

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. II**

CP (IB) 4137/MB/2018

Under Section 9 of the I&B Code, 2016

In the matter of

Tanaya Enterprises Pvt. Ltd.

F-108/109, Ansa Industrial Estate,
Sakivihar Road, Sakinaka, Andheri (E),
Mumbai – 400 072

...Operational Creditor/ Petitioner

v/s

Risa International Ltd.

604, Kushal Point, 4th Road, behind Uday
Cinema, Ghatkopar (W), Mumbai – 400
086

...Corporate Debtor

Order Delivered on: 31.08.2020

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri. Chandra Bhan Singh, Member (Technical)

For the Operational Creditor/Petitioner: Shahbaz Pathan a/w Nikita
Abhyankar i/b Kavita Sharma, Advocates.

For the Corporate Debtor: Tarun Shroff i/b Ashok Bhatia, Advocate.

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. This is an application being CP(IB)4137/MB/2018 filed by **Tanaya Enterprises Pvt. Ltd.**, Operational Creditor/Petitioner, under section 9 of Insolvency & Bankruptcy Code, 2016 (**Code**) against **Risa International Ltd.**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).

SUBMISSIONS BY THE PETITIONER

2. The Petitioner is a Company incorporated on 01.08.2008 and registered under Companies Act, 1956.

3. The Petitioner has claimed a principal amount of Rs. 90,49,843/- from the Corporate Debtor Plus an interest amount calculated as per the provisions of the MSME Act, 2006.

4. The Petitioner states that the Petitioner is also registered under the MSME Act, 2006 and is engaged in the business of manufacturing and trading of fabrics and garments.

5. The Petitioner and the Corporate Debtor had business relations since September, 2013. The Petitioner sold goods worth Rs. 47,35,79,752/- to the Corporate Debtor during the period of September, 2013 to October, 2014 as per the requirements of the Corporate Debtor, the delivery of which was duly received and acknowledged by the Corporate Debtor.

6. The Corporate Debtor had paid the outstanding dues to the Petitioner from time to time. Under the enclosed outstanding invoices, the total value of the goods supplied to the Corporate Debtor was Rs. 97,55,851/- and the same was payable by the Corporate Debtor to the Petitioner. The details of the outstanding invoices as payable by the Corporate Debtor to the Petitioner are as follows:

Invoice No.	Date	Amount
TEPL/RIL/024/14-15	27.10.2014	17,84,640/-
TEPL/RIL/025/14-15	27.10.2014	23,32,624/-
TEPL/RIL/026/14-15	28.10.2014	14,68,125/-
TEPL/RIL/027/14-15	29.10.2014	10,57,770/-
TEPL/RIL/028/14-15	30.10.2014	17,62,200/-
TEPL/RIL/029/14-15	31.10.2014	13,50,492/-

7. The last payment made by the Corporate Debtor, towards part payment of the Petitioner's dues was Rs. 30,30,000/- made on 22.09.2016 in respect of the said running account, which is maintained by TEPL. A sum of Rs. 23,23,992/- was adjusted against the previous invoices raised by the Petitioner and Rs. 7,06,008/- was adjusted as

part-payment towards the Invoice No. TEPL/RIL/024/14-15 leaving behind Rs. 10,78,632/- recoverable against said invoice. A sum of Rs. 79,71,211/- is recoverable against other invoices aggregating to Rs. 90,49,843/- being the total principal amount outstanding.

8. The Corporate Debtor approached the Petitioner for procuring fabric under mutually agreed conditions. The Petitioner has been supplying goods to the Corporate Debtor since September, 2013. The ledger account statement of the Corporate Debtor as maintained by TEPL for the years 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18 and April 2018 to September 2018 is attached to the said petition.

9. The Petitioner maintained running books of accounts of the Corporate Debtor regarding the above said transactions and invoices and such books of accounts inflict an outstanding debt of Rs. 90,49,843/-. In respect of the above said invoices, various reminders, requests as well as follows ups were made but no positive response was received from the Corporate Debtor.

10. The Corporate Debtor deliberately failed and neglected to pay legally enforceable debt amount to the Petitioner. Thereafter the Petitioner issued a demand notice dated 10.09.2018 under section 8 of the Code, demanding a sum of Rs. 1,77,11,546/-, which was duly received by the Corporate Debtor on 21.09.2018.

11. No reply/dispute has been filed by the Corporate Debtor to the said demand notice. Despite due receipt of the demand notice, the Corporate Debtor failed and neglected to make payment to the Petitioner. The same is reflected in the bank statements of the Petitioner.

SUBMISSIONS BY THE CORPORATE DEBTOR

12. The Corporate Debtor filed reply to the petition denying the liability and raised the following contentions:

- a. The Petitioner has filed this application seeking claim amounting to Rs. 1,77,11,546/-. But the goods worth Rs. 47,35,79,752/- was sold to the Corporate Debtor during the period of September, 2013 to October, 2014 and accordingly sales invoices were raised

by the Petitioner and the Corporate Debtor from time to time has paid the Petitioner the outstanding dues.

- b. The Corporate Debtor mentions that the demand notice dated 10.09.2018 has not been served upon the Corporate Debtor. He mentions that the alleged acknowledgement card annexed at page no. 78 of the petition clearly shows that it is served upon one Brahmecha Modi & Company, a Chartered Accountants Firm and not upon the Corporate Debtor. The Corporate Debtor denies and disputed the service of demand notice and mentions that the Petitioner has directly handed over a copy of the petition before any order was passed by this Hon'ble Tribunal. The petition is not maintainable due to the non-compliance of the mandatory provisions hence this Hon'ble Tribunal be pleased to dismiss this petition.
- c. The Corporate Debtor denies and disputes the invoices and delivery challans relied by the Petitioner. The Petitioner has not annexed any lorry receipts in support of his contentions and claims before this Hon'ble Tribunal. The Corporate Debtor denies and disputes the delivery of the goods as they were never received by the Corporate Debtor. When on earlier occasions the goods were supplied the Corporate Debtor had made payments as per the agreed terms and conditions. All the six invoices and delivery challans raised by the Petitioner are false and fabricated and are denied by the Corporate Debtor. The Petitioner has not relied upon any purchase orders placed on behalf of the Corporate Debtor in respect of these invoices.

SUBMISSIONS BY THE PETITIONER IN REJOINDER

13. The Petitioner filed a rejoinder and made submissions as follows:
 - a. The Petitioner denies that the demand notice is not served upon the Corporate Debtor and further denies that the Petitioner has directly handed over a copy of the petition before any order was passed by this Hon'ble Tribunal.
 - b. The Petitioner further states that the address of the Corporate Debtor as mentioned in the acknowledgement card (at page 78 of the petition), is to the knowledge of the Petitioner, the said office is being used by the Directors of the Corporate Debtor and their relatives. It is pertinent to note that the annual report of the

Corporate Debtor for the year 2018-19 shows the same address as the registered address of the Corporate Debtor.

- c. The copy of the petition was duly served on the Corporate Debtor and the same was duly acknowledged by the whole time Director of the Corporate Debtor. The said whole time Director was present before this Bench on 22.04.2019 and has not made any statement regarding the non-receipt of the petition filed by the Petitioner.
- d. The Petitioner denies the contents that the six invoices and delivery challan raised by the Petitioner are false and fabricated. The Corporate Debtor had failed to give any proof of the alleged falsity and fabrication of the said invoices and the entire case of the Corporate Debtor is based on bare allegations. It is evident that the invoices have been duly acknowledged by the Corporate Debtor by putting their stamp.

FINDINGS

14. On going through the submissions made by the Counsel from the both the sides and on perusing the documents produced on record, this Bench takes note of the fact that the six invoices and delivery challan raised by the Petitioner have been duly acknowledged by the Corporate Debtor by putting their stamp. Hence the contention raised by the Corporate Debtor denying and disputing the invoices and delivery challans does not have any foundation.

15. The Petitioner has also duly produced the running Books of Account of the Corporate Debtor regarding the transactions and invoices. This shows an outstanding Debt of Rs 90,49,843/- due from the Corporate Debtor as on 31.03.2018. This clearly shows the amount due from the corporate Debtor.

16. This Bench on examination, finds that the Demand Notice dated 10.09.2018 has been duly served through registered post by the Petitioner at 604, Kaushal point, 4th floor, behind Uday cinema, Ghatkopar (W), Mumbai. A proof of delivery by way of acknowledgment card has been attached by the Petitioner with his Petition. That it is the correct address for delivery of Demand Notice is borne out by the fact this address is mentioned as the Registered address of the Corporate

Debtor company even in their Annual Report of 2018-2019. This Bench, therefore, has no doubt that the Demand Notice was duly served upon the Corporate Debtor and it chose not to contest it.

17. The Petitioner is registered under the MSME Act, 2006. Since the default amount as per the petition is Rs. 90,49,843/- and the Petitioner claimed Rs. 1,77,11,546/- in demand notice. The Bench, while not going into the actual calculation of interest, is of the view that on the Principal amount due the Petitioner can claim interest on the amount due in terms of Section 16 of MSME Act;

"Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank."

18. The Corporate Debtor has not been able to produce a single piece of paper which points towards it raising any dispute regarding the transactions, invoices or the amount payable. This Bench has no doubt that at least an amount of Rs.90,49,843/- is a liability which is due from **Risa International Limited** and qualifies as Operational Debt both in terms of Section 3(11) and Section 5(21) of the IBC, 2016. This Bench also concludes that there is a default in terms of Section 3(12) of the IBC, 2016 which defines default as "...non-payment of Debt when whole or any part or instalment of the amount of debt has become due and payable..." The two essential requirements, i.e. existence of 'debt' and 'default', for admission of a petition under Section 9 of the I&B Code, have been met in this case.

19. The Applicant has proposed name of Mr. Sanjiv Kumar Arora, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P01462/2018-19/12390] as Interim Resolution Professional, to carry the functions of Interim Resolution Professional as mentioned under I&B Code.

20. The Application under sub-section (2) of Section 9 of I&B Code, 2016 filed by the Operational Creditor for initiation of CIRP in prescribed Form 5, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is complete. The existing operational debt beyond the threshold limit against the Corporate Debtor and its default is also proved. Accordingly, the application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Corporate Debtor deserves to be admitted.

21. This application is filed under Section 9 of I&B Code, 2016, filed by **Tanaya Enterprises Pvt. Ltd.**, against **Risa International Ltd.**, for initiating corporate insolvency resolution process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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 activity under the Securitization 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 possession of the corporate debtor.
- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the

Central Government in consultation with any financial sector regulator.

- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench at this moment appoints Mr. Sanjiv Kumar Arora, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P01462/2018-19/12390] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code. The fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- VII. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of appointment of IRP shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
- VIII. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
- IX. The appointed IRP shall also comply the other provisions of the Code including Section 15 and Section 18 of The Code. Further the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report

within 30 days of the appointment. A liberty is granted to intimate even at an early date, if need be.

22. The Petition is hereby "Admitted". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order.

SD/-

Chandra Bhan Singh
Member (Technical)

SD/-

Suchitra Kanuparthi
Member (Judicial)