# IN THE NATIONAL COMPANY LAW TRIBUNAL
# NEW DELHI BENCH (COURT – II)
# R.A. No. 51/2024
# IN
# C.P. (IB) NO. 860/ND/2020

**IN THE MATTER OF:**

**M/s Surya Dealtrade Pvt. Ltd. ... Applicant/Financial Creditor**

**Versus**

**M/s Vipul Ltd. ... Respondent/Corporate Debtor**

**AND IN THE MATTER OF R.A. NO. 51/2024**

**M/s Surya Dealtrade Pvt. Ltd.**
Through Mr. Harishankar Gupta
Regd. Off: 43, Sir Hariram Goenka Street,
Kolkata, West Bengal – 700007 **... Applicant/Financial Creditor**

**Versus**

**M/s Vipul Ltd.**
Regd. Off: Unit No. 201, C-50,
Malviya Nagar,
New Delhi – 110017 **... Respondent/Corporate Debtor**

**Under Section: Section 7 of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016**

**Order delivered on 17.12.2024**

**CORAM:**
**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**
**SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)**

**PRESENT:**

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|---|---|---|
| **For the Applicant** | : | Adv. Sandeep Bajaj, Adv. Devansh Jain |
| **For the Respondent** | : | Adv. Sumesh Dhawan, Adv. V. Kak, Adv. Shaumya Shyam, Adv. Raghav Dembla |

## ORDER

## RA-51/2024

The captioned application has been filed under Rule 11 of NCLT Rules, 2016 by M/s Surya Dealtrade Pvt. Ltd. (hereinafter referred to as "Applicant/ Financial Creditor") through its Authorized Representative, Mr. Harishankar Gupta, seeking restoration of CP(IB) No. 860/ND/2020. The captioned petition was filed by the Applicant under Section 7 of IBC, 2016 to initiate CIRP against M/s Vipul Ltd. (hereinafter referred to as "Respondent/ Corporate Debtor"). The reliefs sought in the present restoration application reads thus: -

a. *"Revive and restore the captioned Petition being Company Petition (IB) No.860/ND/2020titled as "Surya Dealtrade Pvt. Ltd. Vs. Vipul Ltd." to its original number for proper adjudication thereof in terms with the provisions of the Code;*
b. *List Company Petition (IB) No.860/ND/2020 titled as "Surya Dealtrade Pvt. Ltd. Vs. Vipul Ltd." for further proceedings in terms with the prayer clause of the said Petition"*

**2.** The brief facts of the case as narrated by the Applicant/ FC in CP(IB) No. 860/ND/2020 reads thus: -

i. A Loan Acknowledgment Letter dated 22.08.2019 was executed between the Applicant/ FC and the Respondent/ CD by way of which the CD had acknowledged receiving a loan of Rs. 1,05,00,000/- from the Applicant/ FC.

ii. The aforementioned amount was transferred to the Respondent *vide* RTGS dated 22.08.2019 and as per the understanding between the parties, the

Respondent was liable to pay an interest at the rate of 16% p.a and the loan was returnable on 22.02.2020.

iii. Since the amount of debt could not be returned, the Applicant presented the post-dated cheque dated 22.02.2020 which was issued by the Respondent to secure the aforesaid loan. However, the said cheque was dishonored with the remarks "funds insufficient".

iv. The amount advanced by the Applicant had the 'commercial effect of borrowing' as provided under Section 5(8) of the Code and on account of the failure in repayment of the loan amount, the Respondent had committed a default in terms of Section 3(12) of the Code.

v. Till the date of filing of the application, the Respondent had committed a default in repaying the amount of Rs. 1,14,80,383 in respect of the financial debt owed to the Applicant.

**3.** The particulars of the financial debt, including the date of default, as provided in Part – IV of CP(IB) No. 860/ND/2020 reads thus: -

**PART – IV**

| PARTICULARS OF FINANCIAL DEBT | |
|---|---|
| TOTAL AMOUNT OF DEBT GRANTED | Rs.1,05,00,000/- (Rupees One Crore and Five Lakhs Only) on the terms and conditions laid down in the Loan Acknowledgement Letter dated 22.08.2019along with interest at the rate of 16% per annum. |
| DATES OF DISBURSMENT | 22.08.2019 more particularly being the date as mentioned in the Loan Acknowledgement Letter dated 22.08.2019. |

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| **AMOUNT CLAIMED TO BE IN DEFAULT** | Rs.1,14,80,383/- (Rupees One Crore Fourteen Lacs Eighty Thousand Three Hundred and Eighty Three Only)on the terms and conditions laid down in the Loan Acknowledgement Letter dated 22.08.2019including Rs.9,80,383/- (being interest at the rate of 16% per annum for the period commencing from 22.11.2019up to the filing of the present Application on 22.06.2020). For detailed calculations, kindly refer to **APPENDIX – A.** |
| **DATE ON WHICH DEFAULT OCCURRED** | 22.02.2020 being the date on which the Corporate Debtor was liable to make the repayment of the loan amount to the Financial Creditor in terms with the Loan Acknowledgment Letter dated 22.08.2019. |

**4.** Further, as stated by the Applicant in RA- 51/2024, during the pendency of the CIRP, it had received the following payments from the Respondent/ CD: -

| DATE / PERIOD OF RECEIPT | PARTICULAR | AMOUNT |
|---|---|---|
| Financial Year 2019-20 | TDS | ₹ 42,345 |
| Financial Year 2020-21 | TDS | ₹ 1,55,533 |
| Financial Year 2020-21 | TDS | ₹ 46,241 |
| 02.02.2021 | Part payment of interest | ₹ 5,00,000 |
| 11.03.2021 | Part payment of interest | ₹ 5,00,000 |
| 25.03.2021 | Part payment of interest | ₹ 1,50,000 |

**5.** It is pertinent to note that during the pendency of the CP(IB) No. 860/ND/2020, this Court had *vide* order dated 12.07.2021 passed in CP(IB) No. 541/ND/2019 titled ***M/s Vipul Greens Resident Welfare Associates vs. M/s Vipul Ltd*** ordered commencement of CIRP qua the Respondent/ CD. In the wake, the CP(IB) No. 860/ND/2020 was disposed of with liberty to Applicant/ FC to file its claim before the Resolution Professional appointed in CP(IB) No. 541/ND/2019. Relevant excerpts of the order dated 15.07.2021 passed in CP(IB) No. 860/ND/2020 reads thus: -

> *"Since the CIRP has already been initiated against the Corporate Debtor, the Petition has become infructuous.*
>
> *The Petition (IB- 860(ND)2020 is* ***Dismissed being infructuous.***
>
> *However, the Petitioner is at liberty to raise his claim before the RP of (IB) 541/2019"*

**6.** It is relevant to mention that an appeal was preferred on behalf of the Respondent/ CD challenging the order dated 12.07.2021 passed in CP(IB) No. 541/ND/2019 before the Hon'ble Supreme Court by way of Civil Appeal No. 4467/2021 titled ***Mr. Punit Beriwala vs. M/s Vipul Greens Resident Welfare Association & Anr***. In terms of the order dated 02.08.2021, Hon'ble Supreme Court could set aside the impugned order dated 12.07.2021 passed by this Court, thereby terminating the CIRP qua the Respondent/ CD. Relevant excerpt of the judgment dated 02.08.2021 passed by the Hon'ble Supreme Court reads thus: -

> *"Mr. K. V. Vishwanathan, learned senior counsel appearing for the applicant in I.A.No. 89123 of 2021, has informed us, on instructions, that the CoC has not yet been constituted, as a result of which his client is within the 30-day*

*period in which this application may be taken up, and an order passed by us stating that the matter has been settled. Accordingly, we do so and take the Settlement Agreement dated 26.07.2021 on record and dispose of the appeal. The NCLT Order is set aside."*

**7.** The Applicant has stated in the present Restoration Application that after the disposal of the aforesaid Civil Appeal by the Hon'ble Supreme Court, it approached the Respondent/ CD to repay the debt amount and that at the relevant time, the Respondent/ CD had assured the Applicant that it shall liquidate the liability towards it soon. However, despite such assurances, the Respondent/ CD failed to repay the debt owed to it, which has constrained the Applicant to approach this Adjudicating Authority by way of the present application. The Applicant has further stated that as on 05.03.2024, the defaulted amount stood at Rs. 1,91,88,781/-.

**8.** On behalf of the Respondent/ CD, a reply dated 22.07.2024 was filed wherein the following submissions were made: -

i. The Restoration Application is not maintainable as no liberty was granted by this Court to the Applicant in the order dated 15.07.2021 to revive CP(IB) No. 860/ND/2020. Since the said petition was 'dismissed as infructuous', without any liberty for the purpose of revival of the petition, the Applicant at this stage cannot take the benefit of its own negligent conduct and seek the petition's revival. To buttress this plea, reliance was placed on order of Hon'ble NCLAT in ***SRLK Enterprise LLP vs. JALAN Translutions (India) Ltd.*** [Company Appeal (AT)(Ins) No. 294 of 2021] whereby the Hon'ble Appellate Tribunal had upheld the order of this

Adjudicating Authority dismissing the Restoration Application where no liberty for seeking revival had been granted.

ii. The CIRP against the Respondent/ CD with respect to CP(IB) No. 541/ND/2019 was withdrawn in terms of the order dated 02.08.2021 passed by the Hon'ble Supreme Court in Civil Appeal No. 4467/2021, however, the Applicant has approached this Adjudicating Authority after almost three years of the withdrawal of CIRP with malafide intention to arm twist the Respondent in paying the alleged dues.

iii. The Applicant is neither a financial service provider nor a financial creditor of the CD. The principal business activity of the Applicant neither pertains to financial services nor is it registered with RBI for such activities.

iv. That the alleged debt claimed by the Applicant does not comply with the substantive definition of financial debt provided under Section 5(8) of the Code. The Applicant has failed to demonstrate any understanding or agreement of time value of money with the Respondent in relation to the alleged transaction.

v. The IBC, 2016 is not a tool for recovery of money and therefore, the present application is liable to be dismissed with costs as envisaged under Section 65 of the Code.

vi. Additionally, while considering the immense scale of the projects of the Respondent and the consequently vulnerable interests involved of the concerned Homebuyers, the alleged recoverable debt, if any as claimed by the Applicant is highly undersized & diminutive and is insufficient to altogether initiate/ revive the CIRP of the Respondent as initiating CIRP based on the claim of a single alleged creditor overlooks the collective interests and rights of homebuyers, who are also significant stakeholders of the CD.

**ANALYSIS & FINDINGS: -**

**9.** At the outset, it is pertinent to note that CP(IB) No. 860/ND/2020 was dismissed as infructuous *vide* order dated 15.07.2021 in the wake of admission of CP(IB) No. 541/ND/2019 *vide* order dated 12.07.2021 whereby the CIRP against the Respondent/ CD was initiated. It is also not in dispute that the aforementioned order of 12.07.2021 was set aside in terms of the order dated 02.08.2021 passed by the Hon'ble Supreme Court in Civil Appeal No. 4467/2021 as a consequence of which the CIRP qua the Respondent/ CD stood terminated. The order passed by the Hon'ble Supreme Court has been reproduced herein above.

**10.** A perusal of the order passed by the Hon'ble Supreme Court shows that the impugned order dated 12.07.2021 passed by this Tribunal in CP(IB) No. 541/ND/2019, was set aside by the Hon'ble Supreme Court in the wake of the Settlement Agreement dated 26.07.2021 between the parties therein. Resultantly, the CIRP against the CD stood terminated.

**11.** The Applicant, by way of the present restoration application, has contended that despite receiving assurances from the Respondent/ CD, after passing of the aforementioned order of the Hon'ble Supreme Court, regarding repayment of the defaulted amount, the Respondent/ CD did not make any repayment to the Applicant and as a result, the Applicant was constrained to seek revival of CIRP against the Respondent/ CD.

**12.** On the other hand, the Respondent/ CD has primarily contended that when CP(IB) No. 860/ND/2020 was dismissed as infructuous, no liberty was granted to the Applicant to seek revival of the said petition at a later point of time.

**13.** In view of the aforementioned contentions and submissions of the parties, this Adjudicating Authority will analyze the law on the issue of whether a petition which has been dismissed on account of withdrawal by the Applicant or in view of a settlement between them can be revived when no liberty was granted in the earlier order of dismissal.

**14.** At the outset, we deem it apt to make reference to judicial precedents on this issue. In the matter of ***Adhunik Niyat Ispat Limited vs. Truvoit Engineering Company Private Limited*** [Company Appeal (AT)(Ins) No. 933 of 2022], the Hon'ble NCLAT, New Delhi *vide* order dated 03.04.2023 had held that once an Applicant forfeits his right to seek revival of the petition before NCLT and prefers to keep the application dismissed, there was no occasion to again approach the NCLT to seek restoration of the application. Relevant excerpt of the order reads thus: -

> *"**13.** On perusal of the aforesaid order it is very much clear that the right for revival of main application was forfeited by the Ld. NCLT. Once with open mind the appellant has agreed on the terms and thereafter, he preferred to*

*keep his application dismissed, there was no reason to again approach the NCLT for filing an application for restoration. Of course, Ld. NCLT while dismissing the restoration petition had examine the question of threshold, we are of the opinion that those facts are not required to be taken note of at the moment particularly in view of the fact that restoration application has also been dismissed on the ground that no liberty was granted for revival."*

*[...]*

*"**15**. In view of the facts and circumstances, particularly in the fact that while dismissing the application on the ground of settlement, Ld. NCLT by its implication had restrained the appellant for revival of the application, there is no reason to entertain the present application which has been filed against the impugned order. The Appeal stands dismissed."*

**15.** In the matter of ***Growel Feeds Pvt. Ltd. vs. Ashadeep Aquaculture Pvt. Ltd.*** [Company Appeal (AT) No. 754 of 2022], the Hon'ble NCLAT, New Delhi *vide* order dated 03.07.2023 held that when liberty had not been granted by NCLT to revive the petition which has been dismissed on account of settlement between the parties, there was no error by NCLT in refusing to revive the earlier petition on grounds of dishonoring of settlement terms by CD. Relevant excerpt of the order reads thus: -

*"Subsequent to the said order, it appears that settlement terms were not honoured by the Corporate Debtor. On the breach being committed, an application was filed to revive the CIRP. The Adjudicating Authority has taken the view that there is a fresh cause of auction to take appropriate action against the party concerned which has been observed in Paragraph 9 of the Order. It is further stated that Adjudicating Authority in its order dated 13th September, 2022 in spite of request to grant liberty to revive has negavitated the said request hence the revival cannot be granted.*

*We are of the view that in the facts of the present case, especially when the liberty sought by the memo was not granted by the Adjudicating/Authority the course open for the Appellant was to file a fresh application under Section 9 of the Code and the Adjudicating Authority did not commit any error in refusing to revive the earlier Company Petition."*

**16.** On behalf of the Respondent/ CD, reliance was placed on the order dated 08.04.2021 of Hon'ble NCLAT in ***SRLK Enterprise LLP vs. JALAN Translutions (India) Ltd.*** [Company Appeal (AT)(Ins) No. 294 of 2021] whereby the Hon'ble Appellate Tribunal had upheld the order of this Adjudicating Authority dismissing the Restoration Application where no liberty for seeking revival had been granted. Relevant excerpt of the aforementioned order reads thus: -

> *"**6.** […] There is difference between withdrawal simplicitor making statement that parties have settled. It is different when bringing the settlement on record, and making it a part of the Order of withdrawal liberty is taken and brought on record to restore the proceedings in case of default. IBC is not a recovery proceeding where because the money or part of it has not come, the party may repeatedly come to the Court. Adjudicating Authority has rightly observed that no liberty to revive was there and so declined to interfere. The Appellant would be at liberty to pursue other remedies in law."*

**17.** A reference may also be made to the order dated 15.052.2023 passed by Hon'ble NCLAT in ***IDBI Trusteeship Services Limited vs. Nirmal Lifestyle Limited*** [Company Appeal (AT)(Ins) No. 117 of 2023] wherein the Hon'ble Appellate Tribunal had held that when a withdrawal settlement specifically contains a clause for revival in the event of default on the part of the CD, the Adjudicating Authority cannot reject a revival application by the FC in the event of default by the CD. Relevant excerpt of the aforesaid order reads thus: -

*"**15**. In the present case, consent terms were brought on record since they were part of the Application under Section 12A of the Code which was noticed in the Order of the Adjudicating Authority itself. When consent term itself contains clause for revival, non-giving liberty specifically for revival by the Adjudicating Authority is inconsequential.*

***16.*** *Another judgment which has been relied on by Learned Counsel for the Respondent is C.A. (AT) Ins. No. 294 of 2021-SRLK Enterprises LLP v. JALAN Transolutions (India) Ltd. In the above case, the Adjudicating Authority's Order which was under challenge was noted in paragraph 5. It is useful to extract paragraph 5 of the Judgment which is to the following effect:*

> *"5. The Impugned Order is a short Order which reads as under: "IA/977/2021: The Applicant has filed this Application under Section 60(5) of the IBC Code r/w Rule 11 of the NCLT Rules. Heard Ld. Counsel appearing for the Applicant and perused the averment made in the Application.*
>
> *The Ld. Counsel appearing for the Applicant submitted that this Adjudicating Authority vide order dated 09.05.2019 had terminated the CIRP and the file was consigned to the records. He further submitted that the said order was passed in terms of the settlement arrived in between the parties. He further submitted that in the meantime, the Corporate Debtor has violated the terms and conditions of the settlement. Therefore, this Adjudicating Authority under Rule 11 of the NCLT Rules has power to revive the original application. He also placed reliance on the decision of the Hon'ble Supreme Court in Civil Appeal No. 324/2020 as well as decision of the NCLT, Mumbai Bench in M.A. No. 3516 of 2019.*
>
> *In the light of submissions, we went through the decision on which the Petitioner has placed reliance as well as averments made in the Application. We notice that vide order dated 09.05.2019 passed by this Bench, the petition (IB)- 1721(ND)2018 was withdrawn at the instance of the Financial Creditor and the CIRP was terminated. We further notice that no liberty was given to the Petitioner to revive the application. So, considering this, we are of the considered view that since this Adjudicating Authority was not the part of the settlement arrived in between the parties, rather the settlement was arrived*

*outside the Tribunal. It was on the submissions of the Applicant, the main petition was dismissed as withdrawn and the CIRP was terminated. Therefore, we have no reason to recall our earlier order. Accordingly, the prayer of the Applicant to recall the earlier order is hereby rejected.*

*Accordingly, the IA is DISMISSED."*

***17.*** *The adjudicating Authority while rejecting the revival application as noted above observed that the settlement was arrived in between the parties outside the Tribunal. In the present case, the Settlement was arrived and submitted before the Adjudicating Authority which was noticed in the Order dated 09.02.2022 hence the Judgement of SRLK Enterprises LLP is clearly distinguishable from the facts of the present case. In paragraph 6 of the Judgement, following has been observed: "6. Going through the Impugned Order dated 26th February, 2021 which seeks to recall the Order dated 09th May, 2019 which also we have seen, we find it difficult to take a different view from the Adjudicating Authority. There is difference between withdrawal simplicitor making statement that parties have settled. It is different when bringing the settlement on record, and making it a part of the Order of withdrawal liberty is taken and brought on record to restore the proceedings in case of default. IBC is not a recovery proceeding where because the money or part of it has not come, the party may repeatedly come to the Court. Adjudicating Authority has rightly observed that no liberty to revive was there and so declined to interfere. The Appellant would be at liberty to pursue other remedies in law"*

***18.*** *What has been observed in paragraph 6 itself makes a clear distinction between withdrawal simplicitor making statement that parties have settled and bringing on record settlement. This Tribunal itself has recognized two separate categories. Present case falls in the category where settlement has been brought on record. Thus, Judgement of this Tribunal in SRLK Enterprises LLP does not help the Respondent.*

*__19.__ We thus in the facts of the present case are of the view that Adjudicating Authority committed error in rejecting the revival application 3196 of 2022 when the consent term itself contemplates a clause for revival in event of default and default having been committed by the Corporate Debtor, rejection of revival is to deny the Financial Creditor rightful remedy. Non-mention of specific liberty in the Order is inconsequential in view of the clear terms in the settlement which was the basis of withdrawal of Company Petition.*

*__20.__ We thus are of the view that the Adjudicating Authority committed error in rejecting I.A. No. 3196 of 2022. Sufficient cause has been made out for allowing this Appeal and setting aside the Order dated 21.12.2022. Consequently, I.A. No. 3196 of 2022 is allowed and the C.P. (IB) No. 4412(MB)/2019 is revived before the Adjudicating Authority to proceed in accordance with law"*

**18.** In the aforesaid order, the Hon'ble Appellate Tribunal had noted that when the settlement agreement was brought on record of the Adjudicating Authority at the time of withdrawal of the application and further when such settlement agreement itself contained a clause which provided for revival of proceedings in the event of breach of settlement terms by the parties, the Adjudicating Authority should not have rejected the restoration application by the FC.

**19.** In the present case, the Applicant has failed to bring on record any document/ agreement between the parties in terms of which the Applicant/ FC could get the liberty to revive the application on termination of earlier CIRP. In paragraph 8 of the application, the Applicant has merely contended that certain assurances were given by the CD in the wake of the termination of the CIRP that the defaulted amount would be repaid. Paragraph 8 of the application reads thus: -

> *"**8.** Thatafter disposal of the aforesaid Civil Appeal, the Financial Creditor / Applicant approached the Corporate Debtor and requested the Corporate Debtor to repay the financial debt which it owed to the Financial Creditor. At the relevant point in time, the Corporate Debtor assured the Financial Creditor that it shall liquidate the liability of the Corporate Debtor towards the Financial Creditor soon. However, despite such assurance, the Corporate Debtor has failed to repay its debt towards the Financial Creditor thereby constraining the Financial Creditor to approach this Hon'ble Tribunal."*

**20.** In fact, in the present restoration application, the Applicant has failed to place on record any communication made with the Respondent/ CD since the passing of the aforementioned order dated 02.08.2021 of the Hon'ble Supreme Court whereby the demand for the defaulted amount has been made by the Applicant/ FC. Besides, the captioned RA has been preferred for revival of the petition, which could be disposed of way back on 02.08.2021 i.e. after almost three years of the order passed by Hon'ble Supreme Court. Even if it is presumed that the cause for reviving the CIRP could accrue the Applicant, only after the order passed by Hon'ble Supreme Court, then also he could prefer the present application within 30 days of the order of the Hon'ble Supreme Court. In any case, apparently, the RA has been preferred after almost 3 years. We may also not be oblivious of the fact that the object and intent of CIRP is to rescue the Corporate Debtor and to put it back to its feet. The same is not to facilitate the recovery of debt. Once it could transpire before the Hon'ble Supreme Court that the Corporate Debtor could meet its liability and CIRP was not needed, just to strong arm the CD to repay the amount of its debt, the Applicant cannot maintain restoration/ revival application after 3 years.

**21.** Therefore, granting the relief being sought by the Applicant in the present application would result in turning the IBC, 2016 into a debt recovery proceeding where a party would repeatedly approach this Tribunal for recovery of the same debt. It is a settled law that the Code cannot be turned into a debt recovery proceeding and this legal position has been reiterated by the Hon'ble Supreme Court in a catena of judgments including ***Swiss Ribbons Pvt. Ltd. vs. Union of India & Ors.*** [WP(C) No. 99 of 2018], ***M/s S.S. Engineers & Ors. Vs. Hindustan Petroleum Corporation Ltd.*** [Civil Appeal No. 4583 of 2022] and ***M/s Invent Asset Securitization and Reconstruction Private Limited vs. M/s Girnar Fibres Limited*** [Civil Appeal No. 3033/2022].

**22. The restoration application is found devoid of merits and is accordingly, rejected.**

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|---|---|
| **Sd/-** | **Sd/-** |
| **(SUBRATA KUMAR DASH)** | **(ASHOK KUMAR BHARDWAJ)** |
| **MEMBER (T)** | **MEMBER (J)** |