

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court- II)**

**RST.A(IBC)/16(KB)2023**

**IN**

**CP(IB)/598(KB)2019**

**In the Matter of:**

*The Insolvency and Bankruptcy Code, 2016;*

AND

**In the Matter of:**

*Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;*

AND

**In the Matter of:**

*Section 60(5) of the Insolvency and Bankruptcy Code, 2016;*

AND

**In the Matter of:**

*Rule 11 of the National Company Law Tribunal Rules, 2016*

AND

**In the Matter of:**

**ARCHANGLES DISTRIBUTORS PRIVATE LIMITED**, a Company incorporated under the provisions of Companies Act, 1956 having its registered office at 57/1, Ballygunge Circular Road, Kolkata-700019, West Bengal.

**.... Applicant/Operational Creditor**

**Versus**

**IDEAL FINANCING CORPORATION LIMITED**, a Company incorporated under the provisions of Companies Act, 1956 having its registered office at 50, Jawahar Lal Nehru Road, 11<sup>th</sup> Floor, Kolkata-700071, West Bengal.

**.... Respondent/Corporate Debtor**

**CORAM:**

**Smt. Bidisha Banerjee : Member (Judicial)**

**Shri D. Arvind: Member (Technical)**

**Date of pronouncing the order: 03/04/2024**

**Appearances (Physically/ via video conference)**

*For Registrar of Companies, West Bengal:*

1) Mr. Patita Paban Bishwal, Adv. ] For the Applicant in Rst.A(IBC)/16(KB)2023  
2) Ms. Suranjana Chatterjee, Adv. ]

1) Mr. Shaunak Mitra, Adv. ] For the Respondent in Rst.A(IBC)/16(KB)2023  
2) Mr. Saubhik Chowdhury, Adv. ]  
3) Mr. Tirthankar Das, Adv. ]

**ORDER**

***Smt. Bidisha Banerjee, Member (Judicial)***

1. Court congregated in a hybrid mode.
2. Learned Counsel for both the parties were heard at length.
- 3.1 During pendency of **CP(IB)/598(KB)2019** the Applicant/Financial Creditor entered into a settlement agreement with Corporate Debtor on 7<sup>th</sup> June, 2022 whereby and whereunder the Corporate Debtor agreed to pay an amount of Rs.2,31,60,579/- (Rupees Two Crore Thirty-One Lakh Sixty Thousand Five Hundred Seventy Nine only) to the Applicant by 27 (twenty seven) installments.
- 3.2 It was also agreed between the parties as per the aforesaid agreement that in default of the performance of the agreed terms of settlement by the Corporate Debtor, the applicant will be free to apply to the National Company Law Tribunal, Kolkata Bench, Kolkata to restore the Company Petition being **CP(IB)/598(KB)2019** and/or instigate any further legal action as per the laws of the land, over and above the steps in regard to the default.

- 3.3 The Applicant, accordingly, at the time of hearing on 8<sup>th</sup> June, 2022 informed the Bench that a settlement has been arrived at between the Applicant and Corporate Debtor and upon specific submission by both the Applicant and Corporate Debtor, this Tribunal was pleased to dispose of the proceedings by recording the settlement.
- 3.4 Since the Corporate Debtor has failed to pay the 6 (Six) installments which were due on 10<sup>th</sup> April, 2023, 20<sup>th</sup> May, 2023, 10<sup>th</sup> June, 2023, 30<sup>th</sup> June, 2023, 20<sup>th</sup> July, 2023 and 10<sup>th</sup> August, 2023, the Advocate on behalf of the Applicant sent a legal notice dated 19<sup>th</sup> August, 2023 to the Corporate Debtor, demanding Rs.2,11,60,579/- plus interest due from 10<sup>th</sup> April, 2023.
- 3.5 Upon failure of the Corporate Debtor to make payments as demanded, the Applicant intends to revive the instant Company Petition, being **CP(IB)/598(KB)2019** as against the Corporate Debtor and restore it to its original number and file to pursue the proceedings against the Corporate Debtor filed under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
- 3.6 Hence, this Application has been preferred to seek the following reliefs: -
- a) Company Petition Number being **CP(IB)/598(KB)2019** be revived and restored to its original file and number against the Corporate Debtor in view of the settlement having been failed;
  - b) Adjudicate and dispose of the pending CP(IB)/598(KB)2019 against the Corporate Debtor;
  - c) Such other order or orders be passed and/or direction or directions be given as this Hon'ble Tribunal may deem fit and proper.

4. **Per Contra:**

The Corporate Debtor has resisted the claim having stated as under: -

(i) **No liberty was granted by this Hon'ble Tribunal to the Financial Creditor to seek restoration while disposing the said application**

That Hon'ble NCLAT in SRLK Enterprises LLP v. Jalan Transolutions (India) Limited [**Company Appeal (AT) Ins. No. 294 of 2021**] has held that “*a financial creditor can seek restoration if the application has been withdrawn by bringing the settlement on record AND “liberty is taken” to restore the proceedings in case of default*”. In the present case, although the settlement has been brought on record, however no liberty has been taken by the Financial Creditor from this Hon'ble Tribunal to seek restoration”.

(ii) MERE EXISTENCE OF CLAUSE FOR LIBERTY TO APPLY FOR RESTORATION UPON DEFAULT WILL NOT SUFFICE:

The Hon'ble NCLAT in *Permali Wallace Pvt. Ltd. V. Narbada Forest Industries Pvt. Ltd.* [**Company Appeal (AT) Ins. No. 36 of 2023 @ paras 3 to 5**] has held that even in a case where there existed a clause providing liberty to the operational creditor to apply for revival of IBC proceedings, the Adjudicating Authority did not commit any error in rejecting revival since no liberty was granted while passing the order permitting withdrawal. Further, it was held that IBC is not a recovery mechanism and since the application was not filed for resolution or insolvency of the corporate debtor, therefore the order under appeal was not erroneous.

(iii) The Financial Creditor is not at all concerned with the resolution or insolvency of the Corporate Debtor and is solely interested to recover its purported debt from the Corporate Debtor which is not permissible under IBC.

The Corporate Debtor thus prays that this Tribunal may be pleased to dismiss the present application with costs.

5. We have considered the rival contentions.
6. In as much as no liberty was sought for on 08.06.2022 and the **CP(IB)/598(KB)2019** was dismissed as withdrawn without liberty to get it revived, in our considered opinion, the prayer for restoration of **CP(IB)/598(KB)2019** is not maintainable and hence not entertainable.  
The CP(IB)/598(KB)2019 was dismissed as withdrawn recording settlement between the parties. No liberty was granted by this Tribunal to revive the CP(IB)/598(KB)2019 in case the Corporate Debtor fails to acknowledge the terms of settlement or fails to pay in terms of the settlement.
6. Hence the claim of the Applicant fails and therefore, the **RST.A(IBC)/16(KB)2023** is **dismissed** and is accordingly disposed of.
7. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information.
8. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**D. Arvind**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

Signed this, on the 3<sup>rd</sup> day of April, 2024

*Skb*