

**THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"**

**CA No. 44/2020
In
CP (IB) No. 353/Chd/Chd/2018
(Disposed of)**

**Under Section 9 of the Insolvency
and Bankruptcy Code, 2016 and Rule 11
NCLT Rules, 2016**

In the matter of:

Atul Arya
Vs. ...Petitioner/Operational Creditor
Rana Polycot Limited
....Respondent/Corporate Debtor

In the matter of CA No. 44/2020

Atul Arya
2146, Sector 15-C,
Chandigarh-160015
Vs. ...Petitioner/Operational Creditor
Rana Polycot Limited
Regd. Office at
SCO 49-50, Sector-8C,
Chandigarh-160009
CIN No. U171111CH1993PLC013489
....Respondent/Corporate Debtor

Order delivered on: 17.03.2023

**Coram: Hon'ble Mr Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr Subrata Kumar Dash, Member (Technical)**

Present :

For Applicant
in CA No.44/2020: : Mr. Nahush Jain, Advocate
For Applicant
in CA no.44/2020 : Mr. Atul Sharma, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

ORDER

CA No. 44/2020

1. The present application is being filed by Mr Atul Arya, (herein referred to as Operational Creditor) against Rana Polycot Limited (herein referred to as Corporate Debtor) under Rule 11 of NCLT Rules, 2016 for the revival of the CP (IB) No. 353/Chd/Chd/2018 on the failure of the Corporate Debtor to honour settlement.
2. It is prayed by the applicant to revive the CP (IB) No. 353/Chd/Chd/2018 for the initiation of CIRP against the Corporate Debtor in view of the failure of the Corporate Debtor to honour the settlement.
3. The brief facts of the case, as stated in the application are that applicant has filed an application bearing CP (IB) No. 353/Chd/Chd/2018 u/s 9 of Insolvency and Bankruptcy Code, 2016 for initiation of CIRP against corporate debtor and the arguments in the main matter was heard on 16.09.2019 and the same was reserved. Thereafter, the applicant has filed an application for the withdrawal of the petition on the ground of settlement and the order dated 06.09.2019 passed by this Adjudicating Authority permitting to withdraw the aforesaid CP with liberty to revive the same is attached as Annexure A-2 of the application. In view of the settlement agreement dated 25.09.2019 (Annexure A-3) of the application, the applicant had received a Demand Draft amounting to Rs. 9,00,000/- as an upfront payment and another three cheques amounting to Rs. 3,00,000/- each. The aforesaid demand draft and one cheque has been duly cleared. However, two cheques dated 05.11.2019 and 25.11.2019 has been bounced. A bank transfer has been received against the cheque dated

05.11.2019. The applicant sent an email dated 17.11.2019 to the officials of the corporate debtor which was not bounced back and till date no reply has been received to the said email, except false assurances.

4. The respondent/corporate debtor has filed a reply by diary No. 02188/1 dated 08.01.2022 stating that the applicant has alleged various fact in the Company Petition as there are outstanding payments qua salaries. It is not disputed that a compromise has been made between the parties and the corporate debtor has paid Rs. 9 lakh in the form of demand draft. The payment against the cheques has been made through bank transfer/RTGS/demand draft on 02.12.2019, 05.03.2020 and 23.11.2020 respectively. The operational creditor has received the full and final payment of Rs. 18 lakhs and details of the payment made by the corporate debtor are attached as Annexure R-2. It is further averred that no outstanding principal amount is pending between the parties which can be termed as debt in terms and provisions of Section 3 (11) of the Insolvency and Bankruptcy Code, 2016. It is, therefore, prayed by the respondents to dismiss the present application.

5. We have heard learned counsel for the applicant and respondents and have perused the record carefully.

6. In the present case, the Corporate Debtor has issued a demand draft dated 25.09.2019 and 03 cheques dated 15.10.2019, 05.11.2019 and 25.11.2019 in lieu of the settlement dated 25.09.2019. It is contended by the petitioners that the cheques dated 05.11.2019 and 25.11.2019 have been dishonoured due to insufficient funds. It is seen that the respondents have transferred the amount of the cheques in the bank account of the petitioner through RTGS/Bank transfer/demand draft on 02.12.2019, 05.03.2020 and 23.11.2020. The amount

which was agreed to be paid to the petitioner in the settlement has been duly transferred after dishonouring of the aforesaid cheques and no principal amount is outstanding as on date. It may be noted that the amount of two bounced cheques were paid to the applicant through bank transfers/demand draft after the filing of the present application and the same fact has been admitted by the applicant. Hence, the question of revival of the present petition does not arise at all.

7. It is further contended by the counsel for the petitioner that there is no payment with regard to the payment of interest as the amount was transferred after few months. The respondent has relied upon the judgement passed by Hon'ble National Company Law Appellate Tribunal in the case of ***"Permail Wallace Pvt. Ltd. Versus Narbada Forest Industries Pvt. Ltd.; Company Appeal (AT) (Insolvency) No. 36 of 2023 dated 17.01.2023*** wherein, it is held that *'when there is a dispute about the terms of the settlement agreement as far as calculator of interest amount is concerned it cannot be resolved before this Adjudicating Authority'*. We have perused the settlement dated 25.09.2019 and it is noted that no agreement/clause has been added with regard to the payment of interest in case the cheques were bounced. Therefore, the petitioners are at liberty to approach the appropriate forum for their claim of interest which occurred due to the late payment as per the settlement.

8. In view of the aforesaid discussion CA No.44/2020 is dismissed and disposed of accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

March 17, 2023

SA/VN