

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II

INTERLOCUTORY APPLICATION. No. (IBC) 2625/2021

In

INTERLOCUTORY APPLICATION. No. 517/2021

In

C.P(IB) NO.1392 OF 2017

*Application filed under Rule 11 of the National
Company Law Tribunal Rules, 2016.*

In the matter of

Banswara Syntex Limited,

Incorporated under the provisions of the
Companies Act, 1956 having its registered
office at

Dohad Road, Industrial Area.

District Banswara. PIN 327001

Rajasthan

... Operational Creditor

v/s

Samrat Gems Impex Private Limited

Samrat House •Unit NO 13'. Plot NO. 7 A,

Marol Co-Op-Industrial Estate,

Andheri East

...Corporate Debtor

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In the matter of:

Banswara Syntex LimitedPetitioner

v/s

Samrat Gems Impex Private Limited

...Corporate Debtor

Order Pronounced on: - 13.12.2023

Coram:

Anil Raj Chellan

Kuldip Kumar Kareer

Member (Technical)

Member (Judicial)

ORDER

1. The Operational Creditor is filing the present Interim Application seeking the recall of dismissal of IA 517 of 2021 in the above Company Petition and restore the same to the file of this Honourable Tribunal.

Case of the Applicant in Brief:

2. The Operational Creditor had supplied textiles to the Corporate Debtor based on various purchase orders /indents issued by the Corporate Debtor. As Corporate debtor failed to make the payment, the operational creditor filed an application under section 9 of IBC being C.P (I.B) NO. 1392 of 2017("Company Petition"). When the above captioned Company Petition was

being heard, it was observed that another application under section 9 of the IBC bearing CP NO. 1731 (IB)/MB/ 2018 (Rajgopal Creation Vs. Samrat Gems Impex Pvt. Ltd.) was already admitted and the CIRP against the Corporate Debtor was already in process. Therefore, the above captioned Company Petition was dismissed as infructuous with liberty to the Applicant to file its claim before the Interim Resolution Professional (IRP) of the Corporate debtor in CP NO. 1731 (IB)/MB/ 2018 (Rajgopal Creation VS. Samrat Gems Impex Pvt. Ltd).

3. The operational creditor filed its claim before the IRP. In the meanwhile, the Corporate Debtor had filed an appeal in the CP No. 1731 (IB)/MB/ 2018 before the Hon'ble NCLAT and the matter between them was settled and the Corporate Debtor was released from Corporate Insolvency Resolution Process .As the CP filed by another creditor was withdrawn as having being settled, the Applicant herein had moved an IA No. 517 of 2021 seeking revival of its petition. However, it was dismissed in default vide Order dated 07.07.2021 for want of prosecution. Hence the Instant IA has been preferred by the Applicant seeking restoration of IA No. 517 of 2021.

Case of Reply filed by the Respondent:

4. As per the Respondent, the Applicant has not stated the provision of law under which they have filed Interlocutory Application No.

2625 of 2021. Hence, it is the case of the Respondent that the present application is misconceived.

5. The Plea taken by the Applicant that the Cause lists dated 23.06.2021 and 07.07.2021 did not mention the name of the Advocate correctly, is flimsy in nature as the aforesaid cause lists had rightly mentioned the application number as also the party names.

FINDINGS

6. We have heard both the parties and we have carefully gone through their pleadings and documents placed on record.
7. The Counsel for the Applicant submits that this IA was first listed on 23.06.2021 and thereafter on 07.07.2021 before this Honourable Tribunal and in both the dates, Cause lists did not show the name of the Advocate on record for the Operational Creditor/Petitioner and the column of the above Advocate for the Petitioner wrongly reflected the name of the of a Resolution Professional called Anurag Singh. The Counsel for the Applicant further submits that as the advocates name was not correctly mentioned, the petition skipped the attention of the advocates for the Applicant and hence the same could not be prosecuted on behalf of the Applicant as result of which the Application No. 517 Of 2021 came to be dismissed vide order dated 07.07.2021. The Learned Counsel for the Applicant states that the error on the part of Applicant as well as its advocates was inadvertent and unintentional in nature and

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hence the same needs to be condoned by revival of the IA which was dismissed in default. Further, it is in the interest of justice that both the parties should be heard before any decision on revival of Company Petition is taken.

8. On the other hand, Counsel for the Respondent has vehemently objected to the maintainability of the application. Counsel for the Respondent submits that the Application is misconceived as it is not stated under which provision of law the application is preferred. Further, Counsel for the Respondent submits that the cause lists had correctly mentioned the name of the parties and the number of applications. Merely for incorrectly mentioning the name of the advocate for the Applicant in the cause list neither vitiates the cause list nor gives any cause of action to Applicant to move the present application.
9. We have heard and carefully weighted the aforesaid submissions of the Counsels for the Applicant and Respondent.
10. It is cardinal principle of law that nobody should be condemned unheard. And as far as possible, the cases should be decided on merits after giving an opportunity of being heard to both the parties. In our considered view, the absence of the counsel for the Appellant on the date when IA No. 517 of 2021 was listed on 07.07.2021 does not appear to be intentional. Therefore, applying the principle of Audi Alteram Partem and in the interest of justice, we are of the considered view that IA No. 517 of 2021 should be allowed.

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11. Hence, we pass the following orders:

- a. IA No. 2625 of 2021 is **allowed**.
- b. IA No. 517 of 2021 is hereby **restored to file**.
- c. Registry is directed to list IA No. 517 of 2021 in C.P (I.B) NO. 1392 of 2017 on **08.01.2024**.
- d. Accordingly, this IA stands disposed off

Sd/-

**ANIL RAJ CHELLAN
MEMBER (TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
MEMBER (JUDICIAL)**