

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT No. V, MUMBAI BENCH**

C.P. No. 1252/I&B/2020

Under section 8 & 9 of the IBC, 2016

In the matter of

**SAB Global Entertainment Media Private
Limited**

(Through its Resolution Professional – Mr.
Mukesh Verma)

Flat No. 112, C Wing, Manish Rose CHS,
Building No. 29, Manish Nagar, Andheri
(West), Mumbai - 400053

.... Petitioner / Operational Creditor

V/s.

**M/s Tanish Entertainment Private
Limited**

Office No. 103, Building No. 3C, 1st Floor,
Oshiwara Breeze CHS Ltd., Patliputra Nagar
Oshiwara, Jogeshwari West, Mumbai -
400102.

.... Corporate Debtor

Order Reserved on: 11.01.2023

Order Pronounced on: 15.03.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via Video Conferencing):

For the Petitioner: Adv. Prakhar Tandon

For the Corporate Debtor: Adv. Arpit Dwivedi

Per: - Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. This Company petition is filed by SAB Global Entertainment Media Private Limited (hereinafter called "**the Petitioner**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against M/s Tanish Entertainment Private (hereinafter called "**Corporate Debtor**") alleging that the Corporate debtor has committed a default in making payment to the Petitioner. This petition has been filed by invoking the provisions of Section 9 Insolvency and bankruptcy code (hereinafter called "**Code**") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. It was brought to the notice of this Bench that the CIRP was initiated against the Petitioner, vide order dated 05.11.2019, of NCLT Mumbai Bench- 1 and Mr. Mukesh Verma was appointment as the Interim Resolution Professional. Thereafter, on 09.12.2019, Mr. Mukesh Verma was appointed as the Resolution Professional of the Petitioner and has filed this petition, under Section 9 of the Code, before this Adjudicating Authority, on the ground that the Corporate Debtor had failed to make payment of a sum of Rs. 1,25,36,014/-.

THE SUBMISSIONS BY THE OPERATIONAL CREDITOR: -

3. The Ld. Counsel for the Petitioner, submits, that upon the request of the Corporate Debtor, the Petitioner had assigned the theatrical rights of 140 episodes of "**Hamara Fasana**" to the Corporate Debtor for Bombay/ Delhi/Nizam circuit for a period of 7 years, in accordance with the Assignment and Transfer Agreement dated 25.03.2017.
4. The Petitioner submits that the Principal amount of Rs. 97,41,400/- was outstanding from the Corporate Debtor, out of

which the Corporate Debtor has paid Rs. 300,000/- and Rs. 9,50,000/- on 25.04.2017 and 01.06.2017 respectively. However, no subsequent payment has been made. Therefore, a principal amount of Rs. 84,91,400/-, along with an interest of Rs. 40,44,614.15/- till 02.06.2020, as per Micro, Small and Medium Enterprises Development Act, 2006 ("**MSMED Act**"), remains outstanding, aggregating to a outstanding debt of Rs. 1,25,36,014/-.

5. It is further submitted that due to the non-payment of the dues, the Petitioner has sent various reminders and requested the Corporate Debtor to clear the outstanding debt. Thereafter, the Petitioner has sent a Demand notice dated 08.06.2020, demanding a payment of outstanding Debt of Rs. 1,25,36,014/-. However, the Corporate Debtor failed to clear its dues and no payment has been made till date. Hence this petition.

REPLY FILED BY THE CORPORATE DEBTOR: -

6. The Corporate Debtor had filed their Affidavit in Reply ("**Reply**") and denied each and every statement, contention and allegation made by the Petitioner.
7. The Corporate Debtor submits that the present petition is not maintainable as the petition does not meet the minimum threshold limit of Rs. 1 Crore for maintaining the Petition under the code. The Petitioner has admitted in the Petition, that the Corporate Debtor has defaulted in payment of Rs. 84,91,400/- under the Assignment and Transfer Agreement of Theatrical Rights dated 25.03.2017 ("**Assignment Agreement**"). Thus, the Learned Counsel, submitted that the amount does not meet the minimum threshold limit to file and maintain a petition under the Code.
8. It is further submitted that the Petitioner in order to cross the minimum threshold limit, has added an amount of Rs.

40,44,614.15/- towards interest payable under Micro, Small and Medium enterprises Development Act, 206 (“MSMED Act”). Moreover, there is no confirmation of account, by either parties with respect to charging of interest on instalment, as no such entry or balance confirmation or recognition of interest is made either by the Petitioner or the Corporate Debtor in the books maintained by them.

9. It is submitted that the Corporate Debtor had paid Rs. 300,000/- and Rs. 9,50,000/- on 25.04.2017 and 01.06.2017 respectively. However, pursuant thereto, the Petitioner had defaulted in fulfilling its obligation under the Assignment Agreement, as the Corporate Debtor suffered financial losses and therefore, the Corporate Debtor could not make any further payment to the Petitioner.
10. It is further submitted that the alleged amount of Operational Debt of Rs. 84,91,400/- become due from 01.06.2017 and the present Petition is filed by the IRP of the Petitioner, in the month of September 2020. This is after the period of limitation of three years as prescribed under the law. The Petitioner had issued the demand notice under Section 8 of the Code, on 08.06.2020 i.e., after expiry of period of limitation of three years. Hence the petition is liable to be dismissed.

FINDINGS:

11. We have heard the Counsel for the parties.
12. In this Petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, the Petitioner has claimed in Part IV of the Petition, that an Operational debt of Rs. 1,25,36,014/- is outstanding against the Corporate Debtor, which is aggregate of the Principal amount of Rs. 84,91,400/-, and interest of Rs. 40,44,614.15/-, payable under Micro, Small and Medium

Enterprises Development Act, 2006 ("**MSMED Act**").

13. The Bench is of the view that the Petitioner in order to meet the requirement of Rs. 1 crore has added a sum of Rs. 40,44,614.15/- towards interest as payable under Micro, Small and Medium Enterprises Development Act, 2006 ("**MSMED Act**") and not as per any Clauses of the Assignment and Transfer Agreement of Theatrical Rights, dated 25.03.2017 ("**Assignment Agreement**").
14. The Bench further note that the Adjudicating Authority does not have powers of a civil court to adjudicate upon the entitlement of the Operational Creditor to the benefits accruing from the MSME Act. Therefore, the Petition does not meet the minimum threshold limit of Rs. 1 crore to file the present Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 and deserve to be **dismissed**.

Sd/-

Anuradha Sanjay Bhatia
Member (Technical)

Sd/-

Kuldip Kumar Kareer
Member (Judicial)