

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-IV

Company Petition No. (IB)-556(ND)/2021

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

ASSETS CARE & RECONSTRUCTION ENTERPRISE LIMITED
... APPLICANT/FINANCIAL CREDITOR

Vs.

S T G SOFTEK PRIVATE LIMITED
... RESPONDENT/CORPORATE DEBTOR

Order Pronounced on: 20.06.2022

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (J)

MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (T)

ORDER

PER- MS. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)

The instant petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company M/s. STG Softek Private Limited., referred to as the corporate debtor.



2. The present applicant M/s. Assets Care & Reconstruction Enterprise Limited, having registered office at 2ND FLOOR, MOHANDEV BUILDING 13, TOLSTOY MARG NEW DELHI New Delhi DL 110001 acting in its capacity as trustee of ACRE-107-TRUST ("Financial Creditor"/ "Applicant").

3. The respondent company M/s. S T G Softek Private Limited (CIN: U72200DL2005PTC141840) against whom initiation of Corporate Insolvency Resolution Process has been prayed for was incorporated on 18.10.2005 having its registered office at 711/92, Deepali Building, Nehru Place, New Delhi – 110019. 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 sub-section (1) of Section 60 of the Code.

4. The details of transactions leading to the filing of this petition as averred by the applicant are as follows: -
 - a) ATS Infrastructure Limited (Borrower 1) and Mr. Getamber Anand (Borrower 2) (together as "Borrowers") entered into a Loan Agreement dated 29.09.2017 for a rupee term loan facility to the extent of INR 50,00,00,000/- (Indian Rupees Fifty Crores only) in aggregate ("Loan") from Xander Finance Private Limited ("Assignor"), which was executed inter-alia amongst the Borrowers, Corporate Debtor, i.e., S T G Softek Private Limited (as Security Provider/Obligor) and the Assignor.



- b) An assignment agreement dated 13.04.2021 ("Assignment Agreement") was executed between the Assignor and the Financial Creditor, the Assignor assigned all the loans and underlying securities i.e., all amounts due and payable by each of the Borrowers under the Loan Agreement and the security documents (including the Corporate Guarantee issued by the Corporate Debtor stipulated hereinabove), to be received by the Assignor under the Loan Agreement and the security documents, in favour of the Financial Creditor.
- c) The Assignor vide an email dated 14.04.2021 intimated the Borrowers and the Corporate Debtor regarding the assignment of the Loan Agreement and all securities, rights and obligations in relation thereto by the Assignor in favour of the Financial Creditor
- d) ATS Infrastructure Limited (Borrower 1) has failed to repay the Outstanding Amount on the due dates, i.e., on 31.03.2021 and on 12.04.2021. Accordingly, the Borrower 1 has committed a default in repayment of its debt and consequently, the Financial Creditor was compelled to file a petition under Section 7 of the Code, before this Hon'ble Tribunal, titled 'Assets Care & Reconstruction Enterpris
- e) The applicant is the financial creditor of S T G Softek Private Limited ("Corporate Debtor"), being the assignee of the above Loan and all underlying securities and interest in relation thereto from the Assignor, including the Corporate Guarantee, as per the provisions of Section 5(7) of the Insolvency and Bankruptcy Code, 2016, as amended from time to time ("Code")
- f) The Financial Creditor, due to the failure of the Borrowers to pay the Outstanding Amounts, was compelled to invoke the unconditional and irrevocable Corporate Guarantee issued by the Corporate Debtor by way of its demand notice dated 03.08.2021 ("Demand Notice"), inter alia, demanding the





payment of the Outstanding Amounts payable by Borrower 1, i.e., INR 49,75,05,243/- (Indian Rupees Forty Nine Crores Seventy Five Lakhs Five Thousand Two Hundred Forty Three only) along with interest, default interest, other charges, expenses, etc. in accordance with the Corporate Guarantee, to the Financial Creditor.

- g) Despite the Demand Notice, the Corporate Debtor has defaulted in its guaranteed obligations towards the payment of the outstanding dues, including interest and other charges to the Financial Creditor.
- h) The financial creditor have placed the following documents on record to prove the claims –
- i. Loan Agreement dated 29.09.2017
 - ii. Deed of corporate guarantee dated 29.09.2017 issued by the corporate debtor.
 - iii. Deed of assignment agreement dated 13.04.2021.
 - iv. Copies of emails and letters exchanged between the assignor, corporate debtor and the borrowers dated 13.04.2021, 14.04.2021, 15.04.2021, 17.04.2021 and 20.04.2021
 - v. Demand notice dated 03.08.2021 issued by the financial creditor to the corporate debtor for invocation of the corporate guarantee.
 - vi. Agreement to sell dated 31.12.2020 executed between Xander Finance Private Limited, ATS Infrastructure, Mr. Getamber Anand ('Principal Borrowers') and Nischaya Infrabuild Private Limited ('NIPL')



5. The Corporate Debtor has filed its reply and written submissions and has raised objection against the petition stating averments, which are listed here:
- a) The corporate debtor submits that the sums being claimed by the alleged Financial Creditor to be due does not constitute a 'debt' within the meaning of the Code and cannot be constituted as a "financial debt" within the meaning of Section 7 of the Act especially in terms of the Agreement to sell dated 31.12.2020 which novated and superseded all the earlier agreements between the Parties including the agreements of loan dated 29.09.2017, deed of corporate guarantee dated 29.09.2017 and deed of personal guarantee dated 29.09.2017, on the basis of which the default has been alleged by the Financial Creditor.
 - b) The corporate debtor further submits that the amount alleged to be outstanding as on 31.03.2021 had in any event had merged to become a part of the sale consideration towards the agreement to sell dated 31.12.2020 and therefore, no amount was due and payable by the Respondent to either Xander Finance Private Limited then or is payable to alleged Financial Creditor now under the loan agreement dated 29.09.2017 especially after the said novation and substitution of the said Agreements pursuant to which there could have been no liability against the Corporate Debtor under the said Agreements or in any event be considered as ' financial debt' in terms of the said Agreement of 31.12.2020.
 - c) Further, the act of assigning the purported loan agreement dated 29.09.2017 without the agreement to sell dated 31.12.2020 exhibits the collusion between the alleged Financial Creditor and Xander Finance Private Limited to cause wrongful gains to themselves and wrongful loss to the Respondent and as such the assignment itself is also void and cannot be relied upon.
 - d) Without prejudice to the submissions, that no default has been committed by the Respondent or the Principal Borrowers, it is



stated that even as per the case of the alleged Financial Creditor the Respondent/ Principal Borrowers has committed the alleged default in repayment of the outstanding dues up to December 2020 and that a sum of INR 49,40,64,306/- (Rupees Forty-Nine Crores Forty Lakhs Sixty-Four Thousand Three Hundred and Six only) was outstanding as on 31.12.2020. Clearly, establishing that if any alleged default has been committed by the Principal Borrowers or the Respondent the same has been committed during the suspended period as prescribed under Section 10A of IBC for which no insolvency petition can be allowed.

6. The financial creditor has filed the written submission wherein, reiterating the contents of the petition and further submitting the following contentions: -
- a) The respondent had made an untenable averment by purporting that the entire liabilities of the Borrower have been purportedly settled pursuant to an agreement to sell dated 31.12.2020 ("Expired ATS"), whereas, it has admitted that such Expired ATS was never consummated.
 - b) Further, it was submitted that entire ATS was only limited to a part of the outstanding dues/debt of the Borrower i.e., 'Overdue Amount' (as defined in the Expired ATS) and under no circumstances did it cover the entire debt, as falsely purported.
 - c) In this regard, it is pertinent to point out that Recital J of the Expired ATS specifically provided that the Expired ATS was being executed in lieu of repayment of the 'Overdue Amount' only. For ease of reference, Recital J of the Expired ATS is reproduced herein below:

"J. In lieu of repayment of the Overdue Amount, the Company, being an affiliate of the Borrower, has approached the Lender and has offered to transfer and assign its rights title and interest under the Tri-Partite Sub-Lease Deed in the said Property to the Lender or any of its nominee as the Lender may deem fit." 4 iii. Therefore, it is amply clear that the allegations of the Respondent are misconceived and are liable to be rejected. Furthermore, as mentioned in the



Petition, the said Expired ATS stood terminated/ expired by efflux of time and in accordance with the provisions thereof, the assignor (Xander Finance Private Limited) was fully entitled to recourse under the facility agreement and other securities.

d) Without prejudice to the aforementioned, it is also imperative to point out that the Expired ATS on which the Respondent is seeking to place reliance, clearly records at Recital I that a sum of Rs.49,40,64,306/- is due and payable by the Borrower as on 31.12.2020. For ease of reference, Recital I of the Expired ATS is reproduced herein below:

"I. A sum of INR 49,40,64,306 (Indian Rupees Forty Nine Crore Forty Lakhs Sixty Four Thousand Three Hundred and Six Only) is the amount total outstanding under the Loan Agreement from Borrowers as of December 31, 2020 (excluding interest, default interest and charges thereon) ("**Outstanding Amount**"). A sum of INR 5,30,04,987 (Indian Rupees Five Crores Thirty Lakhs Four Thousand Nine Hundred and Eighty Seven only), is due and payable by the Borrower to the Lender as on October 01, 2020 and continues to be overdue under the said Loan Agreement (hereinafter referred to as "**Overdue Amount**"). Further a sum of INR 6,72,48,878 (Indian Rupees Six Crore Seventy Two Lakhs Forty Eight Thousand Eight Hundred and Seventy Eight Only) is due and payable by the Borrowers to the Lender under the Loan Agreement as on December 31, 2020. ..."

e) It is submitted that the Corporate Debtor has not addressed the factum of the notice of invocation of the Corporate Guarantee vide notice dated 03.08.2021 in the Reply filed by the Corporate Debtor dated 06.01.2022. It is submitted that it is settled law that in absence of any denial of the averments, the same shall be construed as admission of the said facts/ averments. Therefore, the Corporate Debtor has admitted to default as well as the invocation of the Corporate Guarantee

f) The financial creditor submits that Form 1 filed by the Financial Creditor, mention the date of default as 01.04.2021 and 12.04.2021 default by the Borrower, and further on 03.08.2021 (upon the



Corporate Debtor's failure to honour its guaranteed obligations), all of which are after the date of 25.03.2021 (the cut-off date for Section 10A of IBC) and thus, outside the purview of Section 10A of IBC.

7. We have heard Ld. Counsel for both the parties and perused the averments made in the application, reply and written submissions filed by the parties.
8. We have observed that one of the contention as raised by the Corporate Debtor about the alleged amount to be outstanding had in any event had merged to become a part of the sale consideration towards the agreement to sell dated 31.12.2020 and therefore, no amount was due and payable by the Respondent to either Xander Finance Private Limited (Assignor) or the Financial Creditor after the novation and substitution of the said Agreements pursuant agreement to sell dated 31.12.2020. That in order to test the contention raised by the Corporate Debtor, it is necessary to visit the contents of Section 62 of the Indian Contract Act, 1872. The content of Section 62 of the Indian Contract Act, 1872 are reproduced herein below:-

62. Effect of novation, rescission, and alteration of contract.—*If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed. —If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed."*

Illustration (c)

A owes B 1,000 rupees under a contract, B owes C 1,000 rupees, B orders A to credit C with 1,000 rupees in his books, but C does not assent to the agreement. B still owes C 1,000 rupees, and no new contract has been entered into. (c) A owes B 1,000 rupees under a contract, B owes C 1,000 rupees, B orders A to credit C with 1,000 rupees in his books, but C does not assent to the agreement. B still owes C 1,000 rupees, and no new contract has been entered into."

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9. From a perusal of the agreement to sell dated 31.12.2020, we are of the opinion that agreement to sell dated 31.12.2020 executed in lieu of repayment of the 'Overdue Amount' only as defined in **Exhibit J. Further, from the perusal of the provisions of section 62 of the Indian Contract Act, 2013 and the** agreement to sell dated 31.12.2020 especially Recitals H, I and J of the agreement to sell dated 31.12.2020 , we inferred that the agreement to sell dated 31.12.2020 have not substituted and novation the other agreements and was without prejudice to the Facility Agreement dated 29.09.2017.
10. As regards to the contention of the corporate debtor that the debt in default is barred by the provision of Section 10 A of the IBC, on perusal of the documents on record and submissions made, we inferred that a part of the default as alleged in Part IV of Form V of the petition was occurred 25.03.2020 to 24.03.2021 as envisaged under Section 10A of the IBC. Be that as it may, from a glance of Part IV of Form 1 of the petition, the financial creditor claimed an amount of Rs. 49,75,05,243/- upon failure of the corporate debtor to make the payment pursuant to the Demand Notice issued by the financial creditor on 03.08.2021 (date of default) , we inferred debt that the amount of default after adjusting the amount of default during 25.03.2020 to 24.03.2021 is above the threshold limit (Rs.1 crore) as provided in section 4 of the IBC, 2016.
11. We are of the view that dispute over the quantum of default cannot be a ground to reject the Application under Section 7 of the IBC,2016 as determination of quantum of financial debt is not in the domain of Adjudicating Authority. we are strengthen by the Judgement in '**M/s. Innoventive Industries Ltd.' Vs. 'ICICI & Anr.'**, (2018) 1 SCC 407, wherein the hon'ble supreme court observed the definition of 'Claim' and held that even if right of payment is disputed, the Code gets triggered the moment, the default exceeds the threshold amount. At this juncture, it is relevant to reproduce paras 27, 28 & 30 of the '**M/s.**



Innoventive Industries Ltd. (Supra) wherein the Hon'ble Supreme Court has observed as follows:

“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes nonpayment of even part thereof or an instalment amount. For the meaning of “debt”, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5 (21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is



disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

(Emphasis Supplied)

12. Needless to say, that an application under Section 7 of the Code is maintainable if the debt is proved to be due and there is default. In view of the Section 4 of the Code, the moment default is of Rupees one hundred lakhs or more, an application to trigger Corporate Insolvency Resolution Process under the Code is maintainable.
13. We are satisfied that the present application is complete in all respect. The applicant financial creditor is entitled to move the application against the corporate debtor in view of admitted outstanding financial debt and default of the same by the corporate debtor. The default in repayment of the financial debt is not refuted by the Corporate Debtor. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is hereby, admitted.
14. The applicant in Part III of its application proposed the name of Mr. Abhilash Lal proposed Interim Resolution Professional, having Registration Number IBBI/IPA-001/IP-P00344/2017-2018/10645 having e-mail id abhilash@abhilashlal.com. The consent in Form-2 of the proposed IRP Mr. Abhilash Jain is taken on record. ~~Therefore, the I.A./1852/ND/2022 stands allowed, as to no order to cost.~~ ^{On}

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15. Mr. Abhilash ^{dal} Jain having Registration Number IBBI/IPA-001/IP-P00344/2017-2018/10645 having e-mail id abhilash@abhilashlal.com is hereby appointed as an Interim Resolution Professional for corporate debtor.
16. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
17. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Mr. Abhilash ^{dal} Jain to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount however is subject to adjustment towards Resolution Process cost as per applicable rules.
18. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

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(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any Judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

19. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

20. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the

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Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex- directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders.

21. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
22. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.

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(SUMITA PURKAYASTHA)
MEMBER (T)

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(DHARMINDER SINGH)
MEMBER (J)

Pronounced today under Rule 151 of the NCLT Rules, 2016 as the Hon'ble Member (Technical) Ms. Sumita Purkayastha is not holding the court today.

Vishal Rana
20-06-2022
Court Officer



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

IA/2047/ND/2022
IN
IB/556/2021

In the matter of :

Assets Care and Reconstruction Enterprises Ltd Financial Creditor

v.

STG Softek Private Limited Corporate Debtor /
Applicant

Order Delivered on: 20.06.2022

CORAM

SH. DHARMINDER SINGH, HON'BLE MEMBER, (JUDICIAL)

MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)

ORDER

PER: MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)

The present interlocutory application has been filed by the Corporate Debtor i.e., M/s. STG Softek Private Limited ("Corporate Debtor/Applicant") with a prayer to recall the orders dated 27.04.2022 in the aforesaid Company Fetition No. IB-556/(ND)/2021 filed by the abovementioned Corporate Creditor against the Respondent herein.

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2. The submissions made by the respondent corporate debtor are stated in brief as follow:-
 - a. The Tribunal vide order dated 27.04.2022 in C.P.(IB) 556/ND/2021 which was listed for arguments on 27.04.2022, had reserved the C.P.(IB) 556/ND/2021 for orders without granting an opportunity to the Corporate Debtor to address its arguments.
 - b. The respondent corporate debtor requests the tribunal to refrain from passing any final order on the petition under Section 7 of the Code without hearing the corporate debtor and especially in view of the fact that both the financial creditor and the corporate debtor are effectively attempting to settle their disputed and that passing of the final orders shall adversely affect the ongoing settlement negotiations between the parties. Further, the respondent corporate debtor sought a time of four (4) weeks on account of ongoing settlement talks between the parties.
 - c. The respondent corporate debtor submits that in case any final order is passed in the instant proceedings the ongoing settlement talks between the financial creditor and corporate debtor shall be disrupted and will lead to multiplicity of litigation. The financial Creditor and the corporate Debtor are genuinely attempting to resolve their ongoing disputes and hopeful that the same shall be settled within four (4) weeks.
3. We have considered the facts of this case and the submissions made by the respondent corporate debtor. The respondent corporate debtor has filed the application (IA/2047/ND/2022) to recall the order dated 27.04.2022 wherein the C.P.(IB) 556/ND/2021 was reserved for orders.
4. Apparently, Company Petition No. IB- 556/ND/2021 has been reserved on 27.05.2022 after providing the counsel of respondent corporate debtor an opportunity to argue the matter, whereas the counsel for respondent corporate debtor sought adjournment on the ground that arguing counsel in not present today. At this juncture, it is relevant to note that the corporate debtor was earlier proceeded ex parte vide order dated

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26.10.2021 because of non-appearance in the matter consequent to which the corporate debtor filed an application (I.A. 1176/2022) on 06.01.2022 for setting aside the order dated 26.10.2021. This tribunal in the interest of justice was please to set aside the ex-parte order dated 26.10.2021 and fixed the matter on 27.04.2022.

5. So far as the question of ongoing settlement talks between the parties in Company Petition No. C.P.(IB) 556/ND/2021, still the matter has to be taken into consideration whether it has to be admitted or not. Apart that it is settled position of law that the financial creditor is at liberty to file the withdrawal application under the relevant provisions at any stage of the matter if it is being admitted. Thus, the applicant herein is indulged in dilatory tactics and want to prolong the matter on one pretext or other.
6. In sequel of the aforesaid discussion, no interference is called for setting aside/ recalling the order dated 27.04.2022 in the aforesaid Company Petition No. IB-556/ND/2021.
7. Resultantly, the present Interlocutory Application IA/2047/ND/2022 is hereby dismissed as to no order as to costs.

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(SUMITA PURKAYASTHA)
MEMBER (T)

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(DHARMINDER SINGH)
MEMBER (J)

Pronounced today under Rule 151 of the NCLT Rules, 2016 as the Hon'ble Member (Technical) Ms. Sumita Purkayastha is not holding the court today.

Vishal Rana
20-06-2022
Court Officer