

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH - I
KOLKATA**

CP (IB) 97/KB/2021

*An application Under Section 9 of the Insolvency and Bankruptcy
Code, 2016*

In the Matter of

Rashi Peripherals Private Limited , a company incorporated and existing under the provisions of the Companies Act, having its Registered Office at Aristo House, 5th Floor, Corner of Telli Galli, Andher (East), Mumbai- 400069, Maharashtra.

...Operational Creditor

versus

Savera Digital India Private Limited, a company incorporated and existing under the provisions of the Companies Act, and having its Registered Office at: 1, Ganesh Chandra Avenue, Ground Floor, Kolkata- 700013, West Bengal.

... Corporate Debtor

Date of Hearing: 13.07.2022

Date of Pronouncement: 01.08.2022

CORAM:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearance

For Operational Creditor

Mr. Rahul Auddy, Advocate

Mr. Aditya Gooptu, Advocate

ORDER

Per: Balraj Joshi, Member (Technical)

1. The Court was convened in a hybrid mode.
2. This is an application filed by the Rashmi Pheripheral Pvt. Ltd. represented by Mr. Nikhil Deora, Branch Head of Rashmi Pheripheral Pvt Ltd, Authorised by Board Resolution dated 28.01.2021 under Section 9 of the Insolvency and Bankruptcy Code 2016(Code) seeking to initiate the Corporate Insolvency Resolution Process (CIRP) against the Savera Digital India Pvt Ltd (Corporate Debtor). The claimed amount has been stated to be Rs.31,358,771.72/- (Rupees Three Crore Thirteen Lakh Fifty Eight Thousand Seven Hunded Seventy One and Paise Seven Two only) excluding interest in Part IV of Form -II and the date of default stated is 08.09.2020.
3. The Corporate debtor did not file any reply and neither attended the hearings on 06.01.2022, 21.03.2022, 28.04.2022, 09.06.2022 and hence was declared *ex-parte* on 09.06.2022.

Submissions on behalf of the Operational Creditor

4. The case of the operational creditor is that the Corporate Debtor had entered into a contract *vide* various email purchase order/ sale orders for purchasing of Laptop Computers, Hard-Drives, accessories, peripherals, IT and allied products (hereinafter referred to as Goods).
5. The Operational Creditor supplied the goods to the Corporate Debtor from time to time and raised invoices. Payments of the goods supplied were to be made within 30 days from the date of invoice. The Corporate Debtor failed to make timely payments. Therefore, the Operational Creditor *vide* emails dated 18.06.2019, 27.06.2019 and 24.06.2019 requested Corporate Debtor to make the outstanding payments. In the end of June, 2019 after the transactions between the Operational Creditor and the Corporate Debtor the Corporate

Debtor, the Corporate Debtor agreed to make a payment of ₹ 2.5 Crore immediately but the Corporate Debtor failed to comply with the said arrangements.

6. Hence, the Operational Creditor *vide* emails dated 01.07.2019 04.07.2019 requested the Corporate Debtor to make a payment of ₹ 25,248,838 (Two Crore Fifty Two Lakh Forty Eight Thousand Eight Hundred Thirty Eight) against the total dues of ₹ 32,643,655 (Three Crores Twenty Six Lakhs Forty Three Thousand Six Hundred Fifty Five). The Corporate Debtor *vide* its email dated 02.07.2019 acknowledge the debt and assure the Operational Creditor that payment will be made. The Operational Creditor *vide* email dated 08.07.2019 once again requested the Corporate Debtor to make payment of ₹ 26,670,624 (Two Crore Sixty Six Lakh Seventy Thousand Six Hundred Twenty Four).
7. Mr. Gopal Pansari, Director of the Corporate Debtor in its email dated 08.07.2019 acknowledged the dues but no payment was received by the Operational Creditor. The Operational Creditor thereafter *vide* emails dated 11.07.2019, 19.09.2019, and 20.01.2020 requested the Corporate Debtor once again to make the payment but to no avail.
8. Thereafter, the Operational Creditor sent a demand notice under Section 8 of the Code dated 22.01.2020 at the Registered Office of the Corporate Debtor. In the interim the Government of India announced the lockdown due to Covid-19 Pandemic. As the lockdown restrictions were eased, the Corporate Debtor on 22.07.2020 sought details from the Operational Creditor about outstanding dues the Operational Creditor *vide* email dated 25.07.2020 provided the details of the pending invoices as on 24.07.2020 that is ₹ 31758771.72.
9. Thereafter the Corporate Debtor made payments on 04.03.2020, 12.03.2020, 22.07.2020, 03.08.2020, 24.08.2020 and 08.09.2020. Thereafter in or around October 2020 certain discussions were held

between the Corporate Debtor and the Operational Creditor wherein the Corporate Debtor agreed to settle the entire dues of the Operational Creditor and accordingly the Corporate Debtor issued one cheque dated 05.11.2020 to the Operational Creditor *vide* cheque no. 000257 drawn on HDFC Bank for a sum of ₹ 31358771.72 dated 05.11.2020. The cheque was dishonoured due to the account being closed.

10. Hence the Operational Creditor issued another statutory demand notice dated 16.02.2021 which was duly delivered on 19.02.2021 the Corporate Debtor replied to the statutory demand notice *vide* reply dated 25.02.2021 no specific disputes were raised in the said reply.

Analysis and findings

11. Heard the Learned Counsel for the Operational Creditor and perused the record. On perusal of the record it is clear that the Operational Creditor had supplied goods to the Corporate Debtor and the Corporate Debtor has time and again defaulted in payment of the invoices. The Corporate Debtor has not raised any dispute with regard to the goods supplied to the Corporate Debtor. It is clear that the Corporate Debtor is in debt with respect to the Financial Creditor.
12. In Part IV of the Petition, the Financial Creditor has stated that the date of default has been taken as 08.09.2020. Although the Financial Creditor had sent the first notice on 22.01.2020 but thereafter received part payment from the Corporate Debtor, hence that demand notice cannot be taken into consideration.
13. The date of default i.e. 08.09.2020 comes within the period excluded under section 10A of the Code, which envisages that no application for initiation of CIRP shall be filed for any default arising on or after 25.03.2020 which was extended further till March 2021.

14. Therefore, the present Petition is hit by section 10A of the Code and cannot be admitted.
15. In view of the above observations, **CP (IB) No. 97/KB/2021** is hereby dismissed.
16. However, the Petitioner is at liberty to take any legal recourse before any other judicial forum available, if any.
17. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi

Member (Technical)

Rohit Kapoor

Member (Judicial)

Order signed on 1st day of August 2022.

GGRB_LRA/TY