

S.No.8

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
31-05-2024 AT 10:30 AM**

**CP (IB) No. 271/9/HDB/2022
AND
IA (IBC) No. 487/2024 in CP (IB) No. 271/9/HDB/2022
u/s. 9 of IBC, 2016**

IN THE MATTER OF:

Sun Printers

...Operational Creditor

AND

OMICS International Pvt Ltd

...Corporate Debtor

CORAM:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

IA (IBC) No. 487/2024

Orders pronounced. In the result, **this application is dismissed. No costs.**

**Sd/-
MEMBER (T)**

**Sd/-
MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-I**

**IA.No. 487 of 2024
in
CP.No.271/ 9 / HDB/ 2022**

*Under Section 60(5) of Insolvency and Bankruptcy Code, 2016 read with
Rule 11 of the National Company Law Tribunal Rules, 2016.*

**IN MATTER OF M/s. OMICS INTERNATIONAL PRIVATE
LIMITED**

BETWEEN

M/s. Sun Printers, A Partnership Firm
Registration No. 660 of 2014,
Registered Office: H.No.1-7-104/2,
Kamala Nagar, ECIL Post,
Secunderabad, Hyderabad – 500062.

...Applicant/ Operational Creditor

AND

M/s. Omics International Private Limited,
CIN: U22122TG2008PTC061143,
Registered Office: Building No.20, 9th Floor,
Raheja IT Park, Mindspace, APIIC Layout,
HITECH City, Hyderabad – 500081,
Telangana, India.

... Respondent/ Corporate Debtor

DATE OF ORDER: 31.05.2024

Coram:

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA,
HON'BLE MEMBER (JUDICIAL)
SHRI CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

Parties / Counsels Present

For the Petitioner : Mr. Nitin Bansal, Counsel &
Mr.Rajiv Bhatnagar, CA
For Respondent : NIL

PER BENCH

ORDER

1. The present Application is filed by the Applicant/Operational Creditor under Section 60(5) of Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 praying:
 - a) To entertain the present application for recalling the order dated 21.12.2023 in **CP(IB) No. 271/HDB/9/2022**.
 - b) To waive off the cost of Rs.5,00,000/- imposed upon the applicant.
 - c) To consider the genuine claim of the applicant in the main petition as bonafide.
 - d) To consider the non-disclosure of the legal notice as inadvertent error of the Lawyer at that time and wrong mentioning of interest @18% rather than 24% as inadvertent mistake of Lawyer at that point of time to allow the Company Petition No. **CP(IB) No. 271/HDB/9/2022** in favour of the applicant for realization of genuine and bonafide dues of the applicant considering the amount in default very much

acknowledged by the respondent in time to time along with the rate of interest @24% mutually agreed by both the parties as mentioned in the Work Order dated 30.08.2018.

- e) To held the Corporate Debtor liable for the default of **Rs.1,05,37,712/-** amount due towards the applicant for supply of the goods and services.

2. Gist of the Application:

2.1 It is averred that on 30.08.2018 both Applicant/Operational Creditor and Respondent/Corporate Debtor entered into a commercial agreement/ Work Order on dated 30.08.2018 mutually agreed and mutually signed by both parties for supply of printing items/printed materials to Respondent/Corporate Debtor with an interest @24% mutually agreed on overdue of 30 days.

2.2 It is stated that after entering into this agreement the applicant kept supplying the printing materials as per the requisitions of the Respondent from time to time and the Respondent kept paying at times but not regularly but very much kept admitting the amount of debt due from time to time and finally not paid anything after 12.02.2021. During the year starting from 2018 up to the year 2021 the Respondent/Corporate Debtor defaulted in the payments for the supplies of goods and services made by

Applicant/Operational Creditor. In spite of several requests and reminders to the Respondent/Corporate Debtor, but the Corporate Debtor failed to make the payment of outstanding dues to be payable to the Operational Creditor, Hence, the Applicant/ Operational Creditor instituted/ filed a petition under Section 9 of the IBC Code vide the Petition No. CP(IB) 271/9/HDB/2022 before the Hon'ble NCLT, Hyderabad Bench seeking the Initiation of Corporate Insolvency Resolution Process ("CIRP") against M/s. Omics International Private Limited, Respondent/Corporate Debtor, while alleging that the Respondent/ Corporate Debtor had committed a default in repayment of its dues to the tune of Rs.1,05,37,712/- (Rupees One Crore Five Lakhs Thirty Seven Thousand Seven Hundred and Twelve only) including interest @ 24% as mutually agreed between the parties. Rest of the facts are as mentioned in the Main Petition are matter of record and not repeated here for the brevity.

- 2.3 It is stated that the Applicant availed the services of Legal Consultants/ Company Secretary for filing and pleadings of the above said Petition No. CP(IB) 271/9/HDB/2022 and provided all the facts, documents and communications between the parties available to the Applicant.

2.4 It is stated that the Applicant received the Certified Copy of Final Order dated 21.12.2023 CP(IB) 271/9/HDB/2022 from NCLT Registry on dated 31.01.2024 through the counsel Mr. Kiran Kumar Jakkani, since the legal consultants hired to plead the matter have not conveyed the final order dated 21.12.2023 as they said that the order is not received from the NCLT. After the Christmas Holidays, winter vacations the applicant talked to another counsel Mr. Kiran Kumar Jakkani for order copy who went to the NCLT Registry and they said that the copy of order is not prepared yet and later once again said that the copy of order is not available and after few days he visited again and they said that the order is misplaced and finally provided the copy of order on 31.01.2024.

2.5 It is stated that the Applicant was shocked to know that the matter was dismissed on the grounds of suppression of material facts regarding the Legal Notice dated 04.09.2021 by the counsel and wrong mentioning of facts of rate of interest @ 18% rather than @ 24% in the Legal Notice whereas the Applicant has very much disclosed all the facts and documents to the Lawyer who sent the Legal Notice & to the Lawyers/ Legal Consultants hired in NCLT proceedings. The Applicant further shocked to know that, the cost of Rs.5,00,000/- has been imposed on him

for suppression of facts by his counsel. Copy of the Final Order is attached as Annexure-II.

2.6 It is stated that the applicant is a small entrepreneur and running the business for his daily bread and butter and the dismissal of the said petition which was filed for default in payment of hard-earned money and imposing of cost of Rs.5,00,000/- on the applicant has caused a grave injustice to the applicant for no wrong done by him and for the bonafide reasons filing the present application for recalling the final order dated 21.12.2023 to be heard on the following grounds.

2.7 Grounds for the Review/ Recall of order dated 21.12.2023:

- i) The Applicant duly disclosed all the facts, documents and other circumstantial information to his legal consultants/ Lawyers who represented the Applicant at the various stages.
- ii) The Applicant is a small entrepreneur and the respondent is a big corporate entity and the denial of relief to the applicant has caused loss of hard-earned money of the applicant and wrongful gain to the Respondent.
- iii) That the Respondent has well acknowledged the dues from time to time and the respondent has well acknowledged by paying the dues

at different intervals from time to time that the rate of interest @24% per annum has been mutually agreed and mutually signed and acknowledged by both the parties on Work Order dated 30.08.2018 (Annexure-III).

- iv) That the non-disclosure of Legal Notice dated 04.09.2021 by the concerned Legal Consultant/ Lawyer at the time of filing the petition before Hon'ble NCLT, Hyderabad Bench may not be treated as suppression of facts by the applicant since was very much disclosed by the Applicant to his Legal Consultants before filing the petition.
- v) That the matter relating to the suppression of fact regarding the rate of interest in Legal Notice dated 04.09.2021 @ 18% rather than 24% may be treated as inadvertent error by the Lawyer/ Legal Consultant who sent the Legal Notice since the Works Contract which carried interest @ 24% per annum was provided to the Lawyer who sent the Legal Notice by the Applicant.
- vi) The work order, invoices and delivery challans have been very much acknowledged by the respondent from time to time. Hence, the amount of default is very much acknowledged and admitted by the Respondent.

- vii) That the rate of interest @ 24% per annum along with the amount of default makes more than Rs.1.00 Crore Threshold limit which is more than sufficient for the initiation of the Corporate Insolvency Resolution Process (“CIRP”) proceedings against Respondent/ Corporate Debtor before the Hon’ble NCLT, Hyderabad Bench.
- viii) The applicant is a bona fide, creditor of his dues and never intended to hide anything from his legal consultants.
- ix) The applicant is a layman not a law man and does not know about the legal technicalities. He being a small entrepreneur who has been suffering from severe financial losses due to the non-payment of operation debt by the Respondent/ Corporate Debtor and apart from that, the cost of Rs.5,00,000/- imposed on him by the Hon’ble Tribunal will cause a great financial impart on both his running business as well as personal life.
- x) As per the Section 8(2) of the IBC, 2016 the Corporate Debtor/ Respondent did not, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) of Section 8 of IBC, 2016, bring to the notice of the Operational Creditor –

- a. Existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;
- b. The repayment of unpaid operational debt –
 - i. by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or
 - ii. by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

3. Therefore, the point that arises for our consideration.

Whether the order dated 21.12.2023 in CP No. 271/HDB/9/2022 can be recalled on the grounds mentioned in the application ?

4. We have heard the learned counsel Mr. Nitin Bansal, Counsel & Mr. Rajiv Bhatnagar, CA for petitioner. Perused the record.

At the outset we wish to state that issue as to the power to recall its own orders by this Tribunal, is no more *res integra*, as Hon'ble Supreme Court of India, in Greater Noida Industrial Development authority vs Praphjit Sing Soni & anr, 2024 LiveLaw (SC) 111, it was held that:

“Thus, the question that appears before the Supreme Court was whether, in the exercise of powers under sub-section (5) of Section 60, the Adjudicating Authority (i.e., NCLT) can recall an order of approval passed under sub-section (1) of Section 31 of the IBC?

Answering in affirmative, the Supreme Court while relying on its recent judgment passed in Union Bank of India vs. Financial Creditors of M/s Amtek Auto Ltd. & Ors. observed that **there was a gross mistake on the part of the Adjudicating Authority in approving the plan which did not fulfil the conditions laid down in sub-section (2) of Section 30 of the IBC.**

Therefore, the recall application filed by the resolution applicant qualifies as valid grounds on which a recall of the order of approval could be sought.

“In our view, the grounds taken qualify as valid grounds on which a recall of the order of approval dated 04.08.2020 could be sought. We thus hold that the recall application was maintainable notwithstanding that an appeal lay before the NCLAT against the order of approval passed by the Adjudicating Authority.”

Thus, it is quite clear from the above ruling that in cases where there is a gross mistake on the part of the Adjudicating Authority, in passing an order which did not fulfil the law, then notwithstanding that an appeal lay before the NCLAT against the order, the said order can be recalled.

5. We have carefully perused the grounds pleaded in the present application, in the light of the above ruling and found that none of the grounds pleaded in the petition fell within the ambit and scope of the above judgment. In fact the grounds pleaded relates to the merits of our order rather than on alleged

violation of any particular law or legal principle, while passing the impugned order. Therefore, this application is liable to be dismissed.

Hence the application is dismissed. No costs.

Sd/-

Charan Singh
Member (Technical)

Sd/-

Dr.Venkata Ramakrishna Badarinath Nandula
Member (Judicial)

Sridher