

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **19.07.2024** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : Fomra Electricals
Vs
KYRA Photon Tech Pvt Ltd

MAIN PETITION NUMBER : IBA/741/2019

(IA/MA) APPLICATION NUMBERS

IA(IBC)/2230(CHE)/2023

ORDER

Present: Ld. PCS Shri. K Gaurav Kumar for the Applicant.

None for the Respondent.

Vide separate order is pronounced in the Open Court, application is allowed and the petition IBA/741/2019 is revived.

List the IBA/741/2019 for hearing on 01.08.2024.

Sd/-

(VENKATARAMAN SUBRAMANIAM)

MEMBER (TECHNICAL)

MG

Sd/-

(SANJIV JAIN)

MEMBER (JUDICIAL)

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

IA(IBC)/2230(CHE)/2023 in IBA/741/2019

(filed under Section 60(5) of IBC, 2016 read with Rule 11 of the NCLT Rules, 2016)

In the matter of M/s. Kyra Photon Tech Private Limited

M/s. FOMRA ELECTRICALS,
Represented by its Partner Mr.SarvanFomra
New No. 250, GovindappaNaicken Street,
Chennai-600 001

... Applicant

Vs

M/s. Kyra Photon Tech Private Limited,
(Formerly known as Enetric Projects and Solutions
India Private Limited)
No.CP-24, Razaack Garden Main Road,
MMDA Colony,
Arumbakkam, Chennai-600 106

... Respondent

Order pronounced on 19th July, 2024

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant: Mr.K. Gaurav Kumar, Ld. PCS.

For Respondent: Shri. N. Mohammed Ismail, Ld. Advocate

ORDER

(Hearing conducted through Hybrid mode)

This application has been filed by the applicant under Section 60(5) of IBC, 2016 read with Rule 11 of NCLT Rules, 2016 seeking following reliefs:

- i) *That the Hon'ble Bench may be pleased to revive the main petition IBA/741/2019 and resume the proceedings against the Corporate Debtor.*
- ii) *To hear and adjudge the matter as per the prescribed procedure under the Insolvency and Bankruptcy Code, 2016 and the rules framed thereunder;*
- iii) *To pass such other orders as the Tribunal may deem fit in the interest of justice.*

2. The facts relating to disposal of the present application are that the Applicant had filed an application under section 9 of IBC, 2016 against the Corporate Debtor M/s. Kyra Photon Tech Private Limited (Formerly known as M/s. Enetric Projects and Solutions India Private Limited). During hearing on 09.12.2019, the Corporate Debtor made a payment of Rs.1,00,000/- in favour of the Operational Creditor but did not file any reply, allegedly to have acknowledged the debt and default. In the meantime, Respondent was admitted into CIRP in a different matter i.e. CP/1327/2018 vide an order dated 29.01.2020. Since the Corporate Debtor was admitted to CIRP, the application

IBA/741/2019 was closed with liberty to the Applicant to file the claim before the IRP in CP/1327/2018 who shall consider the claim in accordance with the provisions of the Code and in case, if the order in CP/1327/2018 is set aside by any of the Appellate Authorities, to revive/restore the petition.

3. Later i.e., on 31.12.2022, the Applicant came to know from the IBBI website under the headline as *“Corporate Insolvency Resolution Process withdrawn u/s 12A; as on 31st December, 2022”* that the CIRP against the Corporate Debtor was withdrawn under section 12A vide an order dated 14.03.2020 since the Corporate Debtor settled with the other creditors. The document in the website of IBBI is placed as Annexure-4. It is stated that the Applicant did not receive any communication from the IRP with respect to the CIR Process. Even on IBBI portal, it was reflecting as ‘no record found’ and ‘no result found’ under the heading of ‘orders’, ‘claims’ and invitation for Resolution Plans of the Respondent. The screenshot of the IBBI website is placed as Annexure-3.

4. It is stated that this application has been filed on the basis of the order dated 26.02.2020 which is also in consonance with the judgment of Hon'ble Supreme Court in the case of *Ess Investments Private Limited v. Lokhandwala Infrastructure Pvt. Ltd. &Anr. in Civil Appeal No. 324/2020*” where it was held that since the dispute between the parties has been settled and CIRP has been set aside, it will be open to the party to proceed against the Respondent before NCLT by seeking the call of the order and revival of the application.

5. In reply, it is stated by the Corporate Debtor/Respondent that the Applicant had not filed any claim with the IRP in CP/1327/IB/2018. The application is barred by limitation. Reference is made of Rule 48 and Rule 49 of NCLT Rules, 2016 to state that there is no provision in the rules to grant liberty to restore the finally disposed of petition. The option available to the Applicant was to file fresh petition. It is stated that there was pre-existing dispute between the parties. That dispute dates back to 08.02.2018 which is time barred.

6. In rejoinder, reference of the order dated 09.12.2019 in IBA/741/2019 is made where it was observed that “*since the Corporate*

Debtor is inclined to settle the matter with the Petitioner. Hence, it has not filed the reply. Rs. 1,00,000/- payment made to the Petitioner. Since reply has not been filed by the Corporate Debtor, filing of reply by it stands closed. For reporting settlement on the part of the Corporate Debtor, post the matter on 07.01.2020, failing which the tribunal will be constrained to initiate CIRP against the Corporate Debtor as the claim amount is not disputed."

7. It is stated that from this order, it is clear that the Corporate Debtor not only acknowledged the debt and the default which is above Rs.1.0 Lakh but also did not file the reply and its right to file reply was closed. It is stated that vide order dated 26.02.2020 liberty was given by the Tribunal to revive the petition, if the order in CP/1327/2018 is set aside. It is stated that the Applicant had submitted the claim before the IRP in CP/1327/2018 on 28.02.2020. Copy of e-mail dated 28.02.2020 is annexed as Annexure-B. Thereafter, the Applicant was not provided any update. On enquiry, the Applicant found a document released by IBBI with the heading "*Corporate Resolution Process withdrawn u/s 12A; as on 31st December, 2022*" about the settlement by the Corporate Debtor with the creditors. It is stated that the Applicant is entitled to benefit of limitation from 23.02.2020 to

28.02.2022 in view of the order of Hon'ble Supreme Court in Suo Moto Writ Petition (C) No.3 of 2020. It is stated that the Applicant took the steps within limitation and filed this application.

8. We have heard Learned Counsels for the parties and perused the record.

9. A perusal of record reveals that the Applicant had filed the petition IBA/741/2019 against the Corporate Debtor M/s. Kyra Photon Tech Private Limited. Another petition vide CP/1327/IB/2018 was pending against the Corporate Debtor which was formerly known as Enetric Projects and Solutions India Private Limited. The said petition was admitted into CIRP by the tribunal vide an order dated 29.01.2020. The tribunal noticing the initiation of CIRP against the Corporate Debtor in different petition i.e., CP/1327/IB/2018 vide order dated 26.02.2020 closed the IBA/741/2019 with liberty to the Applicant/Petitioner to file claim before the IRP in CP/1327/IB/2018 and directed the IRP to consider the claim of the Applicant in accordance with IBC and in case if the order in CP/1327/IB/2018 is set aside, the Applicant is given liberty to revive/restore the

petition/application. Neither the Applicant nor the Respondent challenged the order of the tribunal dated 26.02.2020 which thus became absolute.

10. The Applicant has filed the documents i.e. copy of the mail dated 28.02.2022 submitting the claim papers with the IRP in CP/1327/IB/2018 as Annexure-B. It has been stated by the Applicant that after that it was not provided any update on either the claims or the status of CIRP. The Applicant has also placed the screenshot of IBBI website as Annexure-3 qua details of the Respondent in IBBI portal which reflected as 'no record found' and 'no result found' under the heading of 'orders', 'claims ' and 'invitation from Resolution Plan of the Respondent/Corporate Debtor. It was only on 31.12.2022, it found from the website of the IBBI under the headline "*Corporate Insolvency Resolution Process withdrawn under Section 12A; as on 31st December, 2022*" that the Respondent has come out of the CIRP on 04.03.2020 and the date of withdrawal of CIRP under the heading "*Other settlement with Creditors*".

11. The case of the Applicant is that the Respondent never satisfied the claim of the Applicant in CP/1327/IB/2018. The Applicant making basis of the order of this tribunal dated 26.02.2020 filed this application on 15.11.2023 i.e., within limitation period of three years from the date the Applicant came to know of the withdrawal of CP/1327/IB/2018 under section 12 A of IBC, 2016 and settlement made by the Corporate Debtor with the creditors.

12. We are not in agreement with the contention of the Respondent that there is no provision in the Rules/IBC giving liberty to the Petitioner/Applicant to restore the disposed of the petition. In this case, the order dated 26.02.2020, gives the liberty to the Petitioner/Applicant to file the application to restore the petition. Further, the Hon'ble Supreme Court in the case of *Ess Investments Private Limited v. Lokhandwala Infrastructure Pvt. Ltd. & Anr. in Civil Appeal No. 324/2020* in factually similar circumstances has held that if the dispute between the parties have been settled and CIRP is withdrawn, it will be open to the party whose petition was closed due to admission of petition and ordering of CIRP to proceed before the NCLT by seeking revival of the application.

13. This Bench in CP/45/IB/2018, vide order dated 24.01.2023 revived the petition for initiation of CIRP against the Corporate Debtor on the similar grounds. In that case also, in another petition filed by the Operational Creditor, CIRP was initiated against the Corporate Debtor. The Petitioner was directed to file the claim before the IRP. The Corporate Debtor settled with the other creditors and the CIRP was withdrawn, however, the claim of the Petitioner was not settled. The Petitioner thereafter filed the application for restoration which was allowed.

14. In the light of what has been stated above, we are of the view that it is a fit case to revive IBA/741/2019. We therefore allow the application reviving/restoring the petition IBA/741/2019.

15. IA(IBC)/2230(CHE)/2023 is accordingly **disposed of**.

16. List IBA/741/2019 for hearing on **01.08.2024**.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

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