

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT -V**

**C.P. (I.B) No. 423/MB/2021**

**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*

**M/s. Amber Enterprises India Limited**

Having its registered address at C1 Phase, Ifocal Point, Rajpura Town,  
Punjab 140 140(PB)

**...Operational Creditor/Applicant**

Vs

**M/s Esaplling Private Limited**

Office No.513, Rainbow Plaza Rahatani Pune,  
411 027 (MH)

**...Corporate Debtor/Respondent**

**Order Dated: 01.03.2024**

**Coram:**

Reeta Kohli, Hon'ble Member (Judicial)

Madhu Sinha, Hon'ble Member(Technical)

**Appearances: Physical/ VC**

For the Operational Creditor: Adv Aarsheya Sharda (VC)

**ORDER**

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

1. This Company Petition is filed by M/s. Amber Enterprises India Limited (hereinafter referred as “**the Operational Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against M/s Esaplling Pvt Ltd. (hereinafter called “**Corporate Debtor**”) by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for an Operational Debt of Rs.1,09,45,873/- as on 17.07.2020 including principal amount of Rs. 91,05,344/- along with an interest of 18 % p.a of Rs.18,40,529/-.

**Brief Facts: -**

1. The present petition reveals that the Corporate Debtor approached the Operational Creditor in May, 2019 for supply of air conditioners. Thereafter, the Corporate Debtor placed an order for the supply of air conditioners vide purchase order dated 06.05.2019 and 25.05.2019. Accordingly, the Operational Creditor successfully delivered the air conditioners and duly raised the invoices dated 15.05.2019, 19.05.2019, 27.05.2019 and 29.05.2019 in respect thereof.
2. As per the terms of invoices, the due date for making payment was within 10 days from the date of invoice, failing which an interest of 18% p.a. will be charged on the invoice amount.
3. Subsequently, the Corporate Debtor vide email dated 04.09.2019 admitted their liability by sharing the Ledger of the Operational Creditor maintained by the Corporate Debtor from 01.04.2017 to 27.03.2019.
4. Thereafter, the Operational Creditor vide email dated 25.11.2019 requested the Corporate Debtor to release payments against the invoices

and clear the outstanding dues. However, despite repeated reminders, the Corporate Debtor failed to make the payment for approx. 400 days on each invoice.

5. Consequently, the Operational Creditor through its Advocate served a demand notice in Form-3 under Section 8 of the Insolvency and Bankruptcy Code 2016 on 04.08.2020.
6. Thereafter, the Operational Creditor vide an email dated 13.08.2020, again intimated the Corporate Debtor that legal proceedings may be initiated against it in case of non-payment of the dues.
7. Furthermore, the Corporate debtor vide email dated 13.08.2020 replied to the email of the Operational Creditor, stating "*Kindly anticipate response before tomorrow morning*". However, neither response was received by the Operational Creditor nor any dispute whatsoever was raised by the Corporate Debtor till date.
8. Therefore, the Operational Creditor has filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 for realization of its debt amount of Rs. 1,09,45,873/-.

**Submission by Corporate Debtor.**

9. The Corporate Debtor had filed their Affidavit in Reply ("**Reply**") and denied each and every statement, contention and allegation made by the Petitioner.
10. It is submitted that the Tax invoices issued by the Operational Creditor comprises of three Components namely Value of Goods, GST (Goods and Service Tax) and the Total Value. And the Operational Creditor at the time of issuing the said invoices, required to pay the applicable IGST to the

concerned Government Tax Department, which is a legal obligation on part of the Operational Creditor. However, on inspection of the GST Portal by the Corporate Debtor, the Operational Creditor has only paid the applicable IGST for certain invoices and has not paid the applicable IGST on the remaining invoices. The details of paid and unpaid IGST is as follows:

<b>Sr. No</b>	<b>Total Value of Goods</b>	<b>Unpaid (IGST)</b>	<b>Alleged Outstanding Amount</b>
1	Rs.17,72,480/-	---	Rs.17,72,480/-
2	Rs.23,65,440/-	---	Rs.23,65,440/-
3	Rs.25,80,480/-	Rs.(5,64,480/-)	Rs.20,16,000/-
4	Rs.23,86,944/-	Rs.(5,64,480/-)	Rs.18,22,464/-
<b>Total</b>	Rs.91,05,344/-	Rs.(11,28,960/-)	Rs.79,76,384/-

11. Pursuant to above, it is submitted that the amount claimed by the Operational Creditor is not genuine as the Operational Creditor had itself not paid the requisite amount of IGST to the Government Tax Department. Therefore, the outstanding principal amount as alleged to be paid by the Corporate Debtor stands at Rs.79,76,384/- instead of Rs.91,05,344/- as mentioned in the Part IV of the Company Petition. Therefore, the present Company Petition filed by the Operational Creditor fails to meet the minimum threshold limit as prescribed under Section 4 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) duly notified with effect from 25.04.2020.
12. In support of the above contention the Corporate Debtor submitted the calculations as follows:

<b>Sr.No</b>	<b>Particulars</b>	<b>Amount</b>
1.	Advance paid by the Corporate Debtor to the Operational Creditor	(Rs.10,00,011/-)
2.	Invoice dated 15.05.2019	Rs.17,72,480/-
3.	Invoice dated 19.05.2019	Rs.23,65,440/-
4.	Invoice dated 27.05.2019	Rs.20,16,000/- (After deducting the IGST that has not been paid by the Operational Creditor on the original invoice value)
5.	Invoice dated 29.05.2019	Rs.18,22,464/- (After deducting the IGST that has not been paid by the Operational Creditor on the original invoice value)
<b>Total Principal Amount</b>		<b>Rs. 69,76.373/-</b>

13. Therefore, it is submitted that the Corporate Debtor does not owe the amount of Rs. 1,09,45,873/- as claimed by the Operational Creditor in Part IV of the Company Petition. Rather liable to pay an amount of Rs. 83,85,282/-. Thus, the present Company Petition is not maintainable for want of non-compliance of Section 4 of the IBC, 2016.
14. The Corporate Debtor further submitted that as per Section 10A of the IBC, if the event of any default occurred during the period from 25.03.2020 to 25.03.2021, then no application ever shall be filed under Section 7, 9, 10 of the IBC, 2016 for the purpose of initiating corporate insolvency resolution process. However, in the present case, the expiry of the ten-days period from the date of receipt of the Demand Notice under Section 8 of the IBC, 2016 i.e. 14.08.2020, falls within the ambit of Section 10A of the IBC, 2016. Therefore, the present Company Petition has occurred during the period mentioned under Section 10A of the IBC, 2016 and deserved to be dismissed.

## **Findings**

15. We have heard the Counsel for the parties and perused the documents available on the record.
16. It is an undisputed fact that the Corporate Debtor placed an order for the supply of air conditioners vide purchase order dated 06.05.2019 and 25.05.2019 to Operational Creditor. Accordingly, the Operational Creditor delivered the air conditioners and raised the invoices dated 15.05.2019, 19.05.2019, 27.05.2019 and 29.05.2019 in respect thereof.
17. The contention raised by the Corporate Debtor is that the Present Petition is barred by Section 10 A of the Code, since the expiry of the ten-days period from the date of receipt of the Demand Notice dated 04.08.2020 under Section 8 of the IBC, 2016 is 14.08.2020, which falls under the Section 10A period i.e. from 25.03.2020 to 25.03.2021. In view of the above contention, Section 10 A of the IBC Code is reproduced hereunder:-

***Section 10A: Suspension of initiation of corporate insolvency resolution process.***

*[10A. Notwithstanding anything contained in sections [7](#), [9](#) and [10](#), no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified<sup>2</sup> in this behalf:*

*Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.*

*Explanation. – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.]*

18. After perusal of the above Provision of Section 10 A of the code, this bench is of the considered view that so far as the applicability of Section 10A of the Code is concerned, to determine as to whether the Petition is barred under the said Section or not would depend upon the date of default. If the date of default occurs during the period excluded under Section 10A of the Code, then the Petition under Section 9 of the Code cannot be maintained. In this case, the Operational Creditor after delivering the air conditioners, raised the invoices dated 15.05.2019, 19.05.2019, 27.05.2019 and 29.05.2019. As per the terms of invoices, the due date for making payment was within 10 days from the date of invoice, failing which an interest of 18% p.a. will be charged on the invoice amount. It is noteworthy that all the invoices raised are prior to the period provided in Section 10A of the Code. Moreover, as per the terms of the invoices the date of default against the said invoices are 26.05.2019, 30.05.2019, 07.06.2019 and 09.06.2019 respectively, which also are not covered under the stipulated period of Section 10A of the Code. Therefore, the contention of the Corporate debtor that the Present Petition is barred by Section 10A of the Code does not survive.
19. The second contention raised by the Corporate Debtor is that the Present Petition does not meet the minimum threshold limit of Rs. 1 crore and is not maintainable. Since the Operational Creditor has failed to pay the applicable IGST on certain invoices. The details of paid and unpaid IGST as submitted by the counsel for the Corporate debtor is as under:-

<b>Sr. No</b>	<b>Total Value of Goods</b>	<b>Unpaid (IGST)</b>	<b>Alleged Outstanding Amount</b>

1	Rs.17,72,480/-	---	Rs.17,72,480/-
2	Rs.23,65,440/-	---	Rs.23,65,440/-
3	Rs.25,80,480/-	Rs.(5,64,480/-)	Rs.20,16,000/-
4	Rs.23,86,944/-	Rs.(5,64,480/-)	Rs.18,22,464/-
<b>Total</b>	<b>Rs.91,05,344/-</b>	<b>Rs.(11,28,960/-)</b>	<b>Rs.79,76,384/-</b>

20. However, the Petitioner in response to the above contention has submitted in its rejoinder that the Operational Creditor has duly and timely paid the IGST amount on the above invoices and have never defaulted on the same. The Petitioner in its rejoinder vide “Annexure R1” has annexed the proof of IGST payment by the Operational Creditor for the subject invoices. The extract of the payment proof is as under :-

Invoice No	Invoice Date	Total Value	Taxable Value	IGST Value	CGST Value	SGST Value	CESS Value
SI192016-00845	15/05/2019	2580480.00	2016000.00	564480.00			
SI192016-00922	19/05/2019	2365440.00	1848000.00	517440.00			
SI192016-01078	27/05/2019	2580480.00	2016000.00	564480.00			
SI192016-01101	29/05/2019	2386944.00	1864800.00	522144.00			

21. In view of the above proof of payment annexed by the Petitioner in its Rejoinder, makes it clear that the Petitioner has duly paid the IGST amount in respect of the invoices alleged by the Corporate Debtor. Therefore, the contention of the Corporate Debtor that the Petitioner has not paid the IGST in respect of several invoices does not survive and the Petitioner is well within its minimum threshold limit of Rs. 1 Crore. This Bench further observes the Ledger maintained by the Corporate Debtor for the Operational Creditor annexed as “Annexure A6” of the Company

Petition shared by the Corporate Debtor to the Operational Creditor vide email dated 04.09.2019 which reveals that the Respondent has admitted its liabilities against the pending dues by way of an email dated 04.09.2019. The present petition is filed on 02.04.2021, therefore the Petition is well within limitation and maintainable.

22. Further the Operational Creditor issued the Demand Notice dated 04.08.2020 for the payment of the outstanding dues however, the Corporate Debtor failed to respond to the said demand notice nor raised any dispute to the same. Therefore, we are of the considered view that the Petitioner has been able to establish that there is an existence of “**operational debt**” and “**default**” committed by the Corporate Debtor and an **absence of the Pre-Existing dispute** in this case.
23. This Bench is of the opinion that the Petition deserves to be admitted under Section 9 of the Code.
24. The Operational Creditor has proposed the Interim Resolution Professional in Part III of the Company Petition.
25. Accordingly, the above Company Petition is ‘**admitted**’ by passing the following:

### **ORDER**

- a. The above Company Petition No. 423/IBC/MB/2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Esaplling Private Limited**.
- b. **Mr. Hardev Singh**, having registration No. IBBI/IPA-002/IP-N00177/2017-18/10449, having email Id- singh\_hardev@rediffmail.com, having address - 101, Plot No-6, LSC, Rajadhani Plaza, New Rajadhani Enclave, New Delhi, Delhi ,110092 and having Mobile Number- +919810331425, is hereby appointed as

Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Operational Creditor shall deposit an amount of Rs. 2 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favor 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, Pune, for updating the Master Data of the Corporate Debtor.

Accordingly, CP 423 of 2021 is **admitted**.

**SD/-**

**Madhu Sinha**  
**Member (Technical)**

/Abhay/

**SD/-**

**Reeta Kohli**  
**Member (Judicial)**