

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

IA(IBC)/1748 (CHE)/2023

In

IA(IBC)/429(CHE)/2023

In

IA/643/2021

In

IBA/902/2019

(Under Section 60(5) of the Insolvency & Bankruptcy Code, , 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016)

In the matter of **M/S. TOPKNIT PROCESSING MILLS PRIVATE LIMITED**

MR.C. SIVASAMI,

Resolution Applicant/Promoter,
M/s Topknit Processing Mills Pvt.Ltd.,
1/131, Senathipathi Chetty Palayam,
Kalipalayam, Morattupalayam,
Utthukuli RS, Tirupur - 638 752.

... Applicant

-Vs-

1. MR.A.R. RAMASUBRAMANIA RAJA,

Liquidator of M/s. Topknit Processing Mills Pvt. Ltd.,
No.3, Sundaram Brothers Layout,
Opp. to All India Radio,
Trichy Road, Ramanathapuram,
Coimbatore - 641 045.

... Respondent No.1

2. M/s SMALL INDUSTRIES

DEVELOPMENT BANK OF INDIA,
SIDBI Tower, 15, Ashok Marg,
Lucknow - 226 001.

... Respondent No.2

Order Pronounced on **10th May 2024**

CORAM

Shri. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

Shri. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present:-

For Applicant : Mr.T.K.Bhaskar, Advocate
Mr.Sankar Varadharajan, Advocate
Mr.V.Regunathan, Advocate
Mr. K.Vijayakuymar, Advocate

For Respondents : Mr.AG.Sathyanarayana, Advocate
Mr.Dhruva, Advocate

ORDER

This Application has been filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016 by Mr.C.Sivasami, Resolution Applicant against Mr.A.R.Ramasubramania Raja, Liquidator of Topknit Processing Mills Pvt. Ltd and Small Industries Development Bank of India (SIDBI), seeking reliefs as follows,

- i) Pass an order of stay of the operation of its order passed in IA(IBC)/429(CHE)/2023 dated 26.07.2023 to enable the Applicant to deposit the sum of Rs.9,37,50,000/- (Rupees Nine Crore Thirty Seven Lakhs Fifty Thousand only) into the Liquidation account of the Corporate Debtor, and*
- ii) Consequentially directing the 1st Respondent herein to put on hold of the Liquidation proceedings in respect of the M/s. Topknit Processing Mill Private Limited; and*
- iii) Directing the 2nd Respondent to withdraw the CP(IB)/128(CHE)/2023 pending on the file of this Tribunal;*

2. It is averred in the application that the CIRP of the Corporate Debtor viz. Topknit Processing Mills Pvt. Ltd was initiated on 21.11.2019. The 1st Respondent herein was appointed as the

Resolution Professional. The Resolution Plan submitted by the Applicant along with one Mr.Jana Bharathi was approved by this Tribunal vide order dated 26.06.2022 on the condition that the Resolution Applicants were directed to bring a sum of Rs.10,11,00,000/-.

3. It is stated that the Applicant along with Mr.Jana Bharathi have already paid Rs.1,03,25,000/- including the security deposit of Rs.46,25,000/- in to the escrow account. Since, the timeline committed was not complied by the Applicant, the 1st Respondent moved an application IA(IBC)/429(CHE)/2023 and prayed for liquidation of the Corporate Debtor.

4. On 22.06.2023 hearing of the aforesaid IA, the Applicant stated that Rs.1 crore shall be paid on or before 30.06.2023 and the balance would be paid by 15.07.2023. Accordingly, this Tribunal directed the Applicant to file an undertaking to that effect. Complying with the same, the Applicant filed an affidavit with the following repayment schedule,

- a) To deposit a sum of Rs.2,00,00,000/- on or before 30.06.2023.
- b) To deposit the remaining sum of Rs.7,00,00,000/- plus any other dues on or before 15.07.2023.

And the matter was posted for hearing on 07.07.2023.

5. It is stated that the Applicant was unable to fulfil the above compliance when the case came upon hearing on 07.07.2023 and

17.07.2023. Consequently, this Tribunal allowed IA(IBC)/429(CHE)/2023 and order liquidation of the Corporate Debtor on 26.07.2023.

6. Subsequently, the 2nd Respondent herein has initiated personal insolvency proceedings under Section 95 of IBC, 2016 against the Applicant and Mr.Jana Bharathi in CP(IB)/1028(CHE)/2023 which is *pending lis*.

7. It is stated that the Resolution Applicant has now identified the prospective investor and mobilized the required funds as agreed before this Tribunal while approving the Resolution Plan on 20.06.2022 in IA(IBC)/643(CHE)/2021 for a sum of Rs.9,37,50,000/- in the following manner:

a) Rs.18,15,00,000/- vide Demand Draft No.01162 drawn on Bank of Baroda dated 20.09.2023.

b) Rs.1,22,50,000/- vide Demand Draft No.001163 drawn on Bank of Baroda dated 20.09.2023.

8. Since, the Applicant is facing bankruptcy proceedings against him it is not appropriate for him to realize the Demand Drafts in his account. The applicant is ready to deposit entire Rs.9,37,50,000/- into the liquidation account of the Corporate Debtor as and when directed by this Tribunal.

9. It is stated that unless the liquidation order passed by this Tribunal is stayed and until the withdrawal of the Personal

Insolvency Application filed against the Applicant, he cannot deposit Rs.9,37,50,000/- into the liquidation account of the Corporate Debtor.

10. In reply, the 1st Respondent/Resolution Professional contended that there is no express or implied provision in the IBC, 2016 for the withdrawal of the Company Petition or stay of Liquidation proceedings when the company is under liquidation. The prayer sought by the Applicant is beyond the comprehension of this Tribunal and is not maintainable and to be dismissed *in limine*.

11. He further stated that the Resolution Plan of the Corporate Debtor was approved by this Tribunal on 20.06.2022. The Applicant herein had failed in complying with the timelines even after several opportunities. If further opportunity given to the Applicant after lapse of 16 months from the approval of the Resolution Plan, it would defeat the purpose of liquidation.

12. Heard the submission of the Ld. Counsel for both the parties and perused the documents on record.

13. At the outset it is seen that the Applicant praying to stay the own order of this Tribunal. Further, the Applicant has sought a another preposterous prayer to direct the 2nd Respondent SIDBI to withdraw the CP(IB)/128(CHE)/2023 filed against the Applicant.

14. Noting the above now we may now delve to the facts of the case. It is noted that the Resolution Plan of the Corporate Debtor was approved by this Tribunal on 20.06.2022. Since the Successful Resolution Applicant/Applicant herein failed to pay the committed amount in the Resolution Plan this Tribunal had ordered Liquidation of the Corporate Debtor vide order dated 26.07.2023. It is pertinent to note that till 17.07.2023 this Tribunal provided reasonable time to pay the Resolution Plan amount. Despite several opportunities the Applicant failed to adhere with the commitment that he agreed in the Resolution Plan.

15. Now the Applicant two months after the liquidation of the Corporate Debtor imparting the bench that that he ready to pay all the dues as per the Resolution Plan. The 2nd Respondent member of Stakeholder Committee agreed to the proposal of the Applicant. Consequently, the Applicant sought to recall the Liquidation order passed by this Tribunal.

16. Hon'ble Apex Court and the Hon'ble Appellate Tribunal time and again extensively explained the limitation of this Tribunal in recalling or reviewing its own order. In the case of **Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni & Anr** (2024 INSC 102) Hon'ble Supreme Court categorically held that,

"50. In light of the discussion above, what emerges is, a Court or a Tribunal, in absence of any provision to the contrary, has inherent power to recall an order to secure the ends of justice

and/or to prevent abuse of the process of the Court. Neither the IBC nor the Regulations framed thereunder, in any way, prohibit, exercise of such inherent power. Rather, Section 60(5)(c) of the IBC, which opens with a non-obstante clause, empowers the NCLT (the Adjudicating Authority) to entertain or dispose of any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under the IBC. Further, Rule 11 of the NCLT Rules, 2016 preserves the inherent power of the Tribunal. Therefore, even in absence of a specific provision empowering the Tribunal to recall its order, the Tribunal has power to recall its order. However, such power is to be exercised sparingly, and not as a tool to re-hear the matter. Ordinarily, an application for recall of an order is maintainable on limited grounds, inter alia, where (a) the order is without jurisdiction; (b) the party aggrieved with the order is not served with notice of the proceedings in which the order under recall has been passed; and (c) the order has been obtained by misrepresentation of facts or by playing fraud upon the Court /Tribunal resulting in gross failure of justice."

But in the instant case reasonable opportunity was given to the Applicant to pay the Resolution Plan amount. Further, there is no provision in IBC, 2016 to entertain settlement proposal during liquidation process. Albeit, settlement arrived between the parties it should be within the framework of the IBC, 2016, entertaining such settlements by exercising inherent powers vest with this Tribunal would dilute the framework of IBC, 2016.

17. At this juncture it is relevant to refer to the case of **Arunkumar Jagatramka V. Jindal Steel & Power Ltd. & Anr.** (2021 SCC OnLine SC 220) wherein the Hon'ble Supreme Court, held that how to exercise the inherent power of this Tribunal as follows,

"103. At this juncture, it is important to remember that the explicit recognition of the schemes under Section 230 into the liquidation process under the IBC was through the judicial intervention of the NCLAT in Y Shivram Prasad (supra). Since the efficacy of this arrangement is not challenged before us in this case, we cannot comment on its merits. However, we do take this opportunity to offer a note of caution for the NCLT and NCLAT, functioning as the Adjudicatory Authority and Appellate Authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from the NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC. This conscious shift in their role has been noted in the report of the Bankruptcy Law Reforms Committee (2015) in the following terms:

"An adjudicating authority ensures adherence to the process

At all points, the adherence to the process and compliance with all applicable laws is controlled by the adjudicating authority. The adjudicating authority gives powers to the insolvency professional to take appropriate action against the directors and management of the entity, with recommendations from the creditors committee. All material actions and events during the process are recorded at the adjudicating authority. The adjudicating authority can assess and penalise frivolous applications. The adjudicator hears allegations of violations and fraud while the process is on. The adjudicating authority will adjudicate on fraud, particularly during the process resolving bankruptcy. Appeals/actions against the behaviour of the insolvency professional are directed to the Regulator/Adjudicator."

104. Once again, we must clarify that our observations here are not on the merits of the issue, which has not been challenged before us, but only limited to serve as guiding

principles to the benches of NCLT and NCLAT adjudicating disputes under the IBC, going forward.

(emphasis supplied)

18. In view of the above discussion we are of the considered opinion that at any stretch of imagination the relief sought by the Applicant could not be granted. Accordingly, this Application I.A.No.1748 of 2023 stands **dismissed**. No cost.

Sd/-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

Sd/-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)