

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH - I
KOLKATA
C.P (IB) No. 1699/KB/2018**

An application 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:

IDL Explosives Limited [CIN - U28132TG2010PLC070529]

...Operational Creditor

Versus

Bengal Emta Coal Mines Limited [CIN - U10102WB1996PLC076986]

...Corporate Debtor

Date of Hearing: 27.06.2022

Date of pronouncing the order: 30.06.2022

Appearances (through Video Conferencing/physical hearing)

<i>For the Operational Creditor</i>	:	Mr. Rishav Banerjee, Advocate
	:	Mr. Patita Paban Bishwal, Advocate
<i>For the Corporate Debtor</i>	:	Mr. Joy Saha, Sr. Advocate
	:	Mr. Pushan Majumdar, Advocate
	:	Ms. Asmita Raychaudhuri, Advocate

Coram:

<i>Shri Rajasekhar V.K.</i>	:	<i>Member (Judicial)</i>
<i>Shri Balraj Joshi</i>	:	<i>Member (Technical)</i>

ORDER

Per Balraj Joshi, Member (Technical)

1. The Court convened *via* hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (***‘the Code’***) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by IDL Explosives Limited (***‘Operational Creditor’***) a company incorporated under the Companies Act, 1956, having its office at IDL Road, Kukatpally Hyderabad - 500072, by Mr. Atul Khapre, Senior Manager Marketing, duly authorised *vide* Board Resolution dated 30 July, 2018¹ for initiation of Corporate Insolvency Resolution Process (***‘CIRP’***) against Bengal Emta Coal Mines Limited (***‘Corporate Debtor’***), a company incorporated under the Companies Act, 1956, having its registered office at 5B, Nandalal Basu Sarani, Kolkata -700071
3. The present Petition was filed on ***24 December, 2018*** before this Adjudicating Authority. The total amount claimed in default is Rs.86,74,007/- (Rupees Eighty Six Lakh Seventy Four Thousand Seven only) [*Principal - Rs.55,36,003/- and Interest – Rs.31,38,004/-*], inclusive of interest calculated @ 18% per month from March, 2016 till 30 April, 2018. The first default is stated to be on ***14 March, 2015***.
4. As per Part – II of the Petition the authorized and paid-up share capital of the Corporate Debtor is 13,84,69,000/- (Rupees Thirteen Crore Eighty Four Lakh Sixty Nine Thousand only).

¹ Annexure A-3, page 17 of the Petition.

5. Submissions by the Ld. Advocate appearing on behalf of the Operational Creditor.

5.1 The Operational Creditor supplied explosives in bulk to the Corporate Debtor in the year 2013 and 2014.² Several invoices were raised against the Corporate Debtor with respect to supplies by the Operational Creditor.

5.2 As per invoices raised the total consideration amount was Rs.1,18,28,289/- (Rupees One Crore Eighteen Lakh Twenty Eight Thousand Two Hundred Eighty Nine only), however, a sum of Rs.62,92,286/- (Rupees Sixty Two Lakh Ninety Two Thousand Two Hundred Eighty Six only) was paid but a sum of Rs.55,36,003/- (Rupees Fifty Five Lakh Thirty Six Thousand Three only) still remains due.

5.3 Several reminders were sent to the Corporate Debtor for clearing the pending payment but no responses were received. On 30 May, 2018, a statutory demand noticed under section 8 of the Code was sent to the Corporate Debtor and the same was delivered.

5.4 In pursuance of the purchase order dated 15 February, 2014³, where the Corporate Debtor requested the Operational Creditor to supply the bulk explosives to their Pachwara (North) Block OCP, Amrapara, Pakur, Jharkhand, the last invoice was raised on 13 February, 2015.⁴

5.5 The Operational Creditor also submitted their claim on 12 February, 2016 to in reference to the notification No.11//1/2014/NA dated 15 December, 2015.⁵

6. Submissions by the Ld. Counsel on behalf of the Corporate Debtor

6.1 The Ministry of Coal, Government of India had allocated Tara (East & West), Bajore, Gangaramchak and Pachwara (N) Coal Blocks to the West Bengal Power Development Corporation Limited (**'WBPDCCL'**), a fully owned power

² Annexure -6, pages 21 – 34 of the Petition.

³ Page 34 of the Petition.

⁴ Page 67 of the Petition.

⁵ Annexure A-10 of the Petition.

Utility of the state of West Bengal. Thereafter, WBPDCCL for the development of the said blocks formed a joint venture company in the name of Bengal Emta Coal Mines Limited, i.e., the Corporate Debtor in this matter.

- 6.2 By virtue of a judgment dated 25 September, 2014 in Writ Petition (CRL) No. 120 of 2012, the Hon'ble Supreme Court held that the allocation of coal blocks mad during the year 1993 to 2010 were arbitrary and illegal and cancelled the allocation of 204 coal blocks out of 218.
- 6.3 In view of the above, the operations of the coal block allocated to WBPDCCL stopped since 01 April, 2015

Analysis and Findings

7. Heard the Ld. Counsel for the Financial Creditor and the Ld. Counsel for the Corporate Debtor and perused the concerned documents annexed to the Petition.
8. Upon perusal of the Reply at page 4 point (v) it is apparent that due to no operational income the Corporate Debtor has no substantial assets to pay off its debts and liabilities. These submissions would tantamount to the existence of default on the part of the Corporate Debtor. It is also pertinent to mention that the Corporate Debtor nowhere disagreed with the fact that there is existence of Operational Debt.
9. Further, as per the submission of claim of the Operational Creditor to the section officer, nominated authority, Ministry of Coal, Government of India at page 71 of the Petition, 100% of the payment for the month of December 2014, January 2015 and February, 2015 were pending for payment. As envisaged under section 9(3)(b) of the Code, an affidavit has been filed by the Operational Creditor. From the available record, it is apparent that the Corporate Debtor had never raised any dispute with respect to the services of the Operational Creditor.
10. From the above facts we can construe that there is an existence of debt and default without any dispute. However, be that as it may, the question that arises is ***whether this application is within limitation or not*** because as per

the records available the date of default is 14 March, 2015 and this instant application has been filed on 24 December, 2018 i.e., beyond three years from the date of default.

11. In *Sesh Nath Singh & Another v. Baidyabati Sheoraphuli Co-Operative Bank Limited and Another*⁶ the Hon'ble Supreme Court has held that (Para 60);

“It is true that a valuable light may accrue to the other party by the law of limitation, which should not lightly be defeated by condoning delay in a routine manner. At the same time, when stakes are high, the explanation should not be rejected by taking a pedantic and hypertechnical view of the matter, causing thereby irreplaceable loss and injury to the party against whom the lis terminates. The courts are required to strike a balance between the legitimate rights and interests of the respective parties.”

Applying these principles here, this is a matter where provisions of sub-section (2) of section 14 of the Limitation Act, 1963 should apply and the time taken in proceedings before the Nominated Authority should be excluded. Once this period is excluded, the present application would be within limitation.

12. In view of the above facts and circumstances, we are satisfied that the present petition made by the Operational Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time. Further, no disputes were ever raised by the Corporate Debtor.
13. It is, accordingly, hereby ordered as follows:-
- a) The application bearing *CP (IB) No. 1699/KB/2018* filed by IDL Explosives Limited, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to

⁶ (2021) 7 SCC 313 decided on 22 March, 2021

Adjudicating Authority) Rules, 2016 for initiating CIRP against Bengal Emta Coal Mines Limited, is ***admitted***.

- b) There shall be a moratorium under section 14 of the IBC.
- c) 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.
- d) 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.
- e) ***Mr. Swapnil Jain***, registration number ***IBBI/IPA-001/IP-P-02498/2021-2022/13872***, email: ***swapniljain88@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. 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.
- f) 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 Code. 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.

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- g) 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.
- h) The Operational Creditor shall deposit a sum of **Rs.4,00,000/- (Rupees Four 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).
- i) 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 and email immediately, and in any case, not later than two days from the date of this Order.
- j) 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.
14. **CP (IB) No. 1699/KB/2018** to come up on **10 October, 2022** for filing the periodical report.
15. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**BALRAJ
JOSHI** Digitally signed by
BALRAJ JOSHI
Date: 2022.06.30
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Balraj Joshi
Member (Technical)

**Rajasekhar
V K** Digitally signed by Rajasekhar V K
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Rajasekhar V.K.
Member (Judicial)

Safura A., [LRA]