

**THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV**

Restoration Application (IBC)/56(ND)2023

**IN
Company Application (IB) No. 1104 of 2020**

IN THE MATTER OF:

KULDEEP KUMAR

.....Operational Creditors/Applicants

Versus

FAIRWOOD INFRA & SERVICES PVT. LTD.

.....Corporate Debtor/Respondent

Under Rule 11 OF NCLT Rules, 2016.

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on: 23.04.2024

PRESENT:

For the Applicant : Mr. Vaibhav Gaggar,
Mr. Akash Chatterjee,
Mr. Mrityunjay, Advs.

For the Respondent : Ms. Manju Singh, (Authorized Representative)

ORDER

PER: DR. SANJEEV RANJAN MEMBER (T)

1. Under consideration is an application bearing **Restoration Application (IBC)/56(ND)2023**, filed under Rule 11 of National Company Law Tribunal Rules, 2016 seeking the following reliefs:
 - a. Allow the present application and restore the Company Petition bearing no. C.P. (IB) No. 1104(ND) of 2020; and/or
 - b. Pass any other relief/reliefs, which this Hon'ble Tribunal may think fit and proper in the facts and circumstances of the case, in the interest of justice.
2. As per the averments made in the application the applicants are the Operational Creditors in the Application bearing IB/1104/2020 which was filed under Section 9 of Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency process against Corporate Debtor Fairwood Infra and Services Pvt. Ltd.
3. Further, it is submitted that during the hearing of pending admission of the Main Application bearing IB/1104/2020, a settlement was arrived between the parties, wherein the Corporate Debtor had undertaken to repay the dues of the Operational Creditor. Pursuant to such settlement the Operational Creditor requested to withdraw the Company Petition bearing no. C.P. (IB) No. 1104/ND of 2020. Accordingly, this

Page | 2

Adjudicating authority vide order dated 08.08.2022 dismissed the petition C.P. (IB) No. 1104/ND of 2020 as withdrawn. The Order has been reproduced here-below –

ORDER

Mr. Akash Chatterjee, Learned Counsel for the applicant stated that the matter has been settled between the parties and he wants to withdraw the present petition. Accordingly, in view of the statement made by Mr. Akash Chatterjee, Learned Counsel for the applicant, the present petition stands dismissed as withdrawn.

File be consigned to records.

4. Pursuant to the Settlement Agreement, the Corporate Debtor had paid two instalments to the Operational Creditor. Thereafter it has been submitted by the Applicant that the Corporate Debtor made default in payment subject to the Settlement Agreement.
5. Further, it has been submitted by the Applicant that the Corporate Debtor had failed to honour the terms of the settlement and therefore the Applicant has approached the Hon'ble Tribunal for restoration of the Company petition bearing CP(IB) No.1104/ND of 2020.

Analysis and Findings

6. On perusal of the Order dated 08.08.2022, it is evident that the CP(IB) No.1104/ND of 2020 was allowed to be withdrawn on the submissions of the Applicant only and upon review of the documents it is found that the Settlement Agreement had not been placed on record. Further no liberty was granted by this Adjudicating Authority to restore the application.

7. The present case is squarely covered by the ratio of order of **Hon'ble NCLAT as held in SRLK Enterprises LLP. Vs. JALAN Transolutions (India) Ltd. [Company Appeal (AT) (Ins) No. 294 of 202]** vide order dated 08.04.2021, in para (6) of the order as follows -

"6 ...There is difference between withdrawal simpliciter The Hon'ble NCLAT has distinguished between Withdrawal simpliciter making statement that parties have settled. It is different when bringing the settlement on record, and making it a part of the order of withdrawal liberty is taken and brought on record to restore the proceedings in case of default. IBC is not a recovery proceeding where because the money or part of it has not come, the party may repeatedly come to the Court. Adjudicating Authority has rightly observed that no liberty to revive was there and so declined to interfere. The Appellant would be at liberty to pursue other remedies in law."

8. It is pertinent to note that the settlement agreement was entered between the parties, thereafter the parties had agreed to settle the outstanding operational debt. The moment the parties entered into a settlement agreement dated 05.08.2022, the nature of the debt being operational debt defined under Section 5(21) of the Code, 2016 is bygone as now the debt is not owed for outstanding salaries of the Operational Creditors. 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.

9. It is no more res-integra that IBC is not a recover proceeding where because the money or part of it has not come, the party may repeatedly come to the Adjudicating Authority for the recovery of the amount. The **Hon'ble Supreme Court in 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.
10. We are of the view that this Adjudicating Authority is not to be used as a mere recovery mechanism. The parties are not expected to misuse this forum to recover their dues. On account of withdrawal of the C.P.(IB)/1014/2020, 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. Further, the order dated 08.08.2020 of the Adjudicating Authority did not give any liberty to revive the Company Petition

if settlement not materialised. There is no express provision under Insolvency and Bankruptcy Code 2016 for revival of proceedings once withdrawn by the Operational Creditor. Accordingly, the Main Application C.P. IB/1104/2020 cannot be restored in the given facts and circumstances of the case. Hence, the present Restoration Application (IBC)/56(ND)2023 is dismissed without costs. However, the Applicants are at liberty to take other legal remedy available as per law.

Sd/-

(DR. SANJEEV RANJAN)

MEMBER (T)

Sd/-

(MANNI SANKARIAH SHANMUGA SUNDARAM)

MEMBER (J)