

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I
KOLKATA**

IA (IB) 224/KB/2022

in

CP (IB) No.219/KB/2021

An application under section 60(5) read with Section 9 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Amit Agarwal

... Operational Creditor

Versus

Sparsh Baldev Exports Private Limited [CIN U51101WB2007PTC113811] having registered office at 493 - B, Bengal Jute Mill G. T. Road, Shibpoor, Howrah - 700002

... Corporate Debtor

Date of hearing: 20.04.2022

Date of pronouncement: 06.05.2022

Coram:

Shri Rajasekhar V.K.

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Appearances (via video conferencing):

For the Operational Creditor

: Mr. S. Rajagopalan, Advocate

Ms. Chetna Reddy, Advocate

For the Corporate Debtor

: Mr. Aashish Bernard, Advocate

Mr. Abhishek Sikdar, Advocate

ORDER

Rajasekhar V.K., Member (Judicial):

1. This Court convened *via* video conferencing.
2. An application under section 9 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) has been filed by Mr. Amit Agarwal, proprietor, Adarsh Enterprises – Gagan Pahad (*'Operational Creditor'*) seeking to initiate Corporate Insolvency Resolution Process (*'CIRP'*) against Sparsh Baldev Exports Private Limited (*'Corporate Debtor'*), a company incorporated under the Companies Act, 1956.

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3. This is a demurer application, filed under section 60(5) of the Code, by the Corporate Debtor against the Operational Creditor, *inter alia*, praying for -
 - (a) Dismissal of the main Company Petition being ***CP (IB) No.671/KB/2019*** because the amount claimed in there has accrued during the period when the Ministry of Corporate Affairs *vide* its notification dated 24 September, 2020 and 22 December, 2020 has excluded the period to be taken into account for calculating any claim due to the pandemic.
4. ***Submission of the learned Counsel appearing on behalf of the Corporate Debtor***
 - 4.1 The Respondent is an intermediary providing service of sourcing of iron ores from various mines at Goa and various other locations. The Operational Creditor has raised four invoices dated 12 March, 2021 and as contended by the Operational Creditor, the Corporate Debtor was liable to pay an amount of Rs.1,86,07,330/- (Rupees One Crore Eighty Six Lakh Seven Thousand Three Hundred Thirty only).
 - 4.2 It is a standard practice in mining and minerals industries to levy interest for delayed payments. Accordingly, the Operational Creditor had levied interest at the rate of 18% p.a. i.e., Rs.11,33,702/- (Rupees Eleven Lakh Thirty Three Thousand Seven Hundred Two only). A Debit Note dated 28 June, 2021 was

also raised and served upon the Corporate Debtor. Subsequently, a demand notice dated 29 June, 2021 under section 8 of the Code was also issued by the Operational Creditor.

- 4.3 In para 9 of its petition, the Operational Creditor has stated that the Corporate Debtor is to pay the amount as of 12 March, 2021. Thus, as per the Operational Creditor the date of default is 12 March, 2021, in line with section 3(12) of Code.
- 4.4 As per Section 10A no application for initiation CIRP shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or further period, not exceeding one year from such date, as may be notified in this behalf. It is pertinent to point out that the Ministry of Corporate Affairs *vide* its notification dated 24 September, 2020 and 22 December 2020 exercised its powers conferred under section 10A of the Code and notified a further period of three months..
- 4.5 Thus, as per the notification, no application for initiation CIRP against the Corporate Debtor can be filed for any default arising for a further period of three months from 25 December, 2020 till 25 March, 2021. Hence, in view of the above, the petition filed by the Operational Creditor should be dismissed.

Analysis and Findings

5. We have heard the Ld. Counsel appearing on behalf the parties and perused the record, however, there is no reply by the Operational Creditor in the ***IA (IB) 224/KB/2022***.
6. Upon perusal of the record, it has been noticed that the date of default is 12 March, 2021. As envisaged under the proviso section 10A of the Code, no application for initiating CIRP can ever be filed for any default arising on or after 25 March, 2020 for a period of six months or such further period, not exceeding one year. Also, as per the Central Government's notification dated 22 December, 2020, the time period was extended for three months i.e., till 25

March, 2021. Hence, the date of default falls within the prohibited period covered under section 10A of the Code.

7. In light of the above facts and circumstances, the demurer application being ***IA (IB) No. 224/KB/2022*** *succeeds* and is *allowed*. Resultantly, ***CP (IB) No.219/KB/2021*** is *dismissed*. The Operational Creditor is, however, at liberty to pursue other available remedies under law.
8. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

06.05.2022

GGRB [LRA], SA [LRA]