

IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT-II, MUMBAI BENCH

CP(IB)-209/MB/2021

Under Section 9 of the IBC, 2016

*In the matter of*

**Swiss Promotion Private Limited**

...Operational Creditor

V/s.

**Timekeepers The Watch Boutique**

**Private Limited**

...Corporate Debtor

Order Pronounced on: 16.05.2024.

*Coram:*

**Mr. Anil Raj Chellan**

**Hon'ble Member (Technical)**

**Mr. Kuldip Kumar Kareer**

**Hon'ble Member (Judicial)**

*Appearances (via physical mode of hearing):*

For the Petitioner: Ms. Bhawya Khanna, Advocate.

For the Respondent: Mr. Shyam Kapadia, Advocate.

**ORDER**

*Per: Kuldip Kumar Kareer, Member (Judicial)*

1. This is a Company Petition filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by **Swiss Promotion Private Limited**, ("the Operational Creditor") through its Representative Mr. Nitin Chainani authorized by the Board Resolution, on 23.01.2021 seeking initiation of Corporate Insolvency Resolution Process (CIRP) against **Timekeepers The Watch Boutique Private Limited** [CIN: U52100MH2012PTC236840]

(being hereinafter referred to as “the Corporate Debtor”) for the amount payable to the Operational Creditor.

- 1.1. The Corporate Debtor is a company incorporated on 16.10.2012 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai having its registered office at 65, Oriental Building, Hutatma Chowk, Mahatma Gandhi Road, Fort, Mumbai– 400 001, Maharashtra. This Bench has jurisdiction to deal with the present petition.
2. The present petition is filed by the Operational Creditor before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹2,24,20,546/- (Rupees Two crores, Twenty-Four Lakhs, Twenty Thousand, Five Hundred and Fourty Six only) outstanding as on 23.12.2020 along with interest @ 18% per annum on the aforesaid amount on account of non-payment thereof to be calculated from the date of default in payment against the invoices till its actual realization. However, the amount of interest has not been quantified by the Applicant in the Application. The date of default is not stated in Part-IV of the Application.
- 2.1. The Operational Creditor is a company engaged in the business of distribution/agency of luxury watches representing various luxury brands in India, more specifically the brand ‘Ulysse Nardin’.

The Corporate Debtor is engaged in the business of retail/sale of time pieces and has been a retailer of the Operational Creditor for selling the time pieces in specific of the brand 'Ulysse Nardin' and in the terms of oral contract in October, 2013 subsequently followed by a written contract dated 30<sup>th</sup> May, 2014 specifically for "Special Memorandum for consignment watches, displays and accessories". The Operational Creditor supplied the goods to the Corporate Debtor and issued invoices from time to time which were duly received and accepted by the Corporate Debtor. As per the records maintained by the Operational Creditor, the Corporate Debtor started defaulting on the agreed payment terms in the financial year 2015-16 itself. Thereafter, the defaults persisted from time to time resulting in huge amount due by the Corporate Debtor to the Operational Creditor.

2.2. The Operational Creditor in an endeavor to recover the outstanding dues of INR 2,47,17,641/- issued a legal notice through its advocate dated 14.12.2016 to the Corporate Debtor. The Corporate Debtor replied to the aforesaid notice vide Letter dated 29.12.2016. Thereafter, it was mutually agreed that the payment terms be extended from 30 days to 60 days. Accordingly, the Corporate Debtor started making part payments to the Operational Creditor and the supply of goods was resumed. Thereafter, the default was committed again by the Corporate Debtor. As per the ledger, the last payment received by the Operational Creditor from the Corporate Debtor was on 15<sup>th</sup> April, 2019.

2.3. The Operational Creditor has attached copy of 16 invoices issued from

February 2015 to September 2018 giving a total outstanding amount as on 23.12.2020 totaling to an of ₹ 2,24,20,546/-. The last invoice dated 14.09.2018 had fallen due on 13.11.2018.

2.4. It further submits that since many invoices remained unpaid, the Operational Creditor sent a notice dated 23.12.2020 to the Corporate Debtor asking to pay the outstanding amount of ₹2,24,20,546/-. The Corporate Debtor has replied to the demand notice on 08<sup>th</sup> September, 2021 and admitted the claim only to the extent of Rs.73 Lakhs. Hence, the Operational Creditor has filed this petition u/s 9 of the Code.

3. **Reply of the Corporate Debtor:**

3.1. The Corporate Debtor in its reply dated 13.01.2022 has raised objection with respect to the defective demand notice issued by the Operational Creditor. The Section 8 Demand Notice dated 23.12.2020, which is purportedly the foundation of the Petition, is non-compliant with the requirements and prescribed format of the IBC and the Rules and Regulations framed thereunder. The Notice is addressed to one "M/s. **Timekeepers Private Ltd**" and not to the Respondent, "Timekeepers The Watch Boutique Private Limited". As such, the Demand Notice falling foul of statutory requirements is defective and does not constitute a valid notice under Section 8 of the IBC. Consequently, the Petition, being based upon a defective Notice, is also defective and hence the Petition is not maintainable before this Tribunal and the same ought to be dismissed at the threshold itself, with costs.

3.2. The Respondent has submitted that a bare perusal of the Petition, and

specifically the various alleged invoices under which the Petitioner is making its alleged claim are all from the year 2015, save and except for one invoice from the year 2016 and one invoice from the year 2018. Thus, any claim based upon such alleged 2015 and 2016 invoices is clearly time-barred. Further, as regards the 2018 'invoice dated 14<sup>th</sup> September, 2018 for the sum of Rs.19,25,000/-, a bare perusal of the ledger annexed by the Petitioner discloses that a payment of Rs.19,25,000/- was made in advance by the Respondent to the Petitioner towards this Invoice on 12<sup>th</sup> September, 2018. It is, therefore, evident that the Petitioner knowing that its alleged claim is bogus and barred by limitation, has mischievously and malafidely claimed under this invoice only to somehow attempt to bring its claim within limitation. According to the Respondent, as set out above, even assuming arguendo that the aforementioned invoice dated 14<sup>th</sup> September, 2018 for the sum of Rs.19,25,000/- is unpaid (which it is not), the Petition is not maintainable in view of the Notification dated March 24, 2020, which specified Rs. 1 Crore as the minimum amount of default for the purpose of the IBC.

- 3.3. The Corporate Debtor further submits that there are genuine, bona fide, documented and well-founded pre-existing disputes between the Petitioner and the Respondent as regards the monies allegedly owed by the Respondent to the Petitioner, and the Respondent has conveyed this to the Petitioner much prior to the filing of the present Petition. There is substantial correspondence between the parties which established the existence of disputes much prior to the issuance of the Notice, some of which has been annexed to the Petition itself. The Corporate Debtor did

not enter into any agreement with the Operational Creditor and merely printing interest on the invoice is not valid. Therefore, the claim of interest @24% by the Operational Creditor is not legally acceptable. Without considering the interest portion, the principal amount is much below the threshold limit. Therefore, the Petition is not maintainable under IBC.

- 3.4. The Corporate Debtor further submits that its accounts are not tallying with that of the Operational Creditor and hence, the accounts need to be reconciled. According to the Operational Creditor, there is an outstanding of over rupees two crores, whereas the Corporate Debtor has admitted its liability only to the tune of Rs. 73 lakhs. It is also pertinent to note that in or around the year 2017, due to alleged serious tax / customs duty evasion by the Petitioner, the Directorate of Revenue Intelligence ("DRI") was investigating the Petitioner and all its retailers / clients. It is during such investigation that in and around August 2017, the DRI directed the Respondent to pay the total sums due to the Petitioner amounting to approximately Rs. 70 Lakhs directly to the DRI towards settling the Petitioner's tax liability. This was not a part of any settlement between the parties, but rather a direction of the DRI. Therefore, the Respondent had written to the Petitioner informing the Petitioner that the Respondent shall be making payment of the entire outstanding of Rs.73 lakhs to the DRI, and the same was accepted by the Petitioner.
- 3.5. In the end, the Corporate Debtor has prayed for the dismissal of the Petition.

**Submissions of the Operational Creditor in Rejoinder**

4. The Operational Creditor has filed rejoinder dated 02.02.2022 to submit that the Corporate Debtor admitted only an amount of Rs. 73 lakhs from the total outstanding of Rs. 2,24,20,546/- owed and payable to the Operational Creditor with a malafide intention to have the petition dismissed for lack of the pecuniary jurisdiction. There was never a dispute raised by the Corporate Debtor on the outstanding debt owed to the Operational Creditor.
  - 4.1. The Corporate Debtor as per its own email dated 23<sup>rd</sup> March, 2017 admits as follows: *“Dear Nitin, we discussed the following as per me: 73 lacs is the outstanding as per Timekeepers which we both agreed on + opening balance if any + 9,80,000.”* Thereafter, the last transaction admittedly is INR 19,25,000/- between the parties making it a total of Rs. 73 lakhs+ 19,25,000/- + opening balance+ 9,80,000 which in any case would bring the petition within the pecuniary jurisdiction of more than Rs. 1 crore. A sum of INR 19,25,000/-, as being referred to by the Corporate Debtor in paragraph 8 of the reply, was received on 12.09.2018 and was adjusted to the running outstanding dues and the last goods supplied to the Corporate Debtor was on 14.09.2018, which continue to remain due and outstanding.
  - 4.2. The Corporate Debtor has raised the objection of defective demand notice on the ground that the said notice was addressed to “M/s. Time Keepers Private Limited” and not to “M/s. Timekeepers The Watch Boutique Private Limited”. The fact that the Corporate Debtor has responded to the

demand notice shows that the demand notice was duly served, and it satisfied all the requirements of law. Therefore, the demand notice served on the corporate debtor is not defective, but it is consistent with the statutory requirements of the rules under the code. The Corporate Debtor has relied upon the judgment of Hon'ble Supreme Court in Dena Bank v/s. C Shivkumar Reddy to show that the provisions of the IBC shall be construed liberally and not be given a narrow, pedantic interpretation which defeats the purposes of the Act.

- 4.3. The Corporate Debtor in August, 2017 also furnished an undertaking to make a payment for a sum of Rs. 70 lakhs to the "Directorate of Revenue Intelligence" on behalf of the operational creditor as a partial payment which was owed by the Corporate Debtor against the claim of the Operational Creditor, but despite the commitment did not adhere to it, causing further financial burden to the Operational Creditor.
- 4.4. The Operational Creditor submits that the debts owed by the Corporate Debtor to the Operational Creditor are not barred by limitation as u/s 18 and 19 of the Limitation Act, 1963 read with Section 238A of the Code, the acknowledgement of debt by the Corporate Debtor renews the period of limitation. If the effect of acknowledgement and the orders of the Hon'ble Supreme Court, both extending the period of limitation are considered, then the operational debts owed by the Corporate Debtor are not time barred. Hence, this petition is maintainable.

- 4.5. The Operational Creditor denies that its Authorised Representative Mr. Nitin Chainani is only authorized to file suit for recovery of monies and not to institute proceedings under the IBC. It is submitted by the Operational Creditor that Mr. Nitin Chainani has been appointed to institute legal proceedings.

**ANALYSIS AND FINDINGS**

5. We have heard the Counsel for the parties and gone through the record.
6. During the course of arguments, Counsel for the Petitioner has argued that the present Petition has been filed in respect of non-payment of as many as sixteen invoices, the total amount which comes to Rs. 2,24,20,546/-. The issuance of the invoices has not been disputed by the Corporate Debtor, even after the receipt of the demand notice, the Corporate Debtor has not raised any dispute within the given period of ten days. Counsel for the Operational Creditor has further argued that there is no pre-existing dispute between the parties. The claim of the Petitioner is also more than Rs. 1 crore, therefore, it meets the threshold limit. Counsel for the Operational Creditor has further pointed out that though there was some mistake which took place while mentioning the name of the Corporate Debtor in the demand notice, the same is not serious as all the documents enclosed with the notice made it amply clear that the demand notice was meant for the Corporate Debtor only and in the reply to the demand notice also, no such objections have been raised and, therefore, the Operational Creditor cannot be non-suited on the basis of this hyper technical point.

7. Counsel for the Operational Creditor has further prayed for the admission of the Petition under Section 9 of the IB Code, 2016.
8. On the other hand, Counsel for the Corporate Debtor has argued that there is a clear-cut pre-existing dispute between the parties with regard to the quantum of alleged unpaid due. Counsel for the Corporate Debtor has further pointed out that the Petitioner filed the claim in respect of non-payment of sixteen invoices whereas in the ledger relied upon by the Petitioner, there are as many as sixty invoices. According to the Counsel for the Corporate Debtor, upon a perusal of ledgers produced on record by the Petitioner, it becomes evident that the Petitioner has added the amount of invoices pertaining to the year 2013 onwards and thereafter subtracted the payments received from the Corporate Debtor to arrive at a total unpaid dues of Rs. 2,24,20,546/-. Counsel for the Corporate Debtor has further contended that there is a clear-cut contradiction in the case of the Petitioner as on one hand, the Petitioner is sole relying upon the invoices but at the same time, the Petitioner is also claiming it to be a running account as depicted in the ledger attached with the Petition. Counsel for the Corporate Debtor has further argued that since there is a dispute with regard to the exact due amount, the same cannot be resolved in a summary way and has to be decided by recording evidence in detail which is not possible before this Authority and, on this ground alone, the Petition deserves to be dismissed.
9. Counsel for the Corporate Debtor has further argued that there is contradiction even in the emails relied upon by the Petitioner. Counsel for

the Corporate Debtor has further pointed out that if all payments made by the Corporate Debtor since the inception of the ledger are taken into account, it would show that the Respondent has already paid much more than the total value of the invoices.

10. Counsel for the Corporate Debtor has further argued that in the year 2017, the Department of Revenue Intelligence (DRI) was investigating the affairs of the Petitioner for tax/custom duty evasion and a direction was issued by the DRI to the Corporate Debtor to pay dues of Rs. 70 lakhs to the Petitioner as at that time only an amount of Rs. 73 lakhs was outstanding. The Petitioner never disputed the fact during the course of emails exchanged between the parties that DRI had arrived at figure of approximately Rs. 70 lakhs only. Therefore, it is evident that only a sum of Rs. 70 lakhs was outstanding and not more than Rs. 2 crores, as claimed by the Petitioner.
  
11. Counsel for the Corporate Debtor has further argued that the present Petition is barred by time as invoices in question were allegedly issued in the year 2015 and 2016 and the demand notice issued only on 23.12.2020. According to the Counsel for the Corporate Debtor each invoice constitutes a distinct transaction and has its own period of limitation. Therefore, taking into account all this fact, it has to be held that the claim of the Operational Creditor is clearly barred by time. Counsel for the Corporate Debtor has further argued that since the claim of the Operational Creditor regarding the running account has not been established, more particularly when the claim is based only on sixteen

specific invoices, it has to be held that the claim in respect of all the invoices have not been filed within the time.

12. Lastly, it has been argued by the Counsel for the Corporate Debtor that even the demand notice under Section 8 of the IB Code, 2016 is defective as the same is not addressed to the Corporate Debtor. In fact, the notice has been addressed to “M/s. Time Keepers Private Limited” whereas the name of the Corporate Debtor is “M/s. Timekeepers The Watch Boutique Private Limited” which might be some other entity. In this regard, Counsel for the Corporate Debtor has relied upon judgment passed by the *Hon’ble NCLAT in the matter of Anil Syal vs. Sanjeev Kapoor, 2019 SCC Online NCLAT 630*, whereby it has been held by the Hon’ble NCLAT that if a demand notice is issued in the wrong name, the same is not a valid demand notice under Section 8 of the IB Code, 2016 and any order passed in the Petition under Section 9 is liable to be set aside.
13. In the end, the Corporate Debtor has prayed for dismissal of the Petition.
14. On perusal of the Petition, it is seen that the sixteen invoices were raised by the Operational Creditor against the Corporate Debtor remain due and unpaid. The invoices have been raised in the years from 2015 to 2018. The date of default has nowhere been mentioned in the Application u/s 9 filed by the Applicant and more particularly in Part IV and Part V of the Application. However, considering the fact that out of 16 invoices, 15 invoices remain fully unpaid, the default seems to have been committed by the Corporate Debtor on expiry of credit period of 60 days. The details of invoices have been encapsulated in the table below:

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH: C-V

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<u>Sr. No.</u>	<u>Invoice No.</u>	<u>Invoice Date</u>	<u>Due Date</u>	<u>Invoice Amount (in INR)</u>	<u>Total Pending Payment (in INR)</u>
1.	UN/283	26/02/2015	27/04/2015	32,61,654	3,40,188
2.	UN/294	23/03/2015	22/05/2015	15,38,360	15,38,360
3.	UN/003	08/04/2015	07/06/2015	18,80,248	18,80,248
4.	UN/010	20/04/2015	19/06/2015	5,70,257	5,70,257
5.	UN/035	28/05/2015	27/07/2015	45,54,804	45,54,804
6.	UN/040	08/06/2015	07/08/2015	26,47,696	26,47,696
7.	UN/041	08/06/2015	07/08/2015	15,27,222	15,27,222
8.	UN/042	13/06/2015	12/08/2015	15,349	15,349
9.	UN/044	15/06/2015	14/08/2015	15,27,222	15,27,222
10.	UN/063	23/07/2015	21/09/2015	3,19,238	3,19,238
11.	UN/081	10/08/2015	09/10/2015	4,15,701	4,15,701
12.	UN/100	04/09/2015	03/11/2015	32,23,282	32,23,282
13.	UN/116	18/09/2015	17/11/2015	12,06,172	12,06,172
14.	UN/118	21/09/2015	20/11/2015	3,79,887	3,79,887
15.	UN/264	23/03/2016	22/05/2016	3,49,920	3,49,920
16.	UN/164	14/09/2018	13/11/2018	19,25,000	19,25,000
			<b>TOTAL</b>	<b>2,53,42,012</b>	<b>2,24,20,546</b>

15. The Hon'ble Supreme Court in B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Ors.' (2019) 11 SCC 633 after considering the provisions of IBC and the Limitation Act had laid down that for filing application

under Section 7 and 9, it is Article 137 which is attracted. In Paragraph 42 of the Judgment, following has been laid down:

*"42. It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application."* (Emphasis Supplied)

16. On 23<sup>rd</sup> March, 2017, the Corporate Debtor by way of an e-mail had acknowledged its liability of Rs. 73 lakhs and INR 9,80,000/- towards Rolex and for Opening Balance Difference, if any. No justification or explanation has been provided by the Corporate Debtor to show as to how he has arrived at the aforementioned figures. When the Corporate Debtor had acknowledged its liability to pay, the onus shifts upon it to justify, explain or substantiate the amount of debts owed by it to the Operational Creditor. The Corporate Debtor has not disputed the invoices and the delivery of goods as per the invoices. Though the Corporate Debtor has raised the plea of limitation, but its e-mail to the Operational Creditor dated 23<sup>rd</sup> March, 2017 serves as an acknowledgment of debt having the effect of renewal of the prescribed period of limitation u/s 18 of the Limitation Act, 1963. Furthermore, the payment of INR 10 lakhs made by the Corporate Debtor to the Operational Creditor on 15-04-2019 will again have the effect of renewal u/s 19 of the Limitation Act, 1963.

Hence, the petition is held to be within the period of limitation.

17. On perusal of the running account ledger of the Corporate Debtor with the Operational Creditor, we are of the opinion that the Invoice No. UN/164 dated 14/09/2018 of INR 19,25,000/- is not due and payable since the payment in respect of the said invoice was already made by the Corporate Debtor two days in advance on 12/09/2018. We are unable to believe the case of the Operational Creditor that the Corporate Debtor's payment of INR 19,25,000/- was towards the arrears and not in respect of Invoice No. UN/164. Thus, we are of the view that the Invoice No. UN/164 dated 14/09/2018 of INR 19,25,000/- should be excluded from the total claim of INR 2,24,20,546/- as no default in respect of the said invoice has been committed by the Corporate Debtor. However, even if the said invoice is excluded from the claim of default, the minimum threshold of rupees one crore is satisfactorily met.
18. As per the e-mail correspondences between the parties herein on 23<sup>rd</sup> March, 2017 and 11<sup>th</sup> August, 2017 (annexed at Pages 106 to 109 of this Petition), the Corporate Debtor submits that there is a dispute with respect to the debts owed by the Corporate Debtor to the Operational Creditor. According to the Operational Creditor, a sum of INR 1.08 crores was due in addition to the liability of INR 35 lakhs by the Corporate Debtor and whereas, according to the Corporate Debtor, only a sum of around rupees INR 73 lakhs was due. This in itself cannot be considered as a genuine pre-existing dispute between the Parties because the Corporate Debtor has failed to substantiate as to how only INR 73 lakhs

was due by it to the Operational Creditor when the invoices and supply of goods have not been disputed by it. No proof of payments by the Corporate Debtor to the Operational Creditor have been furnished either in the reply to the demand notice or in the affidavit-in-reply justifying the claim amount to Rs. 73 lakhs. Mere ledger account differences needing reconciliation cannot be considered as a genuine pre-existing dispute to save the Corporate Debtor from the clutches of CIRP. Moreover, the Corporate Debtor has not produced on record its own ledger or statement of account to prove as to how much payment was made against which of the invoices. No doubt, the initial onus to prove its case is on the Operational Creditor, but in civil proceedings onus is like a pendulum and it keeps shifting. Therefore, in our considered view, the Corporate Debtor was also bound to prove on record the accounts maintained by it which surprisingly have not been brought on record for which an adverse inference has to be drawn against the Corporate Debtor. Thus, we are of the opinion that the defence of pre-existing disputes appear to be spurious and a mere bluster to avoid the corporate insolvency resolution process.

19. The Corporate Debtor in its reply dated 13.01.2022 has raised objection with respect to the defective demand notice issued by the Operational Creditor. The Notice is addressed to one "M/s. **Timekeepers Private Ltd**' and not to the Respondent, "**Timekeepers The Watch Boutique Private Limited**". As such, the Demand Notice falling foul of statutory requirements is defective and does not constitute a valid notice under Section 8 of the IBC. Consequently, the Petition, being based upon a

defective Notice, is also defective and hence the Petition is not maintainable before this Hon'ble Tribunal and the same ought to be dismissed at the threshold itself, with costs. While we agree that the Demand Notice dated 23-12-2020 issued by the Operational Creditor u/s 8 of the Code r.w Rule 5(1)(a) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was addressed to M/s. Timekeepers Private Limited instead of M/s. Timekeepers The Watch Boutique Private Limited, it is also important to note that the said demand notice was rightly served on the Corporate Debtor at its registered office. On perusal of the contents of the said demand notice, we find that the documents annexed therein such as Invoices and Ledger Account correctly mention the name of the Corporate Debtor as Timekeepers The Watch Boutique Private Limited and after perusing the E-mail correspondences exchanged between the parties, which have been annexed to the said demand notice, we can clearly say that the Demand Notice dated 23.12.2020 was, without an iota of doubt, intended to be addressed by the Operational Creditor to M/s. Timekeepers The Watch Boutique Private Limited, the Corporate Debtor. It is also pertinent to note that the said demand notice was accepted by the Corporate Debtor on 28.12.2020 and the Corporate Debtor had also replied to the said demand notice vide Letter dated 08<sup>th</sup> September, 2021. Similar issue had arisen in the case of **Niraj Kumar Singh v/s. LI Digital Payments Private Limited**, wherein the Hon'ble National Company Law Appellate Tribunal ('NCLAT') in **Company Appeal (AT)(Ins.) No. 566/2022** had rejected such technicalities raised by the Corporate Debtor and upheld the decision of the Adjudicating Authority dismissing such technical

contentions raised by the Respondent Corporate Debtor therein. In this regard, specific attention is drawn to the findings of Hon'ble NCLAT at Paragraphs 11, 12 and 13 of the above-quoted judgment delivered on 27.01.2023. Hence, in view of the above, we are not inclined to dismiss this petition on this technical ground.

20. In view of the facts narrated and discussions, as above, this Bench is of the opinion that the Petition deserves to be admitted u/s 9 of the Code. It is, ordered accordingly in the following terms:-

**ORDER**

- (a) The petition bearing **CP(IB)-209/MB/2021** filed by M/s. **Swiss Promotion Private Limited**, the Operational Creditor, under Section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against M/s. **Timekeepers The Watch Boutique Private Limited** [CIN: U99999MH1990PTC056451], the Corporate Debtor, **is hereby admitted.**
- (b) There shall be a moratorium under Section 14 of the IBC, in regard to the following:
- (i) 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;

- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - (iii) 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 (SARFAESI) Act, 2002;
  - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium-
- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
  - ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr. Vijender Sharma**, an Insolvency Professional having registration No. **IBBI/IPA-003/IP-N00003/2016-2017/10022**, (email: [vijender@vsa.net.in](mailto:vijender@vsa.net.in), Mob.: 9810166877), **is hereby appointed as Interim Resolution Professional** to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/ Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Operational Creditor shall deposit a sum of ₹5,00,000/- (Rupees five lakhs only) with the IRP 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.

- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

**Sd/-**  
**ANIL RAJ CHELLAN**  
**MEMBER (TECHNICAL)**  
*Sushil*

**Sd/-**  
**KULDIP KUMAR KAREER**  
**MEMBER (JUDICIAL)**