

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V
(Division Bench)

Item No.-503
IB-362/ND/2021
RA-192/2023

IN THE MATTER OF:

TLG India Pvt. Ltd

Vs.

Chikai Global Pvt. Ltd.

.....Applicant

.....Respondent

SECTION

U/s 9 IBC

Order delivered on 11.07.2024

CORAM:

SHRI MAHENDRA KHANDELWAL,
HON'BLE MEMBER (JUDICIAL)

Dr. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)

HYBRID HEARING (PHYSICAL & VC)

PRESENT:

For the Applicant : Sr Adv Ritin Rai, Adv Dayaar Singla, Adv Shivani
Purohit

For the Respondent : Adv Sandeep Bisht, Adv Shruti Goyal

ORDER

RA-192/2023:-

This is an application filed by the Operational Creditor under Rule 11 of NCLT Rules, 2016 seeking restoration of Company Petition IB-362/ND/2021 which was dismissed as withdrawn vide order dated 13.05.2022.

Heard Ld. Sr. Counsel on behalf of Applicant and also Ld. Counsel for the Non-Applicant. As mentioned in order dated 13.05.2022 that an application bearing no. IA-2228/2022 for withdrawal of Company Petition IB-362/ND/2021 was filed on account of settlement agreement. A copy of the settlement agreement was also filed with the application. Accordingly, liberty was granted to the Applicant to withdraw the main Section 9 petition subject to payment of cost of Rs. 5,000/- to be deposited in the Prime Minister Relief Fund. Ld. Counsel for the Applicant referred to Para-4 of the settlement

agreement wherein it was stated that the Corporate Debtor had agreed that if any of the post-dated cheques is dishonoured, then the Operational Creditor shall have the right to continue with their legal rights as Operational Creditor under Section 9 petition of the IBC. Ld. Counsel also referred to the decision of Hon'ble NCLAT dated 20.07.2022 in Company Appeal (AT) (Insolvency) No-103/2022 in the matter of Pooja Finlease Ltd vs. Auto Needs (India) Pvt Ltd wherein the Hon'ble NCLAT has referred to a similar clause of the settlement agreement and stated that when the application for withdrawal was allowed in view of the consent term of the settlement agreement, the said clause shall be treated to be part of the order which shall entitle the Petitioner to revive the petition. Ld. Counsel on behalf of Non-Applicant submitted that the proceeding in respect of dishonor of cheque is also pending in terms of Section 138 of the Negotiable Instruments Act. Therefore, this present petition of Section 9 should not be restored. It is the settled law that pending of petition of proceeding under Section 138 of the Negotiable Instruments Act does not preclude the parties to initiate the IBC proceedings. In view of this, the present petition is allowed and IB-362/ND/2021 is restored.

Since the right to file reply of Corporate Debtor was closed in the earlier proceeding, however, in the interest of justice, we deem it appropriate that 2 weeks' time be granted to the Corporate Debtor to file their reply to Section 9 petition. With these observations, the present RA-192/2023 **is disposed of**. List the main matter on **27.08.2024**.

Sd/-
(Dr. SANJEEV RANJAN)
MEMBER (T)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (J)