

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III**



Rst. A. - 2/2025

IN

CP No.326 of 2024

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

Tricon Infra Buildtech Private Limited

Having Registered Office at:

Shop No 2s-3 First Floor, Konark Baugh New Hub, First Floor, Indrayu Mall, Near Konark Pooram, Kondhwa, Pune, Maharashtra-411048.

... Applicant/ Operational Creditor

Xrbia Chakan Developers Private Limited

Having office address at

Office No.125/126, Patil Plaza, Mitramandal Chowk, Parvati, Pune, Maharashtra, India-411009.

... Respondent / Corporate Debtor

In the matter of:

Tricon Infra Buildtech Private Limited

...Petitioner

Vs.

Xrbia Chakan Developers Private Limited

...Corporate Debtor

Order Pronounced on: 22.04.2025

CORAM:

Ms. Lakshmi Gurung, Member (Judicial)

Sh. Hariharan Neelakanta Iyer, Member (Technical)

APPEARANCES:



For the Applicant

Adv. Shadab S. Jan, Adv. Aditya Sharma

For the Respondent

Adv. Jill Rodricks

Per: Ms. Lakshmi Gurung, Member (Judicial)

1. The present Interlocutory Applications is filed by **Tricon Infra Buildtech Private Limited** under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**Code**), read with Rule 11 of the National Company Law Tribunal Rules, 2016 (**'NCLT Rules'**) seeking the following reliefs:

A) Restore the Company Petition No.326 of 2024 for violation of Consent terms by the Respondent.

B) Pass ad-interim reliefs interim of Clause A.

C) Pass Such order or further reliefs as this Hon'ble Bench may deem fit and proper in facts and circumstances of the case.

Brief Facts:

2. M/s. Tricon Infra Buildtech Private Limited (**'Applicant'**) had filed the Company Petition bearing No. 326 of 2024 against Xrbia Chakan Developers Private Limited (**'Corporate Debtor'**) under Section 9 of the Code for a default of **Rs.2,00,26,690/-** (Rupees Two Crore Twenty-Six Thousand Six Hundred and Ninety Only).The said Company Petition No. 326 of 2024 was admitted vide order dated 1.08.2024 of this Tribunal wherein **Mr. Vakati Balasubramanyam Reddy** was appointed as the Interim Resolution Professional (**'IRP'**).
3. Immediately thereafter, the Applicant and the suspended director of the Corporate Debtor signed consent terms dated 02.08.2024 wherein the suspended director agreed to pay a sum of Rs. 1,51,73,325/- (Rupees One Crore Fifty-One Lakhs, Seventy-Three Thousand, Three Hundred and Twenty-Five Only) by way of settlement for the entire claim of the Applicant.
4. As the parties arrived at a settlement, the suspended Director for the



Corporate Debtor filed an Interlocutory Application No.4466 of 2024 on 03.08.2024 for withdrawal of the CIRP process of the Corporate Debtor under 12 A of the Code.

5. This Tribunal vide order dated 03.10.2024 allowed and disposed the said withdrawal application 4466 of 2024 filed by the suspended Director of the Corporate Debtor on ground of settlement arrived between the Applicant and the Corporate Debtor.
6. After the signing of the Consent Terms dated 02.08.2024, the Applicant wrote a letter to the Corporate Debtor on 05.08.2024 requesting the Corporate Debtor to maintain balance in the bank account as the Applicant intended to deposit the cheque issued by the promoters of the Corporate Debtor.
7. The Resolution Professional had also filed I.A. having diary no 2709138078142024 under 12 A of the Code on 05.08.2024 but the same was not yet listed but I.A. 4466 of 2024 filed by the suspended Director was listed. The same was supported by the Resolution Professional.
8. The Corporate Debtor further vide letter dated 06.08.2024 requested the Applicant to not proceed with the deposit of the cheque till the process of withdrawal of the Company Petition was completed.
9. The Corporate Debtor further vide its letter dated 12.08.2024 and 17.08.2024 once again requested the Applicant to allow some more time to the Corporate Debtor to arrange funds and deposit cheques after approval of withdrawal application.
10. The Applicant vide letter dated 20.08.2024 requested the Corporate Debtor to issue fresh cheques in place of earlier cheques as per the consent terms and informed that thereafter the Applicant would handover old cheques issued by the promoter company i.e. Xrbia Chakan Developers Private ('XDL').
11. The Applicant vide its letter dated 03.10.2024 requested the Corporate Debtor to issue a fresh single cheque and complete payment failure of which would lead to appropriate action under applicable laws.



12. The Applicant further once again vide its letter dated 06.11.2024 informed the Corporate Debtor that the withdrawal application was allowed by this tribunal hence requested the Corporate Debtor to issue fresh cheque in terms of consent terms dated 02.08.2024 and informed that no further time would be granted for making full payment to the Applicant.
13. Accordingly, on 11.11.2024, the Corporate Debtor sent a letter along with a cheque for an amount of Rs. 1,51,73,325/- dated 25.11.2024 to the Applicant. The new cheque dated 25.11.2024 was deposited by the Applicant on 04.12.2024 with HDFC Bank however was returned unpaid. Pursuant thereto the Applicant vide their letter dated 05.12.2024 allowed time of 7 days upto 13.12.2024 to Corporate Debtor to cure the lapse and make payment however, no payment was made by the Corporate Debtor.
14. As the default continues on behalf of the Corporate Debtor, hence the Applicant has filed present application for restoration of the original Company Petition.
15. The Corporate Debtor in its reply has submitted that it had sincerely attempted to fulfil its financial obligations to the Operational Creditor and was willing and wanting to adhere to the consent terms but due to certain unforeseen circumstances, it defaulted in its payment terms to the Operational Creditor.
16. We note that the Corporate Debtor was admitted into CIRP vide order dated 1.08.2024 of this Tribunal however, in view of settlement/ consent term dated 02.08.2024 the Company Petition was permitted to be withdrawn by order dated 03.10.2024 of this Tribunal.
17. We also note that pursuant to settlement terms dated 02.08.2024 the IRP had not constituted CoC nor any CoC meetings were held. We note that the IRP had filed I.A. bearing Dairy no 2709138078142024 for the withdrawal of CP.326 of 2024 however the same was not listed therefore the suspended Director of the Corporate Debtor filed an Interlocutory Application No.4466 of 2024 on 03.08.2024 for withdrawal of Company Petition No. 326 of 2024.



18. Further it is an admitted position that the settlement terms have been breached and default by the Corporate Debtor continues.
19. Moreover, we note that Clause No.6 of the consent terms dated 02.08.2024 provides for restoration of the present company petition in the event of dishonour of cheques, the clause is reproduced hereunder:

"In the event that, post-dated cheques are being dishonoured, the said Form FA given by the Petitioner to the IRP will automatically stand cancelled & the CIRP Process Initiated under Section 9 shall resume"

20. We place reliance on the judgement of the **Hon'ble NCLAT in Himadri Foods Ltd. Credit Suisse Funds [Company Appeal (AT) (Ins) No. 1060 of 2020]**, wherein it was held that: a Creditor can apply for restoration of a company petition when the settlement agreement contains a clause emphasizing on the same event if it has not been specifically recorded in the order that non-compliance would warrant revival/ restoration of the CIRP proceedings. This was reiterated by the Hon'ble NCLAT in **IDBI Trusteeship Services Limited vs. Nirmal Lifestyle Limited [Company Appeal (AT) (Ins) No. 117 of 2023]** wherein it was held as follows:

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, not giving liberty specifically for revival by the Adjudicating Authority is inconsequential.*

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 Respondent, 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.***"



(Emphasis Provided)

21. In the present case also Clause 6 of the Consent terms envisages the situation that if post-dated cheques are dishonoured then the CIRP process shall resume. In the present case the cheques issued by the Corporate Debtor have been dishonoured therefore, the present case is fit for restoration of the CIRP process as the debt and default is established in view of breach of consent terms which is also admitted by the Corporate Debtor.
22. Accordingly, the Company Petition bearing no. **326 of 2024** is restored from the stage at which it was withdrawn with the following directions:
 - i. The above Company Petition No. (IB) 326 (MB)/2024 is hereby restored and CIRP activities to be resumed.
 - ii. Since the erstwhile IRP had communicated his inability to act as IRP, the Applicant has proposed the name of Mr. Sanjay Vijay Jeswani Registration No. IBBI/IPA-001/IP-P-02891/2024-2025/14432, to act as the Interim Resolution Professional for the Corporate Debtor. We note that the Written Consent dated 09.01.2025 of the proposed IRP as required under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is annexed as *Exhibit A2* to the Additional Affidavit dated 05.02.2025. The Written Communication is accompanied by AFA which is valid upto 30.06.2025. Accordingly, we appoint **Mr. Sanjay Vijay Jeswani** (jeswanisanjay007@gmail.com) as the new Interim Resolution Professional (IRP) to carry out the CIRP activities and functions as per the Insolvency & Bankruptcy Code, 2016.
 - iii. It is to be noted that CIRP of the Corporate Debtor commenced on 01.08.2024, but on 02.08.2024 Consent terms were executed between the Applicant and Respondent. On 03.08.2024 I.A. 4466 of 2024 for withdrawal of Company Petition 326 of 2024 was filed which was allowed by this Tribunal on 03.10.2024. Apparently no CIRP activities



were undertaken in view of consent terms dated 02.08.2024 and filing of withdrawal application dated 03.08.2024 under 12A of the Code. Newly appointed IRP shall carry on activities from the stage of withdrawal of Company Petition 326 of 2024.

- iv. All the consequences of commencement of CIRP including moratorium and other applicable provisions shall apply.
 - v. The Operational Creditor shall deposit an adhoc amount of Rs. 5 Lakhs towards the CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional (IRP) appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by the Committee of Creditors.
 - vi. The directors of the Corporate Debtor, its promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under Section 19 of the Code.
23. Accordingly, the Interlocutory Application No. 02 of 2025 is **allowed and disposed of**, and the Company Petition No. 326 of 2024 stands **restored**.

SD/-

Hariharan Neelakanta Iyer

Member (Technical)

(LRA APURVA)

SD/-

Lakshmi Gurung

Member (Judicial)