

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT VI, NEW DELHI**

I.A/4893/2021 IN IB-1457/PB/2019

Application under Section 60(5) IBC,2016.

IN THE MATTER OF:

IN THE MATTER OF

M/s. Sahil Holdings Private Limited

Registered Office: F-3, First Floor, South Extension - II, New Delhi –
110049

...Financial Creditor/ Applicant

VERSUS

M/s. Saluja Constructions Co. Ltd.

Registered Office: 3, Munirka Marg, Vasant Vihar, Delhi -110057

...Corporate Debtor/Respondent

Coram:

Shri. Bachu Venkat Balaram Das, Member (Judicial)

Shri. Rahul Bhatnagar, Member (Technical)

Counsel for the Applicant: Adv. Kaustubh Prakash

Counsel for the Respondent: Adv. Mohit Nandwani

ORDER

PER-RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Order Pronounced on: 07.12.2023

1. The present Application has been filed by the Applicant under Section 60(5) of the IBC, 2016 praying for the following reliefs:
 - (a) *Revive the Petition CP(IB) No.1457/PB/2019 and revive the CIR Process against the Corporate Debtor;*
 - (b) *Pass any other and further order this Tribunal may deem fit and proper in the facts and circumstances of the case.*
2. The brief facts as averred by the Applicant for filing the present Application are as follows:
 - i. That the Financial Creditor had filed a Company Petition (IB) No. 1457(PB) of 2019 before this Adjudicating Authority under Section 7 of the Insolvency and Bankruptcy Code, 2016 to initiate CIR Process against the Corporate Debtor since the Corporate Debtor failed to repay the amount of Rs. 11,08,84,000/- along with interest and thus committed default of the Financial Debt. The said petition was admitted by this Adjudicating Authority, vide its order dated 29.08.2019.

- ii. That subsequently, the Applicant and the suspended director and shareholder of the Corporate Debtor entered into a settlement agreement dated 02.09.2019, vide which the total amount outstanding along with interest was settled at Rs, 10,90,00,000/- (Rs. Ten crores ninety lakhs) of which Rs. 5,00,00,000/- (Rs. Five crores) was paid at the time of signing of the settlement agreement and balance amount of Rs. 5,90,00,00W- (Rs. Five crores ninety lakhs only) was decided to be paid in three monthly installments. It was also decided that in the event of default in the payment terms interest at the rate of 12% p.a. would be applicable on the outstanding amounts till the date of repayment.
- iii. That thereafter, an application was filed under Rule 11 of the NCLT Rules, 2016 with a prayer for withdrawal of CP(IB) No. 1457(PB)/2019. Vide its order dated 05.09.2019, this Adjudicating Authority took the Settlement Agreement on record and dismissed the petition CP(IB) No. 1457(PM/2019 as withdrawn with a liberty to the Financial Creditor/ Applicant to apply for revival of the petition in case the terms of the settlement agreement are not complied with.

- iv. That the Corporate Debtor, out of the outstanding balance of Rs. 5,90,00,000/- repaid Rs. 1,00,00,000/- in December 2019. The Corporate Debtor, failed to pay the balance outstanding of Rs. 4,90,00,000/- and thereby failed to comply with the terms of the settlement agreement dated 02.09.2019.
- v. That thereafter Corporate Debtor and Financial Creditor/ Applicant entered into another settlement agreement dated 14.02.2020 modifying the payment terms of the Settlement Agreement dated 02.09.2019. Vide the said settlement agreement dated 14.02.2020, out of the balance outstanding of Rs. 4,90,00,000/- along with interest at the rate of 12% per annum on the same, Corporate Debtor gave a property bearing address First Floor, E-56, Anand Niketan, New Delhi — 110021 for a total amount of Rs. 4,00,00,000/- which was then duly registered in the name of the Financial Creditor. The balance outstanding amount of Rs. 90,00,000/- was then decided to be paid in installments for which post-dated cheques were provided.
- vi. That for the repayment of the balance amount of Rs. 90,00,000/- along with interest at the rate of 12% p.a., the

Corporate Debtor vide letter dated 30.06.2020 asked for some more time and provided two post-dated cheques.

- vii. That Corporate Debtor again asked the Financial Creditor not to deposit the aforesaid cheques in the bank account and stated that the outstanding amount would be remitted directly to the bank account.
- viii. That the Corporate Debtor failed to comply with the settlement terms and did not pay the balance outstanding amount of Rs. 90,00,000/- along with interest at the rate of 12% per annum. The Financial Creditor through its authorized representative, sent a Demand Notice dated 24.09.2021, calling upon the Corporate Debtor to pay the amount due and payable and in default in terms of the Settlement Agreement dated 02.09.2019 and 14.02.2020.
- ix. That as on date of filing of this Application, the Corporate Debtor is in default of Financial Debt of Rs, 1,12,84,270/-.

3. The Respondent has filed its reply stating as follows:

- i. That the present application is not maintainable as it is barred by Section 10A of the Code. As per Clause 6 of the second agreement, in the event of failure to make payment on the

assigned due date, the Agreement would stand breached. The due date of making payment of Rs. 90 lacs was 31.07.2020 which was admittedly not made, hence the date of default was 01.08.2020 for which no application could ever be filed as per Section 10A. Hence, the present application seeking revival is not maintainable as the date of default is 01.08.2020.

- ii. That the present application is not maintainable as it is filed solely for recovery of money which is against the intention and purpose of the Code and has been strongly discouraged by the Hon'ble Supreme Court of India on various occasions.
- iii. That the Applicant in the present application is claiming that the interest is applicable on the amount of Rs. 90 lacs from 02.09.2019 till 20.09.2021 @ 12% p.a. thereby making a total amount of Rs. 1.12 Cr. This contention of the Applicant is flawed and misconceived.

4. We have heard the submissions made by both the parties. The present Application has been filed by the Applicant seeking to revive CP(IB) No.1457/PB/2019 which was withdrawn by the Applicant in light of the settlement agreement dated executed between the Applicant and the Respondent. This Adjudicating

Authority vide order dated 05.09.2019 allowed the withdrawal of the Petition and granted the Applicant liberty to revive the Petition if the terms of settlement are not complied with. The Respondent has not contested the claim of the Applicant and has admitted that the Respondent has breached the terms of agreement. However, the Respondent has submitted that the present Application seeking revival of IB-1457/PB/2019 is not maintainable as the Applicant has wrongly added interest component to the debt amount of Rs. 90 Lacs which is below the threshold of Rs. 1 Crore as per Section 4, IBC, 2016. Further, the Respondent has also stated that since the date of default as per settlement agreement is 01.08.2020, it is barred by Section 10A, IBC, 2016.

- 5.** As far as the first contention of the Respondent is concerned, the threshold limit for revival of IB-1457/PB/2019 shall be Rs. 1 Lac as the notification dated 24.03.2020 increasing the threshold limit u/s 4, IBC, 2016 is prospective in nature. Similar view was taken by Hon'ble NCLAT in the matter: *Madhusudan Tantia vs Amit Choraria & Anr Company Appeal (AT) (Insolvency) No. 557 of 2020* wherein it was held as follows:

“57. In view of the upshot and also this Tribunal, on a careful consideration of respective contentions advanced on either side and considering the facts and circumstances of the instant case in a conspectus fashion holds unhesitatingly that the notification dated 24.03.2020 of the Ministry of Corporate Affairs, Government of India, is prospective in nature and it is not retrospective or retroactive in nature.”

- 6.** Further, the Hon’ble NCLAT in the matter of *Royal Manpower Services Versus Faridabad Autocomp System Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 370 of 2023 & I.A. No.1245 of 2023* held as follows:

“The Adjudicating Authority having dismissed the application only for not fulfilling the threshold of Rs.1 crore, which does not appear to be applicable, since the application was filed in the year 2019 and subsequent registration of application will not change the date of filing. Hence, on the date of filing of the application, the threshold which was to be fulfilled by the Appellant was Rupees One Lakh only. In view of the above, impugned order dated 06.01.2023 is set aside and the application under Section 9 is revived before the Adjudicating Authority to be heard and decided in accordance with law.”

- 7.** The second contention of the Respondent that since the date of default as per settlement agreement is 01.08.2020, it is barred by Section 10A, IBC, 2016 holds no ground as the the default started

in 2019 when the Petition was originally filed and has been continuing till the date of filing this Petition.

8. In light of the above, IA/4893/2021 stands allowed and Ib-1457/PB/2019 stands restored and CIRP is initiated against the Respondent.

9. Sub-section (3) (b) of Section 7 mandates the Financial Creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the Applicant has proposed the name of Mr. Mr. Sanyam Goel for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N00138/2017-18/10397. Section 16(1) and Section 16 (2) of the Code mandate that the Resolution Professional proposed by the Financial Creditor shall be appointed as the Interim Resolution Professional (IRP) by the Adjudicating Authority (Tribunal) if no disciplinary proceedings are pending against him. Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, require the proposed Interim Resolution Professional to make a declaration in Form 2 confirming his eligibility to be appointed as a Resolution Professional as well as a declaration confirming that no disciplinary proceedings are

pending against him in the Insolvency and Bankruptcy Board or elsewhere. The proposed Interim Resolution Professional Mr. Sunil Kumar has submitted the declaration in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 11.08.2023. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

10. Mr. Sanyam Goel having registration number IBBI/IPA-002/IP-N00138/2017-18/10397 is appointed as an Interim Resolution Professional.

11. 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.

12. 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:

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

(b) transferring, encumbering, alienating or disposing of 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.”

13. 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.

14. 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 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 preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (Tribunal) with a prayer for passing an appropriate order. 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.

15. 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. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)