

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

I.A. No. 3177/(ND)/2021
Connected with IB-1619/(ND)/2019

Application on behalf of Corporate Debtor for directions in terms of Section 10A of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

TRANSRAIL LIGHTING LIMITED

...Financial Creditor

versus

ZAPDOR ENGINEERING PRIVATE LIMITED

...Corporate Debtor

In the matter of:

ZAPDOR ENGINEERING PRIVATE LIMITED

Registered Office at:

602, 6TH Floor, Rishabh Corporate Tower,
Karkardooma Community Centre, Karkardooma,
New Delhi- 110092

...Applicant/Corporate Debtor

versus

TRANSRAIL LIGHTING LIMITED

Registered Office at: 501, A, B, C, E,
Fortune 2000, Block- G, Bandra Kurla Complex,
Bandra East, Mumbai- 400051

... Respondent/Financial Creditor

Coram:

SH. P.S.N. PRASAD, Hon'ble Member (Judicial)

SH. RAHUL BHATNAGAR, Hon'ble Member (Technical)

I.A. No. 3177 of 2021

Connected with IB no. 1619/(ND)/2019

Transrail Lighting Limited v. Zapdor Engineering Private Limited



Counsel for Applicant: Mr. Ashish Kr. Bhagat and Mr. Aditya Sinha,
Advocates.

Counsel for Respondent: Mr. Mirza Aslam Beg and Ms. Chandni
Arora, Advocates.

ORDER

Per P.S.N. PRASAD, MEMBER (JUDICIAL)

Date: 07.01.2022

1. This is an application filed by the Applicant 'Zapdor Engineering Private Limited' being the Corporate Debtor in the main matter i.e., IB-1619/ND/2019, 'against the Respondent, 'Transrail Lighting Limited' i.e., the Financial Creditor, seeking the following directions:

- a) To direct the Financial Creditor to withdraw the present petition as the same is infructuous and not maintainable or
- b) Dismiss the present case as infructuous and not maintainable in view of the settlement and in view of the provisions of section 10A of the IBC, 2016.
- c) To pass any such order/direction which the Hon'ble Tribunal deem fit and proper in the facts and the circumstances of the case.



2. The applicant submitted that the present matter has been filed under section 7 of IBC, 2016 and is pending for adjudication before this Hon'ble Tribunal. That the Financial Creditor during the pendency of the said petition had entered into settlement agreement with the Corporate Debtor. The operative part of the written agreement is as follows:

- (1) *That ZEPL shall pay amount of Rs 75,00,000 (Rupees Seventy Ewe Lacs) out of the said outstanding amount of Rs. 2,38,31,644/- (Rupees Two Crore Thirty Eight Lacs Thirty One Thousand Six Hundred and Forty Four only) immediately on signing of this Agreement and the Balance amount along in four equal instalments as stated in clause (3) below.*
- (2) *That on receipt of payment of upfront amount as stated in clause (1) above, Transrail shall withdraw the aforesaid Application No. C.P. No. /2019, filed as Operational Creditor under Section 9 of IBC, 2016 before Hon'ble National Company Law Tribunal, New Delhi within 15 working days.*
- (3) *After the order of withdrawal of aforesaid application is passed by NCLT, ZEPL.. shall pay an amount of Rs. 1,63,31,644/- (Rupees One Crore Sixty Three Lacs Thirty One Thousand Six Hundred and Forty Four only) in four instalments of Rs.40,82,911 (Rupees Forty Lacs Eighty Two Thousand Nine Hundred and Eleven only) per month starting from 3rd month from the month of withdrawal of the NCLT case by Transrail. However, the Post-Dated cheques for the same shall be provided for same shall be provided by ZEPL to TLL at the time of signing of this Agreement.*
- (4) *That Transmit has assured ZEPL that on the receipt of the aforesaid amount, nothing shall remain receivable/payable by the ZEPL from Transmit or payable by Transmit to ZEPL on any account whatsoever pertaining to the aforesaid contracts.*
- (5) *After compliance by the parties of the above settlement agreement all the matter shall stand amicably and finally settled and nothing shall remain payable by either party to the other party pertaining to the aforesaid contracts. Transmit reserve rights to continue claim its demand with interest, if ZEPL defaults even a single instalment.*



- (6) *That on the aforesaid terms and conditions having been complied by both the parties there shall be nothing left against either the party with respect to the aforesaid contracts.*
- (7) *The present Agreement is being signed between the parties of their own freewill and without undue influence and coercion in order to bring an end to the disputes between the parties for all intents and purposes.*
- (8) *Transmit reserves all its legal rights in case ZEPL is not meeting the obligations under this agreement and/or not making the payments accordingly.*
- (9) *This Agreement shall be subject to be construed in accordance with the laws of India and Jurisdiction of this agreement shall be at Mumbai. Both the parties have agreed for exclusive jurisdiction at Mumbai.*

3. The applicant submitted that it agreed to the terms and condition as proposed by the Respondent and also complied with the pre-condition laid down by the Respondent. It was further submitted that the Respondent company paid Rs. 75,00,000/- upfront amount in compliance of the pre-condition to the settlement.
4. It was submitted that the Applicant Company on 28.01.2020 handed i.) one demand draft for an amount of Rs 49,00,000/- bearing no 445293, another demand draft of Rs 26,00,000/- bearing no 445292, ii) 2 copies of the signed agreement and four post -dated cheques bearing nos. 253320, 253319, 253318,



253317 dated 30.04.2020, 30.05.2020, 30.06.2020 & 30.07.2020 to the Respondent against the acknowledgement.

5. That the purpose of handing over four post-dated cheques dated 30.04.2020, 30.05.2020, 30.06.2020 and 30.07.2020 was that as per the agreement after paying Rs. 75,00,000/-, the remaining amount was to be paid in four instalments of Rs.40,82,911 (Rupees Forty Lacs Eighty-Two Thousand Nine Hundred and Eleven only) per month starting from 3rd month from the month of withdrawal of the NCLT case by Transrail (Financial Creditor). The next hearing of the present case at the time of making the upfront payment of Rs 75,00,000/- was on 30.01.2020 and the Applicant Company was under the belief that the Respondent/Financial Creditor as promised would withdraw the present case on 30.01.2020 since all the condition of settlement agreement was compiled by the Applicant Company. Three months from 30.01.2020 would have been 30.04.2020, therefore dates accordingly were filled in the post- dated cheques.
6. The applicant submits that the Respondent i.e., the Financial Creditor made submissions before the Hon'ble Tribunal on



30.01.2020, 12.02.2020 and 27.02.2020 that they would move appropriate application for withdrawal of the case as the matter stands settled. However, till now the Respondent has not withdrawn the said case.

7. It was further submitted by the applicant that after receiving Rs. 75,00,000/- the Respondent/Financial Creditor started demanding more money from the Applicant company. That the Respondent sent another slightly modified settlement agreement on 11.03.2020 to which the Applicant Company agreed. That the Respondent company went ahead to encash the post-dated cheques given in lieu of the settlement. The said cheques were admittedly dishonored because due to the pandemic the Applicant Company was facing financial crisis.
8. The applicant submits that there is no outstanding debt as of today because the outstanding was to occur after three months of withdrawing the present case and till now the present case has not been withdrawn by the Respondent. That the Financial Creditor could at best claim the outstanding to accrue after or from 30.04.2020 i.e., from the date of the first cheque. Then if the



outstanding occurs from 30.04.2020 and the financial creditor is able to establish himself as financial creditor and thereafter also establish that there was a financial debt then in that case also the Applicant Company is entitled to the benefits of the moratorium in operation by virtue of Section 10A of the Insolvency and Bankruptcy Code, 2016. The applicant further submitted that the remaining part of the agreement was to come into effect after the withdrawal of the present case and if any outstanding debt arose thereafter, then a fresh cause of action was made out for which a fresh application is to be filed.

9. The Counsel for the Respondent/Financial Creditor, filed its reply Affidavit on behalf of the Respondent stating that:

- i. The applicant has previously already admitted the debt due and liable to be paid to the Respondent which is on record of the Tribunal.
- ii. That the contents of Section 10A of the Code are reproduced below:

10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency

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resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation. —For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.

- iii. The Respondent submits that as per the explanation stated hereinabove, it is amply clear that the provisions of section 10A shall not be applicable on to any default committed under section 7,9 and 10 before 25.03.2020. that the default in the present case has started to occur from 2017 itself and continues till date due to non-payment of due amounts.
- iv. The Respondent submitted that the first draft proposal for settlement was shared on 10.10.2019 and the same was not accepted. Further the Respondent submitted that on 28.01.2020 the counsel for the Corporate Debtor

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handed over two Demand Drafts amounting to a sum of INR 75,00,000/- dated 24.01.2020 along with four post-dated cheques of INR 40,82,911/- each dated 30.04.2020, 30.05.2020, 30.06.2020 and 30.07.2020 respectively along with an executed version of a settlement agreement. However, upon perusal of the settlement agreement, it came to the attention of the Financial Creditor that the Corporate Debtor incorporated additional clauses to their benefit which were not agreed upon by the Financial Creditor in the email communications shared which included the withdrawal of complaint case under Section 138 of the Negotiable Instruments Act, 1881 filed by the Financial Creditor upon the Corporate Debtor.

- v. That after a long negotiation it was agreed between the parties that financial creditor will also withdraw the petition under section 138 subject to Corporate Debtor paying the 2 cheques of INR 2,00,000/- each and in furtherance of the same on 03.03.2020, the Corporate

Debtor shared a revised draft proposal for settlement which was slightly modified by the Financial Creditor and revised draft shared with the Corporate Debtor on 11.03.2020. The said revised draft was accepted by the Corporate Debtor on 12.03.2020 with a commitment to provide two additional cheques of INR 2,00,000/- each on or before the next date of hearing. However, Corporate Debtor once again failed to fulfil their commitment and did not provide any cheques of INR 2,00,000/- which was the pre-condition of settlement and because of which the settlement could not be concluded and the question of withdrawal of present Petition did not arise.

10. We have gone through the Documents filed and heard the arguments at length advanced by the learned counsels for both the parties.

11. The applicant being the Corporate Debtor in the main matter prays for dismissal of the present case as infructuous and not maintainable in view of the settlement and in view of

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the provision of section 10A of the Insolvency and Bankruptcy code which has been quoted in the earlier part of this order.

12. As stated in the above-mentioned provision that no application for initiation of CIRP of a Corporate Debtor under section 7,9 and 10 of IBC, 2016 shall be filed for any default arising on or after 25th March, 2020 along with that it was also clarified that provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020. Whereas, in the present case in hand the main matter has been filed under section 7 of IBC, 2016 and the default as well as the filing of the application under section 7 has taken place prior to 25th March 2020. The applicant's contention that as both the parties entered into a settlement therefore, there has been novation of the MOU/Agreement dated 28.08.2017 and as a result the previous date of default be rescheduled cannot be accepted since the liability to pay has occurred much before the settlement and before the moratorium under section 10A set in.



13. It is pertinent to mention that as the main matter has been filed under section 7 of IBC, 2016 for initiation of CIRP in respect of the Corporate Debtor, the provision of section 7(5)(a) and (b) is reproduced below:

7. Initiation of corporate insolvency resolution process by financial creditor.

(5) Where the Adjudicating Authority is satisfied that –

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

14. On a bare reading of the provision of section 7(5) clauses (a) and (b) it is amply clear that the Adjudicating Authority has two courses of action available to it. The Adjudicating Authority must either admit the application under section 7(5)(a) or it must reject the application under section 7(5)(b) of IBC, 2016. Whereas, in the present case in hand the settlement agreement agreed between the parties is only a subsequent arrangement which cannot negate the occurrence of default much earlier. Therefore, the applicants' contention regarding change or rescheduling in date of default in lieu of

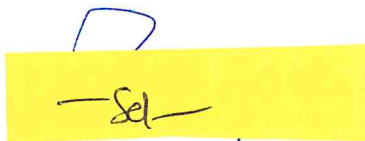
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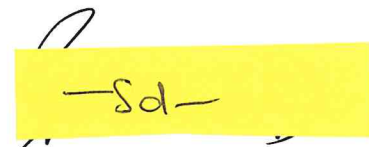
the settlement Agreement holds no merit. Hence, the prayers by the applicant in the present application stands dismissed.

15. Thus, in light of the above, after giving careful consideration of the entire matter we have no option but to **dismiss** the present Application filed for directions in terms of section 10A of IBC, 2016.

16. Accordingly, we hereby Dispose of the present application IA/1312/2021.



**(SH. RAHUL BHATNAGAR)
MEMBER (TECHNICAL)**



**(SH. P.S.N. PRASAD)
MEMBER (JUDICIAL)**

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