

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT VI, NEW DELHI**

I.A. 4081/2022

IN

Company Petition No. (IB) – 1013 (PB) /2020

*Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 r/w Rule 11 of the National
Company Law Tribunal Rules, 2016.*

In the matter of:

M/s. Finsbury Global FZE,

At: PO Box No.40493

Ajman Free Zone

Ajman United Arab Emirates

Also at: PO Box No. 922144, Dubai

...Financial Creditor/ Applicant

Versus

M/s. Uttam Sucrotech International Pvt. Ltd.

At: No. 95, F.I.E

Patparganj Industrial Area

New Delhi- 110029

Also at: H-194, Sector 63, Noida

UP- 201301

...Corporate Debtor/Respondent

Order Pronounced on: 04.05.2023

Coram:

Shri. Bachu Venkat Balaram Das, Member (Judicial)

Shri. Rahul Bhatnagar, Hon'ble Member (Technical)

For the Applicant: Adv. Neha Sharma

ORDER

PER- RAHUL BHATNAGAR , MEMBER (TECHNICAL)

1. The present Application has been filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016 praying for the following reliefs:
 - Pass orders to revive C.P. (IB)-1013 (PB)/2020 filed by the Applicant/ Operational Creditor against the Corporate Debtor.
 - Take up C.P. (IB)-1013 (PB)/2020 for hearing at the earliest;
 - Pass such other or further orders and /or directions as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.

2. The brief facts as averred by the Applicant for filing the present Application are as follows:

- i. That the Corporate Debtor vide Purchase Order dated 28.11.2017 ordered seven Rotary Leaf Filters (RLF) for a sum of USD 9,64,509/-. The Applicant delivered 4 RLF which were accepted by the Corporate Debtor without demur. The Applicant raised two invoices dated 24.07.2019 for USD 5,51,148/- and 14.08.2019 for USD 47,400/-. However, the Corporate Debtor failed to make any payment against the said invoices. Thereafter, the Operational Creditor filed an application bearing number IB-1013/(PB)/2020 under Section 9, IBC, 2016 before this Tribunal.
- ii. That the Corporate Debtor approached the Applicant/Operational Creditor to amicably settle the matter. The matter was eventually settled and the same was recorded in the Settlement Agreement dated 09.11.2021. Therefore, the Operational Creditor withdrew the Section 9 Application.
- iii. That the Corporate Debtor has again defaulted under the Settlement Agreement dated 09.11.2021, which

was the very basis for the Applicant/Operational Creditor to withdraw the Section 9 Application and hence the Operation Creditor wishes to revive the Section 9 Application.

iv. That the Hon'ble National Company Law Appellate Tribunal in the case of *M/s ICICI Bank Ltd. vs. OPTO Circuits (India) Ltd in Company Appeal (AT) (Ins) No. 146 of 2021* vide judgment dated 28.04.2022 held that when the Corporate Debtor defaults under OTS, the other side can revive the CIRP proceedings and should not be compelled to file fresh proceedings.

3. The Corporate Debtor has filed its reply against application seeking revival of the Section 9 petition filed by the Operational Creditor stating as under:

i. That the Hon'ble National Company Law Appellate Law Tribunal (NCLAT), New Delhi in *SRLK Enterprises LLP vs Jalan Transolutions India Ltd, Company Appeal (AT) (Ins) No. 294 o/2021* rightly declined to interfere in an order against revival of insolvency proceedings when the same was withdrawn, without liberty. Insolvency and Bankruptcy Code is not a recovery proceeding

where parties can repeatedly approach in case money or part of it is not received.

ii. That the Applicant has relied on *ICICI Bank Ltd vs. OPTO Circuits (India) Ltd & Ors in Company Appeal (AT) (CH) Ins. No. 146 of 2021* and *Vivek Bansal vs Burda Druck India Pvt. Ltd & Anr in Company Appeal (AT) (CH) Ins. No. 552 of 2020* to argue that the Applicant is entitled to revive the insolvency proceedings. However, the reliance on these judgments is misplaced in as much as the issue decided in these cases is entirely different from that in the present case. The issue under consideration in *ICICI Bank Ltd vs. OPTO Circuits* was whether the Adjudicating Authority's decision in directing that failing to adhere to terms and conditions of one-time settlement, the Appellant Bank is entitled to file fresh Company Petition is justifiable. The Hon'ble NCLAT held in this case that the Adjudicating Authority should give liberty to revive the proceedings in case of failure to adhere to the terms of settlement. This was not a case seeking to revive insolvency proceeding when the

same was withdrawn without liberty but a case where the adjudicating authority refused to give permission for revival at the time of withdrawal.

4. The present I.A has been filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 for seeking revival of IB-1013/(PB)/2020 filed under Section 9, IBC, 2016 on the ground of breach of terms and agreements of the Settlement Agreement dated 09.11.2021.

5. On mere perusal of the order dated 03.12.2021, it is evident that the C.P.(IB)/1013/2020 was allowed to be withdrawn on the submissions of the applicant only and no liberty was granted by this Adjudicating Authority to restore the application. Further, the Hon'ble National Company Law Appellate Law Tribunal (NCLAT), New Delhi in *SRLK Enterprises LLP vs Jalan Transolutions India Ltd, Company Appeal (AT) (Ins) No. 294 of 2021* has held as follows;

"5 We notice that vide order dated 09.05.2019 passed by this Bench, the petition (IB)-1721 (ND)2018

was withdrawn at the instance of the Financial Creditor and the CIRP was terminated. We further notice that no liberty was given to the Petitioner to revive the application. So, considering this, we are of the considered view that since this Adjudicating Authority was not the part of the settlement arrived in between the parties, rather the settlement was arrived outside the Tribunal. It was on the submissions of the Applicant, the main petition was dismissed as withdrawn and the CIRP was terminated. Therefore, we have no reason to recall our earlier order. Accordingly, the prayer of the Applicant to recall the earlier order is hereby rejected.

6. From the documents on records, it is pertinent to note that pursuant to the settlement agreement dated 09.11.2021 entered between the parties, the parties had agreed to settle the outstanding operational debt amounting USD 5,98,148 at a settlement amount of USD 5,78,148. The moment the parties entered into the settlement agreement dated 09.11.2021, the nature of the debt being operational debt defined under Section 5(21) of the Code, 2016 changed. The amount outstanding pursuant to the settlement agreement is only a settlement amount which can merely be a debt as defined under Section 3(11) of the Code, 2016 but in no circumstances can be an operational debt as it has lost

its substratum of operational debt and is only a debt pursuant to the settlement between the parties.

7. The Hon'ble NCLAT in its order dated 17.01.2023 in *Company Appeal (AT)(Insolvency)No.36 of 2023 case titled Permali Wallace Private Limited versus Narbada Forest Industries Private Limited* rejected an Appeal filed against the Order dated 03.11.2022 passed by the Adjudicating Authority (National Company Law Tribunal, Indore Bench) wherein the Application filed under Section 9 of the IBC, 2016 for default in payment of the interest amount due pursuant to a settlement agreement was rejected by the Adjudicating Authority. The Hon'ble NCLAT held as follows:

4. *Learned Counsel for the Appellant challenging the order contends that liberty was granted in the consent terms/settlement agreement that in event any breach is committed, the Application be revived. He further submits that post dated cheques were bounced and Appellant filed Application under Section 9 was for recovery of the balance interest amount which was unpaid.*

5. *Having heard Learned Counsel for the parties, we are of the view that Adjudicating Authority did not commit any error in rejecting Section 9 Application. It has been laid down by the Hon'ble Supreme Court in "Swiss Ribbon Pvt. Ltd. Vs. Union of India" ((2019) 4 SCC 17), IBC is not a recovery proceeding and the Application which has been filed by the appellant in the*

present case is only the application for recovery of balance amount of the interest and application was not filed for resolution of any insolvency of the Corporate Debtor. We are of the view that no error has been committed by the Adjudicating Authority in rejecting Section 9 Application filed by the Appellant. There is no merit in the Appeal, the Appeal is dismissed.

- 8.** It is no more res-integra that IBC is not a recovery proceeding where because the money or part of it has not been paid, the party may repeatedly come to the Adjudicating Authority for the recovery of the amount. The Hon'ble Supreme Court in citation *M/s. Invent Asset Securitisation and Reconstruction Private Limited v. M/s. Girnar Fibres Limited [Civil Appeal No. 3033/2022]* observed that time and again, it has been expressed and explained by this Court that the provisions of the Code are essentially intended to bring the corporate debtor to its feet and are not of money recovery proceedings as such. The intent of the appellant had only been to invoke the provisions of the Code so as to enforce recovery against the corporate debtor.
- 9.** Having regard to the relevant facts and discussions and the judgments cited supra, we are of the view that pursuant to the withdrawal of the C.P.(IB)/1013/2020

on the strength of the settlement agreement dated 09.11.2021, the outstanding debt as claimed in the company application has lost its substratum of being operational debt as defined under Section 5(21) of the Code, 2016.

10. Accordingly, IA/4081/2022 stands dismissed. No orders to cost.

File be consigned to records.

Let a copy of order be served to parties.

SD/-

**(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)**

SD/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**