not made the payment as per directions given in the order dated 03.02.2023. On perusing the order, it is clear that the operational creditor was directed to deposit a sum of Rs.2,00,000/- with the IRP i.e. the applicant herein, and then further directions were also given. The order specifies that first the operational creditor to deposit the amount

with the applicant which is admittedly not done by the respondent. The respondent even in its written submissions, instead of making payment, made certain allegations upon IRP/RP and prayed to hold order in this case and to decide another IA wherein he has challenged constitution of CoC. When the respondent was directed to make payment there is no question of payment to be made by the CoC and also to hold order on this application. In fact, respondent refused to pay the amount.

7. Despite clear directions from this Tribunal, the respondent failed to pay the amount for expenses to the applicant. Initiation of Contempt has dual purpose, upholding majesty of law by punishing the contemnor and though coercing the contemnor to do what the law requires him to do. In view of Section 425 of the Companies Act, this Tribunal has powers to punish their own contempt. The order of this Tribunal is disobeyed. It is not the defence of respondent that he has no knowledge of the order dated 03.02.2023. The respondent goes to the extent of interpreting the order stating that the applicant to take amount from CoC, though the order is specific stating that the respondent to make payment. Thus, the act of non-payment of amount by the respondent is certainly wilful. As per definition of Civil Contempt in Section 2 of Contempt of Court's Act, Civil Contempt means wilful disobedience of any judgment, decree, directions, etc. As the directions given by this Tribunal were disobeyed, this is a Civil Contempt made by the respondent. As the directions of the

Court are disobeyed, it is also wilful or deliberate disobedience.

8. We, therefore, hold that the respondent has intentionally disregarded the order of this Tribunal and hence is guilty of Contempt.
9. Before punishing the contemnor, it is necessary that it should be heard on the quantum of sentence. The contemnor to submit on the quantum of sentence. Hence, we pass the following order:

ORDER

- i) This application is allowed.
- ii) The contemnor is directed to submit on the quantum of sentence.

List this matter on 13.05.2024

Sd/-

**DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)**

Sd/-

**CHITRA HANKARE
MEMBER (JUDICIAL)**

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