

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI  
Company Appeal(AT)(Insolvency) No. 357 & 358 of 2021**

**IN THE MATTER OF:**

**Lalitkumar Kesarimal Jain**

**...Appellant**

**Vs**

**JM Financial Trustee Company Pvt Ltd. & Ors.**

**Respondents**

**Present:**

**For Appellant: Mr. Sudipto Sarkar, Sr. Advocate with Mr. Abhijeet Sinha, Mr. Himanshu Satija, Mr. Shadab S. Jain, Mr. Divyang Chandiranani and Ms. Prefana Wagh Advocates**

**For Respondents Mr. Ramji Srinivasan, Sr. Advocate with Ms. Shubhabrata Chakraborti, Ms. Sharmishtha Ghosh, Mr. Jinal Shah, Advocates for Respondent No. 1.**

**ORDER  
(Through Virtual Mode)**

**11.05.2021** The challenge in these appeals is the impugned order of admission passed under section 7 of the Insolvency and Bankruptcy Code 2016 by the Adjudicating Authority passed in CP No. (IB)-960 (MB)/2020 and CP 961 (MB)/2020.

We have heard the arguments of the learned senior counsels, Mr. Sudipto Sarkar, for Appellant and Mr Ramji Srinivasan for Respondents at the admission stage, on issuing interim stay orders for stopping the CIRP of the corporate debtor.

The Appellant challenges the order mainly on the ground that there is no financial debt due to respondent number 1; the petition is not maintainable given section 10 A of the Code; there is no default of 1<sup>st</sup> respondent under consent terms; the alleged default of 2<sup>nd</sup> and 3<sup>rd</sup>

instalments on the consent terms are of 25 March 2020, and hence it can be excluded in terms of Sec 10A of the Code; outstanding amounts under the 1<sup>st</sup> instalment, if at all liable for panel interest, would be less than Rupees one Crore, i.e. below the threshold limit under section 4 of the Code.

As per the consent terms, Rupees One hundred fifty crores (₹1 50 crores) in 10 instalments commence with 1<sup>st</sup> instalment of ₹ ten crores(10 crores) payable on 31 January 2020. The consent terms also provided a cure of 30 days for making payments of the respective instalments set out in the consent terms and panel interest at the rate of 24% per annum for each day of delay in making payment on the designated due date. The cure period of 30 days available for late payments was subject to payment of a delay consideration at the rate of 24% per annum per day of delay and extendable at the sole discretion of Respondent No. 1.

Respondent No. 1 issued a letter to the corporate debtor on 13 April 2020 demanding payment of the 2<sup>nd</sup> instalment of ₹ ten crores due on 31 March 2020 and the interest amount for the delay in payment of the 1<sup>st</sup> instalment.

Similarly, Respondent No. 1 sent letters dated 4 June 2020 and 23 July 2020, among other things demanding payment of sums due for 2<sup>nd</sup> and 3<sup>rd</sup> instalments under the consent terms payable on 31 March 2020 and 30 June 2020, respectively.

The appellant contended that respondent No. 1, coupled with acceptance of amounts paid by the corporate debtor of the 1<sup>st</sup> instalment, has extended the

cure period by five days about the alleged delay in payment of 1<sup>st</sup> instalment as per clause 5 of the consent terms.

The appellant further contended that notwithstanding the operation of section 10 A of the Code, respondent No. 1 filed the said Company Petition No's 960 of 2020 and 961 of 2020 before the Adjudicating Authority seeking initiation of CIRP in purported exercise of its right under clause 10 of the consent terms upon alleged non-payment of instalments given the consent terms as well payment on account of the 'delay interest' towards the 1<sup>st</sup> instalment.

The learned senior counsel Mr Ramji Srinivasan representing respondent No. 1, argued that the appellant had committed default in making payment of the 1<sup>st</sup> instalment as per the terms of the settlement. It is contended that the appellant has made the payment of the 1<sup>st</sup> instalment into tranches of ₹ 50,115,159 on 28 February 2020 and ₹ 49,885,770 on 6 March 2020, i.e. total ₹ 10,00,00,929. It is contended that even if we assume that the cure period of 30 days is applied, which otherwise is the discretion, the period of payment of 1<sup>st</sup> instalment was payable only up to 1 March 2020, i.e., after taking into account the cure period of 30 days. Also, the corporate debtor did not pay panel interest of 24% per annum for each day of delay. Therefore the corporate debtor has committed default in making a payment towards any of the instalments due, and also there is a breach of consent terms by the corporate debtor.

Further, on 5 June 2020, Section 10 A of the Code had been enacted, which suspended operation of section 7 of the Code and excluded defaults

after 25 March 2020 from conferring the right to initiate insolvency resolution process under the Code for an initial period of 5 months from 25 March 2020. The operation of Section 10 A was later extended by notification dated 24 September 2020 and 25 December 2020 issued by the Central Government.

The appellant contends that due to the Global Pandemic, Covid 19, several companies had large-scale default in payments. As a shield to protect the companies, the Central Government issued notification No. SO 1295 (EE) increased the minimum monetary threshold for filing a petition before the NCLT to ₹ One Crore. The appellant further argued that outstanding amounts under the 1<sup>st</sup> instalment, if at all payable as the panel interest, would be less than Rupees One Crore, i.e. below 'threshold limit' as provided under section 4 of the I&B Code 2016.

Ld. Counsel for the Respondent No. 1 accepts the notice. Issue notice to the Other Respondents by speed post. Requisites alongwith process fee, be filed, if not filed within two days. If the Appellant provides the Respondent's email id, let notice also be issued through email.

Meanwhile, the Constitution of COC shall remain stayed, if not constituted, until the next date of hearing.

Let the matter be fixed on **3<sup>rd</sup> June, 2021** under the caption 'For Admission (After Notice)'.

**[Justice Jarat Kumar Jain]**  
**Member (Judicial)**

**(V.P. Singh)**  
**Member(Technical)**

Akc/Gc