

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-783(MB)/2021 & IA-723(MB)/2022

in

C.P.(IB)-2119(MB)/2019

Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016.

Application moved by:

Board of Trustees for the Port of Kolkata

...Applicant

Vs.

Mr. Anneel Saraogi

...Respondent/

Resolution Professional

In the matter of

Vedanth.com Worldwide Limited

...Operational Creditor

Vs.

Karthik Alloys Limited

...Corporate Debtor

Order Pronounced on : **03.03.2023**

Coram:

Hon'ble Shri Kishore Vemulapalli : Member (Judicial)

Hon'ble Shri Prabhat Kumar : Member (Technical)

Appearances:

For the Applicant : Mr. Rohit K. Gupta, Advocate.

For the Respondent : Ranit Basu, Advocate.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. Both the Applications have been filed by the Board of Trustees for the Port of Kolkata. In IA-723/2022, the Applicant has prayed for the condonation of delay of 91 days in submission of claim and direction to the Resolution Professional (RP) to admit the claim of Rs.1,36,73,923/-. In IA-783/2021, the Applicant has sought direction to the RP to pay this amount to the Port Trust and declaration in its favor to allow sale of goods / cargo belonging to the Corporate Debtor by way of auction.
2. The Applicant has drawn our attention to the provisions of the Major Port Trust Act 1963 "MPT Act". We have gone through the provisions of Section 59 & 61 of the said Act, which deal with Board's lien on the goods stored in its land for rent due from the owner of the goods and also authorizes the Board to auction such goods after following due procedures. On perusal of the Section 14 of the IB Code, we find that commencement of CIRP prohibits (i) institution of suits and continuation of pending suits or proceedings, and (ii) any action to foreclose/recover or enforce any security interest created by the Corporate Debtor in respect of its property. In the present case, it has been held by us in IA-129/2021 that the RP has failed to bring on record the evidence proving Corporate Debtor's ownership of the goods lying with the Port. Further, the lien over such goods is created by fiction of law i.e. MPT Act and not by Corporate Debtor, hence, Section 14(1)(c) of the Code is not applicable to the present case. Nonetheless, since the Corporate Debtor is not the owner of the goods, the sale of such goods cannot be said to result into initiation of any proceedings against the Corporate Debtor. The Applicant has a right to set off its claim from the value of the properties in its possession and the same is

exercisable in relation to the goods, over which it has acquired a lien in terms of provision of the MPT Act.

3. In view of the above discussion and finding that the Corporate Debtor has not proved its ownership on the goods in IA-129/2021, the Applicant can proceed to exercise its right as contemplated in Section 61 of the said Act provided the money realized from the sale of the goods in its possession, to the extent it is in excess of its claim, shall be held by the Port Authorities in trust for the owner of the goods and remitted to the owner of goods or his successor for dealing with such money in terms of provisions of the Code. In case the money realized is less than the amount of the claim of the Applicant, such shortfall shall be accounted for as claim of Operational Creditor by the Resolution Professional. It is clarified that if Resolution Professional has already admitted this claim, he shall update the claim amounts accordingly. The IAs are **partly allowed** and disposed of accordingly.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)

03.03.2023 / pvs

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

**IA-1657/2021
in
C.P.(IB)-2119(MB)/2019**

Under Section 30(6) of the Insolvency and
Bankruptcy Code, 2016.

Application moved by:

Anneel Saraogi

...Resolution Professional

In the matter of

Vedanth.com Worldwide Limited

...Operational Creditor

Vs.

Karthik Alloys Limited

...Corporate Debtor

Order Pronounced on : **03.03.2023**

Coram:

Hon'ble Shri Kishore Vemulapalli : Member (Judicial)

Hon'ble Shri Prabhat Kumar : Member (Technical)

Appearances:

For the Applicant : Mr. Ranit Basu a/w Mr. Vishesh
Srivastav, Advocates.