

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI - BENCH-VI

CP (IB) No. 460/MB-VI/2022

[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:

EXCELLOUS COMMODITIES PRIVATE LIMITED

[CIN-U74999MH2013PTC249785]

Registered Office: Unit No. F-130, Ansa 'F'

Industrial Premises Co-Op Soc Ltd, Saki Vihar Road, Sakinaka, Andheri (East), Mumbai – 400072, Maharashtra.

...Operational Creditor

V/s

TANAYA ENTERPRISES PRIVATE LIMITED

[CIN-U52390MH2008PTC187227]

Registered Office: Gala No.13A, 1st Floor,

Zakaria Industrial Estate, Marol Maroshi Road, Andheri (East)

Mumbai -400059, Maharashtra.

...Corporate Debtor

Reserved for Orders: 06.09.2023

Pronounced: 04.10. 2023

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances (Physical):

Operational Creditor: Adv. Ghanshyam Sakpal

Corporate Debtor: Adv. Akash D. Warang

ORDER

[Per: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. Background

1.1 This C.P. (IB) No. 460/MB/C-VI/2022 (Application) was filed on 31.03.2022 by Excellous Commodities Private Limited, the Operational Creditor (OC), under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Tanaya Enterprises Private Limited, the Corporate Debtor (CD). The debt arises from the supply of goods (fabrics) by the OC to the CD, in lieu of which several tax invoices were raised by the OC. In respect of the said tax invoices and E-way Bills raised by the OC upon the CD, a total amount of Rs.2,32,26,919/- fell due to the OC from the CD comprising of principal amount of Rs. 2,02,26,366/- in addition to interest @ 12% p.a. amounting to Rs. 29,31,553/- from 24.09.2020 to 31.10.2021. Heard both the Counsel for the OC and the CD.

2 **Contentions of OC**

- 2.1 The OC alleges that in spite of the delivery of goods and raising eight tax invoices from time to time; and the same being accepted by the CD without any dispute or demur, the CD did not pay the dues arising out of the terms of the said eight tax invoices within ninety days from the date of issue of such invoices as agreed by both the parties.
- 2.2 The OC has also submitted the ledger account of the CD for the period between 01.04.2021 and 22.03.2022 maintained by it in its books of account, which shows the outstanding amount/closing balance as the principal amount claimed in the Application. The OC has also attached

several payment-reminder letters sent by it to the CD, and the same have been acknowledged as received by the CD.

- 2.3 The OC sent a final reminder-letter dated 01.10.2021 calling upon the CD to clear its outstanding dues within a period of seven days from the receipt of the same. The CD replied on 11.10.2021, admitting its dues and requesting further time to pay the said debt. The OC then sent Demand Notice on 05.11.2021 to which the CD replied *vide* letter dated 22.11.2021, again admitting its liability with respect to the total amount claimed in the Application and sought time from the OC to repay the same. The OC, therefore, prays for initiation of CIRP of the CD u/s 9 of the IBC for the default in payment of the amount due i.e., Rs. 2,32,26,919/-.

3 Contentions of CD

- 3.1 As discussed above, the CD in its reply admitted its liability to pay the dues claimed by the OC in the Application and requested for additional time to make the payment and promised that it had full intention to pay the outstanding amount. The CD had initially disputed the interest amount claimed but *vide* letter dated 22.11.2021, it agreed to pay the outstanding amount along with interest.

4 Analysis & Findings

- 4.1 Part IV of the Application filed by the OC mentions the date of default as 24.09.2020. However, the OC has not offered any

explanation as to how it arrived at such a date. It is seen that the OC banks upon the tax invoices to prove the CD's liability to pay. Upon perusal of the tax invoices, it is observed that the date on which the default occurred is ninety days from the date of issue of the invoices (as specified in the said invoices), i.e., ninety days from 21.03.2020, and hence, the date of default in our considered view, is to be taken as 20.06.2020. Interestingly, 20.06.2020 falls within the period specified under Section 10A of the IBC, within which no application for CIRP could have been filed for default occurring between 25.03.2020 and 24.03.2021. Section 10A was introduced as a measure to suspend filing of applications for initiation of CIRP, as a measure to tide over the difficult situation created by COVID-19 pandemic to the corporates. A plain reading of section 10A of the IBC clearly reveals that application for initiation of CIRP for any default that arose on or after 25.03.2020 for a period of six months or such further period as notified (not exceeding one year) from such date was barred. In the Statement of Objects and Reasons appended to the Insolvency and Bankruptcy Code (Second Amendment) Bill, 2020, that replaced the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020, the Hon'ble Finance Minister stated on 09.09.2020 as under:

"2. In the light of the extraordinary economic situation caused by COVID-19 pandemic, a need was felt to temporarily suspend initiation of corporate insolvency resolution process under the Code,

initially for a period of six months or such further period, not exceeding one year from 25th March, 2020, to provide relief to companies affected by COVID-19 to recover from the financial stress without facing immediate threat of being pushed to insolvency proceedings. The benefit of the above said suspension will be available to all those defaults of the corporate debtor that occur from 25th March, 2020 and till the end of the period of suspension.”

4.2 Later, a notification was issued by the Ministry of Corporate Affairs vide No. S.O. 3265 (E) dated 24.09.2020 extending the suspension period for another 3 months w.e.f. 25.09.2020. Later vide notification No. S.O. 4638 (E) dated 22.12.2020, the suspension period was further extended by 3 months w.e.f. 25.12.2020. In effect, the suspension for triggering CIRP was in force for one full year from 25.03.2020 to 24.03.2021, as permissible under section 10A of the IBC. Hence, the date of default in this C.P. becomes crucial to determine whether CIRP of the CD is to be initiated or not.

4.3 It is further noted that there has been clear admission of debt and liability of payment of dues by the CD, as claimed by the OC in the Application, and the amount of Rs. 2,32,26,919/- is in default to be paid by the CD. Thus, it has been established that there was no

payment of unpaid operational debt by the CD. There is nothing to show that any part-payment has been made by the CD till date. However, the date of default as crystallised is observed as 20.06.2020 i.e. ninety days from the invoice as stated in the invoice dated 21.03.2020. The OC, however, pleaded the date of default as 24.09.2020, in the demand notice issued by the OC in Form 3, which is prescribed under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, as well as in Part IV of the Application. If we take the date of default either as 20.06.2020 or as 24.09.2020, both dates fall during the suspension period, i.e., between 25.03.2020 and 24.03.2021, of initiation of CIRP under section 10A of the IBC. We are conscious of the admission of debt and default by the CD. However, we are unable to come to the rescue of the OC as this Application is directly hit by Section 10A of the IBC, and hence, is not maintainable.

ORDER

In view of the above discussions, this Application bearing C.P. (IB) No. 460/MB/C-VI/2022 filed by Excellous Commodities Private Limited, the OC, under section 9 of the IBC for initiating CIRP in respect of Tanaya Enterprises Private Limited, the CD is **Rejected**.

We make it clear that any observations made in this Order shall not be construed as expressing any opinion on merits. The right of the OC available as per law before any judicial/quasi-judicial forum shall not be

prejudiced on the grounds of rejection of the present Application. No orders as to costs. Ordered accordingly.

**Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)**

**Sd/-
K. R SAJI KUMAR
MEMBER (JUDICIAL)**

//LRA/Akshata Shah//