

2023 PLRonline 9004 (NCLT)

NATIONAL COMPANY LAW TRIBUNAL , NEW DELHI

Before: Shri Mahendra Khandelwal, Member (Judicial) , Shri Rahul Bhatnagar, Hon'ble Member (Technical)

M/s. Greenfields Petrchor Pvt. Ltd. V. M/s. Pack N Pack Packaging Pvt. Ltd.

IB-803/ND/2022

30.10.2023

Insolvency and Bankruptcy Code, 2016 , 3(11) , 5(21) , 9 - Settlement entered into between parties- Does not fall within the ambit of an operation debt - Earlier application under Section 9, was withdrawn by the applicant and no liberty was granted by the Adjudicating Authority to restore the application - Settlement agreement was entered into , wherein the parties agreed to settle the outstanding operational debt amounting Rs.5,71,09,219 at a settlement amount of Rs.4,50,00,000 only - The moment the parties entered into a settlement agreement the nature of the debt being operational debt defined under Section 5(21) of the Code, 2016 is gone as now the debt is not owed for the supply of goods or rendering of services - 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. *Company Appeal (AT)(Insolvency)No.36 of 2023 case titled Permal Wallace Private Limited versus Narbada Forest Industries Private Limited , 17.01.2023, referred. [Para 21]*

Insolvency and Bankruptcy Code, 2016 - Is not a recovery proceeding - IBC is not a recovery 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 - Provisions of the Code are essentially intended to bring the corporate debtor to its feet and are not of money recovery proceedings as such IBC is not a recovery proceeding and the Application which has been filed by the appellant in the present case is only the application for recovery of balance amount of the interest and application was not filed for resolution of any insolvency of the Corporate Debtor (*Swiss Ribbon Pvt. Ltd. Vs. Union of India, referred .*

" 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." **M/s. Invent Asset Securitisation and Reconstruction Private Limited v. M/s. Girnar Fibres Limited [Civil Appeal No. 3033/2022]**

ORDER

PER: SHRI MAHENDRA KHADELWAL, HON'BLE MEMBER (JUDICIAL)

1.The instant application is filed by M/s Greenfields Petrchor Private Limited. (hereinafter referred as 'Applicant'/'Operational Creditor') on 26.09.2022 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code/IBC') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s Pack N Pack Packaging Pvt. Ltd. (hereinafter referred as 'Respondent'/'Corporate Debtor') for failing to make the payment amounting

Rs.4,20,00,001/- (Rupees Four Crores Twenty Lakhs and One only).

2.The Respondent Company M/s Pack N Pack Packaging Pvt. Ltd was incorporated on 25.08.1996 under the provisions of the Companies Act, 1956 having its registered office situated 1192, Pocket-B, Sector-A, Basant Kunj, New Delhi-110093. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under subsection (1) of Section 60 of the Code.

Averments of the Applicants:

3.Briefly stated the facts of the present case as averred by the applicant are that the applicant i.e M/s Greenfields Petrchor Private Limited is engaged in the business of wholesale trading of Kraft papers, whereas the Corporate Debtor herein is engaged in the business of manufacturing of corrugated boxes and printed cartons. Applicant further submitted that, the both Operational Creditor and Corporate Debtor in year 2017 entered into a business relationship for the sale and purchase of paper and its products. It is submitted that the Operational Creditor used to make regular supplies to the Corporate Debtor and raise respective invoices for the same to the Corporate Debtor from the period between 23.10.2017 and 20.09.2019.

4.It is further submitted by the Applicant that the Corporate Debtor against the invoices raised by the Operational Creditor used to make payments from time to time and the Operational Creditor did not object to delayed payments by the Corporate Debtor.

5. Further the Applicant submitted that Corporate Debtor sent a Statement of Account to the Operational Creditor vide email dated 05.04.2019 wherein it shows that the outstanding dues as on 31.03.2019 were to the tune of Rs.6,72,77,308/-. It is submitted that upon the request made by the Operational Creditor to repay the due, the Corporate Debtor started making some payments to the Operational Creditors in parts and Operational Creditor continued to supply the materials to the Corporate Debtor.

6.It is further submitted that the Corporate Debtor from September 2019 onwards stopped repaying the dues accrued by it to the Operational Creditor. Applicant submitted that, upon non-receipt of the payment by the Corporate Debtor against the outstanding dues of the Operational Creditor, the Operational Creditor sent a Demand Notice under Section 8 of the IBC on 21.09.2019.

7.It is further submitted that the Operational Creditor thereafter filed a Petition under Section 9 of IBC being C.P. (IB) No. 424 (ND)/2020 titled as M/s Greenfields Petrchor Pvt. Ltd. Vs. M/s Pack N Pack Packaging Pvt. Ltd. before the National Company Law Tribunal, New Delhi for claiming the total outstanding amount of Rs.5,71,09,219/-. Subsequent thereto, the Corporate Debtor approached the Operational Creditor and after discussions, the parties entered into a Settlement Agreement on 10th January 2022.

8.Applicant submitted that, as per the Settlement Agreement, against the total outstanding amount of Rs.5,71,09,219/-, the matter was settled between the parties for a total amount of Rs.4,50,00,000/- as full and final settlement with the Corporate Debtor making monthly instalment of Rs.10,00,000/- from 10.01.2022 for the period of 45 months. Pursuant to the execution of the Settlement Agreement the Operational Creditor withdrew the Company Petition being C.P. (IB)-425(ND)/2019 and the same has been dismissed as withdrawn on agreed settlement agreement between the parties by the Hon'ble Tribunal Delhi on dated 25.02.2022.

9.Further the Applicant submitted that the Corporate Debtor from April 2022 to June 2022 onward defaulted in making the monthly instalment of Rs.10,00,000/- and as per Clause 4 of the said Settlement Agreement, in the event the Corporate Debtor fails to pay at most 3 instalments of the present debt, the entire balance due amount i.e 4,20,00,001 shall become due and payable in consolidation and shall be payable within 15 days of the third default.

10.It is submitted that the Operational Creditor against the default made by the Corporate Debtor once sent the Demand Notice dated 18.08.2022 under section

8 of the IBC to the Corporate Debtor through registered post and through Email on 24.08.2022 at the registered office and email address of the Corporate Debtor.

11.However, the Operational Creditor neither received any reply of Notice sent under Section 8 of the Code nor any payments of the mentioned unpaid amount to the Operational Debtor within a period of 10 days of the receipt of the Demand Notice was made by the Corporate Debtor. Therefore, the Applicant was constrained to file the instant application under section 9 of the Code.

Reply of the Respondent/Corporate Debtor:

12. Per contra, the respondent through his reply submitted that all averments, statements, submissions, grounds, contentions or allegations made by the Applicant are baseless, misconceived and false, and hence, are denied in entirety. Respondent submitted that the Respondent herein has never received any Demand Notice on 18.08.2022 or on 24.08.2022 by the applicant against the alleged due amount i.e 4,20,00,001.

13. Further, the Respondent submitted that the Applicant himself has admitted that the alleged default arose because the Corporate Debtor had failed to comply with the monthly installment obligation in terms of the Settlement Agreement. Therefore, a breach of an agreement by the Respondent is a matter that should be resolved through a civil suit rather than through the jurisdiction of this Adjudicating Authority. Further submitted that the unpaid installments as per the settlement agreement cannot be treated as operational debt as per Section 5 (21) of IBC.

14. Further the Respondent submitted that the sole motive of the Applicant in filing the present application is to recover the outstanding debt, which was due and payable in terms of settlement agreement and that the IBC is not the recovery proceedings where the party may come to the Adjudicating Authority for the recovery of the amount. Further the Respondent placed reliance on the Judgment of 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]** where it had 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 applicant had only been to invoke the provisions of the Code so as to enforce recovery against the corporate debtor"*

Rejoinder by the Applicants

15. The Operational Creditor through its rejoinder has submitted that the Reply filed by the Corporate Debtor is totally false, frivolous and vexatious and is devoid of any merit. Further the Applicant submitted that the demand notice under section 8 of the IBC was duly served upon the Corporate Debtor on the registered email address on 24.08.2022 and denied the contentions made by the Corporate Debtor that the Corporate Debtor has not received the Demand Notice issued on behalf of the Operational Creditor.

16. The Applicant further submitted that the ground taken by the Corporate Debtor with respect to the interpretation of the term "Operational Debt" in terms of Section 5(21) of the IBC has been denied by the Hon'ble NCLAT in the recent judgment and held that the breach of settlement agreement doesn't not wipe out the debt or change the nature or character of the debt.

17. Further the Applicant further submitted that the Corporate Debtor does not possess immaculate goodwill and reputation in the market. It is submitted that the banks and the financial institutions have already initiated the proceedings under the SARFAESI Act, 2002 to reclaim the properties which have been mortgaged with the banks and the financial institutions have indicated that the Corporate Debtor does not have any money to even repay to its financial creditors and therefore, is rightly required that the Corporate Debtor to be sent to CIRP.

Analysis and Findings

18. We have heard Ld. Counsels for the applicant as well as the Ld. Counsel for the Respondent and perused the averments made in the application, counter affidavit and rejoinder. The relevant documents annexed with the submissions have also been examined.

19. We have perused the proof of purchase orders, invoices of Operational Creditor and interest calculation sheet produced by the Operational Creditor. We have also perused the copy of Settlement Agreement executed between the both parties on 10.01.2022. While the Applicant has prayed for initiation of CIRP against the Corporate Debtor, the Respondent has prayed for dismissal of the present Application on ground that the unpaid installment to the Applicant as per the said Settlement agreement is not a debt as per the provision defined under section 5(21) of the IBC.

20. We find that the applicant had filed a Company Petition (C.P.(IB)/424/ND/2020) on 31.12.2019 claiming an outstanding Operational Debt amounting Rs.5,71,09,219/- which consists of Rs.4,31,59,441/- as principal debt and Rs. 1,39,49,778/- as interest at the rate of 24% p.a. The applicant had filed Interlocutory Application IA/730/2022 seeking withdrawal of the (C.P.(IB)/424/ND/2020) which was allowed vide order dated 25.02.2022. The order dated 25.02.2022 is reproduced herein for ready reference:-

“IA/730/2022:

Mr. Sachit Kumar has appeared on behalf of Operational Creditor and submitted that in this matter both the parties have settled and in terms of settlement, the petitioner wishes to withdraw the application.

Considering the submissions, the prayer is allowed. The Company Petition bearing No IB-424/2020 is dismissed as withdrawn subject to payment of cost of Rs. 10,000/- to be deposited in the Prime Minister Relief Fund by the Corporate Debtor.”

21. On mere perusal of the order dated 25.02.2022, it is evident that the (C.P.(IB)/424/ND/2020) was allowed to be withdrawn on the submissions of the applicant only and further, no liberty was granted by this Adjudicating Authority to restore the application. From the documents on records, it is pertinent to note that pursuant to the settlement agreement dated 10.01.2022 entered between the parties, the parties had agreed to settle the outstanding operational debt amounting Rs.5,71,09,219 at a settlement amount of Rs.4,50,00,000 only. The moment the parties entered into a settlement agreement dated 10.01.2022, the nature of the debt being operational debt defined under Section 5(21) of the Code, 2016 is gone as now the debt is not owed for the supply of goods or rendering of services. 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.

22. The Hon’ble NCLAT in its order dated 17.01.2023 in **Company Appeal (AT)(Insolvency)No.36 of 2023 case titled Permal Wallace Private Limited versus Nabada Forest Industries Private Limited** while rejecting an Appeal filed against the Order dated 03.11.2022 passed by the Adjudicating Authority (National Company Law Tribunal, Indore Bench) by which Application filed under Section 9 of the IBC, 2016 for some default in payment of the interest amount due pursuant to a settlement agreement was rejected by the Adjudicating Authority. Hon’ble NCLAT held that Adjudicating Authority did not commit any error in rejecting Section 9 Application. It has been laid down by the Hon’ble Supreme Court in **Swiss Ribbon Pvt. Ltd. Vs. Union of India**, IBC is not a recovery proceeding and the Application which has been filed by the appellant in the present case is only the application for recovery of balance amount of the interest and application was not filed for resolution of any insolvency of the Corporate Debtor.

23. It is no more res-integra that IBC is not a recovery 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 citation 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.*

24. Having regard to the conspectus of all relevant facts and discussions and the judgments cited supra, we are of the view that pursuant to the withdrawal of the (C.P.(IB)/424/ND/2020) on the strength of the settlement agreement dated 10.01.2022, 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.

25. Accordingly, the present application IB-803/ND/2022 stands dismissed. No orders to cost.

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