

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1392 of 2023 & I.A. No. 4976 of 2023

(Arising out of the Order dated 19.09.2023 passed by the National Company Law Tribunal, Jaipur Bench in CP No. (IB)- 18/9/JPR/2021)

IN THE MATTER OF:

Irfan Khan Suspended Director of

M/s Western Energetics Pvt. Ltd.

R/O Sabu Ka Paar, BUKAR,

Ramsar, Barmer-344502 (Rajasthan)

...Appellant

Versus

1. Rakesh Kumar Goswami

Proprietor of Lamsyn Enterprises & Anr.

EF-27, Ashiana Garden, Bhiwadi-301019

...Respondent No.1

2. M/s Western Energetics Pvt Ltd.

Through Mr. Satyendra Prasad Khorania,

Interim Resolution Professional

G-1, 958, Phase-III RIICO Industrial Area,

Bhiwadi, Alwar-301019

...Respondent No.2

Present:

For Appellant

Mr. Manu Beri, Mr. Prateek Kasliwal, Mr. Raunak Raheja & Ms. Kudrat Mann, Advocates.

For Respondents

Mr. Amol Vyas, Advocate for R-1 Mr. Eshaan Sanghi & Mr. Prashant Sharma, Advocates for R-2

J U D G E M E N T

(24 .02.2026)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed by the Appellant i.e., Mr. Irfan Khan, who is the suspended Director of M/s Western Energetics Pvt. Ltd. under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('Code') against the Impugned Order dated 19.09.2023 passed by the National Company Law Tribunal, Jaipur Bench, ("**Adjudicating Authority**") in CP No. (IB)- 18/9/JPR/2021.

Rakesh Kumar Goswami, who is the Proprietor of Lamsyn Enterprises is the Respondent No.1 herein.

M/s Western Energetics Pvt. Ltd., the Corporate Debtor, through Mr. Satyendra Prasad Khorania the Resolution Professional is the Respondent No.2 herein.

2. We note that the appeal has been filed by the Appellant against the order dated 19.09.2023 passed by the Adjudicating Authority, in CP No. (IB)- 18/9/JPR/2021, whereby the Adjudicating Authority initiated Corporate Insolvency Resolution Professional (CIRP) under Section 9 of the Code. It is the case of the Appellant that the alleged default relates to the Section 10A suspension period (defaults on or after 25.03.2020 up to 24.03.2021), which falls within the statutory suspension period prescribed under Section 10A of the Code.

3. We note that the Respondent No. 1 (Operational Creditor) has been engaged in business transactions with the Corporate Debtor over a period. It is the case of the Appellant that running account has been maintained between the

parties. The Appellant submitted that, in the case of a running account, the date of default cannot be determined by reference to the dates mentioned in individual invoices; rather, it need be reckoned from the date of the last payment effected by the Corporate Debtor. The Appellant pleaded that in the present case, the date of default is 29.01.2021, being the date of dishonour of cheques issued by the Corporate Debtor to the Respondent No.1 which falls squarely within the period of suspension, and accordingly, the Application under Section 9 of the Code should have been dismissed. The Appellant submitted that existence of a running account is substantiated by the fact that lump-sum payments were made to the Respondent No. 1, as opposed to payments precisely matching the value of specific invoices. The Appellant referred to the Certificate issued by the banker, evidencing lump-sum payments since 18.08.2018. The Appellant contended that the Respondent No. I/Operational Creditor misled the Adjudicating Authority by asserting in the Section 9 application that material was supplied only since August 2019, whereas the ledger maintained in the books of the Operational Creditor clearly establishes the existence of a running account and continuous payments since 2018.

4. The Appellant emphasized that the Respondent No.1 did not state and the date of default in Part -IV which is a mandatory statutory requirement under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, rendering the Application non maintainable ab initio.

5. It is the case of the Appellant that the date of default cannot be reckoned from the date(s) mentioned in the invoices but must be taken from the date of the last payment made by the Corporate Debtor. The Appellant pleaded that the date of default in the present case (29.01.2021) falls squarely within the period of suspension, the Adjudicating Authority has erred in allowing the application under Section 9 of the Code.

6. The Appellant further pleaded that the Corporate Debtor has regularly made payments to the Operational Creditor since 18.08.2018 onwards, including during the COVID-19 suspension period, with specific payments effected on 17.07.2020, 24.07.2020, and 13.11.2020. The last payment was made by the Corporate Debtor on 27.01.2021 through cheque(s), which were subsequently dishonoured on 29.01.2021. The making of payments even during the suspension period demonstrates the clear intent of the Appellant to honour and settle its obligations. It was owing to the severe financial stress occasioned by the COVID-19 pandemic that the Appellant's cheques came to be dishonoured. The Corporate Debtor effected its last payments to the Operational Creditor on 22.01.2021 and 27.01.2021 vide two cheques amounting to Rs. 50,00,000/- and Rs. 25,00,000/- respectively, which were dishonoured on 29.01.2021, pursuant to which a legal notice was issued by the Operational Creditor/Respondent No. 1 against the Corporate Debtor

7. The Appellant tried to impress upon us that, since the cheques were dishonoured on 29.01.2021, the default is deemed to have occurred during the

period of suspension as provided under Section 10A of the Code (i.e., on or after 25.03.2020 up to 24.03.2021), as Section 10A provides a condition that in case the date of default is post 25.03.2020, then in that case an Operational Creditor cannot file an application under Section 9 of the Code.

8. At this stage, we note Section 10A, which reads as under:

“Section 10A. Suspension of Initiation of corporate insolvency resolution process.-

Notwithstanding anything contained in section 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such farther period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation. --For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March,2020”

(Emphasis supplied)

9. The Respondent No. 1/the operational creditor submitted that it supplied the material to the corporate debtor through various invoices starting from 20.04.2019 to 19.09.2019 and every invoice contained condition that interest @24% will be charged, if the payment is not made within 30 days of the bill date. The Respondent No. 1 argued that each invoice became due and payable 30 days after the date of the invoice. Since the last invoice is dated 19.09.2019, therefore, all the invoices became due and payable on or before 19.10.2019. The Respondent No. 1 submitted that the date of default is relevant only for the purpose of determining the limitation period (3 years under Article 137 of the Limitation Act) and the Adjudicating Authority is required to satisfy itself only events that proves the occurrence of a debt and default. The Respondent No. 1 stated that in the present case, all the invoice is of 2019 and the insolvency application came to be filed by the Operational Creditor in the year 2021 and therefore the issue of limitation does not arise at all. The Respondent No. 1 stated that in its application, it had mentioned that the date of default is 30 days from the date of the invoice.

10. The Respondent No. 1 pleaded that in terms of section 3(12) of the code, the default is non-payment of debt, when whole or any part or instalment of the amount of debt become due and payable and is not paid by the debtor or corporate debtor, as the case may be. Thus, the amount mentioned in the invoices became due & payable after the expiry of the 30 days of the invoice date and all the said

dates falls prior to 25th March-2020, therefore, there is a clear default within the meaning of the aforesaid provision by the Corporate Debtor.

11. We note that no record has either been placed by the parties that there was any settlement between the Operational Creditor and the Corporate Debtor. We note that cheques were issued by the Corporate Debtor to discharge its outstanding liabilities which happened prior to 19.09.2019 (which is not covered by Section 10A period) and the same were dishonoured as the same do not shift the due date of payment.

12. Thus find that section 10A of the Code is not applicable in the present case as the section 10A mandate moratorium in filing of the insolvency application u/s 7, 9 & 10 for any default arising on or after 25th March 2020, where in the present case, all the defaults relating to the respective invoices has fallen prior to 25th March 2020, as noted earlier.

13. We also observe that the Corporate Debtor has not disputed the existence of debt and only objection raised by the corporate debtor is regarding the applicability of 10A of the Code.

14. We observe that Section 10A of the Code is not applicable in the present appeal as Section 10A is not applicable to the defaults which have been committed prior to 25.03.2020. The debt in respect of which the present appeal is for period from 20.04.2019 to 19.09.2019. We also note that the amount was to be paid within a period of 30 days from the date of receipt of the invoice, thus the debt fell due 30 days after the date of the invoice and therefore, the date of default

is 19.10.2019, which can be considered the date of default. Hence, Section 10A has no applicability, in the present case and the Corporate Debtor clearly committed default prior to the Section 10A period of the Code.

15. We further observe that the Respondent No. 1 filed Section 9 application on the basis of the default committed by the Corporate Debtor on 19.10.2019 and not on the basis of the dishonour of cheques issued by the Corporate Debtor to the Operational Creditor. Thus, we reject argument of the Appellant on this issue.

16. We also observe that the Respondent No. 1 supplied the material to the Corporate Debtor through various invoices which dated 20.04.2019 to 19.09.2019 and each invoice contains a condition that interest @ 24% will be charged, if the payment is not made within 30 days of the date of invoice. Further, each invoice became due and payable 30 days after the date of the invoice. Since the last invoice is dated 19.09.2019, therefore all the invoices became due and payable on or before 19.10.2019, thus the amount mentioned in the invoices became due & payable after the expiry of 30 days of the invoice date and all the said dates fall prior to 25.03.2020. In view of this, we also negate the pleading of the Appellant regarding running account status between Corporate Debtor and Operational Creditor.

17. We also find that judgment of this Appellate Tribunal passed in *Vishal Agarwal Erstwhile Director of Gagan I-Land Township Pvt. Ltd. vs. ICICI Prudential Real Estate AIF-1 & Anr.* [(2023) ibclaw.in 68] and judgment of the Hon'ble Supreme Court of India in *Mobilox Innovations Pvt. Ltd. vs Kirusa*

Software Pvt. Ltd., MANU/SC/1196/2017, supports the case of the Respondent No. 1.

18. Now we will deal another issue raised by the Appellant that the Corporate Debtor by issuance of cheques which were dishonoured thus the date of default is the date when the cheques were dishonoured which falls in 10 A period. We are of the view that it was not the intent of the parliament to disqualify any applicant from filing any application under Section 7 & 9 of the Code for the default arising before 25.03.2020 under Section 10A of the Code. We note that any application filed for any default arising on or after 25.03.2020 for a period of six months as such other period, not exceeding one year were barred only. Thus, we do not agree with the view of the Appellant on this issue.

19. In view of above discussion, we do not find any merit in the appeal. The appeal fails and stand rejected. I.A., if any, are closed. No Cost.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

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