

# VAXTEX COTFAB LIMITED

Suiting & Shirting Fabrics

## Vaxtex Cotfab Limited

CIN: L51109GJ2005PLC076930

📍 J-03 (GF to 4th Floor) Tejendra Arcade,  
Nr. Ganjifarak Mill Compound,  
Nr. Rakhial Char Rasta, Rakhial,  
Ahmedabad-380023, Gujarat, India.

☎ +9195376 69940

✉ vaxtexcotfab@gmail.com 🌐

[www.vaxtexcotfabltd.com](http://www.vaxtexcotfabltd.com)

**Date:** 8<sup>th</sup> January, 2024

To,  
**National Stock Exchange of India Limited**  
“Exchange Plaza”, C-1, Block G,  
Bandra-Kurla Complex,  
Bandra (East),  
Mumbai – 400 051

Dear Sir / Madam,

**Subject: Revision of Announcement under Regulation 30 and 30A of SEBI (LODR) Regulations, 2015 for Initiation of Corporate Insolvency Resolution Process (CIRP) against Vaxtex Cotfab Limited dated 6<sup>th</sup> January, 2024**

**Ref: Security Id: VCL / Series: EQ**

As captioned above, the Company had submitted an Announcement dated 6<sup>th</sup> January, 2024 under Regulation 30 of SEBI (LODR) Regulations, 2015 regarding Intimation of Initiation of Corporate Insolvency Resolution Process against Vaxtex Cotfab Limited.

Inadvertently due to some typographical error in Announcement it was mentioned in 1<sup>st</sup> para that order was delivered on 4<sup>th</sup> January, 2024. However, we hereby inform you that, date of order was 4<sup>th</sup> January, 2024 and it was delivered on 6<sup>th</sup> January, 2024.

All the stakeholders are requested to kindly read the announcement after above changes. Revised announcement is attached herewith.

We therefore request you to kindly consider the same.

Thanking You.

**For, Vaxtex Cotfab Limited**

**Mithleshkumar Agrawal**  
**Managing Director**  
**DIN: 03468643**

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**Date:** 8<sup>th</sup> January, 2024

To,  
**National Stock Exchange of India Limited**  
"Exchange Plaza", C-1, Block G,  
Bandra-Kurla Complex,  
Bandra (East),  
Mumbai - 400 051

Dear Sir / Madam,

**Sub: Intimation under Regulations 30 and 30A of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 for Initiation of Corporate Insolvency Resolution Process (CIRP) against Vaxtex Cotfab Limited"**

**Ref: Security Id: VCL / Series: EQ**

Pursuant to Regulation 30 of SEBI (listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR) and in accordance with the requirements of sub-clause 16 of Clause A of Part A of Schedule III of LODR, we hereby intimate that our Company has been admitted in Corporate Insolvency Resolution Process under section 9 of the Code vide order dated 4<sup>th</sup> January, 2024 and delivered on 6<sup>th</sup> January, 2024 by the Hon'ble National Company Law Tribunal, Ahmedabad.

Further, Hon'ble Bench has also pronounced the order for appointment of Mr. Sunil Kumar Kabra, Registered Insolvency Professional having registration number as IBBI/IPA-001/IP-P01011/2017-2018/11662 under section 13 (1)(c) of the Code as Interim Resolution Professional (IRP). He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

A copy of the Order passed by Hon'ble NCLT is attached for your information and records please. However the company is in the process of filing an appeal before NCLAT against the order passed by NCLT.

**For, Vaxtex Cotfab Limited**

MITHLESH  
KUMAR  
AGRAVAL

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MITHLESH KUMAR  
AGRAVAL  
Date: 2024.01.08 12:40:11  
+05'30'

**Mithleshkumar Agrawal**  
**Managing Director**  
**DIN: 03468643**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**

ITEM No.303  
**C.P.(IB)/291(AHM)2022**

**Order under Section 9 IBC**

**IN THE MATTER OF:**

Shree Shyam Avenues Pvt Ltd  
V/s  
Vaxtex Cotfab Ltd

.....Applicant

.....Respondent

**Order delivered on: 04/01/2024**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)  
Mr. Sameer Kakar, Hon'ble Member(T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

-Sd-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
(COURT-I)**

**CP (IB) No.291/AHM/2022**

*(Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

**IN THE MATTER OF:**

**Shree Shyam Avenues Private  
Limited**

Registered office at:  
103, Samved Tower, Shahibaug,  
Ahmedabad-380004  
CIN:U51909DL2011PTC216853

**Applicant/  
Operational Creditor**

**VERSUS**

**M/s. Vaxtex Cotfab  
Limited**

Registered office at:  
Survey No. 230, Opp. Mariya  
Park, B/h. Ranipur Village,  
Saijpur- Gopal,  
Narol, Ahmedabad,  
Gujarat-382405  
CIN:L51109GJ2005PLC076930

**Respondent/  
Corporate Debtor**

**Order pronounced on: 04.01.2024**

**CORAM:**

**MR. SHAMMI KHAN (MEMBER JUDICIAL)**

**MR. SAMEER KAKAR (MEMBER TECHNICAL)**

**APPEARANCE:**

For the Operational Creditor: Ms. Natasha Dhruvan Shah,  
Ld. Adv.

For the Corporate Debtor: Mr. Atul Sharma, Ld. Adv.

**O R D E R**

1. The Present Application is filed on 10.10.2022 by **Shree Shyam Avenues Private Limited** (hereinafter referred to as “**the Applicant/Operational Creditor**”) against **Vaxtex Cotfab Limited** (hereinafter referred to as “**the Respondent/Corporate Debtor**”) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process (in short “**CIRP**”) against the Corporate Debtor for having defaulted in payment of its outstanding dues of **Rs. 1,47,90,236/-**. The date of default is stated to be **08.12.2021**.
2. On perusal of Part-I of the Form-V reveals that the Applicant/Operational Creditor is one Shree Shyam Avenues Private Limited having CIN No. U51909DL2011PTC216853. The registered office of the Applicant/Operational Creditor is situated at 103, Samved Tower, Shahibaug, Ahmedabad-380004.

3. On perusal of Part-II of the Form-V reveals that the Respondent/Corporate Debtor is one M/s. Vaxtex Cotfab Limited having CIN No. U74999GJ1993PTC020533. The registered office of the Respondent/ Corporate Debtor is situated at Survey No. 203, Opp. Mariya Park, B/h. Ranipur Village, Saijpur- Gopal, Narol, Ahmedabad, Gujarat-382405.
4. An affidavit for filing this application is signed by one Mr. Sanjeev Prem Aggarwal, Director and authorized representative of Applicant authorized by Board Resolution dated 15.09.2022 which is annexed at Annexure-B.
5. On perusal of Part-III of the Form-V reveals that the Applicant/Operational Creditor has not proposed the name of any person to be appointed as Interim Resolution Professional.
6. On perusal of Part-IV of the Form-V reveals that total dues as claimed by the Applicant/Operational Creditor is Rs.1,47,90,236/- consisting of Rs.1,40,76,265/- being principle and amount of Rs.7,13,971/- as interest at the rate of 18%..
7. The averments made by the Applicant in its application are summarized hereunder:-
  - a) The Applicant is engaged in the business of manufacturing and selling of various machineries, readymade garments and fabrics and the Respondent is engaged in the business

of job work pertaining to manufacturing and processing of fabrics.

- b) The Applicant on 16.07.2020 purchased the land and building with all pipelines, cables, transformers, electric substation, oil boiler, ETP Plant etc. bearing Survey Number 230 admeasuring area 5100 Sq. Yd. situated at Saijpur Gopalpur Village of Narol Area in Ahmedabad. (hereinafter referred to as **“the processing house”**) from Aggarwal Dyeing and Printing.
- c) The Aggarwal Dyeing and Printing had commercially leased the possession house to one Hillary Fashion Cotfab Limited on the basis of Leave and License Agreement on 01.10.2015.
- d) Thereafter in July, 2017, the said Hillary Fashion Cotfab Limited handed over the possession of the processing house to the Respondent.
- e) A Civil Suit bearing Civil Suit No. 298 of 2020 was preferred by Shree Shyam Avenues Private Limited (Plaintiff No. 1) **(Applicant herein)** and Shri Sanjiv Agrawal, owner of M/s. Aggarwal Dyeing and Printing Works (Plaintiff No.2) against M/s. Hillary Fashion Cotfab Limited (Defendant no.1) and M.s. Vaxtex Cotfab Limited (Defendant no.2) **(Respondent herein)** before the Hon’ble Fifth Additional Senior Civil Judge, Ahmedabad, Mirzapur seeking a) for possession of

the processing house in the name of Shree Shyam Avenues Private Limited (Applicant herein), b) Payment of rent amount of Rs.6,81,000+ Goods and Services Tax along with Service Tax to Shree Shyam Avenues Private Limited (Applicant herein) from 01.12.2020. c) Restrain Hillary Fashion Cotfab Limited and M/s. Vaxtex Cotfab Ltd. (Respondent herein) from further sub-renting the processing house.

- f) During the pendency of the suit, compromise was arrived between the parties and purshis with respect to the same was produced before the Hon'ble Court in view of which consent decree was passed by the Hon'ble Court.
- g) Pursuant to the consent decree the Respondent is liable to pay Rs.6,81,000/- + GST+ certain other charges to the Applicant which constitutes total amount of debt.
- h) Despite several reminders and requests the Respondent has failed to make the payment hence, demand notice under section 8 of the Insolvency and Bankruptcy Code, 2016 was issued upon Respondent on 16.09.2022 and the same was delivered on 20.09.2022.
- i) No payment has been received from Respondent even after service of demand notice hence, present application is preferred to initiate Corporate Insolvency Resolution Process of the Respondent.

j) The Applicant relies upon below mentioned documents to prove its case:-

10.	A copy of the memo, purshis and consent decree of received on 22.07.2021 in Civil Suit No. 289 of 2020	E	<b>37-79/U</b>
11.	A copy of demand notice along with its proof of dispatch via speed post and email	F	<b>80-119</b>
12.	Working computation of the amount of default	G	<b>120</b>
13.	A copy of certificate obtained from accountant	H	<b>121</b>
14.	A copy of ledger account maintained by the applicant of the corporate debtor from 01.10.2021 to 31.10.2022	I	<b>122-137</b>
15.	Copies of tax/rent invoices, and bills from december 2021 to october 2022	J	<b>138-148</b>

16.	Copies of gstr-1	K	149-291
17.	Copies of gstr-3b	L	292-325
18.	A copy of chart representing tou units and flow kld	M	326-331

8. The Respondent has filed its reply on 03.01.2023 the averments of the Respondent in the reply are stated below:-

- a) It is stated that the Licensor (Aggarwal Dyeing and Printing Works) sold the property to the Applicant vide sale deed dated 16.07.2020 without notifying the same to the Licensee being the possession holder of the processing house.
- b) Further, it is stated that Mr. Sanjay Aggarwal in the capacity of proprietor of M/s. Aggarwal Dyeing and Printing Works, issued instruction vide letter dated 29.07.2022 to chairman of Narol Textile Infrastructure & Enviro Management (NTIEM) to close main value from sump and disconnect mega discharge wastewater effluent line to the Processing House. Due to the said disconnection, the Respondent was suffering losses hence, respondent vide letter dated 23.09.2022 directed the Applicant to provide login credentials of Processing House to

upload the revocation application in order to stop the losses. Mr. Sanjeev Aggarwal in capacity of Director of M/s. Shree Shyam Avenues Private Limited replied to the said letter vide letter dated 29.09.2022 justifying the mischievous actions against the Respondent.

- c) The present application has been preferred by the Applicant under Section 9 of the Code for the purported non-payment of debt arising out of a sub-lease agreement between Respondent and Hillary Fashion Coftab Limited.

The Applicant being the Lessor, does not fall within the meaning of 'Operational Creditor' as provided under section 5(20) read with section 5(21) of the 'Insolvency and Bankruptcy Code, 2016 as the Applicant has never provided the Respondent with any goods or services or any such employment, as is required under the statutory scheme of the code. Hence, the present Application is preferred with the mala fide intent to abuse the process of law.

The Respondent has relied upon the decision given by Hon'ble NCLAT, New Delhi in the matter of Mr. M. Ravindranath Reddy Versus Mr G. Kishan & Ors., Company Appeal (AT) (Insolvency) No. 331 of 2019.

- d) It is stated that the present company petition has been preferred upon breach of terms of Settlement Agreement vide decree dated 11.01.2021 passed by the Hon'ble Fifth Additional Senior Civil Judge, Ahmedabad (Rural), at Ahmedabad, Mirzapur. The breach of settlement agreement cannot be a ground to trigger CIRP against the Respondent under the purview of IBC and the remedy for the same may lie elsewhere i.e. execution proceedings and it is further stated that this Hon'ble Tribunal is court of rehabilitation and not a court of execution. Reliance is placed on the decision given by Ld. NCLT, Allahabad Bench in the matter of M/s Delhi Control Devices (P) Ltd Vs. M/s Fedders Electric and Engineering Ltd., Company Petition (IB) No.343/ALD/2018.
- e) It is stated that a “decree-holder” cannot be considered an Operational Creditor within the meaning as provided under section 5(21) of the Code and thus cannot prefer an application under section 9 of the code seeking initiation of CIRP.
- f) It is stated that the Applicant is not entitled to any relief as there is pre-existing dispute between the parties with regards to the alleged claim. Further, the Applicant concealed the fact that the

Respondent on 23.09.2022, had issued a notice qua the concealment of facts by Applicant pertaining to the closure notice issued by GPCB and that the Applicant had also changed the password due to which the Respondent was disabled from filing revocation application, the Respondent had to incur hefty losses. That to the said notice of the Respondent, the Applicant had also issued a reply, this shows that, the Applicant herein was well aware of the existing dispute and has approached this Hon'ble Tribunal with unclean hands.

- g) It is stated that there was no such agreement for payment of interest amount on delayed payment in rent dues however, the Applicant has added an interest @18% per annum to the alleged Operational Debt claim with an intention to meet the threshold of Rs. 1 Crore. Further, the Applicant has also included third party charges, in the alleged claim, such as electricity bill, NTIEM penal charges, NTIEM bill and Municipal Corporation Tax whereas as per the compromise agreement the Respondent was to directly pay the Electricity Bill and Municipal Corporation Tax and no amount was to be claimed by Applicant. Furthermore, certain charges which can be claimed only by M/s. Aggarwal Dyeing & Printing Limited are also clubbed to reach the threshold limit of Rs.1 Crore. Hence, the alleged

Operational Debt claimed are in the nature of damages and has been mischievously adjusted to meet the threshold for the purpose of filing application under section 9 of the Code.

- h) It is stated that the Applicant has filed the present application with the primary object of recovery of its alleged dues and fails to consider that Respondent is a going concern.
- i) It is stated that there is substantial difference in the amount claimed in the Demand notice and the amount claimed in the present Petition which shows that Petition is filed for sole purpose of recovery.
- j) The Applicant has simultaneously initiated action against the Respondent for execution of decree passed by the Hon'ble Fifth Additional Senior Civil Judge, Ahmedabad (Rural), at Ahmedabad, Mirzapur.

9. The Applicant filed a rejoinder to the reply of the Corporate Debtor on 20.02.2023 and made the following submissions:

- a) The Applicant states that possession of the processing house is not disturbed and the suit was

filed seeking possession of the processing house, payment of rent and to restrain the Corporate Debtor from further sub-renting the processing house.

b) The Applicant denies the receipt of letter dated 23.09.2023 and also denies that any reply was given vide letter dated 29.09.2023. It is stated that Applicant received an email dated 30.08.2022 from Pratapsingh Zala on behalf of Respondent requesting to share login credentials of applicants account with the Gujarat Pollution Control Board (“GPCB”). The Applicant rejected the said request vide email dated 30.08.2022 in view unpaid dues of the Respondent. Thereafter, the Respondent tried to access Applicants account without authorization. The said fact was intimated by Applicant to GPCB however, no action was taken. The Applicant then took action in accordance with law and the management of GPCB took cognizance of the offence committed by the Respondent. The Respondent conceded to the allegation and tendered an apology in view of which no penalty or punishment was imposed against the Respondent. Thus, there exists no pre-existing dispute as alleged by the Respondent.

- c) The Applicant submits that dues of the Applicant are towards unpaid license fee which is fully covered within the meaning of 'operational debt' under section 5(21) of the code arising out of the leave and license agreement dated 01.10.2015 and also fortified by the consent decree dated 11.01.2021.
- d) The Applicant denies that the application is filed on the basis of breach of terms of settlement and submits that it has been preferred towards non-payment of its operational dues arising out of the Respondents possession of the processing house and its failure to pay dues towards statutory authorities.
- e) The Applicant submits that original debt is merged in the decree and the person who was originally a creditor became a decree-holder afterwards, it does not in any way destroy the Applicants character of the money due to him from the Respondent as a debt and therefore, the Applicant has rightly preferred the present petition in the capacity of an Operational Creditor.
- f) The Applicant states that the Respondent is attempting to raise moonshine defense under the garb of a pre-existing dispute without placing on

record any evidence supporting the same. The Respondent by way of settlement agreement has admitted its liability under the settlement agreement and the same is a testament to the fact that there is no pre-existing dispute between the parties and the Corporate Debtor is liable to pay the debts owed to the Applicant.

g) The Applicant is an MSME and the provisions of Micro, Small and Medium Enterprises Act, 2006 are applicable to the Applicant on the basis of which an interest at the rate of 18% per annum has been imposed on non-payment of dues from the Respondent within the prescribed period of time. Further, the account utilized by Respondent with government authorities and service providers are associated with the Applicant thus, the Applicant is responsible for ensuring that the dues of these institution are paid on time to avoid any penal interest and closure of accounts. Therefore, the Applicant is the rightful claimant of the dues. Even if the said charges are not considered still the amount payable toward rent and applicable interest is greater than Rs. 1 Crore thus making present petition maintainable.

h) The Applicant states that Corporate Debtor has failed to pay its dues towards the Applicant

pertaining to the possession of the processing house and even failed to make the payment of requisite dues towards Statutory Authorities therefore, the Applicant has preferred the present application for resolution of Corporate Debtor.

- i) The Applicant states that there is no substantial difference in the amount claimed in the demand notice and in the present petition. The additional amount of Rs.8,47,087/- has become due and payable for the month of October, 2022 after the demand notice was issued and therefore the amount sought for in the application is greater than what is mentioned in the demand notice.
  
- j) The Applicant states that Applicant has preferred a petition for execution of decree passed by the Hon'ble Fifth Additional Senior Civil Judge, Ahmedabad (Rural), at Ahmedabad, Mirzapur only for the limited purpose of obtaining possession of the processing house. The Hon'ble Fifth Additional Senior Civil Judge, Ahmedabad (Rural) have approved the execution of decree vide order dated 25.01.2023 and directed the Respondent to hand over the vacant possession of the processing house to the Applicant.

10. We have heard the Ld. Counsel for both the parties and perused the material available on record.
11. It is noted that Aggarwal Dyeing and Printing had leased the processing house to one Hillary Fashion Cotfab Limited on 01.10.2015. The said Hillary Fashion Cotfab Limited had further leased the Processing house to the Respondent in July, 2017. Thereafter, the Applicant purchased the processing house from Aggarwal Dyeing and Printing on 16.07.2020. A Civil Suit bearing Civil Suit No. 298 of 2020 was preferred by Applicant and Shri Sanjiv Agrawal owner of M/s. Agarwal Dyeing and Printing Works against M/s. Hillary Fashion Cotfab Limited and Respondent. During the pendency of the suit compromise was arrived between the parties and consent decree was passed by the Hon'ble Court. Thereafter, the Respondent failed to make payment hence, demand notice was issued on 16.09.2022 still no payment has been received from the Respondent.
12. The main contention raised by the Respondent in its reply is that the Applicant being Lessor is not an Operational Creditor in terms of Section 5(20) read with Section 5(21) of Insolvency and Bankruptcy Code, 2016 and has relied upon the decision in the matter of Mr. M. Ravindranath Reddy Versus Mr. G. Kishan & Ors.,

Company Appeal (AT) (Insolvency) No. 331 of 2019. The decision relied upon by the Respondent has been overruled by the judgment of larger bench (5 judges) in the matter of **Jaipur Trade Expocentre Private Limited Vs. Metro Jet Airways Training Private Limited** Company Appeal (AT) (Insolvency) No. 423 of 2021 wherein it is stated as follows:

*“(1) Judgement of this Tribunal in Mr. M. Ravindranath Reddy(supra) as well as judgment in Promila Taneja’s case does not lay down the correct law.*

*(2)The Claim of Licensor for payment of license fee for use of Demised Premises for business purposes is an ‘operational debt’ within the meaning of Section 5(21) of the Code.”*

Therefore, in view of the above it is clear that the debt is an operational debt and the Applicant is an operational Creditor.

13. The total amount stated to be in default by Applicant is Rs.1,40,76,265/- the bifurcation of the same is as follows:

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount</b>
1.	Principal	90,24,657/-

2.	Interest @18%	7,13,971/-
3.	Torrent Power Limited	19,89,200/-
4.	NTIEM (Penal Interest)	7,997/-
5.	NTIEM (Bill)	16,29,744/-
6.	AMC TAX (03480705660001K)	1,80,458/-
7.	AMC TAX (03480705710001K)	12,44,209/-
	<b>TOTAL</b>	<b>1,40,76,265/-</b>

It is observed that the principal amount of Rs.90,24,657/- pertains to invoice dated 01.12.2021 to 01.10.2022. The interest at the rate of 18% amounting to Rs.7,13,971/- is levied by Applicant on the basis of the Applicant being an MSME and even otherwise the interest clause is mentioned in the invoices annexed at Page No. 138-146. The total of principal plus interest arrives at Rs.97,38,628/- which is below threshold. However, in accordance with consent decree the Respondent is liable to pay to the Applicant interest over the deposit given by Applicant to Torrent Power Limited. The said interest amounts to Rs.19,89,200/-. The total of aforementioned amounts i.e. principal, interest and interest on deposit arrives at Rs.1,17,27,828/- which is

above threshold hence, the requirement of section 4 is satisfied.

14. The Respondent in its reply has also raised an objection on the ground of pre-existing dispute. However; it appears that there exists no such pre-existing dispute as parties had arrived at settlement in view of which the consent decree was passed. Another objection raised by the Respondent is that the decree holder cannot be considered as Operational Creditor. The Applicant in rebuttal to this point have relied upon the decision in the matter of ***Ashok Agarwal Vs. Amitex Polymers Private Limited, Company Appeal (AT) (Ins.) No. 608 of 2020*** wherein it is held that decree holder can be considered as operational creditor. The relevant para of the said order is reproduced below:

*“Considering the fact that the Appellant/Operational Creditor in the Company petition in IB 185/ND/2019 before the National Company Law Tribunal, the Principal Bench had come out with a plea that the Respondent/Corporate Debtor owes a sum of Rs. 8,85,000/- and for which a demand notice dated 11.3.2019 was issued to the Respondent/Corporate Debtor for which no reply was issued by the Respondent/Corporate Debtor to the*

*Appellant/Operational Creditor and this Tribunal taking note of the prime fact that the Appellant/Operational Creditor is a 'Decree Holder' as per the 'Consent Decree' passed on 25.10.2018 in Civil Suit No. 6912 of 2016 by the Learned Additional District Judge, Saket Court, New Delhi, this Court comes to an irresistible and inescapable conclusion that a 'Decree Holder' is no way excluded from the purview of the ambit of the term 'Operational Creditor' as per Section 5(20) of The Insolvency and Bankruptcy Code 2016 and the contra view taken by the 'Adjudicating Authority' in the impugned order is clearly held by this Tribunal as an unsustainable one in the eye of Law.”*

15. In our view the application is complete in terms of Section 9 of the Code. As the Applicant/Operational Creditor has proved that there is debt and despite service of notice under Section 8, the same was not paid by the Respondent/Corporate Debtor. We have also seen that the amount defaulted is more than Rs. 1.00 Cr. which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process

against the Respondent/Corporate Debtor deserves to be admitted.

16. Accordingly, in light of the above facts and circumstances, it is, hereby ordered as under:-

(i) The Respondent/Corporate Debtor **Vaxtex Cotfab Ltd.** is admitted in Corporate Insolvency Resolution Process under section 9(5) of the Code.

(ii) As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

a. 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;

b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

- c. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
  - d. 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. The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.
- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate

debtor under Section 33 of the IBC 2016, as the case may be.

- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- (v) As the Applicant/Operational Creditor has not named any IRP in the matter, we hereby appoint **Mr. Sunil Kumar Kabra**, Registered Insolvency Professional having Reg. No. **IBBI/IPA-001/IP-P01011/2017-2018/11662** under section 13(1)(c) of the Code to act as Interim Resolution Professional (IRP). She shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.
- (vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20

and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- (viii) The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.

- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (xi) We direct the Operational Creditor to pay IRP a sum of **Rs.2,00,000/-** (Rupees Two Lakh Only) in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims till the CoC decides about his fees/expenses.
- (xii) The Registry is directed to communicate this order to the Operational Creditor, corporate debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

(xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

17. Accordingly, this Application **CP(IB)/291/AHM/2022** is allowed and stands admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities

-Sd-  
**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

-Sd-  
**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

Arati-LRA