NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT)(Insolvency) No. 1153 of 2022

IN THE MATTER OF:

Rashi Peripherls Pvt. Ltd. **...Appellant**

Versus

Savera Digital India Pvt. Ltd. **...Respondent**

Present:

For Appellant : **Mr. Mudit Sharma and Ms. Nandini Sharma, Advocates.**

For Respondents : **None.**

ORDER

21.02.2023: Heard Learned Counsel for the Appellant.

This appeal has been filed against the order dated 01.08.2022 passed by the 'National Company Law Tribunal', Kolkata Bench-I, Kolkata in CP (IB)97/KB/2021 by which order the application filed by the Appellant u/s 9 has been rejected as barred by u/s 10A.

2. Notices were issued in this appeal to the Respondent which have been served but no appearance has been filed by the Respondent nor any reply has been filed. The Adjudicating Authority has rejected Section 9 application on the ground that date of default is 08.09.2020 which is within the period excluded u/s 10 A. Para 13 and 14 of the order is as follows:-

> *"13. The date of default i.e. 008.09.2020 comes within the period excluded under section 10A of the Code, which envisages that no application for initiation of CIRP shall be filed for any default*

arising on or after 25.03.2020 which was extended further till March, 2021.

14. Therefore, the present petition is hit be section 10A of the Code and cannot be admitted."

3. Learned Counsel for the Appellant submits that Part IV of the application where particulars of operational debt has been mentioned, clearly indicated that there was default in payment of several invoices beginning from 16.04.2019 till 26.09.2019 and the amount was payable within 30 days from the date of invoice. He submits that Adjudicating Authority has not considered the Part IV in its true spirit and has only taken one line where with the receipt of payment on 08.09.2020 was mentioned and which was also treated to be date of default.

4. We have considered submission of the Learned Counsel for the Appellant and perused the records.

5. Part-IV of the application which is at page 356 of the paper book in column c, it is mentioned that the amount became due after 30 days from the invoice date and in the same column, date of invoices have been mentioned beginning from 16.04.2019 to 26.09.2019. The due date has also been mentioned in the part c of column 4 and due date of the last two invoice was mentioned as 26.09.2019. It is clear from last but two invoices that amount

became due after one month. In part 2 of clause IV following statements have been made:-

> "*The total amount in default is Rs. 31,358,771.72(Rupees Three Crores Thirteen Lakhs Fifty Eight Thousand Seven Hundred Seventy One and Paise Seventy Two Only) excluding interest. The dates of default are mentioned herein above in para 1 (c) in the Table above.*
>
> *The date of last receipt of payment is 08.09.2020 and hence, the date of default is taken as 08.09.2020. Further the date of default of each unpaid invoice is stated in the chart hereinabove which corresponds to 30 days from the date of invoice."*

6. When we look into the claim of the Applicant as is decipherable from Part IV, it is clearly mentioned that date of default of each unpaid invoice is stated in the chart which correspond 30 days from the date of invoice. Last invoice having been issued on 26.09.2019, all amount became due much before the date 25.03.2020. Hence, when we looked into the Part-IV in its entirety, it is clear that the application was not barred by u/s 10A.

7. The Adjudicating Authority committed error in not looking into the Part IV and the details given therein. We, thus are of the view that impugned order is unsustainable. ***The appeal is allowed***. The order dated 01.08.2022

is set aside. The application CP (IB)97/KB/2021 is revived before the Adjudicating Authority to be heard and disposed of in accordance with law. The Adjudicating Authority before proceeding further shall issue a fresh notice to the Respondent and proceed thereafter in accordance with law.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

ss/nn