

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) No.04/ALD/2021

An application under Section 9 of the
Insolvency & Bankruptcy Code, 2016
read with Rule 6 of Insolvency &
Bankruptcy (Application to
Adjudicating Authority) Rules, 2016

IN THE MATTER OF:

M/S LIMTEX INVESTMENTS LTD,

Registered Office: 16, Ganesh Chandra Avenue,
7th Floor, Kolkata-700013

...Applicant/Operational Creditor

Versus

M/S HINDON FORGE PRIVATE LIMITED

Regd Off: P-4 B.S. Road, Industrial Road,
Ghaziabad - 201002

...Respondent/Corporate Debtor

Order pronounced on 30th April, 2024

CORAM:

Sh. Praveen Gupta : Member (Judicial)

Sh. Ashish Verma : Member (Technical)

Appearances:

Ms. Babita Jain ,Adv. : For the Operational Creditor

Sh. Sanchit Garg, Adv. : For the Corporate Debtor

ORDER

1. The petitioner, M/s Nippon Alloy Limited formerly known as Narayani Ispat Limited (presently under Liquidation) had filed a petition under Section 9 before the NCLT, Delhi Bench against the Corporate Debtor namely M/S Hindon Forge Private Limited. A settlement was reached via a settlement deed dated 31.07.2018 and therefore the petition was withdrawn. The petitioner claims that this petition was withdrawn with a condition that in case of breach of the settlement deed, the petition could be revived. A copy of the settlement deed and subsequent withdrawal order have been attached to the application as Annexure-D and E respectively.
2. After various transactions of sales and purchases, between the Petitioner and Respondent, discrepancies emerged in the payment schedule. Despite the Deed of Settlement stipulating a 20-day payment window, the Respondent consistently delayed payments. Moreover, the agreed-upon monthly sum of Rs. 5,00,000 was irregularly paid. These breaches of the settlement terms, as outlined in Clause 13 of the Agreement, prompted the Petitioner to invoke Section 9 of the IBC, 2016,

seeking revival. Since the address of the registered office of Corporate Debtor changed from New Delhi to Ghaziabad, the jurisdiction also changed from NCLT, Delhi Bench to NCLT, Allahabad Bench hence, the revival application was filed before this Tribunal.

3. The last payment from the Corporate Debtor was received on 05.02.2019, after which no further payments were made, thus constituting a default on the part of the Corporate Debtor. Since last payment was received on 05.02.2019, the date of default was taken as 05.03.2019. The amount in default is Rs. 2,13,78,928/- (Two crore thirteen lakh seventy-eight thousand nine hundred and twenty-eight rupees only) including interest @ 15% per annum till 31st July 2020, i.e. principal amount is Rs.1,76,56,542 and interest is Rs.37,22,386.

4. Subsequently, on July 13, 2020, the Applicant dispatched Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016, both via courier and email. The Corporate Debtor responded to this notice on July 15, 2020, via email. Following this, the Operational Creditor Company, represented by its Liquidator, transferred specific receivables and actionable claims, such as debtors, creditors with debit

balances, other receivables, loans, and advances. This transfer was executed in accordance with Regulation 37A of the IBBI (Liquidation Process) Regulations 2016, and other relevant provisions of the Code, rules, or regulations, as per an Assignment Agreement dated April 30, 2021.

5. As a result of the aforementioned Assignment Agreement dated April 30, 2021, the Applicant filed MA12/ALD/2021, seeking to replace M/s Nippon Alloy Limited, the original Operational Creditor to M/s Limtex Investments Ltd, for further proceedings of the Petition. This matter was heard on March 28, 2022, and the Order was pronounced on April 6, 2022, wherein this Tribunal approved the substitution of the original Operational Creditor with the Petitioner, M/s Limtex Investments Limited.

Reply filed by the Corporate Debtor (Respondent)

6. The first defence taken by the corporate debtor is that this application is barred by law of limitation since the operational creditor had supplied goods to respondent from 2012 to 2014 and this application has been filed in the year 2018.
7. Another defence raised by the corporate debtor is that there is a pre-existing dispute concerning the quality of goods supplied. The respondent alleged that the operational creditor (OC)

supplied defective material to the corporate debtor (CD), as evidenced by the invoices attached to the application. These invoices indicate that the blooms supplied to the CD were purchased in an auction conducted by Rashtriya Ispat Nigam Ltd., a public sector undertaking. Furthermore, the invoices issued by Rashtriya Ispat Nigam Ltd. to the operational creditor contain a "D" prefix before the bill number, indicating that the material is defective.

- 8.** The respondent further claimed that the dispute regarding the quality of the blooms arises from the OC's failure to provide a "Mills Test Certificate," which the CD had specifically requested for A105 Quality Material. This lack of certification suggests that sub-standard quality material was indeed provided by the OC to the CD.
- 9.** The respondent states that as per the settlement executed on 31st July 2018, the corporate debtor had to pay Rs. 90 lakhs as final settlement to the operational creditor out of which Rs 10 lakh was paid up front whereas the remaining amount would be paid after the operational creditor supplied blooms up to 50 tons per month to the respondent. The respondent alleges that the applicant breached the settlement terms and never

supplied the goods to the respondent. This issue was also raised by the respondent in its reply to notices dated 13.05.2020 and 11.10.2019

10. The respondent further alleged that according to the terms outlined in the settlement, the Applicant was required to withdraw Complaint Case No. 688 of 2017, lodged against respondent and its Directors under Section 138 of the Negotiable Instruments Act, before the Court of Metropolitan Magistrate, Vishakapatnam. However, the said complaint has not been withdrawn by the Applicant till date, thus indicating a clear violation of the settlement terms.

11. The respondent further submits that even if it is assumed that respondent breached the settlement, any breach of the settlement terms does not meet the criteria for categorization as operational debt under Section 5(21) of the Code and any concerns regarding the settlement agreement should be addressed by the Operational Creditor before the National Company Law Tribunal (NCLT), New Delhi, which approved the settlement agreement. Any alleged breach cannot give rise to a new cause of action.

12. The respondent relies on the case of **Bajaj Rubber Company**

Private Limited versus Saraswati Timber Private Limited, CP (IB) No. 1441(ND)/2018, wherein in NCLT, Delhi Bench opined that a breach of settlement does not meet the criteria for operational debt and therefore falls outside the scope of the Insolvency and Bankruptcy Code (IBC).

Rejoinder filed by the Financial Creditor (Applicant)

13. In the rejoinder, it has been claimed that the respondent has failed to present any communication from its side raising concerns about the quality of the supplied material or the settlement of any amount against purportedly issued debit notes. It is respectfully argued that the Operational Creditor operates as a trader, and if the materials supplied were indeed defective or not as per their order, the Corporate Debtor should have either returned the material or raised debit notes regarding the quality issue. However, after initiating the current petition, the Corporate Debtor is now raising such disputes. Since the material has not been returned and has been fully utilized in their system, they are obligated to pay for the materials received and utilized. Additionally, the Corporate Debtor did not raise any disputes at the time of entering into the Settlement Agreement dated 30.07.2018 and even

requested further supply of material. The Applicant alleges that the quality issues are now being raised by respondent to evade its liability.

- 14.** As regards the issue of application being time-barred, the applicant states that the date of default occurred on 05.03.2019 and the last payment was received on 05.02.2019 and the Petition had been filed within the stipulated limitation period.
- 15.** The Applicant also states that the Operational Debt has been acknowledged by the Corporate Debtor through the Deed of Settlement dated 31.07.2018, thus confirming its acceptance as Operational Debt.

Findings

- 16.** We have considered the submissions made by the Ld. Counsels for the parties and perused the records. The applicant and respondent were in a long-standing business relationship wherein the applicant used to supply blooms to the respondent. The operational creditor had already moved to NCLT, Delhi bench for initiation of CIRP against the corporate debtor. However, a settlement was reached and a deed was executed on 31st July 2018 and the said application was withdrawn from NCLT, Delhi bench.

17. The important terms of the settlement deed have been reproduced herein:

- i.** *The parties herein have duly agreed to settle the instant issue on payment of Rs.90,00,000/- (Rupees Ninety Lacs only) (“Settlement amount”) by the Second Party to the First Party towards full and final settlement of the outstanding amount of Rs.2,12,97.262/- (Rupees Two Crores Twelve Lacs Ninety-Seven Thousand Two Hundred and Sixty-Two Only) as claimed by the First Party.*
- ii.** *It is duly agreed and understood by the Second Party that towards repayment of the above Settlement Amount, the Second Party shall make upfront payment of Rs.10,00,000/- (Rupees Ten Lacs Only) to the First Party in the manner provided herein below:*

AMOUNT	MODE OF PAYMENT
<i>Rs.5,00,000/- (Rupees Five Lacs only)</i>	<i>Cheque no. 000017 dated 10th August, 2018 drawn on equitas small finance bank</i>
<i>Rs.5,00,000/- (Rupees Five Lacs only)</i>	<i>Cheque no. 000018 dated 17. August, 2018 drawn on equitas small finance bank</i>

- iii.** *The Second Party has further agreed and understood that towards discharge of the remaining payment of the Settlement Amount, the Second Party shall make payment of Rs.5,00,000/- (Rupees Five Lacs only) to the*

First Party, on monthly basis, from September 2018 onwards, until the entire Settlement Amount stands discharged.

- iv.** *The First Party has agreed that the Second Party shall also issue Purchase Order on monthly basis to the First Party for supply of Blooms upto 50 Tons per month and the same shall be supplied to the Second Party at its factory located at P-4, B.S. Road, Industrial Area, Ghaziabad (UP). The Second Party has duly understood and agreed that it shall make payment towards such Blooms supplied by the First Party within 20 (twenty) days from the date of delivery of Blooms.*
- v.** *It is duly understood and agreed by the Parties that the payment of Rs.5,00,000/- (Rupees Five Lacs only), on monthly basis by the Second Party to the First Party, on account of payment towards remaining Settlement Amount in terms of Clause 3 of the instant Deed of Settlement, shall be made along with the payment towards supply of Blooms on basis of the Purchase Orders for the respective month as enumerated under Clause 4 of the instant Deed of Settlement.*
- vi.** *It is further understood and agreed between the Parties that in case of any non-supply of Blooms by the First Party on account of non-issuance of Purchase Order by the Second Party or under any unavoidable circumstances or on account of inflated transportation expenses, the Second Party shall make payment of Rs.2,50,000/- (Rupees Two Lacs Fifty Thousand only) for each month, to the First Party towards repayment of the Settlement Amount.*

.....
- vii.** *It is further agreed by the First Party that in view of the instant Deed of Settlement, it shall seek withdrawal of CC No. 688 of 2017 pending adjudication before the Ld. Metropolitan Magistrate, Visakhapatnam, filed against*

the Second Party and its Directors under Section 138 of the Negotiable Instruments Act, 1881.”

- 18.** After both the parties executed the settlement deed, withdrawal application was filed before the NCLT, Delhi Bench and the same was allowed vide order dated 23.08.2018.
- 19.** Later on 13.07.2020, the applicant sent demand notice to the corporate debtor under section 8 of IBC, 2016. Subsequently on 24.08.2020, section 9 application was filed by the operational creditor against the corporate debtor before this Adjudicating Authority for an amount of Rs. 2,13,78,928/- (Two crore thirteen lakh seventy-eight thousand nine hundred and twenty-eight rupees only) including interest @ 15% per annum till 31st July 2020, i.e. principal amount is Rs.1,76,56,542 and interest is Rs.37,22,386.
- 20.** The respondent in his defence alleged that there was a breach of settlement terms on the part of the applicant and the same cannot be considered to be operational debt under the Code.
- 21.** The respondent in his reply to the SBI notice dated 11.10.2019 (annexed as R-5 to the reply) had stated that it had stopped making payments in accordance with the settlement deed when the applicant had failed to supply the said blooms and therefore

had breached the contract between the parties. The important thing to note is that this reply wherein the Respondent was alleging breach of settlement on the part of operational creditor was sent a year before the demand notice was sent to it by operational creditor on 13.07.2020.

22. The facts of the instant case are similar to the case of ***Bajaj Rubber Company Private Limited versus Saraswati Timber Private Limited [CP(IB) 1441 (ND)/2018]*** which was decided by the NCLT, Delhi bench on 11.08.2022. In this case, the applicant had filed an application under section 9 against the corporate debtor but had later withdrawn the application when the parties arrived at a settlement via a settlement deed dated 17.01. 2019. The applicant later sought revival of the petition on the ground of breach of terms of the deed by the corporate debtor.

23. The NCLT, Delhi Bench while dismissing the application, opined that a breach of the terms and conditions of payment according to a settlement agreement does not come under the purview of 'Operational Debt' as defined under IBC,2016 and cannot be a ground to trigger CIRP against the corporate debtor.

24. The NCLT Delhi bench relied on decisions of co-ordinate benches to arrive at this conclusion. The relevant portion of the judgement has been produced here under:

4. *“We have heard the Ld. Counsel for the Applicant and perused the documents placed on record. It is observed that the Applicant has sought revival of the present application on the ground of breach of terms and conditions of the Settlement Agreement.*

5. *At this juncture, it is worthwhile referring to the Judgment of NCLT, Delhi, Court V passed in the matter of **M/s. Alhuwalia Contracts (India) Ltd. Vs. M/s. Logix Infratech Private Limited in (IB)-882/ND/2022**, dated 03.06.2022, which reads as below :*

“15. As per the definition referred to supra, Operational Debt means a claim in respect of provision of goods or services including employment. Now we consider the case of the Applicant and we observe, the claim of the applicant does not fall either under the category of the supply of the goods or service rendered by the Corporate Debtor. Rather the claim of the Applicant is based on the breach of terms and conditions of the settlement agreement, on the basis of which the Applicant has claimed that there is default in payment of the amount as referred to part IV of the application. And the

second part of the Operational debt says a debt in respect of payment dues arising under any law for the time being enforce.

Admittedly the claim of the Applicant also does not come under this part of the definition of the Operational debt.

"**16.** At this juncture, we would also like to refer a decision of NCLT Allahabad Bench in "Company Petition (IB) No. 343/ALD/2018 in the matter of **Mis Delhi Control Devices (P) Limited Vs. Mis Fedders Electric and Engineering Ltd.**" decided on 14.05.2019, in which the NCLT Allahabad bench and same is reproduced below: "unpaid instalment as per the settlement agreement cannot be treated as operational debt as per Section 5 (21) of IBC. The failure or Breach of settlement agreement can't be a ground to trigger CRP against Corporate Debtor under the provision of IBC 2016 and remedy may lie elsewhere not necessarily before the Adjudicating Authority".

17.A similar view is followed by this Bench in IB No. 507/ND/2020 in the matter of **Nitin Gupta vs International Land Developers Private Limited.**

18. Applying this principle decided in the matters referred to Supra, we are of the considered view that the case of the Applicant is also covered with the aforesaid decision. Therefore, in our considered view, the default of payment of settlement agreement do not come under the definition of Operational debt. Hence, we are not

inclined to allow the prayer of the Applicant."

6. *We further observe that though vide order dated 21.01.2019, the liberty was granted, however, subsequently in catena of judgments this Tribunal has held that breach of the terms and conditions of payment according to a Settlement Agreement does not come under the purview of the Operational Debt as defined under the IBC, 2016 and it cannot be a ground to trigger CIRP against the Corporate Debtor."*

25. The above decision of the NCLT, Delhi Bench also finds strength in the case of **Trafigura India Private Limited v. TDT Copper Limited [Company Appeal (AT) (Insolvency) No. 742 of 2020]** decided on 15.09.2022 by the Hon'ble NCLAT, Principal Bench, New Delhi. This was an appeal filed against the order of NCLT, New Delhi Court-V dated 15.07.2020 in CP(IB) No.2817/ND/2019.

26. In this case, the Operational Creditor was engaged in the business of producing various non-ferrous materials and related products whilst the Corporate debtor dealt in manufacturing and supply of various copper cathodes. Both the parties entered into a Master

Sales Agreement (MSA) in the year 2016 and then in the course of the business, payments for several invoices were defaulted by the Corporate Debtor. In, 2018, the parties entered into a settlement agreement for the payment of outstanding amount by the Corporate debtor.

27.As per the terms of the settlement agreement, the Operational Creditor agreed to pay the entire outstanding amount by April 2019, which was further extended to May, 2019 but, the said amount remained unpaid after the expiry of the agreed term. Aggrieved from the same, the Operational Creditor furnished a demand notice to the Corporate debtor as per the provisions of the code, against which, a reply was submitted by the Corporate debtor. However, the Corporate debtor raised various disputes of several natures in respect of the said claim under the notice following which rejoinders were also adduced by the parties.

28.The NCLT, Delhi Bench after observing the factual background, observed that the dues as claimed by the

petitioner in this application does not fall under the purview of the definition of Operational debt as provided under section 5 (21) of the code. While referring to the definitions of debt, default and Operational Creditor as provided under section 3 (11), 3 (12), 5 (21) of the code, respectively, it was held that the dues arising out of non-payment or breach or violation of the terms of the settlement agreement cannot be the cause of initiating CIRP against the Corporate debtor. The Tribunal placed its reliance on judgments like *Delhi Control Device (P) Ltd. vs. Fedders Electric and Engineering Ltd* and *Mr. Nitin Gupta vs. International Land Developers Pvt. Ltd.*

29. The Hon'ble NCLAT, Principal Bench, New Delhi dismissed the appeal and affirmed the order passed by NCLT, New Delhi Court-V dated 15.07.2020. The relevant excerpt of the judgment passed by Hon'ble NCLAT has been reproduced hereunder:

- *“The Adjudicating Authority has considered the Settlement Agreement and rightly come to the conclusion that default of instalment of Settlement Agreement does not come within the definition of*

‘operational debt’ as it does not fall within the definition of operational debt as per Section 5(21) of the IBC

...

- *With these reasons assigned by the Adjudicating Authority, we do not find any merit in the instant Appeal. The impugned order dated 15.07.2020 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench Court-V) in Company Petition (IB) No. 2817/ND/2019 is hereby affirmed. The Appeal is hereby dismissed.”*

30. Thus, in view of the breach of terms of settlement not falling under the purview of operational debt, the present application is non-maintainable and is thus, liable to be dismissed

31. Therefore, the petition CP (IB)No.4/ALD/2021 filed by the Operational Creditor is hereby dismissed.

-Sd-

(Ashish Verma)
Member (Technical)

-Sd-

(Praveen Gupta)
Member (Judicial)

Aditi Kharbanda
(LRA)