



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court– I)
KOLKATA**

C.P. (IB) 97/KB/2021

*A petition under **section 9** of the Insolvency and Bankruptcy Code, 2016, read with rule 6
of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016*

In the matter of:

Rashi Peripherals Private Limited

[CIN: U30007MH1989PTC051039]

..... Operational Creditor/ Petitioner

-versus-

Savera Digital India Private Limited [CIN:U51900WB1995PTC074040]

..... Corporate Debtor/ Respondent

Date of Pronouncement of the order: 10th January 2024

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Balraj Joshi, Member (Technical)

Appearances (via video conferencing/physical):

For the Operational Creditor:

Mr. Rahul Auddy, Adv.

Mr. Aditya Gooptu, Adv.

ORDER

Rohit Kapoor, Member (Judicial):

1. This Court convened through hybrid mode.
2. This is a Company Petition under section 9 of the Insolvency and Bankruptcy Code, 2016 (herein after referred as “the Code” or “IBC”) by **Rashi Peripherals**



Private Limited, hereinafter referred to as “*Operational Creditor*” seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Savera Digital India Private Limited**, hereinafter referred to as “*Corporate Debtor*”.

3. The Corporate Debtor is a private limited company incorporated on 17.04.2013. The nominal share-capital of the company Rs.50,00,000/- and the paid-up share capital of the company is Rs.36,67,500/-.
4. The total amount claimed to be in due to the Operational Creditor, is Rs. 3,13,58,771.72. The date of default is mentioned to be 08.09.2020.
5. The Operational Creditor has relied on the various documents in support of its claims, including:
 - a) Invoices along with proof of delivery of goods, annexed as Annexure **6 (Colly)**;
 - b) Acknowledgements of debt, annexed as Annexures **10, 12, 14 and 16**;
 - c) Cheque issued by Corporate Debtor, annexed as Annexure **21**;

6. Submissions on behalf of the Operational Creditor:

- 6.1 The case of the Operational Creditor is that pursuant to contract/purchase order¹ executed between the parties herein, the Operational Creditor had supplied goods being laptops, computers, hard-drives, accessories, peripherals, IT and allied products to the Corporate Debtor from time to time. The Operational Creditor raised invoices² from time to time in respect of such deliveries. The payment in respect of the same was to be made within 30 days from the invoice date.
- 6.2 The Corporate Debtor used to make on account payments to the Operational Creditor but eventually failed to make timely payments and defaulted on the same. Total 120 invoices remain unpaid.

¹Annexure 4 to the petition

²Annexure 5 to the petition



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- 6.3 The Operational Creditor requested the Corporate Debtor to pay the outstanding amount on various occasions including vide emails dated 18.06.2019³, 24.06.2019, and 27.06.2019⁴.
- 6.4 Subsequently, discussions took place between the parties in the end of June 2019 wherein the Corporate Debtor agreed to make a payment of Rs. 2.5 Crores approximately.
- 6.5 Thereafter, the Operational Creditor again requested the Corporate Debtor to pay the agreed upon amount of Rs. 2,52,48,838/- vide emails dated 01.07.2019 04.07.2019⁵ and subsequently on 08.07.2019⁶. Mr. Gopal Pansari, being the director of the Corporate Debtor replied⁷ to the Operational Creditor's emails on 02.07.2019 and later on 08.07.2019⁸, thereby acknowledging the said debt.
- 6.6 Since the Corporate Debtor failed to make payments in spite of assurances, the Operational Creditor demanded payment of Rs. 2,77,30,600/- vide email⁹ dated 11.07.2019. The Corporate Debtor again acknowledged its debt vide its reply email¹⁰ dated 12.07.2019.
- 6.7 In reply to the Operational Creditor's subsequent email¹¹ dated 19.09.2019 demanding its dues, the Corporate Debtor again issued an email¹² dated 19.09.2019, blaming the laxity of market conditions for the delayed payments.
- 6.8 Due to repeated defaults on part of the Corporate Debtor in making the due payments, the Operational Creditor sent a demand notice¹³ in Form-3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

³Annexure 7

⁴Annexure 8

⁵Annexure 9

⁶ Annexure 11

⁷Annexure 10

⁸Annexure 12

⁹Annexure 13

¹⁰Annexure 14

¹¹, Annexure 15

¹²Annexure 16

¹³Annexure 18



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on 22.01.2020 to the Corporate Debtor. The Corporate Debtor issued no reply to the same.

6.9 Subsequently, after the covid lockdown restrictions were eased, the Corporate Debtor, vide email¹⁴ dated 22.07.2020 sought for details of the invoices from the Operational Creditor, which was provided by the Operational Creditor vide email on 25.07.2020. Following the said communication, certain payments were made by the Corporate Debtor.

6.10 Again, around October 2020, the discussions were held between the parties pursuant to which the Corporate Debtor issued cheque¹⁵ no. 000257 dated 05.11.2020 in favor of the Operational Creditor. However, the same was dishonored¹⁶ upon presentment. Accordingly, the Operational Creditor initiated proceedings¹⁷ against the Corporate Debtor under the Negotiable Instruments Act.

6.11 The Operational Creditor re-issued a demand notice¹⁸ under section 8 of the Code on 16.02.2021. the Corporate Debtor issued a reply¹⁹ to the said demand notice on 25.02.2021, thereby disputing the same.

6.12 The total Amount of default claimed is Rs. 3,13,58,771.72 excluding interest. The date of last receipt of payment is 08.09.2020 and as such the same is taken as the date of default.

7 Analysis and Findings:

7.1 Heard the Ld. Counsel on behalf of the Operational Creditor and Ld. Counsel on behalf of the Corporate Debtor and perused the record.

7.2 It is also noted that the Adjudicating Authority, vide a previous order dated 01.08.2022, had rejected the instant petition on the grounds that the date of default mentioned in part IV of the Form 5 is 08.09.2020 and the same falls within the period excluded under section 10A of the Code. However, the said

¹⁴Annexure 20(Colly)

¹⁵Annexure 21

¹⁶Annexure 22

¹⁷Annexure 23

¹⁸Annexure 24

¹⁹Annexure 26



order was set aside by the Hon'ble National Company Law Appellate Tribunal (NCLAT) vide order dated 21.02.2023 wherein the Appellate Authority has held that since the last invoice was issued on 26.09.2019 and the payment was supposed to be made within 30 days of such invoice, the amount became due much before 25.03.2020 and thus the instant petition was not barred by section 10A.

- 7.3 As a result of such order, fresh notice was issued to the Respondent. In spite of the same, no appearance was filed by the Respondent, nor was reply been filed. Accordingly, the Adjudicating Authority, after having provided the Corporate Debtor several chances to file its representation, set the Corporate Debtor aside on 27.07.2013.
- 7.4 In light of the order passed by the Hon'ble NCLAT in the instant matter, we have perused the series of invoices issued by the Operational Creditor. The last invoice was issued on 26.09.2019, making the date of default to be 26.10.2019. The petition was filed on 22.03.2021. As such, the same is within limitation. In fact, all the invoices were issued in the year 2019 and as such, having taken into account all such invoices, it is clear that the amount in default meets the financial threshold of Rs. 1 crore, as stipulated under section 4 of the Code.
- 7.5 Coming to the correspondences shared between the parties, it is seen that the Corporate Debtor has on several occasions acknowledged its debt, specifically via emails dated 08.07.2019, 12.07.2019 and 19.09.2019.
- 7.6 It is also noted that the first demand notice issued by the Operational Creditor on 22.01.2020 was never replied to by the Corporate Debtor, subsequent to which, the Corporate Debtor had issued cheque no. 000257 dated 05.11.2020 for an amount of 31,358,771.72 in favour of the Operational Creditor. As such, it is abundantly clear that there was clear acknowledgement of debt on part of the Corporate Debtor until its reply dated 25.02.2021 to the second demand notice issued by the Operational Creditor. Even the said reply dated 25.02.2021 contains only denial of the contents of the demand notice. No evidence has been provided



therein by the Corporate Debtor in support of such denial. As such, the same cannot be considered and it is clear to us that the debt has been subsequently acknowledged.

7.7 In light of the aforementioned facts and circumstances, this Adjudicating Authority is satisfied that the Corporate Debtor has defaulted in the repayment of its debt due to the Operational Creditor and as such the instant petition ought to be admitted.

7.8 The petition is complete in all respects and meets all requirements stipulated under the Code.

13.1 It is, accordingly, hereby ordered as follows:-

- i. The application bearing **CP (IB) No. 97/KB/2021** filed by **Rashi Peripherals Private Limited**(Operational Creditor), under section 9 of the Code read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Savera Digital India Private Limited** (CIN: U51900WB1995PTC074040), the Corporate Debtor, is **admitted**.
- ii. There shall be a moratorium under section 14 of the IBC.
- iii. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority 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.
- iv. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- v. **Ms. Rachna Jhunjunwala**, having registration number IBBI/IPA001/IPP00389/2017-18/10707, email:



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egress.rac@gmail.com is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016.

- vi. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- vii. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 one week from the date of receipt of this Order, in default of which coercive steps will follow.
- viii. The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- ix. The Operational Creditor shall initially deposit a sum of ₹3,00,000/- (Rupees three lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC). Further, the Fees of the IRP will be subject to the approval of the COC in accordance with Notification No. IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and Bankruptcy Board of India, as published in the in the Official Gazette.



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- x. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- xi. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means 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.

13.2 **CP (IB) No. 97/KB/2021** to come up on **19.02.2024** for filing the progress report.

13.3 A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 10th day of January, 2024

SM(LRA)