

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB)No.88/BB/2019
U/s.9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

In the matter of:

M/s. Draeger India Private Limited

10th Floor, Commerz II,
International Business Park,
Oberoi Garden City,
Off Western Express Highway,
Goregaon (East),
Mumbai – 400 063

- Petitioner/Operational Creditor

Versus

M/s. Chaya Health Care Private Limited

No.6, 5th Main,
B Channasandra Main Road,
Kasturi Nagar,
Bengaluru – 560 043

- Respondent/Corporate Debtor

Date of Order: 9th August, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri Nikhil K

For the Respondent : Shri S.Srinivasa along with Shri Prabhakar



ORDER

Per: Rajeswara Rao Vittanala, Member (Judicial)

1. C.P.(IB)No.88/BB/2019 is filed by M/s. Draeger India Private Limited (Petitioner/Operational Creditor), U/s. 9 of IBC, 2016, R/w. Rule 6 of I&B (AAA) Rules, 2016, by inter alia, seeking to initiate Corporate Insolvency Resolution Process in respect of M/s. Chaya Health Care Private Limited (Respondent/Corporate Debtor) on the ground that the Corporate Debtor has committed, default for an amount of Rs.34,88,969.31/- (Rupees Thirty Four Lakhs Eighty Eight Thousand Nine Hundred and Sixty Nine and Thirty One paise only) which includes principal amount and interest.
2. Brief facts of the case, as mentioned in the petition , which are relevant to the issue in question, are as follows:
 - (1) M/s. Draeger India Private Limited (herein after referred as Petitioner/Operational Creditor) is a manufacturer cum supplier of medical/surgical equipment which are primarily used by Hospitals and Diagnostic Centers.
 - (2) M/s. Chaya Health Care Private Limited (herein after referred as Respondent/Corporate Debtor) was incorporated on 11.04.2005. Its Authorized Share Capital is Rs.3,00,00,000/- (Rupees Three Crores only) and Paid-up Share Capital is Rs.2,99,00,000/- (Rupees Two Crores Ninety-Nine Lakhs only).
 - (3) The Corporate Debtor approached the Operational Creditor for supply of equipment for their Hospital at Bangalore and subsequently issued purchase orders to the Operational



Creditor for supply of medical equipment on 31st December 2014 and 13th January 2015. The respective Purchase Orders are specified in the invoices mentioned herein. The Operational Creditor immediately supplied the equipment as per the purchase orders issued by the Corporate Debtor. The Operational Creditor raised invoices (4 Nos.) against the equipment supplied to the Corporate Debtor for a total amount of Rs.24,00,125/- and the Corporate Debtor has duly acknowledged the receipt of the equipment specified in such invoices by way of delivery notes. However, till date, the Corporate Debtor has made a part payment of Rs.3,12,595/- leaving outstanding amount of Rs.21,00,125/- is due and payable by the Corporate Debtor to the Operational Creditor under the above mentioned invoices.

- (4) The Corporate Debtor represented its Managing Director, Dr. Mahesh Chowdappa has acknowledged the outstanding debt for an amount of Rs.21,00,125/- as due and payable to the Operational Creditor in his email date 20th June 2017. But in spite of several assurances made by the Corporate Debtor, the Corporate Debtor has failed to make the payment of an outstanding amount of Rs.21,00,125/- till date.
- (5) The Operational Creditor having no option left was constrained to issue a statutory demand notice dated 28th September, 2018 in Form-3 under Rule 5 of the I&B (AAA) Rules, 2016 by way of registered post acknowledgement due to the registered office address of the



Corporate Debtor, demanding payment in respect of the Operational Debt Rs.21,00,125/- along with interest and the same was delivered on the Corporate Debtor on 3rd October 2018. However, on receipt of the said statutory demand notice, no reply has been filed by the Corporate Debtor till date which goes to show that the abovementioned amount remains due and payable and the same has not been denied by the Corporate Debtor. The defaulted amount Operational debt of Rs.21,00,125/- along with interest at the rate of 18% payable from 1st March 2015 to 1st November 2018 amounting to Rs.13,88,444/- totally amounting to Rs.34,88,969/-.

- (6) It is submitted that the amount claimed in the instant Petition falls within the definitions of Operational Debt as envisaged in Section 5(21) of the Insolvency and Bankruptcy Code 2016 and thus Draeger India Private Limited requires the status of an Operational Creditor as envisaged in Section 5(20) of the Code. The Respondent/Corporate Debtor is a private limited Company registered under the Companies Act, 1956 and falls within the meaning of the term Corporate Debtor as envisaged in Section 3(8) of the Code. Hence, the instant Company Petition is maintainable under the Code.
- (7) It is submitted that the Operational Debt specified herein is an undisputed debt by virtue of the admission in the form of Corporate Debtor's email mentioned supra, wherein, the operational debt is duly admitted towards the transactions specified herein and also for the fact that the Corporate



Debtor has not contradicted the existence of such operational debt and neither has he produced any material or record showing repayment of such operational debt, despite of due and valid service of statutory demand notice on 3rd October 2018 and due and valid service of notice issued by this Tribunal which was served on 22nd April 2019.

- (8) The petitioner has relied upon the judgement of the Hon'ble High Court of Karnataka rendered in its judgment dated 25th June 2013 in the case on Sudarshan Cargo Private Limited Vs. M/s. Techvac Engineering Private Limited has held that admission of liability in the form of an email amounts to acknowledgment of liability as envisaged under Section 18 of the Limitation Act. It is also pertinent to state that such acknowledgment of liability was made by the Managing Director of the Corporate Debtor before expiry of limitation period for filing the instant Petition. It is clear that such admission of the Corporate Debtor was unqualified and unambiguous. Thus as fresh period of limitation to file the instant Petition commenced from the date of acknowledgment of such liability by the Corporate Debtor that is 20th June 2017 and this instant suit is filed well within the period of limitation.
- (9) Furthermore, the Mumbai Bench of the NCLT took the view in DF Deutsche Forfait AG and Anr. Vs. Uttam Galva Steel Ltd. C.P. No.45/I&B/NCLT/MAH2017 if a party fails to repay within a fixed time, then interest can claimed over an operational debt as well. Further the Tribunal held that



while an operational debt is normally based on an agreement to pay for goods or services, it does not mean that interest cannot be claimed particularly if the party fails to repay within the fixed time. The differences between a financial debt and an operational debt are that the former is advanced to get interest over the money and the latter happens in the course of business in relations to goods or services. As time passes, the 'time value of money' is a factor that is present in both kinds of transactions and the Operational Creditor is not barred from claiming interest. In the instant case the Corporate Debtor has failed to pay within the specified due date that is 1st March 2015 and 1st April 2015 in the respective invoices. Hence, interest at the rate of 18% payable from 1st March 2015 to 1st November 2018 amounting to Rs.13,88,844/- interest is payable on the operational debt of Rs.21,00,125/- as claimed in the instant Application.

3. Heard Shri Nikhil.K, learned Counsel for the Petitioner and Shri S. Srinivasa along with Shri Prabhakar, learned Counsel for the Respondent. We have carefully perused the pleadings of the parties and extant provisions of the Code and the rules made thereunder and law on the subject.
4. The case is being listed for admission on various dates viz., 19.03.2019, 08.04.2019, 26.04.2019, 10.05.2019, 04.06.2019, 20.06.2019, 10.07.2019, 22.07.2019, and on 09.08.2019 to give opportunity to the Respondent. However, the Respondents failed to avail the opportunities given.



5. Shri Nikhil .K, learned Counsel for the Petitioner submits that they have issued demand notice twice in Form 3, by demanding to pay the outstanding amount. However, the Respondent failed to respond to the demand notice as well as the Company Petition received. In pursuant to the notice ordered by the Adjudicating Authority, the Respondent has not filed any statement of objections till date due to the Director of the Corporate Debtor is on tour, they do not respond to the demand notice as well as this Adjudicating Authority.

Therefore, the learned Counsel claimed that the instant Petition is filed strictly in accordance with law, and Debt and default in question is admittedly are not in dispute. And a qualified Resolution Professional namely Ms. Hiral Shah, bearing Registration No. IBBI/IPA-001/IP-P00700/2017-2018/11255 is proposed to appoint her as Interim Resolution Professional, who has filed Written Communication dated 14.11.2018. Therefore, the learned Counsel urged the Tribunal to admit the instant Company Petition by initiating CIRP as prayed for.

6. The above facts clearly show that the instant Company Petition is filed in strictly in accordance with provisions of the Code, admittedly, there is a debt and default in question, due notice was given to the Corporate Debtor for payment of outstanding amount. And Ms. Hiral Shah, bearing Registration No. IBBI/IPA-001/IP-P00700/2017-2018/11255 is suggested to appoint her as IRP and she has also filed her written consent communication in Form No.2 dated 14.11.2018, by inter alia, stating that she is a qualified Resolution Professional having Regn. No.IBBI/IPA-



001/IP-P00700/2017-2018/11255, and there are no disciplinary proceedings pending against her with the IBBI; she is currently serving as an Interim Resolution Professional/Resolution Professional/liquidator in NIL proceedings. Therefore, we are of the considered opinion that the debt and default in question are not disputed by the Respondent and the Respondent failed to respond to the notices issued to it as detailed supra. And thus it is fit case to admit by initiating CIRP against the Corporate Debtor, appointing IRP, Moratorium etc., as per the Code.

7. In view of the above facts and circumstances of the case, and by exercising powers conferred on this Adjudicating Authority, U/s 9(5)(i) and other extant provisions of the IBC, 2016, the following orders are passed:

- 1) C.P.(IB)No.88/BB/2019 is hereby admitted by initiating Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Chaya Health Care Private Limited, Corporate Debtor;
- 2) Ms. Hiral Shah, bearing Registration No. IBBI/IPA-001/IP-P00700/2017-2018/11255, who is qualified Resolution Professional, is hereby appointed as Interim Resolution Professional, in respect of the Corporate Debtor to carry on the functions as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;
- 3) The following moratorium is declared prohibiting all of the following, namely:



- 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 supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period;
 - f) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator as also not applicable to surety.
 - g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
- 4) The Board of Directors and all the staff of Corporate



Debtors are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.

- 5) IRP is further directed to strictly adhere to the time schedule as mentioned under the Code. And she is directed to file progress reports from time to time to the Tribunal.
- 6) Post the case for submission of report of the IRP on **09.09.2019.**


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Shruthi